STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF TROY,
Public Employer-Respondent,

Case No. C03 G-165

-and-

TROY POLICE OFFICERS ASSOCIATION,
Labor Organization-Charging Party.
_____/

APPEARANCES:

Lange and Cholak, P.C., by Craig W. Lange, Esq., for Respondent

L. Rodger Webb, P.C., by L. Rodger Webb, Esq., for Charging Party

DECISION AND ORDER

On December 30, 2003, Administrative Law Judge (ALJ) Roy L. Roulhac issued his Decision and Recommended Order in the above matter finding no merit to the charge that Respondent, City of Troy (Employer), committed an unfair labor practice in violation of Section 10(1)(e) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210(1)(e), when it unilaterally changed a practice regarding the assigning of overtime. The ALJ recommended that the charge be summarily dismissed. The Decision and Recommended Order of the ALJ was served upon the interested parties in accordance with Section 16 of PERA. Charging Party was granted an extension to file exceptions, and its exceptions to the ALJ's Decision and Recommended Order and brief in support of exceptions were filed timely on January 27, 2004.

The charge alleges that Respondent violated Sections 10(1)(a) and (e) of PERA as follows:

> On or about June 2003, the Troy Police Department advised the Union that it intends to change established practice concerning overtime, and specifically to utilize 5 hour overtime "blocks." The long-established practice is to work unit police officers 10 hours, their regular work shift, to maintain minimum staffing levels. Said unilateral change, to be effected by issuance of a revised general order at some point, materially affects unit employees' wages, hours, and terms and conditions of employment. Its unilateral promulgation, in derogation of the TPOA's repeatedly stated

bargaining demand, therefore violates the Union's bargaining rights, and the City's corresponding bargaining duty, under PERA.

Respondent filed a motion for summary disposition, claiming that Charging Party failed to state a claim upon which relief can be granted because unilateral reduction in overtime hours is not a mandatory subject of bargaining. Charging Party argues that protocols associated with overtime are mandatory subjects of collective bargaining. The ALJ found that the protocols associated with overtime were not raised in the charge, and since overtime hours are not mandatory subjects of bargaining, the charge failed to state a claim upon which relief can be granted. In excepting to that finding, Charging Party seeks to distinguish between the assignment of overtime and the protocols associated with overtime. Thus, Charging Party asserts that it must be allowed to make a record upon which it may challenge the rule relied upon by the ALJ.

The Commission is of the opinion that the legal status of a practice affecting employees covered by a collective bargaining agreement cannot be determined without reference to the agreement and an understanding of the history of the practice. See *Port Huron Ed Ass'n v Port Huron Area Sch Dist*, 452 Mich 309, 312 (1996); *Detroit Police Officers Ass'n v Detroit*, 452 Mich 339, 345 (1996). It appears that there was a collective bargaining agreement between Charging Party and Respondent when the latter unilaterally changed the practice at issue here.

Pursuant to Rule 176(9) of the Commission's General Rules, 2002 AACS R423.176(9), the unfair labor practice charge is remanded for further development of the record in accordance with this decision. The collective bargaining agreement should be included in the record with any evidence as to the history of the practice at issue that either party may properly offer for consideration. See *Mich Educ Ass'n*, 2000 MERC Lab Op 55, 63.

ORDER

We hereby remand to the ALJ for hearing and the issuance of findings of fact, conclusions of law, and 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

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Nora Lynch, Commission Chairman

_____

Harry W. Bishop, Commission Member

_____

Nino E. Green, Commission Member

Dated: _____

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EMPLOYMENT RELATIONS COMMISSION
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CITY OF TROY,
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- and -

TROY POLICE OFFICERS ASSOCIATION,
Charging Party – Labor Organization
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APPEARANCES:

Lange & Cholack, P. C., by Craig W. Lange, Esq., for the Public Employer

L. Rodger Webb, P.C., by L. Rodger Webb, Esq., for Charging Party

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

On July 29, 2003, Charging Party Troy Police Officers Association filed an unfair labor practice charge against Respondent City of Troy. The charge alleges that Respondent violated Sections 10(1)(a) and (e) of PERA as follows:

> On or about June 2003, the Troy Police Department advised the Union that it intends to change established practice concerning overtime, and specifically to utilize 5 hour overtime "blocks." The long-established practice is to work unit police officers 10 hours, their regular work shift, to maintain minimum staffing levels. Said unilateral change, to be effected by issuance of a revised general order at some point, materially affects unit employees' wages, hours, and terms and conditions of employment. Its unilateral promulgation, in derogation of the TPOA's repeatedly stated bargaining demand, therefore violates the Union's bargaining rights, and the City's corresponding bargaining duty, under PERA.

On October 31, 2003, Respondent filed a motion for summary disposition. It claims Charging Party failed to state a claim upon which relief can be granted. According to Respondent, the unilateral reduction in the number of overtime hours worked is not a violation of PERA; an employer may cancel overtime without notification to a union or collective bargaining, fact-finding or other mediation procedure; and unilateral reductions in overtime hours are not a mandatory subject of bargaining.

On December 17, 2003, Charging Party filed a response to the motion. It argues that the Employer's assertion that the number of overtime hours worked is not a mandatory subject of bargaining addresses a "straw horse" and not the actual issue.[1] The Union notes that it has no quibble with the notion that the City has reserved the right to determine whether to work unit employees on an overtime basis. However, it claims that, "the protocols associated with overtime, however, if the employer decides to work unit employees on overtime, are mandatory subjects of collective bargaining."

I find no merit to Charging Party's argument. There is nothing in the charge regarding "protocols associated with overtime." Rather the Union clearly alleges that the Employer violated its bargaining obligation by unilaterally changing the established practice of assigning overtime from ten hour "blocks" to five-hour "blocks". As noted by Respondent, it is well settled that overtime hours are not part of regular wages and may be reduced by an employer unilaterally as part of its right to regulate and control its operations. *Leelanau County Board of Commissioners*, 1970 MERC Lab Op 1054, 1061-1062; *City of Roseville*, 1987 MERC Lab Op 182, 186-188; *City of Battle Creek (Fire Department)*, 1989 MERC Lab Op 726, 735; *St. Clair County Road Commission*, 1992 MERC Lab Op 316, 321. Since the charge fails to state a claim upon which relief can be granted, I recommend that it be summarily dismissed as permitted by Administrative Rule 423.165(2)(d).

RECOMMENDED ORDER

The unfair labor practice charge is dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Roy L. Roulhac
Administrative Law Judge

Dated: _____

[1]On December 17 2003, Charging Party also filed a "first amended unfair labor practice charge" alleging that in September 2003, Respondent unilaterally altered established leave practices. Since this allegation raises a completely different issue, amendment of the instant charge is not appropriate. Therefore, the "amended charge" will be docketed as a new case.