STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:
DETROIT PUBLIC SCHOOLS,
Public Employer-Respondent,

Case No. C07 B-035

-and-

DETROIT ASSOCIATION OF EDUCATIONAL
OFFICE EMPLOYEES,
Labor Organization-Charging Party.
____/

APPEARANCES:

Gordon J. Anderson, Esq., for the Respondent (on exceptions)

Law Offices of Mark H. Cousens, by Gillian H. Talwar, Esq., for the Charging Party

DECISION AND ORDER

On June 7, 2007, Administrative Law Judge (ALJ) Doyle O'Connor issued his Decision and Recommended Order on Summary Disposition finding that Respondent, Detroit Public Schools, violated Section 10(1)(e) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210(1)(e). The ALJ concluded that Respondent committed an unfair labor practice by failing to properly respond to a request for information made by Charging Party, Detroit Association of Educational Office Employees. Upon finding that the requested information was presumptively relevant, the ALJ issued an Order to Show Cause Why an Evidentiary Hearing is Necessary. The Order directed Respondent to address specific issues and warned that failure to do so could result in an adverse decision. When Respondent failed to respond to the Order within the designated time period, the ALJ issued his Decision and Recommended Order stating that Respondent be compelled to provide the Union with the information it requested. The Decision and Recommended Order was served on the interested parties in accordance with Section 16 of PERA.

On July 2, 2007, Respondent filed exceptions to the ALJ's Decision and Recommended Order on Summary Disposition. In its exceptions, Respondent alleges that the ALJ erred by finding that it failed to respond to Charging Party's information requests and by finding a violation of PERA. Respondent has not explained why it failed to respond to the order to show cause.

We have reviewed Respondent's exceptions and find them to be without merit.
Factual Summary:

The unfair labor practice charge filed by Charging Party alleges Respondent violated the Act by failing to respond to a request for information that was "reasonably necessary for the administration of the collective bargaining agreement and processing of grievances," and was, therefore, presumptively relevant. The ALJ issued an order to show cause why an evidentiary hearing was necessary if the information requested was presumptively relevant. Because the Respondent did not respond to the order to show cause, there was no genuine issue of material fact in dispute, and the ALJ issued a Decision and Recommended Order granting the relief requested by Charging Party.

In its exceptions, Respondent asserts factual representations that are not part of the record made before the ALJ. Included in the factual representations asserted in its exceptions is Respondent's claim that it has provided Charging Party with the information that is the subject of the unfair labor practice charge and the ALJ's Recommended Order.

Discussion and Conclusions of Law:

On the record before us, it is established that Respondent ignored the Charging Party's request for presumptively relevant information. Respondent also ignored the order to show cause issued by the ALJ, and has offered no explanation for doing so. Factual representations that are asserted for the first time in Respondent's exceptions to the ALJ's Decision and Recommended Order are not properly before us, and we do not consider them. See e.g. *Wayne Co*, 21 MPER ___ (Case No. C02 J-217, issued November 6, 2008); *City of Detroit*, 21 MPER 39 (2008); *Garden City/Dearborn Pub Sch Adult Ed Consortium*, 1994 MERC Lab Op 1. Moreover, Respondent has not moved to reopen the record so that we may consider the additional facts it asserts in its exceptions. Even if Respondent had moved for reopening, however, the requirements for reopening have not been met. Rule 166 of the General Rules of the Michigan Employment Relations Commission, 2002 AACS, R 423.166 provides:

> A motion for reopening of the record will be granted only upon a showing of all of the following:
> (a) The additional evidence could not with reasonable diligence have been discovered and produced at the original hearing.
> (b) The additional evidence itself, and not merely its materiality, is newly discovered.
> (c) The additional evidence, if adduced and credited, would require a different result.

Respondent asserts the documents it would like us to consider were provided to Charging Party in February 2007, well before the show cause order was issued by the ALJ on March 28, 2007. Thus, it is evident that the documents are not "newly discovered."

For the aforementioned reasons, we find that under Commission Rule 165(1), R

423.165 (1), a ruling in favor of Charging Party on summary disposition is appropriate. Accordingly, we adopt the ALJ's Decision and Recommended 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

____
Christine A. Derdarian, Commission Chair

____
Nino E. Green, Commission Member

____
Eugene Lumberg, Commission Member

Dated: ____________

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

DETROIT PUBLIC SCHOOLS,
Respondent-Public Employer, Case No. C07 B-035

-and-

DETROIT ASSOCIATION OF EDUCATIONAL
OFFICE EMPLOYEES,
Charging Party-Labor Organization.
____/

APPEARANCES:

Gillian H. Talwar, for the Charging Party

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE ON SUMMARY DISPOSITION

Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, this case was assigned to Doyle O'Connor, Administrative Law Judge (ALJ), acting on behalf of the Michigan Employment Relations Commission.

The Unfair Labor Practice Charge, Order to Show Cause, and Findings of Fact:

On February 23, 2007, an unfair labor practice charge was filed with the Commission by the Detroit Association of Educational Office Employees (the Union) alleging that the Detroit Public Schools (the Employer) violated the Act by failing to properly respond to a request for information made by the Union. The information sought by the Union, according to the charge, was:

A. A report from the Office of Public Safety showing the time Patrice Lee used her keycard to gain access to the workplace building . . . from July 2006 through December 2006;
B. A copy of the payroll records for employees of the Office of Procurement from July 2006 through December 2006.

