STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF DETROIT,
Public Employer-Respondent,

MERC Case No. C09 L-265
-and- Hearing Docket No. 09-000013

DETROIT FIRE FIGHTERS ASSOCIATION, LOCAL 344,
INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS,
Labor Organization-Charging Party.
_____/

APPEARANCES:

Valerie A. Colbert-Osamuede and Letitia C. Jones, for Respondent

Alison L. Paton, for Charging Party

DECISION AND ORDER

On November 1, 2016, Administrative Law Judge David M. Peltz 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 either 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

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: January 11, 2017

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

CITY OF DETROIT,
Respondent-Public Employer,

Case No. C09 L-265
-and- Docket No. 09-000013-MERC

DETROIT FIRE FIGHTERS ASSOCIATION, LOCAL 344,
INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS,
Charging Party-Labor Organization.
_____/

APPEARANCES:

Valerie A. Colbert-Osamuede and Letitia C. Jones for the Public Employer

Alison L. Paton for the Charging Party

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE

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 David M. Peltz, Administrative Law Judge (ALJ) for the Michigan Administrative Hearing System, acting on behalf of the Michigan Employment Relations Commission. Based upon the entire record, including the transcript of hearing, exhibits and post-hearing briefs, I make the following findings of fact, conclusions of law and recommended order.

The Unfair Labor Practice Charge and Procedural History:

This case has a long and tortured procedural history which is described in detail below. The Detroit Fire Fighters Association, Local 344, International Association of Fire Fighters (DFFA or Union) represents a bargaining unit comprised of all non-civilian positions within the City of Detroit Fire Department, including fire chief, fire marshal, fire captain and fire fighter. The unit also includes several civilian positions such as fire dispatcher, supervisor of fire apparatus and auto repair foremen. The most recent collective bargaining agreement between the parties covered the period July 1, 1998 to June 30, 2001, but remained in effect at the time of the hearing in this matter. The contract contains a grievance procedure culminating in final and binding arbitration.

On December 30, 2009, the DFFA filed an unfair labor practice charge asserting that the City of Detroit violated Section 10(1)(e) of the Act by failing to provide information requested by the Union relating to calculations of lump sum pay for retiring bargaining unit members and by providing "incomplete information" in response to a request for the medical records of unit member Jason Johnson. The charge further alleged that the City breached its duty to bargain in good faith by unilaterally implementing Bulletin 86/09, which pertained to the submission of medical mileage reimbursement requests. Finally, the charge asserted that the City repudiated its obligations under the collective bargaining agreement by: (1) failing to pay banked leave time (other than sick time) within the 30-day contractual time limit; (2) failing to implement a two percent wage increase for battalion chiefs and equivalent ranks; (3) failing to properly and accurately credit employees for sick leave accrual; (4) failing to implement step increases for members above the rank of fire fighter; (5) failing to implement increased merit performance award pay for the ranks of battalion chief and above; (6) failing to pay retroactive pay to DFFA members who are in positions which are parity allied with positions represented by the Detroit Police Lieutenants and Sergeants Association (DPLSA); (7) failing to pay the proper amount owed to members under the contract's uniform and cleaning allowances; (8) making improper deductions for Medicare; (9) failing to pay compensatory time; and (10) failing to correct underpayments for all of the above within the 60-day time period set forth in the contract.

The charge was initially assigned to ALJ Doyle O'Connor and an evidentiary hearing was scheduled for May 5, 2010. On January 15, 2010, Judge O'Connor issued an order requiring the City of Detroit to file a fact specific answer or position statement addressing the allegations set forth in the charge. With respect to the information request allegation, the order required the City to show cause why summary disposition should not be granted in the Union's favor. On or about February 18, 2010, the City filed a response to the order to show cause asserting that it had previously responded to all of the information requests submitted by the Union.

No answer or position statement was filed addressing the remaining allegations in the charge as required by Judge O'Connor's order of January 15, 2010. After the Union complained about the Employer's failure to fully comply with the ALJ's order, Joseph Martinico, then Director of Labor Relations for the City of Detroit, sent a letter to the Union dated March 16, 2010, in which he asserted that most of the Union's complaints have been addressed, but that the City would provide the DFFA with any "missing or incomplete" information. The Union's attorney, Alison Paton, responded to Martinico by letter dated April 1, 2010. In that letter, Paton took issue with Martinico's assertion that the case was essentially resolved and she provided clarification regarding the specific claims being asserted by the Union.

On or about April 8, 2010, the evidentiary hearing in this matter was adjourned at the request of the parties to accommodate proceedings which were ongoing pursuant to the Compulsory Arbitration of Labor Disputes in Police and Fire Departments Act, 1969 PA 312, MCL 423.231 *et seq*. (Act 312). Following the conclusion of the Act 312 hearings, Judge O'Connor rescheduled this matter for hearing on November 16, 2010.

On August 5, 2010, the DFFA filed a first amended charge in which it withdrew the allegation that the City had repudiated its contractual obligation to implement a two percent wage increase for battalion chiefs and equivalent ranks. The amended charge raised several new allegations, including a claim that Respondent failed to comply with the Union's May 13, 2010, request for information relating to the City's "possible transfer" of the Detroit Police & Fire Retirement System (DPFRS) to the Municipal Employees' Retirement System (MERS). In addition, the amended charge asserted that the City had repudiated the terms of the parties' collective bargaining agreement by failing to pay unused sick time in accordance with the formula specified in the contract. Finally, the amended charge alleged that Respondent was unlawfully deducting social security from the paychecks of bargaining members.

The Union filed a second amended charge on September 22, 2010, incorporating two additional allegations which the DFFA asserted had been "inadvertently omitted" from the prior pleading. The second amended charge asserted that following the issuance of an Act 312 award involving the City and the Detroit Police Command Officers Association (DPCOA), Respondent repudiated the terms of its contract with the DFFA by failing or refusing to implement changes in terms and conditions of employment for unit members who were supposed to have parity with police command positions. In addition, the second amended charge alleged that the City violated PERA by failing to implement the provisions of the "Dorio Thornton" settlement agreement entered into on December 29, 2009.

The parties met for the evidentiary hearing in this matter on November 16, 2010. Rather than going on the record, the City and the Union instead engaged in settlement discussions which resulted in an agreement on a framework for voluntary resolution of all of the Union's allegations. The agreement was codified in a letter from DFFA President Daniel McNamara to Martinico dated November 23, 2010. In case the settlement fell through, the parties also resolved to participate in another prehearing conference with Judge O'Connor. On May 4, 2011, Paton notified O'Connor in writing that the parties had been unable to fully resolve this dispute. Specifically, Paton asserted that the City had failed to keep almost all of the promises it had made at the November 16, 2010, prehearing conference.

The parties met once more in an attempt to resolve this dispute on May 18, 2011. Those discussions failed to produce a settlement and an evidentiary hearing commenced before Judge O'Connor on June 15, 2011. The hearing was not completed on that date and a second day of trial was scheduled for September 20, 2011.

