STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF DETROIT,
Public Employer-Respondent,

MERC Case No. C10 A-012

-and-

ASSOCIATION OF MUNICIPAL ENGINEERS,
Labor Organization-Charging Party.
_____/

APPEARANCES:

June Adams, City of Detroit Law Dept., and Dwight Thomas, Labor Relations Specialist, for Respondent

Sachs Waldman, P.C., by John R. Runyan, for Charging Party

DECISION AND ORDER

On September 9, 2011, Administrative Law Judge (ALJ) David M. Peltz issued his Decision and Recommended Order in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, and recommending that the Commission dismiss the charge. The ALJ's Decision and Recommended Order was served on the interested parties in accord with Section 16 of the Act.

Charging Party filed exceptions to the ALJ's Decision and Recommended Order on October 3, 2011.

On July 26, 2013, this case was placed on hold due to bankruptcy proceedings involving the Respondent City of Detroit. To our knowledge, those bankruptcy proceedings have since concluded.

On October 6, 2016, the Commission wrote to the Parties:

> It is our understanding that the City exited bankruptcy some time ago. On the advice of the Attorney General's office, the Commission has continued to hold in abeyance this case and all others involving the City. At this time, however, we can see no reason to delay moving forward with this matter.

> If any party believes this case has not been resolved by proceedings before the United States Bankruptcy Court in Case No. 13-53846, that party shall notify the Commission in writing and provide supporting documentation within twenty (20) days from the date of this letter.
>
> If this office does not hear from the parties within twenty (20) days from the date of this letter, the Commission will consider the matter closed, and an Order closing the case will be issued.

Neither Charging Party nor Respondent replied to the Commission's October 6, 2016 letter.

A charge that fails to state a claim under the Public Employment Relations Act is subject to dismissal pursuant to an order to show cause why it should not be dismissed. The failure to respond to such an order may, in itself, warrant dismissal of the charge. *Detroit Federation of Teachers*, 21 MPER 3 (2008).

In the instant case, the parties' failure to respond to the Commission's October 6, 2016 letter warrants dismissal of the charge and an Order closing the case.

ORDER

The unfair labor practice charge is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: December 15, 2016

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

CITY OF DETROIT,
Respondent-Public Employer,

Case No. C10 A-012

-and-

CORRECTED DECISION

ASSOCIATION OF MUNICIPAL ENGINEERS,
Charging Party-Labor Organization.
_____/

APPEARANCES:

June Adams, City of Detroit Law Dept., and Dwight Thomas, Labor Relations Specialist, for Respondent

Sachs Waldman, P.C., by John R. Runyan, for Charging Party

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE

On January 19, 2010, the Association of Municipal Engineers (AME), filed an unfair labor practice charge alleging that the City of Detroit (City) violated Section 10(1)(e) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210(1)(e), by failing or refusing to timely provide requested information. Pursuant to Sections 10 and 16 of PERA, this case was assigned to David M. Peltz, Administrative Law Judge of the Michigan Administrative Hearing System, on behalf of the Michigan Employment Relations Commission. Based upon the entire record, including the transcript of hearing, exhibits, and post-hearing briefs filed by the parties, I make the following findings of fact, conclusions of law, and recommended order.

Findings of Fact:

Charging Party represents a bargaining unit comprised of approximately 35 employees, most of whom work for the City as senior associate engineers in the Department of Water and Sewerage (DWSD). The AME unit also includes a small number of employees in the Department of Public Lighting (DPL) and the Department of Public Works (DPW). The parties are currently engaged in negotiations over a successor collective bargaining agreement, their most recent contact having expired in 2005. The City has proposed that the Union agree to various concessions, including a ten percent across-the-board reduction in wages, higher health

care costs for employees and a decrease in benefits for new hires. In response, Charging Party has indicated that it will not agree to any concessions for those AME members employed within the DWSD. Throughout the course of negotiations, Charging Party has submitted multiple broad, and often vague, requests for information to the City, several of which are the subject matter of the instant dispute.

