STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

WAYNE COUNTY COMMUNITY COLLEGE DISTRICT,
Public Employer - Respondent,

Case No. C04 J-282

-and-

WAYNE COUNTY COMMUNITY COLLEGE PROFESSIONAL AND ADMINISTRATIVE ASSOCIATION, MFT & SRP LOCAL 4467,
Labor Organization - Charging Party.
_____/

APPEARANCES:

Floyd E. Allen & Associates, by Shaun P. Ayer, Esq., for Respondent

Law Offices of Mark H. Cousens, by Gillian H. Talwar, Esq., for Charging Party

DECISION AND ORDER

On September 20, 2006, Administrative Law Judge David M. Peltz (ALJ) issued his Decision and Recommended Order finding that Respondent, Wayne County Community College District (WCCCD or the College), violated Section 10(1)(e) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210(1)(e). The ALJ concluded that Respondent breached its duty to bargain by refusing to negotiate the impact of a reorganization plan and by failing to supply the Charging Party, Wayne County Community College Professional and Administrative Association, MFT & SRP Local 4467 (P&AA or the Union), with information relating to the reorganization. Although the ALJ held that Respondent satisfied its obligation to bargain over the realignment of positions, he found that Respondent failed to satisfy its obligation to bargain over the impact of position eliminations, reassignments, and certain changes in working conditions for bargaining unit members. Further, the ALJ recommended that we order Respondent to cease and desist the aforementioned unlawful activities and take additional affirmative action, including making whole those bargaining unit members employed as tutors who suffered a loss of pay as a result of the College's unilateral decision to reduce their working hours. The Decision and Recommended Order was served on the interested parties in accordance with Section 16 of PERA.

After requesting and receiving an extension of time, Respondent filed exceptions to the ALJ's Decision and Recommended Order on November 13, 2006. In its exceptions, Respondent alleges that the ALJ erred in finding that it failed to respond to a September 7, 2004 e-mail in which Charging Party requested a meeting to bargain the impact of Respondent's decision to reduce the hours of work of bargaining unit members employed as tutors. It also excepts to the ALJ's finding that its reduction of the tutors' work hours was unlawful and alleges that the ALJ erred in recommending a full back pay remedy for tutors whose work hours were reduced.

On December 19, 2006, after receiving an extension of time, Charging Party filed cross-exceptions to the ALJ's Decision and Recommended Order. In its cross-exceptions, Charging Party alleges that the ALJ erred by finding that Respondent satisfied its obligation to bargain over the reassignment of the computer lab coordinators and computer lab assistants when that issue was discussed at the parties' July 23, 2004 meeting. Charging Party also excepts to the remedy recommended by the ALJ, which it asserts is too narrow, contending that in addition to the tutors who were included in the remedy, other employees affected by layoffs and reassignments should have been granted back pay. Charging Party also asserts that the ALJ erred because the recommended order fails to restore the status quo with respect to the tutors' work hours. Further, Charging Party excepts to the ALJ's recommendation that we order Respondent to cease and desist refusing to comply with Charging Party's information requests regarding the effects on unit employees of the 2004 layoffs and the resulting realignment of work. Charging Party contends that the cease and desist language regarding its information requests should have been phrased more broadly.

We have reviewed Respondent's exceptions and Charging Party's cross-exceptions and find that Charging Party's cross-exceptions have merit.

Factual Summary:

Background

Charging Party and Respondent are parties to a collective bargaining agreement in which Respondent has reserved the right to manage its affairs efficiently; to determine the number, location and type of facilities and installations; to determine the size of the work force and increase or decrease its size; and to hire, assign, and lay off employees. Additionally, under the contract Respondent has the right to establish, change, combine or discontinue job classifications; to prescribe job duties, content, and classifications, and to establish wage rates for any new or changed classification; and to transfer and promote employees from one department or location to another.

Article IX, Section B(1) of the agreement provides for a minimum of thirty calendar days notice to the Union and each employee initially affected in the event of layoff due to reorganization, abolishment of a position, insufficient enrollment or reduction

in funds. With respect to reorganizations, Article IX, Section H of the parties' collective bargaining agreement provides that prior to the delivery of a layoff notice and prior to implementation of a reorganization plan, Respondent will meet with the president of the Union to discuss the intended plan and will meet with the Union's bargaining team to negotiate the effects on bargaining unit members of any adopted reorganization plan.

Article XIII of the agreement requires Respondent to provide the Union, upon written request, with a copy of the College's organizational chart, including the names, titles, salaries, office locations, office telephone numbers, and extensions of each bargaining unit member, and mandates that the Union be promptly notified of any changes to the chart.

