STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

DETROIT PUBLIC SCHOOLS,
Public Employer-Respondent,

Case No. C10 F-129

-and-

TEAMSTERS LOCAL 214,
Labor Organization-Charging Party.

_____/

APPEARANCES:

Daryl Adams, Assistant Director, Office of Labor Relations, Detroit Public Schools, for the Respondent

Law Office of Wayne A. Rudell, P.L.C., by Wayne A. Rudell, for Charging Party

DECISION AND ORDER

On June 20, 2012, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act, 1965 PA 379, as amended, and recommending that the Commission dismiss the charges and complaint.

The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of the Act.

The parties have had an opportunity to review the Decision and Recommended Order for a period of at least 20 days from the date of service and no exceptions have been filed by any of the parties.

ORDER

Pursuant to Section 16 of the Act, the Commission adopts the recommended order of the Administrative Law Judge as its final order.

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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Robert S. LaBrant, Commission Member

Dated: _____

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

DETROIT PUBLIC SCHOOLS,
Public Employer-Respondent,

Case No. C10 F-129
-and- Docket 10-000079-MERC

TEAMSTERS LOCAL 214,
Labor Organization-Charging Party.
_____/

APPEARANCES:

Daryl Adams, Assistant Director, Office of Labor Relations, Detroit Public Schools, for Respondent

Wayne A. Rudell, for Charging Party

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE ON SUMMARY DISPOSITION

On June 1, 2010, Teamsters Local 214 filed the above charge, Case No. C10 F-129, with the Michigan Employment Relations Commission (the Commission) against the Detroit Public Schools alleging that Respondent had violated §§10(1)(a), (b), (c) and (e) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210. The charge was amended on June 28, 2010 and September 13, 2010. Pursuant to §16 of PERA, the charge was assigned for hearing to Administrative Law Judge Julia C. Stern of the Michigan Administrative Hearing System (MAHS). By my order, this charge was held in abeyance pending a decision by the Commission on a related charge, Case No. C09 G-103. On January 19, 2012, the Commission issued its final order on that charge. *Detroit Pub Schs*, 25 MPER 58 (2012). Based upon the facts set forth in the instant charge and conclusions of law set forth below, I recommend that the Commission issue the following order.

The Unfair Labor Practice Charge, Background, and History:

At the time the charge was filed, Charging Party represented a bargaining unit of public safety officers/security officers employed by Respondent to provide security at its schools and other buildings. Respondent also employed certified police officers who were represented by another labor organization, the Police Officers Labor Council (POLC). In late 2008 or early 2009, Respondent created a new classification, campus security police officer (CSPO), and

placed the new classification in the bargaining unit represented by the POLC. Respondent filled CSPO positions in March 2009 and again in the fall of 2009. Most of the positions were filled by security officers from Charging Party's unit who applied for promotion. Respondent's intent in creating the CSPO position was that the CSPOs would have more law enforcement authority than its security officers and somewhat different duties. However, Respondent was not prepared when it first hired them to give the CSPOs additional authority or to assign them duties that were different from those of the security officers. Between March and December 2009, CSPOs in the POLC bargaining unit performed the same work as security officers in Charging Party's unit.

On July 10, 2009, Charging Party filed a charge, Case No. C09 G-103, alleging that Respondent violated §§10(1) (a) and (e) of PERA by refusing to recognize the Charging Party as the bargaining representative for employees with the title CSPO and refusing to apply the terms of the Charging Party's collective bargaining agreement to these employees. It also alleged that Respondent had violated its duty to bargain in good faith by failing to provide Charging Party with accurate information about the alleged new position, as Charging Party had requested on January 22, 2009. The charge also alleged that Respondent provided unlawful assistance to the POLC, in violation of §10(1)(b) of PERA, by recognizing the POLC as the bargaining representative for the CSPO title before any employees were hired and by deducting dues for the POLC from the CSPOs' paychecks without a valid union security or dues deduction provision in place. Finally, the charge alleged that Respondent's actions, as set forth above, violated §§10(1)(c) and (d) of PERA because they constituted retaliation against Charging Party for positions it had taken at the bargaining table and because it had filed previous unfair labor practice charges against Respondent.

This charge in Case No. C09 G-103 was assigned to me and consolidated for hearing with a representation petition, (Case No. R09 C-047), and a unit clarification petition (Case No. UC09 C-009). The latter petition was filed by Charging Party and sought to clarify the security officers' bargaining unit to include the CSPOs.[1] On April 30, 2010, I issued a Decision and Recommended Order in the consolidated cases. I concluded that Respondent had violated §§10(1)(a) and (e) by refusing to recognize Charging Party as the bargaining agent for the employees who had been given the CSPO title but had been assigned to perform the duties of a security officer. I also found that Respondent had violated its duty to bargain by refusing to apply the terms of Charging Party's collective bargaining agreement, including the union security and dues checkoff provisions, to these employees. I found, in addition, that Respondent had a duty to provide Charging Party with the information about the CSPO position that it had requested on January 22, 2009, that Respondent did not provide this information until after the hearing on the charge in September 2009, and that Respondent violated its duty to bargain in good faith by failing to provide this information in a timely manner. I concluded, however, that Respondent's actions in that case did not violate §10(1)(b) or §10(1)(c) of PERA.