The first information request referenced in the instant charge was made on October 5, 2009. In a letter from Union president Vinod Sharma to Barbara Wise Johnson, the City's labor relations director at the time, the Union requested that the City provide the following information: (1) the "Detailed budget of the Detroit Water and Sewerage" for fiscal years 2007-2010; (2) the "Water Rate booklets" for fiscal years 2007-2010; and (3) a "projection of savings through the proposed concession to [sic] AME that will help to reduce the general deficit of City of Detroit." In the letter, Sharma asserted that all of the information requested was relevant to the ongoing contract negotiations.

On or about October 14, 2009, the director of Respondent's budget department, Pam Scales, made a presentation to representatives of the AME concerning the City's fiscal situation. During the presentation, Scales reviewed the City's revenue projections for the current fiscal year through 2012 and provided background information regarding those projections. The presentation was not geared specifically to issues involving the AME or the DWSD and there was no discussion regarding the amount of savings projected by Respondent if Charging Party were to agree to the economic concessions proposed by the City's bargaining team during negotiations on a successor contract.

At or around the same time as the budget presentation, Respondent provided to the AME rate books and budgets as adopted by the City Council. However, Sharma was not satisfied with the information contained within these documents. In a letter to Wise-Johnson dated October 21, 2009, Sharma wrote, in pertinent part:

> I did not receive detailed budget of Detroit Water and Sewerage (DWSD) for fiscal years 2007-2008, 2008-2009 and 2009 and 2010. The City of Detroit also has not provided any projection of savings though the proposed concession to AME that will help to reduce the general deficit of City of Detroit.
>
> AME would like to know how much money was saved that was used to reduce the general deficit because of 10% cut that some unions took in the last contract period (2005-2008).
>
> The rate books of DWSD show clearly that the expenses are covered by water rates, that the rates are increased for new expenses as the operations and maintenance require additional funds, that there is nothing in the rate books showing that money goes from DWSD to cover the Detroit budget debt.
>
> Therefore, we ask you to drop the discussion of pay cuts and layoffs in DWSD and please concentrate on the rate increases and thus the increase in our pay and pay ranges.

Sharma sent another letter requesting information to Wise-Johnson on or about November 10, 2009. In this letter, Sharma acknowledged receipt of the DWSD budgets, but once again complained that the documents fail to explain why increases in water rates have not resulted in pay raises for AME members. Sharma further asserted that the information provided by Respondent "does not explain how much money is reimbursed to other city departments for their services, for example human resources, law department, mayor's office, etc." Also for the first time, Sharma requested information on "budgeted, filled and vacant engineering positions such as administrative, head engineer, engineer, sr. associate engineer, associate engineer DWSD and PPS report since January 1, 2006." Finally, Sharma requested information concerning "devils night patrolling how much money in terms of over time / regular pay by individual department like DWSD, DPW, Recreation, etc."

Sometime in early December of 2009, Dwight Thomas, a labor relations specialist with the City assigned to work with the AME bargaining unit, received a letter from the DWSD containing information related to Charging Party's November 2009 information request for data regarding reimbursements by the DWSD to other City departments. The letter, dated December 2, 2009, indicates that the City charged the DWSD $10, 231,187.00 for services provided to that department during the 2009 fiscal year. At hearing, Thomas testified that he did not immediately forward the letter to Charging Party because it was responsive to one of several information requests submitted by the Union and that he intended to compile the various documents as they were received and submit all of the information to Charging Party at one time in packet form.

The next communication between the parties was a letter from Thomas to Sharma dated March 17, 2010. In the letter, Thomas indicated that he was transmitting the following packet of documents to the Union as an attachment in response to the AME's November 10, 2009 request for information: (1) the December 2, 2009 letter referenced above; (2) PPS reports indicating the number of budgeted and filled engineer positions at the DWSD for 2006, 2007, 2008 and 2009; and (3) a memo from the Recreation Department reflecting employee costs for the 2009 Angel's Night program. At the close of the letter, Thomas indicated that additional information would be forwarded to the Union as it became available.

