STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF DETROIT,
Public Employer-Respondent,

Case No. C03 E-097

-and-

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 25, AND ITS AFFILIATED CITY OF DETROIT LOCALS,
Labor Organization-Charging Party.
_____/

APPEARANCES:

City of Detroit Law Department, by Bruce A. Campbell, Esq., for Respondent

Miller Cohen, P.L.C., by Richard G. Mack, Jr., Esq., for Charging Party

DECISION AND ORDER

On November 18, 2004, Administrative Law Judge (ALJ) Julia C. Stern issued her Decision and Recommended Order in the above matter finding that Respondent, City Of Detroit, breached its duty to bargain in good faith in violation of Section 10(1)(e) of the Public Employment Relations Act (PERA), 1965 PA 379 as amended, MCL 423.210(1)(e). Charging Party, American Federation of State, County and Municipal Employees (AFSCME), Council 25, and its affiliated City of Detroit locals, contended that Respondent had a duty to provide all of the information sought in its three requests for information related to Respondent's decision to subcontract certain work. The ALJ found that Respondent had a duty to provide part of the information requested by Charging Party and recommended that Respondent be ordered to provide such information to Charging Party. However, the ALJ also found that Respondent had no duty to provide other information requested by Charging Party. The ALJ's Decision and Recommended Order was served upon the interested parties in accordance with Section 16 of PERA. After filing a timely request, Charging Party was granted an extension to file exceptions until January 12, 2005, and filed its exceptions and a brief in support on that date. Respondent did not file exceptions and did not respond to Charging Party's exceptions.

In its exceptions, Charging Party asserts that the ALJ erred in finding that Respondent had no duty to provide certain financial information regarding the cost comparison between work done by a subcontractor and work done by Charging Party's bargaining unit members. Charging Party also contends that the ALJ should have found that Respondent had a duty to provide information regarding the amount of money collected by City employees in years past, the number of utility shut-offs by Respondent in years past, as well as an analysis of revenue collection. For the reasons stated below, we find that the ALJ's recommended order must be modified to require Respondent to provide the cost comparison information. However, we find no merit to Charging Party's exceptions regarding its request for an analysis of revenue collection, information as to the amount of money collected by City employees, or the number of utility shut-offs.

Factual Summary:

The relevant facts in this case were set forth fully in the ALJ's Decision and Recommended Order and need not be repeated in detail here. Respondent and Charging Party are parties to a collective bargaining agreement extending through July 2003, which covers employees who collect overdue water bills, assist revenue collectors and income tax investigators, audit tax receipts, and provide clerical assistance to attorneys involved in collecting other debts owed to the City. Article 19 of that agreement provides:

> B. The right of contracting or subcontracting is vested in the City. The right to contract or subcontract shall not be used for the purpose or intention of undermining the Union nor to discriminate against any of its members nor shall any seniority employee be laid off or demoted or caused to suffer a reduction in overtime work as a direct and immediate result of work performed by an outside contractor.
>
> C. In cases of contracting or subcontracting, including renewal of contracts, affecting employees covered by this Agreement, the City will hold advance discussion with the Union prior to letting the contract. The Union representatives will be advised of the nature, scope and approximate days of work to be performed and the reasons (equipment, manpower, etc.) why the City is contemplating contracting out the work.

This agreement also included a memorandum of understanding creating a joint labor/management committee to "audit the financial impact" of City contracts where "the Union's position is that such services can be provided by City employees at a more cost effective level" and providing that the work of the committee would continue throughout the life of the agreement.

When Charging Party learned that Respondent was negotiating with a private company, MBIA MuniServices Company (MBIA), for collection services, Charging Party complained that it had not been given copies of, and had not discussed with Respondent, any proposed contract between Respondent and MBIA. On April 22, 2003, Charging Party addressed a letter to Respondent requesting financial information related to Respondent's decision to subcontract collection services to MBIA, including the amount of money collected from delinquent water customers and the number of

customers who had their water shut off. In that letter, Charging Party expressed its opinion that the cost of those services would be less if "done in house." Respondent did not answer Charging Party's request.

On May 7, 2003, the MBIA contract was approved for a three-year term by Respondent's City Council with assurances from Respondent's chief financial officer, Sean Werdlow, that no city employee who was currently connected with Respondent's collection process would lose his job during the three-year term of the MBIA contract. Werdlow also assured the City Council that at the conclusion of the contract the entire collection process would be returned to Respondent and its employees.