2004 Layoffs

Prior to May of 2004, WCCCD operated computer labs at three of its campuses, including fourteen labs on the College's downtown campus. The labs were supervised by five full-time computer lab coordinators and thirteen part-time computer lab assistants. The College also employed an unspecified number of tutors, who worked on an hourly basis in the academic support center/multi-learning lab and the ACCESS department, which provided services to special needs students. The computer lab coordinators, computer lab assistants, and tutors were all included within Charging Party's bargaining unit.

In response to reduced state and federal funding, Respondent identified several job classifications for possible elimination, including computer lab coordinators, computer lab assistants, and tutors. The College notified the Union of the issuance of the position elimination notices in a May 23, 2004 e-mail message sent to Charging Party's president, Mary Ann Gill. Gill responded on June 1, 2004, by requesting that the parties meet to "discuss the impact of [the e-mail] message and the meaning of it."

The parties met on June 2, 2004, at which time Gail Arnold, senior associate vice chancellor for human resources and staff development, was unable to explain why position eliminations were occurring or what would become of the work of the eliminated positions. Gill asked Respondent to provide updated seniority lists, a list of vacant bargaining unit positions, and a "reorganization plan."

On June 3, 2004, Gill sent an e-mail message to Arnold requesting "the Reorganization Plan of May and June," along with the "new Organizational Chart" and a "list of Consultants in each [affected] area where [P&AA] members are being laid off and duties that they will be performing." During a regularly scheduled labor relations meeting that same day, Willie Acosta, executive assistant to the chancellor, denied that a reorganization was occurring, blaming the layoffs on budgetary considerations. Acosta indicated that work performed by computer lab coordinators and computer lab assistants would be shifted to staff at the central administration building. He further indicated that the College would be creating an unspecified number of new learning assistant positions in

conjunction with the layoffs of the lab coordinators, lab assistants, and tutors. Acosta has acknowledged that there was very little discussion about the impact of the changes on members of Charging Party's bargaining unit because Respondent "didn't know what the impact was." Consequently, Respondent decided to postpone the layoffs for thirty days to determine who would perform the work of the computer lab coordinators and computer lab assistants.

At a July 23, 2004 meeting, Respondent gave Charging Party a document entitled "Proposed Realignment" listing the names of bargaining unit members who had received position elimination notices. All computer lab coordinators and nine of thirteen lab assistants would be retained but would be assigned to new classifications, with one coordinator assigned to a part-time position. The tutors would be reclassified as "Learning Specialists" and none would be laid off. On her copy of the document, Gill made numerous notations, including writing "Accept" next to the names of six of the lab assistants. There was no testimony as to when any of these notations were made, the purpose of the notations, or the meaning of the notations. Gill viewed the meeting as informational and did not make a counter-proposal to Respondent's plan during the meeting, but continued to request information that the Union needed to assess the changes Respondent had proposed.

On August 12 and 17, and September 7 and 9, 2004, Gill sent e-mails to Acosta in which she requested meetings to negotiate the impact of various issues including the combining of certain programs, the assignment of bargaining unit work outside of the bargaining unit and the reduction of the hours of work of tutors reassigned as learning specialists. In her September 9 e-mail, Gill also noted that the Union had not received the reorganization plan and the organizational chart that it had requested. Gill's e-mails went unanswered.

The parties met September 16, 2004 to discuss various unit clarification matters that were pending. At that meeting, Gill attempted to raise issues relating to the alleged reorganization and its impact on P&AA members, but Respondent insisted on limiting the discussion to the unit clarification issues.

A majority of the bargaining unit members who had received position elimination notices in May of 2004 remained employed, either in their original classifications or in other positions. At Respondent's downtown campus, twelve computer labs were closed following the elimination of the lab coordinator and lab assistant positions. The coordinator of the academic support lab was moved into the office formerly occupied by the computer lab coordinator and was given the responsibility of supervising the ACCESS department work. The two computer labs that remained open at the downtown campus were staffed by tutors and learning resource center assistants, who are also members of Charging Party's bargaining unit. Computer labs were also closed at other campuses and that work is being performed by staff from the library and the academic support lab/multi-learning center.

Discussion and Conclusions of Law:

Respondent takes exception to the ALJ's finding that it failed to respond to Gill's September 5, 2004 e-mail in which Gill requested to meet to discuss the reduction of tutors' hours of work from thirty to twenty, contending that it had no duty to bargain over hours of work for part-time bargaining unit members in the tutor classification and that a back pay remedy for tutors is not justified. We disagree. The reduction of tutors' hours of work has to be viewed in the context of the position eliminations, computer lab closures, program mergers, reassignments, and layoffs that were part of a comprehensive reorganization of Respondent's workforce. The ALJ correctly determined that the impact of that reorganization constituted a mandatory subject of bargaining and that the appropriate remedy for Respondent's refusal to bargain the impact is a full back pay award. See *Ishpeming Supervisory Employees, Local 128, AFSCME v City of Ishpeming*, 155 Mich App 501, 508-516 (1986), aff'g in part 1985 MERC Lab Op 687.

