STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF DETROIT,
Public Employer - Respondent,

-and-

Case No. C13 A-007
Docket No. 13-000017-MERC

MICHIGAN AFSCME COUNCIL 25 AND ITS AFFILIATED LOCAL 542,
Labor Organization - Charging Party.
_____/

APPEARANCES:

Shawntane Williams, Staff Attorney, for Charging Party

DECISION AND ORDER

On May 23, 2013, Administrative Law Judge Julia C. Stern issued a 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

_____
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:

CITY OF DETROIT,
Public Employer-Respondent,

Case No. C13 A-007
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-and-

MICHIGAN AFSCME COUNCIL 25 AND ITS AFFILIATED LOCAL 542,
Labor Organization-Charging Party,
_____/

APPEARANCES:

Shawntane Williams, Staff Attorney, Michigan AFSCME Council 25, for the Charging Party

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON SUMMARY DISPOSITION

On January 14, 2013, Michigan AFSCME Council 25 and its affiliated Local 542 filed the above unfair labor practice charge against the City of Detroit with the Michigan Employment Relations Commission (the Commission), pursuant to §10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210. Pursuant to §16 of PERA, the charge was assigned to Julia C. Stern, Administrative Law Judge for the Michigan Administrative Hearing System.

The Unfair Labor Practice Charge:

Charging Party AFSCME Council 25 and its affiliated Local 542 represent a bargaining unit of employees of Respondent in its recreation department. According to the charge, at the time the charge was filed Charging Party and Respondent were parties to a collective bargaining agreement covering this unit. The charge alleges that Respondent repudiated this collective bargaining agreement, and violated its duty to bargain under §15 of PERA, by: (1) failing to respond, within the time limits set forth in the collective bargaining agreement, to three requests made by Charging Party in June and July 2012 for special conferences pursuant to Article 12 of the agreement; (2) failing to provide Charging Party with written position statements, as required by Article 12, after special conferences held in July, August and September 2012; and (3) failing to provide a written answer to a grievance heard at the fourth step of the grievance procedure on July 19, 2012, in violation of Article 8 of the agreement. Charging Party also alleges that Respondent violated its duty to bargain in good faith by refusing to provide Charging Party with

information it requested on June 30, 2012 that was relevant to Charging Party's duty to represent its members and police its collective bargaining agreement.

On February 19, 2013, pursuant to my authority under Rule 165 of the Commission's General Rules, 2002 AACS, R 423.165, I issued an order to Charging Party to show cause why its charge should not be dismissed for failure to state a claim upon which relief could be granted under Rule 165(2)(d). I directed Charging Party to explain why Respondent's conduct, as alleged in the charge, constituted repudiation of the parties' collective bargaining agreement and a violation of Respondent's duty to bargain. I also ordered Charging Party to explain why, based on the facts asserted in the charge, it asserted that Respondent had refused to provide the information Charging Party requested on June 30, 2012. On April 22, 2013, Charging Party filed a response to my order to show cause. Based on facts set forth in the charge and Charging Party's response to my order to show cause, I make the following conclusions of law and recommend that the Commission issue the following order.

Facts:

Alleged Repudiation of Contract and Refusal to Provide Information

According to the charge, Article 12 of the parties' collective bargaining agreement includes the following language:

> Special conferences for important matters including problems of health, safety and periodic discussion of substantial issues which are of concern to the Union members will be arranged between the Local Union President and the Department head or his/her designated representative upon request of either party… Such conferences shall be held within (7) calendar days after the request is made, unless extended by mutual agreement of the parties … in areas where the parties fail to agree, the Employer will submit a written position statement to the Union within (10) calendar days [after the special conference].

Article 8 of the agreement is the grievance procedure. Article 8 provides that a grievance filed at the third or fourth step of the grievance procedure is to be answered by Respondent in writing within five working days from the date of the meeting at which the grievance was discussed.

On June 7, 2012, Charging Party faxed a request for a special conference to Lamont Satchel, Respondent's director of human resources. The topics Charging Party requested be discussed at the special conference were the proposed takeover by the State of Michigan of Belle Isle Park, the impact upon/plans for Local 542 bargaining unit members as a result of the takeover, "contractors/vendors," and contractors and employees at the Erma Henderson Marina. On June 25, 2012, Charging Party faxed a request for a special conference to Loren Cunningham, the director of Respondent's recreation department. The topics Charging Party asked to discuss in this request were the 2012-2013 budget, department operations under said budget, possible layoffs and reductions in force, expectations of bargaining unit members, and current out-of-class assignments.

