

**STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION**

In the Matter of:

EAST CHINA SCHOOL DISTRICT,
Public Employer-Respondent in Case No. C14 J-119; Docket No. 14-026912-MERC,

-and-

TEAMSTERS LOCAL 214,
Labor Organization-Respondent in Case No. CU14 J-047; Docket No. 14-026913-MERC,

-and-

DENISE BUCKLEY,
An Individual Charging Party,

-and-

KATHY WAWRZYNIAK,
An Individual Charging Party,

-and-

SANDRA AVILA,
An Individual Charging Party.

APPEARANCES:

Thrun Law Firm, P.C., by Kathrine Wolf Broaddus and Eric D. Delaporte, for the Public Employer-Respondent

Michael Landsiedel, Business Agent for Teamsters, Local 214, for the Labor Organization-Respondent

Denise Buckley, appearing on her own behalf

Kathy Wawrzyniak, appearing on her own behalf

Sandra Avila, appearing on her own behalf

DECISION AND ORDER

On February 26, 2015, Administrative Law Judge Travis Calderwood issued his Decision and Recommended Order in the above matter finding that Respondents did not violate Section 10 of the Public Employment Relations Act, 1965 PA 379, as amended, and recommending that the Commission dismiss the charges and complaint.

The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of the Act.

The parties have had an opportunity to review the Decision and Recommended Order for a period of at least 20 days from the date of service and no exceptions have been filed by any of the parties.

ORDER

Pursuant to Section 16 of the Act, the Commission adopts the recommended order of the Administrative Law Judge as its final order.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: March 23, 2015

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION**

In the Matter of:

EAST CHINA SCHOOL DISTRICT,
Respondent-Public Employer in Case No. C14 J-119; Docket No. 14-026912-MERC,

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DENISE BUCKLEY,
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An Individual Charging Party,

-and-

SANDRA AVILA,
An Individual Charging Party.

_____ /

APPEARANCES:

Thrun Law Firm, P.C., by Kathrine Wolf Broaddus and Eric D. Delaporte, for the Respondent-Public Employer

Michael Landsiedel, Business Agent for Teamsters, Local 214, for the Respondent-Labor Organization

Denise Buckley on her own behalf

Kathy Wawrzyniak on her own behalf

Sandra Avila on her own behalf

**AMENDED DECISION AND RECOMMENDED ORDER ON
RESPONDENT'S MOTION FOR SUMMARY DISPOSITION
AND ORDER TO SHOW CAUSE**

On October 22, 2014, Denise Buckley, Kathy Wawrzyniak and Sandra Avila, filed the above unfair labor practice charges against the East China School District ("District") and the Teamsters Local 214 ("Union"). Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, this case was assigned to Administrative Law Judge, Travis Calderwood, of the Michigan Administrative Hearing System, acting on behalf of the Michigan Employment Relations Commission (Commission).

Charging Parties, who by their own admission are employees of Michigan Education Transportation Services ("METS") and are "contracted through METS to drive school bus [sic] for" the District, are challenging the validity of a clause contained with the most recent collective bargaining agreement between the District and the Union which establishes a bidding order for routes based on seniority of bargaining unit members and which places Buckley, Wawrzyniak and Avila at the bottom of the list. Charging Parties claim that the agreement between the District and Union somehow conflicts with a bidding order relative to them as set forth in a pre-existing agreement between the District and METS.

Procedural History and Motion:

On November 19, 2014, Teamsters Local 214 filed a response to the allegations raised by the Charging Parties, in which it argued that the Charging Parties were no longer employees of a public employer and are not represented by the Union. On November 20, 2014, the District filed a Motion for Summary Disposition which raised the same issues as those found in the Union's response and argues that the Commission has no jurisdiction under PERA over the parties in this dispute.

On November 26, 2014, I issued an order, pursuant to Rule 165 of the Commission's General Rules, 2002 AACRS, R 423.165, directing Charging Parties to show cause in writing why their charges against both Respondents should not be dismissed for failure to state a claim upon which relief could be granted under PERA because the Commission, and by extension, the ALJ assigned to this case, did not have jurisdiction over the parties. Charging Parties' response was due December 17, 2014. Charging Parties failed to respond to my order.

Discussion and Conclusions of Law:

Charging Parties failure to respond to my November 26, 2014, Order, by itself, is cause for dismissal in favor of Respondents.¹ The failure of a charging party to respond to an order to show cause may warrant dismissal of the charge. *Detroit Federation of Teachers*, 21 MPER 3 (2008).

The above notwithstanding, I will address the issue of jurisdiction over the parties as challenged by the District in its motion. For purposes of addressing the District's motion, I accept all

¹ The original Decision and Recommended Order issued in this matter on January 29, 2015, provided June 12, 2014, as the date of the Order to Show Cause. The correct date is November 26, 2014.

factual allegations in favor of the non-moving parties, including that the seniority bidding list established by the agreement between the District and the Union was in direct conflict with the bidding list established in a pre-existing agreement between the District and METS and that the agreement with METS was in full force and effect at all times relevant to this dispute.

It is clear that PERA governs labor law within the public sector. See *Kent Co Deputy Sherriffs' Ass'n v Kent Co Sheriff*, 238 Mich App 310, 313 (1999). Furthermore, it is well established that PERA addresses the rights and privileges of public, rather than private, employees. See *Lansing v Schlegel*, 257 Mich App 627 (2003), *aff'g City of Lansing*, 2001 MERC Lab Op 403. Section 1 of PERA defines "public employee" as a "person holding a position by appointment or employment in the government of this state, in the government of 1 or more of the political subdivisions of this state, in the public school service, in a public or special district, in the service of an authority, commission, or board, or in any other branch of the public service..." Simply put, Charging Parties, by their own admission are employees of METS, not the District, and therefore not public employees for purposes of PERA.

For the reasons set forth herein, I conclude that the Commission lacks subject matter jurisdiction over this charge because Buckley, Wawrzyniak and Avila are not public employees covered by PERA and recommend that the Commission issue the following order:

RECOMMENDED ORDER

It is hereby ordered that the unfair labor practice charges be dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Travis Calderwood
Administrative Law Judge
Michigan Administrative Hearing System

Dated: February 26, 2015