

**STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION**

In the Matter of:

WAYNE COUNTY,
Public Employer-Respondent,

Case No. C08 D-076

-and-

MICHIGAN AFSCME COUNCIL 25 AND ITS AFFILIATED LOCALS 25,
101, 409, 1659, 1905, 3317 AND 3309,
Labor Organizations-Charging Parties.

APPEARANCES:

Deborah K. Blair, Esq., Chief Labor Relations Analyst, Wayne County Labor Relations Division, for Respondent

Aina N. Watkins, Esq., Staff Attorney, Michigan AFSCME Council 25, for Charging Parties

DECISION AND ORDER

On July 23, 2008, Administrative Law Judge (ALJ) Julia C. Stern issued her Decision and Recommended Order on Summary Disposition in the above matter finding that Respondent, Wayne County, violated Section 10(1)(e) of the Public Employment Relations Act (PERA), 1965 PA 379 as amended, MCL 423.210(1)(e). The ALJ found that Respondent violated its duty to bargain in good faith when it refused to provide Charging Parties, Michigan AFSCME Council 25 and its Affiliated Locals 25, 101, 409, 1659, 1905, 3317 and 3309 (AFSCME), with the current home addresses of the employees in their respective bargaining units. The ALJ recommended that we order the Respondent to provide all relevant and necessary information that will allow Charging Parties to fulfill their bargaining agent duties. The Decision and Recommended Order of the ALJ was served upon the interested parties in accordance with Section 16 of PERA. On August 13, 2008, Respondent filed exceptions to the ALJ's Decision and Recommended Order and a brief in support of the exceptions. Charging Parties did not file a response to the exceptions.

On April 15, 2010, the Commission received a letter from Respondent requesting leave to withdraw its exceptions to the ALJ's Decision and Recommended Order. Respondent's request is hereby approved, and Respondent's exceptions are dismissed. Inasmuch as there are no longer

exceptions to the ALJ's Decision and Recommended Order, said Order is adopted by the Commission.

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

Christine A. Derdarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

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

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Deborah K. Blair, Esq., Chief Labor Relations Analyst, Wayne County Labor Relations
Division, for Respondent

Aina N. Watkins, Esq., Staff Attorney, Michigan AFSCME Council 25, for Charging Parties

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON SUMMARY DISPOSITION

On April 25, 2008, Michigan AFSCME Council 25 and its affiliated Locals 25, 101, 409, 1659, 1905, 3317 and 3309 filed the above charge with the Michigan Employment Relations Commission against Wayne County pursuant to Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210. All the Charging Parties, except Local 3309, represent bargaining units of employees of the Respondent.¹ Charging Parties allege that Respondent violated its duty to bargain in good faith by refusing to provide them with the current home addresses of employees in their bargaining units.

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 the PERA. On April 30, 2008, I issued an order to Respondent to show cause why it should not be found guilty of violating its duty to bargain by refusing to provide this information. Respondent filed a timely response to my order on May 29, 2008, and Charging Parties filed a brief in response on June 26, 2008. Neither party requested oral argument.

¹ Local 3309 represents employees of the Wayne County Circuit Court. No charge was filed against this Employer.

The Unfair Labor Practice Charge and Facts:

The pertinent facts are not in dispute. On September 21, 2007, Charging Party AFSCME Council 25 (Council 25), citing PERA, requested that Respondent provide it with the most recent seniority lists, including employee addresses, for the bargaining units represented by the Charging Party Locals. Council 25 noted that it was auditing its membership records. In late September and early October, Respondent provided Council 25 with a separate list for each unit. The lists included the names of employees in the unit, their job titles, and their seniority dates. The lists did not include addresses. On September 27, Respondent informed Council 25 that, because of privacy concerns, its policy was not to release the home address of employees in response to PERA requests unless employees signed written releases.

On October 4, 2007, Council 25, citing the Michigan Freedom of Information Act (FOIA), MCL 15.231 *et seq.*, sent a request to Respondent for a list of all members of AFSCME bargaining units employed by Wayne County, their mailing addresses, seniority dates, and departments. On October 26, Council 25 made another request for the same information, this time citing PERA as the authority for its right to the information. On November 14, Respondent gave Council 25 a single list of the names of all Wayne County employees represented by AFSCME, their seniority dates, job titles, bargaining unit designations, departments/work locations, and mailing addresses at their place of work. Council 25 replied that it wanted the employees' home addresses, not their work addresses. Respondent did not provide this information. On April 7, 2008, Council 25 made another request under the FOIA, this time for an employee list that included both home addresses and telephone numbers. Respondent did not respond to this request.

