STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF DETROIT,
Public Employer-Respondent,

Case No. C08 E-102

-and-

MICHIGAN AFSCME COUNCIL 25 AND ITS
AFFILIATED LOCALS 23 AND 2394,
Labor Organizations-Charging Parties.
_____/

APPEARANCES:

Cassandra D. Harmon-Higgins, Esq., Staff Attorney, Michigan AFSCME Council 25, for the Charging Parties

DECISION AND ORDER

On July 25, 2008, Administrative Law Judge Julia C. Stern issued a Decision and Recommended Order in the above matter finding that Respondent has engaged in and was engaging in certain unfair labor practices, and recommending that we order 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 the Act. Pursuant to Rule 76, R423.176 of the General Rules of the Employment Relations Commission, exceptions to the Decision and Recommended Order were due on August 18, 2008.

No exceptions were filed on or before the specified date. Rather, we received exceptions from Respondent on August 20, 2008. Although the envelope in which the exceptions were mailed was postmarked on August 18, 2008, it is well established that the date of filing of exceptions is the date the document is received at the Commission's office, not the date posted. See e.g. *Amalgamated Transit Local* 26, 20 MPER 1 (2007); *Wayne Co Cmty College Dist*, 18 MPER 54 (2005); *Police Officers Ass'n of Michigan*, 18 MPER 14 (2005); *City of Detroit (Fire Dep't)*, 2001 MERC Lab Op 359, 360; *Frenchtown Charter Twp*, 1998 MERC Lab Op 106, 110 aff'd sub nom *Int'l Union v Frenchtown Charter Twp*, unpublished opinion per curiam of the Court of Appeals, issued November 2, 1999 (Docket No. 211639), 1999 WL 33432169.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 as our final order.

ORDER

IT IS HEREBY ORDERED that the Order recommended by the Administrative Law Judge shall become the Order of the Commission.

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: _____

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
EMPLOYMENT RELATIONS COMMISSION

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APPEARANCES:

Cassandra D. Harmon-Higgins, Esq., Staff Attorney, Michigan AFSCME Council 25, for the Charging Parties

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON SUMMARY DISPOSITION

On May 29, 2008, Michigan AFSCME Council 25 and its affiliated Locals 23 and 2394 filed the above charge against the City of Detroit pursuant to Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210. Charging Parties allege that Respondent violated its duty to bargain in good faith under Section 10(1) (e) by refusing or failing to provide them in a timely manner with information relevant to collective bargaining and the administration of their collective bargaining agreements.

The charge was assigned to Administrative Law Judge Julia C. Stern of the State Office of Administrative Hearings and Rules pursuant to Section 16 of PERA. Pursuant to Rule 165 of the Commission's General Rules, 2002 AACS, R 423.165, on June 9, 2008, I issued an order to Respondent to show cause on or before June 30, 2008 why it should not be found guilty of an unfair labor practice based on the facts as set forth in the charge. A copy of the charge was served on Respondent by certified mail along with the order. According to the return receipt card, these documents were received and signed for by Respondent on June 11, 2008. Respondent did not file a response to the order to show cause, and neither party requested oral argument.

The Unfair Labor Practice Charge and Facts:

The facts, as set forth in the charge and attachments, are as follows. Charging Party Council 25 and Charging Party Local 23 represent a bargaining unit of nonsupervisory employees of Respondent. Council 25 and Charging Party Local 2394 represent a bargaining unit of supervisory employees of Respondent. These units included employees of Respondent's housing department until approximately June 2004, when the Detroit Housing Commission, an independent public entity, took over the functions of that department. On or about June 30, 2004, Respondent laid off its employees formerly employed in the housing department, including approximately one hundred members of Local 23 and seven members of Local 2394.

In June 2004, both Local 23 and Local 2394 had collective bargaining agreements with Respondent that gave their laid off members displacement (bumping) and recall rights. Both collective bargaining agreements stated that no vacancy in a given classification would be filled except by recall until employees laid off or demoted from the class had been restored to the class. Recall, reemployment and restoration rights continued for a period of four years from the last date of an employee's separation from Respondent's employment under both collective bargaining agreements. Both contracts explicitly provided that information concerning recall lists for classifications covered by the agreements would be made available to Council 25 and to the local presidents.

