STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

36th DISTRICT COURT,
Public Employer-Respondent

Case No. C13 H-155
-and- Docket No. 13-011475-MERC

AFSCME COUNCIL 25 AND ITS AFFILIATED LOCAL 3308,
Labor Organization-Charging Party
_____/

APPEARANCES:

Kienbaum, Opperwall, Hardy & Pelton, by Thomas Kienbaum, for Respondent

Shawntane Williams, Staff Attorney, for Charging Party

DECISION AND ORDER

On September 25, 2014, 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

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: November 14, 2014

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

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APPEARANCES:

Kienbaum, Opperwall, Hardy & Pelton, by Thomas Kienbaum, for Respondent

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

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON SUMMARY DISPOSITION

On September 30, 2013, AFSCME Council 25 and its affiliated Local 3308 filed the above unfair labor practice charge with the Michigan Employment Relations Commission (the Commission) against the 36th District Court, pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216. The charge alleges that Respondent violated §10(1)(e) of PERA by failing and refusing to provide Charging Party with information it requested on August 8, 2013. Pursuant to Section 16 of PERA, the charge was assigned to Administrative Law Judge Julia C. Stern of the Michigan Administrative Hearing System (MAHS).

After the charge was filed, I directed Respondent to file a position statement in response to the allegations, which it did on November 14, 2013. Thereafter, Charging Party obtained some of the information it sought in its original request, and withdrew certain portions of its charge. On February 10, 2014, Charging Party submitted a statement outlining the issues remaining to be decided by the Commission. On March 29, 2014, pursuant to Rule 165(1) and (2)(f) of the Commission's General Rules, 2002 AACS, R 423.165, I issued an order to Charging Party to show cause why the charge should not be dismissed because there was no genuine issue of material fact and Respondent was entitled to judgment as a matter of law. Charging Party filed a response to my order on April 9, 2014.

Based upon the facts alleged by Charging Party, and facts asserted by Respondent in its position statement that are not in dispute, I make the following conclusions of law and recommend that the Commission issue the following order.

The Unfair Labor Practice Charge:

Charging Party represents a bargaining unit of employees of the Respondent Court. As noted above, the charge alleges that Respondent violated its duty to bargain in good faith under §10(1)(e) of the Act by failing to provide information requested by the Charging Party on August 8, 2013 which was relevant to Respondent's duty to engage in collective bargaining and otherwise represent its members.

According to a letter submitted by Charging Party on February 10, 2014, the only issues remaining in dispute are: (1) whether Respondent violated its duty to bargain in good faith by failing to provide Charging Party with a detailed budget for the Court that included the salaries of individuals who came to work at the Court after Judge Michael Talbot's appointment as special administrator, and the source of funding for their salaries; and, (2) whether Respondent had an obligation to provide the names, job titles, salaries and "origin of salaries" of any and all new individuals either appointed by or brought to the Court by Judge Talbot after his appointment, including, but not limited to, information about the fees paid to attorney Thomas Kienbaum and the source from which his fees were paid.

Facts:

Background

In February 2013, an emergency manager was appointed for the City of Detroit, the Court's funding unit. On May 28, 2013, in response to operational problems experienced by Respondent, and the inability of the City to fund the Court at the level the Court deemed necessary, the Michigan Supreme Court appointed Michael J. Talbot, a judge of the Court of Appeals, as special judicial administrator for the Court. Under Talbot's direction, the Court undertook a reorganization of its operations. Some members of Charging Party's bargaining unit were also laid off after Talbot's appointment. After Talbot's appointment, a number of individuals began working in the Court's building who had not previously worked either for the Court or in its building.

No collective bargaining agreement was in effect for Charging Party's unit when Talbot was appointed. In June 2013, the parties resumed contract negotiations. In these negotiations, Respondent demanded significant economic concessions from Charging Party's unit. On or about August 8, 2013, after a bargaining session held that day, Respondent declared impasse. It then implemented changes in terms and conditions of employment, an action which was originally the subject of a separate unfair labor practice charge. That charge was later withdrawn after the parties reached agreement on the terms of a new contract.

