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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF FLINT,
Respondent-Public Employer,

MERC Case No. C18 F-064

-and-

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 25 AND ITS AFFILIATED LOCAL 1600,
Charging Party-Labor Organization.

_____/

APPEARANCES:

Reed E. Eriksson, City of Flint Legal Department, for Respondent

Kenneth J. Bailey, AFSCME Council 25, for Charging Party

DECISION AND ORDER

On June 14, 2019, Administrative Law Judge Julia C. Stern issued her 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: AUG 20 2019

[1] MOAHR Hearing Docket No. 18-014027

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

In the Matter of:

CITY OF FLINT,
Respondent-Public Employer,

Case No. C18 F-064
Docket No. 18-014027-MERC

-and-

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 25 AND ITS AFFILIATED LOCAL 1600,
Charging Party-Labor Organization.

_____/

APPEARANCES:

Reed E. Eriksson, City of Flint Legal Department, for Respondent

Kenneth J. Bailey, AFSCME Council 25, for Charging Party

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE

On June 27, 2018, the American Federation of State, County and Municipal Employees (AFSCME) Council 25 and its affiliated Local 1600 filed the above unfair labor practice charge with the Michigan Employment Relations Commission (the Commission) against the City of Flint pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA or the Act), 1965 PA 379, as amended, MCL 423.210, MCL 423.216. The charge was amended on October 5, 2018. Pursuant to Section 16 of the Act, the charge was assigned to Julia C. Stern, Administrative Law Judge (ALJ) with the Michigan Administrative Hearing System (now the Michigan Office of Administrative Hearings and Rules).

On January 10, 2019, the parties submitted a joint stipulation of facts in lieu of a hearing. Based on these facts, and the arguments set out in the briefs filed by both parties on January 28, 2019, I make the following conclusions of law and recommend that the Commission issue the following order.

The Unfair Labor Practice Charge:

Charging Party represents a bargaining unit of Respondent's employees. The charge as originally filed alleged that Respondent violated its duty to bargain in good faith, and Section 10(1)(e) of PERA, by refusing to provide Charging Party with copies of "roster cards" kept by

Respondent for all members of Charging Party's bargaining unit. These roster cards contain employees' original hire date, wage rate, dates of their movement from one position or classification to another, and other employment-related information as well as their social security numbers. After a pre-hearing conference, the parties discussed and eventually reached a settlement of this issue. On November 28, 2018, Charging Party withdrew its allegation relating to the production of the roster cards.

Meanwhile, however, on October 5, 2018, Charging Party amended the charge to include new allegations. Charging Party now alleges that Respondent engaged in unlawful direct bargaining and circumvention of the union when it negotiated a written "settlement agreement" with unit member Artisha Wallace without Charging Party's participation or knowledge. In connection with this settlement agreement, Wallace signed documents that, among other things, purported to withdraw a wage reallocation request and grievance filed by Charging Party on Wallace's behalf. Charging Party did not learn of the settlement until on or about May 18, 2018, after both Wallace and Respondent had signed the documents.

The amended charge also alleges that Respondent unlawfully refused Charging Party's May 31, 2018, request for any "documents, settlements, agreements, LOU's, studies or criteria" related to Wallace's wage reallocation and change in job title. On August 22, 2018, Charging Party made a second request for "a copy of the settlement agreement reached between the City of Flint and Artisha Wallace regarding her wage allocation." Respondent refused to provide either the settlement agreements or any other document related to the wage reallocation without a signed release from Wallace. On August 29, 2019, Respondent gave Charging Party a copy of a letter of understanding (LOU) signed by Wallace and Respondent on May 17, 2018, as well as several "Union Representative Waiver" forms signed by Wallace. Accompanying the documents was a written authorization signed by Wallace to allow the release of her "employment/personnel records" to the Charging Party. Charging Party contends that Respondent violated its duty to provide information by refusing to provide the documents in a timely fashion and without Wallace's authorization.

Facts:

As noted above, on January 10, 2019, the parties submitted a joint stipulation of facts in lieu of a hearing. The facts below are set out in that stipulation and in documents made part of the stipulation.

Article 27 of the Parties' Collective Bargaining Agreement
and Wallace's Reallocation Request

Respondents are parties to a collective bargaining agreement which originally covered the period July 1, 2014, through June 30, 2016. The agreement has since been automatically extended for successive one-year periods, currently through June 30, 2019. Article 27 is entitled "Pay Level - Reclassification and Reallocations," and that article describes the process and the

rights and responsibilities of both parties in that process.[1] Article 27 reads, in its entirety, as follows:

> Section 1. Reclassification Requests
>
> In any calendar year during the term of this Agreement, the Union President may submit one reclassification or reallocation request each quarter. A reclassification or reallocation request shall include a CS-39 complete form with the employee's and supervisor's signature verifying the information.
>
> The City of Flint Human Resources/Labor Relations Department will determine whether the incumbent is correctly working within their current job description and classification and advise the Union President of their determination.
>
> (a) If the Human Resources/Labor Relations Department determines over 50% of the current incumbent's duties are in another, higher classification, then the incumbent will be promoted to that position effective the first full pay period following the Human Resources/Labor Relations Department determination. When an employee is placed in a different pay level by reason of reclassification or reallocation, said employee's pay rate will change the first full pay period following the Human Resources/ Labor Relations Department's determination.
>
> (b) The Union may grieve a denial of a reclassification or reallocation request with the grievance being presented at Step 3 of the Grievance Procedure. Any pay from a grievance settlement will not be awarded prior to the date of the grievance written filing [sic] after the Employer's denial.
>
> Section 2. New Classifications, Reclassifications, Reallocations
>
> The City shall have the exclusive right to establish new classifications, to reclassify existing classifications and to reallocate wage rates to classifications. When such changes are made, the Union will be provided a copy of the new/revised position description and the established rate of pay at least five work days prior to implementation. Upon request of the Union a meeting shall be held (either before or after implementation) to allow the Union the opportunity to meet and confer with the Human Resources/Labor Relations director or their designee as to the wage rate of such classification, but not to the duties. However, any delay in the implementation will be at the sole prerogative of the Employer.

[1] The collective bargaining agreement does not define the terms "reclassification" or "reallocation." However, it appears that as the terms are used by the parties, a "reclassification" occurs when, based on an assessment of the employee's current job duties, the employee is moved to a different existing, higher-paid, job classification. Reallocations occurs when, again based on an assessment of the employee's current job duties, his or her position, whether given a new title or not, is placed on a higher level of the pay scale.

> If there is no agreement upon the rate of pay, the matter as to the appropriate pay rate may be referred to Step 3 of the grievance procedure.
>
> Section 3. Arbitrator Authority
>
> If arbitrated as provided in Sections 1 and 2, the Arbitrator's only authority is to determine if the Employer's decision was not reasonable. If such is the case, the Arbitrator will refer the grievance back to Step 3 for further review.

Sometime in the late fall of 2015, Charging Party Local 1600 President Sam Muma submitted a reallocation/reclassification request for Artisha Wallace, whose title was then Police Department Records Clerk. Wallace filled out a CS-39 form describing her job duties and the percentage of time she spent on each, and Wallace's supervisor, Pamela Coleman, signed the form certifying that Wallace's statement of the duties of her position was complete and accurate on November 20, 2015. The CS-39 was submitted as part of the request.

Grievance Filed on Wallace's Behalf

In November 2017, Respondent had still not determined whether Wallace was correctly classified or working within her job description. As Respondent had not yet denied Wallace's November 2015 reclassification/reallocation request, there was no denial for Charging Party to grieve under Article 27, Section 1. However, on November 20, 2017 Charging Party filed a grievance on behalf of Wallace at Step 3 of the grievance procedure. The grievance read:

> The grievant and the president turned in the proper CS-39 form back over 2 ½ years ago. Still to date no answer from the City of Flint. This action by management adversely affects the rights of the grievant. The Union charges the City of Flint with violation of, but not limited to, Articles 2, 3, 4 and 27 and personnel rules and regulations.

Step 3 of the grievance procedure is a meeting between Respondent's Director of Human Resources/Labor Relations, or two representatives designated by the director, and Charging Party's president or his designees. On February 26, 2018, Respondent provided Charging Party with its Step 3 answer on the November 20, 2017, grievance. The answer said that there were no contract violations as the "grievant's CS-39, along with other such requests, have been and are being reviewed by HR/LR staff familiar with the process."