Charging Party had not received a response to either of the above requests when, on June 30, 2012, it filed the following grievance through its president Phyllis McMillon:

> In the month of March/April it was rumored that the State would take over Belle Isle Park, although Mayor Bing vehemently denied it. In late May, I received a call from LaDonna Bailey stating that there were two men on Belle Isle questioning Rodney Mack on equipment needed to care for the park. On May 21, 2012, I requested De Angelo Malcolm to schedule a special conference through Labor Relations to discuss the take over and what impact it would have on the members. On June 7, 2012, a Special Conference request letter was sent and received by Mr. Satchel on June 11, 2012. Since June 13, 2012, there has been no scheduled meeting with the Union prior to State takeover. I was made aware today, June 30, 2012, that the State will be taking over Belle Isle Park in 90 days and the employees will have to apply for a job.

This grievance was filed at the fourth step of the grievance procedure. Charging Party requested, at the time the grievance was filed, that the grievance be moved to arbitration.

On June 30, 2012, Charging Party also emailed a request for information to Satchel, to labor relations specialist Laverne Bronner-Wilson, and to Bradley Dick, the director of the general services department. According to the charge, the request read as follows:

> 1. Written Statement – GSD/Recreation Dept – Loren Cunningham, Interim Director and Bradley Dick –Will State Take Over – Rouge, Chandler and Palmer as well? Why only Belle Isle? Management scheme for Belle Isle (or for ANY of Detroit's monumental parks).
>
> 2. Impact/Plans for our bargaining members as a result of the State Take Over.
>
> 3. Copy of all Contractors, Vendors and a list of all nonprofit organizations involved in support of the Park.
>
> 4. Copy of all Investors.
>
> 5. Who will pick up Maintenance Costs?
>
> 6. Copy of contracts, subcontracting out for: Michigan Department of Natural Resources
>
> 7. Copy of Lease Agreement.
>
> 8. Copy of all Internal Memos, Studies, Correspondence with Michigan Department of Natural Resources, Belle Isle Conservatory [sic] and The Detroit Riverfront Conservancy.

9. Erma Henderson Marina Status.

On July 5, 2012, Charging Party faxed another request for a special conference to the director of the recreation department. The parties held special conferences on the topics raised in the June 7, June 25, and July 5 requests on July 11, August 6, and September 14, 2012. Charging Party asserts that although special conferences were held on the issues raised in the requests, the issues "were glossed over and never actually addressed." Respondent did not provide Charging Party with written position statements after any of these three special conferences.

On July 19, 2012, the parties held a fourth step meeting on the grievance Charging Party filed on June 30. Respondent did not provide Charging Party with a written grievance answer following the meeting.

On August 14, 2012, Satchel sent Charging Party the following response to its June 30 information request.

> This letter is in response to your June 30, 2012 letter requesting specific information about the future of Belle Isle as it relates to the City of Detroit's recent discussions with the State of Michigan about state assistance in its operation. As you know, the Financial Stability Agreement entered into between the City of Detroit, State of Michigan and Department of Treasury contains language in Annex E committing the cooperative support of the State and Treasury Department in the maintenance and improvement of Belle Isle.
>
> Without waiving any other objection to your information request, requests 1 through 8 are premature and incapable of response, as the City of Detroit has not finalized any deal with the State or Treasury Department regarding the disposition of Belle Isle. I would also note that any correspondence between the "Michigan Department of Natural Resources, Belle Isle Conservancy and the Detroit Riverfront Conservancy" would not be in the possession of the City of Detroit. Lastly, request 9, which seeks the status of the Erma Henderson Marina, is vague and without more specific information, I am unable to respond. If you would like to provide a more specific request, I will endeavor to provide an appropriate response.

The charge does not make reference to any subsequent communications between the parties about this information, written or oral. Respondent did not provide Charging Party with any documents in response to the June 30, 2012 request.

