STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

HARRISON COMMUNITY SCHOOLS,
Public Employer-Respondent,

Case No. C07 G-164

-and-

HARRISON EDUCATIONAL SUPPORT PERSONNEL ASSOCIATION, MEA/NEA,
Labor Organization-Charging Party.
_____/

APPEARANCES:

Thrun Law Firm, P.C., by Martha J. Marcero, Esq., for Respondent

White, Schneider, Young and Chiodini, P.C., by William F. Young, Esq. and Timothy J. Dlugos, Esq., for Charging Party.

DECISION AND ORDER

On August 27, 2009, Administrative Law Judge (ALJ) Julia C. Stern issued her Decision and Recommended Order in the above matter finding that Respondent, Harrison Community Schools (Employer), violated Section 15 and Sections 10(1)(a) and (e) of the Public Employment Relations Act (PERA) 1965 PA 379 as amended, MCL 423.215 and 423.210(1)(a) and (e), by deciding to subcontract certain services provided by its aides without giving Charging Party, Harrison Educational Support Personnel Association, MEA/NEA (Union), the opportunity to bargain over this decision. The ALJ considered whether the various types of aides employed by Respondent provide noninstructional support services within the meaning of Section 15(3)(f) of PERA. She determined that the services provided by chapter I instructional aides/kindergarten aides, RTC coordinators, and library aides were properly characterized as instructional. She also found that except for those special education aides who regularly provide only health or personal care services, the services provided by Respondent's special education aides also are instructional. The ALJ held, therefore, that by making the decision to subcontract the services of its aides providing instructional support services without giving Charging Party an opportunity to bargain over this decision, Respondent violated its duty to bargain under PERA.

The ALJ's Decision and Recommended Order was served upon the interested parties in accordance with Section 16 of PERA. Respondent filed exceptions and a supporting brief on

September 21, 2009. Charging Party filed a brief in support of the ALJ's Decision and Recommended Order on October 1, 2009.

In its exceptions to the ALJ's Decision and Recommended Order, Respondent contends that the ALJ erred in finding that Respondent violated PERA when it did not bargain with the Union over its decision to privatize aides' services. Respondent takes exception to the ALJ's conclusion that services performed by its aides do not constitute "noninstructional support services" under Section 15(3)(f) of PERA. Respondent argues that the ALJ erred in her application of the rules of statutory construction in interpreting the phrase "noninstructional support services," in her interpretation of the relevant legislative history, and in her failure to apply various statutes in interpreting Section 15(3)(f) of PERA. Respondent further contends that the ALJ failed to properly consider affidavits it presented to support its contention that aides do not provide instruction.

We have reviewed Respondent's exceptions and brief in support, as well as Charging Party's brief in support of the ALJ's Decision and Recommended Order, and conclude that the exceptions lack merit and the ALJ's decision should be affirmed.

Discussion and Conclusions of Law:

We adopt the findings of fact as enumerated in the ALJ's Decision.

As the ALJ pointed out, under PERA, the subcontracting of bargaining unit work has historically been considered to be a mandatory subject of bargaining. See *Detroit Police Officers Ass'n v Detroit*, 428 Mich 79 (1987); *Plymouth Fire Fighters Ass'n, Local 1811 v Plymouth*, 156 Mich App 220 (1986); *Van Buren Public Sch Dist v Wayne Co Circuit Judge*, 61 Mich App 6, (1975); *Interurban Transit Partnership*, 21 MPER 47 (2008). With the adoption of Section 15(3)(f) of PERA, where the employer is a "public school employer," as defined by Section 1(h) of PERA, the subcontracting of non-instructional support services is no longer a mandatory subject of bargaining, but is now a prohibited subject of bargaining. Thus, the primary issue before us is whether the aides perform noninstructional support services

While PERA contains definitions of many of the terms contained therein, the Legislature did not add a definition of the phrase "non-instructional support services" when PERA was amended to add Section 15(3)(f). Respondent asserts that Charging Party and the ALJ are incorrect in distinguishing the aides from other support personnel and giving them a "special protected status" akin to that of certified teachers and the superintendent. Respondent contends that the phrase "noninstructional support services" applies to all of its support employees. Respondent would have us determine which employees provide non-instructional support services by merely differentiating between those who provide professional instructional services and those who provide support services. We agree with the ALJ's conclusion that the phrase "noninstructional support services" does not apply to instructional services provided by support personnel.

Respondent contends that the ALJ erred in her application of the rules of statutory construction in interpreting the phrase "noninstructional support services," and in her

interpretation of the relevant legislative history. In determining whether Section 15(3)(f) applies to exempt Respondent from its duty to bargain in this case, the ALJ discussed at length the rules of statutory construction and the legislative history of the act that amended PERA to add Section 15(3)(f), Act 112 of 1994. We find no error in her recitation or application of the relevant legislative history and rules of statutory construction to this issue and adopt her reasoning herein.

Respondent notes that the initial draft and two subsequent drafts of Act 112 defined "non-instructional support services" as including but not limited to: "transportation, food service, janitorial and building maintenance services, paraprofessional and teacher aide or assistant services, and administrative services such as data processing, accounting, and clerical functions." However, the final draft deleted the language listing the various services comprising noninstructional support services. From this, Respondent assumes that the Legislature intended that all support staff would be subject to Section 15(3)(f). We cannot make that assumption. To find that the deletion of specific illustrative examples from earlier drafts of Act 112 is an indication that the Legislature intended to include the deleted illustrative examples in the phrase "non-instructional support services" goes against accepted rules of statutory construction. As the U.S. Supreme Court stated in *District of Columbia v Heller*,___US___; 128 S Ct 2783, 2796; 171 L Ed 2d 637; 76 USLW 4631 (June 26, 2008), "It is always perilous to derive the meaning of an adopted provision from another provision deleted in the drafting process." We find it more likely, as the ALJ did, that the Legislature omitted the list of job categories in the final draft of Act 112, because it intended that the determination of whether the services are noninstructional support services would be made based on the particular facts and the specific duties involved.