Step 4 of the grievance procedure is arbitration. The contract includes the following language:

> Either party may submit the grievance to arbitration by notifying the other party in writing of the desire to arbitrate within ten work days from the date the response from Director of Human Resources/Labor Relations [at Step 3] is due. . . *Within thirty calendar days of the Union's desire to arbitrate [sic] to the Human Resource/Labor Relations Director, AFSCME Council 25 must notify the Director*

of Human Resources/Labor Relations in writing to request an arbitrator be selected or indicate that the grievance is being withdrawn without precedent. Failure by Council 25 to notify the Human Resources/Labor Relations Director within this thirty calendar day period will result in the Employer's grievance answer being deemed acceptance of the determination made by the City on the grievance. [Emphasis added.]

Article 2 goes on to describe the procedure for selecting the arbitrator. The collective bargaining agreement, as written, provided that the parties would utilize the services of the Federal Mediation and Conciliation Service to obtain lists of potential arbitrators. In 2017, however, the parties entered into a LOU to provide instead for a rotating panel of four permanent arbitrators. The LOU states that when a grievance is "being moved forward for an arbitrator selection," Charging Party's arbitration department will automatically go to the next arbitrator on the list.

On March 9, 2018, Muma sent Respondent a letter stating that Charging Party desired to arbitrate the November 20, 2017 grievance. The last sentence of the letter said, "If you wish to select an arbitrator in accordance with Article 9, Step 4, please contact Lori Greyerbiehl, Staff Representative, Michigan AFSCME Council 25 at ..."

Respondent's position is that Charging Party was required to follow up its March 9, 2018, letter indicating its intent to arbitrate the November 20, 2017, grievance with a second letter requesting that an arbitrator be selected or informing Respondent of the permanent arbitrator designated to hear the case. According to Respondent, under the contract Charging Party's failure to send this second letter within thirty days of its first constituted acceptance of the Respondent's denial of the grievance at Step 3. According to Respondent, because Charging Party effectively withdrew the grievance, after April 9, 2018, the November 20, 2017, grievance could no longer be considered pending. Charging Party disagrees and asserts that the grievance remained active.

Respondent Enters Into a "Settlement Agreement" with Wallace

On April 2, 2018, Wallace sent an email to Makini Jackson, Respondent's Human Resources/Labor Relations Director, asking if Jackson could find time for a brief meeting with her to discuss "some concerns and issues" regarding her position. Wallace wrote, "I've attempted to get assistance from the Union President for over 8 years with no success," and told Jackson that she did not know what to do or whom to talk to at this point. The next day, Jackson emailed an assistant and asked her to set up a meeting with Wallace for the following morning, April 4, 2018. On April 4, 2018, Wallace met with Jackson and both signed a "Union Representative Waiver Form," stating that Wallace did not want a union representative present during her requested meeting with Human Resources. The stipulated facts do not indicate what Jackson and Wallace discussed at the April 4, 2018 meeting.

On May 17, 2018, Wallace and Jackson met again and signed another "Union Representative Waiver Form." This one stated the Wallace was waiving representation for "the meeting with the HR/LR Director regarding my Letter of Understanding Settlement Agreement

for grievance log #A-17-22-CS-39." This was Charging Party's November 20, 2017 grievance. The form also stated that Wallace was "withdrawing my grievance and any pending arbitrations regarding this matter."

Wallace and Jackson signed another document on May 17, 2018, a LOU entitled, "Reallocation of the Position of Artisha Wallace." The LOU recited that Wallace, as a Police Records Clerk, had satisfactorily performed the duties of a higher classification for in excess of six months. Therefore, effective May 25, 2018, her position would be retitled Police Records Coordinator, a new job description would be prepared, and the new position placed at a higher level on the contractual pay scale than the Police Records Clerk position. The LOU also stated that Wallace was to receive back pay from November 1, 2017. The third paragraph of the LOU read:

> In consideration of the foregoing, Artisha Wallace hereby releases, indemnifies, and holds harmless the Employer (City of Flint) from any and all grievances and/ or claims either now pending or which may arise in the future before any court or tribunal body, arising out of the acts and conduct, or lack thereof, which resulted in the execution of this agreement.

Respondent sent Charging Party a copy of the job description for the new Police Records Coordinator position and the rate of pay it had established for the position.

Requests for Information

The following day, May 18, 2018, Muma was told, during a conversation with a representative from Respondent's Human Resources Department, that Respondent had entered into a settlement with Wallace of her wage reallocation request. Muma immediately requested information about the settlement agreement but was told, in an email from the Human Resources Department, that Wallace had waived union representation.

