STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF DETROIT,
Public Employer-Respondent,

Case No. C10 A-025

-and-

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

APPEARANCES:

Miller Cohen P.L.C., Richard G. Mack, Jr. Esq., for Charging Party

DECISION AND ORDER

On March 10, 2010, Administrative Law Judge Julia C. Stern issued her 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

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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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DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE ON SUMMARY DISPOSITION

On January 27, 2010, Charging Party American Federation of State, County and Municipal Employees (AFSCME), Council 25, filed the above charges against the City of Detroit alleging that the Respondent violated Sections 10(1)(a) and (e) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210. Pursuant to Section 16 of PERA, the charge was assigned to Administrative Law Judge Julia C. Stern of the State Office of Administrative Hearings and Rules.

On February 3, 2010, pursuant to my authority under Rules 165(1), 2(f) and (3) of the Commission's General Rules, AACS 2002 423.165, I issued an order to Respondent to show cause why an order should not be issued finding it to have violated its duty to bargain in good faith under Section 10(1) (e) by failing to provide Charging Party with information about retiree health care benefits requested by it on October 27, 2009. Respondent was given three weeks from the date of the order to respond in writing. The order was served on Respondent by certified mail on February 17, 2010. Respondent did not file a response to the order or request an extension of time to do so.

The Unfair Labor Practice Charge:

Charging Party represents a bargaining unit of Respondent's employees. On October 27, 2009, Charging Party's counsel sent Respondent a letter requesting information. The letter stated that the information was relevant to a pending contractual grievance challenging Respondent's changes to the health care coverage of retirees. The letter asked for the following information:

1. This question applies to all AFSCME retirees who worked for the City of Detroit. Provide documentation reflecting any changes in the retirees' health care coverage, costs or plans, which were made from January 2006 to date. This includes, but is not limited to, all documentation showing changes in co-pays, the amount of employer funding, and the ability to allow the retirees the option of selecting alternative plans offered by the City. The documents are to include information from the City's health care administrators/providers and the City's benefits department reflecting such changes made.

2. This question applies to all AFSCME retirees who worked for the City of Detroit. Provide documentation that describes all health care plans under which all retirees received care coverage, from January 2006 to date. The information should list the complete details of the plan, coverage, employee cost, employer cost, and retiree coverage options, for each plan that is available to AFSCME City retirees. It should also include any changes to such plans, from January 2006 forward.

3. This question applies to all AFSCME retirees who worked for the City of Detroit. Describe specifically any changes to employee health care that the City has made from January 2006 through the present. This includes details of the plan, coverage, employee cost, employer cost, and retiree coverage options, for each plan that is available to AFSCME City retirees.

The letter asked Respondent to provide the information within ten business days of the date of the letter, and told Respondent to direct any questions or concerns regarding the information sought to Charging Party's counsel.

Charging Party asserts in the charge that the grievance for which it sought the information is now scheduled for arbitration. It asserts that Respondent has not provided any of the information requested.

Discussion and Conclusions of Law:

It is well established that 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 police the administration of the contract. *Wayne Co*, 1997 MERC Lab Op 679; *Ecorse Pub Schs*, 1995 MERC Lab Op 384, 387. Where the information sought relates to discipline or 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 Co, supra.* See also *EI DuPont de Nemours & Co v NLRB*, 744 F2d 536, 538 (CA 6, 1984). Information about nonunit employees is not presumptively relevant, and a union must demonstrate relevance in order to obtain this information. *Traverse City Pub Schs*, 1969 MERC Lab Op 395 (no exceptions); *City of Pontiac*, 1981 MERC Lab Op 57, 62 (no exceptions); *SMART*, 1993 MERC Lab Op 355. However, 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 Co; SMART, 1993 MERC Lab Op 355, 357. See also *Pfizer, Inc*, 268 NLRB 916 (1984), *enfd* 763 F2d 887 (CA 7, 1985). A union may establish the relevance of information pertaining to nonunit employees by demonstrating its relevance to a pending grievance. *SMART; City of Detroit*, 20 MPER 57 (2007) (no exceptions).

An employer must respond to a union's request for relevant information in a timely manner. *Leland Stanford Junior Univ*, 307 NLRB 75, 80 (1992). An unreasonable delay in furnishing such information is as much of a violation as a refusal to furnish the information at all. *Valley Inventory Service*, 295 NLRB 1163, 1166 (1989). An employer has a duty to timely furnish such information absent presentation of a valid defense. See, e.g., *Mary Thompson Hospital*, 296 NLRB 1245 fn. 1 (1989), *enfd* 943 F2d 741 (CA 7, 1991); *NLRB v Illinois-American Water Co*, 933 F2d 1368, 1377-1378 (CA 7, 1991), *enfd* 296 NLRB 715 (1989). The Commission has repeatedly found employers guilty of violating their duty to bargain by unreasonably delaying their response to unions' requests for relevant information. See *Detroit Pub Schs*, 2002 MERC Lab Op 201 (no exceptions)(six month unexplained delay was unreasonable); *Detroit Pub Schs*, 1990 MERC Lab Op 624 (no exceptions) (employer committed unfair labor practice when it failed to respond to union's request for two or three months, and provided information on the day of the unfair labor practice hearing); *City of Detroit*, 1994 MERC Lab Op 416 (no exceptions) (nine month delay was unreasonable); *Oakland Univ*, 1994 MERC Lab Op 540 (nine month delay);*Wayne Co ISD*, 1993 MERC Lab Op 317 (no exceptions) (seven month delay in providing the information was unreasonable, and charge was not made moot by the fact that the employer provided the information).

In the instant case, Charging Party asserted that it requested information about the health insurance benefits paid to its retired members, that the information was relevant to a pending grievance scheduled for arbitration on this issue, and that three months after the request was made Respondent had not provided any of the information. Pursuant to the Commission's rules, I issued an order to Respondent to show cause why it should not be found to have violated its duty to bargain by failing to provide the requested information. Respondent, therefore, had the opportunity to challenge the facts as alleged in the charge and to raise legal defenses to the charge. As noted above, however, Respondent did not file a response.

Under Commission Rule R 423.165 (1), where there is a properly stated charge and no genuine issue of material fact, an administrative law judge acting for the Commission has the authority and obligation to issue a ruling on the merits of the dispute on summary disposition. *Detroit Public Schools*, 22 MPER 19 (2009); see also, *Oakland County and Oakland County Sheriff v Oakland County Deputy Sheriffs Assoc*, 282 Mich App 266 (2009). I conclude, based on the undisputed facts as alleged in the charge, that the information requested by Charging Party on October 27, 2009 was relevant to its duty as bargaining agent for Respondent's employees to police the parties' collective bargaining agreement, that Respondent had a duty under PERA to provide Charging Party with this information, and that by failing to provide the information in a timely fashion Respondent violated its duty to bargain under Section 10(1) (e) of PERA. I recommend, therefore, 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 failing or refusing to provide AFSCME Council 25 with information relevant and necessary to the union's duty to police the collective bargaining agreement between the parties.

2. Without delay, provide AFSCME Council 25 with the information about the health insurance benefits paid to its retired members requested by AFSCME on October 27, 2009.

3. 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

Dated: _____