Sharma responded to Thomas by email on April 13, 2001. In the email, Sharma asserted that he did not receive the memo referenced in the March 17, 2010 letter pertaining to employee costs associated with Angel's Night for the Recreation Department. In addition, Sharma complained that the December 2, 2009, letter sent by Thomas was insufficient because it did not break down the amounts billed to the DWSD by each of the individual City departments providing services to the DWSD, and because the information pertained to only one year whereas, according to Sharma, the Union had requested information regarding DWSD reimbursements for the three prior fiscal years.

Thomas sent an email to the Union on April 14, 2001, attached to which was a copy of the Recreation Department's Angel's Night report which Sharma had indicated was missing from the March 17th packet. The email also included Angel's Night costs for the DPW and the PLD. With respect to DWSD reimbursement costs, Thomas took issue with Sharma's characterization of the Union's initial information requests. Thomas wrote, "It is clear based on

the language in your [November 10, 2009] letter, you did not request the information for a three (3) year period. The City has provided you with the information you have requested."

Sharma responded to Thomas by letter dated April 20, 2010. In the letter, Sharma reiterated his contention that the information requests originally submitted by the Union in October of 2009 sought data regarding DWSD reimbursement costs for a three-year period. In addition, Sharma complained that the report provided by Respondent pertaining to Angel's Night costs failed to set forth the money spent by the City on overtime for DWSD employees.

Thomas replied to Sharma by letter on April 21, 2010. Thomas again insisted that the City had properly responded to the Union's request for information regarding DWSD reimbursements with the production of the December 2, 2009 letter. Thomas asserted that although the Union had specified a time frame of 2007-2010 for some of the documents it had requested, the November 10, 2009 request for reimbursement information did not identify any specific time period. With respect to the Union's request for additional information pertaining to Angels' Night expenditures, Thomas indicated that the DWSD was still compiling the data and that he would forward the documentation to Sharma as soon as it became available. In an email to Thomas sent on May 4, 2010, Sharma once again asserted that the City had not met its obligations and requested itemized reimbursement data for a three-year period.

At some point prior to the evidentiary hearing in this matter, the City verbally disclosed to the Union that it expected to save $11 million dollars from concessions agreed to by other labor organizations. Although the City did not provide the AME with any documentation supporting this assertion, the Union did not request additional clarification until the eve of hearing.

As of June 1, 2010, the date of the hearing, three of Charging Party's information requests were still, to some degree, outstanding: (1) Angels Night expenditures by the DWSD; (2) the amount of reimbursement payments made by the DWSD to other City Departments from 2007-2010; and (3) the amount that the City would save if the AME were to accept the concessions proposed by Respondent. Thomas testified that the City was not aware that Charging Party was seeking reimbursement data for a three-year period until the Union clarified its request in April 2010 and that Respondent was still in the process of obtaining the necessary information. Similarly, Thomas asserted that Respondent was still trying to gather information concerning Angel's Night expenditures by the DWSD. Thomas testified credibly and without contradiction that compiling the remaining information was taking longer because the DWSD has a particularly large number of employees assigned to the Angel's Night operation. At hearing, the parties agreed that the resolution of any issue pertaining to the Union's request for budget information, and the City's response thereto, would not be considered a part of the instant charge.

While this case was pending, decisions were issued in three other cases involving the City of Detroit and the AME and/or Sharma, two of which dealt with requests for information made pursuant to PERA. In Case No. C06 E-120, the Commission affirmed ALJ Julia C. Stern's decision finding that the City did not unlawfully refuse to provide information to the AME in a timely manner. The information sought by the Union consisted of requests made by individuals

outside of Charging Party's bargaining unit to use paid leave time for attendance at a large public meeting held to discuss water rates, as well as documents approving those requests. In his request, Sharma simply stated that the Union needed the information for "grievance and court hearing." In dismissing the allegations, Judge Stern held, "An employer's duty to provide a union with information is not without boundaries. I find that Charging Party failed to establish even a reasonable probability that the information would be of use to it in carrying out its statutory duties." A Decision and Order affirming Judge Stern was issued by the Commission on June 10, 2010.