On May 21, 2003, Charging Party's counsel faxed a letter to Respondent requesting the following information:

> All versions of the MBIA contract, and any amendments, addendums or attachments.
>
> All documents created by the City administration, City Council or the MBIA which deal with the affect [sic] of the MBIA services upon AFSCME members – including but not limited to the classifications of AFSCME members affected, how these employees will be affected, nature and scope of training that will be offered to AFSCME members, length of training, etc.
>
> All documents submitted to the City by MBIA related to MBIA's bid proposal for the provision of the debt collection services.

Charging Party also asked to meet with Respondent to discuss its request. Respondent did not reply to the May 21, 2003 letter. Thus, Charging Party sought to include this in its charge alleging that Respondent had violated its duty to bargain in good faith by failing to provide requested information.

Discussion and Conclusions of Law:

The law governing an employer's statutory duty to provide information to the bargaining representative of its employees has been accurately stated by the ALJ, and we adopt her recitation as our own. See *City of Battle Creek, Police Dep't*, 1998 MERC Lab Op 684, 687; *Wayne Co*, 1997 MERC Lab Op 679; *Ecorse Pub Schs*, 1995 MERC Lab Op 384, 387. The ALJ found that comparative cost information was not relevant because Respondent had no duty to bargain its decision to subcontract work and its collective bargaining agreement with Charging Party did not condition its right to subcontract on cost effectiveness. Charging Party excepted to this finding and we find merit to the exception.

While it is true that Respondent has retained the right to subcontract work as long as that right is not used to undermine the union, discriminate against any of its members, or cause any seniority employee to be laid off, demoted, or suffer a loss of overtime work, Respondent has also agreed to the

establishment of a joint labor/management team to audit the financial impact of such contracts where the Union's position is that such services can be provided by City employees at a more favorable cost. In order to evaluate matters potentially within the purview of the joint committee, Charging Party must have access to comparative cost information.

While the Charging Party's role with respect to subcontracting may be limited, it is one that has been granted by contract. We conclude that Respondent is obliged to furnish information that Charging Party needs to carry out the limited oversight responsibility that it has been granted. Consequently, we hold that Respondent violated Section 10(1)(e) of PERA by failing to provide Charging Party with comparative cost information, notwithstanding that no analysis of this information may exist.

Charging Party also takes exception to the ALJ's conclusion that Respondent had no duty to provide information as to the amount of money collected by City employees for delinquent water bills and the number of utility shutoffs in preceding years. It argues that this information is relevant because of its belief that Respondent has reduced the hours of work of bargaining unit employees in consequence of subcontracting. We direct Respondent to disclose the number of bargaining unit employees performing the services at issue here and the number of hours worked by those employees, including overtime, from 1994 to the present. Until there is evidence that the hours of work of these employees have been reduced, we find that information as to the amount of money they have collected and the number of utility shutoffs that have occurred is not relevant.

We have carefully considered each of the arguments set forth by Charging Party in its exceptions and brief, and for the reasons set forth above, we modify the Administrative Law Judge's recommended order as follows:

ORDER

Respondent City of Detroit, its officers and agents, are hereby ordered to:

1. Cease and desist from refusing to provide AFSCME Council 25 with information that is relevant and necessary to its role as the bargaining agent for employees of Respondent.

2. Furnish AFSCME Council 25 with the following information:

   a. For the period 1994 through the present, the number of City employees represented by AFSCME Council 25 performing services that MBIA MuniServices Company performs or is entitled to perform under its contract with the City of Detroit; the base pay and fringe benefit payments for these employees; and the number of hours worked by these employees, including a specific listing of overtime, as requested by AFSCME Council 25 on April 22, 2003;

b. All requests for proposals (RFPs) from the City's Finance Department for contracts that impact employees represented by AFSCME Council 25, as requested by it on May 6, 2003;

c. All documents dealing with the effect of the MBIA contract on employees represented by AFSCME Council 25, as requested by it on May 21, 2003, and, to the extent it has not already done so, provide a copy of the complete and final contract between the City of Detroit and MBIA MuniServices Company; and

d. All other information in its possession bearing upon the cost of utilizing employees represented by AFSCME Council 25 to perform the collection services contracted by Respondent to MBIA.

