

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

In the Matter of:

OAKLAND COMMUNITY COLLEGE,
Public Employer-Respondent,

Case Nos. C11 J-169, C11 J-171

-and-

EDWARD BOWIE,
An Individual-Charging Party.

APPEARANCES:

Edward Bowie, *In Propria Persona*

DECISION AND ORDER

On December 14, 2011, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order in the above matters finding that Respondent 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 complaints.

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

Edward D. Callaghan, Commission Chair

Nino E. Green, Commission Member

Christine A. Derdarian, Commission Member

Dated: _____

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

In the Matter of:

OAKLAND COMMUNITY COLLEGE,
Public Employer-Respondent,

-and-

Case Nos. C11 J-169
C11 J-171

EDWARD BOWIE,
An Individual-Charging Party.

APPEARANCES:

Edward Bowie, appearing for himself

**DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON SUMMARY DISPOSITION**

On October 5, 2011, Edward Bowie, a union steward for AFSCME Local 1999, filed the above unfair labor practice charges with the Michigan Employment Relations Commission (the Commission) against Oakland Community College pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216. Pursuant to Section 16, the charges were assigned to Julia C. Stern, Administrative Law Judge for the Michigan Administrative Hearing System.

On October 13, 2011, I issued an order to Bowie to show cause why his charges should not be dismissed for failure to state a claim upon which relief could be granted under PERA. In this order, I asked Bowie to clarify whether he was authorized to file the charge on behalf of AFSCME Local 1999. Bowie filed responses to my order on November 1 and November 18, 2011. In his responses, Bowie indicated that it was not his intent to bring the charges on behalf of Local 1999, and that he had brought the charges on behalf of himself and his co-workers. Based on the facts set forth in Bowie's charge and other pleadings, I make the following conclusions of law and recommend that the Commission take the following action.

The Unfair Labor Practice Charges:

AFSCME Local 1999 represents a bargaining unit of employees of Respondent that includes custodians. The charge in Case No. C11 J-169 alleges that on or about August 16, 2011, Respondent violated its duty to bargain under Section 10(1)(e) of

PERA by unilaterally eliminating security protection for custodians working the midnight shift at its Auburn Hills and Orchard Ridge campuses. It also alleges that by failing to provide its staff with security during their working hours, Respondent interfered with their lawful concerted activity. The charge in Case No. C11 J-171 alleges that Respondent violated Sections 10(1)(a) and (b) of that Act by failing to answer a grievance filed by Bowie on August 21, 2011 at step two of the contractual grievance procedure.

Facts:

Case No. C11 J-169

Respondent employs custodians who work between the hours of 12:00 a.m. and 6:00 a.m, Mondays through Fridays. It also employs public safety officers, represented by another labor organization, to provide security and emergency medical assistance at all five of its campuses. On or about August 16, 2011, Respondent eliminated the midnight shift of public safety officers at its Orchard Ridge and Auburn Hills campuses. Since that date, public safety officers have not patrolled at these two campuses between 12:00 a.m. and 6:00 a.m., and there have been no security personnel in buildings on these campuses during those hours. Public safety officers continue to patrol between 12:00 a.m. and 6:00 a.m. at Respondent's other three campuses.

Respondent's 2011 annual department of public safety report states that the mission of the department is "to provide protection and quality service to the college community and continually strive to maintain a healthy and safe environment for students, staff, and visitors." It also states:

During business hours, the college will be open to students, employees, contractors, guests, and invitees. During non business hours there is no access to college facilities. OCC DPS is available before and after these times.

Federal law requires Respondent to provide the federal government with a copy of its annual department of public safety report. Respondent's website states that its department of public safety is "committed to providing the students, faculty, staff and visitors with a safe and secure environment."

Case No. C11 J-171

As noted above, Bowie is a steward for AFSCME Local 1999. He works as a custodian at the Auburn Hills campus. On August 21, 2011, Bowie filed a grievance alleging that Respondent was violating its contractual obligation to provide a safe working environment by refusing to assign public safety personnel to the custodial third shift at the Auburn Hills campus. On August 24, the grievance was denied at the first step of the grievance procedure by management representative John Nagalski and forwarded to Respondent's human resources office. As of the date the charge was filed, Bowie had

not received an answer or response to the above grievance.

Article 19 of the collective bargaining agreement between AFSCME Local 1999 and Respondent states:

Step 2. Any grievance not settled in Step 1 of the grievance procedure may be referred, in writing, accompanied with a copy of all relevant documents within five (5) working days of the immediate supervisor's disposition to the Director of Operations and Maintenance, or in the case of the Bee Administration Center, the appropriate member of the Chancellor's Council. The Director or member of Chancellor's Council shall respond in writing within five (5) working days.