On October 5, 2010, I issued a Decision and Recommended Order in Case No. C08 L-250 dismissing an unfair labor practice charge in which the Union, as in the instant case, alleged that the City had violated its duty to bargain in good faith by failing or refusing to provide information which the AME asserted was needed for the purpose of "grievances and contract negotiations." The case involved a series of information requests made by Sharma and the AME from March 19, 2008 to March 5, 2009. Sharma transmitted each of the requests to Respondent's FOIA section, despite the fact that Respondent had repeatedly directed the Union to transmit such requests to the City's labor relations division. In dismissing the charge, I concluded:

> Charging Party has failed to prove that the City breached its duty to furnish, in a timely manner, relevant information necessary for the Union to engage in collective bargaining and contract administration. To the contrary, Charging Party's conduct in this matter, including its willful disregard for the procedures established by the City pertaining to the transmission of information requests under PERA, leads me to conclude that the actual intent of the AME, or perhaps Sharma himself, in making the requests was to harass the Employer in pursuit of claims previously addressed by the Commission and which appear to have no relation to the legitimate interests of the Union. Were it not for *Goolsby v Detroit*, 211 Mich App 214, 224 (1995), a decision which the Commission has urged the Court of Appeals to reconsider, I would follow MERC's earlier decision in *Wayne-Westland Community Sch Dist*, 1987 MERC Lab Op 381, aff'd sub nom *Hunter v Wayne-Westland Community Sch Dist*, 174 Mich App 330 (1989) and award attorney fees and costs to Respondent as compensatory damages, as I find that Sharma and the AME have engaged in an intentional pattern of abuse of MERC's processes.

The Commission affirmed my Decision and Recommended Order in Case No. C08 L-250 on July 12, 2011. On June 2, 2011, ALJ Doyle O'Connor issued a Decision and Recommended Order dismissing a charge filed against the City by the AME and Sharma. In Case No. C09 I-166, Sharma sought City pay under the collective bargaining agreement for attending a fact-finding hearing involving a different labor organization. It was undisputed that the expired contract between the parties provides for paid time off for Union business only with respect to matters directly relating to the AME bargaining unit itself. The ALJ repeatedly directed Sharma to show cause why the matter should not be dismissed. After failing to file a compliant answer in response to three separate orders to show cause, Sharma then filed a proposed amended charge which substituted the original allegations for claims already litigated before ALJ Stern in Case

No C06 E-120. The ALJ refused to allow the proposed amendment and instead issued a decision recommending dismissal of the charge on summary disposition. The ALJ found that Sharma had willfully failed to file a substantive response to the orders to show cause and that his conduct was abusive to the process. In assessing sanctions against Sharma and the AME, the ALJ concluded:

> The goal of the charge was to compel contractually and legally unwarranted payments from the City for Sharma's personal benefit. Further, I conclude, based on that improper goal and on Sharma and the AME's willful failure to comply with orders of this tribunal, that the actual intent of Sharma and the AME in bringing and pursing this frivolous Charge was to improperly harass the Employer. Additionally, I find the attempted pursuit of the proposed Amended Charge to have been similarly abusive. In bringing the proposed amended charge, Sharma and the AME sought to abandon the original non-viable charge and to bring a new vague charge. I find that the sole purpose of the new proposed charge was to further delay and complicate the proceedings and to allow Sharma to appear at MERC for a hearing, not to legitimately secure relief, but rather for the primary purpose of his personally getting the paid time off work he was earlier denied.

While the instant case was pending, Charging Party moved to "retract" a fact finding report issued by Donald Burkholder on February 10, 2011. The Commission denied Charging Party's motion, concluding that "neither the applicable statutes, nor the MERC Rules, provide it with the authority to set aside a Fact Finding report and/or to second guess the report/recommendation of a Fact Finder." Letter from Ruthanne Okun, Director of the Employment Relations Commission, dated June 14, 2011.