3. 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 30 consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____
Nora Lynch, Commission Chairman

_____
Nino E. Green, Commission Member

_____
Eugene Lumberg, Commission Member

Dated: _____

NOTICE TO EMPLOYEES

After a public hearing before the Michigan Employment Relations Commission, the City of Detroit has been found to have committed an unfair labor practice in violation of the Michigan Public Employment Relations Act (PERA). Pursuant to the terms of the Commission's order,

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT refuse to provide AFSCME Council 25 with information that is relevant and necessary to its role as the bargaining agent for our employees.

WE WILL furnish AFSCME Council 25 with the following information it requested on April 22, May 6, and May 21, 2003:

For the period 1994 through the present, the number of City employees represented by AFSCME Council 25 performing services that MBIA MuniServices Company performs or is entitled to perform under its contract with the City of Detroit; the base pay and fringe benefit payments for these employees; and the number of hours worked by these employees, including a specific listing of overtime;

All requests for proposals (RFPs) from the City's Finance Department for contracts that impact employees represented by AFSCME Council 25;

All documents dealing with the effect of the MBIA contract on employees represented by AFSCME Council 25;

A copy of the complete and final contract between the City of Detroit and MBIA MuniServices Company; and

All other information in our possession bearing upon the cost of utilizing employees represented by AFSCME Council 25 to perform the collection services contracted to MBIA.

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, 3026 W. Grand Blvd, Suite 2-750, P.O. Box 02988, Detroit, Michigan 48202. Telephone: (313) 456-3510.

STATE OF MICHIGAN
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APPEARANCES:

Bruce A. Campbell, Esq., Senior Assistant Corporation Counsel, City of Detroit Law Department, for Respondent

Miller Cohen, P.L.C., by Richard G. Mack, Esq., for Charging Party

DECISION AND RECOMMENDED ORDER

OF

ADMINISTRATIVE LAW JUDGE

This case was heard at Detroit, Michigan on November 13, 2003 and April 13, 2004, by Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission, pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216. Based upon the entire record, including briefs filed by the parties on or before June 14, 2004, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

Charging Party American Federation of State, County and Municipal Employees (AFSCME) Council 25, and its affiliated City of Detroit locals, filed this charge against the City of Detroit on May 7, 2003. Charging Party alleges that Respondent violated its duty to bargain in good faith by failing to provide Charging Party with information it requested on April 22, May 6 and May 21, 2003. Most of the information concerned a contract between Respondent and a private company, MBIA

MuniServices Company (MBIA), for the collection of overdue taxes and water and sewerage bills. The charge also alleged that Respondent unlawfully repudiated the parties' collective bargaining agreement by subcontracting bargaining unit work to MBIA.

I conducted pre-hearing conferences in this case on July 21 and October 30, 2003. At these conferences, Charging Party asserted that it needed the requested information before presenting its proofs on the second allegation of the charge. Accordingly, on November 13, 2003, I bifurcated the charge. The instant charge now includes only the information allegations.

Facts:

The "Master Agreement" between the Respondent and Charging Party AFSCME Council 25 covers all bargaining units of employees of Respondent represented by AFSCME. Article 19 of the Master Agreement states:

> B. The right of contracting or subcontracting is vested in the City. The right to contract or subcontract shall not be used for the purpose or intention of undermining the Union nor to discriminate against any of its members nor shall any seniority employee be laid off or demoted or caused to suffer a reduction in overtime work as a direct and immediate result of work performed by an outside contractor.
>
> C. In cases of contracting or subcontracting, including renewal of contracts, affecting employees covered by this Agreement, the City will hold advance discussion with the Union prior to letting the contract. The Union representatives will be advised of the nature, scope and approximate days of work to be performed and the reasons (equipment, manpower, etc.) why the City is contemplating contracting out the work.

The Master Agreement also includes a memorandum of understanding creating a joint labor/management committee to review the cost effectiveness of using outside contractors. The committee does not have the authority to decide whether a particular contract should be entered into or continued. The record does not indicate whether this committee was operating in the spring of 2003.