On May 31, 2018, Respondent met with Muma to discuss Wallace's reallocation. After the meeting, Muma sent an email to the Human Resources Department stating that he still did not know what study or criteria was used to determine Wallace's new wage rate or what effect the reallocation had on other employees with the Police Records Clerk title. Muma attached to his email a letter requesting, under PERA, "any and all documents, Settlements, Agreements, LOUs, Studies or criteria, etc. in regard to the reclassifying of Police Records Clerk to Police Records Coordinator," including the amount of back pay. In an email the same day, Respondent quoted the first paragraph of Article 27, Section 2, and stated that because of the rights granted to Respondent by that paragraph, Charging Party was not entitled to, and Respondent was not required to, provide the documents Charging Party had requested, including the back pay. The email also said that Respondent had satisfied its obligations under Article 27, Section 2 by providing Charging Party with a copy of the new/revised job description and the established rate of pay and meeting with Charging Party at its request to discuss the wage rate.

On August 22, 2018, Council 25 Staff Representative Greyerbiehl sent Jackson a letter requesting, under PERA, a "copy of the settlement agreement reached between the City of Flint

and Artisha Wallace with regards to her wage reallocation." Sometime within the next several weeks, Respondent gave Charging Party a copy of the May 17, 2018, LOU signed by Respondent and Wallace. Respondent also provided Charging Party with copies of the "Union Representation Waiver" forms signed by Wallace on April 4 and May 17, 2018. Accompanying these documents was another form entitled "Authorization for the Release of Employment/Personnel Records" signed by Wallace and dated August 29, 2018.

Discussion and Conclusions of Law:

Direct Dealing

Under both Section 11 of PERA and Section 9(a) of the National Labor Relations Act (NLRA), 29 USC 159(a), representatives designated or selected for purposes of collective bargaining by a majority of employees in a unit are the exclusive representative of all the employees in that unit for purposes of collective bargaining with respect to rates of pay, wages, hours, or other conditions of employment. As the U.S. Supreme Court held in *Medo Photo Supply Corp v NLRB,* 321 US 678 (1944), the principal of exclusive representation imposes a duty on employers to deal with the union and no other, and it is a violation of the essential principles of collective bargaining for an employer to disregard the bargaining representative by negotiating or attempting to negotiate directly with employees over their wages, hours, and working conditions. Moreover, since this prohibition protects the principal of exclusive representation and, therefore, the right of all employees to collective bargaining, an employer is not relieved from its obligation to deal only with the union because employees ask it to deal directly with them, at least where the employer is in a position to secure any advantage from dealing with the employees directly. *Medo,* at 687.

The National Labor Relations Board (NLRB) has formulated a three-part test for determining whether an employer is guilty of unlawful direct dealing with its employees. The criteria are: (1) that the employer communicated directly with union-represented employees; (2) that the discussion was for the purpose of establishing or changing wages, hours, and terms and conditions of employment or undercutting the union's role in bargaining; and (3) that such communication was made to the exclusion of the union. *Permanente Med Group,* 332 NLRB 1143, 1144 (2000). See also *Southern California Gas Co,* 316 NLRB 979 (1995); *Mercy Health Partner,* 358 NLB 566, 567 (2012); *Roemer Industries Inc,* 367 NLRB No. 133 (May 23, 2019). An employer violates its duty to bargain with the union when its attempts to negotiate with employees has the effect of eroding the union's position as the exclusive representative. *Modern Merchandising,* 284 NLRB 1377, 1379 (1987). The Commission has adopted the NLRB's test for determining whether an employer has engaged in unlawful direct dealing. *City of Detroit (Housing Commission),* 2002 MERC Lab Op 368, 376 (no exceptions); *Wayne Co,* 31 MPER 17 (2017) (no exceptions).

Wages paid to bargaining unit members are a mandatory subject of bargaining under PERA. In this case, the parties bargained a provision in their contract, Article 27, governing reclassifications, reallocations and wage increases related to those actions. Under Article 27, Respondent has broad discretion to change the classifications of existing unit positions and/or change their placement on the contractual wage scale and its obligations with respect to these

issues are limited to those specified in that article. That is, if an employee's supervisor requests a reclassification/reallocation, or the employees themselves submit such requests directly to the Human Resources Department under Article 27, Section 2, Respondent may grant, deny or ignore the request. Its only obligations under Section 2 are, first, if it decides to grant the request, to notify Charging Party of the changes before they are implemented; second, to meet with Charging Party to discuss the new wage rate if Charging Party requests a meeting; and, third, if Charging Party requests it, participate in an arbitration in which the arbitrator's authority is limited to deciding whether Respondent's determination of the appropriate wage rate was unreasonable.

