STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

PONTIAC SCHOOL DISTRICT,
Public Employer-Respondent,

Case No. C13 I-169
-and- Docket No. 13-013135-MERC

PONTIAC EDUCATION ASSOCIATION,
Labor Organization-Charging Party.
_____/

APPEARANCES:

Darryl K. Segars, for Respondent

Law Offices of Lee & Correll, by Michael K. Lee, for Charging Party

DECISION AND ORDER

On November 13, 2014, Administrative Law Judge Julia C. Stern issued her 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: January 16, 2015

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

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-and-

PONTIAC EDUCATION ASSOCIATION,
Labor Organization-Charging Party.
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APPEARANCES:

Darryl K. Segars, for the Respondent Public Employer

Law Offices of Lee & Correll, by Michael K. Lee, for the Charging Party Labor Organization

DECISION AND RECOMMENDED ORDER
OF
ADMINISTRATIVE LAW JUDGE

Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, this case was heard in Detroit, Michigan on March 11, 2014, before Administrative Law Judge Julia C. Stern of the Michigan Administrative Hearing System (MAHS) for the Michigan Employment Relations Commission (the Commission). Based upon the entire record, including post-hearing briefs filed by the parties on April 28, 2014, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

The Pontiac Education Association filed this unfair labor practice charge against the Pontiac School District on October 24, 2013. Charging Party represents a bargaining unit of Respondent's employees that includes teachers. Charging Party alleges that, on or about August 29, 2013, Respondent violated its duty to bargain in good faith by unilaterally altering the wages paid to athletic coaches in the bargaining unit, as set out in the parties' expired contract.

Findings of Fact:

The recognition clause in the parties' 2007-2011 collective bargaining agreement, which expired on August 31, 2011, defined the scope of Charging Party's bargaining unit as "all professional and professional/technical employees employed by the Board including those on leave, but excluding the following positions. . ." There followed a list of forty-six positions, including the superintendent and food service, plant operations and transportation. The athletic director was included in this list, but no other athletic or coaching positions were listed.

The 2007-2011 agreement also contained the following language, at Article 5(D) (Extra Pay Assignments):

> Item 4. No coach from outside the bargaining unit will be hired unless no qualified association member applies. *Coaches hired outside the bargaining unit will remain outside the bargaining unit.* Teachers shall be made aware of coaching positions by means of internal/external postings. Applicants whose qualifications and experience are best matched shall be assigned the position. [Emphasis added]
>
> > 4.1 In instances where two or more bargaining unit members are being considered for a coaching position because qualifications and experience are equivalent, seniority shall be the determining factor.
> >
> > 4.2 All coaching positions held by a member of the bargaining unit will be paid based on the yearly salary schedules contained in the PEA Master Agreement. Athletic percentage differentials contained in Article twenty-four (24), Section B will be applied according to [the teacher salary schedule in in the Master Agreement.]
>
> Article 24, Section B, Item 1, read as follows:
>
> Athletic percentage differentials apply only to the Bachelor's Degree Salary Schedule for the current year. The experience which will be counted will be in the specific activity.

Items 2 and 3 of Article 24, Section B, listed forty athletic coaching positions in the senior and junior high schools. Next to each position was a percentage differential. For example, the percentage differential for the head varsity football and the head varsity basketball coach positions in the high school was thirteen. Under the contract, therefore, the head varsity high school football and basketball coaches were to receive an extra pay stipend equivalent to thirteen percent of the salary paid to a teacher with a Bachelor's degree with the same number of years of teaching experience as these coaches in their current positions. Different coaching positions had different percentage differentials; for example the percentage differential for the junior high volleyball and the junior high gymnastics coach was five.

During the term of this contract and after, some coaching positions were filled by individuals who also had other positions within the bargaining unit. Although Charging Party's bargaining unit includes professionals who are not teachers, for purposes of this decision, I refer to this group of individuals as teacher-coaches. Other coaching positions were filled by individuals who had no other bargaining unit position. For purposes of this decision, I refer to this group as non-teacher coaches. Charging Party President Aimee McKeever testified that, prior to 2013, it was Respondent's practice to calculate the stipends for both teacher and non-teacher coaches using the formula in Article 24 and that the parties had never agreed that Respondent could ignore Article 24 in calculating the pay of non-teacher coaches. However, Respondent Interim Superintendent Kelley Williams testified that it was not Respondent's practice to always follow the formula in Article 24 in calculating the pay of non-teacher coaches. She also asserted that Respondent had always had the right, when it could not find teachers to fill coaching positions, to determine the salaries it paid to non-teacher coaches.

In May 2012, the parties entered into a new collective bargaining agreement covering the 2011-2012 and 2012-2013 school years. Under this agreement, salaries were reduced by six percent effective with the beginning of the 2012-2013 school year. Step increases, annual increments, and longevity payments were suspended for both school years. The parties also agreed to halve the percentage differential for each athletic position for the 2012-2013 school year. The 2011-2013 agreement took the form of agreed-to changes to the 2007-2011 contract. No change was made to either the language of the recognition clause or Article 5(D).

