STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

WALLED LAKE CONSOLIDATED SCHOOL DISTRICT,
Public Employer-Respondent,

-and-

Case No. C13 F-116
Docket No. 13-005505-MERC

WALLED LAKE TRANSPORTATION ASSOCIATION
MEA-NEA,

Labor Organization-Charging Party.
____/

APPEARANCES:

Lusk & Albertson, PLC, by Robert A. Lusk, for the Public Employer

Law Offices of Lee & Correll, by Michael K. Lee and Erika P. Thorn, for the Labor Organization

DECISION AND ORDER

On August 8, 2014, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act, 1965 PA 379, as amended, and recommending that the Commission dismiss the charges and complaint.

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

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

ORDER

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

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

____________/s/________________________________
Edward D. Callaghan, Commission Chair

____________/s/________________________________
Robert S. LaBrant, Commission Member

___________/s/__________________________________
Natalie P. Yaw, Commission Member

Dated: 9/17/2014

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

WALLED LAKE CONSOLIDATED SCHOOL DISTRICT,
Public Employer-Respondent,

-and-

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WALLED LAKE TRANSPORTATION ASSOCIATION MEA-NEA,
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APPEARANCES:

Lusk & Albertson, PLC, by Robert A. Lusk, for the Public Employer

Law Offices of Lee & Correll, by Michael K. Lee and Erika P. Thorn, for the Labor Organization

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON SUMMARY DISPOSITION

Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, this case was assigned to Doyle O'Connor, Administrative Law Judge (ALJ) for the Michigan Administrative Hearing System (MAHS), acting on behalf of the Michigan Employment Relations Commission (MERC). Pursuant to Rule 174, R 423.174, of the Rules and Regulations of the Employment Relations Commission, the matter was reassigned to ALJ David M. Peltz following Judge O'Connor's retirement.

The Unfair Labor Practice Charge and Procedural Background:

The Walled Lake Transportation Association, MEA/NEA filed this charge against the Walled Lake Consolidated School District on June 25, 2013. The Union represents a bargaining unit comprised of more than 100 non-instructional transportation employees formerly employed by the school district. On February 28, 2013, Respondent issued a Request for Proposals (RFP) seeking bids on student transportation services. Charging Party submitted a timely proposal in response to the RFP. On May 2, 2013, Respondent awarded the contract for transportation services to Dean Transportation, a private entity.

The charge alleges that Respondent's decision to subcontract the bargaining unit work constituted a violation of Sections 10(1)(a), (c) and (e) of PERA. Charging Party contends that

the school district violated its duty to bargain under the Act by failing or refusing to give the unit an equal opportunity to bid on the contract. In addition, Charging Party asserts that Respondent's decision to subcontract the work was motivated by anti-union animus, as evidenced by the conduct of the school district after the expiration of the bidding deadline had expired. Respondent asserts that the charge should be dismissed because the Union waived its right to bring this action by failing to submit a proper or responsive bid to the district's RFP. Respondent further contends that dismissal of the charge is warranted because the Union has failed to allege any facts which would establish anti-union animus on the part of the school district.

A hearing was originally scheduled for September 4, 2013. On August 12, 2013, Respondent filed a motion for summary disposition in which it asserted that the issue was governed by the Commission's decision in *Lakeview Community Schools*, 25 MPER 37 (2011), a consolidated case involving charges against both the Lakeview Community School District and Mt. Pleasant Public Schools. The hearing was adjourned in order to give Charging Party the opportunity to respond to the school district's motion, which it did in a brief filed with Judge O'Connor on September 3, 2013. The district filed a reply to the Union's brief on September 17, 2013. Thereafter, the case was placed in adjourned without date status by agreement of the parties pending appellate review of the Commission's decision in *Lakeview*.

The Court of Appeals issued its decision affirming the Commission in *Lakeview* on October 15, 2013. See *Mt. Pleasant Pub Schools et al v AFSCME Council 25*, 302 Mich App 600 (2013). On May 2, 2014, the Supreme Court issued orders denying applications for leave to appeal by the two school districts involved in the *Lakeview/Mt Pleasant* matter. See 495 Mich 998 (2014). Thereafter, I sent a letter to Charging Party inquiring whether the Union intended to proceed with its unfair labor practice charge given the appellate court decisions. When no response was filed to that letter, I issued an order notifying the parties that the case would be administratively closed unless the Union submitted a request to proceed on the matter within twenty-one days. By letter dated July 7, 2014, Charging Party requested that the case be removed from inactive status and that I issue a decision on Respondent's motion for summary disposition.