Respondent contends that the ALJ erred in her failure to consider and apply various statutes in interpreting Section 15(3)(f) of PERA. In support of its contention that all support staff are subject to Section 15(3)(f), Respondent points to Sections 1229 and 1231 of the 1996 Revised School Code, MCL 380.1229 & 380.1231, which require school boards to employ a superintendent and teachers. Apparently, from the cited provisions, Respondent would have us conclude that because school boards are not required to employ personnel other than a superintendent and certificated teachers, all other school employees provide noninstructional support services that can be subcontracted without regard to the school board's duty to bargain with the employees' union representatives. The Legislature's decision to provide school boards with specific obligations governing the employment of a superintendent and teachers does not indicate that the Legislature intended to alter school boards' obligations under other statutes, such as PERA, with respect to categories of employees that are not expressly mentioned in the provisions relied upon by Respondent. Moreover, as the ALJ pointed out, the Legislature chose to modify the phrase "support services" by the word "noninstructional," indicating that it was not changing the duty to bargain over subcontracting with respect to all support services, just those that are noninstructional. We adopt the ALJ's rationale for finding that the phrase "non-instructional support services" does not apply to instructional support services, which may be provided by employees who are not certified teachers.

Further, Respondent argues that the services provided by the aides cannot be considered instructional, because aides cannot legally provide instructional services. Respondent points to provisions of the Revised School Code, MCL 380.1233; the State School Aid Act of 1979, MCL 388.1763; and Rule 5(1) & (2) of the Teacher Certification Code, R 390.1105(1) & (2) in support

of its contention that Michigan law permits only teachers to provide instructional services to public school students. It is Respondent's contention that Rule 5(2) of the Teacher Certification Code, R 390.1105(2) removes the entire class of paraprofessional employees from the scope of those employed in an instructional capacity. Respondent's argument that the services provided by paraprofessional employees are noninstructional support services because those employees are not required to have a teaching certificate ignores the distinction between instructional services and instructional *support* services. Respondent argues in its brief in support of its exceptions, "aides employed to supervise students and provide noninstructional assistance to professional personnel do not provide the 'instructional services' for which licensed teachers are exclusively responsible, any more than a nurse's aide provides the 'medical services' for which physicians are exclusively responsible, or a law clerk practices law." While an unlicensed law clerk may not practice law, the clerk certainly may provide legal support services by performing legal research, drafting simple documents, or otherwise applying his or her limited legal training to assist the attorney under whose supervision he or she works. Similarly, under the appropriate factual circumstances, services provided by a paraprofessional working under the direction of a certified teacher may include such things as providing supplemental group instruction, individual tutoring on academic subjects, or other instructional support services. These are not services provided by a professional, but are services provided by support employees to assist professionals in performing the duties for which they have been licensed.

Respondent correctly points out that we have found that aides cannot be included in a bargaining unit of professional teachers, citing: *South Lyon Cmty Sch*, 19 MPER 64 (2006); *Lenawee Intermediate Sch Dist*, 16 MPER 48 (2003); *Port Huron Area Sch Dist*, 1996 MERC Lab Op 14; 9 MPER 27044 (1996); *Muskegon Heights Pub Sch,* 1993 MERC Lab Op 63; 6 MPER 24072 (1993); *Kalamazoo City Sch Dist*, 1990 MERC Lab Op 62**;** 3 MPER 21092 (1990); *Niles Cmty Sch*, 1984 MERC Lab Op 327, 330; *Lansing Sch Dst*, 1972 MERC Lab Op 264. However Respondent is in error when it contends that we have "consistently distinguished teachers as instructional and aides as noninstructional support staff." In the *Kalamazoo City Sch Dist* case cited by Respondent we stated, "This Commission has consistently refused to mix paraprofessional positions in school districts with teachers and other professional classifications comprising the teaching or professional bargaining unit." In each such case, paraprofessionals have not been put in the same unit with professional staff because they do not share a community of interest. A key consideration in such cases is the fact that the teachers are professional staff and the aides are support staff. In *Lenawee Intermediate Sch Dist*, we explained:

> With respect to the composition of teacher bargaining units at both the K-12 and college levels, this Commission has in the past included noncertified professional employees of a school district in the same bargaining unit with certified teachers where their work is functionally integrated with the work and efforts of the teachers. *Muskegon Heights Pub Sch*, 1993 MERC Lab Op 419, 422. See also *Wayne Westland Cmty Sch Dist*, 1976 MERC Lab Op 847. Thus, we have included such positions as librarians, social workers, counselors, and school nurses in bargaining units with teachers because the ultimate purpose of their employment is the education of students.
>
> . . .

> This Commission concluded that inclusion of the aides in a unit of teaching personnel would not be appropriate. *Lansing Sch Dist*, [1972 MERC Lab Op] at 268. We found that although the aides in many ways functioned "precisely as a teacher," that fact was not sufficient to overcome the substantial difference in basic education required for the two positions. We also noted that while there was cooperation between the adult basic education teacher and the aide, the teacher was responsible for passing upon the competency of the aides assigned to them. We held that this responsibility, while not necessarily indicative of supervisory status, indicated "acknowledgement by the Employer of the superior education and judgment of the teacher relative to the professional aspects of teaching." In dismissing the petition with respect to the aides, we also restated our policy of not including professional and non-professional employees in the same bargaining unit.

As indicated above, the cases cited by Respondent focus on issues of community of interest. Considerations of community of interest are however, not relevant to determining whether the support services provided by aides are instructional or noninstructional.

Respondent further contends that the ALJ failed to properly consider affidavits it presented to support its contention that aides do not provide instruction. We disagree. The affidavits provided by the aides clearly indicate that aides assist students with their lessons and instruct students on aspects of the curriculum determined by the certified teacher under whose supervision the aides work. Moreover, the affidavit of the school principal, Michelle Sandro, which Respondent points to in its brief in support of its exceptions, states "Aides may practice skills or lessons at the direction of the teacher with materials or supplies determined by the teacher." When discussing RTC aides, Sandros' affidavit states, "At most, the aide may assist a student in a lesson or worksheet brought from the classroom." A similar statement is contained in the affidavit of Julie Rosencrantz, principal of Larson Elementary School. Similarly, the affidavit of Sheryl Presler, the superintendent of the Clare-Gladwin Regional Education Service District, gives examples of interactions between aides and students, stating, "An aide will listen to a student read and correct the student; or review math skills and correct the problems." Presler's affidavit also states, "Aides do not provide instruction; they supplement instruction. The work is routine implementation of skills previously taught by the teacher." Thus, while the affidavits of those individuals identified in the parties' stipulation as Charging Party's witnesses indicate that the aides provide instructional support services, the affidavits of Respondent's witnesses also support that conclusion. The ALJ properly considered the affidavits submitted by both parties, which well support her findings.