Charging Party takes exception to the ALJ's finding that Respondent satisfied its duty to bargain over issues discussed at the parties' July 23, 2004 meeting. At that meeting, Respondent presented a proposed realignment to Charging Party, a one page document listing various bargaining unit members and positions. Next to several of the names, the Union president wrote "Accept." From this, the ALJ concluded that the Union president agreed to certain proposals at that time. Adding to this the fact that the Union made no further bargaining requests during the days immediately following the meeting, the ALJ found that Respondent satisfied its obligation to bargain over the issues discussed at the July 23, 2004 meeting. We disagree and find merit in Charging Party's exception.

The July 23, 2004 meeting was described in the testimony of the Union president as informational. She was given the proposed realignment document, there was a discussion, and she placed numerous notations on the document, including the word "accept," next to six of thirteen employees identified in the document as "part timers." She also placed other notations on the document. The record is silent as to when any of these notations were made, and there is no testimony explaining how they relate, if at all, to Respondent's bargaining obligation. Consequently, we find that the record does not support an inference that the Charging Party agreed to any of Respondent's proposals at this meeting.

Additionally, we do not view the fact that bargaining could have taken place at the July 23 meeting, coupled with the fact that Charging Party made no further bargaining demand during the days immediately following that meeting, as evidence that Respondent satisfied its bargaining obligation. We agree with the ALJ's finding that there is no indication in the record that the Union was aware on July 23, 2004 of the other changes that ultimately occurred as a result of the layoffs and reassignments. The evidence does not establish that the Union knew of the closure of computer labs, the merger of programs, and the reduction in the hours of work for individuals employed as tutors at the time of the July 23 meeting. When the Union began to learn of these changes in August of 2004, the Union president contacted members of Respondent's administration and demanded effects bargaining over these issues. Respondent failed to respond. When the parties did meet on

September 16, 2004, Respondent limited the discussion to issues unrelated to the impact of reorganization on unit members. We hold that the Respondent failed to satisfy its obligation to bargain the impact.

Because the Respondent failed to satisfy its obligation to bargain the impact of its reorganization as to all affected members of Charging Party's bargaining unit, we find merit in Charging Party's exception to a remedy limiting back pay to the tutors and the ALJ's failure to recommend the broad language customarily included in an order to cease and desist from refusing to respond to information requests. However, we decline to order restoration of the *status quo ante* because the Respondent's duty to bargain had to do with the impact of its reorganization. *City of Ishpeming (On Remand)*, 1989 MERC Lab Op 234, 247-248. The reorganization was not at issue.

ORDER

Wayne County Community College District, its officers, agents, and representatives shall:

1. Cease and desist from

    a. Failing or refusing to comply with the Union's request for information relevant and necessary to the Union's functioning as the collective bargaining representative of the unit employees.

    b. Failing or refusing to bargain with the Union as the exclusive representative of unit employees about the effects on unit employees of the 2004 layoffs and the resulting realignment of work.

    c. In any other manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed by Section 9 of PERA.

2. Take the following affirmative action necessary to effectuate the policies of the Act

    a. Furnish the Union with relevant information it has requested about the effects on unit employees of the 2004 layoffs and the resulting realignment of work.

    b. On request, bargain with the Union over the effects on unit employees of the layoffs and the resulting realignment of work.

    c. Make bargaining unit members whole for any loss of pay they may have suffered as a result of the College's unilateral decision to reduce their working hours. Said payments shall include interest on the amount owed at the statutory rate of five percent (5%) per annum, computed quarterly.

d. Post copies of the attached notice to employees in conspicuous places on Respondent's premises, including all locations where notices to employees are customarily posted. Copies of the notice shall be duly signed by a representative of the Wayne County Community College District and shall remain posted for a period of thirty (30) consecutive days. One signed copy of the notice shall be returned to the Commission and reasonable steps shall be taken by the Employer to ensure that said notices are not altered, defaced, or covered by any other material.

e. Notify the Michigan Employment Relations Commission within twenty days of receipt of this Order regarding the steps that the Employer has taken to comply herewith.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____
Christine A. Derdarian, Commission Chair

_____
Nino E. Green, Commission Member

_____
Eugene Lumberg, Commission Member

Dated: _____

NOTICE TO ALL EMPLOYEES

After a public hearing before the Michigan Employment Relations Commission, WAYNE COUNTY COMMUNITY COLLEGE DISTRICT, a public employer under the PUBLIC EMPLOYMENT RELATIONS ACT (PERA), has been found to have committed unfair labor practices in violation of this Act. Pursuant to the terms of the Commission's order, we hereby notify our employees that:

WE WILL NOT fail or refuse to comply with any request of the Wayne County Community College Professional and Administrative Association, MFT&SRP Local 4467 (P&AA), for information relevant and necessary to the Union's functioning as the collective bargaining representative of the unit employees.