The August 8 Request for Information

In the early morning hours of August 8, 2013, Charging Party Staff Representative Robert Davis sent Respondent's chief negotiator, Thomas Kienbaum, the following email:

> In accordance with applicable laws, including but not limited to PERA, on behalf of AFSCME Local 3308, I am respectfully requesting to receive the following information:
>
> 1. A summary of the amount of money the 36th District Court has saved with the layoffs of staff personnel that were implemented by Judge Talbot.
>
> 2. A list of all the individuals that have been appointed by Judge Talbot with a listing of their job titles (i.e., Peggy Madden).
>
> 3. A list of the salaries that are being paid to all of the individuals who were appointed by Judge Talbot and provide the source by which these individuals are being paid (i.e., are they being paid by the 36th District Court, Supreme Court, State of Michigan, etc.,)
>
> 4. Please provide the legal authority that describes the power and authority of Judge Talbot.
>
> 5. A copy of the audit for 36th District Court and detailed budgets for the 2011-2012 and 2012-2013 budget years.

Response to the Request

On August 12, 2013, Kienbaum sent Davis a letter stating that the information Davis requested on August 8, 2013 was "not relevant to the issues which we have been bargaining." Kienbaum also told Davis that no final figure for the net amount of money saved by the layoffs had been calculated because of the number of variables impacting that figure, including the payout of leave banks, and unemployment payments. He said that he would provide Davis with the information once it became available.

On August 14, Kienbaum emailed Davis a copy of the portion of the City of Detroit's 2012-2013 budget covering Respondent's operations. He also sent Davis preliminary budget documents for the City's 2013-2014 budget, the final version of which had not yet been published. Kienbaum told Davis that these were the only budget documents that the Court had in its possession. He said that the Court did not have a copy of the City's audits, but that they should be available from the City. The budgets included line items for expenditures for contractual services, legal fees, salaries, and various employment benefits. They did not break down salaries by position or position classification.

On September 30, 2013, Charging Party filed the instant charge. The charge asserted that, as of that date, none of the information requested on August 8 had been provided and that all of this information was relevant to its duty to engage in collective bargaining and police the labor contract.

On October 8, 2013, after receiving a copy of the charge, Kienbaum wrote Davis again. With respect to item five of Davis' August 8 request, Kienbaum stated that Respondent had, on August 14, forwarded all the budget information it had available. With respect to items two and three, Kienbaum told Davis:

> Judge Talbot has only appointed Ina Grant as Director of Probation, to replace the prior Director. No other appointments have been made by Judge Talbot, nor are any of the individuals temporarily supporting the restructuring efforts paid out of the Court's budget, for instance Peggy Madden on whom you appear to be focused, SCAO representatives, or employees of Conway McKenzie.

Kienbaum's letter also stated that the Court was not paying for the services of his law firm, an issue that had previously been raised by Charging Party at the bargaining table.

In the position statement which Respondent filed in response to my direction on November 14, 2014, the Court stated that Kienbaum's fees were being paid by the Supreme Court, and the salaries of other personnel, including Madden, assigned to assist the Court after Judge Talbot's appointment, were being paid by the State Court Administrator's Office (SCAO), an arm of the Supreme Court. Attached to the position statement was an affidavit signed by Talbot stating that Kienbaum had been retained by Talbot, that Kienbaum's fees were being paid by the Supreme Court, and that various employees of the SCAO were assisting Talbot with the Court's reorganization.

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 police the administration of the contract. *Wayne Co*, 1997 MERC Lab Op 679; *Ecorse Pub Schs*, 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 Co*, supra. See also *E.I. Du Pont de Nemours & Co v NLRB*, 744 F2d 536, 538 (CA 6, 1984). Information about nonunit employees is not presumptively relevant, and a union must demonstrate relevance in order to obtain this information. *Traverse City Pub Schs*, 1969 MERC Lab Op 395 (no exceptions); *City of Pontiac*, 1981 MERC Lab Op 57, 62 (no exceptions); *SMART*, 1993 MERC Lab Op 355. However, 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 Co; SMART* at 357. See also *Pfizer, Inc*., 268 NLRB 916 (1984), enf'd 763 F2d 887 (CA 7, 1985).

