STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

DETROIT PUBLIC SCHOOLS,
Respondent-Public Employer,

Case No. C01 G-139

-and-

ORGANIZATION OF SCHOOL ADMINISTRATORS AND SUPERVISORS,
Charging Party-Labor Organization
____/

Appearances:

Gordon J. Anderson, Attorney, For the Public Employer

Mark H. Cousens and John E. Eaton, Attorneys for the Labor Organization

DECISION AND ORDER

On May 1, 2002, Administrative Law Judge Roy L. Roulhac issued his Decision and Recommended Order in the above-entitled matter, finding that Respondent has engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist and take certain affirmative action as set forth in the attached Decision and Recommended Order of the Administrative Law Judge.

The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of Act 336 of the Public Acts of 1947, as amended.

The parties have had an opportunity to review this Decision and Recommended Order for a period of at least 20 days from the date the decision was served on the parties, and no exceptions have been filed by any of the parties to this proceeding.

ORDER

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

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Dated: ______

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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 MCL 423.216, this case was heard in Detroit, Michigan on November 5, 2001, by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission. This proceeding was based upon an unfair labor practice charge filed against Respondent Detroit Public Schools by Charging Party, the Organization of School Administrators and Supervisors, on July 13, 2001. Based upon the record and a brief filed by Charging Party on January 9, 2002, I make the following findings of fact, conclusions of law, and recommended order pursuant to Section 16(b) of PERA:[1]

The Unfair Labor Practice Charge:

Charging Party claims that Respondent violated Section 10(1)(a) of PERA by failing to respond to requests for information that were necessary to enforce or administer the collective bargaining agreement.

Findings of Fact:

Charging Party has represented a bargaining unit of approximately 600 school administrators employed by Respondent for over 33 years. The parties' collective bargaining agreement does not contain a

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1 Respondent did not file a post-hearing brief.

union security clause that requires bargaining unit members to join the union or pay a service fee. Therefore, in order to recruit bargaining unit members, Charging Party relies on personnel rosters provided by Respondent to track employees' movement in and out of bargaining unit positions.

On March 20, 23, and April 9, 2001, Charging Party, pursuant to the PERA and the Freedom of Information Act (FOIA), requested lists that contained the name, file number, assignment, job classification, pay rate and pay location of employees who were hired, appointed, promoted, or transferred between November 1, 2000 and March 16, 2001; during the week ending March 30, 2001; and during the week ending April 6, 2001, respectively. Within days of receiving each request, Respondent informed Charging Party that its FOIA request had been received, but that it needed the extra ten days allowed by FOIA to search and/or collect the documents requested.

However, Respondent did not provide any of the information requested until late September or early October 2001, six months after the requests were made and two months after this unfair labor practice charge was filed. The information presented to Respondent consisted of three "Personnel Recommendations – Administrative Personnel" reports dated February 26, April 11, and May 6, 2001. Although the information provided by Respondent substantially complied with Charging Party's request, Diann Woodward, the Union's president testified that the reports were incomplete and did not include information about some potential bargaining unit members.

On November 1, a few days prior to the hearing, Respondent provided Charging Party with a list of personnel actions that it had taken from March 16 through March 30. This list, however, did not contain an explanation of the three-letter codes shown on the list to describe what personnel actions were taken, and, therefore, according to Charging Party, the information provided was of no value.

Conclusions of Law:

In order to meet its duty to bargain in good faith with its employees' bargaining representative as required by Section 10 of PERA, an employer must furnish, in a timely manner, relevant information requested by a union for purposes of collective bargaining and contract administration. *Wayne County*, 1997 MERC Lab Op 679; *City of Battle Creek*, 1996 MERC Lab Op 538. It is not necessary that the information requested be dispositive of an issue; it simply needs to have some bearing on it. *SMART*, 1993 MERC Lab Op 355. An information request that concerns the wages, hours or working conditions of bargaining unit employees is presumptively relevant. *Plymouth-Canton Community Schools*, 1998 MERC Lab Op 545. A refusal or an unreasonable delay in supplying requested information is an unfair labor practice. *Oakland University*, 1994 MERC Lab Op 540; *Wayne County ISD*, 1993 MERC Lab Op 317. The Commission has not articulated the precise time for employers to respond to information requests. However, it has found violations of the Act in cases where the delay ranged from 2-3 months to 9 months. See *Detroit Public Schools*, 1990 MERC Lab Op 624; *City of Detroit Police Dept.*, 1994 MERC Lab Op 416.

