STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

TRUE COPY

In the Matter of:

LAPEER COMMUNITY SCHOOLS,
Respondent-Public Employer,

-and-

MERC Case No. C18 H-078

SEIU LOCAL 517M,
Charging Party-Labor Organization.
_____/

APPEARANCES:

Lusk Albertson, PLC, by Robert T. Schindler and Adam J. Walker, for Respondent

Dominic Barbato, Labor Relations Specialist, for Charging Party

DECISION AND ORDER

On April 24, 2019, Administrative Law Judge Travis Calderwood issued his Decision and Recommended Order[1] 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

Edward D. Callaghan, Commission Chair

Robert S. LaBrant, Commission Member

Natalie P. Yaw, Commission Member

Issued: MAY 22 2019

[1] MAHS Hearing Docket No. 18-016204

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

In the Matter of:

LAPEER COMMUNITY SCHOOLS,
Respondent-Public Employer,

Case No. C18 H-078
Docket No. 18-016204-MERC

-and-

SEIU LOCAL 517M,
Charging Party-Labor Organization.
_____/

Lusk Albertson, PLC, by Robert T. Schindler and Adam J. Walker, for Respondent

Dominic Barbato, Labor Relations Specialist, for Charging Party

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE ON MOTION FOR SUMMARY DISPOSITION

On August 9, 2018, SEIU Local 517M (Charging Party or Union), filed the above unfair labor practice charge with the Michigan Employment Relations Commission (Commission) against Lapeer Community Schools (Respondent or Employer). Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, the charge was assigned to Administrative Law Judge Travis Calderwood of the Michigan Office of Administrative Hearings and Rules.

Charging Party alleges that the Respondent violated its duty to bargain in good faith when it refused, despite several requests being made under the Act, to provide Charging Party with the home address, home and/or cell phone number, and personal email address for each of Respondent's employees represented by the Union.[1] The matter was initially scheduled for hearing on September 26, 2018.

On September 19, 2018, both parties filed motions for summary disposition under Rule 165(2)(f) of the Commission's General Rules, R 423.165(f), in which each asserted there was no genuine issue of material fact and that the matter could be adjudicated as a matter of law. The September 26, 2018, hearing date was adjourned without date pending disposition of the motion(s). The parties were directed to file responsive pleadings to each other's motion by October 5, 2018. Charging Party timely a response to Respondent's motion; Respondent indicated in an email, dated October 5, 2018, that it would forego the filing of any response brief.

[1] As will be discussed below, the Union's original request for information included employee birthdates, however Charging Party's pleadings are devoid of that request.

Background:

On May 10, 2018, Dominic Barbato, a Labor Specialist with the Union, emailed Kim Seifferly, the Employer's Executive Director of Human Resources, and indicated that the Union was "purchasing a different database and dues collection software system called Pledge Up." That email went on to request payroll dates for the 2018-2019 school year along with individual information for the bargaining unit members. More specifically, for each of its members, the Union requested their home address, building location, whether they were full-time or part-time, email address, hire date, birthdate, classification, and cell phone number. Just a few minutes after the above email was sent, Barbato followed-up with a second email in which he acknowledged that the Employer was presently preparing to provide the Union with a seniority list and that his earlier request only applied to information not already included in the seniority list.

On May 11, 2018, Lisa McAley from the Respondent's Human Resources Department emailed the Union's local president, Jennifer Putnam, an excel spreadsheet which contained, for each member of the cafeteria unit represented by Charging Party, the name, position, hours a day scheduled, date of hire, building, address and telephone number. The spreadsheet, as attached to Respondent's motion, does not indicate whether each respective phone number listed is a home and/or cell phone number. Of the information requested by Barbato's email(s), the seniority list did not provide birth dates, personal email addresses, or phone numbers specifically identified as cell phone numbers. [2]

On June 19, 2018, Barbato sent Seifferly another email in which he stated, "I was looking through my emails and could not find the below request in my inbox, was it ever provided to me electronically?" Barbato sent two more emails, one on June 29, 2018, and another on July 16, 2018, each again asking the Employer to provide the information he previously requested. The last email also indicated that the request was being made under PERA.