WE WILL NOT fail or refuse to bargain with the P&AA as the exclusive representative of unit employees about the effects on unit employees of the 2004 layoffs and the resulting realignment of work.

WE WILL NOT, in any other manner interfere with, restrain, or coerce employees in the exercise of rights guaranteed by Section 9 of PERA.

WE WILL furnish the P&AA with relevant information it has requested about the effects on unit employees of the 2004 layoffs and the resulting realignment of work.

WE WILL, on request, bargain with the P&AA over the effects on unit employees of the layoffs and the resulting realignment of work.

WE WILL make bargaining unit members whole for any loss of pay they may have suffered as a result of the College's unilateral decision to reduce their working hours. Said payments shall include interest on the amount owed at the statutory rate of five percent (5%) per annum, computed quarterly.

ALL of our employees are free to engage in lawful activity for the purpose of collective bargaining or other mutual aid and protection as provided in Section 9 of the Public Employment Relations Act.

WAYNE COUNTY COMMUNITY COLLEGE DISTRICT

By: _____

Title: _____

Date: _____

This notice must be posted for a period of 30 consecutive days and must not be altered, defaced or covered by any material. Any questions concerning this notice or compliance with its provisions may be directed to the office of the Michigan Employment Relations Commission, Cadillac Place Building, 3026 W. Grand Blvd, Suite 2-750, P.O. Box 02988, Detroit, MI 48202-2988. Telephone: (313) 456-3510.

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

WAYNE COUNTY COMMUNITY COLLEGE DISTRICT,
Respondent-Public Employer,

Case No. C04 J-282

-and-

WAYNE COUNTY COMMUNITY COLLEGE
PROFESSIONAL AND ADMINISTRATIVE
ASSOCIATION, MFT&SRP LOCAL 4467,
Charging Party-Labor Organization.
_____/

APPEARANCES:

Floyd E. Allen & Associates, by Shaun P. Ayer, Esq., for Respondent

Law Offices of Mark H. Cousens, by Gillian H. Talwar, Esq., for Charging Party

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE

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 heard at Detroit, Michigan on March 31, 2005, before David M. Peltz, Administrative Law Judge (ALJ) for the Michigan Employment Relations Commission. Based upon the entire record, including the transcript of hearing, exhibits and post-hearing briefs filed by the parties on or before June 6, 2005, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

Wayne County Community College Professional and Administrative Association, MFT&SRP Local 4467 (P&AA), is the collective bargaining representative for a unit of comprised of all full-time and part-time administrators and professional employees of Respondent Wayne County Community College District (WCCCD), including computer lab coordinators, computer lab assistants and tutors. The charge, which was filed on October 21, 2004, alleges that Respondent violated PERA by refusing to negotiate the impact of a May 2004 reorganization plan, and by failing to supply the P&AA with information relating to the reorganization.[1]

[1] The charge was filed by the Michigan Federation of Teachers and School Related Personnel (MFT&SRP) on behalf of the P&AA.

Findings of Fact:

I. Background

Charging Party and Respondent are parties to a collective bargaining agreement covering the period July 1, 2003 to June 30, 2008. Article V of that agreement gives the College certain rights, including the right to manage its affairs efficiently; to determine the number, location and type of facilities and installations; to determine the size of the work force and increase or decrease its size; to hire, assign, and lay off employees, to establish, change, combine or discontinue job classifications and prescribe job duties, content, and classification, and to establish wage rates for any new or changed classification; and to transfer and promote employees from one department or location to another.

Article IX of the agreement covers staff reductions, reassignment, bumping and recall rights, reorganization and subcontracting. The procedure which is to be followed in the event of staff reductions of an indefinite duration is set forth in Article IX, Section B(1) of the agreement, which provides:

> In the event it should become necessary to reduce the number of employees in the Bargaining Unit or to discontinue formally a College position to which a full-time or part-time employee is assigned because of reorganization, abolishment of a position, insufficient enrollment or reduction in funds, the Employer shall provide the Union and each employee initially effected [sic] with a minimum of thirty (30) calendar days notice. In such an event, the Employer shall meet within five (5) working days with the Union President to discuss how the layoffs shall be implemented.

With respect to reorganizations, Article IX, Section H of the parties' collective bargaining agreement states:

> In the event the Employer considers a reorganization plan of the College which would affect members of the Union, it is mutually agreed that the Employer shall meet with the President of the Union to discuss the intended plan. Said meeting shall take place prior to the formal adoption of a reorganization by the Board of Trustees, prior to the delivery of any layoff notice (Article IX, Position Security), and prior to the implementation of the reorganization plan. It is expressly understood that such a meeting shall not be for the reorganization plan's approval or disapproval by the Union but for information and opportunity for input by the President of the Union.
>
> The Employer further agrees to meet with the Union's negotiating team to negotiate the effects on Bargaining Unit members of any adopted reorganization plan.