On July 14, 2011, the AME filed yet another unfair labor practice charge alleging that the City of Detroit violated PERA by failing or refusing to timely respond to a multitude of information requests. That charge, Case No. C11 E-111, is currently pending before ALJ Stern.

Discussion and Conclusions of Law:

In order to satisfy its bargaining obligation under Section 10(1)(e) of PERA, an employer must timely supply requested information to permit the union to engage in collective bargaining and to police the administration of the contract. *Wayne County*, 1997 MERC Lab Op 679; *Ecorse Pub Sch*, 1995 MERC Lab Op 384, 387. 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, SMART*, 1993 MERC Lab Op 355, 357. See also *Pfizer, Inc*, 268 NLRB 916 (1984), enf'd, 763 F2d 887 (CA 7 1985). Information relating to terms and conditions of employment, such as wages, job descriptions, and other information pertaining to bargaining unit employees is presumptively relevant and the employer must provide it unless it rebuts the presumption. *Plymouth Canton Community Sch*, 1998 MERC Lab Op 545; *City of Detroit, Dep't of Transp*, 1998 MERC Lab Op 205.

Where a union makes a request for information which is not presumptively relevant, the employer has no duty to provide such information 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), enf'd, 531 F2d 1381 (CA 6, 1976). Information about employees outside the bargaining unit is not presumptively relevant. *City of Pontiac*, 1981 MERC Lab Op 57. Financial information is not presumptively relevant. *Sunrise Health & Rehabilitation Ctr*, 332 NLRB No. 133 (2000); *STB Investors, Ltd*, 326 NLRB 1465, 1467 (1998). Information pertaining to matters of managerial prerogative, including the decision to layoff unit members, is not presumptively relevant, nor is information pertaining to the subcontracting of bargaining unit work. *Challenge-Cook Bros of Ohio*, 282 NLRB 21 (1986), enf'd, 843 F2d 230 (CA 6, 1988*); AATOP LLC, d/b/a Excel Rehabilitation and Health Ctr*, 336 NLRB No. 10, fn 1 (2001), enf'd, 331 F3d 100 (CA DC, 2003).

An employer has no duty under PERA to respond to an inappropriate request for information or to provide information that does not exist. *State Judicial Council*, 1991 MERC Lab Op 510, 512. See also *Kathleen's Bakeshop LLC*, 337 NLRB 1081 (2002). When a union requests information that the employer does not keep in the form requested, the employer must, at a 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; *Green Oak Twp*, 1990 MERC Lab Op 123, 125-126. If an employer claims that compiling the data 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).

A refusal or unreasonable delay in supplying relevant information is a violation of the duty to bargain in good faith. *Oakland University*, 1994 MERC Lab Op 540; *Wayne County ISD*, 1993 MERC Lab Op 317. When determining whether a party violated its duty to bargain in good faith, this Commission looks to the totality of circumstances surrounding a dispute. *Grand Rapids Pub Museum*, 17 MPER 58 (2004). The Commission has not articulated the precise time for employers to respond to information requests. However, it has found violations of the Act in cases where the delay has ranged anywhere from 2-3 months to 9 months. See *Detroit Public Schools*, 1990 MERC Lab Op 624; *City of Detroit Police Dept*, 1994 MERC Lab Op 416. See also *Detroit Public Schools*, 2002 MERC Lab Op 201 (no exceptions).

I. DWSD Reimbursements

Charging Party asserts that the City breached its duty to bargain in good faith by failing to timely respond to the Union's requests for information concerning the amount that the DWSD spent on services provided to it by other City departments. Charging Party argues that the December 2, 2009 letter given to the Union by Thomas was insufficient because it failed to include data for a period covering three fiscal years, and because it did not break down expenditures by each of the City departments which provided services to the DWSD. Having carefully reviewed the testimony and evidence submitted by the parties in this matter, I find that the Union failed to establish a breach of the duty to bargain in good faith with respect to disclosure of information relating to DWSD reimbursements.