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 information requested by the union which will permit it to engage in collective bargaining and police the administration of its collective bargaining agreement. *Wayne Co*, 1997 MERC Lab Op 679; *Ecorse Pub Schs*, 1995 MERC Lab Op 384. Information relating to terms and conditions of employment, such as wages, job descriptions, and other information pertaining to bargaining unit employees, is presumptively relevant, and will be ordered disclosed unless the employer rebuts the presumption. *City of Detroit (Dept of Transportation)*, 1998 MERC Lab Op 205; *Plymouth Canton Cmty Schs*, 1998 MERC Lab Op 545. 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 NLR 916 (1984), *enfd* 763 F2d 887 (CA 7, 1985). The employer may rebut the presumption by demonstrating a legitimate confidentiality interest which would be damaged by disclosure of the information. *Michigan State Univ*, 1986 MERC Lab Op 407; *Kent Co*, 1991 MERC Lab Op 374; *City of Battle Creek*, 1998 MERC Lab Op 684. In both *Kent Co* and *City of Battle Creek*, the Commission held that a public employer has a legitimate interest in keeping confidential information relating to an employer's internal investigation of employee misconduct, including witness statements.

The Commission has not explicitly addressed the issue of whether an employer has the obligation to provide a union with the home addresses of members of its unit. However, the National Labor Relations Board (NLRB) has long held that the home addresses and telephone numbers of bargaining unit members are presumptively relevant. *Georgetown Holiday Inn*, 234 NLRB 485, 486 (1978); *Tom's Ford*, 253 NLRB 88 894-95 (1980); *Valley Programs*, 300 NLRB 423, 424 (1990); *Watkins Contracting, Inc*, 335 NLRB 222 (2001); *Madison Industries, Inc*, 349 NLRB No. 114 (2007). To rebut that presumption, the NLRB requires that the employer demonstrate a "clear and present danger" that the union would misuse the information. *Advertisers Composition Co Typographers, Inc*, 253 NLRB 1019, 1023 (1981); *Shell Oil Co v NLRB*, 457 F2d 615, 620 (CA 9, 1972).

Home addresses are obviously useful to a union in carrying out its statutory duties since they provide a means for the union to communicate with its members without using the employer's communication channels. Moreover, home addresses assist a union in checking its records to ensure that all members of its bargaining unit are paying the dues or fees that the collective bargaining agreement requires. Respondent asserts, however, that because of the rise of identity theft in the computer age, it has a legitimate interest in allowing its employees to keep their home addresses, and other private information that could be misused, confidential. It notes that in an unpublished Court of Appeals case, *Bell v AFSCME Council 25*, 2005 WL 356306, Council 25 was held liable for negligence when one of its employees stole the social security and driver's license numbers of members from improperly secured union files and used this information to make unauthorized purchases. According to Respondent, the Commission should recognize the damage that can be done by the release of home addresses by holding that an employer need not provide a union with the home address of an employee unless and until that employee signs a written release.

In its response to my order to show cause, Respondent pointed out that the Michigan Supreme Court had recently granted leave to appeal in a case addressing the issue of whether the home addresses and telephone numbers of public employees can be exempt from disclosure under the FOIA privacy exemption.² After Respondent filed its response, the Court decided this case. *Michigan Federation of Teachers v Univ of Michigan*, ___ Mich ___ (Docket No. 133819, decided July 16, 2008). At issue was a FOIA request by the Michigan Federation of Teachers for the home addresses and telephone numbers of University of Michigan employees not currently represented by that labor organization. The Court held that that the FOIA privacy exemption does, in fact, permit a public body to refuse to disclose the home addresses and telephone numbers of its employees. The Court concluded, first, that "information of a personal nature" under the FOIA includes private or confidential information. It held that home addresses and telephone numbers qualify as private information because where a person lives and how a person may be contacted are private and confidential details of that person's life. It also concluded that requiring the public body, in this case the University of Michigan, to disclose the home addresses and phone numbers of its employees would result in a "clearly unwarranted invasion of privacy" since providing the public with this information would do nothing to further

² MCL 15.243(1) (a) allows a public body to exempt from disclosure as a public record "information of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy."

the core purposes of the FOIA, i.e., would not shed light on whether the University was functioning properly and consistently with its statutory and constitutional mandates.

