STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

CITY OF DETROIT (FINANCE DEPARTMENT),
Public Employer–Respondent,

Case No. C05 H-164

-and-

AFSCME COUNCIL 25, LOCAL 2799,
Labor Organization-Charging Party.
_____/

APPEARANCES:

Ben K. Frimpong, Esq., for the Labor Organization

DECISION AND ORDER

On April 20, 2006, Administrative Law Judge (ALJ) Roy L. Roulhac issued his Decision and Recommended Order in the above matter finding that Respondent, City of Detroit (Finance Department), did not violate Sections 10(1)(e) and 15(1) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210(1)(e) and 423.215(1), by refusing to supply information to Charging Party, AFSCME Council 25, Local 2799. The ALJ held that the relevance of the requested information was not explained in the request, and the relevance was not plain. Concluding that Respondent was not obligated to respond to the information request, the ALJ recommended that the charge be dismissed.

The Decision and Recommended Order was served on the interested parties in accordance with Section 16 of PERA. On May 15, 2006, Charging Party filed exceptions to ALJ's Decision and Recommended Order. In its exceptions, Charging Party alleges that the ALJ erred in finding that the relevance of the information had not been established and that Respondent had no duty to supply the information. Respondent did not file a response to the exceptions. We have reviewed Charging Party's exceptions and find that they have merit.

Factual Summary:

The facts in this case are set forth fully in the ALJ's Decision and Recommended Order and need not be repeated in detail here. Charging Party represents a bargaining unit of non-supervisory employees working for Respondent, City of Detroit. The Charge filed on August 4, 2005 alleges that on two occasions in June 2005, Charging Party sent letters to Respondent asking for "the scope of service and terms of service" for two non-union employees. Charging Party made the request upon learning that contract or seasonal employees were working after five bargaining unit members were laid off. Citing Article 19 of the applicable collective bargaining agreement in its request, Charging Party requested copies of the contracts of the

contracted workers.

Article 19 provides:

> B. The right of contracting or subcontracting is vested in the City. The right to contract or subcontract shall not be used for the purpose or intention of undermining the Union nor to discriminate against any of its members nor shall any seniority employee be laid off or demoted or caused to suffer a reduction in overtime work as a direct and immediate result of work performed by an outside contractor.
>
> C. In cases of contracting or subcontracting, including renewal of contracts, affecting employees covered by this Agreement, the City will hold advance discussion with the Union prior to letting the contract. The Union representatives will be advised of the nature, scope and approximate days of work to be performed and the reasons (equipment, manpower, etc.) why the City is contemplating contracting out the work.

After Respondent failed to respond to either request for information, this Charge was filed. The case was set for hearing before Administrative Law Judge (ALJ) Roy Roulhac on November 14, 2005. While a Notice of Hearing was sent to both parties via certified mail, Respondent did not appear at the hearing. Section 72(1) of the Michigan Administrative Procedures Act, MCL 24.272(1), provides for a hearing in the absence of a party that fails to appear.

Discussion and Conclusions of Law:

We have had several recent occasions to consider unfair labor practice charges protesting this Respondent's failure to furnish information requested by a labor organization representing City of Detroit employees. In each instance, we held that Respondent had violated PERA. *City of Detroit (Water & Sewerage Dep't)*, 19 MPER 46 (2006); *City of Detroit (Dep't of Transp)*, 19 MPER 34 (2006); *City of Detroit*, 18 MPER 78 (2005).

The ALJ correctly observed that an employer does not have a duty to provide a union with information about subcontracting unless and until the union demonstrates the relevance of the information, or the facts surrounding the request are such as to make the relevance of the information plain. *Island Creek Coal Co*, 292 NLRB 480, 490 (1989), enf'd 899 F2d 1222 (CA 6, 1990); *Ohio Power Co*, 216 NLRB 987 (1975). However, we disagree with the ALJ's finding that Charging Party failed to demonstrate the relevance of the requested information in this case. At the very least, we disagree with the ALJ's conclusion that the relevance was not plain.

Charging Party based its information request expressly on Article 19 of the parties' collective bargaining agreement which protects bargaining unit members from layoff, demotion, or reduction in overtime work as a result of work performed by an outside contractor. At the time that the request for information was made, bargaining unit members were on layoff, while contracted workers had been retained. Information disclosing the scope and terms of the contracted work was relevant to Charging Party's right to know whether Article 19 was being

honored. We believe that mention of the contract provision in Charging Party's request was sufficient to apprise Respondent of the relevance of the information.

We hold that Respondent's failure to furnish the information requested by Charging Party violated PERA.

ORDER

Respondent City of Detroit, its officers and agents, are hereby ordered to:

1. Cease and desist from refusing to provide AFSCME Council 25, Local 2799 with information that is relevant and necessary to it in its role as the bargaining agent.

2. Furnish AFSCME Council 25, Local 2799 with the following information:

   Copies of the contracts for Mia Grillier in Treasury and Brandi Brown in Assessments including the scope and terms of service.

3. Post copies of the attached notice to employees in conspicuous places on Respondent's premises, including all locations where notices to employees are customarily posted. Copies of the notice shall be duly signed by a representative of the City of Detroit and shall remain posted for a period of thirty consecutive days. One signed copy of the notice shall be returned to the Commission and reasonable steps shall be taken by the Employer to ensure that said notices are not altered, defaced, or covered by any other material.