McKeever normally meets weekly with Respondent representatives. One of these regular meetings took place in mid-August 2013 between McKeever and Acting Human Resource Manager Dawn Demick, Interim Superintendent Williams, and Athletic Director Lee Montgomery. At this meeting, Respondent presented McKeever with a list of the coaching positions Respondent intended to fill for the 2013-2014 school year. The list also included the names of the coaches, if one had been selected, and the stipends that Respondent intended to pay each coach for that school year. McKeever told Respondent that the coaches' stipends were not consistent with what the parties' had agreed to in May 2012, and said that Charging Party would not agree to this pay schedule. McKeever objected to the fact that certain non-teacher coaches were slated to receive stipends that were larger than they would have received had their stipends been calculated using the formula in Article 24. One of these non-teacher coaches was the head varsity football coach at the high school. McKeever noted that some retirees and unit members had not yet received their stipends and sick leave payouts from the previous year school year. She suggested that if Respondent had extra money to pay coaches, it use it to pay these individuals. Williams said that Respondent wanted to retain the head football coach and needed to pay him a stipend that would keep him on the job. Williams also told McKeever that if the positions were not held by teachers, Respondent could pay them whatever Respondent decided to pay them as long as it stayed within the athletic budget. McKeever disagreed, and asserted that Respondent was obligated to follow Article 24 in calculating the stipends for both teacher-coaches and non-teacher coaches.

Either during this meeting or shortly thereafter, it came to light that Respondent had not reduced the percentage differentials in calculating coach stipends for the 2012-2013 school year as the parties had agreed to do in the 2011-2013 contract. Although the coaches had already

received their 2012-2013 stipends, Demick recalculated the stipends for the teacher-coaches for the 2013-2014 school year using the lower percentage differentials.

On August 20, McKeever sent Williams an email stating that she had met with her bargaining team and that they all agreed that Respondent "had to follow the collective bargaining agreement as is and pay all coaches accordingly." In her reply, Williams said, "We will follow the agreement for PEA members."

Sometime between the end of August and September 2013, Respondent's Board of Education adopted, as part of its budget, a schedule of coach positions and their stipends for the 2013-2014 school year. Interim Superintendent Kelley Williams testified that all the stipends received by teacher-coaches were calculated in accord with Article 24 of the 2011-2013 collective bargaining agreement. For example, the high school varsity basketball head coach, a teacher, was listed in the budget as receiving a stipend equivalent to 6.5 percent of the highest salary for an individual with a Bachelor's degree under the 2012-2013 salary schedule. No evidence was presented that any teacher-coach received a stipend that was not calculated in accord with Article 24. However, at least one non-teacher coach, the high school varsity football head coach, received a stipend that was larger than a teacher-coach could have received for that position under Article 24.

Discussions and Conclusions of Law:

Charging Party asserts that since the broad recognition clause in the parties' contract does not exclude coaches, both teacher-coaches and non-teacher coaches are included in Charging Party's bargaining unit. Therefore, it argues, Respondent was obligated after the contract expired to continue to adhere to the formula set out in Article 24 in calculating the stipends for both teacher coaches and non-teacher coaches. Respondent asserts that non-teacher coaches are not members of Charging Party's bargaining unit. Therefore, it argues, Respondent has no obligation to bargain with Charging Party over the wages or terms and conditions of employment of non-teacher coaches or to follow the terms of the expired contract in calculating their stipends.

Here, the record does not establish that Respondent calculated the stipends it paid to non-teacher coaches using the formula set out in the collective bargaining agreement prior to the 2013-2014 school year. However, even if it did, I conclude that Respondent was not obligated by PERA to continue using this formula to calculate the wages it paid to the non-teacher coaches. An employer has no duty to bargain over the wages paid to non-unit employees, even those who perform unit work, unless the union establishes that the compensation paid to non-unit employees vitally affects the interests of the bargaining unit. *Grand Rapids Pub Schs*, 1986 MERC Lab Op 560, 567-68, citing *Chemical Workers v Pittsburgh Plate Glass Co*, 404 US 157 (1971) and *Times-Herald Inc*, 237 NLRB 922 (1978). The recognition clause of the parties' collective bargaining agreement neither explicitly includes nor explicitly excludes coaches. However, in Article 5(D) of this collective bargaining agreement, the parties clearly agreed that non-teacher coaches were be excluded from the unit. I find that Charging Party did not establish that the stipends paid to non-teacher coaches vitally affected the interests of its bargaining unit. I conclude, therefore, that Respondent had no obligation to bargain with Charging Party over the wages paid to non-teacher coaches outside the bargaining unit. I find that Respondent did not

violate §§10(1)(a) and (e) of PERA, and I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern
Administrative Law Judge
Michigan Administrative Hearing System

Dated: November 13, 201413