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

In the Matter of:

WATERSMEET TOWNSHIP SCHOOL DISTRICT,
Public Employer-Respondent,

Case No. C13 B-020

-and-

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

APPEARANCES:

Law Offices of Ryan & Cohs, by Jennifer Cohs, for Respondent

White, Schneider, Young & Chiodini, P.C., by Jeffrey S. Donahue, for Charging Party

## DECISION AND ORDER

On September 3, 2013, Administrative Law Judge (ALJ) David M. Peltz issued his Decision and Recommended Order on Summary Disposition in the above matter finding that Respondent, Watersmeet Township School District, did not violate § 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210(1) (e), when in December 2012 it deducted increased health insurance premiums from bargaining unit member's paychecks. The deductions were made approximately one month before the scheduled expiration of the parties' collective bargaining agreement. The ALJ further found that the record did not support Charging Party's claim of direct dealing. The Decision and Recommended Order of the ALJ was served on the interested parties in accordance with § 16 of PERA. On September 26, 2013, Charging Party filed exceptions to the ALJ's Decision and Recommended Order and a brief in support of the exceptions. On October 8, 2013, Respondent filed a brief in support of the ALJ's Decision and Recommended Order.

In its exceptions, Charging Party contends that the ALJ erred in concluding that Respondent did not violate its duty to bargain when it deducted increased health care premiums from employees' pay prior to the expiration of the parties' collective bargaining agreement. Charging Party also alleges that the ALJ incorrectly held that the record did not support its allegation of direct dealing. We have reviewed Charging Party's exceptions and find them to be without merit.

Factual Summary:

We adopt the facts as found by the ALJ since this matter is being decided on Summary Disposition, and summarize the facts here only as necessary. We agree with the ALJ that there are no material facts at issue.

The parties' collective bargaining agreement was scheduled to expire December 31, 2012. In November 2012, the parties' negotiated a change in health care in compliance with the Publicly Funded Health Insurance Contribution Act, 2011 PA 152, MCL § 15.561. Specifically, the parties agreed that Respondent would implement the "hard cap" option set forth in § 15.563 of the Act.[1] The "hard cap" option applies to health care payments that are made by the Respondent. Relevant to this case, PA 152 requires that if the current collective bargaining agreement contains different health care provisions, the newly-negotiated options under Act 152 do not apply until the agreement expires. § 15.565 (1). Accordingly, the "hard cap" payments would begin in January 2013. However, PA 152 does not address when employee contributions to the health care plan must or should be made.

In a December 12, 2012 memo to "Watersmeet School Staff Members," Respondent's business manager informed the staff that "the increase in employee insurance premiums will be reflected on your December payroll," as the insurance carrier (MESSA) billed premiums one month in advance.

Several days later, Charging Party's UniServ Director responded to the memo, stating that, while he understands that "the MESSA billing cycle is one month early…the District is committing an Unfair Labor Practice by withholding additional funds prior to the expiration of the contract."

Respondent's business manager responded to the Director on December 18, 2012, starting the memo "Happy Tuesday, Staff," and sent to the email address associated with the staff, "watersmeetstaff@lists.remc1.net." It is undisputed that if Respondent had not commenced PA 152 deductions in December 2012, members of the bargaining unit would have been required to pay two months of premiums in January 2013. The manager gave employees the option of having two months of contributions deducted at once, both in January, after the collective bargaining agreement expired.

Discussion and Conclusions of Law:

Respondent Did Not Refuse to Bargain in Good Faith

In its exceptions, Charging Party argues that Respondent took unilateral action on a mandatory subject of bargaining, i.e., the timing of employee benefit payroll deductions. Specifically, Charging Party asserts that Respondent could not unilaterally impose increased health care deductions on its members prior to the expiration of the collective bargaining agreement, relying on PA 152 § 15.565 (1).

[1] The "hard cap" option requires that public employers shall pay no more than a statutorily set dollar amount for health insurance during a medical benefit plan coverage year beginning on or after January 1, 2012.

Respondent asserted, and the ALJ properly agreed, that it had not unlawfully refused to bargain in good faith with Charging Party regarding the issue of when insurance premiums may be deducted from employee paychecks. First, PERA has defined an employer's duty to bargain as follows:

> "(1) A public employer shall bargain collectively with the representatives of its employees as described in section 11 and may make and enter into collective bargaining agreements with those representatives. Except as otherwise provided in this section, for the purposes of this section, to bargain collectively is to perform the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or to negotiate an agreement, or any question arising under the agreement, and to execute a written contract, ordinance, or resolution incorporating any agreement reached if requested by either party, but this obligation does not compel either party to agree to a proposal or make a concession."