Consent Agreement Involving Respondent

Although not mentioned in the charge, I take judicial notice of the following additional facts which are public record. On or about April 9, 2012, Respondent entered into a consent agreement, titled Financial Stability Agreement (FSA) with the State of Michigan as authorized by the Local Government and School District Fiscal Accountability Act, 2011 PA 4, MCL 141.1503 et seq. As authorized by that statute, Section 4.4 of the FSA included a declaration by

the State Treasurer that beginning 30 days after the effective date of the FSA, Respondent would not be subject to §15(1) of PERA for the remaining term of the FSA. During the summer of 2012, a petition for referendum of 2011 PA 4 was filed with the Michigan Secretary of State and presented to the Board of Canvassers for review pursuant to Article 2, §9 of the Michigan Constitution and the Michigan Election Law, MCL 168.1 et seq. On August 8, 2012, the Board of Canvassers certified the referendum for placement on the ballot for the November 6, 2012 election. In accord with MCL 168.477(2), 2011 PA 4 ceased to be effective with the certification of the referendum. The voters failed to approve the law at the November election, and 2011 PA 4 was thus repealed by referendum.

Discussion and Conclusions of Law:

The law is well established that, in the absence of facts indicating that a party has repudiated its collective bargaining agreement, an unfair labor practice proceeding is not the proper forum for the adjudication of a contract dispute. *Detroit Regional Convention Authority*, 25 MPER 8 (2011); *Wayne Co*, 19 MPER 61 (2006); *Village of Romeo*, 2000 MERC Lab Op 296, 298. Repudiation exists only when both of the following are present: (1) the contract breach is substantial and has a significant impact on the bargaining unit; and (2) no bona fide dispute over interpretation of the contract is involved. *City of Detroit*, 26 MPER 21 (2012); *Gibraltar Sch Dist*, 18 MPER 20 (2005); *Eastern Michigan Univ*, 17 MPER 72 (2004). The Commission will find repudiation only when the action of a party amounts to a rewriting of the contract or a complete disregard for the contract as written. *Goodrich Area Sch*, 22 MPER 103 (2009); *City of Detroit (Dept of Transp)*, 19 MPER 34 (2006). The Commission will not find repudiation on the basis of an insubstantial or isolated breach. *Michigan State Univ*, 1997 MERC Lab Op 615, 618.

An employer's refusal to accept or acknowledge a grievance filed pursuant to a contractual grievance procedure violates its duty to bargain in good faith. *Washtenaw Co Rd Commission*, 29 MPER 69; *City of Mt Clemens*, 1974 MERC Lab Op 336, enf'd *Fire Fighters Union v Mt Clemens*, 58 Mich App 635 (1975); *Lake Co and Lake Co Sheriff*, 1981 MERC Lab Op 1, 5; *City of West Branch*, 1978 MERC Lab Op 352. However, the Commission has held that a party's failure to adhere to the strict letter of the grievance procedure does not constitute a repudiation of contract because it does not constitute a substantial breach. For example, in *City of Pontiac Sch Dist*, 1991 MERC Lab Op 491 and *Linden Cmty Schs*, 1993 MERC Lab Op 763 (no exceptions) the Commission held that even the employers' repeated failure to comply with contractual deadlines for scheduling grievance meetings and/or supplying grievance answers did not constitute repudiation. The Commission has held that an employer's failure to properly respond to a grievance constitutes a denial of that grievance, permitting the union to move the grievance to the next step. *Hurley Hospital,* 1974 MERC Lab Op 872, 875; *City of Detroit,* 1980 MERC Lab Op 131.

Here, Charging Party alleges that Respondent repudiated its collective bargaining agreement by failing to respond to three of Charging Party's requests for special conferences made in June and July 2012 within the time limits set forth in the collective bargaining agreement, and by failing, after the conferences were finally held weeks to months later, to provide Charging Party with written position statements as required by the contract. Charging Party also alleges that Respondent repudiated the collective bargaining agreement when, after

meeting with the Charging Party to discuss a grievance on July 19, 2012, it failed to provide the written grievance answer required by the contract.