On July 20, 2011, the DFFA filed a third amended charge in which it withdrew allegations relating to implementation of increased merit performance award pay for the ranks of battalion chief, payment of the uniform and cleaning allowance for bargaining unit members, failure to pay compensatory time and implementation of the "Dorio Thornton" settlement agreement. The amended charge included a new allegation that the City violated PERA by failing to provide information regarding merit pay for battalion chiefs.

The September 20, 2011, date for continuation of the evidentiary hearing was canceled at the City's request due to a scheduling conflict. The hearing was rescheduled for December 15, 2011. The day before the hearing was set to resume, Charging Party notified ALJ

O'Connor that the DFFA was withdrawing its allegation that Respondent violated PERA by failing to implement the provisions of the DPOCA arbitration award and its claim that the City had unlawfully failed or refused to provide requested information concerning merit pay for battalion chiefs.

On December 15, 2011, the parties informed Judge O'Connor that no additional hearing dates were necessary and that the record in this matter could be closed. Thereafter, the ALJ provided the parties with a schedule for the filing of post-hearing briefs. The DFFA filed its post-hearing brief on February 29, 2012. As part of the brief, the Union withdrew its allegation that the City had breached its duty to bargain in good faith by unilaterally implementing Bulletin 86/09 which pertained to the submission of medical mileage reimbursement requests. The City filed its post-hearing brief on September 14, 2012.

Pursuant to Rule 174, R423.174, this case was transferred to ALJ Julia Stern on October 11, 2013, following Judge O'Connor's retirement. In July of 2013, Respondent filed a petition for bankruptcy in federal court. As a result, all cases then pending before the Commission involving the City of Detroit, including the instant case, were held in abeyance until the bankruptcy petition was resolved. On February 21, 2014, the DFFA filed a proof of claim in the bankruptcy court preserving the Union's right to debt owned in connection with various cases, including the instant dispute.

The City of Detroit emerged from bankruptcy on December 10, 2014. On August 26, 2015, Judge Stern sent the parties a letter stating that since the bankruptcy proceeding had concluded, she planned on moving forward with this case, but that if any party believed that placing this matter back on the active docket would be in contravention of an order issued by the Bankruptcy Court or any other lawfully issued order, the party was to notify her within twenty-eight days of the letter. Judge Stern did not receive any response to the letter and the case was placed back on her active docket. However, because of the age of the case, and the likelihood that some issues had been rendered moot or settled while the matter was stayed, Judge Stern directed the parties to appear for a status conference on December 1, 2015. The conference was rescheduled for January 29, 2016, at Charging Party's request.

Around the time that the instant case was reactivated, Judge Stern was in the process of presiding over a complicated unit clarification proceeding for which an expedited decision was required. Accordingly, I was invited to assist her at the status conference with the understanding that this matter would likely be transferred to my docket if any issues remained outstanding. At the January 29, 2016, conference, the Union withdrew its allegation that the City violated PERA by failing to pay banked leave time (other than sick time) within the 30-day contractual time limit. Thereafter, the case was formally transferred to my docket.

The following issues remain in dispute: (1) failure to provide information relating to calculations of lump sum pay for retiring bargaining unit members; (2) failure to provide Jason Johnson's entire medical file; (3) refusal to comply with the Union's request for information relating to the possible transfer of the DPFRS to MERS; (4) failure to pay unused sick time; (5) failure to properly and accurately credit employees for sick leave accrual; (6) failure to implement parity step increases for members above the rank of fire fighter; (7) failure to pay

retroactive pay to DFFA members who have parity with DPLSA positions; (8) improper deductions for Medicare for employees hired before March 31, 1986; and (9) improper deductions for social security.

I. INFORMATION REQUESTS

Findings of Fact:

Calculation of Lump Sum Pay For Retiring Bargaining Unit Members

Under the collective bargaining agreement which was in effect at the time of the hearing in this matter, members of the DFFA unit were entitled, upon retirement, to a lump sum payment of accrued sick time and banked time, the latter of which included compensatory time and furlough days. The payments were processed by the City's payroll department using separate forms, one for sick time and another for all other types of banked time.

At some point, bargaining unit members began noticing that they were not receiving the proper lump sum payment amounts. On July 2, 2009, DFFA Secretary Jeffrey Pegg wrote to Seth Doyle, III, Deputy Fire Commissioner, requesting a "complete and accurate copy of the Detroit Fire Department's Calculation of Lump Sum Pay for all members that have retired effective July 1, 2008 through present." Doyle responded by letter dated July 8, 2009, asserting that the request had been forwarded to human resources and/or payroll "for a proper response." Despite that assurance, the Union received no further communications from the City regarding this matter and the requested information was not provided.

On September 23, 2009, the Union filed the instant charge which included an allegation that the City had violated its duty to bargain under PERA by failing to respond to the July 2, 2009, request for information concerning the calculation of lump sum payments. Two days after the charge was filed, Pegg sent another written request to Doyle for the lump sum payment information for bargaining unit members who had retired effective July 1, 2008, through the present. At the time, the request covered approximately 40 unit members. Once again, the City provided no response to the Union's information request.

On March 16, 2010, Martinico wrote to DFFA attorney Paton concerning the charge. Regarding the issue of the lump sum payment information request, Martinico expressed uncertainty as to which of the two forms the Union was seeking. Despite that confusion, Martinico promised that the City would provide "greater detail and explanation as to how these lump sum payments are calculated." Martinico further indicated that he would provide Paton with "several sample calculations of sick leave payments, in order to more fully clarify the methodology or formula used to make these calculations."

Paton responded to Martinico by letter dated April 1, 2010. In the letter, Paton took issue with the City's contention that it did not understand which forms the Union was seeking. Paton asserted that Martinico's letter was "the first time anyone has indicated that there was a need for further clarity as to what is being requested; it is unfortunate that this was never

indicated previously during the approximately 8 months that this request has been pending." Paton proceeded to explain that the Union was seeking information for both sick time lump sum payments and all other lump sum payments for every member who had retired since July 1, 2008. She also clarified that the DFFA was "not seeking sample calculations, but rather calculation sheets" for each affected unit member. To avoid any further confusion, Paton enclosed examples of the specific forms the Union was seeking.

On November 16, 2010, Judge O'Connor held a settlement conference during which the parties worked out a schedule for resolution of the various claims set forth in the charge. The schedule, as formalized in a letter from DFFA President McNamara to Martinico dated November 23, 2010, called for the DFFA to provide to the City a list of the specific individuals for whom lump sum payment information was being sought. Pursuant to the agreement, the City was then obligated to provide the Union by December 24, 2010, with copies of the two lump sum payment forms for 25 of the bargaining unit members identified by the Union, with forms for the remainder of unit members provided to the DFFA by February 1, 2011.

Pursuant to the agreement, the Union provided the City with a list containing the names of 151 fire department employees for whom it was seeking information concerning the calculation of lump sum payments. Several names on the list, which was provided to Respondent on November 19, 2010, were in bargaining units other than the DFFA at the time; however, those individuals were formerly in Charging Party's unit and held seniority in positions represented by the DFFA. Other individuals on the list had not yet retired from the fire department but had opted to take an early payout prior to separation from employment with the City.

