STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF DETROIT,
Public Employer - Respondent,

- and - Case No. C10 J-265

AMERICAN FEDERATION OF STATE COUNTY AND MUNICIPAL EMPLOYEES, MICHIGAN COUNCIL 25, LOCAL 542,
Labor Organization - Charging Party.
_____/

APPEARANCES:

June C. Adams, City of Detroit Law Department, and Dwight Thomas, Labor Relations Specialist, for the Respondent

Cassandra D. Harmon-Higgins, Staff Attorney, for the Charging Party

DECISION AND ORDER

On May 2, 2012, 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

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Edward D. Callaghan, Commission Chair

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Nino E. Green, Commission Member

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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,

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-and-

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, MICHIGAN COUNCIL 25, LOCAL 542,
Charging Party-Labor Organization.
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APPEARANCES:

June C. Adams, City of Detroit Law Dept. and Dwight Thomas, Labor Relations Specialist, for Respondent

Cassandra D. Harmon-Higgins, Staff Attorney, for Charging Party

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE

This case arises from an unfair labor practice charge filed by the American Federation of State, County and Municipal Employees (AFSCME), Michigan Council 25, Local 542 against the City of Detroit. The charge, which was filed on October 26, 2010 and subsequently amended on November 22, 2010 and March 8, 2011, alleges that the City violated Section 10(1)(e) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210(1)(e), by failing to timely provide requested information.[1]

Pursuant to Section 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. Based upon the entire record, including the transcript of hearing, exhibits, and a post-hearing brief filed by Charging Party on September 19, 2011, I make the following findings of fact, conclusions of law, and recommended order.[2]

[1] The charge also contained an allegation that Respondent repudiated its collective bargaining agreement with the Union by allowing non-City employees to perform unit work. Charging Party withdrew that allegation in its post-hearing brief.

[2] No brief was filed on behalf of the City.

Findings of Fact:

Charging Party represents a bargaining unit comprised of approximately 485 employees of the City's recreation department. The parties are currently operating under what both the Union and the Employer assert is an "imposed collective bargaining agreement" which is scheduled to expire on June 30, 2012. From May of 2009 through April of 2011, the Union submitted multiple requests for information to the City in connection with grievances which were filed pursuant to the terms of the parties' contract. Those information requests, as well as the City's response thereto, are the subject matter of this dispute.

Grievance No. 718

On May 19, 2009, Charging Party filed Grievance No. 718 alleging that various bargaining unit members had been denied overtime assignments. On that same date, AFSCME Local 542 president Phyllis McMillon sent a memo to Phillip Bartell, superintendent of the City's general services department, requesting the following information for purposes of monitoring and administering the contract: (1) time sheets for ten employees for the weeks of May 4 and May 11, 2009; (2) overtime records for the Davison Yard and the North District for April and May of 2009; (3) a written statement from supervisor Steve Coleman regarding overtime equalization; (4) job duties and schedules for the Davison Yard and the North District for the weeks of May 4 and May 11, 2009; (5) a list of all overtime assignments made in the preceding two months for the Davison Yard and the North District, along with the name of the employee(s) and the amount of overtime worked; (6) job assignments for the Davison Yard and the North District for the weeks of May 4 and May 11, 2009; and (7) any memos or correspondence regarding overtime.

The City did not respond to the May 19, 2009 information request and Grievance No. 718 was processed to arbitration. On October 14, 2010, arbitrator George T. Roumell, Jr. issued an opinion remanding the matter to the parties pending resolution of related proceedings before the Commission. In the opinion, Roumell made reference to the City's failure to provide information to the Union, characterizing the City's conduct as "disconcerting" and noting that timely production of the materials "could very well have resolved the grievance." Several weeks later, on or about November 5, 2010, Charging Party sent a second request to Bartell for the information described above. The City did not immediately furnish the requested documents or otherwise respond to the Union's request. As descried more fully below, it was not until after the instant charge was filed that the City provided the Union with some, but not all, of the requested information.

Grievance No. 712

On April 10, 2010, the Union filed Grievance No 712 asserting that bargaining unit work was being performed by individuals outside of the unit. In connection with the grievance, Charging Party requested, in writing, that the City provide the Union with job assignment information for employees Dalton, Way, Massenburg, Carter and Goodson and the tool sign-out list for the Belle Island tool-room for April 6, 2010. The City did not furnish Charging Party with the requested materials or otherwise respond to its request for information. The Union sent

follow-up requests to Bartell dated July 22, 2010 and August 23, 2010, but once again the City failed to provide any response until March 15, 2011, as described in more detail below.