The fact that information may be exempt from disclosure under the FOIA, however, does not mean that an employer cannot be required under PERA to provide it to a union to which it owes a duty to bargain. As noted by the Court in *University of Michigan*, the core purpose of the FOIA is preventing public bodies from shielding from public view information that would reflect poorly on the performance of their public duties. In accord with this purpose, any member of the public can obtain public records by making a request under FOIA. The duty to provide information under PERA however, has nothing to do with "government in the sunshine." Rather, the duty to provide information is part of the obligation to bargain in good faith. In accord with this purpose, only public employers and the unions with which they have bargaining relationships have the right to receive or the obligation to provide information under PERA. Obviously, providing public employees' home addresses to the unions that represent them is not the same as turning that information over to any member of the general public who requests it under the FOIA. A union owes a duty of fair representation to the members of its bargaining unit, whether or not they choose to become members of the union. As illustrated by the *Bell* case cited by the Respondent, this includes a duty to use reasonable diligence in safeguarding their personal information. An employer, of course, may also have a duty to safeguard employee home addresses and other personal information that it must keep for its own purposes.³

As discussed above, a union has several legitimate reasons to have access to the home addresses of members of its bargaining unit. Except for certain law enforcement officers, as discussed below, the only harm to employees identified by Respondent from the disclosure of this information is the risk that the addresses will be misused in identity theft. I find that the possibility that a union may fail in its duty to safeguard employees' home address does not raise sufficient confidentiality concerns to justify withholding this information from the union that represents them.

Respondent also argues that it should not be required to disclose the home addresses of members of the unit represented by Charging Party Local 3317 because that unit includes law enforcement officers who work undercover. It argues that the disclosure of these officers' home addresses could jeopardize their physical security and that of their families. According to Respondent, its personnel and human resources office has no way of knowing which law enforcement officers work undercover, and therefore could not omit their home addresses from a list of the home addresses of other members of this unit. I note that there is no indication that Respondent raised this issue in response to Charging Parties request for information. Obviously, Respondent and Local 3317 share an interest in protecting the physical security of the law enforcement officers in Local 3317's unit. I conclude that if Respondent believes that special measures need to be taken to ensure that undercover officers' home addresses do not fall into the hands of criminals, it has the obligation to raise this issue with Charging Parties and negotiate the special protections that are required.

³ Respondent has not suggested, and this seems very unlikely, that it would be held liable for the misuse of addresses disclosed to the Charging Parties pursuant to a PERA request.

Respondent's final argument is that it has no obligation to provide Charging Parties with the home addresses of unit members because Charging Parties should already have all the information they need to contact their members. Respondent points out that its employees fill out dues check-off cards upon hire and again upon transfer or promotion, and that Charging Parties receive copies of these cards. The check-off card, if the employee chooses to fill it out completely, includes the employee's home address. According to Respondent, if the employee refuses to fill out the dues check-off card, Respondent deducts dues from the employee's check and sends them to Charging Party Local 25 with a code that indicates that the dues are in dispute. In addition, each month Respondent sends each Charging Party Local a list of any new employee in its bargaining unit, including the employee's work area and department.

An employer has an obligation to supply relevant data even though the labor organization may be able to obtain the information itself by individually contacting members of the bargaining unit directly. *Michigan State Univ*, 1986 MERC Lab Op 407, 416; *City of Pontiac*, 1981 MERC Lab Op 57, 64. Respondent admits that if an employee omits his home address when filling out his check-off card, or if the employee refuses to sign a card, Charging Parties will not have access to his home address. Moreover, even if an employee fills out the check off card completely, he may later change his address. Although Respondents provide the Charging Party Locals with periodic lists of new unit members, these lists do not provide home addresses. I find that Charging Parties have no reliable method of obtaining the home addresses of their unit members other than by requesting them from Respondent and that, even if they did, Respondent would still have the obligation to provide them with this information.

Under Rules 165(1) and 2(f) of the Commission's General Rules, 2002 AACRS, R 423.165, an administrative law judge designated by the Commission may, on his or her own motion, issue a ruling in favor of a charging party where there is no genuine issue of material fact. In accord with the conclusions of law set forth above, I find that Respondent violated its duty to bargain in good faith under Section 10(1) (e) of PERA by refusing to provide Charging Party AFSCME Council 25 and Charging Parties Locals 25, 101, 409, 1659, 1905, and 3307 with the home addresses of employees in bargaining units represented by these local unions. Since Respondent is not the employer of employees represented by Charging Party Local 3309, I find that Respondent had no obligation under PERA to provide information regarding employees represented by this local. I recommend that the Commission issue the following order.

RECOMMENDED ORDER

Respondent Wayne County, its officers and agents, are hereby ordered to:

1. Cease and desist from refusing to provide AFSCME Council 25 and its affiliated Locals 25, 101, 409, 1659, 1905 and 3307 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. Furnish AFSCME Council 25 with a list of the names of all Respondent's employees represented by AFSCME Council 25 and its the locals set out above, their seniority dates, job titles, bargaining unit designations, departments/work locations, and home mailing addresses, or with separate lists for each unit containing this same information.

 - 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

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

Date: _____