Although the City ultimately provided Charging Party with the requested separation payment forms for 25 of the bargaining unit members identified by the Union, it did not do so by the December 24, 2010, deadline previously agreed to by the parties. Forms for 20 additional unit members were later provided to the Union at a meeting on May 18, 2011. However, the Union indicated to the City at that time that the forms were incomplete. According to the Union, Respondent provided only the sick time forms and did not include the lump sum payment forms for any of these members.

Respondent did not provide any further information to the DFFA through the date of the hearing in this matter. With respect to the approximately forty bargaining unit members who had retired from July 1, 2008, through the time of the filing of the charge, there were still six to ten members for whom the Union had received no information whatsoever relating to the calculation of lump sum payments.

Medical Documentation Concerning Jason Johnson

The Union filed a grievance on behalf of bargaining unit member Jason Johnson after Respondent placed him on "injured on duty inquiry" status. The grievance asserted that Johnson should have been eligible for duty disability benefits. On August 26, 2009, the Union submitted a form entitled, "Authorization to Release Medical Information/Records" to the fire

department's medical division. The form, which Johnson signed, requested that Respondent produce "any and all information you may have regarding my condition when under observation or treatment by you, including history obtained, findings and diagnosis." The form did not specifically mention the pending grievance. Pegg testified that whenever the Union had previously submitted such a form to the fire department, it had always received the employee's entire medical file in return.

The City responded to the information request on or about September 2, 2009, by providing the Union with a 46-page packet of medical records pertaining to Johnson which included a Workers Compensation Claim summary, an accident report, and various documents from medical care providers.

Sometime in late 2009 or early 2010, Pegg had a conversation with Yolanda Daley, a medical case worker employed by the City. Daley is in charge of maintaining medical records for fire department employees and compiling those files in response to Union requests for information. Daley told Pegg that she had not given the DFFA a copy of Johnson's complete medical file, but rather only those documents that she had deemed relevant to the pending grievance. Following that conversation, Pegg wrote to 2nd Deputy Fire Commissioner Chery Campbell, complaining that the City was not providing complete medical files for its members in response to Union information requests. In addition, Pegg asserted that the fire department's medical division was giving copies of medical documents to the Respondent's labor relations department and/or City attorneys which had never been provided to the Union.

Campbell responded by letter dated January 15, 2010, in which she asserted that the Union would "receive a more comprehensive response after these allegations have been investigated." Charging Party never received a reply from Campbell regarding Pegg's assertion that the fire department was withholding information. However, the Union subsequently received a new packet of documents from Respondent which included additional medical records pertaining to Johnson. The new packed included a progress report from Gary Chodoroff, M.D. In the report, Dr. Chodoroff asserted the City had misrepresented his earlier diagnosis of Johnson:

> Mr. Johnson provided me with a document entitled, "Public Safety Case Review" dated 08/06/2008. In this review, it is stated that, "Based on Dr. Chodoroff note, nothing duty related. Problems appear chronic. Can continue treatment with his physician and should be placed off sick." This is not what I had stated to the doctor. I explained to her that my opinion was that there was . . . a clear cut work injury."

After the instant charge was filed, Martinico wrote to Paton regarding the issue of Johnson's medical records. In the letter, dated March 16, 2010, Martinico explained that Respondent had interpreted the Union's August 26, 2009, request as pertaining to records relevant to the grievance and that the City had not understood that the DFFA was actually seeking all records in the fire department's possession concerning Johnson's medical history. Martinico indicated that "[u]pon receipt by the Department of a medical records release

covering all medical records applicable to all conditions for which Mr. Johnson has been treated during his employment with the Department, all of these records will be provided."

Information Regarding Transfer of Retirement System

Retirement plans for employees of the City of Detroit police and fire departments are administered by the DPFRS. In 2010, Charging Party became concerned that the City might be considering transferring the administration of employee retirement benefit plans to MERS, a retirement services company which oversees retirement plans for municipalities throughout Michigan. At hearing, Union President Dan McNamara testified that such a move would have the potential to impact members of the DFFA bargaining unit. For example, McNamara testified that under the current system, the DPFRS board is responsible for determining whether a police or fire department employee is entitled to a disability pension. According to McNamara, the responsibility would likely be transferred to another entity if MERS were to take over management of the retiree benefits.

By letter dated May 13, 2010, McNamara wrote to Executive Fire Commissioner James W. Mack, Jr., requesting "all communications written and verbal to include but not be held to only these forms: e-mail, letter, missive, snail mail, text, twitter, tweet, phone call, video, facebook, myspace page or any other electronic means between the City of Detroit and its agents, MERS and its agents and any other interested group or persons directly related to moving the Detroit Police and Fire Retirement System to MERS."

Mack responded to McNamara on or about May 21, 2010, asserting that "the Detroit Fire Department does not have communication, written or verbal" pertaining to the subject matter of the request. A few days later, Martinico wrote to McNamara regarding the Union's information request. In the letter, which was dated May 27, 2010, Martinico neither confirmed nor denied that transfer of the retirement system to MERS was under consideration. Instead, he asserted that the Union was not entitled to any information regarding the issue because "there is currently no City or Union proposal made in collective negotiations or bargaining regarding moving the Detroit Police and Fire Department System to MERS." Martinico requested that McNamara "indicate the basis for the Association's information request" so that Respondent could be able to appropriately consider whether any document should be disclosed.

On or about June 10, 2010, McNamara wrote a letter to Martinico disputing his legal conclusion that the City had no duty under PERA to disclose the requested information. In the letter, McNamara noted that "PERA allows such a request so that a union can 'administer, enforce or negotiate the collective bargaining agreement.'" The letter continued:

> The Detroit Fire Fighters Association (DFFA) is under the belief that there have been meetings held by our employer with MERS and other interested parties that involve a mandatory subject of bargaining that is clearly recognized in our CBA. In fact, one group has stated in print that they have met and discussed the movement to MERS with Mayor Bing and representatives of MERS.

> It is problematic that groups are meeting over such an issue, especially while those bargaining groups that are legislatively and legally empowered to do such negotiating are left out.
>
> For these, and other obvious reasons, I again assert the PERA request that I have submitted to you.

Attached to the letter was a copy of a news item published by the Retired Detroit Police and Fire Fighters Association (RDPFFA). The publication referred to a meeting at which RDPFFA representatives, then City of Detroit Mayor Dave Bing and officials from MERS purportedly discussed proposed legislation which would place the Detroit pension systems under the management of the statewide retirement system.

Martinico responded to McNamara by letter dated June 23, 2010. Martinico once again asserted that the City was not obligated to provide any information regarding the possible transfer of the retirement system because the Union had not explained how its request was relevant to the "administration, enforcement or negotiation of the agreement." Martinico also denied having any knowledge of a meeting between the City, MERS or other interested parties, including the RDPFFA. Martinico concluded the letter by asserting that he was "still unable to make a full and knowledgeable evaluation" of the Union's information request. After receiving this letter from Martinico, the Union filed the instant charge.

