

**STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMMISSION  
LABOR RELATIONS DIVISION**

In the Matter of:

WAYNE COUNTY,  
Public Employer-Respondent,

Case No. C09 D-063

-and-

MICHIGAN AFSCME COUNCIL 25, AFL-CIO,  
Labor Organization-Charging Party.

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APPEARANCES:

Miller Cohen, PLC, by Bruce A. Miller, Esq., for Charging Party

**DECISION AND ORDER**

On June 11, 2009, Administrative Law Judge Doyle O'Connor 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 the recommended order of the Administrative Law Judge as its final order.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Christine A. Derdarian, Commission Chair

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

Dated: \_\_\_\_\_

**STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
EMPLOYMENT RELATIONS COMMISSION**

In the Matter of:

WAYNE COUNTY,  
Respondent-Public Employer,

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Charging Party-Labor Organization.

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Miller Cohen, PLC, by Bruce A. Miller, for Charging Party

**DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW**  
**JUDGE ON SUMMARY DISPOSITION**

Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, this case was assigned to Doyle O'Connor, of the State Office of Administrative Hearings and Rules (SOAHR), acting on behalf of the Michigan Employment Relations Commission (MERC).

The Unfair Labor Practice Charge and the Order to Show Cause:

On April 28, 2009, an unfair labor practice charge was filed with the Commission by Michigan AFSCME Council 25, AFL-CIO (the Union) alleging that Wayne County (the Employer) violated the Act by failing to properly respond to a request for information made by the Union. A complaint was issued based on that charge which was served by certified mail upon the Wayne County Director of Labor Relations. The information sought by the Union, according to the charge, was allegedly necessary for the review or processing of several apparently related grievances under the contractual grievance procedures and was further described in several letters that were attached to the charge.

In a letter of November 26, 2008 to Mark Dukes, Director of Labor Relations for Wayne County, the Union stated the following request:

“AFSCME Council 25, in processing grievance 08-C25-007, requests the following information, under the regulations of PERA:

Names of employees given notice of the increase to their drug card from \$3.00 to \$10.00

Addresses of above referenced employees.<sup>1</sup>

Council 25 would anticipate a response to this request by close of business December 5, 2008.”

In a letter of March 11, 2009 to Mark Dukes, Director of Labor Relations for Wayne County, the Union stated the following request, which was assertedly being made for the third time:

“Pursuant to your duties under the Public Employee Relations Act, and our rights there under, we request that you provide us with the following information in connection with our grievance concerning supplemental Life Insurance for Active Employees:

1. A list of all active employees who purchased SLI [supplemental life insurance] from 1997 to date.
2. Payroll documents or equivalent records showing the amount of insurance each such employee had.
3. Payroll documents or equivalent records that showed both the total amount of insurance premium that they paid for this insurance and the rate of premium per thousand dollars of insurance.
4. The documents in your possession concerning the transfer of SLI from Cigna to Prudential for retiree basic insurance and retiree SLI.
5. Any documents from Cigna or Prudential prior to and after 1997 or thereabouts that set forth age rated plans for both active and retired employees concerning the cost of insurance by age.
6. Any documents concerning insurance commission earned because of the transfer from Cigna to Prudential.
7. Any documents showing the actual cost of insurance to actives after the transfer.
8. Any documents indicating how the County used the difference between the cost of the insurance and the amount paid for the insurance by active employees.

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<sup>1</sup> The parties had a prior dispute over the Employer’s refusal to produce employee addresses, which was resolved in the Union’s favor in *Wayne County*, C08 D-076, Stern, (July 23, 2008) (on exceptions).

9. Any documents indicating that the County notified the Union about the switch in insurance carriers and the cost consequences of the shift at any time either before or after the switch.
10. The census of active employees by age on the same basis kept for actuarial calculations from 1997 to date.

The Union reserves the right to make additional requests. If any part of this request is denied, please state the reasons for the denial. If any material is unavailable, please provide the remaining items. Non-receipt of information requested herein will not prejudice the Union's position that it is entitled to such information. Please provide the information by April 7, 2009."

According to the Charge, and as undisputed, the requested information was related to two specific pending contractual grievances challenging the County's handling of a supplemental life insurance benefits program and was, therefore, presumptively relevant. On its face, the information appeared to consist of ordinary business records relating to current and former bargaining unit employees. The Charge asserted that the Employer did not provide the requested information or otherwise respond to the request.

Pursuant to Rule 165, R 423.165, of the General Rules and Regulations of the Employment Relations Commission, an order to show cause was issued on May 1, 2009. The order noted that Commission Rule 423.165 allows for a pre-hearing dismissal of a charge, or for a ruling in favor of the charging party, and that upon review of the charge it appeared that an order to show cause why an evidentiary hearing was necessary might aid in resolving this dispute without the expense or delay that would be entailed in hearing the matter. The show cause order noted that, as asserted in the charge, the information requested was presumptively relevant.

The Employer was directed to address the following factual issues, in accord with Commission rules and the case law set forth in the order, and with separate answers as appropriate regarding the several AFSCME requests for information:

1. Did the Union make requests for information relating to conditions of employment of bargaining unit employees and regarding pending contractual grievances?
2. If yes, was the information provided, or did the Employer otherwise respond to the request?
3. What material facts, if any, are in dispute regarding this aspect of the charge?

The Union was directed to address the following factual issues, in accord with Commission Rules and the case law set forth in the order, and with separate answers as appropriate, regarding the several AFSCME requests for information:

1. Did the Union provide the Employer with a factual basis supporting the claim that the information that was requested was relevant to the bargaining obligation? If yes, what was the basis?
2. Did the Employer request clarification of the Union's request for information, or bargaining over the cost of production of the information?
3. Please clarify whether the requests for information as appended to the Charge at tabs 'A' and 'B' relate solely to current or former AFSCME bargaining unit members, and, if not, the relevance of information requested as to non-unit individuals.
4. What material facts, if any, are in dispute regarding this aspect of charge?

The Respondent and the Charging Party were each granted twenty-one (21) days from the date of the order to respond. Both parties were expressly cautioned in the closing line of the order that a failure to file timely and substantive responses to the order would result in a substantive decision on the charge without a hearing or other proceedings.

The Union filed a timely and substantive response on May 12, 2009 which expanded on the Union's explanation of its need for the information in order to process several pending contractual grievances and which shows that it was contemporaneously served on the County's Director of Labor Relations. Although a postal return receipt establishes receipt of the Complaint and the Order to Show Cause at Respondent's headquarters at 600 Randolph, Room 107, on May 5, 2009, the Employer did not respond to the order in any fashion.

#### 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 to police the administration of the contract. *Wayne County (AFSCME)*, 1997 MERC Lab Op 679; *Ecorse Public Schools*, 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 County*, supra. See also *E.I. DuPont de Nemours & Co v NLRB*, 744 F2d 536, 538 (CA 6, 1984). 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 County*, supra; *SMART*, 1993 MERC Lab Op 355, 357. See also *Pfizer, Inc*, 268 NLRB 916; 115 LRRM 1105 (1984), enforced 763 F2d 887 (CA 7, 1985).

Here the charge asserts that the Employer ignored the Union's request for presumptively relevant information related to several underlying contractual grievances.<sup>2</sup> A show cause order was issued which noted that the information sought was presumptively relevant. The Employer has chosen to similarly ignore that order to show cause, which was properly issued in this case pursuant to the Commission's Rules. In these circumstances, a proper charge has been stated and there is no genuine issue of material fact in dispute. Under Commission Rule R 423.165 (1), where there is a properly stated charge and no genuine issue of material fact, an administrative law judge acting for the Commission has the authority and obligation to issue a ruling on the merits of the dispute on summary disposition. *Detroit Public Schools*, 22 MPER 19 (2009); see also, *Oakland County and Oakland County Sheriff v Oakland County Deputy Sheriffs Assoc.*, 282 Mich App 266 (2009).

Where the union's request entails compiling specific information in the employer's possession, rather than producing existing documents, PERA ordinarily allows the Employer to require that the parties bargain in good faith over the cost of duplication or compilation of the requested data, granting the Union access to the necessary files, or by bargaining over other means of providing the information. *Michigan State University*, 1986 MERC Lab Op 407, 409. Here, the Employer has without explanation failed and refused to timely provide presumptively relevant information. I find that, by failing to timely assert the issue, they have waived the right to demand bargaining over any costs associated with the production of the requested information. Further, to effectuate the purposes of the Act, as anticipated and mandated by 423.216 (b), I would regardless order a waiver of any claimed production costs where the Employer has unlawfully withheld relevant information.

In accord with this conclusion and the undisputed facts and the discussion set forth above, I find that the County has engaged in an unfair labor practice, in violation of Section 10(1)(e) of the Act, and I recommend that the Commission issue the following order.

#### RECOMMENDED ORDER

Wayne County, its officers, agents, and representatives are hereby ordered to:

1. Cease and desist from
  - a. Refusing to bargain collectively with the representatives of its public employees.
  - b. Failing to provide presumptively relevant information requested by Michigan AFSCME Council 25, AFL-CIO.

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<sup>2</sup> It appears that the underlying dispute over supplemental life insurance benefits has spawned an array of litigation in multiple forums. The undersigned issued a decision on January 18, 2008 dismissing a related unfair labor practice charge in *AFSCME Council 25*, CU07 J-050, which remains on exceptions to the Commission. There are apparently cases pending in the Wayne County Circuit Court and the Michigan Court of Appeals related to the grievance arbitration dispute.

2. Without further delay, and without charge, provide to the Michigan AFSCME Council 25, AFL-CIO information which it requests, or has requested, which is relevant to the Union carrying out its duty to represent members or relevant to the policing or administration of the collective bargaining agreement, including the documents described below, to the extent that such documents exist and are possessed by, or under the control of, the County or its agents or vendors:

- a. A list of all active employees who purchased supplemental life insurance from 1997 to date.
- b. Payroll documents or equivalent records showing the amount of insurance each such employee had.
- c. Payroll documents or equivalent records that show both the total amount of insurance premium that was paid for this insurance and the rate of premium per thousand dollars of insurance.
- d. The documents in the County's possession concerning the transfer of supplemental life insurance from Cigna to Prudential for retiree basic insurance and retiree supplemental life insurance.
- e. Any documents from Cigna or Prudential prior to and after 1997 that set forth age rated plans for both active and retired employees concerning the cost of insurance by age.
- f. Any documents concerning insurance commission earned because of the transfer from Cigna to Prudential.
- g. Any documents showing the actual cost of insurance to actives after the transfer.
- h. Any documents indicating how the County used the difference between the cost of the insurance and the amount paid for the insurance by active employees.
- i. Any documents indicating that the County notified the Union about the switch in insurance carriers and the cost consequences of the shift at any time either before or after the switch.
- j. The census of active employees by age on the same basis kept for actuarial calculations from 1997 to date.
- k. Names and addresses of employees given notice of the increase to their drug card from \$3.00 to \$10.00

Post the attached notice to employees in a conspicuous place at each County worksite and post it prominently on any website currently maintained by the County for employee access for a period of thirty (30) consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Doyle O'Connor  
Administrative Law Judge  
State Office of Administrative Hearings and Rules

Dated: \_\_\_\_\_

## NOTICE TO ALL EMPLOYEES

Pursuant to a formal charge before the Michigan Employment Relations Commission, WAYNE COUNTY, a public employer under the PUBLIC EMPLOYMENT RELATIONS ACT (PERA), has been found to have committed unfair labor practices in violation of this Act. Pursuant to the terms of the Commission's order, we hereby notify our employees that:

### WE WILL NOT

- a. Refuse to bargain collectively with the representatives of our public employees.
- b. Fail to timely provide presumptively relevant information requested by Michigan AFSCME Council 25, AFL-CIO.

### WE WILL

- c. Bargain collectively with the representatives of our public employees.
- d. In a timely fashion provide presumptively relevant information requested by Michigan AFSCME Council 25, AFL-CIO.
- e. Without further delay, provide to the Michigan AFSCME Council 25, AFL-CIO information which it requests, or has requested, which is relevant to the Union carrying out its duty to represent members or relevant to the policing or administration of the collective bargaining agreement, including information related to the disputes over supplemental life insurance costs and over prescription drug co-pays.

**ALL** of our employees are free to engage in lawful activity for the purpose of collective bargaining or other mutual aid and protection as provided in Section 9 of the Public Employment Relations Act.

WAYNE COUNTY

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

This notice must be posted for thirty (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 Building, 3026 W. Grand Blvd, Suite 2-750, Detroit, MI 48202-2988. Telephone: (313) 456-3510.