STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF DETROIT,
Respondent-Public Employer,

Case No. C03 J-227

-and-

AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, COUNCIL 25, LOCAL 836,
Charging Party-Labor Organization.
_____/

APPEARANCES:

City of Detroit Law Department, by Kimberly D. Hall, Esq., for Respondent

Robert E. Donald, Esq., for Charging Party

DECISION AND ORDER

On October 18, 2004, Administrative Law Judge Roy L. Roulhac issued his Decision and Recommended Order in the above matter finding that Respondent has not engaged in and was not engaging in certain unfair labor practices, and recommending that the Commission dismiss the charges and complaint as being without merit.

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

_____
Nora Lynch, Commission Chairman

_____
Harry W. Bishop, Commission Member

_____
Nino E. Green, Commission Member

Dated: _____

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APPEARANCES:

City of Detroit Law Department, by Kimberly D. Hall, Esq., for Respondent

Robert E. Donald, Esq., 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, Administrative Law Judge Roy L. Roulhac heard this case for the Michigan Employment Relations Commission in Detroit, Michigan on April 26, 2004. Based upon the record and a post-hearing brief filed by Respondent on July 9, 2004, I make the following findings of fact, conclusions of law and recommended order.

The Unfair Labor Practice Charge:

On October 28, 2003, Charging Party AFSCME Council 25, Local 836 filed an unfair labor practice charge against Respondent City of Detroit. The charge claims that Respondent violated Section 423.210(1)(e) of PERA "[I]n that, the City has repudiated the Master Agreement." On March 2, 2004, Respondent filed a motion for a more definite statement. On March 9, 2004, Charging Party was directed to respond to the motion within fourteen days.

Motion For Summary Disposition:

On April 23, 2004, Respondent filed a motion for summary disposition and attached a copy of Charging Party's April 12, 2004 response to the motion for a more definite statement. Charging Party's response to the

motion for a more definite statement, which Charging Party never filed with this tribunal, included thirty-two alleged violations of PERA. Respondent requested that the charge, as amended by Charging Party's response, be dismissed, or alternatively, that the alleged violations that occurred more than six months before the charge was filed, or that occurred after the charge was filed, be dismissed.

Respondent's motion, as amended during the hearing, alleges that items 8, 9, 16, 17, 20, 23, 26, 28, and 30 should be dismissed because they refer to events that occurred more than six months prior to October 28, 2003, the date that the charge was filed.[1] Respondent also claims that items 2, 3, 4, 10, 11, 12, 13, 21, 24, 25, 29, and 31 should be dismissed because they refer to events that post-date the charge, and that item 27 should be dismissed because it alleges a contract violation.

Charging Party agreed to withdraw the allegations that post-date the charge. I granted Respondent's motion to dismiss items that allege violations that occurred more than six months before the charge. I also granted Respondent's motion to dismiss item 5 because the evidence Charging Party presented related to events that were not included in the charge or in its response to the motion for a more definite statement. Charging Party withdrew item 27. The remaining allegations, items 1, 6, 7, 14, 15, 19, 22, and 32, as discussed below, should also be dismissed because they lack factual or legal support.

Findings of Fact and Conclusions of Law:

Item 1 reads: "On October 8, 2003 the union requested [sic] Tracey Hill be released pursuant to the Master Agreement and human resources (U. Taylor) failed to release Ms. Hill or respond to the request."

The contract between Respondent and Charging Party contains a clause that provides for union officers to be released from work to participate in union business. On October 8, 2003, Robert Donald, Charging Party's counsel, faxed a letter to Human Resources Manager Ursula Taylor-Holland requesting that Tracy Hill Faulkner, the secretary-treasurer of Local 836, be released from her work for two days to attend union functions because he, Donald, would be on vacation. According to Donald, Respondent failed to release Hill and the Local was without representation for two days. Taylor-Holland testified that the request was honored.

Charging Party alleges that Respondent violated the parties' collective bargaining agreement by not releasing Tracy Hill to conduct union business. The Commission has held that it will not find a violation of PERA based on a duty to bargain when the parties have a bona fide dispute over the interpretation of their contract. *City of Detroit (Health Dep't)*, 2003 MERC Lab Op ___ (Case No. C02 D-084, Issued March 25, 2003); *Village of Romeo*, 2000 MERC Lab Op 296; *Central Michigan Univ*, 1997 MERC Lab Op 501; *City of Detroit (Wastewater Treatment Plant)*, 1993 MERC Lab Op 716. Here, Charging Party does not even claim that Respondent violated its duty to bargain. Its claim that Respondent violated the contract by not releasing Hill should be resolved through the contractual grievance procedure.

