STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

WEST BLOOMFIELD SCHOOL DISTRICT,
Public Employer-Respondent,

Case No. C13 I-166
-and- Docket No. 13-012466-MERC

WEST BLOOMFIELD MAINTENANCE & TECHNICAL, MEA/NEA,
Labor Organization-Charging Party.
_____/

APPEARANCES:

Lusk & Albertson, P.L.C., by William G. Albertson, for Respondent

White, Schneider, Young and Chiodini, P.C., by Erin M. Hopper, for Charging Party

DECISION AND ORDER

On February 27, 2015, 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: April 29, 2015

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

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APPEARANCES:

Lusk & Albertson, P.L.C., by William G. Albertson, for Respondent

White, Schneider, Young and Chiodini, P.C., by Erin M. Hopper, for Charging Party

DECISION AND RECOMMENDED ORDER
OF
ADMINISTRATIVE LAW JUDGE

Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, this case was heard in Detroit, Michigan on March 17, 2014, before Administrative Law Judge (ALJ) 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 or before May 14, 2014, and a reply brief filed by the Charging Party on June 13, 2014, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

On October 17, 2013, the West Bloomfield Maintenance and Technical, MEA/NEA, filed the above charge with the Michigan Employment Relations Commission (the Commission) against the West Bloomfield School District. The Charging Party Union represents a bargaining unit consisting of maintenance and technical employees of the Respondent Employer. On April 25, 2013, the parties began negotiations for a successor to their collective bargaining agreement expiring on June 30, 2013. On June 7, 2013, they entered into a tentative agreement for a new contract which was later ratified by both parties. On August 26, 2013, Respondent's Board voted to approve an agreement with the Oakland Schools, Respondent's intermediate school district, under which the Oakland Schools assumed responsibility for providing Respondent with information technology (IT) support services. In September 2013, four technical positions, more

than one-third of Charging Party's unit at that time, were eliminated and the employees were laid off.

Charging Party alleges that the Employer violated its duty to bargain in good faith under §10(1)(e) of PERA by withholding relevant information from Charging Party during contract negotiations; i.e., failing to advise Charging Party that it was considering entering into the agreement with the Oakland Schools.

Findings of Fact:

During the 2012-2013 school year, Charging Party's bargaining unit consisted of four maintenance, one grounds, four IT tech, and one audio-visual tech positions. In 2012, Respondent had long-standing concerns about the effectiveness of its IT department, including the department's infrastructure and the level of service the department provided. In November or December 2012, Respondent contacted the Oakland Schools in an attempt to improve its delivery of IT services. Oakland suggested that Respondent and Oakland enter into an intergovernmental agreement under which Oakland would take over responsibility for providing Respondent with IT support services, services that it provided to a number of other districts within Oakland County. Between November and January 2013, Respondent's administrative cabinet heard presentations from Oakland Schools and also from a private contractor about the services these entities could provide. The Oakland Schools presentation included information about the prices it charged to other districts.

In late 2012, Neil Curry was head of Respondent's IT department. Curry's position was not part of the administrative cabinet. According to Deputy Superintendent Rick Arnett, Curry was not made part of the administrative cabinet's discussions about IT services and did not take part in the deliberations eventually leading to Respondent's decision to enter into the contract with Oakland Schools.

After researching the private contractor, Respondent's administrative cabinet eliminated it from consideration. However, it concluded that it needed a third party opinion before accepting Oakland School's proposal. On February 25, 2013, Respondent hired the consulting firm Plante Moran to do an assessment of Respondent's information technology equipment, administrative systems, infrastructure, technology support and delivery, communication, training/professional development and user perceptions. Plante Moran was also specifically directed to recommend whether Respondent should continue in-house IT support operations or contract with Oakland Schools for services. Between March and June 2013, Plante Moran representatives visited Respondent on numerous occasions, met with both user groups and IT staff, and inventoried Respondent's IT infrastructure, including hardware and software. Plante Moran also conducted a web-based survey of all teachers, staff and administrators asking them about their satisfaction with current services.

Respondent has an employee newsletter, the WB Voice, which it sends out approximately six times per year when it wishes to communicate with employees. The WB Voice is sent to all employees via at their internal email addresses and hard copies are also placed in locations where employees congregate, such as staff lounges. On March 7, 2013, Respondent sent an issue of the

Voice to all employees.[1] The lead article in the March 7 newsletter was entitled "Technology Support Services District-Wide Assessment Scheduled to Begin." The article included this sentence: "At this point, the District is seeking to engage the services of a consulting firm to examine both instructional and operational technology in the district and to recommend whether the District should continue with in-house IT support operations or contract for IT support services through Oakland Schools." The article also listed the objectives of the assessment, including determining whether to continue in-house IT support services or contract with Oakland Schools and preparing the information necessary to obtain a quote from the Oakland Schools if the District pursued that option.