On November 16, 2010, the parties met for a pretrial conference with Judge O'Connor, the substance of which was later codified in a letter from McNamara to Martinico dated November 23, 2010. With respect to the MERS information request, the City agreed that on or before January 10, 2011, it would provide a letter to the DFFA "indicating what if any documents it will provide, and for any documents that exist but which the City does not intend to provide, a brief explanation of the document and the reason the City will not provide it." McNamara testified the Union never received any such letter from the City, nor did the DFFA ever receive any documents in response to its request for information concerning the possible transfer of the retirement system.

Discussion and Conclusions:

Charging Party contends that the City violated PERA by failing to properly and fully respond to its requests for information. 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. 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.

Charging Party made its initial request for information concerning the calculation of lump sum payments on July 2, 2009. No information was provided by Respondent at that time, nor did the City disclose any information after the Union repeated the request on September 25, 2009, more than two months later. The information request was clearly relevant to the Union's statutory duty to police the administration of its contract. Members of the bargaining unit had been complaining to DFFA representatives that they were not being paid the full lump sum payment amounts that they were owed by Respondent upon retirement. The information sought by the Union was necessary to assess whether those complaints were valid. In fact, the City has not disputed the relevancy of the requested information.

The record overwhelmingly establishes that the City did not respond in good faith to the request for information. Although Respondent promptly acknowledged receipt of the Union's initial request, it did not immediately provide Charging Party with the information or offer any reason why it could not do so. The only explanation given by Respondent to justify its failure or refusal to provide the requested documents was Martinico's assertion that the meaning of the request was unclear. However, that claim was not made until March 16, 2010, more than eight months after the Union first submitted its information request and almost six months after the charge was filed. To the extent that the City found Charging Party's request vague or misleading, it should have requested clarification upon receipt of the initial request. *Wayne County Comm College*, 20 MPER 98 (2007), citing *Azabu USA*, 298 NLRB 702 (1990). See also *National Electrical Contractors Assn., Birmingham Chapter*, 313 NLRB 770, 771 (1994); *Keauhou Beach Hotel*, 298 NLRB 702 (1990).

At hearing, the City's attorney asserted that the Union's allegations concerning the production of lump sum payment information should be dismissed because most of the documentation requested was ultimately provided to the DFFA. I find no merit to this assertion. The fact that requested information may have been provided to the Union after the charge was filed does not obviate an otherwise valid claim for breach of the duty to bargain in good faith. *Macomb County (Juvenile Justice Center)*, 27 MPER 7 (2013); *Detroit Public Schools*, 25 MPER 58 (2011). An employer's unreasonable delay in furnishing relevant information is as much a violation of its duty to bargain as a refusal to provide the information at all. *Valley Inventory Service*, 295 NLRB 1163, 1166 (1989). See also *City of Detroit*, 25 MPER 23 (2011) (no exceptions). In any event, it should be noted that even after the charge was filed, the City acted in a dilatory manner by failing to comply with the timeline it had agreed to during the November 16, 2010, settlement conference. In fact, it was not until May 18, 2011, almost two years after the charge was filed, and more than a year after Paton first clarified the scope of the request, that much of the information was finally provided. Under such circumstances, I find that Respondent did not respond to the request for information in good faith, and has thereby violated Section 10(1)(e) of the Act.

Similarly, I find that the City violated PERA by withholding information in response to the Union's request for copies of Johnson's medical records. There can be no reasonable dispute that the information sought by the Union was presumptively relevant. Johnson was a member of the DFFA bargaining unit and the Union had filed a grievance on his behalf pertaining to Johnson's eligibility for duty disability benefits. Although Respondent initially provided certain documents to the Union relating to Johnson's condition, the packet of information did not include a progress report dated August 27, 2008, which seems to relate specifically to the issue of Johnson's eligibility for duty disability benefits. Curiously, that document contains an allegation that the fire department misrepresented the diagnosis of a physician who was treating Johnson for his injuries. It was only after Charging Party discovered that the initial disclosure was incomplete and submitted a complaint to the fire department that the missing document was finally turned over to the DFFA, more than four months after the Union first submitted the Authorization to Release Medical Information/Records form to the department's medical records division.

In its post-hearing brief, Respondent asserts that the 2008 progress report was not included in the initial packet of information because its representatives did not believe the document was germane to the pending grievance. However, the City is not the arbiter of relevancy when a labor organization makes a request for information relating to a bargaining unit member. The request submitted by Charging Party on August 26, 2009, was open-ended, referring to "any and all information" regarding Johnson's medical "condition." In fact, Pegg testified without contradiction that the fire department had always provided an employee's complete medical file whenever an authorization was submitted. Moreover, Respondent failed to call Martinico, Daley or any other witness to support its claim that the document was omitted from the initial disclosure because it was deemed immaterial by City representatives. While it is conceivable that the progress report was inadvertently left out of the initial packet of information, there is simply no evidence in the record establishing that the omission was justifiable. For these reasons, I conclude that Respondent violated its duty to bargain in good faith by failing or refusing to fully comply with Charging Party's request for Johnson's medical records.

Lastly, I find that Respondent acted unlawfully with respect to the Union's request for information relating to the possible transfer of the DPFRS to MERS. There is no dispute that the City failed to provide any documentation in response to the Union's May 13, 2010, request for information. According to the evidence introduced by the DFFA at hearing, Respondent did not believe that the Union was entitled to the information under PERA because the issue of transferring control of the retirement system to MERS was not the subject of any ongoing negotiations between the City and the Union. Such an interpretation of Section 10(1)(e) of the Act is without any merit. As noted, the employer has a duty to disclose information requested by a labor organization as long as there exists a reasonable probability that the information will be of use to the union in carrying out its statutory duties. A change in the administration of the retirement system would certainly have the potential to impact current and former fire department employees in a myriad of ways. Because retirement benefits are a term and condition of employment for DFFA members, the information sought by the Union was presumptively relevant and the City had a duty to promptly comply with the request.

In its post-hearing brief, the City asserts that it had no duty to provide Charging Party with information regarding a possible transfer of the retirement system to MERS because such documentation simply did not exist. In support of this contention, the City refers to written correspondence from Employer representatives to McNamara which the Union introduced into evidence at hearing. It is true that Mack, in his initial response to the Union, asserted that the fire department did not have any documents pertaining to the Union's information request. However, Mack's response did not speak to the issue of whether the City itself was in possession of such information. In fact, the Union's request was forwarded by Respondent's representatives to Martinico, the City's labor relations director. Notably, in his various communications with the Union, Martinico never denied that the transfer of the retirement system to MERS was under consideration or that the City had documents in its possession relating to that issue. Instead, he asserted that the Union had not demonstrated that it was entitled to such information and that he was unaware of any meetings which had occurred between the City, MERS and other interested parties. Notably, the City did not call Martinico or any other witness to testify at hearing in support of its claim that the documents sought by the DFFA did not exist. Under such circumstances, I conclude that the record supports a finding that the City violated its obligation to bargain in good faith with respect to the Union's request for information relating to the possible transfer of the DPFRS to MERS.