Among the employees Charging Party represents are seven employees in Respondent's Department of Water & Sewerage who collect overdue water bills. Charging Party does not represent revenue collectors in Respondent's Finance Department who collect unpaid property taxes, or income tax investigators in the same department who are responsible for collecting unpaid income taxes. However, Charging Party represents clerical employees who assist the revenue collectors and income tax investigators, clerical employees in the Finance Department who audit tax receipts, and employees in the Law Department who provide clerical assistance to attorneys involved in collecting the City's debts.

The City of Detroit is owed a substantial sum in unpaid income and property taxes and overdue water and sewerage bills. At the beginning of 2003, Respondent estimated this sum to be in excess of 300 million dollars. In the spring of 2002, Charging Party became aware that Respondent was

considering contracting with a private company to collect the City's outstanding debts. Charging Party vociferously opposed this contract, asserting that the principals in the company were corrupt. Respondent terminated its negotiations with this company before reaching agreement.

Sometime between mid-2002 and April 2003, Charging Party learned that Respondent was negotiating with another company, MBIA, for collection services. On or around the week of April 15, 2003, Respondent's Chief Financial Officer, Sean Werdlow, presented Respondent's City Council with a proposed contract between Respondent and MBIA. Under the proposed contract, MBIA was to collect Respondent's delinquent water bills and unpaid taxes and receive a commission on the monies it collected. MBIA's services were to supplement, not replace, Respondent's collection efforts with its own employees. The amount of the commission MBIA was to receive depended on the type of collection action it took. However, Respondent did not have to pay MBIA until Respondent actually received the money MBIA had collected. Werdlow told Council members that MBIA was going to train Respondent's employees, although he did not provide Council with specific information about this training.

Edward McNeil, special assistant to AFSCME Council 25 President Al Garrett, appeared at the City Council meeting to argue against the proposed contract. McNeil told Council members that City employees had done a good job collecting delinquent water bills. He presented them with a chart showing how much money in current and delinquent water bills AFSCME-represented employees had collected per employee between 1994 and 2003. McNeil also told the City Council that Respondent was "not allowing" employees to collect back taxes.

McNeil testified that he learned at the Council meeting that Werdlow had given the City Council several versions of the proposed MBIA contract. McNeil complained to Council that he had not been given copies of any of the proposed contracts, and that Respondent had not discussed the proposed MBIA contract with Charging Party as required by Article 19(D) of the Master Agreement. McNeil was also concerned about Werdlow's statement that MBIA would train Respondent's employees, and whether this training would impact promotions within the bargaining unit.

The Council did not approve the contract at that meeting, but directed Werdlow to provide it with additional information. It also told Respondent to give McNeil a copy of the proposed MBIA contract.[1]

On April 22, 2003, Charging Party's counsel sent Werdlow a letter stating:

> I understand the City's claim to be that debt collection of City debts through the MBIA contract is more cost effective than having the work performed in-house only. Thus we request that the City substantiate such a claim, and provide all data and financial

[1] Respondent gave McNeil a copy of the MBIA contract sometime shortly before or shortly after it was approved by the City Council on May 7, 2003. However, Respondent did not make it clear at this time whether the contract it gave McNeil was the final and complete agreement between it and MBIA.

> information/documentation relied upon by the City which lead it to conclude that it will be more cost effective for the City to collect its debts through the MBIA contract than to collect debts with City employees alone.

The April 22, 2003 letter also requested the following information:

> All data reflecting the costs to the City of having the City employees perform debt collection for water bills, taxes and any other collection which the City intends to retain MBIA to perform. Specifically, AFSCME requests, for years from 1994 through the present, the number of employees, the base pay for the employees, fringe benefit payments by the City for the employees, the number of hours worked for all employees (including a specific listing of overtime), the amount of money collected, and the number of shuts each year.[2]
>
> Provide any type of analysis of revenue for the City of Detroit, done by either the City itself or an external entity, within the last three years, including ratio analysis, audits, etc.

Respondent did not reply to this letter.

Sometime before May 7, 2003, a president of an AFSCME local gave McNeil a copy of a City bid request, or request for proposals (RFP) for debt collection work. The local president had received this document from managers in the department where employees in his local worked. According to McNeil, he was not sure if the RFP that he obtained was the one to which MBIA had responded, or if Respondent had issued more than one RFP for this type of service.