The two Charging Party witnesses who were Respondent's employees in March 2013, Charging Party President Brian Low and Vice-President Jonathan Dyer, both testified that they did not read the article in the March 7, 2013 Voice. Low, a maintenance employee, also testified that he did not hear, from any source, that Respondent was considering outsourcing IT support services to the Oakland Schools until late July or early August 2013. However, Dyer, an IT tech, admitted that there was discussion prior to the end of the 2012-2013 school year among the IT department employees about the possibility of Oakland Schools taking over the IT services. He also testified:

> There was discussion [among the employees in the IT department] that, through word of mouth again, because I don't read the newsletter, there was discussion that if the District couldn't get the service done cheaper by Oakland Schools that they would look to outsource the IT department. So, therefore, there were some concerns because we didn't have an agreement for the following year, but not too much.

By "agreement," Dyer meant union contract. Dyer testified that he probably mentioned to Cyndi Austin, Charging Party's UniServ representative, that he had concerns about his job security because of the Plante Moran study. However, there is no indication that Dyer told Austin that Oakland Schools might take over Respondent's IT services.

Austin is not an employee of Respondent and does not receive the Voice. Deputy Superintendent Arnett testified that on March 5, 2013, two days before the Voice was sent out, he had a meeting with Austin on a matter involving another bargaining unit. After the meeting concluded, according to Arnett, he informed Austin that Plante Moran was going to do a study of the IT department and that a communication was going out advising staff about this study. Arnett testified that he spoke to Austin because he knew that the Voice article would "raise some eyebrows" and he did not want Austin to find out about it from someone else. Arnett testified that he specifically told Austin that part of the study was whether Oakland Schools would come in and take over Respondent's IT support services. According to Arnett, Austin told him that this would be outsourcing, and that Respondent would have to "go through certain steps to do that." Arnett disagreed, telling Austin that Respondent would not have to follow these steps because,

[1] Charging Party President Brian Low, a maintenance employee, testified that he did not receive the Voice by email although he had seen hard copies of the publication in the past. However, Vice-President Jonathan Dyer, an IT tech, agreed with Respondent Deputy Superintendent Rick Arnett that the Voice was sent to employees by email. Dyer testified, however, that he received so many emails in the course of a day that he never read the Voice.

unlike the Respondent's previous contracts for transportation and custodial services, this would be an intergovernmental agreement and not an agreement with a private contractor. Arnett testified that Austin then said that she would have to verify this with legal counsel.

Austin, who testified before Arnett at the hearing, was not specifically asked about the alleged March 4 conversation. However, she testified that while she heard from employees that a study was being conducted, she was not informed, either by Respondent representatives or any member of the four bargaining units of Respondent's employees she represents, that a purpose of the study was to determine whether Respondent should continue providing in-house IT services or contract with Oakland Schools for these services. Austin testified that she believed the study was merely to assess Respondent's technology needs.

The first bargaining session for a successor collective bargaining agreement was held on April 25, 2013. Before this date, Respondent sent Austin a package of information, including its budget and salary and benefit cost information for all eleven positions then in the bargaining unit. Among the documents Austin received was a breakdown of salary and benefits for all the employees in the IT department, including four department employees (Curry, a clerical employee, and two other supervisory or professional employees) not in Charging Party's bargaining unit. Austin used the financial information from Respondent to formulate Charging Party's initial wage offer.

At the first bargaining session, Charging Party proposed a three year contract in which wages cut in the previous contract would be restored to previous levels in the first year and increased by one percent in both the second and third years. Austin also testified that Charging Party asked Arnett exactly what the Plante Moran study was looking at, and that Arnett told her that they were looking at "all the technology," but did not mention Oakland Schools. She testified that Arnett also said that Respondent had concerns through the survey about some of the services the IT staff was providing, and that he mentioned one individual in particular. Austin said that she told Arnett that Respondent should bring those concerns to the attention of the employees. She also recalled discussing putting something in the contract about additional training for the IT employees to upgrade their skills. According to Austin, Respondent agreed that the employees needed additional training, but said it did not have the funding for that. Low, who was also part of the bargaining team, testified that there was discussion about the Plante Moran study; he agreed with Austin that the parties discussed the performance of one of the IT employees and the fact that giving IT employees more training would be desirable. Low testified that the impression he gained from the brief conversation about the study was that it was about assessing what needed to be done to get the IT infrastructure up-to-date.