MCL § 423.215 (1) An employer violates § 10(1) (e) of PERA when it takes unilateral action on a mandatory subject of bargaining prior to reaching impasse. *Decatur Pub Sch*, 27 MPER 41 (2014).

While wages, hours, and terms and conditions of employment must be negotiated, the duty to bargain also applies to "types and levels of benefits and coverages for employee group insurance." PERA § 423.215 (3) (a). However, this provision makes no mention of negotiating the timing of deductions from employee paychecks. Clearly, the facts of this case do not fall within the parameters of either subsection (1) or (3) such that it invokes the duty to bargain. Further, the ALJ properly credited Respondent's assertion that its action in deducting insurance premiums one month in advance was the same procedure it had used prior to implementation of PA 152. Therefore, there was no "change or proposed change" regarding insurance benefits which might otherwise necessitate good faith bargaining.

As noted, the timing of deductions is not considered a mandatory subject of bargaining; further, it is undisputed that Respondent has full statutory authority to make payroll deductions for benefits. MCL § 423.215b (1) of PERA provides in pertinent part:

> "…Employees who receive health, dental, vision, prescription, or other insurance benefits under a collective bargaining agreement shall bear any increased cost of maintaining those benefits that occurs after the expiration date. The public employer is authorized to make payroll deductions necessary to pay the increased costs of maintaining those benefits."

Clearly, this provision of PERA does not impose any limits on the employer as to *when* deductions may be taken from employee paychecks. The ALJ found, and we agree, that to the extent the December 2012 deductions by the Respondent in this matter applied to post-contract benefits, the alleged conduct appear to be in compliance with and in fact, mandated by PA 152. [2]

Similarly, in § 15.566 Act 152 permits an employer to make deductions, but does not dictate when the deductions may be withdrawn from employee paychecks:

> "A public employer may deduct the covered employee's or elected public official's portion of the cost of a medical benefit plan from compensation due to the covered employee or elected public official. The employer may condition eligibility for the medical benefit plan on the employee's or elected public official's authorizing the public employer to make the deduction."

Moreover, Respondent correctly noted that the "hard cap" payments are not made or effective until after the collective bargaining agreement expires. In the business manager's memorandum dated December 12, 2012, she clearly distinguished between the school district's implementation of the "hard cap" option and the billing of employees for their share of increased insurance premiums. PA 152 § 15.563 states that an employer's payments to a medical benefit plan are limited "for a medical benefit plan coverage year beginning on or after January 1, 2012." PA 152 § 15.563 *does not state* that deductions for employee contributions to the plan must begin on or after January 1, 2012. In fact, § 15.563 does not even generally address the timing of employee premium deductions. Given that, as the ALJ noted, the Respondent's determination of the appropriate date on which to begin implementation of PA 152 requirements was reasonable. Respondent was acting in good faith in an attempt to meet PA 152 mandates and even cautioned employees that a December deduction carried less of a financial impact for them.

Clearly, where both PERA and Act 152 are silent as to the timing of payroll deductions, Charging Party cannot establish a violation.

Respondent Did Not Engage in Direct Dealing

In its exceptions, Charging Party also contends that Respondent violated PERA by dealing directly with its bargaining unit members. However, the ALJ correctly ruled that there was no violation.

Once a union is designated or selected for the purposes of collective bargaining by a majority of public employees in a unit appropriate for such purposes, that union is the exclusive representative of these employees for purposes of collective bargaining in respect to rates of pay, wages, hours or other conditions of employment. *Huron Sch Dist*, 1990 MERC Lab Op 628, 634; *Pontiac Sch Dist*, 22 MPER 51 (2009). An employer violates the duty to bargain and unlawfully bypasses the union when it confers a benefit upon employees or otherwise changes conditions of

[2] As the ALJ noted, even if this can be construed as a technical violation of PA 152, it was not a violation of PERA.

employment without going through the employees' exclusive bargaining representative. *Pontiac Sch Bd of Ed*, 1994 MERC Lab Op 366, 374; *Birmingham Bd of Ed*, 1985 MERC Lab Op 755.