Item 6 reads: "Within the last years [sic] and a half the City has reorganized the recreation department three times. The dates are unknown to the union because the City has refused to give notice of the reorganization or inform the union of the reorganization. The City has refused to identify its representatives pursuant to the Master

[1]Section 16(a) of PERA provides, in pertinent part: "No complaint shall issue based upon any unfair labor practice occurring more than 6 months prior to the filing of the charge with the commission and service of a copy thereof upon the person against whom the charge is made."

Agreement. The City has refused to meet regarding the impact of said reorganization."

Charging Party presented Henry Wolfe III and Edwina Lawson as witnesses. Wolfe testified that the recreation department was "realigned from whatever previous number to this new number of four districts," that there were "additions or subtractions of personnel from the district" and his position was affected because he had a new boss to report to. Lawson testified that the department has been reorganized twice since 2001, and the number of districts changed from four to five and from five back to four. She also explained that managers were added in one of the reorganizations, eliminated in another, and as a result she was required to report to different people.

The charge and the evidence presented to support it do not allege any facts that occurred within the six months prior to October 28, 2003, when the charge was filed, as required by Section 16(a) of PERA. Even if the charge were timely filed, it is well settled that an employer does not have a duty to bargain regarding a legitimate reorganization, but is only required to bargain, upon demand, over the reorganization's impact upon unit members. *Ishpeming Supervisory Employees v City of Ishpeming*, 155 Mich App 501 (1986). Charging Party presented no evidence that it made a demand to bargain over the reorganizations' impact.

Item 7 reads: "On August 21, 2003 the union requested grievance information from the City pursuant to the Master Agreement relative to member Martain Tompkins' discipline and the City (U. Taylor) refused to provide the information or respond to the request."

Martain Tompkins was suspended on January 9, 2003, and Charging Party filed a grievance on her behalf. Donald testified that Respondent failed to respond to his request for a fact sheet and any documentation to support Tompkins' suspension. When asked on cross-examination for a copy of Charging Party's information request, Donald responded, "the grievance itself."

Charging Party's own evidence demonstrates that it never requested information about Tompkins' suspension. See the discussion of Item 32 below where Donald erroneously claims that Article 9(I) of the parties' agreement requires Respondent to automatically provide information when a grievance is filed.

Item 14 reads: "On September 19, 2003 the City unilaterally changed the conditions of employment (job specifications) of bargaining unit members (recreation instructors). The union requested to meet and bargain the change. On March 26, 2004 the City began enforcing the unilateral change without notice to the union (U. Taylor)."

Donald testified that on September 19, 2003, Respondent changed the job description for non-supervisory recreation instructors so that they are required to supervise other bargaining unit members. Under, "Essential Functions," the old job description provides:

4. Oversees and monitors the activities of Play Leaders and other seasonal employees.
5. Completes activity records and recommends disciplinary actions.

As revised, the job description states:

5. Directs and monitors the activities of Play Leaders and other seasonal employees.
6. Evaluates assigned employees' performance and initiates corrective action when needed.

According to Donald, the new job description requires instructors to initiate discipline and prepare a fact sheet for

the supervisor to start the discipline. Donald testified that before the job description was revised, instructors were akin to babysitters who could not actually discipline anyone, but rather had to go "to your supervisor and say, 'Hey, Johnny is not doing his job, and you probably need to take a took at it.'" On March 26, 2004, Donald received a phone call from Carol Taylor informing him that a recreation instructor was giving directives to a bargaining unit member and the member would not follow the directive. Donald advised Taylor that the instructor could not give directives because she was not a supervisor and that the parties were in special conference negotiations regarding the unilateral change. Since December 2003, the parties have held two special conferences to discuss Charging Party's concerns about the revised job description.

Loren Jackson, Respondent's general manager of operations for the recreation department testified that instructors have never been required to supervise employees. Rather, according to Jackson, they inform their supervisors of problems by completing a "put-in-writing" form.