In order to constitute a breach of the duty to bargain, a contract breach must be substantial and have a significant impact on the bargaining unit. As discussed above, the Commission has held that "repudiation" is conduct which amounts to a rewriting of the contract or a complete disregard for its terms. I conclude that Respondent's delay in scheduling the three special conferences and its failure to provide Charging Party with written position statements after the conferences did not constitute a substantial breach of the contract or have a significant impact on the unit. As noted above, the Commission has also held that a party's failure to adhere to the strict letter of the contractual grievance procedure does not constitute repudiation, and that a failure to properly respond to a grievance simply serves as a denial of that grievance which gives the union the right to move the grievance to the next step. Charging Party has not asserted that Respondent refused to accept the June 30, 2012 grievance or discuss it, or that it refused to arbitrate the grievance on Charging Party's demand. I find that neither Respondent's conduct with respect to the special conferences nor its failure to provide a written step answer to the June 30, 2012 grievance, either separately or in the aggregate, amounted to an unlawful repudiation of the parties' agreement.[1] I conclude that the allegation that Respondent repudiated its collective bargaining agreement does not state a claim under which relief can be granted under PERA.

In its response to my February 19, 2013 order, Charging Party asserts that although the special conferences were eventually held, Charging Party did not get satisfactory answers to all the questions it asked at these conferences. I find that this allegation, which was not part of the original charge, also fails to state a claim on which relief could be granted under PERA for the reasons discussed above.

Charging Party also asserts that Respondent refused to provide it with relevant information it requested on June 30, 2012. It is well established that when a union makes a request for relevant information, the employer has a duty to supply the information in a timely fashion or to adequately explain why the information was not furnished. *City of Lansing,* 21 MPER 64(2008) (no exceptions); *Beverly California Corporation f/k/a Beverly Enterprises*, 326 NLRB 153, 157 (1998); *Interstate Food Processing*, 283 NLRB 303, 306 (1987). It is also well established that if an employer does not understand the request, it has an affirmative duty to request clarification. An employer may not simply refuse to comply with an ambiguous request, but must request clarification and/or comply with the request to the extent it encompasses necessary and relevant information. *City of Lansing; National Electrical Contractors Assn., Birmingham Chapter*, 313 NLRB 770, 771 (1994); *Keauhou Beach Hotel,* 298 NLRB 702 (1990).

On August 14, 2012, about a week after PA 4 was suspended and Respondent's duty to bargain reinstated, Respondent human resources director Satchel replied to Charging Party's June 30 information request with the statement that the request was premature, as Respondent had not reached agreement with the State on the disposition of Belle Isle matters. He also asked for clarification of item nine of the request. Charging Party argues that Satchel improperly used

[1] In view of this finding, it is unnecessary for me to determine whether Respondent had a duty to bargain under §15(1), and/or a valid collective bargaining agreement with Charging Party, at the time of the alleged repudiation.

the fact that a consent agreement had been in place to assert that Respondent did not have to provide the information requested. However, this is not what Satchel stated in his August 14, 2012 letter. Rather, Satchel responded that Respondent did not yet have the information Charging Party asked for in its June 30, 2012 request because the matters had not yet been decided. In its charge and response to my order, Charging Party asserts that this was not an adequate response since what Charging Party wanted was information about the discussions that were taking place between Respondent and representatives from the State and proposed drafts of the documents referred to in its request. However, with the possible exception of item eight, it was not clear from the wording of the June 30 request that this is what Charging Party wanted, and Charging Party has not asserted that Respondent knew or should have known from some other source what information it was really seeking.[2] It seems that Charging Party could have cleared up any ambiguity about what it was seeking by sending Satchel a clarifying letter, but it does not appear to have done so. I find that Respondent did not refuse in its August 14, 2012 letter to provide the information that Charging Party requested on June 30, 2012. It is, therefore, unnecessary for me to address the question of whether Respondent had a duty to provide the information that Charging Party apparently wanted, but for which it did not ask. I conclude that Charging Party has failed to state a claim upon which relief can be granted in this allegation as well. I recommend, therefore, that the Commission issue the following order.

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RECOMMENDED ORDER

The charge is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Julia C. Stern
Administrative Law Judge
Michigan Administrative Hearing System

Dated: _____

[2] In item eight of the June 30 request, Charging Party appears to be seeking *Respondent's* internal memos or studies with respect to Belle Isle and *Respondent's* correspondence with the Michigan Department of Natural Resources, Belle Isle Conservancy, and Detroit Riverfront Conservancy regarding the proposed transfer of Belle Isle.