Further, the job descriptions of the teacher aides/special education position, the chapter 1 instructional aide/kindergarten position, and the library aide included in the parties' stipulated record indicate that these positions are responsible for such duties as: assisting and instructing students in classroom activities (for the teacher aides/special education position); tutoring students, providing individual instruction, and leading group instructional lessons (for the chapter 1 instructional aide/kindergarten position); and assisting and instructing students in the use of the library (for the library aide's position). Although some of the aides may have some incidental noninstructional responsibilities such as copying or other clerical duties, it is evident

from the record that a substantial and regular part of their duties includes working directly with students, assisting them in mastering their lessons, and helping them learn to adjust their behavior to accommodate the learning process. It is evident from the exhibits in the stipulated record provided by both parties that, while the aides are not responsible for planning and directing student instruction, as the certified teacher is, the aides assist in student instruction and provide the certified teacher and the students with instructional support.

Accordingly, we agree with the ALJ's conclusion that the services provided by the chapter 1 instructional aides/kindergarten position, the RTC coordinators, the library aides, and the special education aides, except for those special education aides who regularly provide only health or personal care services, are not noninstructional support services within the meaning of Section 15(3)(f) of PERA. Therefore, we further agree with the ALJ that Respondent violated its duty to bargain under Section 15 and Section 10(1)(a) and (e) of PERA when it decided to subcontract the services of these aides without first giving notice and an opportunity to bargain to Charging Party.

We have carefully examined all other issues raised by the parties and find they would not change the result. In accordance with the conclusions of law set forth above, in order to remedy the Employer's illegal actions, we issue the following order:

ORDER

IT IS HEREBY ORDERED that the Order recommended by the Administrative Law Judge shall become the Order of the Commission.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____
Christine A. Derdarian, Commission Chair

_____
Nino E. Green, Commission Member

_____
Eugene Lumberg, Commission Member

Dated: _____

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

HARRISON COMMUNITY SCHOOLS,
Public Employer-Respondent,

Case No. C07 G-164

-and-

HARRISON EDUCATIONAL SUPPORT PERSONNEL ASSOCIATION, MEA/NEA,
Labor Organization-Charging Party.
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APPEARANCES:

Thrun Law Firm, P.C., by Martha J. Marcero, Esq., for Respondent

White, Schneider, Young and Chiodini, P.C., by William F. Young, Esq. and Timothy J. Dlugos, Esq.

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE

On July 25, 2007, the Harrison Educational Support Personnel Association, MEA/NEA, filed the above charge with the Michigan Employment Relations Commission against the Harrison Community Schools. The charge alleged that Respondent violated Sections 10(1)(a) and (e) of the Public Employment Relations Act (PERA or the Act), 1965 PA 379, as amended, MCL 423.210 when it decided to contract with a third party for services provided by aides represented by Charging Party without giving Charging Party an opportunity to bargain over this decision. Pursuant to Section 16 of PERA, the case was assigned for hearing to Julia C. Stern, administrative law judge for the State Office of Administrative Hearings and Rules.

On October 17, 2007, the Clare County Circuit Court issued a preliminary injunction prohibiting Respondent from terminating approximately thirty aides and privatizing their work pending resolution of the unfair labor practice charge. On July 29, 2008, the parties submitted a stipulated record in lieu of a hearing on the unfair labor practice charge and briefs supporting their positions. Based upon the entire record, including the facts contained in the stipulated record and briefs, I make the following findings of fact, conclusions of law and recommended order.

Background and Summary of the Issue:

At one time, Charging Party represented a bargaining unit of all regular bus drivers and full-time and regular part-time custodians, mechanics, aides, secretaries, clerks, food service personnel and "STOP coordinators" employed by Respondent. However, in the years preceding this charge, Respondent experienced declining student enrollment and significant budget deficits. Between 2005 and July 2007, Respondent entered into contracts with private entities for transportation, food service and custodial services. It also closed several buildings and eliminated aide positions. Between 2002 and 2008, Respondent reduced its teaching staff from 132 to 92 and its support staff from 118 to 37.

In July 2007, the parties were engaged in bargaining a new collective bargaining agreement. At this time, there were more than a hundred unresolved contract issues. The parties agree that they were not at impasse on the contract. On or about July 18, 2007, Respondent advised Charging Party that its school board had scheduled a special meeting for July 27 to consider subcontracting the work performed by the aides to a third party. It said that if the parties did not reach agreement on a collective bargaining agreement by that date, Respondent would privatize the work. The parties met on July 23, but did not reach agreement.

Respondent admits that labor costs, particularly the cost of health insurance, were the primary impetus for its decision to subcontract the work of the aides. Respondent estimated that contracting with a third party would result in annual cost savings of approximately $300,000.

Charging Party filed this unfair labor practice charge on July 25, 2007. On July 26, it also filed a complaint for injunctive relief with the Clare County Circuit Court. On July 27, the school board voted to enter into a contract for the services provided by the aides. After a hearing on July 31, 2007, the Court entered a temporary restraining order prohibiting Respondent from finalizing the contract. The Court held a show cause hearing on August 15, 2007. On October 17, 2007, it issued a preliminary injunction prohibiting Respondent from entering into the contract pending resolution of the unfair labor practice charge.

Respondent does not contend that it was entitled to subcontract because Charging Party failed to demand bargaining or because the parties had reached impasse. Rather, it argues that it has no duty to bargain over the subcontracting of services provided by aides because this is a prohibited/illegal subject of bargaining under Section 15(3) (f) of PERA. As amended by 1994 PA 112, Sections 15(3) (f) and (4) provide:

> (3) Collective bargaining between a public school employer and a bargaining representative of its employees shall not include any of the following subjects:
>
> * * *
>
> (f) The decision of whether or not to contract with a third party for 1 or more *noninstructional support services*; or the procedures for obtaining the contract; or the identity of the third party; or the impact of the contract on individual employees or the bargaining unit. [Emphasis added]

> (4) The matters described in subsection (3) are prohibited subjects of bargaining between a public school employer and a bargaining representative of its employees and, for the purposes of this act, are within the sole authority of the public school employer to decide.

Charging Party contends that Section 15(3)(f) does not apply to the aides in its bargaining unit because the work they do is *instructional*. This term is not defined in PERA. Respondent argues that in a public school setting, *instructional* services are provided only by certified teachers. Therefore, according to Respondent, Section 15(3)(f) covers all services utilized by a public school employer except those provided by certified teachers. Although more than a decade has passed since Section 15(3)(f) was added to PERA, neither the Commission nor the Court of Appeals has had occasion to rule directly on the meaning of the phrase "noninstructional support services." Therefore, this issue is squarely before me as a case of first impression.[1]

At the time this charge was filed in 2007, Charging Party's unit included several different types of aides. As discussed in detail below, the stipulated record includes information about the duties of special education aides, Title I/kindergarten aides, library aides, and a position titled Responsible Thinking Coordinator (RTC). The parties stipulated that there is no longer a dispute over whether the services provided by playground aides fall under Section 15(3) (f).