II. REPUDIATION CLAIMS

Findings of Fact:

FAILURE TO PAY UNUSED SICK TIME

Article 22, Subsection (B)(9)(e) of the collective bargaining agreement covers the issue of payment to bargaining unit members for unused sick leave upon retirement. On or about May 13, 2008, the City and the DFFA entered into a memorandum of understanding (MOU) to modify that section of the agreement for certain unit members who retire on or after July 1, 2008. Pursuant to that MOU, the contract now provides:

> 1) Effective July 1, 2008, a member shall receive full pay for eighty-five percent (85%) of the unused accumulated sick bank amounts, except DFFA members allied to DPOA shall receive one hundred percent (100%) of the unused accumulated sick banks, or
>
> 2) chose to receive the 3-year average of twenty-five percent (25%) of the unused sick leave bank as provided in 1) above, and have that sum included in the average final compensation used to compute the member's service pension of their retirement allowance. For any member choosing to exercise this option, the lump sum payment the member will receive will be the remaining value of the unused accrued sick leave bank as provided in 1) above.
>
> All other provisions of Article 22, Subsection (9)(e) shall remain the same.

After the MOU went into effect, issues arose over how the agreement was to be implemented. Meetings were held between the City and the Union at which Respondent's representatives conceded that it had made mistakes which resulted in some bargaining unit members receiving the wrong payment amounts. Those members had not been made whole by the time of the hearing in this matter. As of the date of hearing, however, the Union had not been able to determine exactly how many unit members were still owed money by the City or how much money was involved.

FAILURE TO IMPLEMENT STEP INCREASES

In fire department parlance, the term "step increase" means a wage increase that comes from proceeding to the next level of pay within the same rank based on length of service within that rank as set forth in Article 22, subsection A of the contract. The term "step increase" can also refer to a wage increase that comes from proceeding to the next higher rank pursuant to a seniority-based promotional system as set forth in Schedule 1 of the agreement.

Pegg received calls from DFFA members above the rank of fire fighter who indicated that they had not received their step increases in a timely manner. Pegg investigated the issue by performing a random sampling of 61 bargaining unit members above the rank of fire fighter. Using promotion notifications issued by the City and information received from the pension board, Pegg examined the date that each of these random members were promoted, the position to which they were promoted, what step increases should have occurred during that time period and the dates upon which each member had their wages adjusted. This information was then compiled into a document which the parties referred to at the evidentiary hearing as the "master list." Of the 61 bargaining members identified on the master list, 21 individuals had not received their step increase on the proper date.

The Union provided a copy of the master list to City representatives during settlement discussions which were held at the MERC offices on November 16, 2010. At that conference, Respondent promised that by no later than February 11, 2011, it would provide payroll information for the 21 employees identified on the master list as a first step toward determining whether errors had occurred and to establish whether further review of payroll data was needed.

At hearing, Pegg testified that the City provided information for only one or two of the 21 names listed by the Union. However, documentation submitted into evidence by Charging Party appears to show that Respondent provided information to the Union regarding nine bargaining unit members on May 15, 2011 and May 23, 2011. Pegg later admitted that during a meeting with the City on May 18, 2011, the Union was provided with payroll information for 10 employees. Pegg testified that as of the date of the hearing, he had yet to thoroughly review that information.

At the time the unfair labor practice charge was filed, none of the 21 employees had received any payment from Respondent to compensate them for the delay in implementation of the increase. Subsequent to the filing of the charge, the City provided retroactive pay to some of the members listed on the master list. However, those payments did not include any interest.

FAILURE TO PAY PARITY RETROACTIVE PAY

Schedule 1 of the parties' contract describes the parity relationships which exist between positions with the DFFA bargaining unit and positions within the City of Detroit Police Department. Subsection A of Schedule 1 provides:

> Traditional police-fire pay parity means that the full time Police Officer and the full time Fire Fighter, whose base salaries are the same, will experience identical salary rate changes with identical effective dates throughout the fiscal year so that the total base pay of a Police Officer is equal to that of a Fire Fighter in any fiscal year covered by this Agreement. Similarly, the Fire Sergeant and Fire Engine Operator have parity with the Police Investigator; the Fire Lieutenant has parity with the Police Sergeant, the Fire Captain with the Police Lieutenant, the Battalion Fire Chief with the Police Inspector, and the Chief of Fire Department with the Deputy Chief-West Operations.

On December 15, 2008, an Act 312 award was issued in a case involving the City and the DPLSA. The panel adopted the police union's wage proposal, which called for a three percent wage increase retroactively from January 1, 2008, and another three percent increase effective July 1, 2008. The section of the panel's decision pertaining to wages makes no reference to longevity pay or other benefits. After the award was issued, Anita Berry, Respondent's labor relations supervisor, issued a memo to employees in the City's payroll department in which she summarized the economic changes awarded in the DPLSA proceeding, including the aforementioned wage increases, and noted that "[u]nder the parity relationships contained in the DFFA contract, these changes also apply to those corresponding ranks in the DFFA."

Employees in the DPLSA bargaining unit received the first wage increase in January or February of 2009, with retroactive pay for the period January 1, 2008, through the date of implementation. For employees in parity positions within the DFFA unit, the first wage increase was implemented in March of 2009. Some retroactive pay was included, but there was no payment covering the months of May and June of 2008. In addition, the City did not compensate Charging Party's members retroactively for longevity, comp time and furlough sellback.

The Union brought this issue to Respondent's attention and several meetings were held between the parties. On September 29, 2009, DFFA representatives wrote to Torleice Anderson of the City's payroll division and asserted that the non-payment of retroactive pay for May and June of 2008 and retroactive payment of longevity, comp time and furlough sellback remained unresolved. The City responded via a letter to Pegg dated October 7, 2010. In that letter, Respondent's human resources director, Gail Oxendine, asserted that the process of making retroactive payments would be completed by November 5, 2010. However, according to Pegg, the remainder of DFFA employees with parity to police positions were not paid in full by that date.

At the settlement conference held in this matter on May 18, 2011, the parties agreed to exchange letters setting forth their respective positions on the DPLSA parity wage increase issue. Respondent provided Pegg with a spreadsheet indicating the specific amounts paid to Charging Party's members and asserted that the City had fully complied with the terms of the Act 312 wage increases for all DFFA members with parity to positions within the DPLSA unit. Pegg indicated that such information was not helpful and that he wanted to see the actual payroll registers. The City representatives agreed to check and see if that was possible, but Pegg never received any of the requested documentation.