Not all communications between an employer and its employees are unlawful. An employer may communicate factual information regarding the status of negotiations or its position at the bargaining table, provided that it does so in a non-coercive manner and without disparaging the bargaining agent. *MEA v North Dearborn Hts Sch Dist*, 169 Mich App 39, 45-46 (1988); *Jackson Co*, 18 MPER 22 (2005). A union fails to meet its burden of proof regarding direct dealing where the employer communicates with employees for the purpose of providing information relating to planned or actual changes in operations or procedures, the employees are offered nothing and are not requested to make an agreement. *City of Grand Rapids*, 1994 MERC Lab Op 1159; *North Ottawa Comm Hosp*, 1982 MERC Lab Op 555. For example, the Commission has refused to find a direct dealing violation where the employer distributed information to employees describing its plan to reorganize city services and soliciting questions from them concerning the planned changes. *City of Madison Hts*, 1980 MERC Lab Op 146.

Respondent's December 12, 2012 memo was addressed to "Watersmeet School Staff Members." Respondent's December 18, 2012, memo was addressed "Happy Tuesday, Staff," and was sent to the email address "watersmeetstaff@lists.remc1.net." The import of this is that Charging Party argued that only the December 18 memo violated PERA, and yet, there is no substantive difference between the two communications. Both memos made it clear that the deductions had to be made; that fact was not negotiable. The initial memo to staff did not even invite discussion about premium deductions. It simply informed employees that the deductions would be taken out in December paychecks. The December 18 email gave employees the less-desirable option of combining deductions in January, after the collective bargaining agreement expired. Undisputedly, the content of both of Respondent's memos was the same: the *timing* of the deductions.

Further, the ALJ correctly rejected Charging Party's allegation that Respondent had impermissibly engaged in direct dealing with represented employees by means of the December 18 email. In that message, the manager informed employees that if the December premium is reimbursed, it simply will be recollected in January in conjunction with the January deduction for February premiums. The manager requested that "each union unit" be polled as to how they wish the district to proceed with the issue of deductions for January and February. The manager was communicating factual information about the deduction procedures and doing so in a non-coercive and non-disparaging manner. Charging Party's assertion that the manager's communication constituted a "proposal" is not supported by the evidence. At best, the manager is simply communicating a billing option or alternative, not the type of contractual proposal which the principle of direct dealing contemplates.

The ALJ phrased his review of the memo as follows:

> "However, reading that message closely and in its entirety, it is clear that to the extent that a proposal was made therein, it was directed to the employees' unions and not to the employees themselves."

The ALJ's interpretation of the email, that the business manager was requesting a response from each unit and not an individual response from each employee, was legitimate. Even assuming Respondent was communicating directly with staff as opposed to Charging Party, it was not negotiating a change in hours, wages or terms and conditions of employment. Nor was Respondent conferring a benefit upon employees or otherwise changing conditions of employment while bypassing Charging Party.

Moreover, the ALJ noted the urgency of the situation, given the approaching holidays, the January 2012 payment deadline and the risk of statutory penalties should Respondent fail to comply with the "hard cap" terms of Act 152. Specifically, § 15.569 of PA 152 imposes a substantial penalty on any employer that does not comply:

> "If a public employer fails to comply with this act, the public employer shall permit the state treasurer to reduce by 10% each economic vitality incentive program payment received under 2011 PA 63 and the department of education shall assess the public employer a penalty equal to 10% of each payment of any funds for which the public employer qualifies under the state school aid act of 1979, 1979 PA 94, MCL 388.1601 to 388.1772, during the period that the public employer fails to comply with this act."

There is no guarantee that the state treasurer would decline to impose a penalty while Respondent delayed action to comply with Act 152 simply to appease Charging Party. *Decatur*. Therefore, Respondent acted reasonably in seeking to avoid a possible penalty.

In conclusion, Respondent did not violate the prohibition against direct dealing nor did it breach its duty to bargain with Charging Party. We, therefore, affirm the Decision and Recommended Order of the ALJ finding no violation of PERA and issue the following Order.

## ORDER

The Charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: October 8, 2014

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

In the Matter of:

WATERSMEET TOWNSHIP SCHOOL DISTRICT,
Respondent-Public Employer,

Case No. C13 B-020
-and- Docket No. 13-000048-MERC

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

APPEARANCES:

Law Offices of Ryan & Cohs, by Jennifer Cohs, for the Public Employer

White, Schneider, Young & Chiodini, P.C., by Jeffrey S. Donahue, for the Charging Party

## 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 David M. Peltz, Administrative Law Judge (ALJ) of the Michigan Administrative Hearing System, acting on behalf of the Michigan Employment Relations Commission (MERC). Based on the pleadings, briefs and the transcript of oral argument which was held on August 6, 2013 in Detroit Michigan, I make the following findings of fact and conclusions of law.