4. Notify the Michigan Employment Relations Commission within twenty days of receipt of this Order regarding the steps that the Employer has taken to comply herewith.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Christine A. Derdarian, Commission Chair

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

Dated: _____

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CITY OF DETROIT (FINANCE DEPARTMENT),
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AFCSME COUNCIL 25, LOCAL 2799,
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_____/

APPEARANCES:

Ben K. Frimpong, Esq. for the Labor Organization

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE

This case was heard in Detroit, Michigan on November 14, 2005, by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission (MERC) pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216. Respondent City of Detroit did not appear for the hearing. A Notice of Hearing was sent to Respondent at its last known address by certified mail on September 6, 2005. The notice was not returned as undeliverable and Respondent did not make a request to adjourn the hearing. The hearing was held in accordance with Section 72(1) of the Michigan Administrative Procedures Act, being MCL 24.272(1), which provides for a hearing in the absence of a party. Based on the record and a post-hearing brief filed by Charging Party on January 3, 2005, I make the following findings of fact and conclusions of law.

The Unfair Labor Practice Charge:

On August 4, 2005, Charging Party AFSCME Council 25, Local 2799, filed an unfair labor practice charge against Respondent City of Detroit alleging that it failed to respond to its June 9 and 14, 2005 requests for information about the scope and term of service of two non-union employees.

Finding of Facts:

Charging Party is the bargaining representative of non-supervisory employees within various departments of the City of Detroit. The parties' collective bargaining agreement covers the period July 1, 2002 to June 30, 2005. Article 19 reads in pertinent part as follows:

> B. The right of contracting or subcontracting is vested in the City. The right to contract or subcontract shall not be used for the purpose or intention of undermining the Union nor to discriminate against any of its members nor shall any seniority employee be laid off or demoted or caused to suffer a reduction in

> overtime work as a direct and immediate result of work performed by an outside contractor.
>
> C. In cases of contracting or subcontracting, including renewal of contracts, affecting employees covered by this Agreement, the City will hold advance discussion with the Union prior to letting the contract. The Union representatives will be advised of the nature, scope and approximate days of work to be performed and the reasons (equipment, manpower, etc.) why the City is contemplating contracting out the work.

In March 2005, Respondent laid off a number of employees. On June 9, 2005, after learning that some contract or seasonal employees were still working after five of its members had been laid off, Charging Party made the following information request:

> Pursuant to Article 19 of the Collective Bargaining Agreement between the City of Detroit and AFSCME, the union is requesting copies of the contract for Mia Grillier, working in Treasury and Brandi Brown, working in Assessments. Please include the scope and terms of service.
>
> Remittance within 10 days is expected. Thanking you in advance for your anticipated cooperation.

By June 14, 2005, when Respondent had not responded to its June 9 request, Charging Party sent a second request. Charging Party's president testified that before she could determine whether the contract had been violated, she needed to know the contract employees' duties, pay and if they were performing bargaining unit work or work that bargaining unit members could perform. Without the information, according to the president, she is at an impasse.

Conclusions of Law:

To satisfy its bargaining obligation under Section 10(1)(e) of PERA, an employer must timely supply relevant information that is reasonably necessary for the union to perform its responsibilities, including contract administration and grievance processing and evaluation. *NLRB v. Acme Industrial Co.*, 385 US 432, 64 LRRM 2069 (1967), *City of Detroit*, 18 MPER 78 (2005); *City of Battle Creek (Police Dep't*, 1998 MERC Lab Op 684, 687; *Wayne Co*, 1997 MERC Lab Op 679; *Ecorse Public Schs*, 1995 MERC Lab Op 384, 387. Information relating to terms and conditions of employment, such as wages, job descriptions, and other information pertaining to bargaining unit employees is presumptively relevant. *Plymouth Canton C S*, 1998 MERC Lab Op 545.

A union's interest in information will not always predominate over other legitimate employer interests. When the request is for information about matters occurring outside the unit, the union must demonstrate its relevance. Information about non-unit employees is not presumptively relevant. *City of Pontiac*, 1981 MERC Lab Op 57. Financial information is not presumptively relevant. *Sunrise Health & Rehab Cnt*, 332 NLRB No. 133 (2000); *STB Investors, Ltd*, 326 NLRB 1465, 1467 (1998). Information about an employer's subcontracting of work that could allegedly be performed by unit members is also not presumptively relevant. *AATOP LLC*,

d/b/a Excel Rehab and Health Cnt, 336 NLRB No. 10, fn 1 (2001), enf'd 331 F3d 100 (CA DC, 2003). An employer does not have a duty to provide a union with information about subcontracting unless and until the union demonstrates the relevance of the information, or the facts surrounding the request are such as to make the relevance of the information plain. *Island Creek Coal Co*, 292 NLRB 480, 490, (1989), enf'd 899 F2d 1222 (CA 6, 1990); *Ohio Power Co*, 216 NLRB 987 (1975).

The NLRB's approach to a union's request for information about subcontracting is illustrated by *Dexter-Fastener Technologies, Inc*, 321 NLRB 612 (1996), enf'd 145 F3d 1330 (CA 6, 1998). In that case, the NLRB found that a union that had not demonstrated relevancy was not entitled to information that it had requested about the employer's existing subcontracts. It held, however, that the employer was required to provide presumptively relevant information concerning unit employees contained in the same request without an explanation of its relevancy. The information the employer was required to provide included the average total labor cost per hour for each unit employee, and the total number of hours worked by unit members.

In this case, Charging Party requested the "scope and terms of service" of two non-unit employees. Charging Party's president testified that before she could decide whether to file a grievance, she needed to know the employees' duties, pay and whether they were performing bargaining unit work. Charging Party's June 9, 2005 information request, however, did not explain the relevance of the requested information and its relevance is not plain. I find, therefore, that Respondent was not obligated to respond to Charging Party's information request. Based on the above findings of fact and conclusions of law, I recommend that the Commission issue the order set for 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: