STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF DETROIT (WATER & SEWERAGE DEPARTMENT),
Respondent–Public Employer,

Case No. C05 B-037

- and -

AFCSME COUNCIL 25, LOCAL 207,
Charging Party–Labor Organization.
____/

APPEARANCES:

City of Detroit Law Department, by Bruce A. Campbell, Esq., for the Public Employer

L. Rodger Webb, P.C., by L. Roger Webb, Esq., for the Labor Organization

DECISION AND ORDER

On April 20, 2006, Administrative Law Judge Roy L. Roulhac issued his Decision and Recommended Order in the above-entitled matter, finding that Respondent has engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist and take certain affirmative action as set forth in the attached Decision and Recommended Order of the Administrative Law Judge.

The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of Act 336 of the Public Acts of 1947, as amended.

The parties have had an opportunity to review this Decision and Recommended Order for a period of at least 20 days from the date the decision was served on the parties, and no exceptions have been filed by any of the parties to this proceeding.

ORDER

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

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Nora Lynch, Commission Chairman

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

Dated: ____________

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EMPLOYMENT RELATIONS COMMISSION
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L. Rodger Webb, P.C., by L. Roger Webb, Esq., for the Labor Organization

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE

This case was heard in Detroit, Michigan, on August 31, 2005, by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission (MERC) 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 on the record, I make the following findings of fact and fact and conclusions of law. The parties did not file post-hearing briefs, which I directed to be filed by September 19, 2005.

The Unfair Labor Practice Charge:

Charging Party's February 16, 2005 unfair labor practice charge, as amended, alleges that Respondent violated Sections 10(1)(a)(c) and (e) of PERA. The pertinent part of the charge reads:

> In August and October, 2004, AFSCME Council 25, Local 207, requested certain information from the City of Detroit in conjunction with their prosecution of grievances relating to the City Water Department's maintenance/repair contracts and those contracts' impact on unit employees under the parties' collective bargaining agreement. After some delay, the City ultimately attended a meeting on November 18, at which it provided a partial response to AFSCME's requests and little of the requested documentation, and precipitately terminated the meeting. On November 29, 2004, AFSCME, by its counsel, sent the City, by its counsel, a follow-up letter requesting a meeting date and reiterating specific requests for information and documents. The City neither responded to that request, nor provided any further information or documentation. Said failure and refusal to meet and provide documentation in its exclusive custody is designed to,

> and does, thwart AFSCME's invocation of the parties' grievance process, has needlessly prolonged AFSCME's access to arbitration, and constitutes a patent refusal to bargain.

Finding of Facts:

Charging Party represents approximately 280 maintenance and repair workers employed at Respondent City of Detroit's water and sewerage department in the following classifications: water systems helper, water systems repair worker, water systems worker, water systems mechanic, and senior water systems mechanic. Charging Party and Respondent are parties to a master agreement that covers the period July 1, 2001 to June 30, 2005. Article 19 of the agreement reads, in pertinent part, as follows:

> 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.

Beginning in June 2004, Charging Party made several requests to Respondent for information and documents for its use in arbitrating grievance SC-08-02. Charging Party's June 2004 request sought copies of contracts for water mains systems repair for Imperial Construction and for all companies doing similar work; and monthly PPS and jobs completion reports for DWSD crews for the period 2000 – 2004. In grievance SC-08-02, Charging Party alleged that Respondent had violated Articles 19 and 21, among other provisions, of the master agreement that involve contracting and maintenance of conditions. Specifically, Charging Party claimed that its members were losing overtime because of Respondent's use of contractors to perform work that its members have the skills and experience to perform.[1]

Charging Party made another more detailed request on August 13, 2004, and requested the following information:

> A. Audit trails or time, attendance and overtime records, and job distribution reports for the period January 1, 2002 through the present, for all Water Department. Maintenance and Repair Division employees employed in the following classifications: water systems helper, water

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[1]Respondent made its initial request for the information in October 2002. An unfair labor practice charge (Case No. C03 B-039) filed in February 2003 was dismissed after some of the information was provided.

systems repair worker, water systems worker, water systems mechanic, and senior water systems mechanic;

B. W2s for all employees identified above for the years 2000 through 2003, and;

C. All statements/invoices, billing documents and any other documents submitted to Respondent by vendors and companies that performed any work that could have been performed by bargaining unit members and any other documents that contain reference to the jobs worked, crews used, and hours worked, including overtime.;

Charging Party explained in its requests that the information requested was needed to "prepare to litigate" grievance SC 09-02, and that it was "material to issued [sic] raised" in its grievance. On November 29, 2005, after a special conference to discuss the parameters of the information request, Charging Party sent Respondent a follow-up letter emphasizing that its request included information about all vendors that repair or replace water mains. Charging Party's president testified at the hearing that the information about contractors was needed to establish a nexus between the overtime that union members could work and work sub-contracted to outside vendors.

Conclusions of Law:

To satisfy its bargaining obligation under Section 10(1) (e) of PERA, an employer must timely supply relevant information that is reasonably necessary to the union's performance of its responsibilities, including contract administration and grievance processing and evaluation. *NLRB v. Acme Industrial Co.*, 385 US 432, 64 LRRM 2069 (1967), *City of Detroit*, 18 MPER 78 (2005); *City of Battle Creek (Police Dep't*, 1998 MERC Lab Op 684, 687; *Wayne County*, 1997 MERC Lab Op 679; *Ecorse Public Schools*, 1995 MERC Lab Op 384, 387. Information relating to terms and conditions of employment, such as wages, job descriptions, and other information pertaining to bargaining unit employees is presumptively relevant. *Plymouth Canton C S*, 1998 MERC Lab Op 545.

A union's interest in information will not always predominate over other legitimate employer interests. When the request is for information about matters occurring outside the unit, the union must demonstrate its relevance. Information about non-unit employees is not presumptively relevant. *City of Pontiac*, 1981 MERC Lab Op 57. Financial information is not presumptively relevant. *Sunrise Health & Rehab Cnt*, 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 information's relevance 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 the 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.

In its August 13, 2004 information request, Charging Party requested time and attendance records, overtime reports and payroll audit trials for its bargaining unit members for 2000 through August 2004, and W2s from 2000 to 2003. Charging Party's information request for these items is presumptively relevant information. I find, therefore, that Respondent is obligated to comply with Charging Party's request for this information.

Charging Party's request also seeks information about Respondent's subcontracting of repair work that its bargaining unit members could allegedly performed. This information is not presumptively relevant. However, Charging Party explained that the information was needed to "prepare to litigate" grievance SC 09-02 and that it was "material to issued [sic] raised" in its grievance." I find that by failing to timely comply with Charging Party's August 1, 2004 information request, Respondent violated its duty to bargain in good faith under Section 10(1)(e) of PERA. Based on the above findings of fact and conclusions of law, I recommend that the Commission issue the order set for below:

<u>Recommended Order</u>

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

1. Cease and desist from refusing to provide AFSCME Council 25, Local 207 with information that is relevant and necessary to it in its role as the bargaining agent.

2. Furnish AFSCME Council 25, Local 207 with the following information:

A. Audit trails or time, attendance and overtime records, and job distribution reports for all Water Department Maintenance and Repair Division employees in the following classifications: water systems helper, water systems repair worker, water systems worker, water systems mechanic, and senior water systems mechanic for the period January 1, 2000 through August 2004;

B. W2s for all employees identified above for the years 2000 through 2003;

C. All statements, invoices, billing documents and any other documents submitted to Respondent by vendors and companies that performed any work that could have been performed by bargaining unit members and any documents that contain reference to the jobs worked, crews used, and hours worked, including overtime.

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 30 consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Roy L. Roulhac
Administrative Law Judge

Dated:

NOTICE TO EMPLOYEES

AFTER A PUBLIC HEARING, THE MICHIGAN EMPLOYMENT RELATIONS COMMISSION FOUND THAT THE CITY OF DETROIT (WATER AND SEWERAGE DEPARTMENT) COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF THE MICHIGAN PUBLIC EMPLOYMENT RELATIONS ACT (PERA). BASED UPON THE COMMISSION'S ORDER, WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT refuse to provide AFSCME Council 25, Local 207 with information that is relevant and necessary to it in its role as bargaining agent for City of Detroit employees.

WE WILL furnish the following information to AFSCME Council 25, Local 207 in order to effectuate the policies of the Act:

> A. Audit trails or time, attendance and overtime records, and job distribution reports for all Water Department Maintenance and Repair Division employees in the following classifications: water systems helper, water systems repair worker, water systems worker, water systems mechanic and senior water systems mechanic for the period January 1, 2000 through August 2004;
>
> B. W2s for all employees identified above for the years 2000 through 2003;
>
> C. All statements, invoices, billing documents and any other documents submitted to Respondent by vendors and companies that performed any work that could have been performed by bargaining unit members and any other documents that contain reference to the jobs worked, crews used, and hours worked, including overtime.

All of our employees are free to engage in lawful, concerted activity through representatives of their own choice for the purpose of collective bargaining or other mutual aid or protection as provided by Section 9 of the Public Employment Relations Act.

CITY OF DETROIT (WATER & SEWERAGE DEPARTMENT)

BY: ___________________________________

TITLE: ___________________________________

Dated: _______________

Direct questions about this notice to the Michigan Employment Relations Commission, 3026 W. Grand Blvd, Ste. 2-750, Box 02988, Detroit, MI 48202. Phone (313) 456-3510.