Facts:

The following facts are derived from the unfair labor practice charge and the Union's response to the school district's motion for summary disposition, as well as the assertions set forth by the Employer in its motion for summary disposition, along with the attachments thereto, which were not specifically disputed by Charging Party.

The most recent collective bargaining agreement between Charging Party and the school district covered the period 2008-2012. In 2010, the parties reached an agreement on amendments to the contract's wages and benefits provisions which were scheduled to remain in effect through June 30, 2012. The parties began negotiating the terms of a successor agreement sometime around August of 2012. However, those discussions only addressed the language of the recently expired contract and did not involve any bargaining concerning the economic issues set forth in the 2010 amendments.

On January 16, 2013, Respondent announced its intention to seek requests for proposals to contract out its student transportation services. The school district estimated that subcontracting the work would save approximately $1.4 million each year over the course of the contract's term. On February 28, 2013, the district provided prospective bidders with copies of an RFP for a three-year contract to perform the work done by the bargaining unit. The school district hand-delivered a copy of the RFP to Charging Party on that same day.

By its terms, the purpose of the RFP was to "establish a contractual relationship with an experienced and qualified pupil transportation services entity(ies) to provide daily general education and special needs pupil transportation, extra-curricular and athletic transportation requested by the School District, as well as transportation fleet maintenance services, to the School District in the most efficient and cost-effective manner possible . . . ." The document repeatedly referred to the prospective student transportation services entity as "the contractor" and specified that the winning bidder would be responsible for the "selection, evaluation, training, compensation, and retention of transportation employees . . . ." The RFP further stated that although the school district anticipated that the winning bidder would consider all current unit members for employment, the contractor "shall be free to hire only those individuals which it deems to be the best qualified, in its sole and absolute discretion."

The RFP contained a number of requirements with which each bidder was expected to comply when submitting a proposal. Pursuant to the RFP, each proposal was to be accompanied by a bid bond or certified check in the amount of five percent of the first year's total cost of the contract and a letter agreeing to be bound by the terms and conditions of the RFP. Other information required by the RFP included: costs and pricing quotes for a three-year contract which would, at a minimum, maintain the school district's current level and scope of transportation services; a description of the chain of command and reporting relationships of the prospective bidder and a proposed organizational chart; documentation of sufficient financial resources to provide the transportation and maintenance services; evidence of the prospective bidder's ability to obtain adequate insurance coverage; a plan for the replacement of school buses, including both quantity and type of buses in order to maintain the maximum/average age of the bus fleet; an explanation of whether the bidder intended to use the district's maintenance facilities; evidence of resources available for research and development needed to keep abreast of changing technologies in pupil transportation management; and a schedule indicating the wages and benefits to be offered to employees of the contractor. Prospective bidders were entitled to seek clarification of any information contained within the RFP by making a written request to the district via email. The RFP required that any request for exceptions to the terms set forth therein be specifically enumerated along with an explanation of the exceptions or the reasons such terms and conditions could not be met. Pursuant to the terms of the RFP, bids were due by 1:00 p.m. March 22, 2013.

After the RFP was issued, Respondent held an informational meeting for prospective bidders. At least one Union representative attended the meeting. Four transportation companies submitted bids by the deadline. The school district also received a four-page document from Charging Party entitled, "Walled Transportation [sic] et al., MEA/NEA Bid for Transportation Services" which was prefaced with the following statement:

> The Walled Lake Transportation Association MEA-NEA, Walled Lake Paraeducators Association MEA-NEA, and the Walled Lake Educational Support Personnel Association MEA-NEA (Associations), on behalf of its various members who work in the Transportation Department of the Walled Lake Consolidated School District, respectfully request consideration for our members to continue providing transportation services for the District. Concerning the specifications delineated in the District's Request for Proposals (RFP), the Associations are not serving as Contractor and are therefore unable to comply with various provisions in the RFP. Notwithstanding, please refer to the responses contained herein in answer to the District's request for information.
>
> Rather than serve as contractor, the Associations propose that the District remain as the employer and administer the transportation services program. The transportation services provided by our members will instead be determined through collective bargaining. The Associations additionally propose our members working in the Transportation Department continue to be members of their respective Associations, with all membership rights, responsibilities, wages, hours and working conditions, unless otherwise specified by mutual agreement.
>
> Please do not mistake the Associations' inability to comply with all sections of the RFP as being non-responsive. We are confident our members will continue to provide the qualify service that is sought by the District. Throughout their decades-long history with the District, our members have demonstrated that they are a highly skilled and reliable workforce – which has also greatly benefited the communities that feed into the District. Because our members have extensive knowledge of the District's transportation services, programs and requirements, they understand the scope of the work and have the ability to accomplish the work proposed in the bid.
>
> When considering the Associations' proposal, we respectfully request that the District recognize the efforts, expertise, and experience of our members. They have and will continue to demonstrate an unwavering commitment to providing unparalled and outstanding service for which the District has come to known [sic].