Grievance No. 725

On March 30, 2010, AFSCME Local 542 steward Dorothy Johnson, a park maintenance helper/park maintenance worker, arrived at Peterson Park as part of a work crew assigned to cut grass at the park. Upon her arrival, Johnson observed two trucks affixed with Detroit Public Schools (DPS) logos and approximately six individuals who did not appear to be City employees. According to Johnson, the individuals were in the process of maintaining the baseball diamonds and fences within the park, work which was to be performed solely by bargaining unit members. Several weeks later, on or about April 26, 2010, Johnson again witnessed what she believed were contract employees performing maintenance work at Peterson Park.

On May 6, 2010, Charging Party filed a grievance asserting that the City was violating its collective bargaining agreement with AFSCME by allowing contract employees to perform bargaining unit work at Peterson Park. At the same time, the Union requested that the City provide the following documents pertaining to the grievance: (1) attendance records, a department schedule, and time sheets for the Northwest District for the period March 20, 2010 to May 7, 2010; (2) a copy of a contract or request for proposal (RFP) for Peterson Park; and (3) time sheets and work orders for bargaining unit members for March 20, 2010 to May 7, 2010. The City did not furnish Charging Party with the requested materials or otherwise respond to its request for information. The Union sent follow-up requests to Bartell dated August 23, 2010 and September 14, 2010, but the City again failed to provide any response. Grievance No. 725 was pending arbitration at the time of the hearing in this matter.

Documents Provided to Charging Party

As noted, the instant charge was filed on October 26, 2010. A hearing was scheduled before the undersigned for March 15, 2011. The hearing was adjourned over Charging Party's objection because the attorney who appeared on behalf of the City was not prepared to go forward with the case at that time. Instead, the parties participated in a prehearing conference during which Dwight Thomas, a labor relations specialist with the City, provided the Union with a packet of documents which contained some of the materials sought by the Union in the various information requests described above. In addition, Thomas indicated to Charging Party that there were no contracts or RFPs relating to Peterson Park and promised to provide an affidavit to that effect to the Union as soon as possible.

Despite the production of documents by Thomas, a number of the Union's information requests remained outstanding as of July 7, 2011, the date of the hearing in this matter, including (1) the job schedule for employee Goodson; (2) time sheets for ten employees for the weeks of May 4 and May 11, 2009; (3) overtime records for the Davison Yard for April and May of 2009; (4) job duties and overtime assignments for the North District for the weeks of May 4 and May 11, 2009; (5) a list of all overtime assignments made from March 19, 2009 to May 19, 2009 for the North District, along with the name of the employee(s) and the amount of overtime worked;

and (6) any memos or correspondence regarding overtime in 2009. In addition, Thomas had not yet provided an affidavit to the Union concerning contracts or RFPs covering Peterson Park.

At the hearing, Thomas conceded that no additional information had been provided to the Union since the March prehearing conference, but testified that the City still intended to comply with most of the remaining outstanding requests "hopefully within the next two to three weeks at most." With respect to the Union's request for a statement from supervisor Coleman, Thomas asserted that the City was unable to comply with the request because the information did not exist.

Discussion and Conclusions of Law:

In order to satisfy its bargaining obligation under Section 10(1)(e) of PERA, an employer must timely supply requested information to permit the union to engage in collective bargaining and to police the administration of the contract. *Wayne County*, 1997 MERC Lab Op 679; *Ecorse Pub Sch*, 1995 MERC Lab Op 384, 387. 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, SMART*, 1993 MERC Lab Op 355, 357. See also *Pfizer, Inc*, 268 NLRB 916 (1984), enf'd, 763 F2d 887 (CA 7 1985). 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. *Plymouth Canton Community Sch*, 1998 MERC Lab Op 545; *City of Detroit, Dep't of Transp*, 1998 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 of the information, or the facts surrounding the request are such as to make the relevance of the information plain. *Island Creek Coal Co*, 292 NLRB 480, 490 (1989), enf'd, 899 F2d 1222 (CA 6, 1990); *Ohio Power Co*, 216 NLRB 987 (1975), enf'd, 531 F2d 1381 (CA 6, 1976). Information about employees outside the bargaining unit is not presumptively relevant. *City of Pontiac*, 1981 MERC Lab Op 57. Financial information is not presumptively relevant. *Sunrise Health & Rehabilitation Ctr*, 332 NLRB No. 133 (2000); *STB Investors, Ltd*, 326 NLRB 1465, 1467 (1998). Information pertaining to matters of managerial prerogative, including the decision to layoff unit members, is not presumptively relevant, nor is information pertaining to the subcontracting of bargaining unit work. *Challenge-Cook Bros of Ohio*, 282 NLRB 21 (1986), enf'd, 843 F2d 230 (CA 6, 1988*); AATOP LLC, d/b/a Excel Rehabilitation and Health Ctr*, 336 NLRB No. 10, fn 1 (2001), enf'd, 331 F3d 100 (CA DC, 2003).

An employer has no duty under PERA to respond to an inappropriate request for information or to provide information that does not exist. *State Judicial Council*, 1991 MERC Lab Op 510, 512. See also *Kathleen's Bakeshop LLC*, 337 NLRB 1081 (2002). 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. *Michigan State Univ*, 1986 MERC Lab Op 407; *Green Oak Twp*, 1990 MERC Lab Op 123, 125-126. 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 the unfair labor practice hearing. *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 a violation of the duty to bargain in good faith. *Oakland University*, 1994 MERC Lab Op 540; *Wayne County ISD*, 1993 MERC Lab Op 317. When determining whether a party violated its duty to bargain in good faith, this Commission looks to the totality of circumstances surrounding a dispute. *Grand Rapids Pub Museum*, 17 MPER 58 (2004). 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 from 2-3 months to 9 months. See *Detroit Pub Sch*, 1990 MERC Lab Op 624; *City of Detroit Police Dept*, 1994 MERC Lab Op 416. See also *Detroit Pub Sch*, 2002 MERC Lab Op 201 (no exceptions).

In the instant case, the record overwhelmingly establishes that the City failed or refused to timely comply with any of the requests for information set forth in the charge. Although Respondent ultimately provided a packet of documents to Charging Party, it did so only after the Union filed an unfair labor practice charge challenging the City's conduct and more than two years from the date of the initial information request. Moreover, a number of the documents requested by the Union had still not been provided by the time of the hearing in this matter, including several documents which were part of the first information request in May of 2009. The City has never disputed that the information requested by Charging Party is relevant for purposes of PERA, nor does it appear that Respondent could, in good faith, make such an argument given the nature of the documentation sought by the Union in this matter. Respondent does not assert that any of the requests were vague or that its representatives did not understand the scope or nature of the requests. There is no suggestion in the record that the requests were sent to the wrong department or that the individual or individuals designated by the City to handle such requests did not actually receive the various grievances and letters sent by the Union. The only defense asserted by the City at hearing was that the written statement from supervisor Coleman did not exist.[3] With respect to the remaining materials, the record establishes that the City willfully ignored its statutory obligation to bargain in good faith with Charging Party.

This is not the first time that Respondent has been found to have violated PERA in recent years by failing or refusing to timely supply requested information to permit its unions to engage in collective bargaining and to police the administration of the contracts. See *City of Detroit*, 25 MPER 23 (2011) (no exceptions); *City of Detroit*, 23 MPER 29 (2010) (no exceptions); *City of Detroit*, 20 MPER 57 (2007); *City of Detroit*, 19 MPER 46 (2006); *City of Detroit (Water & Sewerage Dept)*, 19 MPER 34 (2006) (no exceptions); *City of Detroit (Dept of Transp)*, 18 MPER 78 (2005). Based on this history, and in light of the City's flagrant disregard for its obligations under the Act in this case, I would, but for *Goolsby v Detroit*, 211 Mich App 214, 224 (1995), follow the Commission's earlier decision in *Wayne-Westland Community Sch Dist*,

[3] Charging Party failed to establish that the Coleman statement exists and, therefore, the failure to produce such a document was not, in and of itself, unlawful. However, Respondent did have a duty to at least provide a timely response to the request.

