STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:
CITY OF LANSING (POLICE DEPARTMENT),
Respondent–Public Employer,

Case No. C05 H-167

-and-

CAPITOL CITY LODGE NO. 141 OF THE FRATERNAL ORDER OF POLICE,
Charging Party-Labor Organization.
_____/

APPEARANCES:

Susan C. Graham, Esq., Labor Relations Specialist, City of Lansing, for the Public Employer

Wilson, Lett & Kerbawy, PLC, by Steven T. Lett, Esq., for the Labor Organization

DECISION AND ORDER

On October 19, 2005, Administrative Law Judge Roy L. Roulhac issued his Decision and Recommended Order 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 any 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

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Nora Lynch, Commission Chairman

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

Dated: _____

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

On August 9, 2005, Charging Party Capitol City Lodge No. 141 of the Fraternal Order of Police filed an unfair labor practice charge against Respondent City of Lansing. Charging Party claims that on February 5, 2005, Officer Chad Frazer was summoned to a meeting and accused of being unprofessional and discourteous to a captain. According to Charging Party, Respondent violated Sections 9 and 10 of PERA when it refused to honor Officer Frazier's request to have a union representative present during the meeting.

On October 3, 2005, Respondent filed an answer and a motion for summary disposition. In addition to denying the allegations set forth in the charge, Respondent argues that the charge should be dismissed because Charging Party did not serve Respondent with the charge and because it was not received by the Employer within the six-month statute of limitations contained in MCL 423.216(a).1 According to Respondent, it did not receive the charge until September 21, 2005, when it was received with the complaint and notice of hearing issued by the Commission. Charging

1Pertinent parts of MCL 423.216(a) read: No complaint shall issue based upon any unfair labor practice occurring more than 6 months prior to the filing of the charge with the commission and the service of a copy thereof upon the person against whom the charge is made, unless the person aggrieved thereby was prevented from filing the charge by reason of service in the armed forces, in which event the 6-month period shall be computed from the day of his discharge.

Party responded to the motion on October 7, 2005. It contends that pursuant to MCL 600.5856, the statute of limitations is tolled for ninety days to allow for service of unfair labor practice charges, and Respondent admits that the charge was received on September 21, 2005.

Charging Party's defense is completely without merit. First, MCL 600.5856 has no application to proceedings before administrative agencies. It is part of the Revised Judicature Act of 1961, as amended, which regulates practices and procedures in civil and criminal actions. Second, the statutory language of 16(a) provides an exception to the statute of limitations only when an employee is prevented from filing a charge because of service in the armed forces. In addition to the statutory exception, the courts have created two exceptions. In *Wines* v *City of Huntington Woods*, 97 Mich App 86, 91 (1980), the Court found that the six-month statute of limitations is tolled when an employee does not have knowledge of the unfair labor practice. In *Silbert* v *Lakeview Ed Assn*, 187 Mich App 21 (1991), the Court created an exception in breach of the duty of fair representation claims while employees pursue internal union appeal procedures.

Moreover, even if Charging Party had served a copy of the charge on Respondent on August 9, 2005, when it was filed with the Commission, summary disposition is warranted because the charge was filed more than six months after February 5, 2005, when Respondent allegedly refused Officer Frazier's request for union representation. Based on the above discussion, I recommend that the Commission issue the order set forth below.

RECOMMENDED ORDER

The unfair labor practice charge is dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Roy L. Roulhac
Administrative Law Judge

Dated: _____