First, and perhaps most importantly, Charging Party has not affirmatively demonstrated the relevance of the information to bargaining or contract administration issues. The information does not directly concern unit members and Charging Party failed to adequately explain the relevance of the requested information at the hearing. Based upon the arguments set forth in the Union's post-hearing brief, it appears that the request is derived from the AME's oft-stated but erroneous contention that Respondent is obligated to treat Charging Party's members differently than other City employees because the DWSD is an "enterprise department" which has its own source of funding through rate payers and, therefore, is arguably not directly affected by budget deficits of the sort that the City is now experiencing. However, the Commission has never held that a public employer violates its duty to bargain in good faith by insisting on treating its employees the same regardless of funding source. In *City of Detroit (Water & Sewerage Department)*, 1996 MERC Lab Op 318, ALJ James P. Kurtz, noting that the City of Detroit has always treated all of its employees as general fund employees, held that requiring the City to give special preference to enterprise departments would "balkanize a number of City departments and make the City's financial situation among various groups of employees impossible to control." See also *City of Detroit*, 24 MPER 11 (2011), issued February 10, 2011 (affirming the finding of the ALJ that the parties lawfully entered into an agreement to impose economic concessions in grant-funded and enterprise departments of the City). Accordingly, I conclude that Charging Party's request for information concerning DWSD reimbursements has no conceivable relation to its duty to engage in contract negotiations or administration.

Even assuming arguendo that the information was relevant to collective bargaining or contract administration, the record does not establish that Respondent violated its duty to bargain in good faith in responding to the Union's request. The first information requested submitted by Charging Party on or about October 5, 2009 did not specifically reference DWSD expenditures to other City departments. Rather, Sharma initially asked the City to provide the DWSD budget and water rate books for fiscal years 2007-2010, as well as projected savings to the City's general fund based upon the proposed AME economic concessions. Shortly thereafter, Charging Party received rate books and budget documents from Respondent. The first reference to DWSD reimbursements appeared in Sharma's November 10, 2009 letter to Wise-Johnson. In that letter, Sharma complained that the information provided by the City did not "explain how much money is reimbursed to other city departments for their services, for example human resources, law department, mayor's office, etc." I find that this statement was not so specific as to put Respondent on notice that the Union was seeking three years' worth of data regarding DWSD reimbursements, nor did the request specifically indicate that the Union was seeking to have the data broken up by City department. From the wording of the letter, it could reasonably be understood that the Union was seeking the total expenditures made by DWSD to other City departments during the preceding fiscal year, and that is precisely what Respondent provided to Charging Party by way of the December 2, 2009 letter.

It was not until April 13, 2010 that Charging Party first explicitly requested detailed DWSD reimbursement information covering a period of three years. On that date, Sharma sent an email to Thomas in which he complained that the December 2, 2009 letter from Respondent did not break down the amounts spent by City department and that the document failed to include data for the three preceding fiscal years. After the request was clarified by Sharma, both

parties engaged in needless back-and-forth bickering over whether the initial information request was reasonably specific with respect to the scope and nature of the information sought by the Union. Clearly, the City would have been best served by simply acknowledging the clarification and either immediately turning over the additional information to the Union or providing Charging Party with a time frame in which the City expected to comply with the request. The argument which ultimately ensued, however, was a predictable by-product of the long and contentious bargaining relationship between the parties and was specifically precipitated by the AME's multiple, vague and overlapping information requests.

As evidenced by my decision in *City of Detroit*, Case No. C08 L-250, this is not the first time that Charging Party has inundated the City with information requests which are unnecessarily vague, voluminous, irrelevant or made without any consideration for the procedure established by the City for the handling such requests. When Respondent has disclosed information in a good faith attempt to comply with the Union's demands, Charging Party has inevitably found fault with the material provided by the City, either by raising issues which were not reasonably within the scope of the original request or by changing the nature of the request such that it is impossible for the City to ever fully comply.[1] As noted, the Union has, twice in the past year, been found to have engaged in unlawful abusive conduct intended solely to harass the City. Most recently, the Commission dismissed Charging Party's collateral challenge to a fact finder's report on the ground that the claim lacked any conceivable merit under the Act and MERC's administrative rules.