Findings of Fact:

History of Section 15(3)(f)

Section 15(3)(f) was added to PERA in 1994 as part of 1994 PA 112 (Act 112), a package of amendments that applied only to "public school employers," their employees, and the employees' bargaining representatives. [2] The changes effected by Act 112 included a fine on striking public school employees and the creation of a list, in Section 15(3), of "prohibited subjects of bargaining" between a public school employer and the bargaining representative of its employees. This was a significant change because, until these amendments, PERA, like the National Labor Relations Act (NLRA), 29 USC 150 et. seq, did not explicitly make any topic a mandatory or nonmandatory subject of bargaining. Section 15 of PERA simply stated that a public employer was required to bargain collectively with respect to "wages, hours, and other terms and condition of employment." The task of interpreting this phrase and classifying subjects

[1] In *Troy Sch Dist*, 21 MPER 37 (2008), the Commission held that even if the term "noninstructional support" in Section 15(3)(f) excluded services provided by paraeducators, a petition seeking to sever custodial and maintenance employees from a broad unit of support employees, including paraeducators, was inappropriate. On March 2, 2009, Administrative Law Judge Doyle O'Connor issued a decision and recommended order in *Pontiac Sch Dist*, Case No. C04 H-215, in which he concluded that the occupational therapists and physical therapists employed by the employer in that case provided instructional services not covered by Section 15(3)(f), and that the employer had a duty to bargain over the subcontracting of their work. *Pontiac* was pending before the Commission on exceptions when the instant decision was issued.

[2] Section 1(1)(h) of PERA, as amended by 1994 PA 112, defines a "public school employer" as a public employer that is the board of a school district, intermediate school district, or public school academy; is the chief executive officer of a school district in which a school reform board is in place under part 5A of the revised school code, 1976 PA 451, MCL 380.371 to 380.376; or is the governing board of a joint endeavor or consortium consisting of any combination of school districts, intermediate school districts, or public school academies.

as mandatory, permissive or illegal was left to the Commission and the Courts with the assistance of precedent developed under the NLRA.

1994 PA 112 went through a number of changes between its introduction, as House Bill 5128 on October 14, 1993, and its passage. The first version of what became Section 15(3)(f) read as follows:

> The decision of whether or not to contract with a third party for 1 or more *noninstructional support services, including, but not limited to, transportation, food service, janitorial and building maintenance services, paraprofessional and teacher aide or assistant services, and administrative services such as data processing, accounting, and clerical functions;* or the procedure for obtaining the contract, or the identity of the third party. [Emphasis added.]

The third draft of the bill added "or the impact of the contract on individual employees or the bargaining unit" to the last sentence of this paragraph. In the fifth draft, "paraprofessional and teacher aid or assistant services" were omitted from the list of examples of noninstructional support services. This version of Section 15(3)(f) read as follows:

> The decision of whether or not to contract with a third party for 1 or more *noninstructional support services, including, but not limited to, transportation, food service, janitorial and building maintenance services, and administrative services such as data processing, accounting, and clerical functions*; or the procedures for obtaining the contract; or the identity of the third party; or the impact of the contract on individual employees of the bargaining unit. [Emphasis added.]

The sixth version of the bill contained the language which eventually became Section 15(3)(f). In the final version of the bill, the Legislature retained the phrase "noninstructional support services," but removed all illustrative examples.

Teachers and Aides Compared

Both parties agree that there are significant differences between the duties of teachers and aides and the qualifications required for these positions. Teachers are professional employees who provide and determine how instruction will be provided based on their professional training, knowledge and skill. Aides perform a variety of functions, including, but not limited to, assisting teachers by providing supplemental instruction on academic subjects. Aides work under the specific direction of teachers and administrators. Teachers design lessons, analyze student progress, and evaluate the need for and create programs for remedial or accelerated individualized instruction. None of Respondent's aides draft curriculum, set educational goals, develop lesson plans, do written evaluations of students, or issue grades. Respondent's aides do not participate in parent-teacher conferences or attend teacher professional development sessions.

All of Respondent's teachers are required to hold an instructional teaching certification. This requires a bachelor's degree in education, passing a proficiency test in basic educational skills and knowledge in the teacher's area of certification, and time spent as a student teacher or intern under the supervision of a certified teacher. After a teacher begins teaching, he or she must fulfill additional educational requirements to become permanently certified. In addition, teachers are required by state law to participate in professional development each year.

Most aide positions with Respondent require no formal education beyond a high school degree, although early childhood aides are required by the State of Michigan to have either an associates' degree in child development or an equivalent combination of education and experience. Under the federal No Child Left Behind Act of 2001 (hereinafter NCLB), 29 USC 6301 et seq, aides who work directly with students to supplement instruction in schools receiving federal funding are deemed "paraprofessionals" and must be "highly qualified." [3] Except for playground aides and some special education aides, Respondent requires all its aides to be "highly qualified." Aides can become "highly qualified" by: (1) completing 60 semester hours of college credit or an associate's degree: (2) preparing a portfolio highlighting their experience and qualifications; or (3) passing the "Work Keys" test for paraprofessionals approved by the Michigan Department of Education (MDE). The "Work Keys" test measures reading, writing and math skills.

The Clare-Gladwin Regional Education Service District (RESD) offers classes to help aides prepare for the Work Keys test. Although the classes are not mandatory, many of Respondent's aides have attended them. Some or all of Respondent's aides have also received training in first aid, CPR, and non-violent crises response. The record also indicates that aides may be assigned to acquire other skills as need to perform their jobs. For example, one of Respondent's special education aides was assigned to learn basic sign language to communicate with a student although, according to her supervisor, she did not follow through on this assignment.

Michigan's Revised School Code, MCL 388.1763.(1)(a) prohibits a public school district from permitting a noncertificated teacher to teach in an elementary or secondary school or adult basic education or high school completion program. In addition, the State School Aid Act, MCL 388.1701, mandates that a public school district seeking state funding must provide 1080 "hours of pupil instruction" per year. What can be counted as a "pupil instruction" time for purposes of this statute is set out in a rule promulgated by the MDE, R 340.10. At the minimum, both pupils and a certificated teacher or teachers must be present for the time to count as "pupil instruction." A certain number of study halls, and reasonable recess periods, can be counted as pupil instruction time but only if supervised by a certified teacher.

