

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

In the Matter of:

CITY OF DETROIT,
Public Employer-Respondent,

- and -

Case No. C11 A-004

AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES, COUNCIL 25 and
LOCALS 23, 26, 62, 207, 229, 273 312 457, 542, 836, 1023,
1206, 1227, 1642, 2394, 2799 and 2920,
Labor Organization-Charging Party.

APPEARANCES:

City of Detroit Law Department, by Andrew Jarvis, for the Respondent

Aina N. Watkins, Staff Attorney for the Charging Party

DECISION AND ORDER

On July 15, 2011, Administrative Law Judge David M. Peltz issued a 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

Edward D. Callaghan, Commission Chair

Nino E. Green, Commission Member

Christine A. Derdarian, Commission Member

Dated: _____

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION**

In the Matter of:

CITY OF DETROIT,
Respondent-Public Employer,

Case No. C11 A-004

-and-

AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES, COUNCIL 25 and
LOCALS 23, 26, 62, 207, 229, 273 312 457, 542, 836, 1023,
1206, 1227, 1642, 2394, 2799 and 2920,
Charging Party-Labor Organization.

APPEARANCES:

Andrew Jarvis for Respondent

Aina Watkins for Charging Party

**DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE**

On January 7, 2011, the American Federation of State, County and Municipal Employees (AFSCME) Council 25 and its Locals 23, 26, 207, 229, 273, 312, 457, 542, 836, 1023, 1206, 1227, 1642, 2394, 2799 and 2920, filed an unfair labor practice charge alleging that the City of Detroit violated Sections 10(1)(e) and 15(1) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210(1)(e) and 423.215(1), by refusing to comply with the Union's requests for information relating to the elimination of bargaining unit positions and the possible use of non-unit personal to perform bargaining unit work. Pursuant to Sections 10 and 16 of PERA, this case was assigned to David M. Peltz, Administrative Law Judge of the Michigan Administrative Hearing System, on behalf of the Michigan Employment Relations Commission.

The case was heard in Detroit, Michigan on May 26, 2011. At the conclusion of the hearing, counsel for both parties made closing arguments in lieu of filing written post-hearing briefs. Thereafter, I rendered a bench decision, finding that Respondent violated its duty to bargain by failing or refusing to provide relevant information to Charging Party. The substantive portion of my findings of fact and conclusions of law are set forth below:

The parties introduced into evidence in this matter the master agreement between the City and Council 25, [dated] 2001 through 2005. The parties are currently operating

under terms and conditions of employment that were imposed by the City following expiration of that agreement.

In the spring of 2010, the Union received notice from the City of impending layoffs. [T]he Union requested a special conference on May 25th of 2010, specifically to discuss the layoffs and also to discuss the summer youth program. That special conference . . . occurred on June 22nd of 2010. During that conference, and again, in writing shortly thereafter, the Union requested certain information from the City.

In [the written request for information, dated June 24, 2010], Catherine Phillips, staff representative for Council 25, sought: (1) a copy of all contracts [related to the performance] of AFSCME bargaining unit work, i.e., general auto mechanic work, grass cutting, engine repair, building attendants, security, etc.; (2) a list of all “favored work” positions -- who they are, and where they are [and whether there] are any provisional [employees] performing AFSCME bargaining unit work [and] if so, who are they and where are they assigned; (3) a list of all urban government summer interns, where are the interns assigned, who is their supervisor, what actual work are the interns performing. That request was sent to Lisa Kent of the Labor Relations Department of the City of Detroit.

[S]ometime soon thereafter, Ms. Phillips had a discussion with Lisa Kent regarding the information request, and that discussion became heated, and there was some back and forth between Ms. Phillips and Ms. Kent regarding the issue of the [requested] contracts. Around that same general period of time, the parties were engaged in fact finding. During that process, the Union requested copies of contracts from the City, and some, but not all of the contracts [requested by Phillips], were provided to the Union [as part of the fact finding proceedings].

Nothing else was provided to the Union with respect to the information requests made in this case until May of 2011, essentially on the eve of the hearing in this matter. As of today's date, the information [requests have] been satisfied with respect to all of the requested information, except the contracts. That concludes the finding of facts portion of this decision.

It is well established that in order to satisfy the bargaining obligation under Section 10(1)(e) of PERA, the Employer must timely supply the requested information to permit the Union to engage in collective bargaining, and to police the administration of the contract. See *Wayne County*, 1997 MERC Lab Op 679; *Ecorse Public Schools*, 1995 MERC Lab Op, 384. 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. See *Wayne County (Smart)*, 1993 MERC Lab Op 355.

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 the Employer must provide it unless it rebuts the

presumption. See *Plymouth Canton Community Schools*, 1998 MERC Lab Op 45; *City of Detroit, Dep't of Transportation*, 1988 MERC Lab Op 205. Where a Union makes a request for information which is not presumptively relevant, the Employer has no duty to provide such information unless and until the Union demonstrates the relevance, or the facts surrounding the request are as such as to make the relevance of the information plain. See *Island Creek Coal Company*, 292 NLRB 480 (1989).

