STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF DETROIT,
Public Employer-Respondent,

Case No. C06 B-032

-and-

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 517M,
Labor Organization-Charging Party.
_____/

APPEARANCES:

City of Detroit Law Department by Andrew Jarvis, Esq., for Respondent

Doris Houston, Second Vice-President, Local 517M, for Charging Party

DECISION AND ORDER

On March 20, 2007, Administrative Law Judge (ALJ) Julia C. Stern issued her Decision and Recommended Order in the above matter finding that Respondent, City of Detroit, 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 ALJ's Decision and Recommended Order was served on the interested parties in accord with Section 16 of the Act. Pursuant to Rule 76, R423.176 of the General Rules of the Employment Relations Commission, exceptions to the Decision and Recommended Order, along with two copies of each exhibit submitted at the hearing, were due on April 12, 2007.

No exceptions were filed on or before the specified date. Rather, we received Respondent's exceptions and two copies of exhibits 1-4 on April 13, 2007. Respondent did not file the required two copies of exhibits 5 and 6 at that time. On April 16, 2007, Respondent filed a Motion to File Late Exceptions to the Decision of the Administrative Law Judge[1]. In Respondent's motion,

[1] We note that Rule 176(8) of the Commission's rules, 2002 AACS, R 423.176(8) provides, in relevant part:

> A request for extension of time in which to file exceptions . . . shall be filed in writing and filed with the commission before expiration of the required time for filing. . . . One extension of not longer than

Respondent asserted that its legal assistant had attempted to hand deliver the exceptions on April 12, 2007, but was delayed by a "transportation problem" and arrived after our offices had closed. Respondent attached the affidavit of its legal assistant in support of the motion.[2]

By letter dated April 18, 2007, we notified the parties that the motion would be granted if Charging Party, Service Employees International Union, Local 517M, consented to the late submission of the exceptions and if the copies of exhibits 5 and 6 were submitted. The April 18, 2007 letter also informed the parties that if documentation of the Charging Party's consent to the Commission's acceptance of the untimely exceptions and two copies of exhibits 5 and 6 were not received before the close of business on May 1, 2007, the Commission would issue an order adopting the Administrative Law Judge's Decision and Recommended Order.

On April 30, 2007, we received Respondent's request that it be granted a seven day extension, until May 8, 2007, to provide the required documents. On May 2, 2007, Respondent submitted copies of the two exhibits not provided previously. Later the same day, a member of our staff telephoned Respondent's attorney and informed him that while the Commission's staff did not have authority to grant the requested extension, he could submit documentation of Charging Party's consent to the filing of the late exceptions, and said documents would be submitted to the Commission. Respondent's attorney was also advised that if he wished to submit documentation of Respondent's reasons for seeking an extension of the May 1, 2007 deadline those documents would also be submitted to the Commission. Respondent's proposed May 8, 2007 deadline has passed and Respondent has filed nothing further.

It is well established that the date of filing of exceptions is the date the document is received at the Commission's office. See *City of Detroit (Fire Dep't)*, 2001 MERC Lab Op 359, 360; *City of Detroit (Finance Dep't, Income Tax Div)*, 1999 MERC Lab Op 444,445. See also *Police Officers Ass'n of Michigan*, 18 MPER 14 (2005); *Frenchtown Charter Twp*, 1998 MERC Lab Op 106, 110 aff'd sub nom *International Union v Frenchtown Charter Twp*, unpublished opinion per curiam of the Court of Appeals, issued November 2, 1999 (Docket No. 211639), 1999 WL 33432169. When the Administrative Law Judge's Decision and Recommended Order was served on the parties, the accompanying letter explicitly stated that the exceptions must be received at a Commission office by the close of business on the specified date. Accordingly, we hereby adopt the recommended order of the Administrative Law Judge.

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30 days will be granted to the moving party upon the filing of the request. Subsequent extensions will be granted only upon a showing of good cause.

[2] According to her affidavit, Respondent's legal assistant left Respondent's offices about ninety minutes before the scheduled closing time for our offices. Pursuant to Rule 176(8), Respondent could have filed a request for extension of time as late as 5:00 p.m. on April 12, 2007, the date the exceptions were due. Respondent could have faxed the request to our offices and received additional time to transmit its exceptions instead of taking the chance that a "transportation problem" would prevent the timely delivery of the exceptions.