[3] Under Section 1119 of NCLB, aides must qualify as paraprofessionals if they: (1) provide tutoring at a time when a teacher is not present; (2) assist with classroom management, such as organizing instructional materials; (3) conduct parental involvement activities; (4) provide instructional assistance in a computer laboratory; (5) provide support in a library or media center; (6) act as a translator, or provide support services under the direct supervision of a translator. Aides who provide playground services or personal care services, or who provide noninstructional computer assistance, are not required to qualify as paraprofessionals.

For special education students, a school district is required to create and implement an individual education plan (IEP). Teachers, in conjunction with parents and other professionals such as speech therapists, social workers, etc., are responsible for creating IEPs and seeing that they are carried out. Aides do not have access to IEPs. However, teachers may share parts of the IEP with their special education aides, including the student's behavior modification plan. Some IEPs provide that "adult assistance" or "a paraprofessional" will be provided to the student as needed. The school district is not required to assign these duties to an aide; "adult assistance" can be provided by various school employees, including teachers, aides, volunteers, secretaries and principals.

Duties of Respondent's Aides

Chapter I Instructional Aide/Kindergarten:

Respondent has job descriptions for three aide positions. One of these is "chapter I instructional aide/kindergarten." According to the job description, the goal of this position is to "assist teacher consultants with the implementation of remediation programs in mathematics and reading for students with deficiencies in these skills." The "performance responsibilities" of the position include the following:

1. Plan, organize, and implement programs and activities for students in cooperation with and under the direction of a teacher consultant.

2. Tutor students.

3. Record student prescriptions and provide individual instruction.

4. Lead group instructional lessons.

5. Maintain program and student records. Record student attendance and grades.

6. Prepare, duplicate and copy classroom materials.

7. Inventory, organize and store supplies and materials.

8. Supervise students and maintain discipline.

9. Assist with student testing and evaluation.

10. Prepare bulletin boards, displays, charts, etc.

11. Assist in requisitioning of supplies and materials.

12. Housekeeping duties necessary to keep classroom area and materials neat and orderly.

13. Exercise reasonable judgment in the use and care of school district property. Report loss of or damage to property to immediate supervisor.

14. Assist with and exercise reasonable care and judgment to safeguard the safety and welfare of any student.

15. Participate in in-service training programs when requested.

16. Other duties as may be assigned by the administration/supervisor.

The "chapter I instructional aide/kindergarten" position includes aides working in Respondent's early childhood education program as well as in kindergarten classrooms in the elementary schools. It appears from the record that at one time Respondent assigned employees with this title to other classrooms, but that by the time this record was made Respondent had eliminated these positions due to lack of funds.

The stipulated record includes affidavits from Virginia Krawcyznski, who works half time as a kindergarten aide and half time as a special education aide, and Deborah Lizyness, who works full-time as an early childhood education aide. It also includes affidavits from Richard Foote, former community education director and Lizyness' former supervisor in the early childhood education program; Sandra Bristol, a fourth grade teacher who has had aides assigned to her classroom in the past; and Michele Sandro, an elementary school principal who has supervised classroom aides.

Krawcyznski works mornings in a kindergarten classroom. Normally the teacher assigns a lesson or task for the morning and then splits the class into three groups. Following the direction of the teacher, Krawcyznski works with the group assigned to her until lunchtime, when she leaves the kindergarten to go to her special education classroom. Krawcyznski is never left alone with the students; the teacher remains in the classroom at all times. Lizyness works with pre-school students in a classroom four days per week. Normally, the teacher in Lizyness' classroom chooses the lesson for the day and then splits the class into two groups. As directed by the teacher, Lizyness helps her group master one aspect of the lesson while the teacher works with the other group. Lizyness and the teacher then switch groups, and Lizyness helps the other half of the class. Like Krawcyznski, Lizyness is never left alone to supervise the class.

The early childhood program is for preschool children four years of age who are at risk of being inadequately prepared for kindergarten. State department of education regulations require an eight to one student to adult ratio. A certified teacher with an early childhood endorsement must be in the classroom at all times. The teacher determines the curriculum, designs the lessons, provides instruction and assesses the students. At the direction of the teacher, the aides practice skills with students. These include using scissors, pencils and art supplies, learning the alphabet, and using the computer to play educational games. Aides also help students master the lessons designed by the teacher using materials and supplies chosen by the teacher.

Sandro's affidavit states that the aides "do not provide instruction," but practice skills or lessons with the student at the direction of the teacher, with material and supplies determined by

the teacher. However, according to Bristol, through experience aides learn to use some of "the elements of teaching" when they work with students. These include introduction of concepts, modeling, variety of explanation, different modes of instruction, assessment, practice, checking for understanding, and reteaching.

Special Education Aides:

Respondent has a job description for the position "teacher aide/special education." The job description describes the general function of this type of aide as "assist[ing] the special education teacher in maintaining a positive educational environment. Provid[ing] direct care, supervision and guidance of child/children." The specific job duties listed are as follows:

1. Assist and instruct students in classroom activities.

2. Organize and supervise student activities.

3. Record daily information as needed.

4. Assist with operation of the classroom as required.

5. Attend to the physical needs of the children including bathroom and cleanliness.

6. Provide for positive emotional, social, intellectual and physical growth and development of children.

7. Planning in cooperation with the teacher.

8. Exercise reasonable care and judgment in the use and care of school district property. Report loss of or damage to property to immediate supervisor.

9. Assist with and exercise reasonable care and judgment to safeguard the safety and welfare of any student/child.

10. Participate in in-service training programs when requested.

11. Assist in the delivery of behavior modification systems.

12. Other duties as may be assigned by the administration/supervisor.

The stipulated record includes an affidavit from Judy Anderson, employed full-time as a special education aide in an elementary school; Krawcyznski, a half time special education aide; Foote, who is Respondent's special education coordinator; Sandro, who is Anderson's immediate supervisor; and Julie Rosekrans, principal at Krawczynzski's school and her immediate supervisor.

Krawcyznski works with students in a special education classroom, both individually and in small groups, on subjects that include reading, writing, and mathematics. Anderson also works with students, both one-on-one and in group settings, on subjects that include reading, writing, math, social studies, science and spelling. Like the chapter I instructional/kindergarten aides, special education aides supplement and reinforce the teacher's instruction by guiding students and helping them practice the skills that were taught by the teacher.