In this case, I find that Charging Party's requests for information about employees' movement in and out of bargaining unit positions was relevant to its obligation to administer the collective bargaining

agreement. However, Respondent did not provide Charging Party with any information until six months later, although the February 26, 2001 roster of personnel recommendations was available almost a month before Charging Party's March 20, 2001. Moreover, the April 11 and May 6, 2001 rosters were available within weeks of Charging Party's March 23 and April 9, 2001 requests. I find that Respondent's six-month delay in responding to Charging Party's information requests was clearly unreasonable and reflects a complete disregard for its duty to bargain in good faith. Further, Respondent's delay in providing the requested information remains unexplained. It did not file an answer to the charge, did not present any defense during the hearing, and did not file a file a post-hearing brief.

Charging Party also claims that Respondent's delay in responding to its requests caused it to lose an opportunity to sign up new members who entered the bargaining unit during the period covered by its information requests. According to Charging Party, Respondent knows that there is little detriment attached to its failure to timely respond to information requests and it should, therefore, be required to reimburse the Union for losses it incurred for its unlawful failure to timely provide the requested information.

Charging Party notes that during the past twelve years, Respondent has repeatedly failed to provide requested information to Charging Party despite remedial orders issued by the Commission. In *Detroit Public Schools*, 1990 MERC Lab Op 624, Respondent provided some of the requested information on the day before the hearing and failed to provide other information. The ALJ observed that Respondent "treated the charging party in what verges on a cavalier manner," and that a delay of two or three months for supplying information that should be readily available was unreasonable. In *Detroit Board of Education,* 1992 MERC Lab Op 572, Respondent was found to have "engaged in excessive delay in responding to the Union's information request" for information that was relevant to process a grievance. In *Detroit Public Schools,* 1998 MERC Lab Op 131, Respondent refused to provide information that Charging Party needed to implement an arbitration award. In each case, the Commission directed Respondent to provide the requested information, cease and desist from refusing to provide information, and to post a notice to employees.

I find that Respondent's conduct has advanced beyond "what verges on a cavalier manner." In this case, Respondent has not only failed to timely respond to Charging Party's information request, but, as noted above, has offered no defense or explanation for its delay. Thus, I conclude that in this case, the Commission's usual cease and desist and notice posting orders will not sufficiently "effectuate the policies of PERA" as required by Section 16 and will not deter Respondent from failing to timely respond to Charging Party's information requests. I, therefore, recommend that the Commission issue the following order:

RECOMMENDED ORDER

Respondent Detroit Public Schools, its officers and agents, are hereby ordered to:

1. Cease and desist from refusing to bargain in good faith with the Organization of School Administrators and Supervisors by refusing to timely respond to its information requests.

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

A. To the extent that it has not complied with Charging Party's information requests, provide the requested information in a useable form not later than two weeks from the date of this order.

B. Reimburse Charging Party for dues that would have been paid by employees who were eligible to become bargaining unit members between March 2001, the date of the Union's first information request, and late September or early October, 2001, when Respondent partially complied with Charging Party's requests.

C. Post copies of the attached notice to employees in conspicuous places, including all locations where notices to employees are customarily posted, for a period of 30 consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Roy L. Roulhac
Administrative Law Judge

Dated: _____________

NOTICE TO EMPLOYEES

After a public hearing before the Michigan Employment Relations Commission, the Detroit Public School has been found to have committed an unfair labor practice in violation of the Michigan Public Employment Relations Act. Pursuant to the terms of the Commission's order

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL bargain with the Organization of School Administrators and Supervisors as the exclusive bargaining representative of the employees in the bargaining unit and provide the Union with information relevant and necessary to its role as the collective bargaining representative.

WE WILL reimburse the Organization of School Administrators and Supervisors for all dues that it lost, with interest at the statutory rate, between March 2001, the date of the Union's first requested information and late September or early October, 2001, when the information was provided.

DETROIT BOARD OF EDUCATION

By: ______________________________

Title: ____________________________