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

_____
Christine A. Derdarian, Commission Chair

_____
Nino E. Green, Commission Member

_____
Eugene Lumberg, Commission Member

Dated:_____

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APPEARANCES:

Article I. Andrew Jarvis, Esq., City of Detroit Law Department, for Respondent

Doris Houston, Second Vice-President, Local 517M, for Charging Party

DECISION AND RECOMMENDED ORDER
Article II. 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, this case was heard at Detroit, Michigan on September 15, 2006, before Administrative Law Judge Julia C. Stern for the Michigan Employment Relations Commission. Based upon the entire record, including evidence and testimony presented at the hearing, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

The Service Employees International Union (SEIU), Local 517M filed this charge against the City of Detroit on February 17, 2006, alleging that Respondent violated its duty to bargain in good faith under Section 10(1)(e) of PERA by failing or refusing to provide Charging Party with information it requested on August 5, 2005 relevant to a grievance or potential grievance. Charging Party alleges that Respondent unlawfully failed to provide the information or respond to either the August 5, 2005 request or a second request for the same information made on January 25, 2006.

Findings of Fact:

Charging Party represents a bargaining unit consisting of approximately sixty-eight employees in Respondent's health department. Members of Charging Party's unit have several

different types of paid leave, including sick leave, leave to care for ill family members, and vacation. Accrued leave is banked for the employee's future use. The FMLA, a federal statute, requires an employer to allow employees to take time off because of the birth or adoption of a child or because of a serious health condition experienced by the employee or a close family member. It does not require the employer to pay employees for this time off. When members of Charging Party's unit request leave for purposes covered by the FMLA, they are asked to designate the leave bank or banks from which they wish to be paid for the time. If employees have no accrued leave time in any of these banks, their FMLA leave is unpaid.

In 2005, Charging Party began to receive complaints from some of its members that Respondent was asking for an unusual amount of medical documentation before approving or extending their FMLA leaves. The information Charging Party received from its members seemed to suggest that Respondent was not consistent in the documentation it required. Sometime in the summer of 2005, Charging Party filed a grievance over this issue. During this same period, employees also began to complain to Charging Party that Respondent was not charging leave to the banks the employees had designated in their FMLA requests. On August 5, 2005, Charging Party sent a letter to Duane Yuille, human resources manager for Respondent's health department, requesting the following information:

1. All documents and records over the past five (5) years relating to FMLA (Family and Medical Leave Act), including postings, memos, internal reports, policy statements, regulations and correspondence with employees or the union.

2. Records of requests for Medical and Family Leave by all employees (union and nonunion, including supervisors) over the past five (5) years and the employer's reasons for granting or not granting each request in a twelve (12) month period or less.

3. The attendance records of all employees (union and nonunion, including supervisors) over the past five (5) years.

The letter asked Yuille to provide the information by August 19, 2005. It stated that if any of the above material was unavailable, Respondent should provide the remaining items as soon as possible.

Respondent did not respond to Charging Party's August 5 request. However, on or about September 17, 2005, the parties held a special conference at Charging Party's request to discuss Respondent's FMLA policies. At this conference, Respondent gave Charging Party a copy of the City-wide FMLA policy that had been in effect since 1998. This policy states generally that employing departments can require medical documentation to substantiate leaves for serious health conditions of the employee or member of his or her immediate family, can require periodic reports for employees on leave for FMLA purposes, and can require a medical statement verifying the employee's fitness to return to work. Charging Party asked various questions about the City's procedures for approving FMLA leave for employee illness or illness of a family member. Respondent provided written answers to these questions in a letter sent to Charging Party president Yolanda Langston on October 17, 2005.