On May 6, 2003, McNeil wrote the following letter to Respondent Labor Relations Director Roger Cheek:

> Michigan AFSCME Council 25 is requesting a Special Conference regarding the Collection of Real and Personal Property taxes, Income taxes and other related taxes. I am also requesting any/all requests for proposals from the Finance Department, which impact AFSCME classifications.

McNeil testified that he was requesting all RFPs that impacted AFSCME classifications, not just the RFP for the MBIA contract, although he expected that the RFP for this contract would be included in the documents he received. Respondent did not reply in writing to McNeil's request. Sometime after Cheek received the May 6 request, he and McNeil discussed the MBIA contract when McNeil came to Cheek's office about another matter. According to Cheek, McNeil had previously asked Cheek for the City's cost analysis of the MBIA contract, and Cheek had told him that he (Cheek) would find out if an analysis existed. When Cheek and McNeil discussed the MBIA contract

[2] This is the number of customers who had their water shut off for failure to pay their bills.

again after the May 6 request for information, Cheek told McNeil that the MBIA contract was the only "substantive written document" Respondent had that related to its decision to contract with MBIA.

The MBIA contract was approved by Respondent's City Council on May 7, 2003. The contract, as approved, had a three-year term. Per the contract, MBIA was to be compensated on a commission basis only, at varying rates depending on the type of collection activity MBIA performed, plus all expenses related to legal enforcement actions of delinquent or unpaid receivables that could legally be charged to the debtor. The contract provided that the commission was to be computed on the total amount received at the time payment was made to the City, including all penalties and interest to the extent that the City received them. The contract did not obligate Respondent to pay MBIA any fees other than commissions, and did not provide MBIA with a guaranteed minimum return. MBIA also agreed, as a condition of the contract, to provide training to Respondent's collection employees.

Werdlow provided City Council with a memo, dated May 7, 2003, in which he made making certain commitments on behalf of the City administration. Werdlow promised that: (1) no city employee who was currently connected with the City's collection process would lose his job during the term of the MBIA contract; (2) MBIA would provide Respondent with a written statement of its collection procedures to be used in training Respondent's employees, would allow Respondent's employees to observe its operations and provide them with hands-on training, and would hold 24 hours of training seminars for up to 25 City employees per year; and (3) at the conclusion of the three-year contract with MBIA, the entire collection process would be returned to Respondent and its employees.

On May 21, 2003, Charging Party's counsel faxed a letter to Cheek that requested the following information:

> All versions of the MBIA contract, and any amendments, addendums or attachments.
>
> All documents created by the City administration, City Council or the MBIA which deal with the affect [sic] of the MBIA services upon AFSCME members – including but not limited to the classifications of AFSCME members affected, how these employees will be affected, nature and scope of training that will be offered to AFSCME members, length of training, etc.
>
> All documents submitted to the City by MBIA related to MBIA's bid proposal for the provision of the debt collection services.

Charging Party also requested to meet with Respondent to discuss the above request. Respondent did not reply to the May 21, 2003 letter.

Shawn Junior represented Respondent at the first pre-hearing conference on this charge held on July 30, 2003. At this conference, Junior said he would attempt to collect the information requested in Charging Party's April 22, May 6 and May 21 letters. At the hearing, Junior testified he could not locate any of the documents Charging Party had requested. With respect to paragraph two of Charging

Party's April 22 letter, Junior testified that Respondent did not have the information in the form requested by Charging Party. However, he admitted that Respondent probably had records from which this information could be compiled. Junior also admitted that although Respondent had no written analyses of revenue, Respondent knew, from its records, how much revenue it collected from taxes and water bills, and also approximately how much it was owed.

Discussion and Conclusions of Law:

In order to satisfy its bargaining obligation under Section 10(1)(e) of PERA, an employer must supply in a timely manner information requested by the union which will permit it to engage in collective bargaining and police the administration of the contract. *City of Battle Creek, Police Department,* 1998 MERC Lab Op 684, 687; *Wayne County,* 1997 MERC Lab Op 679; *Ecorse Public Schools,* 1995 MERC Lab Op 384, 387. This obligation extends to information necessary for the union to determine whether to file a grievance. *NLRB v Acme Industrial Co,* 285 US 432, 436, (1967). The standard is a broad one. 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.

Where the information sought concerns the wages, hours or working conditions of bargaining unit employees, the information is presumptively relevant and the employer must provide it unless it rebuts the presumption. *City of Detroit, Department of Transportation,* 1998 MERC Lab Op 205; *Wayne County, supra.* Obviously, the employer has no duty to provide information that does not exist. See, e.g., *Kathleen's Bakeshop LLC,* 337 NLRB 1081 (2002). [3] However, where the union's request entails compiling specific information from data in the employer's possession, the employer must, at the 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; *City of Detroit (Fire Dept),* 1988 MERC Lab Op 1001 (no exceptions). If an employer claims that compiling the data in the form requested 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). An employer cannot refuse to respond to a request for relevant information on the ground that the request is ambiguous, but must either request clarification or comply with the request to the extent that it clearly asks for necessary and relevant information. *Azabu USA,* 298 NLRB 702 (1990).

However, an employer has no statutory duty to respond to an inappropriate request for information, and an employer's failure to respond to a union's request for information that is not

[3] PERA is largely based on the National Labor Relations Act (NLRA), 29 USC 159 et seq. In construing PERA, the Commission and the Court look for guidance to the construction placed on the analogous provisions of the NLRA by the National Labor Relations Board (NLRB) and the Federal courts. *Rockwell v Crestwood School Dist Bd of Ed,* 393 Mich 616, 636 (1975); *Demings v. City of Ecorse* 423 Mich. 49, 56-57 (1985).

presumptively relevant does not shift the burden of showing relevance to the employer. *State Judicial Council*, 1991 MERC Lab Op 510, 512. When the request is for information with respect to matters occurring outside the unit, the union must demonstrate its relevance. Information about nonunit employees is not presumptively relevant. *City of Pontiac*, 1981 MERC Lab Op 57. Financial information is not presumptively relevant. *Sunrise Health & Rehabilitation Center*, 332 NLRB No. 133 (2000); *STB Investors, Ltd*, 326 NLRB 1465, 1467 (1998). Information about an employer's subcontracting of work that could allegedly be performed by unit members is also not presumptively relevant. *AATOP LLC, d/b/a Excel Rehabilitation and Health Center*, 336 NLRB No. 10, fn 1 (2001), *enf'd* 331 F3d 100 (CA DC, 2003). An employer does not have a duty to provide a union with information about subcontracting 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).

The NLRB's approach to union requests for information about subcontracting is illustrated by *Dexter-Fastener Technologies, Inc*, 321 NLRB 612 (1996), *enf'd* 145 F3d 1330 (CA 6, 1998). In that case, the NLRB found that a union that had not demonstrated relevancy was not entitled to information it had requested about the employer's existing subcontracts. It held, however, that the employer was required to provide presumptively relevant information concerning unit employees contained in this same request without an explanation of its relevancy. The information the employer was required to provide included the average total labor cost per hour for each unit employee, and the total number of hours worked by unit members.

April 22, 2003 Request for Information

In its April 22, 2003, information request, Charging Party requested "all data and financial information/documentation relied upon by the City which lead it to conclude that it will be more cost effective for the City to collect its debts through the MBIA contract than to collect debts with City employees alone." It also requested information about employees, including employees not represented by Charging Party, providing services that Respondent intended MBIA to perform. Finally, Charging Party requested "any type of analysis of revenue for the City of Detroit" done within the last three years.

As noted above, information about wages, hours and working conditions of employees in a union's bargaining unit is presumptively relevant. I find that the number of employees represented by Charging Party involved in performing collection services that Respondent intended MBIA to perform and the information requested by Charging Party about these employees in its April 22, 2003 request, was presumptively relevant information. Respondent was thus obligated to provide this information without an additional explanation of its relevance. Respondent maintains that it does not have the information in the form requested. However, it does not dispute that it has the records from which this information could be compiled. As noted above, if the information sought is relevant, the employer must either provide the information or notify the union promptly that compiling it in the form requested would be unduly burdensome. It must then either give the union access to its records or negotiate with it over

the costs of compiling the information. Since Respondent made no effort to rebut the presumption of relevance, I conclude that it had an obligation to provide Charging Party with this information, and that it violated its duty to bargain by failing to provide the information or take steps to do so in a timely manner.