Discussion and Conclusions of Law:

Case No. C11 J-169

The collective bargaining obligation under PERA is defined in Section 15 as the mutual duty of labor and management to bargain in good faith with respect to "wages, hours, and other terms and conditions of employment." The subjects included within the phrase "wages, hours, and other terms and conditions of employment" are referred to as "mandatory subjects" of bargaining. Once a specific subject has been classified as a mandatory subject of bargaining, the employer and the labor organization are required to bargain concerning the subject, and neither may take unilateral action on the subject absent an impasse in negotiations. *Central Michigan University Faculty Ass'n v Central Michigan University*, 404 Mich 268 (1978). An employer's unilateral change in an existing term or condition of employment violates its duty to bargain in good faith under Section 10(1)(e) of PERA.

Bowie argues that the presence of public safety officers in their buildings during their shifts constitutes a term and condition of employment for custodians. He asserts that Respondent unilaterally altered working conditions by ceasing to provide certain custodians with security during their shift. Bowie also asserts that Respondent's actions violated the recognition clause of its collective bargaining agreement with AFSCME Local 1999. As noted above Section 10(1)(e) prohibits unilateral action on mandatory subjects of bargaining. Moreover, although a breach of a collective bargaining agreement is not per se a violation of PERA, an employer's repudiation of a provision or provisions of a collective bargaining agreement may, in certain circumstances, be tantamount to a rejection of its obligation to bargain under Section 10(1)(e). *36th District Court*, 21 MPER 19 (2008); *City of Detroit, Dep't of Transportation*, 1984 MERC Lab Op 937, aff'd 150 Mich App 605 (1985); *Jonesville Bd of Ed*, 1980 MERC Lab Op 891.

However, the obligation to bargain defined by Section 15 of PERA runs between the employer and the exclusive bargaining representative of its employees. An employer does not violate Section 10(1)(e) of PERA when the exclusive bargaining representative consents or acquiesces to a change in working conditions. Accordingly, the Commission

has repeatedly held that only the exclusive bargaining representative can assert that the employer has violated its duty to bargain in good faith. *Detroit Pub Schs*, 1985 MERC Lab Op 789; *City of Hazel Park*, 1979 MERC Lab Op 177; *City of Dearborn Heights (Fire Department)*, 1978 MERC Lab Op 839, 844; *Old Mills Tavern Hotel, Inc.*, 1975 MERC Lab Op 171, 175. In this case, AFSCME Local 1999 is the exclusive bargaining representative of Respondent's custodians, and it has not asserted that Respondent violated its duty to bargain. I conclude, therefore, that the allegation that Respondent violated Section 10(1)(e) by unilaterally eliminating public safety patrols must be dismissed.

Bowie also alleges that Respondent's elimination of the public safety patrols violated Section 10(1)(a) of PERA. He asserts that "Oakland Community College's annual security report has been violated on a state and federal level. The policy is part of a concerted activity that pertains to public safety for staff during working hours."

Section 10(1)(a) prohibits an employer from interfering with, restraining or coercing public employees in the exercise of their rights guaranteed in Section 9. Section 9 states:

It shall be lawful for public employees to organize together or to form, join or assist in labor organizations, to engage in lawful concerted activities for the purpose of collective negotiation or bargaining or other mutual aid and protection, or to negotiate or bargain collectively with their public employers through representatives of their own free choice.

Section 9 gives public employees the right to engage in protected concerted activities to improve their working conditions. Sections 10(1)(a) and 10(1)(c) of PERA prohibit public employers from retaliating against employees for protesting against or attempting to change their terms and conditions of employment. PERA, however, does not dictate what these terms and conditions of employment must be. Bowie's allegation that Respondent is failing to comply with its own policies and/or provide its employees with a safe working environment does not state a claim upon which relief can be granted under PERA. I conclude, therefore, that Bowie's allegation that Respondent violated Section 10 (1)(a) by unilaterally eliminating public safety patrols must also be dismissed.

Case No. C11 J-171

Bowie alleges that Respondent violated Sections 10(1)(a) and (b) of PERA by failing to answer or respond to a grievance within the time limits set forth in the collective bargaining agreement. As discussed above, Section 10(1)(a) prohibits an employer from interfering with, restraining, or coercing employees in the exercise of their rights under Section 9. While an employer is prohibited by Section 10(1)(a) from retaliating against employees for attempting to exercise their contractual rights, an employer's failure to comply with a term of the contract does not normally constitute unlawful interference under Section 10(1)(a). Section 10(1)(b) of PERA prohibits a public employer from initiating, creating, dominating, contributing to, or interfering with

the administration of, any labor organization. I conclude that Bowie's allegation that Respondent failed to respond to a grievance as required by the terms of the collective bargaining agreement does not state a claim under either Section 10(1)(a) or Section 10(1)(b) of PERA, and must be dismissed.

As I conclude that neither of Bowie's charges states a claim upon which relief can be granted under PERA, I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The charges are dismissed in their entireties.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Julia C. Stern
Administrative Law Judge
Michigan Administrative Hearing System

Date: _____