Although Charging Party provided some of the information required by the RFP, it requested exceptions to a number of the terms and conditions set forth therein, each time with an explanation that the Union was not "bidding as a contractor for services." Most notably, Charging Party's proposal did not specify the price the school district would pay for transportation services if the Union's bid was selected or set forth a schedule of employee wages and benefits. The Union's proposal also failed to describe the expected chain of command and reporting relationships and it lacked any explanation of how the Union intended to maintain or replace buses and other vehicles necessary for transporting students. With respect to the documentation required by the RFP, Charging Party did not submit any evidence establishing that it had sufficient financial resources to provide the transportation and maintenance services or provide any proof of its ability to obtain adequate insurance coverage. The Union's proposal did

not contain a letter agreeing to be bound by the terms of the RFP. It also failed to include a bid bond or certified check as required by the RFP as a guarantee of the bidder's good faith.

Respondent opened the bids on March 22, 2013 and subsequently invited the four transportation companies which had submitted proposals to a meeting to discuss the process. Charging Party was not invited to attend the meeting and its request to sit in on interviews with the prospective bidders was denied by the school district's director of operations.

On April 16, 2013, Union representatives learned that Respondent had given one of the bidders, Dean Transportation, the opportunity to correct an error in its bid. During this same period, negotiations between Charging Party and the school district on a successor contract continued. In the course of those discussions, the Union requested information from Respondent concerning the RFP, the proposals submitted by the four transportation companies and the modification that Dean Transportation was allowed to make to correct the error in its bid. The Union also sought information showing how the estimated $1.4 million in yearly savings would be realized based upon the bids which had been submitted. The school district did not respond to any of the Union's information requests.

On May 2, 2013, Respondent awarded the contract for student transportation services to Dean Transportation. Since its contract with the school district went into effect, Dean Transportation has hired 23 former employees of Walled Lake Community School District.

Discussion and Conclusions of Law:

Under Section 15 of PERA, a public employer has a duty to bargain in good faith with respect to mandatory subjects of bargaining, i.e., wages, hours, and other conditions of employment. In varying contexts, the subcontracting of bargaining unit work has been found to constitute a mandatory subject of bargaining. See e.g. *Van Buren School Dist v Wayne Circuit Judge*, 61 Mich App 6 (1975); *Davison Board of Education*, 1973 MERC Lab Op 824. In *Van Buren*, *supra*, the Court applied the tests set out by the U.S. Supreme Court in *Fibreboard Paper Products Corp v NLRB*, 379 US 203 (1964) to affirm the Commission's holding that the employer had the duty to bargain over its decision to replace employees in an existing bargaining unit with those of a contractor to do the same work under similar conditions of employment. The Court held that an employer has a duty to bargain over the decision to subcontract where: (1) the employer's basic operations were not altered by the subcontracting; (2) there was no capital investment or recoupment; (3) requiring the employer to bargain would not unduly restrict the employer's right to manage.

In 1994 PA 112 (Act 112), the Legislature amended Section 15 of PERA to give public school employers, as defined by Section 1(h) of the Act, extraordinary discretion in managing and directing its operations. PA 112 made the decision whether or not to contract with a third party for one or more noninstructional support services, the procedures for obtaining the contract, the identity of the third party, and the impact of the contract on individual employees or the bargaining unit prohibited subjects of bargaining between public school employers and the bargaining representatives of their employees. Although the amendment did not define the term "prohibited subject", the Court of Appeals concluded that the Legislature' s intent was to

foreclose the possibility that a school district could be found to have committed an unfair labor practice by refusing to bargain over a prohibited topic or that a prohibited topic could become part of a collective bargaining agreement. *Michigan State AFL-CIO v MERC*, 212 Mich App 472 (1995), aff' d 453 Mich 262 (1996). Thus, Act 112 essentially created an exception to the general rule requiring a public employer to bargain over a decision to subcontract unit work.