When the instant charge was filed on June 1, 2010, my Decision and Recommended Order in Case No. C09 G-103 was pending before the Commission. The charge in Case No. C10 F-129, as amended, alleges that Respondent did not comply with my recommended order by recognizing Charging Party as the bargaining agent for the CSPOs and applying the terms of the

[1] The Commission found that the CSPOs shared a community of interest with the POLC unit and denied Charging Party's petition in an order issued on January 14, 2011. *Detroit Pub Sch*, 24 MPER 8 (2011).

parties' collective bargaining agreement to these employees; unlawfully removed more employees from Charging Party's bargaining unit in the spring of 2010 by giving them the CSPO title; and continued to unlawfully recognize the POLC as the bargaining agent for CSPOs and to unlawfully deduct dues for that labor organization from the CSPOs' paychecks. The charge, as amended, also alleges that Respondent violated its duty to bargain in good faith by refusing to provide Charging Party with information Charging Party had requested on April 1, 2010, April 16, 2010, and May 28, 2010. On April 1 and April 15, Charging Party asked Respondent to provide it with the number of employees in the CSPO classification and their names. On May 28, it asked for additional information about the CSPO position and the number, names and addresses of employees classified as security officers in its bargaining unit on several dates after January 1, 2009.

On July 6, 2010, I issued an order to Respondent in Case No. C10 F-129 to show cause why it should not be found to have violated §§10(1)(a) and (e) of PERA by refusing to provide the information Charging Party had requested on April 1, April 15, and May 28, 2010. I stated in that order that I would hold the remainder of the allegations in Case No. C10 F-129 in abeyance pending the Commission decision in Case No. C09 G-103.

On this same date, July 6, 2010, Respondent filed exceptions with the Commission to my April 30, 2010 Decision and Recommended Order in Case No. C09 G-103. It also filed a motion with the Commission to reopen the record in that case to admit evidence of events occurring after the final day of hearing in that case in October 2009. On July 15, 2010, the Commission remanded Case No. C09 G-103 to me to rule on Respondent's motion to reopen the record.

On July 15, 2010, Respondent filed a response to my order to show cause in Case No. C10 F-129 in which it asserted that it had no obligation to provide Charging Party with the names of the CSPOs since the classification was not in its bargaining unit. It also asserted that Charging Party already had the data it had requested about employees in its bargaining unit. It also filed a motion for summary dismissal of the charge in which it asserted that the charge was filed prematurely because the Commission had not yet issued a decision in Case No. C09 G-103. On July 20, 2010, Respondent supplied Charging Party with all the information that Charging Party had requested in April and May 2010.

On August 13, 2010, I issued an order denying Respondent's motion for summary dismissal. I held, however, that the charge should be held in abeyance, and the hearing adjourned without date, until a final Commission order was issued in Case No. C09 G-103.

On February 17, 2011, after conducting further hearings, I issued a Supplemental Decision and Recommended Order on Remand in Case No. C09 G-103. I concluded that the CSPOs had been properly placed in POLC unit in December 2009 based on the new job duties and authority they were given at that time. I concluded, nevertheless, that Respondent had violated its duty to bargain by refusing to recognize Charging Party as the bargaining agent for these employees, and apply the terms of Charging Party's contract to them, prior to December 2009. Respondent filed exceptions with the Commission to my findings. The Commission issued its Decision and Order on exceptions on January 12, 2012. The Commission found that Respondent had committed an unfair labor practice by refusing to provide Charging Party, in a

timely fashion, with the information about the CSPO position it had requested in January 2010. The Commission held that Respondent acted lawfully when it placed the CSPOs in the POLC unit in March 2009, and that Respondent had no duty to recognize Charging Party as the representative of these employees or bargain with it over their terms and conditions of employment. *Detroit Pub Schs,* 25 MPER 58 (2012). No appeal was filed with the Court of Appeals to this order.

On May 9, 2012, I sent a letter to the parties advising them of my intention, if Charging Party did not withdraw the charge, to issue an a decision and recommended order recommending the Commission dismiss the charge in Case No. C10 F-129, explaining my reasons for doing so, and offering them an opportunity to respond. Neither party responded to my letter.

Discussion and Conclusions of Law:

The doctrine of collateral estoppel bars relitigation of an issue in a new action arising between the same parties or their privies when the earlier proceeding resulted in a valid final judgment and the issue in question was actually and necessarily determined in that prior proceeding. *Leahy v Orion Twp,* 269 Mich App 527, 530; (2006), citing 1 Restatement Judgments, 2d, § 27, p 250. The doctrine bars relitigation of issues when the parties had a full and fair opportunity to litigate those issues in an earlier action. *Arim v Gen Motors Corp.,* 206 Mich App 178, 195 (1994).

As discussed above, the Commission held in Case No. C09 G-103 that Respondent acted lawfully when it placed the CSPOs in the bargaining unit represented by the POLC in March 2009. It dismissed Charging Party's claims that Respondent's recognition of the POLC was unlawful, and that Respondent was obligated to recognize Charging Party as the CSPOs' representative and apply the terms of its contract to them. I find that under the doctrine of collateral estoppel, the Commission's decision bars all Charging Party's claims in the instant case except for its allegation that Respondent refused to provide Charging Party with information it requested on April 1, April 15, and May 28, 2010.

Charging Party received the information that it had requested on April 1, April 15, and May 28, 2010 from Respondent on or before July 20, 2010. An unreasonable delay in furnishing information is as much an unfair labor practice as a refusal to provide it. However, in this case the bargaining unit status of the CSPOs was uncertain at the time Charging Party requested their names, and Respondent believed that Charging Party already had some of the information in its possession. I find that Respondent's delay in providing the information was not unreasonable under the circumstances of this case, even though it did not supply the information until after I issued an order to show cause. I conclude, therefore, that Respondent did not violate §§10(1)(a) and (e) of PERA by failing to provide the information Charging Party requested in April and May 2010 until July 20, 2010. I recommend, therefore, that the Commission issue the following order.

RECOMMENDED ORDER

The charge is dismissed in its entirety.

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Julia C. Stern
Administrative Law Judge
Michigan Administrative Hearing System

Date: June 20, 2012