On July 19, 2018, Seifferly sent an email to Barbato in which she provided an excel spreadsheet for the SEIU represented employees at issue, which provided for each individual employee their name, position, hours a day scheduled, date of hire, building, and work email address. That email went on to state, "We are no longer providing personal information for staff members not related to employment, therefore you will find a few items not included such as (home address, personal email, etc.)."

On August 6, 2018, Seifferly, following an apparent phone conversation with Barbato, sent the Labor Specialist a follow-up email in which she stated:

> While the district did provide all of the work-related information requested, we did not provide the personal information for employees including personal email (which we do not collect, nor maintain), cell phone number or home address. While you may seek to obtain this information from employees directly via that work-related contact information we did provide, personal information unrelated

[2] I note that the Union's initial filing does not state whether it received the original seniority list sent to Putnam on May 11, 2018. However, I note that the Union's response to Respondent's motion did not dispute the Employer's assertion regarding the excel spreadsheet.

to employment is not something that we will disclose.

Later that same day Barbato responded and again requested the information, and stated, "Employee contact information is essential for the Union to properly service and represent the membership."

Discussion and Conclusions of Law:

While Charging Party's initial request to the employer for information included the request for birthdates along with home addresses, personal email addresses, and cell phone numbers, Charging Party's unfair labor practice filing, and subsequent pleadings focuses exclusively on the latter items and abandons the request for birthdates. Accordingly, the issue at hand is limited to whether the Employer's refusal to provide the home address, personal email addresses, and phone numbers, either cell or home, violates its duty to provide information under the Act.

It is a long held principle under the Act that an employer, in order to satisfy its bargaining obligation under Section 10(1)(e) of PERA, must supply in a timely manner information requested by the union which will permit the bargaining representative to engage in collective bargaining and police the administration of its collective bargaining agreement. *Wayne Co,* 1997 MERC Lab Op 679; *Ecorse Pub Schs,* 1995 MERC Lab Op 384. 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 will be ordered disclosed unless the employer rebuts the presumption. *City of Detroit (Dept of Transportation),* 1998 MERC Lab Op 205; *Plymouth Canton Cmty Schs*, 1998 MERC Lab Op 545. Under Supreme Court precedent, the standard applied is a liberal discovery-type standard. See *NLRB v Acme Indus Co,* 385 US 432 (1967). The employer has a duty to disclose the requested information as long as there exists a reasonable probability that the information will be of use to the union in carrying out its statutory duties. *Wayne Co*; *SMART,* 1993 MERC Lab Op 355, 357. The employer may rebut the presumption by demonstrating a legitimate confidentiality interest which would be damaged by disclosure of the information. *Michigan State Univ,* 1986 MERC Lab Op 407; *Kent Co,* 1991 MERC Lab Op 374; *City of Battle Creek,* 1998 MERC Lab Op 684. In both *Kent Co* and *City of Battle Creek,* the Commission held that a public employer has a legitimate interest in keeping confidential information relating to an employer's internal investigation of employee misconduct, including witness statements.

The National Labor Relations Board has long held that employee names and addresses are presumptively relevant and that a union does not need to provide any particularized need for the information. See *Georgetown Holiday Inn*, 235 NLRB 485, 486 (1978). As pointed out by both parties, the only apparent decision under PERA on which the issue of whether addresses and/or telephone numbers are presumptively valid was addressed is *Wayne Co,* 23 MPER 43 (2010) (no exceptions). In that case the Commission adopted the recommended decision and order by ALJ Julia C. Stern that found that the employer had violated the Act by refusing to supply the union with the home addresses of its bargaining unit members.[3] In that case, the ALJ first noted that the subject of home addresses and the employer's duty to provide information was a case of first impression before citing to NLRB precedent in *Georgetown Holiday Inn.* The ALJ stated:

[3] While the respondent in *Wayne Co,* initially filed exceptions to the ALJ's decision and recommended order, it later withdrew them.