Background:

This case arises from an unfair labor practice charge filed on January 31, 2013, by the Watersmeet Educational Support Personnel Association, MEA/NEA against the Watersmeet Township School District. The charge, as amended on February 21, 2013, concerns the manner in which the school district imposed increases in employee health insurance contributions pursuant to the Public Funded Health Insurance Contribution Act, 2011 PA 152, MCL 15.561 *et seq*. Act 152 of 2011 (PA 152).

Section 3 of PA 152, MCL 15.563, the "hard cap" option, mandates that public employers "shall pay no more" than a statutorily set dollar amount for health insurance during a "medical benefit plan coverage year beginning on or after January 1, 2012." Alternatively, Section 4, MCL 15.564, gives the employer the discretion to comply with the Act by paying not

more than 80% of the total costs of all the benefit plans it offers or contributes to for its employees and elected officials. If a collective bargaining agreement or other contract that is inconsistent with sections 3 and 4 is in effect for a group of employees of a public employer on the effective date of the Act, the requirements of section 3 or 4 do not apply to that group of employees until the contract expires.

Failure to comply with the requirements of PA 152 subjects a public employer to severe financial penalties, including a ten percent reduction in potential economic vitality incentive program payments received under 2011 PA 63 and a penalty equal to 10% of each payment of any funds for which the public employer qualifies under the state school aid act, 1979 PA 94. The department of education may also refer the penalty collection to the department of treasury for collection consistent with section 13 of 1941 PA 122.

The Unfair Labor Practice Charge and Procedural History:

The instant charge asserts that the Employer acted unlawfully in imposing increased contributions approximately one month before the scheduled expiration of the parties' collective bargaining agreement in January of 2013. According to the charge, the Employer asserted that the deductions which were imposed in December of 2012 were due to the health care provider's billing cycle and that they constituted payment for the January 2013 premiums. The charge further alleges that the school district violated PERA by attempting to deal directly with bargaining unit members concerning the change.

In an order issued on March 8, 2013, I directed the Union to show cause why the charge should not be dismissed for failure to state a claim under PERA. The Union filed its response to the order to show cause on April 12, 2013. On August 6, 2013, the parties appeared for oral argument before the undersigned. After considering the extensive arguments made by counsel for each party on the record, I concluded that there were no legitimate issues of material fact and that a decision on summary disposition was appropriate pursuant to Commission Rule R 423.165 (1). See also *Detroit Public Schools*, 22 MPER 19 (2009) and *Oakland County and Oakland County Sheriff v Oakland County Deputy Sheriffs Assoc*, 282 Mich App 266 (2009). Accordingly, I rendered a decision from the bench, finding that Charging Party had failed to state a valid claim under PERA.

Findings of Fact:

The Watersmeet Township School District and the Watersmeet Educational Support Personnel Association were parties to a collective bargaining agreement which was scheduled to expire on December 31, 2012, following the effective date of PA 152. Under the contract, health care was provided by the Michigan Education Special Services Association (MESSA). In November of 2012, the parties agreed to utilize the "hard cap" option for health insurance premium sharing as set forth in Section 3 of the PA 152.

On December 12, 2012, Sandra Robinson, the school district's business manager, sent a memo to all staff members regarding the implementation of the PA 152 cost sharing requirements. The memo stated, in pertinent part:

> The darkened cloud that has fast been approaching is now upon us. The darkened cloud I speak of would be the implementation of Public Act #152 approved by the Governor and went into effect [sic] on September 27, 2011, which for you, is one year after the law took effect.
>
> The Board of Education, in compliance with the law, is implementing the "Cap" effective January 1, 2013. Unfortunately, due to MESSA's billing cycle, the December invoice is for January's premiums. So, therefore . . . the increase in employee insurance premiums will be reflected on your December payroll.
>
> * * *
>
> I apologize for the incorrigible timing of this legal matter. If anyone has questions, PLEASE stop by so, together, we can work on any issues at hand.

The school board began making the PA 152 deductions from each member's paychecks during the first pay period in December of 2012 as described in the Robinson memo. In an email to Robinson dated December 17, 2012, Steve Smith, Charging Party's UniServ director, asserted that the school district had violated PERA by withholding additional funds prior to the expiration of the parties' contract. Smith demanded that the school district immediately reimburse bargaining unit members for the premature deductions.