At a pretrial conference held by ALJ O'Connor on November 16, 2010, the parties once again agreed to exchange letters setting forth their positions on this issue. The Union submitted its position statement on November 23, 2010. In the letter, the DFFA clarified that the allegation is related solely to the City's implementation of the January 1, 2008, wage adjustment.[1]

Martinico submitted a letter to the DFFA on behalf of Respondent on December 3, 2010. With respect to the January 1, 2008, wage adjustment, Martinico wrote:

> [I]t is clear that the Long award did provide for a 3% wage adjustment for DPLSA members, and by virtue of parity, for pay-allied DFFA members, effective January 1, 2008. This increase was implemented in March of 2009 and applied retroactively to January 1, 2008. I understand from your correspondence dated November 23, 2010, on this matter that there are further issues alleged by DFFA as to whether these retro increases were properly paid for the entire period, and properly applying to intervening Longevity, CT and furlough sellback payouts. I will have these issues promptly investigated and respond to you separate regarding them.

Despite Martinico's assurance that he would investigate the matter, the Union never received any further response from the City pertaining to this dispute.

IMPROPER DEDUCTIONS FOR MEDICARE AND SOCIAL SECURITY

Article 22, subsection (B)(1)(g) of the parties' collective bargaining agreement provides, "For employees hired after March 31, 1986, the employee and the City of Detroit are required to contribute the hospitalization insurance portion of the Social Security Tax. (In calendar year 2002 the tax is 1.45%)." Pegg testified without contradiction that there are no DFFA members covered by Social Security.

Beginning in 2008, Charging Party began receiving complaints from its members that the City was deducting money from their paychecks for Medicare and Social Security. As

1 After the Act 312 award was issued, a dispute arose between Respondent and the DPLSA regarding the meaning and application of the award as it pertains to the July 1, 2008, wage increase. The arbitrator conducted additional proceedings and, according to the City's post-hearing brief in this matter, issued a supplemental Act 312 award on January 10, 2010. However, that award was not made part of the record in this case.

noted, the Union filed a charge alleging that the City was making improper Medicare deductions on December 30, 2009. The DFFA added an allegation concerning Social Security deductions when it filed its first amended charge on August 5, 2010.

At the hearing in this matter, the Union presented documentation pertaining to four of its members as evidence of the allegedly improper deductions. Exhibits 46 and 47 are copies of paystubs for Charlie Pritchett, a bargaining unit member who was hired by Respondent prior to 1986. The first paystub, which is dated March 19, 2010, lists a deduction for "MEDC" in the amount of $1,275.50 for that pay period. According to Pegg, MEDC denotes a Medicare deduction. The second paystub, dated April 1, 2010, indicates a year-to-date deduction amount for MEDC of $2,199.40.

Ex. 48 is a paystub for bargaining unit member Reginald Amos dated April 16, 2010. The paystub shows a MEDC deduction of $231.85 for the pay period and a year-to date total of $1,693. According to Pegg, Amos began working for Respondent prior to 1986.

Ex. 49 is a paystub for Dale Fahoome, a member of the DFFA unit who was hired by the fire department after 1986. The paystub, which is dated August 20, 2010, shows that for the year-to-date, the City had deducted $628.19 from Fahoome's wages under the Federal Insurance Contributions Act (FICA), which is a payroll tax imposed on employers and employees to fund social security and Medicare.

Ex. 50 is a W-2 form for unit member Robert Gray for the tax year 2009. The form indicates that Gray, who was hired by the City prior to 1986, earned $5,721 in "social security wages." The last page of the W-2 is an earnings record for Gray for the years 1971 through 2009. The document shows that Gray had no "taxed social security earnings" for the period 1989 thorough 2008, but that in 2009 he was taxed in the amount of $5,721.

At a prehearing conference before ALJ O'Connor on November 26, 2010, the Union agreed that on or before January 1, 2011, it would provide the City with a list of the names of the DFFA members who had Medicare and Social Security deducted from their paychecks. Thereafter the City was to provide payroll information for those members and an explanation as to why the errors occurred.

On December 30, 2011, the Union provided to Respondent a list of the names of 62 bargaining unit members whom the DFFA believed wrongfully had Medicare and/or Social Security deductions taken from their wages since June 30, 2009. In the cover letter accompanying this document, the Union clarified that the list was "a representative list of just those people we are aware of at present; this is not necessarily a complete list."

Sometime after May 18, 2011, the City provided the DFFA with a spreadsheet which appears to set forth the names of unit members and the amount of year-to-date Medicare and Social Security deductions for each of these individuals. The list showed that 30 members had Medicare deducted from their paychecks in amounts ranging from $2.52 to $2,458.09, while Social Security was deducted from four members in amounts ranging from $9.42 to $6,621,60.

Pegg testified that he did not understand the information which the City had provided and that the problem with erroneous Medicare and Social Security deductions has continued through the date of the hearing.

FAILURE TO PROPERLY CREDIT EMPLOYEES FOR SICK LEAVE ACCRUAL

Article 22, subsection (B)(9)(a) of the collective bargaining agreement provides, "Employees who work an average 48 hour week will accumulate ten (10) hours per month in their Current Sick Leave Bank and fifty (50) hours per year in their Reserve Sick Leave Bank. Effective July 1, 1998, banks shall accumulate without limitation."

Sometime in 2006, Charging Party became aware that employees were not being properly credited for accrued sick leave. Union Treasurer Robert Shinske testified that he performed a review of his own time records and determined that he had been shorted about 84 hours of leave time. After providing this information to management, Respondent credited him the hours that he was owed. The problem reoccurred in 2007 and again in 2008. Both times, Shinske reported the issue to Respondent and the problem was quickly remedied. When Shinske realized he had not been credited for the proper number of sick leave hours in 2009, however, the City refused to take any immediate action on his behalf. Instead, Shinske was told by management that he would have to wait for the payroll department to conduct an audit. Despite submitting additional information to Respondent, Shinske was never credited for the missing hours. As of the date of hearing in this matter, he was still owed 170 hours of accrued sick leave time and he was not receiving any sick leave credit.

Union Secretary Jeffrey Pegg attended meetings with representatives of the fire department's payroll division in 2009, 2010 and 2011 to discuss the issue of improperly calculated sick leave. In addition, Pegg met with individual DFFA members regarding the problem. In 2009, Pegg disseminated a questionnaire to the membership at large regarding this issue and he received responses from 420 of the approximately 1,000 members of the DFFA. Based upon these meetings and the questionnaire results, Pegg concluded that every employee in the fire department had been impacted by the City's failure to properly account for accrued sick leave. Pegg himself was short 50 hours of reserve banked time as of the date of the hearing. Pegg requested that the City conduct an audit of his payroll records, but the investigation never occurred. Pegg testified that he was told by management officials that the problem could not be fixed until a new computer system is put in place to track sick leave and that the new system was not scheduled to be installed for another five to ten years.

Steven Kirschner, Vice President of Local 344, testified that he attended meetings with City representatives at which the problem of inaccurate sick time credits was discussed. According to Kirschner, Respondent explained at these meetings that the problem originated with the relocation of the fire department's payroll division to offices within the Coleman A. Young Municipal Center. City representatives told Kirschner that the sick leave records were packed up and shipped over to the new location, but the boxes were never opened.