Charging Party's April 22 request also included information about employees not represented by it, and financial information including the amount of money Respondent had collected in the form of overdue water bills, the number of customers who had their water shut off, and information about Respondent's revenue stream. As discussed above, this type of information is not presumptively relevant. Moreover, the relevancy of this information to collective bargaining or administration of the parties' contract in this case is not obvious. Under Article 19(A), Respondent had no duty to bargain with Charging Party over the subcontracting of unit work to MBIA even if Charging Party could demonstrate that it was more cost effective to hire more employees than to contract with MBIA. Moreover, Charging Party has not shown why the cost comparison information was necessary or relevant to its duty to police Article 19 or any other provision of the collective bargaining agreement, or to carry out any other of its statutory functions. I find that Charging Party had an obligation to demonstrate the relevance of the information about employees it does not represent and financial information that it requested on April 22, 2003. I also find that Charging Party failed to do this either at the time of its request or at the hearing, and that Respondent therefore had, and continues to have, no obligation to provide Charging Party with this information.

I also accept Respondent's claim that that the information Charging Party sought in paragraph one of its April 22 letter does not exist. In paragraph one, Charging Party asked for Respondent's analysis of the cost effectiveness of the MBIA contract and the underlying data to supports its analysis. The MBIA contract provides Respondent with immediate additional revenue without requiring it to incur any additional expense. According to Respondent, it never analyzed whether it would be cheaper, in the long run, for Respondent to hire more employees to collect its debts than to pay MBIA's commissions. I find no evidence to contradict Respondent's assertion that the prospect of immediate cash in hand was the sole basis for its decision to enter into the MBIA contract.

In sum, I conclude that Respondent violated PERA by failing to provide Charging Party with the following information it requested on April 22, 2003: for the years 1994 to the present, the number of employees represented by Charging Party involved in collecting water bills or overdue taxes or providing any other collection service which Respondent intended MBIA to perform; the base pay for these employees; fringe benefit payments made by the City for these employees; and the number of hours worked for all these employees (including a specific listing of overtime). I find that Respondent did not have the documents requested in paragraph one of the April 22 request. I also find that Charging Party failed to meet its burden of showing that this information, and the remaining information covered by this request, was relevant to collective bargaining or enforcement of the parties' contract. Accordingly, I conclude that Respondent had no duty to provide the other information requested by Charging Party on April 22, 2003.

May 6, 2003 Request for Information

On May 6, 2003, McNeil wrote Cheek requesting "any/all requests for proposals from the Finance Department, which impact AFSCME classifications." Although coupled with a request for a special conference on the MBIA contract, McNeil's request was not limited to the RFP for the MBIA contract.

Although Cheek told McNeil that the MBIA contract was the only "substantive written document" that related to Respondent's decision to contract with MBIA, Respondent has not explicitly denied that an RFP was issued in connection with the MBIA contract. Respondent presented no defense at all for its failure to comply with McNeil's broader request for RFPs from the Finance Department for all contracts impacting employees represented by the Charging Party. That is, Respondent has not asserted that there are no such contracts or RFPs, or that such information is not relevant to collective bargaining or administration of the contract.

RFPs for contracts issued by the City are not documents presumptively relevant to collective bargaining or administration of the contract because they do not directly relate to wages, hours or working conditions. However, under Article 19(B) of the Master Agreement, Respondent has agreed to hold discussions with Charging Party about contracts "affecting employees covered by the agreement" before such contracts are entered into or renewed. Information about subcontracts Respondent is considering is thus plainly relevant to the enforcement of Article 19(B) of the contract. Since RFPs provide such information, the relevance of the requested information is obvious.[4] I conclude, therefore, that Respondent violated PERA by failing to provide Charging Party with requests for proposals from its Finance Department for contracts that impacted employees represented by AFSCME in response to Charging Party's May 6, 2003 request.

May 21, 2003 Request for Information

On May 21, 2003, Charging Party requested all documents relating to the effect of the MBIA contract on employees, including information about training to be provided by MBIA. Information about the effects of the subcontracting on unit employees, including training, is presumptively relevant as it relates directly to their terms and conditions of employment. Respondent did not rebut this presumption. I conclude that Respondent was required to provide this information.