Special education aides are sometimes assigned to one student and follow that student through his or her school day, including time spent by the special education student in a non-special education classroom. A special education aide may be assigned to an individual student because of the student's behavioral needs, physical needs, or both. When the student has behavioral needs, a special education aide may be assigned to prevent the student from injuring himself or others and to keep the student focused. The record does not indicate how aides perform the latter task, but presumably their duties include talking to the student about the lesson when he is distracted to help him refocus. The aide may also help carry out the student's behavior modification plan. Depending on the needs of the student, an aide may assist the student in using the toilet or with other physical needs, help the student get to class, or ensure that the student has the necessary materials and supplies to do his work.

Responsible Thinking Center (RTC) Aides/Coordinators

There is no job description for this position. However, the stipulated record includes an affidavit from Terri J. Townsend, who has the title RTC coordinator, and affidavits from Sandro and Rosekrans, elementary school principals with RTC coordinators under their supervision.

Respondent's elementary schools include an area called the "responsible thinking process center." Children are sent to the center when their behavior in regular classrooms is disruptive or they break classroom rules. Students enter and leave the center throughout the day. All students sent to the center must complete a behavior program process, the RT. This is a scripted series of questions that begins with "What did I do?" and requires the student to think about the consequences of his or her continued misbehavior and formulate plans for making things better. The RTC coordinator goes through the questions with the students and helps them complete the process. Students normally remain in the center until they complete the entire series of questions, but may be there longer. Sometimes students bring lessons or worksheets from their classrooms with them to the center, and the RTC may help them with this work.

Library Aides

Respondent has a job description for the position "library aide." According to the job description, the position's general function is to "organize, maintain and direct school library services, assist students and school staff and support and supplement the instructional program." The job description lists the duties and responsibilities of the position as follows:

1. Assist and instruct students in the use of the library.

2. Plan, organize, and supervise library activities for students.

3. Supervise and direct groups of students in the library and for classroom activities.

4. Organize, catalog and shelve media.

5. Organize and supervise circulation of media including accurate record keeping.

6. Maintain accurate inventory of audio-visual equipment. Maintain schedule for use of equipment.

7. Develop and maintain card catalog system.

8. Requisition, inventory, and store media, material and supplies.

9. Arrange for the acquisition and return of media and materials.

The stipulated record does not include an affidavit from a library aide. In her affidavit, Sandro, the elementary school principal, states that library aides are responsible for checking out and shelving books, and may assist a student or teacher in finding books. According to Sandro's affidavit, library aides provide no instruction to students. The only other affidavit making reference to library aides was that of Sheryl Pressler. Pressler is the superintendent of the Clare Gladwin RESD and had no information about the duties specifically performed by Respondent's library aides.

Discussion and Conclusions of Law:

Duty to Bargain under Section 15 of PERA

Under PERA, all topics are classified as mandatory, permissive or illegal subjects of bargaining. The description of this division in *Detroit Police Officers Ass'n v City of Detroit*, 391 Mich. 44, 54-55 (1974) remains valid today. As the Court explained, under Section 15 of PERA, as under Section 8(d) of the NLRA, the parties have a duty to bargain over "wages, hours, and other terms and conditions of employment.'" Subjects included within that phrase are referred to as "mandatory subjects" of bargaining. Once a specific subject has been classified as a mandatory subject of bargaining, the parties are required to bargain concerning the subject if it has been proposed by either party, and neither party may take unilateral action on the subject absent a good faith impasse in the negotiations. The remaining matters not classified as mandatory subjects of bargaining are referred to as either '"permissive' or "'illegal" subjects of bargaining. The parties are not required to bargain over a permissive subject. They may bargain by mutual agreement on a permissive subject, but neither side may insist on bargaining to a point of impasse. An "illegal" subject of bargaining is a provision that is unlawful under the collective bargaining statute or other applicable statute. The parties are not explicitly forbidden from discussing matters which are illegal subjects of bargaining, but a contract provision embodying an illegal subject is unenforceable.

Over the history of PERA, the Commission and courts have repeatedly been called upon to decide whether a particular topic constitutes a mandatory subject of bargaining. In *Van Buren Public School Dis*t *v Wayne County Circuit Judge,* 61 Mich App 6, (1975), the Court of Appeals affirmed the Commission's finding that a school district's decision to contract with a third party for transportation services previously provided by its employees was a mandatory subject of bargaining. Applying the U.S. Supreme Court's analysis in *Fibreboard Paper Prods Corp v NLRB*, 379 US 203 (1964), the Court of Appeals concluded that where employees were to be replaced by a contractor's employees doing the same work under similar conditions, the employer had a duty to bargain over the decision to subcontract the work. The Court dismissed the school district's argument that bargaining would have been a futile exercise because its decision was motivated by a desire for superior service, rather than cost. The Court stated, at 26,

> We are not convinced that bargaining would have served no purpose. The merits of Van Buren's decision to subcontract are not so clear as to eliminate the need for discussion. Union input might reveal aspects of the problem previously ignored or inadequately studied by Van Buren. The union may well be able to offer an alternative to the one chosen by Van Buren which would fairly protect the interests and meet the objectives of both. Surely discussion of the subject would have done much to "promote industrial peace" and may even have prevented the present lawsuits. Negotiation, even if ultimately unsuccessful, does much to appease; explanation at the bargaining table will sooner quell anger than receipt of a tersely worded termination slip.

PERA does not prohibit a public employer from subcontracting unit work. As the above quote emphasizes, the purpose of requiring a public employer to bargain over such a decision is to give the union the opportunity to point out problems, make suggestions, and propose alternatives that may satisfy the objectives of both parties. The bargaining process, however, is not without cost to the employer. It takes time and effort, and may also reduce the employer's flexibility to make business decisions.

The Commission and Courts have continued to find subcontracting under circumstances similar to those in *Van Buren* to be a mandatory subject of bargaining under PERA. See *Detroit Police Officers Ass'n v Detroit*, 428 Mich 79 (1987); *Plymouth Fire Fighters Ass'n, Local 1811 v Plymouth*, 156 Mich App 220 (1986); *Interurban Transit Partnership*, 21 MPER 47 (2008); *City of Roseville*, 1982 MERC Lab Op 1377.