When the parties engaged in settlement discussions at the MERC offices on November 16, 2010, the City promised that it would look into the issue and, by no later than December 3, 2010, advise the Union how long it would take to complete sick leave audits. There is nothing in the record to indicate that Respondent ever provided this information to the Union, nor did the City submit evidence establishing that the problem has been remedied. In fact, Respondent did not call any witnesses to testify with respect to this issue.

Discussion and Conclusions of Law:

Under Section 15 of the Act, public employers and labor organizations have a duty to bargain in good faith over "wages, hours and other terms and conditions of employment." Such issues are mandatory subjects of bargaining. MCL 423.215(1); *Detroit Police Officers Ass' n v Detroit*, 391 Mich 44, 54-55 (1974). A party violates PERA if, before bargaining, it unilaterally alters or modifies a term or condition of employment, unless that party has fulfilled its statutory obligation or has been freed from it. *Port Huron Education Ass'n v Port Huron Area Sch Dist*, 452 Mich 309, 317 (1996); *Detroit Bd of Education*, 2000 MERC Lab Op 375, 377. A party can fulfill its obligation under Section 15 of PERA by bargaining about a subject and memorializing the resolution of that subject in the collective bargaining agreement. Under such circumstances, the matter is "covered by" the agreement. *Port Huron* at 318; *St Clair Cnty ISD*, 2005 MERC Lab Op 55, 61-62. As the Michigan Supreme Court stated in *Port Huron* at 327, "Once the employer has fulfilled its duty to bargain, it has a right to rely on the agreement as the statement of its obligations on any topic 'covered by' the agreement." At the same time, bargaining unit members have a right to rely upon the terms and conditions in the contract and to expect that they will continue unchanged. *Detroit Bd of Ed*. See also *Wayne Cnty Comm Coll*, 20 MPER 59 (2007). The employer's duty to maintain the status quo pending satisfaction of its bargaining obligation continues even after the expiration of a collective bargaining agreement. *Local 1467 IAFF v City of Portage*, 134 Mich App 466 (1984); *Detroit Police Officers Ass'n v Detroit*, 61 App 487 (1975).

The Commission's role in disputes involving alleged contract breaches is limited. *Genesee Twp*, 23 MPER 90 (2010) (no exceptions). Where there is a collective bargaining agreement covering the subject matter of the dispute which has provisions reasonably relied on for the action in question, and the contract also has a grievance procedure with final and binding arbitration, the contract controls and no PERA issue is present. *Macomb County v AFSCME Council 25, Locals 411 and 893*, 494 Mich 65 (2013). An alleged breach of contract will constitute a violation of PERA only if a repudiation can be demonstrated. See e.g., *City of Detroit (Transp Dept)*, 1984 MERC Lab Op 937, aff'd 150 Mich App 605 (1985); *Jonesville Bd of Ed*, 1980 MERC Lab Op 891, 900-901. A finding of repudiation cannot be based on an insubstantial or isolated breach of contract. *Oakland Cnty Sheriff*, 1983 MERC Lab Op 538, 542. Repudiation exists when (1) the contract breach is substantial, and (2) no bona fide dispute over interpretation of the contract is involved. *Plymouth-Canton Comm Sch*, 1984 MERC Lab Op 894, 897. The Commission will find a repudiation only when the actions of a party amount to a rewriting of the contract or a complete disregard for the contract as written. *Central Michigan Univ*, 1997 MERC Lab Op 501, 507; *Cass City Pub Sch*, 1980 MERC Lab Op 956, 960.

With respect to Respondent's alleged failure to pay unused sick time to its members pursuant to the terms of the MOU entered into by the parties on June 25, 2008, I find that the Union has failed to establish a violation of Section 10(1)(e) of PERA. It is undisputed that certain members of Charging Party's bargaining unit were not paid the proper amount at the time of retirement. However, there is no evidence that the City is ignoring the MOU entirely or engaging in an outright refusal to implement its terms. To the contrary, the record indicates that the City has met with Union representatives regarding this issue, admitted that there is a problem and attempted remedy the issue by making at least some of the affected employees whole for their losses. Moreover, the Union was unable to establish to any degree of specificity the number of employees who were impacted by the issue, the amount of the underpayments or the identity of any employee to whom the City still owes money as of the date of hearing in this matter. Under such circumstances, I conclude that Charging Party has failed to establish that the City repudiated the terms of the MOU. At best, the record establishes that there was an insubstantial or isolated breach of contract for which the appropriate venue for relief is the grievance arbitration process as agreed to by the parties in their contract.

Similarly, there is nothing in the record to suggest that the City repudiated its contractual obligation to pay step increases to bargaining unit members in a timely manner. The Union presented evidence that at least some members of the DFFA unit above the rank of fire fighter did not receive their step increases at the time required by the collective bargaining agreement. However, there is no evidence that this is a problem which affected even a majority of the members of Charging Party's unit who fall within that group. In fact, the master list provided by the Union shows that of the 61 members chosen at random, 40 received their step increases on the date required by the contract. With respect to the remainder of unit members included on the master list, Respondent engaged in efforts to address the issue. City representatives met with Charging Party in May of 2011 and provided additional information concerning the problem. In addition, Pegg testified that after the charge was filed, the City made retroactive step increase payments for at least some of the 21 members identified by the Union on the master list. I conclude that the Union has not established a repudiation based upon these facts.

While there undoubtedly have been some problems with respect to Respondent's implementation of step increases for certain members of the DFFA bargaining unit, Charging Party did not establish that the delays amounted to anything more than an isolated contract breach for which resolution via the grievance process is appropriate. While a breach of contract may have occurred, no PERA violation has been proven by the Union.

As with the above allegations, Charging Party's contention that the City repudiated the collective bargaining agreement by failing to make retroactive wage payments to DFFA members constitutes an attempt by the Union to utilize the Commission's unfair labor practice procedure as a substitute for the grievance administration process. On December 15, 2008, the Act 312 panel issued an award providing for a three percent wage increase for DPLSA members effective January 1, 2008, and a second increase in that same amount effective July 1, 2008. Shortly thereafter, Respondent's labor relations supervisor acknowledged in writing that the same wage increases would apply to members of Charging Party's unit who are parity allied with DPLSA positions. In fact, it is undisputed that the first wage increase was

implemented for all eligible DFFA members in March of 2009, including several months of retroactive pay. When the Union later notified City representatives that there were some retroactive payments missing, Respondent met with the Union and promised to resolve the matter. If any money was still owed to parity allied DFFA members following those discussions, the Union should have filed a grievance and had the matter addressed via the procedure agreed upon by the parties in their collective bargaining agreement. Likewise, the question of whether the January 1, 2008, wage increase encompasses retroactive payment for longevity, comp time and furlough sellback is a matter for a grievance arbitrator to resolve. On these facts, the Union has failed to establish that Respondent repudiated the contract in violation of PERA.