> Home addresses are obviously useful to a union in carrying out its statutory duties since they provide a means for the union to communicate with its members without using the employer's communication channels. Moreover, home addresses assist a union in checking its records to ensure that all members of its bargaining unit are paying the dues or fees that the collective bargaining agreement requires.

ALJ Stern, in making her findings, considered the then-recent decision by the Supreme Court in *Michigan Federation of Teachers v Univ of Michigan,* 481 Mich 657 (2008), wherein the Court considered a FOIA request by the Michigan Federation of Teachers (MFT), a labor organization, for information, including the home addresses and telephone numbers for all individuals employed by the University.[4] ALJ Stern, when discussing the Supreme Court's decision stated:

> The Court held that that the FOIA privacy exemption does, in fact, permit a public body to refuse to disclose the home addresses and telephone numbers of its employees. The Court concluded, first, that "information of a personal nature" under the FOIA includes private or confidential information. It held that home addresses and telephone numbers qualify as private information because where a person lives and how a person may be contacted are private and confidential details of that person's life. It also concluded that requiring the public body, in this case the University of Michigan, to disclose the home addresses and phone numbers of its employees would result in a "clearly unwarranted invasion of privacy" since providing the public with this information would do nothing to further the core purposes of the FOIA, i.e., would not shed light on whether the University was functioning properly and consistently with its statutory and constitutional mandates.

The ALJ went on to explain that while some information might be exempt from disclosure to the public via FOIA, such an exception does not mean that an employer cannot be required under PERA to provide it to a union to which it owes a duty to bargain. In further distinguishing FOIA from PERA the ALJ stated,

> As noted by the Court in [*Michigan Federation of Teachers*], the core purpose of the FOIA is preventing public bodies from shielding from public view information that would reflect poorly on the performance of their public duties. In accord with this purpose, any member of the public can obtain public records by making a request under FOIA. The duty to provide information under PERA however, has nothing to do with "government in the sunshine." Rather, the duty to provide information is part of the obligation to bargain in good faith. In accord with this purpose, only public employers and the unions with which they have bargaining relationships have the right to receive or the obligation to provide information under PERA. Obviously, providing public employees' home addresses to the unions that represent them is not the same as turning that information over to any member of

[4] While neither the Supreme Court decision nor the Court of Appeals decision that preceded it, revealed the purpose for which the MFT sought the information, it is reasonable to assume that the information was being sought to further an organizational effort by the MFT to begin representing various employees of the University.

> the general public who requests it under the FOIA. A union owes a duty of fair representation to the members of its bargaining unit, whether or not they choose to become members of the union.

Respondent's argument for dismissal relies upon a combination of various legal positions, i.e., the position struck by the Supreme Court in *Michigan Federation of Teachers,* the Legislature's enactment of Public Act 349 of 2012 (PA 349), which established Michigan as a right-to-work state, and various Commission and subsequent Court decisions arising from PA 349. Respondent argues in its brief that the Supreme Court's decision in *Michigan Federation of Teachers*, when viewed in light of PA 349 and its related cases, "protects employees' rights to keep their home addresses and phone numbers out of the reach of labor organizations."

Respondent begins its argument with an analysis of PA 349 and the Commission's decisions in *Taylor Sch Distr,* 28 MPER 66 (2015), and *Saginaw Ed Ass'n,* 29 MPER 21 (2015), summarizing such by stating:

> Thus, PA 349 and subsequent case law demonstrates that public employees enjoy the right to be free from being a part of a labor organization or providing financial support to such organizations. Furthermore, they possess the right to be free from public employers interfering with that right.

While the above statement is certainly accurate, its relation and applicability to the present dispute is misplaced. Moreover, even if Charging Party uses the information in connection with the collection of dues, that fact, standing alone, does not run afoul of PA 349 or the rights of public employees so succinctly explained by the Respondent. PA 349 does not prohibit a union from seeking to encourage bargaining unit members to join and thus become dues paying members – the fear of which Respondent seems to focus on. Rather, PA 349 prohibits a union from using "force, intimidation, or unlawful threats" to do such. See MCL 423.209(2).