Under Article 27, Section 1, Charging Party has the right to submit one reclassification/reallocation request per quarter on behalf of a unit employee. Unlike Section 2, Section 1 states that when a reclassification/reallocation request is submitted under that section, the Human Resources Department "will determine whether the incumbent is correctly working within their current job description and classification and advise the Union President of their determination." If a reclassification/reallocation request submitted under Section 1 is denied, Charging Party may grieve the denial and demand to arbitrate the grievance, although as with grievances filed under Section 2 the arbitrator's authority is limited to determining whether Respondent's determination was unreasonable. In any case Section 1, unlike Section 2, appears to require that the Human Resources Department make a decision on the request and then notify Charging Party's president of that decision.

In or around November 2015, Charging Party's president submitted a reallocation/reclassification request on Wallace's behalf. When Respondent had still not acted on the request by November 20, 2017, Charging Party filed a grievance. Since Respondent had not yet denied the request, Charging Party could not grieve the reasonableness of Respondent's denial. However, it asserted that Respondent's failure to act within a reasonable time had adversely affected Wallace's rights and violated the contract. Rather than simply completing its review of Wallace's request, Respondent told Charging Party that it was still reviewing it. This was still Respondent's position three months later, when, on March 9, 2018, Charging Party advised Respondent of its intent to move the grievance to arbitration.

This was the state of affairs less than one month later, on April 3, 2018, when Wallace emailed Jackson and asked to meet with her, telling Jackson that she had attempted to get assistance from Charging Party's president without success. Jackson arranged to meet with Wallace the following morning. As Respondent points out, Wallace signed a document waiving the presence of a union representative at this meeting. The purpose of this waiver, however, is unclear. Under the contract, Respondent has the right to decide whether to reclassify or reallocate an existing position, a right which would appear to encompass the right to meet with employees to discuss their reclassification/reallocation requests. Thus, if the purpose of this meeting was to discuss Wallace's job duties, I can see no reason why Wallace would have had a right to the presence of a union representative there. Moreover, if after the April 4 meeting Respondent had simply notified Muma that it had determined that Wallace had been working out of her classification and that her position would be reallocated, there would have been no basis for a direct bargaining charge, although the issue of Respondent's delay in acting on the request would have remained. Instead, however, the Human Resources Department entered into an agreement

with Wallace in which, in exchange for reallocation of her position and backpay from November 1, 2017, she agreed to "withdraw [her] grievance and pending arbitration," and "indemnify and hold harmless" Respondent from any further claims based on the reallocation.

As noted above, the test for unlawful direct dealing requires, first, that the employer communicate directly with a union-represented employee and, second, that the union was excluded from these communications. I infer from the documents Wallace signed on May 17, 2018, that sometime between April 3, 2018, and the signing of the documents Respondent discussed with Wallace the terms of the agreement that she eventually signed. Charging Party was not notified of these discussions or offered the opportunity to participate. The fact that Wallace asked to meet with Respondent and agreed to exclude Charging Party from the discussions is irrelevant as the question here is whether Respondent violated its duty to bargain exclusively with Charging Party.

The third arm of the test is whether the employer communicated directly with employees for the purpose of setting or changing wages, hours and conditions of employment or undercutting the union. The agreement between Respondent and Wallace changed her job title and granted her a wage increase, but in this case the parties had agreed to allow Respondent to unilaterally make reclassification and wage reallocation decisions which included changing employees' wage rates, subject only to Charging Party's right to grieve certain aspects of these decision. I conclude, however, that the facts here establish that Respondent's purpose in entering into the agreement with Wallace was to undercut Charging Party's role in the grievance process and undermine its status as the bargaining representative. When Respondent entered into the agreement with Wallace, a grievance was pending over Respondent's failure to act on the reallocation request Charging Party had made on Wallace's behalf. [2] While Wallace may have had no effective authority to withdraw the grievance filed by Charging Party or the reallocation request submitted by Charging Party on her behalf, the fact that Respondent secured Wallace's agreement not to participate in any arbitration substantially affected Charging Party's ability to settle the November 20, 2017, grievance on terms more favorable than Wallace had agreed to, e.g. with a retroactive date earlier than November 1, 2017. Thus, Respondent secured an advantage from dealing with Wallace directly instead of with Charging Party. Finally, by sitting on the reallocation request Charging Party had submitted for Wallace for years until Charging Party was forced to file a grievance, and then negotiating an individual settlement with Wallace, Respondent undercut Charging Party's status as bargaining representatives for the unit. That is, Respondent's actions sent a message to Wallace, and other members of the bargaining unit who learned of them, that employees were better off submitting their reclassification/reallocations directly to Human Resources rather than through Charging Party. This is precisely why direct