I conclude that the same analysis applies with respect to the Union's claim that Respondent violated the Act by making deductions for Medicare and Social Security from the paychecks of DFFA members. There is no dispute that there were improper payroll deductions which affected some of Charging Party's members. However, the record does not establish that this was a widespread issue which had a substantial effect on the bargaining unit. Pegg, the sole witness to testify regarding this issue, did not identify or even speculate as to the total number of affected employees. The Union introduced into evidence paychecks showing that Medicare and/or Social Security deductions were made, however those documents pertained to only four members of a bargaining unit consisting of more than 1,000 individuals. The only other documentary evidence introduced by the Union was the spreadsheet which the City provided to DFFA representatives after the charge was filed. There was no testimony explaining the spreadsheet and Pegg asserted that he did not understand the information contained therein. However, the document appears to show that 34 members of Charging Party's unit had Medicare and/or Social Security deducted from their paychecks in 2011. Based upon the record presented, I find that Charging Party has failed to meet its burden of proving that Respondent engaged in a wholesale disregard of its contractual obligations, as is required to establish a repudiation in violation of Section 10(1)(e) of PERA.

In contrast, the Union has demonstrated a clear repudiation by Respondent of Article 22, subsection (B)(9)(a) of the parties' collective bargaining agreement.

The contract provides that unit members who work an average 48-hour week will accumulate ten hours per month in their current sick leave bank and fifty hours per year in their reserve sick leave bank without limitation. The record establishes without any contradiction that since 2006, Respondent has failed to properly credit DFFA members for the accrued sick leave time they have earned. At first, the City was responsive to Union complaints concerning this issue. When DFFA members notified the fire department's payroll division that their accrued leave time balance was incorrect, Respondent promptly remedied the problem by crediting employees for the hours that they had been shorted. Beginning in 2009, however, Respondent failed or refused to take any immediate or effective remedial action. Instead, the City set forth a host of unfulfilled promises and excuses, including blaming the issue on an antiquated computer system and complications arising from an office relocation.

Although the City repeatedly promised to conduct payroll audits to correct the sick leave balances, the issue remained unresolved, even as of the date of the hearing in this matter. For example, Shinske's accrued sick leave balance was still short 170 hours as of June 15, 2011, while Pegg was owed 50 hours of reserve bank time. In contrast to the repudiation claims discussed above, Charging Party presented evidence establishing that the problem with accrued sick leave balances was widespread. Based upon discussions with bargaining unit members, meetings with representatives of the fire department's payroll division and questionnaires distributed to the DFFA membership as a whole, Pegg was able to determine that every employee in the fire department had been impacted by this issue. Respondent has not identified any language in the contract that would conceivably justify what amounts to a complete abrogation of its bargaining obligation. As noted, bargaining unit members have a right to rely upon the terms and conditions in the contract and to expect that they will continue unchanged. *Detroit Bd of Ed*; *Wayne Cnty Comm Coll*. The City's longstanding failure or refusal to fully comply with Article 22, subsection (B)(9)(a) of the contract constitutes a substantial breach of its duty to bargain and an unfair labor practice in violation of Section 10(1)(d) of PERA.

In conclusion, I find that Respondent breached its duty to bargain under Section 10(1)(e) of PERA by failing or refusing to supply relevant information to the Union regarding: (1) the calculation of lump sum payments for retiring members; (2) the medical condition of bargaining unit member Jason Johnson; and (3) the possible transfer of the administration of employee retirement benefit plans from the DPFRS to MERS. In addition, I find that Respondent repudiated its obligations under Article 22, subsection (B)(9)(a) of the collective bargaining agreement by failing to properly credit Charging Party's members for the accrued sick leave time that they have earned. Finally, I conclude that Respondent did not repudiate the terms of the contract with respect to (1) the payment of unused sick time; (2) the payment of step increases for parity allied members above the rank of firefighter; (3) the retroactive implementation of the January 1, 2008, Act 312 award pursuant to the parity provisions in the contract; and (4) deductions for Medicare and Social Security.

I have carefully considered all other arguments set forth by the parties in this matter and conclude that they do not warrant a change in the result. Accordingly, I recommend that the Commission issue the order set forth below.

RECOMMENDED ORDER

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

1. Cease and desist from refusing to bargain collectively with the Detroit Firefighters Association, Local 334, IAFF, by failing or refusing to provide it with information relevant and necessary to carry out its responsibility of engaging in collective bargaining and administrating and enforcing the contract between the parties.

2. Cease and desist from repudiating its obligation to credit Charging Party's members for the accrued sick leave time that they have earned pursuant to Article 22, subsection (B)(9)(a) of the contract.

3. Take the following affirmative action to effectuate the purposes of the Act:

    a. To the extent that it has not done so, furnish Charging Party with the following information without delay:

        i. Information requested by Charging Party on July 2, 2009, regarding the calculation of lump sum pay for all bargaining unit members who retired effective July 1, 2008, through the present;

        ii. The complete medical record for bargaining unit member Jason Johnson;

        iii. Information requested by Charging Party on May 13, 2010, regarding the possible transfer of the administration of employee retirement benefit plans from the Detroit Police and Fire Retirement System to the Municipal Employees' Retirement System.

    b. Comply with the terms of Article 22, subsection (B)(9)(a) of the contract by crediting bargaining unit members for the accrued sick leave time they have earned.

    c. Make members of Charging Party's bargaining unit whole for any loss they have incurred as a result of the conduct described above.

    d. 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

_____

David M. Peltz
Administrative Law Judge
Michigan Administrative Hearing System

Dated: November 1, 2016

NOTICE TO ALL EMPLOYEES

After a public hearing before the Michigan Employment Relations Commission, the CITY OF DETROIT, 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 cease and desist from:

1. Refusing to bargain collectively with the Detroit Firefighters Association, Local 334, IAFF, by failing or refusing to provide it with information relevant and necessary to carry out its responsibility of engaging in collective bargaining and administrating and enforcing the contract between the parties.

2. Repudiating our obligation to credit Charging Party's members for the accrued sick leave time that they have earned pursuant to Article 22, subsection (B)(9)(a) of the contract.

WE WILL take the following affirmative action to effectuate the purposes of the Act:

1. To the extent that we have not yet done so, furnish Charging Party with the following information without delay:

    a. Information requested by Charging Party on July 2, 2009, regarding the calculation of lump sum pay for all bargaining unit members who retired effective July 1, 2008, through the present;

    b. The complete medical record for bargaining unit member Jason Johnson;

    c. Information requested by Charging Party on May 13, 2010, regarding the possible transfer of the administration of employee retirement benefit plans from the Detroit Police and Fire Retirement System to the Municipal Employees' Retirement System.

2. Comply with the terms of Article 22, subsection (B)(9)(a) of the contract by crediting bargaining unit members for the accrued sick leave time that they have earned.

3. Make members of Charging Party's bargaining unit whole for any loss they have incurred as a result of the conduct described above.

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.

CITY OF DETROIT

By: _____

Title: _____

Date: _____

This notice must be posted for a period of 30 consecutive days and must not be altered, defaced or covered by any material. Any questions concerning this notice or compliance with its provisions may be directed to the office of the Michigan Employment Relations Commission, Cadillac Place Building, 3026 W. Grand Blvd, Suite 2-750, P.O. Box 02988, Detroit, MI 48202-2988. Telephone: (313) 456-3510.