Respondent next, in addressing the ALJ's decision in *Wayne Co, supra,* focuses exclusively on the statements by the ALJ regarding the usefulness to the union of home addresses for matters regarding dues; Respondent herein ignores or refuses to accept that a union might need to contact members of its bargaining unit for reasons outside and/or separate from the collection of dues, i.e., grievance investigation, providing information regarding contract negotiations, etc. Equally damaging to Respondent's argument is its failure to accept the distinction between the identity of the information seeker in *Michigan Federation of Teachers* from that of unions in both *Wayne Co* and the present matter. In the former, the labor organization sought information as it related to *all* of the University's employees – including employees it did not represent – while in the latter, the unions are the certified bargaining representatives of the group of employees about which the information is sought.[5] I also note that Respondent points out that while the ALJ in *Wayne Co* took the position that FOIA and PERA "serve different purpose", she "never attacked the

[5] Accepting that the request in *Michigan Federation of Teachers* was made pursuant to FOIA as opposed to PERA, had the request been made under the state's preeminent labor act, it is very unlikely that the union would have been successful in acquiring the information, as information about non-unit employees is not presumptively relevant, and a union must demonstrate relevance in order to obtain this information. *Traverse City Pub Schs,* 1969 MERC Lab Op 395 (no exceptions); *City of Pontiac,* 1981 MERC Lab Op 57, 62 (no exceptions); *SMART,* 1993 MERC Lab Op 355.

[*Michigan Federation of Teachers*], conclusion that home addresses and phone numbers are private information." While I concede that point, it stands to reason that it would have been inappropriate for the ALJ to have taken such an approach as the issue before her arose under PERA and dealt with the scope of an employer's duty to provide information to a labor organization that represents a group of its employees. Accepting Respondent's argument as it applies to its reliance on *Michigan Federation of Teachers* would amount to a finding that certified bargaining representatives operate at the same level as the general public, an outcome that belies Commission and PERA precedent.

What remains, after considering Respondent's arguments, is whether there is reasonable probability that the home addresses and telephone numbers of Charging Party's bargaining unit members will be of use to the Union in carrying out its statutory duties, which I find there is. Extending the preceding standard to Charging Party's request for cell phone numbers in addition to home phone numbers and personal email addresses, I note that here too there is reasonable probability that the information will be of use to the Union in carrying out its statutory duties.

I have considered all other arguments as put forth by the parties and conclude such does not warrant a change in my findings. As such I recommend that the Commission issue the following order:

Recommended Order

Respondent Lapeer Community Schools, its officers and agents, are hereby ordered to:

1. Cease and desist from refusing to provide SEIU Local 517M with information that is relevant and necessary to its role as the bargaining agent for employees of Respondent.

2. Take the following affirmative action to effectuate the purposes of the Act.

   a. Provide, to the extent the information is maintained by the Respondent, the home address, home and/or cell phone number, and personal email address for each of Respondent's employees represented by SEIU Local 517M.

   b. 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 thirty (30) consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Travis Calderwood
Administrative Law Judge
Michigan Office of Administrative Hearings and Rules

Dated: April 24, 2019

UPON THE FILING OF AN UNFAIR LABOR PRACTICE CHARGE WITH THE MICHIGAN EMPLOYMENT RELATIONS COMMISSION (COMMISSION) BY THE **SEIU LOCAL 517M**, THE COMMISSION HAS FOUND THE **LAPEER COMMUNITY SCHOOLS** 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 cease and desist from refusing to provide SEIU Local 517M with information that is relevant and necessary to its role as the bargaining agent for employees of Respondent.

WE WILL provide to SEIU Local 517M, to the extent we maintain the information, the home address, home and/or cell phone number, and personal email address for each of Respondent's employees represented by SEIU Local 517M.

LAPEER COMMUNITY SCHOOLS

By:_____

Title: _____

This notice must be posted for a period of thirty (30) consecutive days and must not be altered, defaced or covered by any material. Any questions concerning this notice 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.

Case No. C18 H-078/Docket No. 18-016204-MERC