Section 15 of PERA was amended once again in 2009 as part of the *Race to the Top* package of legislation. Effective January 4, 2010, the list of prohibited subjects of bargaining in Section 15(3) now includes:

> (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 for noninstructional support services *other than the bidding described in this subsection*; or the identity of the third party; or the impact of the contract for noninstructional support services on individual employees or the bargaining unit. *However, this subdivision applies only if the bargaining unit that is providing the noninstructional support services is given an opportunity to bid on the contract for the noninstructional support services on an equal basis as other bidders*. [Emphasis supplied.]

I find that this case is governed by the analysis which the Commission previously set forth in *Lakeview Community Schools*, 25 MPER 37 (2011), aff'd sub nom *Mt. Pleasant Pub Schools et al v AFSCME Council 25*, 302 Mich App 600 (2013), cert denied 495 Mich 998 (2014). In *Lakeview*, the Commission interpreted the language of the newly-amended Section 15(3)(f) to mean that the subjects enumerated therein cease to be prohibited subjects of bargaining if a public school employer enforces a requirement that disqualifies or otherwise prevents a bargaining unit from bidding on a contract on an equal basis as other bidders. Therefore, the Commission held that an employer acts at its peril if itengages in conduct which effectively closes the door to a bid by the bargaining unit. The Commission concluded, however, that once the bargaining unit is afforded an opportunity to bid for a contract on an equal basis as other bidders, the prohibition on collective bargaining concerning the subjects listed in Section 15(3)(f), including the procedures for how to bid on an equal basis, applies.

In *Lakeview*, the school district provided prospective bidders with an RFP seeking bids for student transportation services. The RFP limited the bidding process to independent contractors with five or more years of experience and required that the bidding company provide personnel, furnish a bond, and submit an audited financial report. After its request to bid on the terms of the bargaining process were rejected, the union submitted a "proposal" stating that it was unable to meet certain specifications in the RFP. The union's proposal was for a collective bargaining agreement pursuant to which the school district would continue to employee the union's members to perform the services described in the RFP. The Commission found that the union's concessionary proposal was not a bid for purposes of Section 15(3)(f) and that by demanding that the employer consider its proposal in lieu of a bid, the union was effectively demanding what Section 15(3)(f) explicitly prohibits - bargaining over the employer' s decision to subcontract noninstructional support services. For that reason, the Commission held that the

union had failed to establish a foundation upon which to claim that the bargaining unit was denied an equal opportunity bid. With respect to the bidding required by Section 15(3)(f), the Commission stated:

> That the bargaining unit will be called upon to meet some of the same conditions required of third party bidders is implicit in the statute, which provides for an equal bidding opportunity, not one that is designed for response by a bargaining unit or labor organization. The language of the statute sends an unequivocal message that bargaining units and their representatives are to engage in the type of bidding and act in the manner of any other third-party contractor. While Charging Parties protest that it is unfair and unrealistic to expect them to act as third party contractors, that is what the statute says they must do in order to bid on a contract for noninstructional support services on an equal basis with other third party bidders. While this may not fit the realities of traditional public sector bargaining and labor-management relations, we do not judge the wisdom of legislative enactments. We interpret and apply them to the particular facts that are before us in accordance with established principles of statutory construction.

Lakeview, *supra* at 136. The Court of Appeals subsequently affirmed the Commission's decision, including MERC's finding that Section 15(3)(f) required the unions to "act in the manner of" third-party contractors in order to bid on the contract and its conclusion that the proposal submitted by the union in *Lakeview* did not constitute a proper bid for purposes of the Act. 302 Mich App at 616-617, 618.

In the instant case, Respondent provided prospective bidders with an RFP for a three-year contract to deliver daily general education and special needs pupil transportation, extra-curricular and athletic transportation, as well as transportation fleet maintenance services to the school district. The school district hand-delivered a copy of the RFP to Charging Party on February 28, 2013, the same day that the document was provided to the other prospective bidders. The RFP explicitly referred to the transportation services entity as "the contractor" and provided that the winning bidder would be responsible for the "selection, evaluation, training, compensation, and retention of transportation employees." Pursuant to the terms of the RFP, each bidder was to include certain information with its proposal, including but not limited to, the price the district would pay for the bidder's services, an explanation of how the bidder intended to provide safe, reliable and on-time transportation for students, documentation of sufficient financial resources to provide the transportation and maintenance services, evidence of the bidder's ability to provide adequate insurance coverage and an explanation of how the bidder intended to maintain and replace buses and other vehicles necessary for transporting students. After the RFP was issued, Respondent invited Charging Party and the other prospective bidders to attend a meeting at which the bidding process was discussed in more detail.