Charging Party presented no evidence that Respondent changed the recreation instructors' terms and conditions of employment to require them to supervise bargaining unit members. The Commission has defined supervisor as one who has authority to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or to effectively recommend such action, as long as this authority requires the use of independent judgment and is not merely routine. See *Village of Paw Paw*, 2000 MERC Lab Op 370; *City of Grand Rapids Police Dep't*, 2000 MERC Lab Op 384. An individual is not a supervisor if her authority is limited to merely directing the daily work of other employees and/or making work assignments of a routine nature. *City of Lansing*, 2000 MERC Lab Op 380. Even if the Respondent unilaterally changed the instructors' duties, Charging Party's own evidence does not support its refusal to bargain claim because Charging Party's concerns have been addressed in special conferences.

Item 15 reads: "On August 15, 2003 the union requested promotional information from the City. The union advised the City on several occasions that first, this was public information, and that the union was entitled to the information pursuant to the Master Agreement. Not withstanding that the union was entitled to the information pursuant to both arguments, the City refused to provide the information. Further the City charged the union $38.00 for the information that it was entitled to for free."

Donald testified that on August 7, 2003, the Union, pursuant to the Master Agreement, requested promotional lists for the positions of recreation leader, recreation instructor, recreation center supervisor grades I and II, district supervisor and manager grade I and II. In a February 25, 2004, Freedom of Information Act (FOIA) request, Donald noted under FOIA, any fee must be limited to actual mailing and duplication costs. According to Donald, Respondent refused to provide the information and subsequently, the Union was required to pay for information that it was entitled to receive at no cost.

Charging Party's own evidence demonstrates that it made a request for information under the FOIA, the information was provided and Charging Party paid the fees that it acknowledges Respondent was entitled to charge. No violation of PERA has been alleged or established.

Item 19 reads: "On August 8, 2003 the union requested that Robert Auston be released from work pursuant to the Master Agreement to handle union business and the City refused to release Mr. Auston, respond to the request or meet to discuss why they refused to release Mr. Auston."

To support this allegation, Donald introduced a hand-written, August 9, 2003 memorandum addressed to

Ursula Taylor requesting the release of the Union's vice president from August 11-14, while he was on vacation. The memorandum contains a time-stamp dated August 8, 2003, 1:29. Taylor testified that she did not recall receiving the memorandum.

This allegation, like Item 1 discussed above, only alleges that Respondent violated the parties' collective bargaining agreement by not releasing an employee from work to conduct union business and does not allege a violation of PERA.

Item 22 reads: "On June 18, 2003 and June 23, 2003, the union requested grievance information for an arbitration hearing to be held involving Edwinda Lawson. The City refused to forward the information or respond to the request."

On June 18 and June 23, 2003, Donald sent a letter to the human resources manager requesting sign-in and sign-out sheets from Considine Recreation Center for October 28, 2002 through November 10, 2002. Respondent's witness Ursula Taylor testified that she informed Donald during the arbitration hearing that the sign-in sheets, which are maintained at the recreation center, could not be located.

I credit Taylor's testimony that the information requested by Charging Party could not be located. I find, therefore, that Respondent did not violate PERA by not providing information that it did not possess.

Item 32 reads. "In June of 2003 Dave Durell disciplined bargaining unit member C. Byrd. During the hearing the union requested disciplinary information and the City refused to provide the information or respond to the request."

Article 9(I) of the parties' collective bargaining agreement provides: "The parties agree that exchanging pertinent information regarding a grievance is beneficial to both parties in attempting to resolve the grievance. The Union shall be advised of the factors considered in the imposition of discipline and shall have the right to request copies of available written documents or statement pertaining thereto." Donald testified that in June 2003, he met with Respondent's representative Dave Durell to discuss Respondent's plan to discipline bargaining unit member Cathy Byrd. Durell advised Donald to direct his request for information to support Byrd's discipline to the human resources office. Subsequently, Donald filed a grievance on Bryd's behalf.

The evidence presented to support this allegation, like the evidence set forth in Item 7 above, shows that Charging Party only filed a grievance and never made a request for information about Byrd's suspension. Donald relies, inappropriately, on Article 9(I) of the parties' agreement for the view that when a grievance is filed Respondent is automatically required to provide information. However, Article 9(1), in addition to memorializing the parties' recognition that exchanging information is beneficial, sets forth the Union's rights to request copies of documents or statements pertaining to the imposition of discipline.

Based on the above findings of fact and conclusions of law, I recommend that the Commission issue the order set forth below:

RECOMMENDED ORDER

The unfair labor practice charge is dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Roy L. Roulhac
Administrative Law Judge

Dated: _____