At the time they were laid off in 2004, the former housing department employees in Charging Parties' bargaining units were given three choices. First, they could unconditionally accept employment with the Detroit Housing Commission, giving up any recall or displacement rights they might have under the collective bargaining agreements. Second, they could accept employment with the Detroit Housing Commission until such time as Respondent offered them a position in another department. Finally, they could choose to remain on layoff until they were offered another position with Respondent.

In December 2007, Council 25 and Respondent held a special conference to discuss the reemployment of former housing department employees. At this conference, Albert Garrett, Council 25 president, made an oral request to Barbara Wise-Johnson, Respondent's labor relations director, for the following information: (1) a list of all former housing department employees laid off in June 2004 and/or the effective dates of their layoffs; (2) seniority dates for all the laid off employees; and (3) a list of all employees hired and/or promoted since the effective date of the layoffs.1 Between December 2007 and February 2008, Respondent neither provided the requested information nor responded to Garrett's request. As a result, in February 2008, Council 25 requested another special conference. Sometime after February 2008, Respondent gave Charging Parties some sort of list of laid off former housing employees. The second special conference was held in March 2008.

On April 4, 2008, Garrett sent the following letter to Barbara Wise-Johnson:

> As of today, Michigan AFSCME Council 25 has yet to receive a written answer to the referenced issue of the special conference regarding efforts of the City toward

1 It is not clear from the charge whether this was a request for all employees hired or promoted by Respondent in any classification between June 2004 and December 2007, or whether the request was limited to classifications covered by the Charging Parties' contracts. However, according to the charge, Respondent did not ask for clarification.

> reemploying laid off Housing Department employees. During the course of said conference, the Union identified several errors with regard to the status of laid off Housing Department employees on the seniority sheet and sought explanation or correction.
>
> Further the Employer could not advise of any other efforts pursued for placement other than the strict application of seniority in regard to recall.
>
> Finally, AFSCME is requesting the listing of all employees hired and/or promoted since the effective date of the Housing Department layoffs.

In their charge, Charging Parties assert that the April 4, 2008 letter constituted a request for: (1) a written answer to the issues addressed at the special conference, as required by Article 12 of the parties' contract; (2) a correction of the errors on the lists provided to Charging Parties after February 2008 and/or an explanation for the discrepancies between information on the list and information obtained by Charging Parties; and (3) a list of all employees hired and/or promoted since the effective date of the housing department layoffs. As of May 29, 2008, the date the charge was filed, Respondent had not provided Charging Parties with the information requested on April 4 or responded to its request.

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 requested information which will permit the union to engage in collective bargaining and to police the administration of the contract. *Wayne County*, 1997 MERC Lab Op 679; *Ecorse Public Schools*, 1995 MERC Lab Op 384, 387. Where the information sought relates to the wages, hours or working conditions of bargaining unit employees, the information is presumptively relevant and will be ordered disclosed unless the employer rebuts the presumption. *City of Detroit, Department of Transportation*, 1998 MERC Lab Op 205; *Wayne County*, *supra*. See also *EI DuPont de Nemours & Co v NLRB*, 744 F2d 536, 538; (CA 6, 1984). When seeking information regarding employees outside the bargaining unit, there is no presumption of relevance and the union must affirmatively show the relevance of the requested information to bargaining issues in order to establish the right to such information. *SMART*, 1993 MERC Lab Op 355; *City of Pontiac*, 1981 MERC Lab Op 57. However if the union establishes that requested information regarding employees outside the unit is relevant, then the employer must provide it. The standard applied is a liberal discovery-type standard. 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 County*, *supra; SMART*, 1993 MERC Lab Op 355, 357. See also *Pfizer, Inc*, 268 NLRB 916 (1984), enforced 763 F2d 887 (CA 7, 1985).