Prior to the bidding deadline, Charging Party submitted a four-page document entitled "Walled Transportation [sic] et al., MEA/NEA Bid for Transportation Services" which proposed that members of the bargaining unit continue to provide transportation services for the school district. However, this document did not in any material way comply with the requirements of the RFP. In soliciting bids, Respondent was expressly seeking to get out of the business of

providing and administering transportation services and to hand over those responsibilities to a third-party entity which would perform the work in "the most efficient and cost-effective manner possible." Yet, Charging Party did not offer to assume the responsibilities of an employer, nor did the Union provide Respondent with pricing information so that it could compare the cost of Charging Party's "bid" with the proposals submitted by the other entities. Rather, the Union's proposal was for the parties to negotiate the terms of a successor collective bargaining agreement pursuant to which Respondent would continue to employ Charging Party's members to perform the services described in the RFP.

As noted, the Commission has construed the language of Section 15(3)(f) as meaning that "bargaining units and their representatives are to engage in the type of bidding and act "in the manner" of any other third-party contractor." *Lakeview*, *supra* at 136. Charging Party's proposal, like the union's bid in *Lakeview*, was merely an offer to maintain the existing collective bargaining relationship between the parties and, therefore, did not constitute a bid for purposes of Section 15(3)(f) of PERA. Under such circumstances, Respondent's decision to reject the Union's proposal outright and award the contract to another bidder cannot reasonably be construed as a refusal to give the bargaining unit an equal opportunity to bid on student transportation services. Because the school district gave Charging Party an opportunity to bid on the work on the same basis as the other entities, I conclude that Respondent's decision to subcontract the transportation services remained a prohibited subject of bargaining under the Act and, therefore, that no valid claim for a violation of the duty to bargain has been stated by Charging Party in this matter. See also *Tri County Area Schools*, Decision and Recommended Order issued June 12, 2014, in which ALJ Julia Stern found no duty to bargain where the union made an almost identical "bid" in response to an RFP for custodial and maintenance work.

Charging Party contends that the instant case is distinguishable from *Lakeview* because the Employer's decision to subcontract the bargaining unit work and award it to Dean Transportation was motivated by anti-union animus. In support of this claim, the Union relies upon *Parchment Sch Dist*, 2000 MERC Lab Op 110. In that case, the employer decided to subcontract its food service operation and terminate its food service employees. The Union filed a charge alleging that the employer's actions were in retaliation for their union and other protected activities, specifically their filing of grievances. The ALJ found that the Union had established a prima facie case of unlawful discrimination based upon evidence indicating that the employer had come to view the union's grievances as an obstruction to a more efficient food service operation. This conclusion was based upon comments made by representatives of management concerning grievances filed by the union, and on the fact that the assistant superintendent conducted an analysis of potential cost savings from subcontracting which listed the costs of grievance administration as separate items rather than lumping them together with other administrative costs that the district would save by subcontracting the work.

In finding that the decision to subcontract bargaining unit work was unlawful, the ALJ in *Parchment* rejected the employer's assertion that Section 15(3)(f) completely insulated public school employers from liability under the Act for making certain decisions about management of the school district. Rather, the ALJ held that a decision to subcontract about which there is no duty to bargain nevertheless constitutes an unfair labor practice if that decision was made in retaliation for the exercise of collective bargaining rights under PERA. While no exceptions were

filed in *Parchment*, the Commission has since cited that decision with approval in *Coldwater Cmty Sch*, 2000 MERC Lab Op 244 and *Southfield Pub Schs*, 25 MPER 36 (2011). In the latter case, the Commission held that where unlawful discrimination is alleged in connection with the subcontracting of bargaining unit work, the issue is to be resolved by determining whether the decision was based on the employer's legitimate business concerns or on an unlawful desire to terminate the union' s representation of the employees. See also *Detroit Public Schools*, 25 MPER 84 (2012); *Coldwater Cmty Schs*, 2000 MERC Lab Op 244; *Parchment Sch Dist*, 2000 MERC Lab Op 110 (no exceptions).

Although the suspension of the duty to bargain does not, by itself, obviate a claim for unlawful discrimination under PERA, I find that the instant charge must nevertheless be dismissed on the basis that Charging Party has failed to set forth any factually supported allegation which would establish that the school district's actions were motivated by anti-union animus in violation of Section 10(1)(a) and (c) of PERA.