[2] As discussed above, Respondent asserts that this grievance was no longer pending at the time it signed the agreement with Wallace because by that time the grievance had been withdrawn due to Charging Party's failure to send Respondent a second letter requesting that an arbitrator be selected. However, Charging Party disagrees that its failure to send a second letter in this case effectively withdrew the grievance. It is well established that, absent any relevant contract language to the contrary, questions of procedural arbitrability are to be decided by the arbitrator. These include timeliness issues and whether the prerequisites for arbitration under the contract were completed. *Bienenstock & Assoc Inc v Lowry,* 314 Mich App 508, 516-517 (2016); *Bennett v Shearson Lehman Am Express Inc,* 168 Mich 80, 83 (1987).

dealing is prohibited. For the reasons set forth above, I conclude that Respondent engaged in unlawful direct dealing in violation of Section 10(1)(a) and (e) when it negotiated and entered into individual "settlement agreements" with Wallace on May 17, 2018, that purported to resolve all claims related to her wage reallocation.[3]

Request for Information

In order to satisfy its bargaining obligation under Section 10(1) (e) of PERA, an employer must supply in timely manner requested information which will permit the union to engage in collective bargaining and to police the administration of the contract. *Wayne County*, 1997 MERC Lab Op 679; *Ecorse Public Schools*, 1995 MERC Lab Op 384, 387. Where the information sought relates to discipline or to the wages, hours or working conditions of bargaining unit employees, the information is presumptively relevant and will be ordered disclosed unless the employer rebuts the presumption. *City of Detroit, Department of Transportation*, 1998 MERC Lab Op 205; *Wayne County, supra*. See also *EI DuPont de Nemours & Co v NLRB*, 744 F2d 536, 538; (CA 6, 1984). Where a union makes a request for information which is not presumptively relevant, the employer has no duty to provide such information unless and until the union demonstrates the relevance of the information, or the facts surrounding the request are such as to make the relevance of the information plain. *City of Detroit (Finance Dept),* 20 MPER 56 (2007); *City of Detroit,* 26 MPER 2 (2012) (no exceptions) and *Pontiac Sch Dist,* 22 MPER 51 (2009) (no exceptions), all citing *Island Creek Coal Co*, 292 NLRB 480, 490 (1989), enf' d, 899 F2d 1222 (CA 6, 1990); and *Ohio Power Co*, 216 NLRB 987 (1975), enf' d, 531 F2d 1381 (CA 6, 1976).

The standard applied for determining relevance is a liberal discovery-type standard. The employer has a duty to disclose the requested information as long as there exists a reasonable probability that the information will be of use to the union in carrying out its statutory duties. *Wayne County, supra; SMART*, 1993 MERC Lab Op 355, 357. See also *Pfizer, Inc*, 268 NLRB 916 (1984), enforced 763 F2d 887 (CA 7, 1985). The employer may rebut a presumption of relevance by demonstrating a legitimate confidentiality interest which would be damaged by disclosure of the information to the union *Michigan State Univ,* 1986 MERC Lab Op 407; *Wayne Co.* 28 MPER 31 (2014). However, the Commission has repeatedly held that an employer cannot require signed releases from individual employees before releasing nonconfidential information from their personnel records to their union. *Centerline Pub Schs,*1976 MERC Lab Op 729, 737 (individual teacher contracts); *City of Detroit (DOT),* 1998 MERC Lab Op 205 (names of bargaining unit employees tested for drugs); *Wayne Co,* 22 MPER 43 (2010) (no exceptions) (home addresses); *SMART,*1985 MERC Lab Op 316, 322 (no exceptions) (leave of absence requests); *City of Pontiac,*1981 MERC Lab Op 57, 63-65 (no exceptions) (merit pay information).

Charging Party argues that it sought the information that it requested with respect to Wallace's wage reallocation in order to determine how Respondent came to its decision on

[3] I find it irrelevant that after entering into the LOU, Respondent complied with the requirements of Article 27, Section 2 by notifying Charging Party of Wallace's wage reallocation and then meeting with it to discuss the reallocation.