According to the Charge, the requested information was "reasonably necessary for the administration of the collective bargaining agreement and processing of grievances" and was, therefore, presumptively relevant. On its face the information appeared to consist of ordinary business records relating to bargaining unit employees. The Charge asserted that the Employer did not provide the requested information or otherwise respond to the request. Notably, the

allegation was that the Employer failed to respond in any way at all to multiple verbal and written requests by the Union for this information.

Pursuant to Rule 165, R 423.165, of the General Rules and Regulations of the Employment Relations Commission, an order to show cause was issued. The order noted that Commission Rule 423.165 allows for a pre-hearing dismissal of a charge, or for a ruling in favor of the charging party, and that upon review of the charge, it appeared that an order to show cause why an evidentiary hearing was necessary might aid in resolving this dispute without the expense or delay that would be entailed in hearing the matter. The show cause noted that, as asserted in the charge, the information requested was presumptively relevant. The Respondent was granted twenty-one (21) days from the date of the order to respond. Respondent was cautioned that a failure to file a timely response to the order might result in a substantive decision on the charge without a hearing.

The Employer was specifically directed to address the following factual issues, in accord with Commission rules and the case law provided in the order:

1. Did the Union make a request for information relating to discipline or regarding conditions of employment of bargaining unit employees?
   a. If yes, was the information provided, or did the Employer otherwise respond to the request?
   b. What material facts, if any, are in dispute regarding this aspect of the charge?

2. What reason exists to preclude the issuance of a ruling in favor of Charging Party?

The March 28, 2007 order to show cause was served upon the Respondent by certified return-receipt mail, together with the charge, complaint, and notice of hearing. A return card was received by the Commission on April 6, 2007, establishing receipt of the charge and the order at Respondent's headquarters at 7430 Second Ave, 4th Floor, Detroit, MI. Respondent did not file any response to the order to show cause.

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 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 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 County*, *supra*. See also *E.I. DuPont de Nemours & Co v NLRB*, 744 F2d 536, 538 (CA 6, 1984). 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; 115 LRRM 1105 (1984), enforced 763 F2d 887 (CA 7, 1985).

Here the charge asserts that the Employer ignored entirely the Union's request for presumptively relevant information. A show cause order was issued which noted that the information sought was presumptively relevant. The Employer has chosen to similarly ignore that order to show cause, which was properly issued in this case pursuant to the Commission's rules. In these circumstances a proper charge has been stated and there is no genuine issue of material fact in dispute. 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 in favor of the charging party on summary disposition. In accord with this conclusion and the findings of fact and discussion above, I recommend that the Commission issue the following order.

RECOMMENDED ORDER

Detroit Public Schools, its officers, agents, and representatives are hereby ordered to:

1. Cease and desist from

   a. Refusing to bargain collectively with the representatives of its public employees.

   b. Failing to provide presumptively relevant information requested by the Detroit Association of Educational Office Employees.

2. Without further delay, provide to the Detroit Association of Educational Office Employees information which it requests which is relevant to the Union carrying out its duty to represent members or relevant to the policing or administration of the collective bargaining agreement, including:

   a. A report from the Office of Public Safety showing the time Patrice Lee used her keycard to gain access to the workplace building from July 2006 through December 2006;

   b. A copy of the payroll records for employees of the Office of Procurement from July 2006 through December 2006.

2. Post the attached notice to employees in a conspicuous place for a period of thirty (30) consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

____

Doyle O'Connor
Administrative Law Judge

Dated: ____________

NOTICE TO ALL EMPLOYEES

Pursuant to a formal charge before the Michigan Employment Relations Commission, DETROIT PUBLIC SCHOOLS, a public employer under the PUBLIC EMPLOYMENT RELATONS ACT (PERA), has been found to have committed unfair labor practices in violation of this Act. Pursuant to the terms of the Commission's order, we hereby notify our employees that:

WE WILL NOT

a. Refuse to bargain collectively with the representatives of our public employees.
b. Fail to timely provide presumptively relevant information requested by the Detroit Association of Educational Office Employees.

WE WILL

a. Bargain collectively with the representatives of our public employees.
b. In a timely fashion provide presumptively relevant information requested by the Detroit Association of Educational Office Employees.
c. Without further delay, provide to the Detroit Association of Educational Office Employees information which it requests which is relevant to the Union carrying out its duty to represent members or relevant to the policing or administration of the collective bargaining agreement, including:

   i. A report from the Office of Public Safety showing the time Patrice Lee used her keycard to gain access to the workplace building from July 2006 through December 2006;
   ii. A copy of the payroll records for employees of the Office of Procurement from July 2006 through December 2006.

ALL of our employees are free to engage in lawful activity for the purpose of collective bargaining or other mutual aid and protection as provided in Section 9 of the Public Employment Relations Act.

DETROIT PUBLIC SCHOOLS

By:____________________

Title:____________________

Date:____________

This notice must be posted for thirty (30) consecutive days and must not be altered, defaced or covered by any material. Any questions concerning this notice or compliance with its provisions may be directed to the office of the Michigan Employment Relations Commission, Cadillac Place Building, 3026 W. Grand Blvd, Suite 2-750, Detroit, MI 48202-2988. Telephone: (313) 456-3510.