Based upon the facts before me, including Charging Party's multiple, vague and often irrelevant information requests, I find, again, that it is the AME, and not the City, which has violated its bargaining obligations under PERA. A review of the facts in this case and the several other recent disputes noted above leads to the obvious conclusion that the information requests by the AME have been pursued not to aid in the bargaining process, but rather to avoid or deter good faith bargaining between the parties. Quite simply, the Union has latched onto the practice of making successive information requests not for the purpose of actually garnering useful information from the City, but instead in an attempt to justify the Union's ongoing refusal to bargain in good faith over the City's demand that AME members share in the economic concessions to which most of the other City of Detroit bargaining units have already acquiesced. Given the Union's apparent lack of regard for its bargaining obligations under the Act, the City's response to the "clarified" request for reimbursement information in the instant case was, though far from ideal, reasonable under the circumstances.

Although the additional reimbursement information had not yet been provided to the Union at the time of the June 1, 2010 hearing in this matter, Thomas testified credibly that the City was still in the process of compiling DWSD reimbursement data beyond that which was contained within the December 2, 2009 letter. I find that no PERA violation has been established given that the Union did not clarify its request until the middle of April of 2010, less than two months prior to the hearing. Similarly, the fact that Thomas did not provide the Union with the December 2, 2009 letter immediately after it came into his possession does not, as Charging Party contends, establish a PERA violation. By that time, the City had already

[1] The AME's conduct in this regard is not unlike the cartoon character Lucy, who is forever pulling the football from underneath Charlie Brown's feet.

provided several documents to Charging Party and, as noted, the Union responded to each of these disclosures with demands for even more information. Under such circumstances, Thomas' decision to hold onto the information as he received it so that it could all be turned over to Charging Party at the same time appears to have been a reasonable attempt by Thomas to deal with the continued barrage of requests he faced from the AME and Sharma.

II. Angel's Night Expenditures

Charging Party contends that the City acted unlawfully in failing or refusing to provide information to the Union concerning the amount of regular and/or overtime paid to City employees for participation in the Angel's Night program. I disagree. Much of the requested information pertains to non-bargaining unit members and, therefore, is not presumptively relevant. Beyond the vague and conclusory assertion that the information is needed for contract negotiations, Charging Party did not proffer any explanation as to how information regarding Angel's Night expenditures, including those pertaining to DWSD employees, would be of use to the Union in carrying out its statutory duties. It appears, however, that the Union is seeking the information in order to attack the City's decision to allocate resources in the form of regular and overtime pay toward the Angel's Night program, resources which the Union presumably believes should instead be used to fund wage increases for AME members. An employer does not, however, have a duty to bargain over changes in day to day work assignments or fundamental decisions regarding the allocation of resources, as those issues are within an employer's inherent managerial prerogative. See e.g. *Pontiac School Dist*, 2002 MERC Lab Op 20; *City of St. Joseph*, 1996 MERC Lab Op 274; *City of Saginaw (Fire Dep't)*, 1973 MERC Lab Op 975. Where there is no duty to bargain over a topic, there is no corollary duty upon the part of the employer to respond to information requests. *Challenge-Cook Bros of Ohio, supra; AATOP LLC, supra*.