Article XIII of the agreement, which is entitled "Communications," requires Respondent

to provide the Union, upon written request, with a copy of the College's organizational chart, including the names, titles, salaries, office locations and office telephone numbers and extensions of each bargaining unit member. In addition, the contract mandates that the College promptly notify the Union of any changes to the organizational chart.

II. 2004 Layoffs

Prior to May of 2004, WCCCD operated computer labs at each of its three campuses, including 14 labs on the College's downtown campus. The labs were supervised by five full-time computer lab coordinators and 13 part-time computer lab assistants. The College also employed an unspecified number of tutors, who worked on an hourly basis in the academic support center/multi-learning lab and the ACCESS department, which provided services to special needs students. The computer lab coordinators, computer lab assistants and tutors were all included within Charging Party's bargaining unit.

Due to a significant reduction in state and federal funding, the WCCCD chancellor ordered the administration to reduce expenditures by July 1, 2004, the beginning of the College's new fiscal year. In response, the administration identified several job classifications for possible elimination, including computer lab coordinators and computer lab assistants and tutors. The College notified the Union of the issuance of the position elimination notices in an e-mail message sent to Charging Party's president, Mary Ann Gill, on May 23, 2004. Gill responded to the College on June 1, 2004, requesting that the parties meet to "discuss the impact of [the e-mail] message and the meaning of it."

A meeting was held on June 2, 2004, at which the issue of the position eliminations notices was discussed. Gail Arnold, the College's senior associate vice chancellor for human resources and staff development, told the Union that she did not know why the position eliminations were occurring or how the College planned to account for the work performed by the eliminated positions. Gill requested that the College provide the Union with updated seniority lists, a list of vacant positions within the bargaining unit and a "reorganization plan." In addition, the Union asked for specific dollar amounts by which the College's funding had been reduced.

On June 3, 2004, Gill sent an e-mail message to Arnold requesting that the College provide "the Reorganization Plan of May and June," along with the "new Organizational Chart" and a "list of Consultants in each [affected] area where [P&AA] members are being laid off and duties that they will be performing." The Union repeated this request during the course of a regularly scheduled labor relations meeting that same day. At that meeting Willie Acosta, the executive assistant to the chancellor, denied that a reorganization was occurring. Acosta blamed the layoffs primarily on budgetary considerations. Acosta indicated that the work formerly performed by the computer lab coordinators and the computer lab assistants would now be facilitated by staff at the Central Administration Building. Acosta further indicated that the College would be creating an unspecified number of new learning assistant positions in conjunction with the layoffs of the lab coordinators, lab assistants and tutors.

At the hearing in this matter, Acosta conceded that there was very little discussion during

these meetings about the impact of the changes on members of Charging Party's bargaining unit. Acosta testified that as of early June, the College simply "didn't know what the impact was." Due to this uncertainty, the College made the decision to postpone the layoffs for 30 additional days so as to give the administration more time to determine exactly who would be performing the work of the computer lab coordinators and computer lab assistants following elimination of the positions.

The parties met again to discuss the layoffs on July 23, 2004. At that meeting, the College presented the Union with a document entitled "Proposed Realignment" which listed the names of bargaining unit members who had received position elimination notices. According to the document, all five computer lab coordinators and nine of the 13 lab assistants would be retained following implementation of the layoffs but assigned to new classifications, with one of the coordinators reassigned to a part-time position. The document listed the specific classifications to which the lab coordinators and assistants would be reassigned. With respect to the tutors, the document indicated that the position would be reclassified as "Learning Specialist" and that none of the employees in this classification would be laid off. On her copy of the document, Gill wrote, "Accept" next to the names of six of the lab assistants. At no time during the meeting did the Union make a specific proposal or present a counter-offer to the College's realignment plan.

On August 12, 2004, Gill sent an e-mail to Acosta in which she stated, "It has been brought to the Union's attention that the college plans on combining the ACCESS Computer Lab with the Multi-Learning Lab. We request a meeting to negotiate the impact on [unit members] ASAP." The College did not respond to Gill's message.

On August 17, 2004, Gill sent an e-mail to Arnold stating:

> It has been told to the Union that the Employer has sent **non-bargaining unit workers** to the Eastern Campus (Steven Ahomed, Work Study) and Downriver Campus (Kurt Gollinger) to perform the work previously performed by the Computer Lab Coordinators and belonging to this Union, while we have one full time Coordinator on layoff from job [sic]. Additionally, this member was placed in a part-time position, outside of the Computer area. The Union is demanding to meet to discuss this **grievous infraction and continual pattern of conduct, incongruent with the Contract. I am available to meet immediately. PLEASE BE REMINDED:** The College continues to refuse to supply the requested information relative to the Computer area and who will be performing this work. [Emphasis in original.]