Wallace's reallocation request. It asserts that this information was relevant to its duty to administer the collective bargaining agreement. As discussed above, under Article 27, Section 2 of the contract Respondent has the unilateral right to establish, reclassify or reallocate the wage rate of positions in the bargaining unit, but Charging Party has the right to grieve the wage rate established for a new or reclassified position. I agree with Charging Party that information about how Respondent decided on Wallace's new wage rate was plainly relevant to its duty to administer the collective bargaining agreement, including whether to file a grievance over the new rate. In addition, the May 27, 2018, LOU and "Union Representative Waiver Form," signed by Wallace on that date purported to withdraw the reallocation request and the grievance Charging Party had filed on Wallace's behalf over it. These documents were obviously relevant to Charging Party's decision regarding how and whether to proceed with the grievance. I conclude that Respondent had the duty under PERA to provide Charging Party with the relevant information it requested on May 31 and August 22, 2018. While Respondent did eventually provide Charging Party with copies of the agreements it had reached with Wallace, I find its failure to do so in a timely fashion violated its duty to bargain in good faith under PERA. I also find that Respondent unlawfully insisted that Wallace sign a release before it would give Charging Party a copy of the May 27, 2018 agreements. While Respondent asserts that the release was necessary to satisfy the requirements of its records policy, Respondent failed to show either that its agreement with Wallace constituted information of a confidential nature or that Respondent was otherwise legally required to obtain Wallace's consent before providing Charging Party with a copy.

Based on the parties' joint stipulation of facts, and as set out in the conclusions of law above, I conclude that Respondent engaged in unlawful direct dealing and violated its duty to bargain in good faith under PERA when it entered into agreements with Wallace which purported to resolve all claims related to her reallocation request without Charging Party's participation or knowledge. I also find that Respondent violated its duty to bargain in good faith under PERA by failing to provide the information requested by Charging Party on May 31, 2018, and again on August 22, 2018, in a timely fashion. I recommend, therefore, that the Commission issue the following order.

RECOMMENDED ORDER

The City of Flint, its officers, agents, and representatives, are hereby ordered to:

1. Cease and desist from bypassing AFSCME Council 25 and its Local 1600 by negotiating and entering into an agreement with an individual member of that labor organization's bargaining unit that purported to settle a grievance and reallocation request filed by AFSCME Council 25 and its Local 1600 on the individual members' behalf.

2. Cease and desist from failing or refusing to provide in a timely manner information requested by AFSCME Council 25 and its Local 1600 that is relevant to that labor organization's duty to police the collective bargaining agreement and process grievances.

3. Cease and desist from refusing to provide AFSCME Council 25 and its Local 1600 with relevant information contained in the personnel files of unit employees without signed releases from the employees involved unless such information falls within a category recognized as confidential.

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

   a. Provide AFSCME Council 25 and its Local 1600 with the information it requested on May 27, 2018 that the City has not already provided.

   b. Post the attached Notice to Employees in all places on the City's premises where notices to members of the bargaining unit represented by AFSCME Council 25 and its Local 1600 are customarily posted for a period of 30 consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Julia C. Stern
Administrative Law Judge
Michigan Office of Administrative Hearings and Rules

Dated: June 14, 2019

NOTICE TO EMPLOYEES

AFTER A PUBLIC HEARING, THE MICHIGAN EMPLOYMENT RELATIONS COMMISSION HAS FOUND THE **CITY OF FLINT** TO HAVE COMMITTED UNFAIR LABOR PRACTICES 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 NOT bypass AFSCME Council 25 and its Local 1600 by negotiating and entering into an agreement with an individual member of that labor organization's bargaining unit that purports to settle a grievance and reallocation request filed by AFSCME Council 25 and its Local 1600 on the individual members' behalf.

WE WILL NOT fail or refuse to provide in a timely manner information requested by AFSCME Council 25 and its Local 1600 that is relevant to that labor organization's duty to police the collective bargaining agreement and process grievances.

WE WILL NOT refuse to provide AFSCME Council 25 and its Local 1600 with relevant information contained in the personnel files of unit employees without signed releases from the employees involved unless such information falls within a category recognized as confidential.

WE WILL provide AFSCME Council 25 and its Local 1600 with the information it requested on May 27, 2018 that the City has not already provided.

CITY OF FLINT

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 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 F-064/18-014027-MERC