Arnett testified that at the beginning of the first bargaining session he gave an overview of Respondent's financial situation during which he mentioned that a "technology audit" was being conducted. According to Arnett, Charging Party's bargaining team did not question him about the study and he did not bring up Oakland Schools at that meeting. Arnett testified that he did mention that there were numerous complaints about the IT department's customer service from users. Arnett testified that Charging Party's bargaining team expressed the view that there was only one person in the unit who had performance issues. According to Arnett, he said that he did not agree that only one of the IT techs had performance issues.

The parties discussed wages during that first session, and Charging Party revised its wage offer to conform to what Respondent said it might accept. Instead of a wage increase, Charging Party proposed off-schedule lump sum payments to employees during the 2013-2014 school year, the amount to be based in part on Respondent's actual enrollment for that school year. It also proposed wage and benefit reopeners for the final two years of the contract. At the next bargaining session, on June 4, 2013, the parties reached a tentative agreement on a new contract with a two year term. Charging Party's membership ratified the contract on June 7, 2013 and Respondent's Board of Education approved it shortly thereafter.

Austin testified that had she known that the IT positions might be eliminated, Charging Party's position on wages might have been different. Austin explained that the IT employees were the only employees in the bargaining unit at that time who were not at the top of the salary schedule, so the elimination of the positions meant that step increases did not need to be preserved. According to Austin, had it known that the IT positions might be eliminated, Charging Party might have offered more concessions to save jobs. She also testified that since the elimination of bargaining unit positions saved Respondent money, Charging Party might have been more insistent in its demand for wage increases.

Sometime between the middle of May and the first week of June 2013, one of the IT techs asked Curry about the future of the IT department. Dyer testified that Curry then came to the high school to talk to the four IT techs. He assured them that they had nothing to worry about and that they "would be here for at least another year." Dyer testified that after this conversation he felt reassured, and that he probably told Austin about the conversation with Curry.

On June 13, 2013, Plante Moran submitted its "IT Assessment Report" to Respondent's administrative cabinet. The report recommended that Respondent explore using Oakland Schools to perform its IT services. This recommendation was based on what Plante Moran concluded were deficiencies in the technical background, customer focus and management skills of many of the current IT employees. The report noted that the cost of using Oakland Schools could not be determined until there was an agreement on the services Oakland would provide.

The administrative cabinet presented Plante Moran's report to the finance committee of Respondent's School Board. The administrative cabinet, Plante Moran representatives, and Oakland Schools' staff then held a series of discussions to work out the details of a proposed agreement. A study session for the full Board to consider the proposal was scheduled for August 2013.

In late July or early August, Arnett informed Austin by phone that that [the administrative cabinet intended to recommend to Respondent's Board that Respondent contract with Oakland Schools for IT services. Arnett and Austin also met in his office to discuss the matter on August 9, 2013. According to Arnett, Austin told him that she had thought that once the collective bargaining agreement was settled the possibility of a contract with Oakland had gone away. On August 6, 2013, Arnett held a meeting with IT department employees in which they were told that a recommendation was going to be made to the Board to contract with Oakland Schools and eliminate their jobs.

On August 12, 2013, Respondent's Board of Education met to consider Plante Moran's report and the cabinet's recommendation. On August 26, 2013, Respondent's Board adopted the cabinet's recommendation and voted to approve the agreement with Oakland Schools and eliminate its IT department effective immediately. Austin spoke at this meeting in an attempt to persuade the Board to reject the cabinet's recommendation.

The contract with Oakland Schools gave Respondent's IT employees the right to apply for positions with Oakland, but no preference in hiring. There is no indication in the record that Charging Party explicitly demanded to bargain over the effects of the Oakland Schools contract on employees, but in early September, Arnett and Austin had a discussion about possible severance pay for the four IT techs. The IT techs were laid off effective September 20, 2013.

Discussion and Conclusions of Law:

My discussion of this charge must begin with what Charging Party does not allege. Respondent takes the position that its decision to enter into the agreement with Oakland Schools was a prohibited subject of bargaining under §15(11) of PERA. Section 15(11) and (12) state:

> (11) The following are prohibited subjects of bargaining and are at the sole discretion of the public employer:
>
> > (a) A decision as to whether or not the public employer will enter into an intergovernmental agreement to consolidate 1 or more functions or services, to jointly perform 1 or more functions or services, or to otherwise collaborate regarding 1 or more functions or services.
> >
> > (b) The procedures for obtaining a contract for the transfer of functions or responsibilities under an agreement described in subdivision (a).
> >
> > (c) The identities of any other parties to an agreement described in subdivision (a).
>
> (12) Nothing in subsection (11) relieves a public employer of any duty established by law to collectively bargain with its employees as to the effect of a contract described in subsection (11)(a) on its employees.