Gill sent a copy of the message to Acosta. However, no one from the College responded to the Union's bargaining demand.

On September 7, 2004, Gill sent another e-mail message to Arnold and Acosta. Gill wrote, "I have received several telephone calls from Tutors (Learning Assistant Specialists) who informed me that they received telephone calls, at home, about their work hours being reduced

from 30 to 20 hours per week. I am requesting a meeting to discuss the change in work hours and the impact that it has on bargaining unit members." Although Acosta asserted that the parties had discussions about the tutors' work hours at some unspecified point in time, Gill testified credibly that the College failed to respond to her September 7, 2004, e-mail.

On September 9, 2004, Gill sent an email to Acosta in which she indicated that the Union was "again requesting to negotiate the impact of the closing of the Computer Lab on bargaining unit members." Gill also noted that the Union had still not yet received the reorganization plan and the organizational chart which it had earlier requested. The College did not respond to this message.

The parties were scheduled to meet on September 16, 2004, for the purpose of discussing various unit clarification matters which were pending at the time. On September 14, 2004, Gill sent an e-mail confirming the meeting to Genet Asfha, a human resources representative for the College. In the message, Gill referred to several "urgent unresolved" issues, including the "reorganization of Student Service and the impact on bargaining unit members" and the "combination of ACCESS, Multi-Learning Lab and Computer Labs." At the September 16, 2004 meeting, Gill attempted to raise issues relating to the alleged reorganization and its impact on P&AA members, but the College insisted on limiting the discussion to the topic of the ongoing unit clarification disputes.

Ultimately, a majority of the bargaining unit members who originally received position elimination notices in May of 2004 remained employed by WCCCD, either in their original classifications or in other positions at the College. The computer lab coordinator and computer lab assistant classifications were completely eliminated. All of the computer lab coordinators and six of the computer lab assistants were reassigned to new positions. One computer lab coordinator position was reduced from full-time to part-time, while seven computer lab assistants were laid off. Most or all of the tutors were retained, but their hours were reduced by a third.

At the College's downtown campus, 12 of the 14 computer labs were closed following the elimination of the lab coordinator and lab assistant positions, as was the academic support lab and the ACCESS department. The coordinator of the academic support lab moved into the office formerly occupied by the computer lab coordinator and was given the responsibility of supervising the ACCESS department work. The two computer labs which remain open on the downtown campus are now staffed by tutors and learning resource center assistants, who are also members of Charging Party's bargaining unit. Computer labs were also closed on the College's other campuses and that work is now being performed by staff from the library and the academic support lab/multi-learning center.

Discussion and Conclusions of Law:

I. Information Request

Charging Party asserts that Respondent violated PERA by refusing to supply the Union with the "reorganization plan" and organizational chart. According to the Union, such information was clearly relevant and necessary to enable its representatives to participate in

meaningful discussions concerning the bumping process, the reassignment of personnel and other issues relating to the working conditions of its members following the reorganization. The College denies that it violated its duty to supply information to the Union. The College contends that there was no reorganization in May of 2004 and, therefore, no reorganization plan in existence which could possibly have been supplied to the Union. According to the College, the changes which were announced in May of 2004 constituted a reduction in the size of the workforce resulting from budgetary concerns as opposed to an actual reorganization as contemplated under the terms of the parties' contract. Respondent asserts that an organizational chart was not provided to the Union because such a document is not maintained by the College.

In order to satisfy its bargaining obligation under Section 10(1)(e) of PERA, an employer must supply in a timely manner requested information which will permit the union to engage in collective bargaining and to police the administration of the contract. *Wayne County*, 1997 MERC Lab Op 679; *Ecorse Public Schools*, 1995 MERC Lab Op 384, 387. The standard applied is a liberal discovery-type standard. The employer has a duty to disclose the requested information as long as there exists a reasonable probability that the information will be of use to the union in carrying out its statutory duties. *Wayne County, SMART*, 1993 MERC Lab Op 355, 357. See also *Pfizer, Inc*, 268 NLRB 916 (1984), enf'd 763 F2d 887 (CA 7 1985). Information relating to terms and conditions of employment, such as wages, job descriptions, and other information pertaining to bargaining unit employees is presumptively relevant and the employer must provide it unless it rebuts the presumption. *Plymouth Canton C S*, 1998 MERC Lab Op 545; *City of Detroit, Dep't of Transp*, 1998 MERC Lab Op 205.