1987 MERC Lab Op 381, aff'd sub nom *Hunter v Wayne-Westland Community Sch Dist*, 174 Mich App 330 (1989) and award attorney fees and costs incurred in this unfair labor practice proceeding to Charging Party as compensatory damages.[4]

I am ordering Respondent to pay, as damages in this case, the entire cost of the arbitrator's fee in the underlying Grievance No. 718, or to reimburse Charging Party for its share of that fee to the extent that payment has already been made to Arbitrator Roumell. Respondent's conduct in simply ignoring the Union's information requests constituted a violation of its duty to bargain generally, as described above, and also a clear breach of the Employer's obligation to respond to and process grievances in good faith. The City's conduct clearly frustrated the purpose of grievance arbitration, which is to expeditiously and economically resolve the dispute, as evidenced by Roumell's finding that arbitration of Grievance No. 718 likely could have been avoided had the City provided the Union with the documentation it had originally requested. Respondent's unlawful conduct caused the Union to needlessly incur the costs of that arbitration. I find that an order requiring the City to pay, as damages in this case, the entirety of the arbitrator's fees in the underlying Grievance No. 718 is necessary to effectuate the purpose of the Act, taking into account the City's pattern of refusing to provide relevant information to the labor organizations representing its employees. I am not, however, ordering the City to reimburse Charging Party for costs the Union incurred, including legal fees, in presenting its own case at arbitration.

For the reasons stated 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 failing or refusing to provide AFSCME Council 25, Local 524 with information relevant and necessary to the union's duty to police the collective bargaining agreement between the parties.

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

a. To the extent that it has not yet done so, furnish the Charging Party with the following information without delay:

1. The April 6, 2010 job assignment sheet for Arthur Goodson.

[4] In *City of Detroit*, Case No. C09 I-166, issued June 2, 2011, ALJ Doyle O'Connor distinguished the *Goolsby* decision and proposed that the Commission assess sanctions against the charging parties for engaging in conduct abusive to the process. That decision is currently pending on exception before the Commission. If the Commission adopts ALJ O'Connor's recommended remedy in *City of Detroit*, I would recommend that it consider similar remedies in this matter, given the blatant and unexcused violations by the City of its duty to bargain.

2. Time sheets for Theresa Sanders, Ernestine Smith, Jobina Marshall, Bettie Edwards, Sheila Boyd, Kim Stafford, Jeanette Richardson, Ronald Burris, Christine Benters and Daniel Sheard for the weeks of May 4 and May 11, 2009.

3. Overtime records for the Davison Yard for April and May of 2009.

4. Job duties and overtime assignments for the North District for the weeks of May 4 and May 11, 2009.

5. An affidavit regarding contracts or requests for proposals for Peterson Park.

6. A list of all overtime assignments made from March 19, 2009 to May 19, 2009 for the North District, along with the name of the employee(s) and the amount of overtime worked

7. Any memos or correspondence regarding overtime in 2009.

b. Pay the entire cost of the arbitrator's fee in Grievance No. 718 or reimburse Charging Party for its share of the fee paid to Arbitrator Roumell to the extent that payment has already been made.

c. 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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David M. Peltz
Administrative Law Judge
Michigan Administrative Hearing System

Dated: May 2, 2012

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 cease and desist from failing or refusing to provide AFSCME Council 25, Local 524 with information relevant and necessary to the union's duty to police the collective bargaining agreement between the parties.

WE WILL furnish AFSCME Council 25, Local 524 with the following information without delay:

1. The April 6, 2010 job assignment sheet for Arthur Goodson.

2. Time sheets for Theresa Sanders, Ernestine Smith, Jobina Marshall, Bettie Edwards, Sheila Boyd, Kim Stafford, Jeanette Richardson, Ronald Burris, Christine Benters and Daniel Sheard for the weeks of May 4 and May 11, 2009.

3. Overtime records for the Davison Yard for April and May of 2009.

4. Job duties and overtime assignments for the North District for the weeks of May 4 and May 11, 2009.

5. An affidavit regarding contracts or requests for proposals for Peterson Park.

6. A list of all overtime assignments made from March 19, 2009 to May 19, 2009 for the North District, along with the name of the employee(s) and the amount of overtime worked.

7. Any memos or correspondence regarding overtime in 2009.

WE WILL pay the entire cost of the arbitrator's fee in Grievance No. 718 or reimburse Charging Party for its share of the fee paid to Arbitrator George Roumell to the extent that payment has already been made.

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.