At the time Charging Party made its August 8, 2013 request for information, the parties were engaged in bargaining a new collective bargaining agreement. Respondent was seeking significant concessions from the bargaining unit, in part because of the dire financial situation of its funding unit, and members of Charging Party's bargaining unit had recently been laid off. At the same time, various individuals who had not previously worked for the Court or in the Court's building had begun performing duties there after Judge Talbot's appointment. I find that Charging Party's duty to engage in collective bargaining on behalf of its members entitled it to information about the Court's finances and expenses. This included whether the individuals who began working at the Court after Talbot's appointment were employees of the Court being paid from the Court's reduced funding from the City of Detroit.

What Charging Party asked for in its August 8, 2013 email, however, were the names, job titles, and individual salaries of the individuals of nonunit employees appointed by Talbot, in addition to the source of the funding for their salaries. According to its response to my order to show cause, Charging Party concedes that Respondent told it that, except for Director of Probation Ina Grant, the individuals who came to work at the Court after Talbot was appointed were employees of the SCAO who were not being paid from the Court's budget. As the facts indicate, Respondent also told Charging Party that the Supreme Court was paying for the services of attorney Kienbaum. However, Charging Party argues that Respondent had an obligation to provide it with documentation of these claims. According to Charging Party, without documentation, it cannot determine whether Respondent's claims are true. Charging Party also argues that Respondent was obligated to comply with its request for the names, job titles, and individual salaries of these individuals, including Grant, plus the amount of the fees paid to Kienbaum for his legal services.

It is not clear, however, what documentation Charging Party believes Respondent should have provided. The City's budget for the Court, which Respondent provided to Charging Party, does not break down salaries by individual positions. Thus, this budget does not document that the individuals brought to work at the Court to assist Talbot were not being paid by the Court. According to Respondent, there is no official budget for the Court other than the portion of the City of Detroit budget which covers Court expenditures, and Charging Party does not dispute this. Charging Party requested a "detailed budget," which it appears to believe would constitute documentation of Respondent's claim that Kienbaum and the other individuals at issue were not being paid by the Court. However, any budget which Respondent prepared solely in response to Charging Party's request would not be evidence that the individuals involved were not being paid by the Court. On November 14, 2013, Respondent submitted an affidavit signed by Talbot stating that Kienbaum's legal fees were being paid by the Supreme Court and that various employees of the SCAO were assisting him with the Court's reorganization. Charging Party insists that Respondent had an obligation to provide better proof that neither Kienbaum nor these other individuals were being paid from the Court's budget. However, it has not indicated what documents or type of documents it believes would satisfy this obligation. I conclude that Respondent did not violate its duty to bargain in good faith by failing to provide Charging Party with additional documentation of its claim that neither Kienbaum or individuals brought to work at the Court after Talbot was appointed were paid from the Court's budget.

Charging Party also argues that Respondent was obligated to provide it with the names, job titles, and individual salaries of the individuals appointed by Talbot or brought to the Court by him after his appointment as special judicial administrator. Charging Party does not claim that these individuals were or should have been considered part of its unit, or that it suspects that these individuals were performing unit work. As noted above, information about nonunit employees is not presumptively relevant, and a union must demonstrate relevance to show that it is entitled to this information. Charging Party asserts that information about the Court's true economic status was relevant to the contract negotiations that were then taking place. It also asserts that the name, job title and individual salary information it sought was necessary, relevant and helpful to "ease speculation [about] the employer's economic status." I agree with Charging Party's first assertion, but not the second. If the individuals for which Charging Party sought information were not being paid from the Court's budget, then the amount of their salaries was irrelevant to the Court's economic condition. Even if they were being paid from the Court's budget, however, I find that the salaries paid to specific individuals were not relevant because this information could not have assisted Charging Party in evaluating the Court's true economic condition, and what it could afford to pay in wages and benefits, at the time negotiations were taking place. This is also true, I find, of the legal fees Kienbaum received for his services. I conclude that Respondent did not violate its duty to bargain by failing or refusing to provide Charging Party with the names, job titles and individual salaries of individuals appointed by or brought to work at the Court by Talbot after his appointment as the Court's special judicial administrator. I recommend, therefore, that the Commission issue the following order.

RECOMMENDED ORDER

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern
Administrative Law Judge
Michigan Administrative Hearing System

Dated: September 25, 2014