The charge in this case does not allege that Respondent violated §10(1)(e) of PERA by refusing or failing to bargain over its decision to contract with Oakland Schools. In its post-hearing reply brief, Charging Party clarified that it is not asserting that Respondent had a duty to bargain over the decision to contract with Oakland Schools. Rather, it alleges that Respondent had a duty to inform Charging Party about the decision if it was made, or the fact that it was considering the contract if it was not, prior to or during the course of the parties' negotiations for a successor collective bargaining agreement.

Respondent maintains that it did provide Charging Party with this information. Respondent Deputy Superintendent Arnett testified that he informed Charging Party UniServ Director Austin on March 4, 2013, that Respondent was considering contracting with Oakland Schools to take over its IT technology support services and that this was part of a study Plant Moran was about to do for Respondent. According to Arnett's testimony, Austin understood that this potentially involved eliminating unit positions because she responded that this would be outsourcing. Austin, however, denied hearing from Respondent, or anyone else, that a purpose of the Plante Moran study was to determine whether Respondent should continue providing in-house IT services or contract with Oakland Schools for these services until Arnett informed her in late July or early August 2013 that Respondent's administrators were going to recommend that the Board approve a contract. Austin also testified that during the first negotiation session for the new collective bargaining agreement on April 25, 2013, she specifically asked Arnett "what Plante Moran was looking at." According to Austin, Arnett replied merely that it was about "all the technology" without mentioning a potential contract with Oakland. Arnett's and Austin's testimony was in direct conflict on this point; Arnett admitted that he did not bring up the Oakland contract at the April 25 meeting, but testified that Charging Party's bargaining team did not ask any questions about the Plante-Moran study at this meeting. For reasons discussed below, however, I conclude that it is unnecessary for me to determine which witness was telling the truth.

In asserting that Respondent violated its duty to bargain by "withholding" the fact that it had decided or was considering contracting with the Oakland Schools, Charging Party relies in part on a line of cases arising under the National Labor Relations Act (NLRA), 29 USC §150 et seq. Some of these cases were discussed by the Commission's administrative law judge in *Pontiac Sch Dist*, 22 MPER 51 (2009). In *Valley Mould & Iron Co.*, 226 NLRB 1211 (1976), the National Labor Relations Board (the Board) dismissed a charge alleging that that the employer violated its duty to bargain in good faith under the NLRA by "withholding and concealing," during negotiations for a new contract, its decision to eliminate six unit positions. The Board based its dismissal on its finding that the employer did not, during negotiations, have a plan that was sufficiently concrete to warrant disclosure to the union. However, in a comment cited in later Board decisions, the Board's ALJ, at 1213, stated, "There can be no question as to the justification for Board intervention in circumstances where an employer has concealed an intention to take drastic, unforeseeable action, in circumstances where such concealment occurred in circumstances preventing a union from taking steps through negotiation and economic action to protect represented employees."

There are a number of Board cases holding that an employer violates its duty to bargain when it intentionally conceals, or makes false representations about, its future plans when that concealment prevents unions from protecting employees' rights. In *Royal Plating and Polishing Co., Inc.*, 160 NLRB 990, 994 (1966), the Board held that the employer violated its duty to bargain by deliberately concealing from the union, during contract negotiations, its plans to close the entire plant and terminate all employees. The Board found that this concealment prevented the union from bargaining over the effect of the closing on employees and held that the contract negotiations that took place were "merely a sham." See also *Standard Handkerchief Co, Inc*, 151 NLRB 15 (1965). The Board has also found violations where the evidence showed that employers deliberately lied about their plans while negotiating plant severance agreements. For

example, in *Waymouth Farms, Inc*, 324 NLRB 960 (1997), the Board held that an employer violated its duty to bargain when it deliberately concealed the fact that it was moving its operations only six miles away, thereby leading the union to agree to accept severance pay for employees and give up their rights to transfer to the new plant. See also *Sheller-Globe Corp*. 296 NLRB 116 (1989).