On December 18, 2012, Robinson sent an email to all staff members in response to the Union's assertion that the school district had prematurely implemented the changes mandated by PA 152. Attached to the email was a copy Smith's earlier complaint. The Robinson email provided, in pertinent part:

> Below is email communication from Steve Smith regarding your insurance premiums for January. He is correct, however, if we give you the premium back the next pay in December (which we certainly can do), you will be responsible for 2-months (January and February) premiums come January 1. The initial decision would be less of an impact for employees.
>
> In lieu [sic] of the above, please render a decision which way you would like the District to proceed regarding this deduction issue. Due to the holiday being Monday and Tuesday and REMC conducting some computer updates on Wednesday (which is when the direct payroll upload is due to our bank), we may have to process payroll on Friday (12/21) so please poll each union (Professional and Support Staff) and notify the business office of your collaborative decision before Friday.

There is no dispute that had the school district not begun the PA 152 deductions in December of 2012, Charging Party's members would have been responsible for two months of premium sharing payments the following month.

Discussion and Conclusions of Law:

The substantive portion of my conclusions of law, as set forth from the bench at the conclusion of oral argument, is set forth below:

> [I]n analyzing this issue we must start by recognizing that the Commission has no independent authority to interpret the language of PA 152 or jurisdiction to enforce or administer that statute itself. The Commission's authority in this area is limited to determining whether the terms of PA 152 excuse a public employer from what would be, in the absence of that statute, its obligation to bargain in good faith under PERA. In other words, the Commission may interpret PA 152 only as necessary to determine whether an unfair labor practice has been committed.
>
> I'll also note that this dispute does not concern the propriety of PA 152 or the wisdom of the Legislature in making a determination that the cost sharing set forth within the statute is appropriate. Those aren't issues before the Commission or [matters] that the Commission can decide. This case involves a new statute about which there have already been numerous disputes over the meaning and scope, including the extent to which public employers must negotiate with labor organizations representing their employees over the changes contemplated by the legislation.
>
> As I've indicated, the parties decided to go with the hard cap option under PA 152, which is set forth in Section 3 of that statute. That [section] mandates [that] the public employer shall pay no more than a statutorily set dollar amount for health insurance during the medical benefit plan coverage year beginning after January 1, 2012. The statute also indicates that where a collective bargaining agreement or other contract is in effect which is inconsistent with Section 3, the requirements of 2011 PA 152 do not apply until the contract expires.
>
> In the instant case I find that, to the extent that the December 2012 deductions by the Employer in this matter were to cover post-expiration premiums, which it appears that is the case, the alleged conduct by the Employer as described in the charge appears to be in compliance with and, in fact, mandated by PA 152. However, even if it was a technical violation of PA 152 for the Employer to deduct the premiums from the paychecks of Charging Party's members in December of 2012, a question which I leave to a more appropriate tribunal to decide, the record simply does not establish a PERA violation in this case.
>
> Given that MESSA charges premiums one month in advance, it was reasonable for the Employer to determine that the appropriate date upon which to start implementing the PA 152 requirements was [in] the first pay period in December. While certainly the Employer could have discussed that issue with the

Union before making that decision, I cannot fault the Employer for taking the action that it did, given that it would have faced substantial penalties under the statute if it was later determined to [have] not timely complied with the Act.

It should be noted that there is no suggestion or allegation that the school district's actions were driven by an improper motive. To the contrary, the record overwhelmingly establishes that the Employer was trying to do its best to comply with a complicated statute which, once implemented, was to have substantial effect on its employees' paychecks. The Employer's sympathy with the situation its employees were facing is evident in the substance and tone of the December 12, 2012 letter from the school district's business manager. Moreover, after realizing or having been brought to its attention that its interpretation of the Act might have been erroneous, the Employer offered to rescind the December implementation of premium sharing and delay it until the first of the year, with the recognition, of course, that employees would then be responsible for paying two months of their portion of the premiums in January. This suggests to me, again, that the Employer was acting in good faith and attempting to comply with the requirements of PA 152.

The Union concedes in this matter that had the Employer billed its members in January, two payments would nonetheless have been owed for that month anyway, effectively leaving employees in essentially the same position they were in anyway, an outcome reflected in the fact that the Union is not seeking any monetary relief in this matter, but rather only a notice posting. There's simply no adverse impact stated on the record, given all of the facts which are undisputed here.