In the instant case, Respondent does not dispute the potential relevancy of the requested information. Rather, Respondent contends that it had no duty to provide an organizational chart or a reorganization plan to the Union because no such documents existed. I find this argument unconvincing. Although Acosta testified at the hearing in this matter that Respondent does not maintain an organizational chart, there is nothing in the record which suggests that the College ever disclosed that fact to the Union. Rather, it appears that the College simply ignored the Union's repeated requests for a copy of the organizational chart. This fact is particularly troubling given that Article XIII of the contract explicitly requires Respondent to provide the Union, upon written request, with a copy of the organizational chart, including the names, titles, salaries, office locations and office telephone numbers and extensions of each bargaining unit member. In addition, the contract mandates that the College promptly notify the Union of any changes to the organizational chart.

I find Respondent's attempt to distinguish between a "reorganization," a "realignment" and a "reduction in force" to be nothing more than an exercise in semantics, at least for purposes of this case. However the College wishes to characterize the changes which occurred, it should have been apparent to the administration from the context of Charging Party's repeated information requests and bargaining demands that the Union was seeking to ascertain the impact of these changes on its members. Specifically, the College should have understood that the Union was seeking an answer to questions such as which positions the College was planning to eliminate, what would happen to the work following implementation of the position eliminations, and which employees would be laid off, reassigned or have their hours reduced. Although the College did eventually provide the Union with a "realignment" proposal, that document failed to

address several of these issues. To the extent that the administration may have found Charging Party's use of the term "reorganization" vague or misleading, the College should have requested clarification. See e.g. *Azabu USA*, 298 NLRB 702 (1990). By essentially ignoring the Union's requests for documents concerning the impact on unit members, I find that Respondent has violated its bargaining obligation under Section 10(l)(e) of PERA.

II. Effects Bargaining

Charging Party contends that the College violated PERA by refusing to bargain the impact of the position elimination notices and the accompanying changes in working conditions for unit members. Both the Commission and the Courts have held that a public employer has an inherent right to determine the size of its work force and to reduce it work force. *AFSCME, Local 1277 v City of Center Line*, 414 Mich 642 (1982); *Benzie County*, 1986 MERC Lab Op 55, 59. As the ALJ noted in *Swartz Creek Community Sch*, 1994 MERC Lab Op 223, 231, the decision to reduce the work force for economic reasons goes to the very essence or heart of an employer's ability to operate. It is well-settled that an employer's decision to reduce the size of its work force or reorganize positions within a bargaining unit is within the scope of managerial prerogative and is not a mandatory subject of bargaining. See e.g. *Ishpeming Supervisory Employees, Local 128, AFSCME v City of Ishpeming*, 155 Mich App 501, 508-516 (1986), aff'g in part 1985 MERC Lab Op 687.

While there is no bargaining obligation with respect to the decision to lay off employees or reorganize positions within the unit, a public employer does have a duty to bargain over the impact of that decision. See e.g. *Ishpeming Supervisory Employees*, *supra*; *Ecorse Bd of Ed*, 1984 MERC Lab Op 615. However, an employer is not required to bargain to impasse over the impact of layoffs prior to the implementation of that decision. *City of Detroit*, 1994 MERC Lab Op 476, 483 (no exceptions); *Kalamazoo County Sheriff*, 1992 MERC Lab Op 63. Moreover, it is the union's obligation to request bargaining over the impact of the decision. *Kalamazoo, supra*; *Service Employees, Local 586 v Village of Union City*, 135 Mich App 553 (1984). Although a bargaining demand need not take any particular form in order to be effective, the employer must know that a request is being made. *Michigan State Univ*, 1993 MERC Lab Op 52, 63, citing *Clarkwood Corp*, 233 NLRB 1172 (1977).

In the instant case, Respondent asserts that it fulfilled its bargaining obligation under PERA by responding to each of the Union's requests to discuss the impact of the position elimination notices on unit members, and by participating in numerous meetings with the Union at which the layoffs were discussed. While the parties did meet several times after the College made the Union aware that position elimination notices had been sent to 67 members of the bargaining unit, most, if not all, of these meetings occurred before the Union had learned the specific details concerning the changes which ultimately occurred, including the closing of computer labs and the reduction in hours for the tutors. In fact, Acosta admitted that there was very little discussion concerning impact on P&AA members because, at the time of the meetings, the College "didn't know what the impact was."

The parties had only one meeting at which any meaningful effects bargaining could have taken place. During the July 23, 2004, meeting between members of the administration and

Union representatives, Respondent provided Charging Party with a document entitled "WCCCD Proposed Realignment" which listed the employees who had received position elimination notices and identified the positions to which those employees would be reassigned. On that date, the parties apparently had discussions concerning the reassignment of the computer lab coordinators and computer lab assistants, including the College's proposal to transfer one of the coordinators to a part time position. In fact, as evidenced by the handwriting on that document, the Union president agreed to certain proposals made by the College at that time. There is no evidence suggesting that the Union made any further bargaining requests during the days immediately following the meeting. Thus, I find that Respondent satisfied its obligation to bargain over the issues discussed at the July 23, 2004 meeting.