As discussed above, Act 112 amended Section 15 of PERA to include a list of "prohibited subjects" of bargaining between public school employers and their employees' bargaining representatives. These prohibited subjects included, in Section 15(3)(f), the "decision of whether or not to contract with a third party for one or more noninstructional support services." When the constitutionality of these amendments was challenged, the Courts construed the phrase "prohibited subject" to be synonymous with "illegal subject." *Michigan State AFL-CIO v Michigan Employment Relations Comm*, 212 Mich App 472, 486-487 (1995), *aff'd* 453 Mich 362 (1996). Therefore, under Section 15(3)(f) a public school employer has no obligation to bargain or discuss its subcontracting of noninstructional support services with the union representing the employees who perform these services and any agreement between them on this subject is not enforceable.

Are All Services Not Provided by Certified Teachers "Noninstructional Support Services" under Section 15(3)(f)?

It is axiomatic that the primary goal of statutory interpretation is to give effect to the intent of the Legislature. *Ford Motor Co v Woodhaven*, 475 Mich 425, 438 (2006). As discussed above, some legislative history is available for Section 15(3)(f). In the original draft of the legislation, the term "noninstructional support services" in Section 15(3)(f) was followed by a list of examples, including "paraprofessional and teacher aide or assistant services." The final bill included no examples. Respondent argues that the original version of the bill demonstrates that the Legislature intended "noninstructional support services" to include all services provided by aides and paraprofessional employees. Charging Party argues that the fact that the Legislature removed aides as an example of noninstructional support employees before they eliminated the reference to other types of support employees means that the Legislature decided that aides were not "noninstructional support" employees. In my view, the fact that the Legislature began with a list of examples, but included none in the final draft, means that it decided not to attempt to enumerate all the different types of services constituting "noninstructional support." That is, it expected the Commission and the Courts to perform their traditional role of interpreting the statutory language based on facts and arguments presented in individual cases.

The interpretation of a statute, of course, begins with the actual words used by the Legislature. When interpreting a statute, a court presumes that the Legislature understood the meaning of the language it enacted. *Robinson v City of Detroit*, 462 Mich 429, 459 (2000). If the expressed language is clear, the statute must be enforced as written. Words in a statute should not be ignored or treated as surplus language. Unless defined in the statute, every word or phrase of a statute should be ascribed its plain and ordinary meaning. *Robertson v DaimlerChrysler Corp*. 465 Mich. 732, 748, 641 (2002).

In Section 15(3)(f), the noun "services" is modified by the adjective "support." At the time Act 112 was adopted, the terms "support employee" or "support staff" were commonly used to refer to employees of a public school district who were neither teachers nor administrators. See, e.g. *Port Huron Sch Dist*, 1996 MERC Lab Op 81; *Howell Pub Schs*, 1994 MERC Lab Op 1034; *Muskegon Heights Pub Schs*, 1992 MERC Lab Op 365. In Section 15(3) (f), however, the Legislature chose to modify the adjective "support" with another term, "noninstructional." As noted above, one of the fundamental rules of statutory construction is that words used in the statute not be ignored or treated as redundant. The Legislature could simply have made the subcontracting of "support" services a prohibited subject of bargaining in public school employment. The fact that the Legislature added the term "noninstructional" suggests that it intended to draw a distinction between "instructional" and "non-instructional" support services.. The Clare County Circuit Court, in its October 18, 2007 opinion and order supporting its issuance of a preliminary injunction, agreed that the use of the term "noninstructional support services" clearly implied the existence of "instructional" support services. It also noted that the school district could provide no examples of instructional support services other than those provided by the aides in this case.

PERA does not define "noninstructional" or "instructional." As noted above, an undefined term in a statute should be given its plain and ordinary meaning; a court may consult a dictionary to learn its common and approved usage. *Haynes v Neshewat*, 477 Mich 29, 36

(2007): *Alvan Motor Freight, Inc* v *Department of Treasury*, 281 Mich App 35, 43 (2008). The Random House Webster's Unabridged Dictionary, Second Edition does not provide a definition of noninstructional, but defines "instruction" as "the act or practice of instruction or teaching; education." The verb "instruct" is defined as "to furnish with knowledge, especially by a systematic method; teach; train; educate and the verb "teach" as "to impart knowledge of or skill in; give instruction in." Similarly, the Merriam Webster Online Dictionary, http://www.merriam-webster.com/dictionary (accessed August 5, 2009), defines "instruction" as the "action, practice or profession of teaching." As these definitions indicate, the plain and ordinary meaning of the word "instruction" encompasses, but is not limited to, instruction by professionally trained teachers.

Respondent points out that under the rules of statutory construction, the Legislature is presumed to be familiar with existing statutes and regulations, including the Michigan School Code and Michigan Department of Education (MDE) regulations issued pursuant to that statute. It argues that the Commission should follow the definition of "instruction" and "instructional" used in the School Code and MDE regulations. However, neither the School Code nor the regulations explicitly define these terms. Moreover, I do not agree, based on the examples provided by Respondent, that the School Code and MDE regulations consistently use these terms to refer only to work performed by professional teachers. The School Aid Act, at MCL 388.1701 requires a certain number of "hours of pupil instruction," defined as time in which both students and certified teachers are present. The purpose of this provision is not to define "instruction" but to ensure that school districts provide their students with a minimum amount of contact with certified teachers. Under this statute, some seemingly noninstructional activities, like recess, are "hours of instruction" if supervised by a certified teacher but are not if supervised by an aide The School Code, MCL 388.1763(1), only prohibits a school district from permitting noncertificated teachers to teach in an elementary or secondary school or adult basic education or high school completion program. The MDE rules that describe who is and is not required to be certified, R 390.1105 (1) and (2), mention both "instructional paraprofessionals" and "paraprofessional persons legally employed in a noninstructional capacity." Those rules state:

> Persons required to hold certificates or permits.
>
> (1) A person employed as a teacher in an elementary or secondary school with *instructional responsibilities* shall hold a certificate, permit, or vocational authorization valid for the positions to which the teacher is assigned.
>
> (2) A teacher aide, *instructional* paraprofessional, classroom assistant, secretary to *instructional* personnel, or other paraprofessional persons legally employed in a *non-instructional* capacity need not be certificated as a teacher. [Emphases added].

Just as I am not persuaded that under the School Code only certified teachers can provide "instructional" services, I am also not persuaded that the Legislature intended "noninstructional support services" in Section 15(3) (f) to mean all services except those provided by certified teachers. As discussed above, this is not the plain and ordinary meaning of the term

"instructional." Moreover, if the Legislature truly intended Section 15(3)(f) to apply to all services except those provided by certified teachers, the Legislature could have prohibited bargaining by a public school employer over "whether or not to contract with a third party for services, other than those provided by (certified) teachers . . ."