Charging Party also requested copies of all versions of the MBIA contract, any amendments, addendums or attachments to these contracts, and all documents submitted by MBIA in response to the RFP. As discussed above, information about subcontracts entered into by employers is not presumptively relevant. Here, Article 19(A) of the parties' collective bargaining agreement prohibits subcontracting under specified circumstances. A copy of the complete final version of the MBIA

[4] To the extent Respondent had questions about the scope of the information Charging Party sought in its May 6 request, Respondent was obligated to ask for clarification or provide Charging Party with all RFPs clearly covered by the request. *Azabu USA, supra*.

contract is obviously relevant to Charging Party's determination of whether the MBIA contract violated this provision. However, under the collective bargaining agreement, Respondent has no obligation to bargain over the subcontracting of work that could be performed by Charging Party's members. I find that Charging Party has not shown even a reasonable probability that the other information it requested on May 21 would have been of use to it in carrying out its statutory responsibilities. I conclude, therefore, that Respondent did not violate PERA by failing to provide Charging Party with earlier versions of a proposed MBIA contract, or with MBIA's response to Respondent's RFP.

Conclusion

In sum, I find that Respondent violated its duty to bargain in good faith under Section 10(1)(e) of PERA by failing to provide Charging Party with the following information it requested on April 22, 2003: for the years 1994 through the present, the number of employees represented by Charging Party performing services that Respondent intended MBIA to perform, the base pay for these employees, fringe benefit payments by the City for these employees, and the number of hours worked by these employees, including a specific listing of overtime. I also find that Respondent unlawfully failed to provide Charging Party with RFPS from the Finance Department for contracts which impacted employees represented by Charging Party, as requested by Charging Party on May 6, 2003. In addition, I find that Respondent violated its duty to bargain by failing to provide Charging Party in a timely fashion with a copy of Respondent's final and complete contract with MBIA, and with the information about the effect of the MBIA contract on employees that Charging Party requested on May 21, 2003. I find that the Respondent had no obligation to provide the other information requested by Charging Party on these dates since this information was not presumptively relevant, and Charging Party failed to show that there was even a reasonable probability that this information would be of use to it in carrying out its statutory duties.

In accord with the findings of fact, discussion and conclusions of law set out 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 refusing to provide AFSCME Council 25 with information that is relevant and necessary to its role as the bargaining agent for employees of Respondent.

2. Furnish AFSCME Council 25 with the following information:

   a. For the period 1994 through the present, the number of employees represented by AFSCME Council 25 performing services that MBIA MuniServices Company performs for the City of Detroit or the City intended it to perform at the time it

entered into a contract with this entity; the base pay for these employees; fringe benefit payments made by the City for these employees: and the number of hours worked by these employees, including a specific listing of overtime, as requested by AFSCME Council 25 on April 22, 2003.

b. All requests for proposals from the City's Finance Department for contracts that impact employees represented by AFSCME Council 25, as requested by it on May 6, 2003.

c. All documents dealing with the effect of the MBIA contract on employees represented by AFSCME Council 25, as requested by it on May 21, 2003, and, to the extent it has not already provided it, a copy of the complete and final contract between the City of Detroit and MBIA MuniServices Company.

3. 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 30 consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Julia C. Stern
Administrative Law Judge

Dated: _____

NOTICE TO EMPLOYEES

After a public hearing before the Michigan Employment Relations Commission, the City of Detroit has been found to have committed an unfair labor practice in violation of the Michigan Public Employment Relations Act (PERA). Pursuant to the terms of the Commission's order,

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT refuse to provide AFSCME Council 25 with information that is necessary and relevant to its role as bargaining agent for our employees.

WE WILL furnish AFSCME Council 25 with the following information it requested on April 22, May 6 and May 21, 2003:

For the years 1994 through the present, the number of employees represented by AFSCME Council 25 Party performing services that MBIA MuniServices Company performs for the City of Detroit, or that the City intended it to perform at the time it entered into a contract with this entity; the base pay for these employees; fringe benefit payments made by us for these employees; and the number of hours worked by these employees, including a specific listing of overtime.

All requests for proposals from the City Finance Department for contracts that impact employees represented by AFSCME Council 25.

All documents dealing with the effect of the MBIA contract on employees represented by AFSCME Council 25.

A copy of the complete and final contract between the City of Detroit and MBIA MuniServices Company.

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, 3026 W. Grand Blvd, Suite 2-750, P.O. Box 02988, Detroit, Michigan 48202. Telephone: (313) 456-3510.