STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF CHARLOTTE,
Public Employer-Respondent,

MERC Case No. C17 K-097

-and-

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 517M,
Labor Organization-Charging Party
_____/

APPEARANCES:

Kevin M. Karpinski, Senior Labor Relations Specialist, for Charging Party

DECISION AND ORDER

On February 7, 2018, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order[1] in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act, 1965 PA 379, as amended, and recommending that the Commission dismiss the charges and complaint.

The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of the Act.

The parties have had an opportunity to review the Decision and Recommended Order for a period of at least 20 days from the date of service, and no exceptions have been filed by either of the parties.

ORDER

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

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: April 16, 2018

[1] MAHS Hearing Docket No. 17-025821

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

CITY OF CHARLOTTE,
Public Employer-Respondent,

Case No. C17 K-097
Docket No. 17-025821-MERC

-and-

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 517M,
Labor Organization-Charging Party
_____/

APPEARANCES:

Kevin M. Karpinski, Senior Labor Relations Specialist, for Charging Party

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON SUMMARY DISPOSITION

On November 16, 2017, the Service Employees International Union, Local 517M, filed the above unfair labor practice charge with the Michigan Employment Relations Commission (the Commission) against the City of Charlotte alleging violation of Section 10(1)(a) and 10(1)(b) of the Michigan Public Employment Relations Act (PERA or the Act), 1965 PA 379, as amended, MCL 423.210. Pursuant to Section 16 of the Act, the charge was assigned to Julia C. Stern, Administrative Law Judge for the Michigan Administrative Hearing System (MAHS).

On December 6, 2017, pursuant to Rule 165 of the Commission's General Rules, R 423.165, 2002 AACS; 2014 AACS, R 423.165, I issued an order to the Charging Party to show cause why its charge should not be dismissed under Rule 165(2)(d) because the charge did not state a claim upon which relief could be granted under PERA and/or Rule 165(2)(f) because there is no genuine issue of material fact, and the Respondent is entitled to judgment as a matter of law. Charging Party did not respond to the order. Based upon the facts alleged in the charge, as set forth below, I make the following conclusions of law and recommend that the Commission issue the following order.

The Unfair Labor Practice Charge and Pertinent Facts:

The facts as alleged in the charge are as follows. Charging Party represents a bargaining unit of Respondent's employees. Sometime prior to October 17, 2017, Charging Party requested that Respondent provide it with the following information for

each member of its bargaining unit: (1) name; (2) job classification; (3) step placement; (4) rate of pay; (5) insurance selection; (6) current sick leave balance; and (7) current vacation balance.

According to emails from Respondent to Charging Party that were attached to the charge, Respondent promptly provided Charging Party with "job descriptions," and "the positions in the contract." However, in an email dated October 17, 2017, Respondent City Clerk Ginger Terpstra told Charging Party that Respondent could not provide Charging Party with each individual's current rate of pay without the individual's consent.

On November 7, 2017, Respondent City Manager Greg Guetschow sent a memo to the members of Charging Party's bargaining unit. The memo stated that Charging Party had requested that Respondent provide it with the names of bargaining unit members, their hourly rates of pay, their insurance selections, their current vacation balances, and their current sick leave balances. Guetschow noted that Charging Party had stated that this information was necessary for it to administer the contract and prepare for negotiations. He told the employees:

> I am of the opinion that the information requested is unnecessary for the stated purposes and is an unwarranted invasion of employee privacy. The City's labor attorney has advised me, however, that the Michigan Employment Relations Commission would be very likely to order the release of the information if the City chose to challenge the request.
>
> Accordingly, this information will be provided to Mr. Karpinski in the near future.

The charge alleges that Guetschow's memo constituted unlawful direct dealing with bargaining unit members in violation of Section 10(1)(a) of PERA and unlawfully interfered with the administration of Charging Party in violation of Section 10(1)(b) of PERA. Charging Party does not allege that Respondent refused to provide any or all of the requested information or that it failed to provide it in a timely fashion.

Discussion and Conclusions of Law:

Section 10(1)(a) of PERA prohibits an employer from interfering with, restraining, or coercing public employees in the exercise of their rights guaranteed by Section 9 of PERA, including their right to negotiate collectively with their employers through representatives of their free choice. An employer violates its duty to bargain in good faith, and interferes with its employees' rights under Section 9 of PERA to collectively bargain, when it bypasses the designated representative and attempts to negotiate directly with employees. The violation is premised on the theory that direct bargaining between an employer and its employees seriously undermines the authority of the union. *City of Dearborn,* 1986 MERC Lab Op 538, 541. As the National Labor Relations Board (NLRB) stated in *General Electric Co*, 150 NLRB 192 (1964), an employer's obligation is "to deal with the employees through the union, not with the

union through the employees." For example, an employer may not give to employees offers which have not been made to the bargaining agent in negotiations. *St Clair County*, 1979 MERC Lab Op 541; *Birmingham Board of Education*, 1985 MERC Lab Op 755; *City of Pontiac (Police Dept)*, 1975 MERC Lab Op 861. An employer, however, is allowed to accurately communicate its positions to employees, provided that it does so in a noncoercive manner. The line between noncoercive communication and direct bargaining can be narrow. Compare *Jackson Co*, 18 MPER 22 (2005) (employer engaged in direct bargaining when it sent unit members personalized letters indicating how much the individual member would receive under its wage proposal and disparaging the union's motives for seeking Act 312 arbitration), with *Huron Sch Dist*, 1990 MERC Lab Op 628 (employer's letter to employees stating that it had withdrawn its wage proposal, and explaining why, did not constitute direct bargaining).

Here, Respondent sent a memo to members of Charging Party's unit informing them of Charging Party's request for information. It told them that its counsel had advised it that it was legally required to provide the information. The memo also stated that, in the opinion of the City Manager, the information was, first, personal information of a confidential nature, and second, information that Charging Party did not need to prepare for collective bargaining or enforce the contract. According to the charge, this memo resulted in Charging Party being forced to "put fires out" among its members. Respondent did, however, provide Charging Party with the information it had requested.

Although expressing disapproval of Charging Party's information request, Guetschow's memo did not explicitly or implicitly threaten adverse action against either Charging Party or members of its bargaining unit. Nor did Guetschow suggest that Charging Party's members pressure Charging Party to withdraw its request. As noted above, the line between the Employer's noncoercive expression of opinion and direct bargaining can be narrow. I conclude that Guetschow's memo did not cross that line.

Section 10(1)(b) of PERA provides, in relevant part, "It shall be unlawful for a public employer or an officer or agent of a public employer … to initiate, create, dominate, contribute to, or interfere with the formation or administration of any labor organization." This section protects the independence of labor organizations by prohibiting public employers from dominating unions or, to a lesser degree, interfering with their administration. I find that the charge in this case does not state a claim upon which relief could be granted under Section 10(1)(b) of PERA.

Under Rule 165(h) of the Commission's rules, the failure of a charging party to file a timely response to an order to show cause may, in and of itself, warrant dismissal of the charge. See also *Detroit Federation of Teachers*, 21 MPER 3 (2008). For this reason, and for the reasons stated in the paragraph above, I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern
Administrative Law Judge
Michigan Administrative Hearing System

Dated: February 7, 2018