Information about employees outside the bargaining unit is not presumptively relevant. *City of Pontiac*, 1991 MERC Lab Op 57. The Employer has no duty under PERA to respond to an inappropriate request for information, or to provide information that does not exist. See *State Judicial Council*, 1991 MERC Lab Op 510. When a Union requests information that the Employer does not keep in the form requested, the Employer must [at a 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. See *Michigan State University*, 1986 MERC Lab Op 407; *Green Oak Township*, 1990 MERC Lab Op 123.

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 an unfair labor practice hearing. See *Oil, Chemical & Atomic Workers Local Union No. 6-418, AFL-CIO v NLRB*, 711 F2d 348, 353, (CA DC 1983). A refusal or unreasonable delay in supplying relevant information is an unfair labor practice. See *Oakland University*, 1994 MERC Lab Op 540; *Wayne County ISD*, 1993 MERC Lab Op 317.

The Commission has not articulated the precise time for Employers to respond to information requests. However, it has found violations of the Act in cases where the delay has ranged anywhere from two to three months to nine months. See examples, *Detroit Public Schools*, 1990 MERC Lab Op 624; *City of Detroit (Police Dep't)*, 1994 MERC Lab Op 416; *Detroit Public Schools*, 2002 MERC Lab Op 201 (no exceptions).

In the instant case, there is no dispute . . . that information was requested and that the request pertained to relevant [subject matters]. There is no [evidence] in the record to suggest that the Employer did not receive the information request. In fact, the evidence indicates that the request was initially made verbally at a special conference, and then it was followed up by a written request from the Union. [I]n fact, Ms. Phillips and Ms. Kent had a discussion regarding that request shortly after the written request was made, so I find that there is no dispute that the request was received by the Employer in this case.

There is no evidence that the Employer made any indication that it was denying the request based on relevancy grounds, nor is there any suggestion that [the requested] documents did not exist. [T]here were no specific requests for clarification of the various information requests by the Union in this matter. Most of the information in this case was not provided, there was no dispute about this, until May of 2011, on the eve of hearing, almost a year after the initial request was made. Although some contracts were

provided in the interim, and that was based on the testimony of Ms. Phillips, there is no evidence in the record indicating that all of the contracts which were requested were provided.

The Employer has argued in closing arguments that the conversation between Ms. Kent and Ms. Phillips may have become heated because Ms. Kent believed that the contracts had all been provided during the course of fact finding; however, there is again, nothing in the evidence to support a finding of that nature.

For these reasons, I find that the City violated its bargaining obligation under Section 10(1)(e) of PERA.¹

Based on the findings of fact and conclusions of law set forth above, I issue the following recommended order:

RECOMMENDED ORDER

The City of Detroit, its officers, agents, and representatives shall:

1. Cease and desist from refusing to comply with the requests of AFSCME Council 25 and its Locals 23, 26, 207, 229, 273, 312, 457, 542, 836, 1023, 1206, 1227, 1642, 2394, 2799 and 2920 for information relevant and necessary to the Union's functioning as the collective bargaining representative of the unit employees.
2. Furnish AFSCME Council 25 and its Locals 23, 26, 207, 229, 273, 312, 457, 542, 836, 1023, 1206, 1227, 1642, 2394, 2799 and 2920 with all information requested by the Union in May and June of 2010.
3. Post the attached notice to employees in a conspicuous place for a period of thirty (30) consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

David M. Peltz
Administrative Law Judge
Michigan Administrative Hearing System

Dated: July 15, 2011

¹ The transcript excerpt reproduced herein contains typographical corrections and other minor edits for clarity purposes. The completed unedited transcript is maintained within the Commission case file.

NOTICE TO ALL EMPLOYEES

After a public hearing before the Michigan Employment Relations Commission, THE CITY OF DETROIT, a public employer under the PUBLIC EMPLOYMENT RELATIONS 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 refuse to comply with the requests of AFSCME COUNCIL 25 and its Locals 23, 26, 207, 229, 273, 312, 457, 542, 836, 1023, 1206, 1227, 1642, 2394, 2799 and 2920 for information relevant and necessary to the Union’s functioning as the collective bargaining representative of the unit employees.

WE WILL furnish AFSCME COUNCIL 25 and its Locals 23, 26, 207, 229, 273, 312, 457, 542, 836, 1023, 1206, 1227, 1642, 2394, 2799 and 2920 with all information requested by the Union in May and June of 2010.

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.

CITY OF DETROIT

By: _____

Title: _____

Date: _____

This notice must be posted for a period of 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, P.O. Box 02988, Detroit, MI 48202-2988. Telephone: (313) 456-3510.