An employer's unreasonable delay in furnishing relevant information is as much a violation of its duty to bargain as a refusal to provide the information. *Valley Inventory Service*, 295 NLRB 1163, 1166 (1989). There is no per se rule for what constitutes unreasonable delay. Rather, what is required is a reasonable good faith effort to respond to the request as promptly as circumstances allow. *West Penn Power Co*, 339 NLRB 585, 587 (2003); *Woodland Clinic*, 331 NLRB 735, 737 (2000); *Good Life Beverage Co*, 312 NLRB 1060, 1062 fn. 9 (1993). The complexity and extent of

information sought, its availability, and the difficulty in retrieving the information are all factors to be considered in determining whether the delay is unreasonable. *Samaritan Medical Center*, 319 NLRB 392, 398 (1995). However, when a union makes a request for relevant information, the employer has a duty to supply it in a timely fashion or adequately explain why the information was not furnished. *Beverly California Corporation f/k/a Beverly Enterprises*, 326 NLRB 153, 157 (1998). Even if a union's request is ambiguous or overbroad, an employer cannot simply refuse to comply, but must request clarification and/or comply with the request to the extent it encompasses necessary and relevant information. *In re Lexus of Concord, Inc*, 330 NLRB 1409, 1417 (2000); *Keauhou Beach Hotel*, 298 NLRB 702 (1990).

According the charge, in December 2007 Council 25 orally requested from Respondent a list of all the former housing department employees laid off on or about June 2004 and their seniority dates. It also requested a list of all employees hired or promoted since their layoffs. To the extent that Charging Parties requested information about the employment status of laid off unit members who continued to have reemployment rights, this information was presumptively relevant as it related directly to the terms and conditions of employment of the unit. Moreover, Charging Parties had the right to police the recall provisions of their collective bargaining agreements as applied to their members laid off in June 2004. A list of all Charging Parties' members affected by the layoff and their seniority dates was obviously of use to Charging Parties in pursuing this issue, as was information about the filling of vacancies which might have been filled by, or improperly denied to, laid off bargaining unit members. I find that Charging Parties have established that all the information Charging Parties requested in December 2007 was relevant to their duty to administer their contracts.

Respondent did not immediately provide Charging Parties with the information requested in December 2007 or provide an explanation of why it did not do so. Sometime after February 2008, Respondent gave Charging Parties the list of laid off former housing department employees. However, there were discrepancies between information contained in the list and information Charging Parties possessed. At the March special conference, and in its April 8, 2008 letter, Charging Parties requested a corrected list and/or an explanation of the discrepancies identified at that conference. It also repeated its request for the list of employees hired or promoted since the June 2004 layoffs. Respondent did not supply this information, provide an explanation for why it did not do so, or request clarification of Charging Parties' request.

I find that Respondent violated its duty to bargain in good faith under Section 10(1) (e) of PERA by failing to provide the list of all former housing department employees in Charging Parties' bargaining units laid off in or around June 2004, the effective date of their layoffs, and the seniority dates of these employees within a reasonable period of time after Charging Parties requested this information in December 2007. As noted above, Respondent did not provide either the information or an explanation of why it did not until after Charging Party requested a second special conference in February 2008. I also find that Respondent violated its duty to bargain in good faith by failing to respond to Charging Party's December 2007 and March and April 2008 requests for information about employees hired and promoted after the June 2004 layoffs. Finally, I find that after Charging Parties' April 8, 2008 request, Respondent had an obligation to provide them with an updated list of housing department employees laid off in or around June 2004 which corrected or explained the discrepancies identified at the March 2008 special conference between information on Respondent's

first list and information possessed by Charging Parties. I find, however, that Respondent did not violate its duty to bargain by failing to provide Charging Parties with written answers after the special conferences held in December 2007 and March 2008. Charging Parties' demand for a written position statement was not a request for "information." Even if Respondent violated its collective bargaining agreements by failing to provide written answers, this was an isolated breach of contract, not a violation of its duty to bargain in good faith. In accord with the conclusions of law set forth above, I recommend that the Commission issue the following order.

RECOMMENDED ORDER

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

1. Cease and desist from refusing to provide AFSCME Council 25 and its affiliated Locals 23 and 2394, in a timely fashion, with information that is relevant and necessary to its role as the bargaining agent for employees of Respondent.

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

a. Provide AFSCME Council 25 and its affiliated Locals 23 and 2394 with the following information:

1. A list of all employees hired and/or promoted by Respondent after members of Local 23 and Local 2394 employed in the housing department were laid off in or around June 2004.

2. A seniority list of all former housing department employees laid off in or around June 2004 which corrects and/or explains the discrepancies between information previously provided by Respondent and information possessed by the unions, as identified by the parties at their March 2008 special conference.

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 (30) consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern
Administrative Law Judge
State Office of Administrative Hearings and Rules

Date: _____