On January 17, 2006, the parties held a meeting to discuss the FMLA grievance filed by Charging Party the previous summer. At this meeting, Charging Party told Respondent that it had received complaints that Respondent was not charging the leave banks that the employees had designated for their FMLA leave. It also asked Respondent to copy it on all letters to Charging Party's members relating to FMLA leave. Respondent's labor relations representative pointed out that under the City's 1998 FMLA policy, employees using FMLA leave because of their own illness were required to utilize all the accrued time in their sick leave banks before they could use accrued vacation or other accrued leave. Respondent told Charging Party that if it received information that the City's written FMLA policy was not being followed it should bring the matter to the attention of Respondent's human resources department. Respondent also told Charging Party that it would be too burdensome to send Charging Party a copy of every FMLA letter.

On January 25, 2006, Charging Party sent Yuille another copy of its August 5, 2005 information request, labeling the letter "second request." When Charging Party did not receive a response to this letter, it filed the instant unfair labor practice charge. A hearing on the charge was originally scheduled for April 26, 2006. The hearing was rescheduled several times. On August 4, 2006, I participated in a settlement conference with the parties. After this conference, I rescheduled the hearing for September 15, 2006 on Respondent's representation that it would begin providing the requested information for members of Charging Party's unit.

On September 11, 2006, Respondent labor relations representative Dwight Thomas sent Charging Party the following letter:

> This correspondence is to confirm our telephone conversation on Friday September 8, 2006,regarding the above captioned request for information. Under the current request, which has been modified by ALJ Julia Stern, the only information to be released by the City of Detroit is information regarding SEIU members. Pursuant to our conversation, the request for information has been further modified as it relates to attendance records of SEIU members who have either requested FMLA and been denied or members who have been granted FMLA. *It is now agreed that the City does not have to produce the attendance records for SEIU members who have not requested an FMLA leave.* [Emphasis in original]
>
> Producing this information is a time consuming job and now that we have narrowed the scope of the request the time to compile the information has been greatly reduced. First, we need to identify the SEIU members for the past five (5) years. Secondly, we have to determine who has requested an FMLA leave and whether the request has been denied or granted. After we have identified the target individuals, we can then ascertain how much time it will take to produce the requested information and exactly how much information is required to be produced.

Attached is the City's response to Union request #1 of the August 5, 2005 and January 25, 2006 requests for information. [See the following documents attached to this letter]

City of Detroit's Policy Directive on the Application of the Family Medical Leave Act of 1993 to City Service.[3]

U. S. Department of Labor Program Highlights and "Your Rights Under the Family Medical Leave Act."

Special Conference response addressed to the Union by Kimberly Hall, dated October 17, 2005

Fourth Step response addressed to the Union by Sharlena Chaney dated March 29, 2005

The City's Policy Directive on Application of FMLA Act of 1993 to City Service and the U.S. Department of Labor Program Highlights have been communicated and/or distributed to employees of the Union.

"Your Rights Under the Family and Medical Act of 1993" has been posted in the Human Resources Department in various City Departments.

The other two (2) requests from the Union were for the FMLA request and the attendance records mentioned previously in this letter.

The Union and the City are scheduled to meet at MERC on Friday, September 15, 2006 at 3:00 pm regarding this matter. As a result of the September 8, 2006 conversation between president Yolanda Langston and this writer, it is recommended that the parties mutually agree to have a telephone conference with the parties and ALJ Stern. The parties appear to be making good progress in resolving this matter without the necessity of a MERC hearing.

[3] This is the 1998 policy given to Charging Party at the October 17, 2005 special conference.

> Upon receipt of this letter, please call me in order that we may discuss how best to proceed regarding the Friday hearing date.
>
> Charging Party responded in a letter dated September 13, 2006:
>
> In response to your letter dated September 11, 2006 SEIU is not making any requests to modify a request that was already given by ALJ Stern [sic]. *SEIU is not in agreement that the City does not have to produce the attendance records for SEIU members who have not requested an FMLA leave.* SEIU would like the City to honor all requests that were made before ALJ Julia Stern at the meeting held on August 4, 2006 and will accept this information without prejudice to its position that SEIU is entitled to all documents and information called for in the request. [Emphasis in original]

Discussion and Conclusions of Law:

In order to satisfy its bargaining obligation under Section 10(1)(e) of PERA, an employer must supply in a timely manner information requested by the union which will permit it to engage in collective bargaining and police the administration of the contract. *City of Detroit,* 18 MPER 78 (2005); *City of Battle Creek, Police Dept*, 1998 MERC Lab Op 684, 687; *Wayne Co*, 1997 MERC Lab Op 679*; Ecorse Pub Schs*, 1995 MERC Lab Op 384, 387. This obligation extends not only to information relevant to an existing grievance, but also to information necessary for the union to determine whether to file a grievance. *NLRB v Acme Industrial Co,* 285 US 432, 436, (1967). The standard is a broad one. The employer has a duty to disclose the requested information as long as there exists a reasonable probability that the information will be of use to the union in carrying out its statutory duties. *Wayne Co; SMART*, 1993 MERC Lab Op 355, 357. Where the information sought concerns the wages, hours or working conditions of bargaining unit employees, the information is presumptively relevant and the employer must provide it unless it rebuts the presumption. *City of Detroit, Dept of Transp*, 1998 MERC Lab Op 205; *Wayne Co*. When the request is for information with respect to matters occurring outside the unit, the union must demonstrate its relevance. Information about nonunit employees is not presumptively relevant. *City of Pontiac*, 1981 MERC Lab Op 57.

Charging Party does not dispute that it received all the information sought in paragraph one of its August 5, 2005 request on September 11, 2006, when Thomas sent Charging Party a letter with certain documents attached. However, Respondent did not give Charging Party these documents until it had filed an unfair labor practice charge and the parties were on the verge of a hearing. More than a year elapsed between Charging Party's request and Respondent's reply. Respondent provided no explanation for its delay. An employer must not only supply a union with relevant information relevant, it must do so within a reasonable time after the union requests the information. An employer acts in bad faith when it simply ignores a union's request, forcing it to file an unfair labor practice charge. *Detroit Pub Schs*, 1990 MERC Lab Op 624 (no exceptions). I

conclude that Respondent violated its duty to bargain in good faith by failing to supply the information requested in paragraph one of Charging Party' August 5, 2005 letter in a timely manner.

In paragraph two of its August 5, 2005 request for information, Charging Party sought to obtain all the FMLA leave requests and the Respondent's responses to these requests for members of its bargaining unit and all other City employees over a five year period. I find that information pertaining to FMLA leaves granted or denied to members of Charging Party's bargaining unit was presumptively relevant as it concerned the working conditions of unit members. As discussed above, information relating to nonunit employees is not presumptively relevant. However, in this case Charging Party sought information about FMLA leaves granted or denied to both unit and nonunit employees to determine whether Respondent was applying consistent standards in requesting medical documentation for such leaves. At the time Charging Party made its request for this information, it had a pending grievance on this subject, and Respondent does not deny that it knew why Charging Party sought the information. I conclude that the information Charging Party sought in paragraph two of its August 5 request was relevant to Charging Party's statutory duty to police the collective bargaining agreement and that Respondent had a duty to provide this information in a timely manner.

Respondent's defense to the allegation that it unlawfully failed to provide the information sought in paragraph two is that the request was unreasonably burdensome. According to Respondent, the requested information includes records for almost 17,000 employees. The FMLA records Charging Party seeks are not part of a computerized database. To collect these records, Respondent must review individual personnel employee files and retrieve and copy the pertinent documents. Moreover, according to Respondent, the staff it has available to perform these tasks has been reduced by layoffs. For all these reasons, according to Respondent, it was not possible for it to supply the records mentioned in paragraph two of the information before the day of the hearing. Respondent stated at the hearing that it was still in the process of compiling this information.

When a union requests information that the employer does not keep in the form requested, the employer must, at the minimum, grant the union access to its files or bargain in good faith over the allocation of the cost of compiling the specific information requested. *Michigan State Univ*, 1986 MERC Lab Op 407; *City of Detroit (Fire Dept)*, 1988 MERC Lab Op 1001 (no exceptions). If an employer claims that compiling the data will be unduly burdensome, it must assert that claim within a reasonable period of time after the request is made, and not for the first time at the unfair labor practice hearing. *Oil, Chemical & Atomic Workers Local Union No 6-418, AFL-CIO v NLRB*, 711 F2d 348, 353, (CA DC, 1983). As noted above, an employer cannot lawfully ignore a request for relevant information. When Respondent received Charging Party's August 5 request for the FMLA records, it had the option of compiling the information itself, providing Charging Party with access to its records, or bargaining in good faith with Charging Party over the allocation of the cost of compiling the information. If Respondent believed that Charging Party's request for the FMLA records of all City employees was unreasonable, it had the obligation to notify Charging Party of its position within a reasonable time after receiving Charging Party's request. After explaining the difficulty of collecting this information for all City employees, Respondent could have offered to split the cost of supplying the information or suggested an alternative, such as supplying the records only from selected nonunit classifications or departments other than the health department in addition to the records for bargaining unit employees. I conclude that Respondent did not satisfy its