There is no indication in the record, however, that the Union was aware on or before July 23, 2004 of the other changes which ultimately occurred as a result of the layoffs and reassignments, such as the closure of computer labs, the merger of programs and the reduction in the hours of work for individuals employed as tutors. When Charging Party began to learn of these changes in August of 2004, the Union president began contacting members of the administration and demanded that Respondent meet and engage in effects bargaining over these issues. The record indicates that the College failed to respond to any of the Union's requests. Although the parties finally met again on September 16, 2004, the College limited the discussion to issues unrelated to the layoffs and their impact on unit members. I conclude that by the conduct described above, the College failed to satisfy its obligation to bargain the impact of the position elimination notices and the accompanying changes in working conditions for unit members.

Having found that Respondent violated Section 10(1)(e) of PERA, the remaining issue is the appropriate remedy for the College's breach of its obligation to bargain in good faith. In addition to an order requiring the College to bargain over the effects of the 2004 layoffs and realignment, Charging Party requests that the Commission order Respondent to make employees whole for any loss of pay suffered as a result of the College's failure to bargain. An unlawful refusal to bargain about the effects of a decision generally results in a limited backpay remedy intended to promote meaningful bargaining over impact issues and to approximate the results of good-faith effects bargaining. See e.g. *Ecorse Bd of Ed*, 1984 MERC Lab Op 615 and *Transmarine Navigation Corp*, 170 NLRB 389 (1986). However, a decision to reduce hours is not an "effect" of a decision to lay off, but rather an alternative to it. *Capac Community Schools*, 1984 MERC Lab Op 1195, 1200. Thus, only a full backpay order can remedy an employer's failure to bargain over such a decision. *City of Ishpeming*, 1989 MERC Lab Op 234, 247-248. See also *Service Employees Int'l Union, Local 586 v Union City*, 135 Mich App 553 (1984). Accordingly, I agree with Charging Party that an order making the tutors whole for loss of pay suffered as a result of Respondent's unlawful failure to bargain is appropriate in this matter.

Article I. RECOMMENDED ORDER

Wayne County Community College District, its officers, agents, and representatives shall:

1. Cease and desist from

    a. Refusing to comply with the Union's request for information relevant and necessary to the Union's functioning as the collective bargaining representative of the unit employees concerning the effects on unit employees of the 2004 layoffs and the resulting realignment of work.

    b. Refusing to bargain with the Union as the exclusive representative of unit employees about the effects on unit employees of the layoffs and the resulting realignment of work.

2. Take the following affirmative action necessary to effectuate the policies of the Act

    a. Furnish the Union with certain relevant information about the effects on unit employees of the layoffs and the resulting realignment of work.

    b. On request, bargain with the Union over the effects on unit employees of the layoffs and the resulting realignment of work.

    c. Make the tutors whole for any loss of pay they may have suffered as a result of the College's unilateral decision to reduce their working hours.

3. Post the attached notice to employees in a conspicuous place for a period of thirty (30) consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

David M. Peltz
Administrative Law Judge

Dated:_____

(a) NOTICE TO ALL EMPLOYEES

After a public hearing before the Michigan Employment Relations Commission, WAYNE COUNTY COMMUNITY COLLEGE DISTRICT, a public employer under the PUBLIC EMPLOYMENT RELATIONS ACT (PERA), has been found to have committed unfair labor practices in violation of this Act. Pursuant to the terms of the Commission's order, we hereby notify our employees that:

WE WILL NOT

a. Refuse to comply with request of the Wayne County Community College Professional and Administrative Association, MFT&SRP Local 4467 (P&AA), for information relevant and necessary to the Union's functioning as the collective bargaining representative of the unit employees concerning the effects on unit employees of the 2004 layoffs and the resulting realignment of work.

b. Fail to bargain with the P&AA as the exclusive representative of unit employees about the effects on unit employees of the layoffs and the resulting realignment of work.

WE WILL

a. Furnish the P&AA with certain relevant information about the effects on unit employees of the layoffs and the resulting realignment of work.

b. On request, bargain with the P&AA over the effects on unit employees of the layoffs and the resulting realignment of work.

c. Make the tutors whole for any loss of pay they may have suffered as a result of the College's unilateral decision to reduce their working hours.

ALL of our employees are free to engage in lawful activity for the purpose of collective bargaining or other mutual aid and protection as provided in Section 9 of the Public Employment Relations Act.

WAYNE COUNTY COMMUNITY COLLEGE DISTRICT

By: _____

Title: _____

Date: _____

This notice must be posted for a period of 30 consecutive days and must not be altered, defaced or covered by any material. Any questions concerning this notice or compliance with its provisions may be directed to the office of the Michigan Employment Relations Commission, Cadillac Place Building, 3026 W. Grand Blvd, Suite 2-750, P.O. Box 02988, Detroit, MI 48202-2988. Telephone: (313) 456-3510.