The elements of a prima facie case of unlawful discrimination under PERA are, in addition to the existence of an adverse employment action: (1) union or other protected activity; (2) employer knowledge of that activity; (3) anti-union animus or hostility toward the employee's protected rights; and (4) suspicious timing or other evidence that protected activity was a motivating cause of the alleged discriminatory action. *Univ of Michigan*, 2001 MERC Lab Op 40, 43; *Grandvue Medical Care Facility*, 1993 MERC Lab Op 686, 696. Although anti-union animus may be proven by indirect evidence, mere suspicion or surmise will not suffice. Rather, the charging party must present substantial evidence from which a reasonable inference of discrimination may be drawn. *Detroit Symphony Orchestra*, 393 Mich 116, 126 (1974); *City of Grand Rapids (Fire Dep' t)*, 1998 MERC Lab Op 703, 707. Only after a prima facie case is established does the burden shift to the employer to produce credible evidence of a legal motive and that the same action would have been taken even absent the protected conduct. *MESPA v Evart Pub Sch*, 125 Mich App 71, 74 (1983); *Wright Line, A Division of Wright Line, Inc*, 662 F2d 899 (CA 1, 1981). See also *City of St. Clair Shores*, 17 MPER 27 (2004); *North Central Cmty Mental Health Services*, 1998 MERC Lab Op 427, 436. The ultimate burden, however, remains with the charging party. *City of Saginaw*, 1997 MERC Lab Op 414, 419; *MESPA*, *supra*.

Unlike in *Parchment*, where the Union presented direct evidence of management's dissatisfaction with the union's exercise of protected activity, Charging Party has set forth no factually supported allegation which, if true, would establish or even suggest that Respondent harbored any anti-union animus or even irritation which might have led the school district to take adverse action against employees. Charging Party asserts that it was the Union's submission of a bid which constituted the protected concerted activity that caused the Employer to retaliate against its members, and there is little doubt that such action by Charging Party would in fact qualify as protected activity for purposes of PERA. However, in attempting to prove that the school district harbored anti-union animus toward that protected activity, Charging Party references what it asserts were numerous examples of unfair treatment by the Employer following the submission of its so-called "bid." For example, the Union asserts that the Employer did not allow the bargaining unit to participate in the post-bid interview process and that the school district refused to provide information requested by the Union concerning the RFP and the bids submitted by other entities. In addition, Charging Party cites, as evidence of anti-union

animus, the fact the Dean Transportation hired less than a quarter of its members. Even accepting all of these allegations as true, which I must for purposes of the motion for summary disposition, such facts simply cannot establish that the Employer's decision to subcontract the work was unlawfully motivated.

As noted above, Charging Party never submitted a proper bid in response to the RFP issued by Respondent. The school district sought by way of the RFP to contract with a third party to take over the management and administration of student transportation services and the Charging Party's so-called "bid" was for something completely different. The Union expressly refused to assume the responsibilities of an employer and instead sought to maintain the existing collective bargaining relationship. Moreover, the Union failed to provide the requisite pricing information which would have enabled the school district to compare the costs of the Union's proposal with those submitted by the other bidders. By failing to submit a proper bid, the Union effectively waived its right to challenge the Employer's ultimate decision to subcontract the work and, under these circumstances, obviated any claim of unfair treatment based on the events which transpired after the bidding process had concluded. Simply put, the school district's refusal to treat Charging Party as a valid candidate once the Union failed to submit a valid "bid" cannot establish anti-union animus. In so holding, I note that although Charging Party asserts that there are questions of fact regarding whether the bid submitted by Dean Transportation would actually save the school district the projected $1.4 million per year, the Union presented no evidence suggesting that if this matter were to proceed to hearing, it is capable of proving that Respondent's decision to subcontract its transportation services was motivated by anything other than a legitimate desire to attain cost savings.

I have carefully considered all other arguments set forth by the parties in this matter and conclude that they do not warrant a change in the result. Based upon my finding that there are no material disputes of fact and that Respondent is entitled to summary disposition, I recommend that the Commission issue the order set forth below.

RECOMMENDED ORDER

The unfair labor practice charged filed by the Walled Lake Transportation Association, MEA/NEA against the Walled Lake Consolidated School District in Case No. C13 F-116; Docket No. 13-005505-MERC is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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David M. Peltz
Administrative Law Judge
Michigan Administrative Hearing System

Dated: August 8, 2014