STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

SAGINAW TRANSIT AUTHORITY REGIONAL SERVICES,
Respondent-Public Employer, Case No. C03 B-044

-and-

UNITED STEEL WORKERS OF AMERICA, LOCAL 9036,
Charging Party-Labor Organization
/

APPEARANCES:

The Williams Firm, P.C., by Timothy R. Winship, for the Public Employer

Daniel A. Nadolski, Staff Representative, for the Labor Organization

DECISION AND ORDER

On August 26, 2003, 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 Chair

_____
Maris Stella Swift, Commission Member

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Harry W. Bishop, Commission Member

Dated: _____

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

On February 26, 2003, Charging Party United Steelworkers of America, Local 9036 filed an unfair labor practice charge against Respondent Saginaw Transit Authority Regional Services. The charge alleges that Respondent violated Sections 16(6) and 30 of the Labor Mediation Act, MCL 423.1 *et. seq.*, by engaging in the following conduct:

> During negotiations for the 2001-2004 collective bargaining agreement, the parties executed agreement to continue in the new agreement a Memorandum of Understanding from the previous agreement regarding suitable and reasonable location for the Union to conduct its business. The Executive Director refuses to sign the Memorandum of Understanding. This action constitutes a failure to bargain in good faith.

On April 2, 2003, Respondent filed an answer denying the allegations set forth in the charge, and on July 21, 2003 filed a Motion for Summary Disposition. It asserts that Charging Party failed to state a valid claim of an unfair labor practice because the parties executed a 2001-2004 collective bargaining agreement; there has been no change in the *status quo* in the Union's use of office space to conduct its business; the duty to bargain only applies to mandatory bargaining subjects and even if office space were a mandatory bargaining topic, the parties have met in good faith and bargained on the subject; and since during negotiations there was no meeting of the minds to retain the office space memorandum of understanding, Respondent was not required to sign it.

Charging Party filed a response to the Motion for Summary Disposition on August 3, 2003. According to Charging Party, the issue of deleting the memorandums of understanding was a non-economic union proposal presented to Respondent on August 23, 2001, and when the parties collectively prepared the new, revised collective bargaining agreement, the office space memorandum was included. Charging Party offers that Respondent's executive director "refused to sign it and instead X-ed where his signature belonged." The parties ratified the 2001-2004 collective bargaining agreement on April 21, 2002.

Section 16(a) of PERA, MCL 423.216(a) provides that no complaint shall issue based upon any unfair labor practice occurring more than 6 months prior to the filing of the charge. Assuming that on August 23, 2001, the parties prepared a collective bargaining agreement that included a memorandum of understanding regarding union office space which Respondent's executive director refused to sign, the February 26, 2003 charge was filed more than six months after the alleged violation, and more than six months after the parties entered into the 2001-2004 agreement.

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; *Washtenaw County,* 1992 MERC Lab Op 471. Since the charge was filed more that six months after the alleged violation and the parties concluded their negotiations on a successor contract on April 21, 2002, it is unnecessary to consider other arguments raised by Respondent. However, even if the charge were timely filed, it is apparent that the parties did not have a meeting of the minds regarding whether a union office space memorandum should be included in their new collective bargaining agreement. The duty to bargain in good faith does not require the parties to reach agreement or make concessions. *Bay City Education Ass'n v Bay City Public Schools, 430 Mich 370, 382 (1988).* I, therefore, 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: _____