In any event, Charging Party has failed to establish that the City unlawfully refused to supply the requested information. Charging Party first asked for this information on November 10, 2009. On March 17, 2010, Thomas sent the Union a letter, attached to which was a package of documents which purportedly included a memo reflecting Angel's Night costs for the City's Recreation Department in 2009. At the close of the letter, Thomas indicated that additional information would be forwarded to the Union as it became available. After receiving the package, Sharma notified Thomas that the Angel's Night memo was missing. The following day, Thomas sent to Sharma by email copies of Angel's Night reports for the Recreation Department, the DPW and the PLD. At hearing, Thomas testified that the City had not yet finished compiling information regarding Angel's Night costs for the DWSD. Thomas asserted that gathering such information is a more intensive task because the DWSD has a large number of employees assigned to the Angel's Night operation. Charging Party offered no evidence to contradict this assertion or otherwise establish that the information could have been compiled and disclosed to the Union sooner. Under such circumstances, I find that Respondent has substantially complied with the Union's request for information relating to Angel's Night expenditures and recommend dismissal of that portion of the charge.

III. Savings From Wage Concessions

Next, the AME asserts that Respondent acted unlawfully in failing to provide it with data establishing the money saved as a result of economic concessions agreed to by other labor organizations representing employees of the City of Detroit. Such information pertains to non-bargaining unit employees and Charging Party has once again failed to demonstrate the relevancy of the request. As was the case with the DWSD reimbursement data, the request for information pertaining to concessions agreed to by other bargaining units is apparently related to the AME's contention that the City is somehow obligated to treat employees working for "enterprise departments" differently than employees whose wages are funded by taxes. As set forth above, it is not unlawful for the City to insist on treating all of its employees the same regardless of funding source and, therefore, I find no violation of the Act by Respondent in failing or refusing to provide this information.

I also find no merit to Charging Party's contention that the City breached its obligation to bargain in good faith in its response, or lack thereof, to the Union's purported request for information concerning the projected savings which would result from proposed concessions by the AME bargaining unit, including increased employee health care costs and reduced benefits for new hires within the bargaining unit. The record establishes that Respondent's budget director promptly gave a presentation to the AME at which the City's budget projections were discussed. Although the City did not provide any information during the meeting on concessions specific to the DWSD or to Charging Party's bargaining unit, it is apparent from the record as a whole that the Union was never legitimately seeking the City's calculation of the savings to be had from the proposed employee concessions. The Union inquired as to the impact of AME concessions on the City's general fund deficit while, at the same time, taking the position at the bargaining table that savings derived from DWSD employees could not be used to reduce that deficit. The request was, in essence, a rhetorical question in furtherance of the Union's specious assertion that the DWSD must be treated as an entity separate and apart from the City's general fund. The City was not obligated to continue in a pointless argument with Charging Party over the distinction between general fund savings and expenditures versus savings and expenditures within the DWDS itself.

Moreover, it appears from the record that AME was well-aware of the precise nature of the economic concessions sought by Respondent and the number of its members who would potentially be affected by those concessions and was, therefore, in an equal position as Respondent to do its own, equally speculative, estimate of likely savings. For example, Charging Party requested and received from the City PPS reports showing the number of budgeted and filled positions within the bargaining unit. The parties' most recent collective bargaining agreement, which was entered into the record as an exhibit in this matter, includes a wage scale setting forth the rate of pay for each position within the AME unit. Thus, Charging Party already had in its possession the data necessary to determine, within a reasonable certainty, the savings which would be realized by the City upon implementation of an across-the-board reduction in wages. Where a labor organization has available to it all necessary data, an employer does not violate its duty to bargain by failing to analyze the information for the union or provide it to the union in conclusory form. See e.g. *Mich State Univ, 1986* MERC Lab Op 407,409*; Port Huron Area Schs Bd of Ed*, 1979 MERC Lab Op 888, 893 (no exceptions). The City is not obliged to do the costing out calculations for the Union and there is no record evidence that the City actually made any projected savings calculations which it withheld from

Charging Party. Accordingly, I find that Respondent did not unlawfully fail or refuse to provide information to the Union regarding savings resulting from proposed concessions.

For the reasons set forth above, I hereby recommend that the Commission issue the following order.

RECOMMENDED ORDER

The unfair labor practice charge filed by the Association of Municipal Engineers against the City of Detroit in Case No. C10 A-012 is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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David M. Peltz
Administrative Law Judge
Michigan Administrative Hearing System

Dated: September 9, 2011