In this case, however, the facts do not support a finding that Respondent intentionally concealed its future plans from Charging Party during contract negotiations. As noted above, Austin testified that she was not told until late July 2013 that Respondent was considering contracting with Oakland Schools. She also testified that she asked Arnett on April 24, 2013, what Plante Moran was studying, and that Arnett did not mention the possibility of a contract with Oakland Schools. Even if Austin's testimony is credited, however, the fact remains that Respondent announced that it had hired a consultant to determine whether to contract with Oakland Schools in its March 7, 2013 employee newsletter. The newsletter was not Respondent's normal means of communication with Austin. However, any of Respondent's employees, including any member of the four bargaining units served by Austin, might have relayed the information about the Plante Moran study set out in the newsletter. An employer seeking to conceal or withhold information from a union, I find, does not publicize it in a newsletter distributed to employees and left in places on the employer's premises where employees can read it. [2]

Charging Party also relies on the line of Commission cases holding that when a union makes a request for information relevant to its duty to engage in collective bargaining, an employer has a duty to provide that information in a timely manner. Information relating to terms and conditions of employment, such as wages, job descriptions, and other information pertaining to bargaining unit employees, is considered presumptively relevant. *Plymouth Canton Cmty Schs*, 1998 MERC Lab Op 545; *City of Detroit, Dep't of Trans*, 1998 MERC Lab Op 205. If the requested information is not in this category, the union must demonstrate its relevancy unless the relevancy is obvious. However, the standard for determining relevancy is a liberal one; the employer has a duty to provide the information as long as there exists a reasonable probability that it will be of use to the union. *Mundy Twp*, 22 MPER 31 (2009). Although information about the subcontracting of unit work is not considered presumptively relevant, the Commission has found it to be relevant under the circumstances of a particular case. For example, in *City of Detroit*, 18 MPER 78 (2005), cited by the Charging Party, the Commission held that the employer had a duty to provide the union with comparative cost information for unit work being subcontracted to third parties. Although the collective bargaining agreement allowed the subcontracting unit work, it also provided for a joint management-labor committee to review the impact of such contracts. The Commission found that the union needed the cost information to evaluate whether the work could be done by unit employees at a more favorable cost. Compare, *City of Grand Rapids*, 22 MPER 70 (2009), which Charging Party also cites, in which the Commission held that an employer did not violate its duty to bargain by failing to provide information the union had requested about a program under which volunteers were performing

[2] I note that I am not finding in this case that the March 7, 2013 employee newsletter constituted affirmative notice to Charging Party that Respondent was considering contracting with the Oakland Schools for work performed by unit members.

unit work where the union had not identified any impact from the program over which it wanted to bargain.

The line of cases cited by Charging Party, however, involve an employer's obligation to provide information *requested* by the union. Here, Charging Party did not request information about the Oakland Schools contract or the possibility of such a contract. I agree with Respondent that Charging Party's claim is, in fact, that Respondent had an affirmative obligation to inform Charging Party of the possibility that Respondent might enter into an intergovernmental agreement under which another governmental entity would take over responsibility for work formerly performed by the bargaining unit.

I find no basis for concluding that Respondent had an obligation to notify Charging Party prior to or during contract negotiations that it was considering entering into an agreement with Oakland Schools. Austin testified that had Charging Party known that Respondent was considering contracting with the Oakland Schools and eliminating the IT tech positions, it might have offered more concessions during contract negotiations in an effort to save their jobs. However, Charging Party concedes that the decision to enter into the contract was a prohibited subject of bargaining, and that Respondent had no obligation to bargain over this decision.[3]

Respondent concedes that it had an obligation to bargain with Charging Party over the effect of the contract with Oakland Schools on employees However, Charging Party did not allege or argue in this case that its ability to engage in meaningful bargaining over the effect of the contract on employees was compromised by the fact that it did not learn of the contract until late July 2013.

Austin also testified that had it known that the IT tech positions would be eliminated, or that this was being considered, Charging Party might not have agreed to Respondent's wage proposal as it did because the elimination of the positions might free up money for the remaining positions. Not only was this mere speculation on Austin's part, when the parties reached their tentative contract agreement in early June 2013, Respondent had not made even a preliminary decision to eliminate its IT department. An employer clearly has no obligation to disclose to the union during contract negotiations every action being contemplated that might affect its finances during the term of this contact.

In sum, I find that Respondent did not intentionally conceal from Charging Party that it was considering contracting with Oakland Schools for its IT support services prior to the beginning of contract negotiations. I also find that even if it failed to affirmatively notify Charging Party that it was considering entering into an intergovernmental agreement with Oakland Schools for these services, its failure to provide this notice did not violate its duty to bargain in good faith under §15 of PERA. I recommend, therefore, that the Commission issue the following order.

[3] Respondent asserts that financial considerations played little or no role in its decision to enter into the contract with Oakland. Whether they did or did not, however, is irrelevant here.

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: February 27, 2015