obligations by ignoring Charging Party's request for relevant information until it had filed an unfair labor practice charge.

Paragraph three of Charging Party's August 5, 2005 request for information asks for attendance records for both unit and nonunit employees for the past five years. Respondent does not dispute the relevance of attendance information for employees in the unit, but argues that Charging Party has failed to demonstrate how attendance records for nonunit employees could reasonably be of use to it in carrying out its statutory duties. As discussed above, a union has the duty to demonstrate the relevance of information pertaining to employees outside its bargaining unit. An employer has no statutory duty to respond to an inappropriate request for information, and an employer's failure to respond to a union's request for information that is not presumptively relevant does not shift the burden of showing relevance to the employer. *State Judicial Council*, 1991 MERC Lab Op 510, 512.

At the hearing, Charging Party explained that it wanted to examine the attendance records for unit and nonunit employees to see how Respondent was recording time off for FMLA leave, particularly when someone called in and requested FMLA leave for a single day. Insofar as the record discloses, Charging Party did not even raise the issue of leave banks being improperly charged until the parties' January 2006 grievance meeting, and even at that time there was no discussion of the relevance of attendance records to this dispute. I conclude that Respondent did not know or have reason to know why Charging Party sought the attendance records of nonunit employees prior to the hearing in this case, and that Charging Party has still not explained how the attendance records for nonunit employees who did not request FMLA leave was relevant to the performance of its statutory representation duties. I conclude, therefore, that Respondent had and has no duty to provide Charging Party with attendance records for the nonunit employees. I also conclude that Respondent violated its duty to bargain in good faith by failing to provide Charging Party with attendance records for employees in its bargaining unit in a timely manner.

In sum, I find that Respondent violated its duty to bargain in good faith by failing to provide Charging Party, in a timely manner, with the information about Respondent's FMLA policies that Charging Party sought in paragraph one of its August 5, 2005 request for information. I also find that Respondent unlawfully failed to supply Charging Party, in a timely manner, with the FMLA and attendance records for members of its bargaining unit Charging Party sought in paragraphs two and three of its August 5 request. I find that the FMLA records for nonunit employees Charging Party requested in paragraph two of this letter were relevant in this case to the performance of its statutory duties, and that Respondent waived its right to assert that this request was unduly burdensome by failing to raise this issue at the proper time and offer Charging Party an alternative. However, I find that Respondent had no obligation to provide Charging Party with attendance records for nonunit employees as Charging Party failed to show the relevance of these documents. In accord with these findings, I recommend that the Commission issue the following order.

(a) RECOMMENDED ORDER

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

1. Cease and desist from:

    a. Failing to respond in a timely manner to requests by Charging Party Service Employees International Union, Local 517M for information relevant to its role as bargaining agent for employees of Respondent;

    b. Refusing to provide Charging Party, in a timely, manner with information necessary and relevant to the performance of its statutory duties.

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

    a. To the extent that it has not yet done so, furnish the Charging Party with the following information:

        1. Records of requests for Medical and Family Leave by all employees, including members of Charging Party's unit and other employees, between August 2000 and August 2005 and Respondent's reasons for granting or not granting each request in a twelve (12) month period or less.

        2. Attendance records for all employees in Charging Party's bargaining unit for the period between August 2000 and August 2005.

    b. Post the attached notice to employees in conspicuous places on Respondent's premises, including all places where notices to employees are customarily posted, for a period of thirty consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Julia C. Stern
Administrative Law Judge

Dated: _____