Finally, it should be noted that this is a problem which was due, in part, from MESSA's requirement that the employees pay their share of premiums one month in advance. Certainly, one possible solution could have been for the Union to go to MESSA and seek relief from that policy, especially given the close ties between MESSA and the MEA which have been recognized in prior Commission decisions and [in] decisions by the courts of this state.

I think the important point in summarizing my conclusions and emphasizing that the Employer acted reasonably here is to quote from a decision by Judge Doyle O'Connor in *Decatur Public Schools*, Case Nos. C12 F-123 and C12 F-124, issued December 20th of 2012 and currently pending exceptions before the Commission. Judge O'Connor wrote that bargaining disputes under PERA are "resolved on what is essentially a reasonableness analysis, because the duty in collective bargaining is to bargain in good faith, not to bargain to perfection, or without error, or without arguable flaw. It is to bargain in good faith." In the instant case, it would be contrary to the purposes of PERA to conclude, under these facts, that the school district breached its duty to bargain in good faith by implementing the increased premium sharing costs in December of 2011.

With respect to the direct dealing allegation, PERA prohibits employers from negotiating directly with individual employees who are represented by an exclusive bargaining agent. *City of Dearborn*, 1986 MERC Lab Op 538, 541. An allegation of direct dealing against an employer must involve a change in the terms and conditions of a mandatory subject of bargaining. *City of Grand Rapids*, 1994 MERC Lab Op 1159, 1162. Mere discussions between an employer and employee to ascertain an employee's interest in a position that is not subject to the promotional process of the parties' collective bargaining agreement do not constitute a direct dealing violation. *City of Detroit (Water and Sewerage Dept)*, 1983 MERC Lab Op 603.

In allegations of direct dealing, the inquiry focuses on whether the employer's conduct is "likely to erode the union's position as exclusive representative." *City of Detroit (Housing Commission)*, 2002 MERC Lab Op 368, 376 (no exceptions), citing *Modern Merchandising*, 284 NLRB 1377, 1379 (1987). A union fails to meet its burden of proof of direct dealing where the employer communicates with employees for the purpose of providing information relating to planned or actual changes in operations or procedures, the employees are offered nothing and are not requested to make an agreement. *City of Grand Rapids*, 1994 MERC Lab Op 1159. Not all communications between an employer and employees are unlawful. An employer may communicate factual information regarding the status of negotiations or its position at the bargaining table, provided that it does so in a non-coercive manner and without disparaging the bargaining agent. *MEA v North Dearborn Heights School District*, 169 Mich App 39, 45-46 (1988); *Jackson County*, 18 MPER 22 (2005).

In the instant case, it is true that the December 18, 2012 e-mail from the school district's business manager was sent directly to all staff members. However, reading that message closely and in its entirety, it is clear that to the extent that a proposal was made therein, it was directed to the employees' unions and not to the employees themselves. After describing the situation and noting the prior e-mail from the MEA UniServe director, the business manager requests that each of its labor organizations "poll each union unit" and "notify the business office of your collaborative decision." [As I interpret the email, the school district was seeking] a collective decision [by the Union and not individualized input from each employee.]

Now, again, it may have been more appropriate for the school district to have sent the email only to union representatives. However, I see no reasonable probability that the message will be likely to erode the Union's position as exclusive representative. There is simply no indication that Respondent sought to circumvent Charging Party or to give employees a greater say than the Union with respect to how the [issue] should be resolved. I'll note also, as the Respondent referenced in its argument today, there was a timing factor here in how this all came about. The January 1, 2012 implementation date for PA 152 was fast

> approaching. As noted, the Employer was facing substantial penalties for non-compliance and it was the holiday period as well. So I think that certainly has to be taken into consideration in terms of how this all proceeded and we have to look at the facts of this specific case. But, again, I see nothing in the record which would indicate that the Respondent in any way sought to circumvent the Union in this matter. So I find nothing in the record to support Charging Parties claim of direct dealing.
>
> And after reviewing the record in its entirety, it appears that the charge, taking all the facts as stated therein, accepting them as true, that there's no PERA claim set forth here and I will be recommending that the Commission issue an order dismissing the charge in its entirety. And that concludes the bench decision.[3]

Based on the findings of fact and conclusions of law set forth above, I issue the following recommended order:

## RECOMMENDED ORDER

The unfair labor practice charge is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

David M. Peltz
Administrative Law Judge
Michigan Administrative Hearing System

Dated: September 3, 2013

[3] The transcript excerpt reproduced herein contains typographical corrections and other minor edits for clarity purposes. The completed unedited transcript is maintained within the Commission case file.