Do Respondent's Aides Provide "Noninstructional Support Services"?

Respondent argues that it is "simply nonsensical" to conclude that the Legislature intended to leave school districts with an obligation to bargain over the subcontracting of work performed by aides. Respondent characterizes this as "grant [ing] aides an elevated protected status not extended to any other district support personnel." As noted above, PERA does not prohibit an employer from subcontracting the work of its employees, and PERA does not protect employees from the privatization of their work after the bargaining process has been exhausted. The bargaining process imposes costs on an employer. However, it does not seem at all nonsensical that the Legislature might intend to give a public school employer the flexibility to quickly contract for some support services while requiring it to bargain over the contracting of "instructional" services more closely related to the employer's educational mission.

However, I conclude that the determination of whether a particular position provides "noninstructional" or "instructional" services should be made on a case-by-case basis. That is, it would inappropriate and inconsistent with the Legislature's intent for the Commission to simply decide that all "aides" or "paraprofessionals" do or do not provide instructional services.

The remaining issue is whether the aides employed by Respondent aides instruct as a regular and continual part of their job.[4] I find that the record establishes that aides classified as chapter I instructional aides/kindergarten, including aides in the early childhood program, perform work properly characterized as instructional. These aides work with individual students and groups of students in a classroom setting. At the direction of the classroom teacher, they help kindergarten and pre-school students master lessons and practice and master skills, including using a pencil and learning the alphabet, that are the necessary foundation for later academic success. Although the aides' role in the classroom is different from that of the teacher, I find that the aides also provide instruction.

The two special education aides who provided testimony in this case, Krawcyznski and Anderson, work with individual students and groups of students to reinforce and practice skills introduced by the teacher in a manner similar to the chapter I instructional/kindergarten aides. This includes helping students master lessons on academic subjects. As discussed above, I find that this constitutes instruction. The record indicates that some special education aides are assigned to individual students because of the student's behavioral needs. These aides may be responsible for carrying out the student's behavior modification plan as well as helping him or her focus on the teacher's lesson. For these students, teaching them how to control their behavior

[4] In determining whether employees who perform emergency dispatch duties are "emergency telephone operators" covered by 1969 PA 312 (Act 312), 423.231 et. seq., the Commission looks to whether these duties are a regular and continual part of their job. *City of Grosse Pointe Farms*, 1979 MERC Lab Op 488; *Village of New Haven*, 1988 MERC Lab Op 601. Compare *Tuscola Co and Sheriff*, 16 MPER 49 (2003) (corrections officers who perform police duties on an occasional and infrequent basis are not "police officers" within the meaning of Act 312.)

is an essential educational goal. I find that these tasks also constitute "instruction" in the plain and ordinary meaning of this term.

For similar reasons, I find that the RTC coordinators are engaged in instruction when they go through the RT questions with the students sent to the RT center because of their disruptive or rule-breaking behavior. The RTC coordinators are not simply supervising students removed from their regular classrooms, but systematically teaching them how to make better decisions. I find that what the RTC coordinators do also constitutes instruction.

According to their job description, the duties of Respondent's library aides include instructing students in the use of the library. Although Sandro states in her affidavit that library aides provide no instruction to students, she also states that classroom aides do not provide instruction. Based on the limited evidence in the record before me, I conclude that the regular duties of Respondent's library aides include instruction.

The record suggests that Respondent may employ some special education aides who regularly provide only health or personal care services. None of the aides whose affidavits are included in this record fall into this category, and the record includes no specific information about the duties of this type of aide. Even though health and personal care services may be essential for some students, I believe that services of this type are not "instructional." However, I make no ruling on this issue since it was not specifically raised.

In sum, as discussed above, I conclude that the services provided by Respondent's chapter I instructional aides/kindergarten aides, RTC coordinators, and library aides do not constitute noninstructional support services within the meaning of Section 15(3)(f) of PERA. I conclude that except for health or personal care services, the services provided by Respondent's special education aides also fall outside this provision. I conclude that by making the decision to subcontract these services without giving Charging Party an opportunity to bargain over this decision, Respondent violated its duty to bargain under Section 15 and Sections 10(1)(a) and (e) of PERA. I recommend, therefore, that the Commission issue the following order.

RECOMMENDED ORDER

Respondent Harrison Community Schools, its agents and officers, are hereby ordered to:

1. Cease and desist from

   a. Refusing to bargain with the Harrison Educational Support Personnel Association, MEA/NEA over the subcontracting of work performed by aides.

   b. Making the decision to subcontract the above work without giving the above labor organization the opportunity to bargain over the decision.

2. Take the following affirmative action to effectuate the purposes of the Act:

   a. Upon demand, bargain with the Harrison Educational Support Personnel Association, MEA/NEA over any decision to contract with a third party for instructional or instructional support services provided by that labor organization's members.

   b. Post the attached notice to employees in conspicuous places on its premises, including all places where notices to employees in this bargaining unit are customarily posted, for a period of thirty (30) consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Julia C. Stern
Administrative Law Judge
State Office of Administrative Hearings and Rules

Dated: _____

NOTICE TO EMPLOYEES

AFTER A PUBLIC HEARING, THE MICHIGAN EMPLOYMENT RELATIONS COMMISSION HAS FOUND the **HARRISON COMMUNITY SCHOOLS** TO HAVE COMMITTED AN UNFAIR LABOR PRACTICE IN VIOLATION OF THE MICHIGAN PUBLIC EMPLOYMENT RELATIONS ACT (PERA). PURSUANT TO THE TERMS OF THE COMMISSION'S ORDER,

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT refuse to bargain with the Harrison Educational Support Personnel Association, MEA/NEA over the subcontracting of work performed by aides in its bargaining unit.

WE WILL NOT make the decision to subcontract the above work without giving the above labor organization the opportunity to bargain over the decision.

WE WILL, upon demand, bargain with the Harrison Educational Support Personnel Association, MEA/NEA over any decision to contract with a third party for instructional or instructional support services provided by that labor organization's members.

As a public employer under PERA, we are obligated to bargain in good faith with representatives selected by the majority of our employees with respect to rates of pay, wages, hours of employment or other conditions of employment.

HARRISON COMMUNITY SCHOOLS

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 may be directed to the office of the Michigan Employment Relations Commission, Cadillac Place, 3026 W. Grand Blvd, Suite 2-750, P.O. Box 02988, Detroit, Michigan 48202. Telephone: (313) 456-3510.
Case No. C07 G-164