**STATE OF MICHIGAN**
**EMPLOYMENT RELATIONS COMMISSION**
**LABOR RELATIONS DIVISION**

In the Matter of:

CITY OF DETROIT,
Public Employer-Respondent,

Case No. C03 D-092

-and-

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

APPEARANCES:

Ronald A. Pollack and Bruce Campbell, Esq. (on the brief), for the Respondent

Vinod Sharma, Vice President, Association of Municipal Engineers, for the Charging Party

## DECISION AND ORDER

On December 16, 2004, Administrative Law Judge (ALJ) David M. Peltz issued his Decision and Recommended Order on Summary Disposition in the above matter finding that Charging Party, Association of Municipal Engineers, did not file its charge within the six-month statute of limitations pursuant to Section 16(a) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, 423.216(a). The ALJ also found that, even if the charge and amendment were timely, Charging Party did not raise any cognizable PERA issue; thus, the ALJ, by way of summary disposition, recommended that the charge be dismissed.

The ALJ's Decision and Recommended Order was served upon the interested parties in accordance with Section 16 of PERA. On January 10, 2005, Charging Party requested and was granted an extension to file exceptions, and its timely exceptions and a brief were filed on January 14, 2005. Respondent did not file a response.

In its exceptions, Charging Party contends that the ALJ erred in failing to find that by its delays, Respondent had deliberately closed the door to the grievance procedure, thereby committing an unfair labor practice. For reasons discussed below, we find that summary disposition was not warranted, and accordingly, this matter should be remanded for a full evidentiary hearing.

Background:

No factual record was made in this case. However, based on the pleadings and statements of the parties at oral argument, the following matters are undisputed. Charging Party represents a bargaining unit of approximately thirteen employees. In November 2001, Charging Party filed a grievance alleging that Respondent violated the collective bargaining agreement between the parties by underpaying members of the unit. A Step 3 grievance hearing was held and, at that time, Respondent acknowledged an issue with respect to payments to members of the unit, but asked for patience while it investigated the matter. This situation was repeated at the Step 4 grievance hearing. In May 2002, Charging Party asked to have the grievance advanced to arbitration, but Respondent once again asked for patience and requested more time to investigate the matter. Respondent continued to make requests for additional time to resolve the issue.

Charging Party initially filed the charge in this matter on April 28, 2003, alleging that Respondent had failed to resolve the back pay claims of twelve of its members. The charge was scheduled for hearing on August 28, 2003, and in a pre-hearing conference on that date, the parties discussed resolution of the matter and agreed to adjourn the hearing for sixty days to try to resolve it. The hearing was rescheduled for November 20, 2003, at which time Charging Party sought to amend the charge to allege that Respondent had wrongfully refused to arbitrate the dispute. During oral argument on November 20, Respondent acknowledged that it still had not completed its investigation of some of the claims for back pay.

Discussion and Conclusions of Law:

Pursuant to Section 16(a) of PERA, a charge that is filed more than six months after the commission of the unfair labor practice is untimely. The limitation contained in Section 16(a) of PERA is jurisdictional and cannot be waived. *Washtenaw Cmty Mental Health*, 17 MPER 45 (2004); *Police Officers Labor Council, Local 355*, 2002 MERC Lab Op 145; *Walkerville Rural Communities Schs*, 1994 MERC Lab Op 582; *Detroit Federation of Teachers, Local 231*, 1986 MERC Lab Op 477. The six-month period begins to run when the charging party knows, or should have known, of the alleged violation. *American Federation of State, County and Municipal Employees, Local 1583*, 18 MPER 42 (2005); *Huntington Woods v Wines*, 122 Mich App 650 (1983), aff'g 1981 MERC Lab Op 836.

In the instant case, the actions that form the basis of the charge as filed initially occurred during or before 2001 and early 2002. The charge was not filed until April 2003, almost a year after Charging Party knew or should have known of the facts alleged in the initial charge. At the hearing held on November 20, 2003, Charging Party sought to amend the charge to allege a wrongful refusal by Respondent to arbitrate the issues underlying the original charge. The ALJ reasoned that the amendment was not timely because Charging Party had known of Respondent's noncompliance with its arbitration demand for more than six months. He also found that no issue cognizable under PERA had been raised. We disagree.

The Commission has long held that absent conduct that closes the door to the entire grievance procedure, it will not involve itself in procedural matters relating to grievance processing. *Gibraltar Sch Dist*, 16 MPER 36 (2003); *Kalamazoo Pub Schs*, 1977 MERC Lab Op 771, 778, 793. However, we have also held that an employer violates its bargaining obligation by refusing to submit an arguably arbitrable grievance to arbitration. *City of Detroit (Police Dep't)*, 1989 MERC Lab Op 331.

Here, Respondent has not expressly refused to arbitrate. Had it done so, the six-month period of limitations would have started on the date that notice of the refusal was given to Charging Party. However, we are not willing to find that a charging party should lose the right to pursue a charge because, in good faith, it acceded to the respondent's requests for ample time to investigate and resolve the underlying claims. That Respondent repeatedly requested and was granted more time to investigate before proceeding to arbitration should not be a bar to the amended charge. Respondent's failure to complete its investigation of twelve back pay claims within two years time raises the question of whether Respondent has been making a good faith attempt to resolve the claims or whether Respondent's repeated promises to investigate were merely designed to delay resolution and were a deliberate attempt to frustrate the grievance process. See *City of Pontiac*, 1991 MERC Lab Op 419. In the absence of compelling reasons justifying such a lengthy delay, we may have no choice but to find that by declining Charging Party's request to proceed to arbitration, Respondent has acted in bad faith and committed an unfair labor practice. However, we must have a factual record before us in order to determine whether Respondent's conduct was such as to constitute repudiation of its obligation to arbitrate grievances and, if so, whether it constitutes a continuing violation making the amended charge timely.

Inasmuch as additional time has passed, the underlying dispute may have been resolved. If not, we find that a full hearing is necessary. Therefore, we remand this matter to the ALJ for further proceedings in accordance with the Order below. It should be noted that this decision to remand should not discourage any party from seeking a mutually acceptable resolution of the underlying dispute through negotiation, for which the Commission's mediation services are available.

## ORDER

The charge, as amended, is remanded to the ALJ for an evidentiary hearing. The ALJ shall schedule this matter for a hearing forthwith and, upon the conclusion of said hearing, shall expeditiously make findings of fact and conclusions of law, and issue a supplemental recommended order. Following service of the supplemental order on the parties, the provisions of R423.176 through R423.179 of the Commission's Rules and Regulations shall be applicable.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Nora Lynch, Commission Chairman

_____

Nino E. Green, Commission Member

Dated: _____

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APPEARANCES:
Ronald A. Pollack and Bruce Campbell, Esq. (on brief) for Respondent

Vinod Sharma, Vice President, Association of Municipal Engineers, for Charging Party

**DECISION AND RECOMMENDED ORDER**
**OF ADMINISTRATIVE LAW JUDGE**
**ON SUMMARY DISPOSITION**

Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, oral argument was held at Detroit, Michigan on November 20, 2003, before David M. Peltz, Administrative Law Judge for the Michigan Employment Relations Commission. Based upon the entire record, including briefs of the parties filed on or before January 14, 2004, I make the following conclusions of law and recommended order.

The Unfair Labor Practice Charge:

This matter involves an unfair labor practice charge filed on April 28, 2003 by the Association of Municipal Engineers against the City of Detroit. The charge states:

> As per the contract between the City of Detroit and the Association of Municipal Engineers (AME) and the Manual of Standard Personnel Practice for the City of Detroit our members are entitled to receive periodic incremental pay adjustments, merit pay adjustments, back pay resulting from status change, etc.
>
> The claimants listed on the attached list have been denied appropriate compensations and adjustments. We tried our best at all levels such as labor relations, payroll and top management but [the] City failed to keep their promises.

> According to . . . article 44 of the Master Agreement between the City and the AME, [the] City shall correct and pay all underpayments within 60 days but it is past over due. We offered help in calculations etc. but nothing worked. The AME request the court that a penalty of 1% interest per month (compounded monthly) and the court cost shall also be imposed on the City for all such arrears because of the gross negligence. We reserve the right to add or delete names depending on the situation on the date of [the] court hearing.

Attached to the charge was a list identifying the twelve individuals who are allegedly owed money by the City.

A hearing was scheduled for November 20, 2003. On that date, I indicated to the parties that none of the allegations set forth by the Union appeared to state a valid claim against Respondent under PERA. Therefore, I concluded that dismissal of the charge was warranted under Rule 165, R 423.165, of the General Rules and Regulations of the Employment Relations Commission. However, Charging Party was given the opportunity for oral argument in accordance with *Smith v Lansing School District*, 428 Mich 248 (1987). At that time, the Union sought to amend its charge to include an allegation that Respondent violated PERA by refusing to arbitrate a grievance concerning the compensation owed to its members. That motion was taken under advisement.

Facts:

The following undisputed facts are derived from the pleadings and statements made by the parties at oral argument. Charging Party represents a bargaining unit consisting of approximately thirteen employees of the City of Detroit. In November of 2001, Charging Party filed a grievance alleging that the City violated the collective bargaining agreement between the parties by underpaying members of the unit. A Step 3 hearing was held concerning the grievance on November 26, 2001. At that time, Respondent acknowledged that there was an issue with respect to the money owed to Charging Party's members and asked the Union to be patient while it attempted to rectify the problem. The Employer had the same response at a Step 4 grievance hearing conducted on March 16, 2002. On May 16, 2002, the Union formally sought to have the matter advanced to arbitration. However, the Employer did not agree to arbitrate the dispute. Rather, it once again asked the Union to be patient while it attempted to resolve the underlying problem. As of the date of hearing in this matter, the grievance has not been arbitrated.

Discussion and Conclusions of Law:

The charge asserts that Respondent violated the parties' collective bargaining agreement by failing to correct underpayments to its members. At the hearing, the Union sought to amend its charge to include an allegation that the City refused to arbitrate a grievance pertaining to that issue. I find neither allegation timely. Pursuant to Section 16(a), no complaint shall be issued based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Commission. The limitations period commences when the charging party knows or should have known of the acts constituting the unfair labor

practice and has good reason to believe that the acts were improper or done in an improper manner. *Huntington Woods v Wines*, 122 Mich App 650, 652 (1983).

In the instant case, the record indicates that Charging Party was aware that the City owed money to its members as early as November 26, 2001, when it filed a grievance concerning that issue. Yet, the unfair labor practice charge was not filed until April 28, 2003, well beyond the six months specified in Section 16(a) of PERA. Similarly, I find that the Union knew or should have known that Respondent was not complying with its demand to have the grievance arbitrated in May of 2002, almost one year prior to the filing of the charge, when the City responded to the Union's arbitration demand by asking for more time to remedy the issue of underpayments to unit members. The Commission has consistently held that the statute of limitations is jurisdictional and cannot be waived. *Walkerville Rural Community Schools*, 1994 MERC Lab Op 582. Accordingly, I find both allegations to be time-barred.

Even assuming, however, that the charge was timely filed, I find nothing in the record which raises any issue cognizable under PERA. It is not the function of the Commission to enforce or interpret collective bargaining agreements. See e.g. *Wayne State Univ*, 2002 MERC Lab Op 294, 297; *City of Detroit (Dept of Transp)*, 1990 MERC Lab Op 254, 257; *County of Oakland (Sheriff's Dept)*, 1983 MERC Lab Op 538, 542.[1] With respect to the Union's allegation that Respondent violated PERA by refusing to arbitrate its grievance, the record indicates that Respondent conducted hearings at Steps 3 and 4 of the grievance procedure, during which the City admitted that a problem existed and asked the Union for more time to resolve the issue. The City made a similar request when the Union sought to have the grievance advanced to arbitration. Absent conduct closing the door to the entire grievance procedure, the Commission does involve itself in procedural matters relating to grievance processing. *Kalamazoo Public Schools*, 1977 MERC Lab Op 771, 793.

Since Charging Party has been given full opportunity for argument and no cause of action under PERA has been raised, summary dismissal is appropriate. *Smith v Lansing School Dist*, *supra*. Therefore, it is recommended that the Commission issue the order set forth below dismissing the charge:

## RECOMMENDED ORDER

It is hereby recommended that the unfair labor practice charges be dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

David M. Peltz
Administrative Law Judge

Dated: _____

[1] An alleged breach of contract will not constitute an unfair labor practice unless repudiation of the agreement can be established. See e.g. *Gibraltar School Dist*, 15 MPER ¶ 36 (2003). Neither in its charge nor at oral argument did the Union ever specifically assert that the City's actions in this matter constituted a repudiation of the parties' agreement.