STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

GIBRALTAR SCHOOL DISTRICT,
Public Employer-Respondent,

Case No. C03 A-012

-and-

GIBRALTAR SECRETARIES/AIDES, GIBRALTAR CUSTODIAL/MAINTENANCE, and GIBRALTAR TRANSPORTATION ASSOCIATIONS,
Labor Organizations-Charging Parties.
_____/

APPEARANCES:

Collins & Blaha, P.C., by Jasen M. Witt, Esq., for the Respondent

The Firestone Law Firm, P.C., by Joseph H. Firestone, Esq., for the Charging Parties

DECISION AND ORDER

On April 14, 2004, Administrative Law Judge (ALJ) Julia C. Stern issued a Decision and Recommended Order finding that the unfair labor practice charge was timely, but should be dismissed. The ALJ found that Charging Parties, the Gibraltar Secretaries/Aides Association, the Gibraltar Custodial/Maintenance Association, and the Gibraltar Transportation Association failed to demonstrate that Respondent violated its duty to bargain in good faith under Section 10(1)(e) of the Public Employment Relations Act (PERA), 1965 PA 379 as amended, MCL 423.210(1)(e), as alleged in the charges. The ALJ found that the conduct complained of by the Charging Parties involved a *bona fide* dispute as to the interpretation of collective bargaining agreements between Charging Parties and Respondent, and that there had been no repudiation by Respondent of those agreements. The ALJ denied Respondent's Motion for Reopening of the Record, holding that the additional evidence sought to be introduced by Respondent would not require a different result.

The ALJ's Decision and Recommended Order was served upon the interested parties in accordance with Section 16 of PERA. Charging Parties filed timely exceptions to the ALJ's Decision and Recommended Order and a brief in support of the exceptions. Respondent filed a brief supporting the ALJ's Decision and Recommended Order.

Factual Summary:

We accept the facts set out in the ALJ's Decision and only summarize them here. The Gibraltar Secretaries/Aides Association represents a bargaining unit of office clerical employees, aides, child development specialists, and child development assistants employed by Respondent. The Custodial/Maintenance Association represents custodial and maintenance employees and the Transportation Association represents bus drivers, bus aides, dispatchers, substitute dispatchers, and extra-board substitutes. Charging Parties had separate collective bargaining agreements with Respondent covering the 2002-2003 school year. All three agreements provided for wage increases effective July 1, 2002, tied to the "foundation allowance" that Respondent received from the State of Michigan for the 2002-2003 school year. Charging Parties allege that Respondent repudiated these wage provisions, and thereby violated its duty to bargain in good faith, by excluding part of Respondent's "foundation allowance" in calculating the amount of the wage increases.

Article 2 of the State School Aid Act, MCL 388.1620 refers to the amount school districts receive from the State on a per-pupil basis as the "foundation allowance." Each year, the legislature determines the amount of the foundation allowance for the upcoming school year, and amends Section 20 of the State School Aid Act to reflect that amount. In 2002-2003, Respondent received a $200 per pupil increase in the foundation allowance for school districts statewide. It also received a supplemental increase of $250 per pupil. When Respondent calculated the wage increases due to members of Charging Parties' bargaining units beginning July 1, 2002, it did so using the $200 per pupil increase only. It did not include the $250 supplemental increase in calculating wage increases under Charging Parties' contracts.

On July 19, 2002, the first paychecks including these wage increases were issued.[1] On November 8, 2002, Charging Parties filed grievances maintaining that Respondent had violated their contracts by excluding the $250 supplement from the calculation of wage increases due on July 1, 2002. In January 2003, Charging Parties demanded arbitration of these grievances under the grievance procedures of their contracts.

Discussion and Conclusions of Law:

In their exceptions, Charging Parties assert that the ALJ erred in concluding that the dispute between the parties is one of contract interpretation that should be deferred to arbitration and by recommending that we dismiss the charge. Charging Parties contend that Respondent repudiated its bargaining obligation when it failed to pay wage increases calculated based on the "foundation allowance" in the amount deemed appropriate by Charging Parties. Charging Parties assert that "foundation allowance" includes all monies

[1] The ALJ's Decision and Recommended Order cites both July 16, 2002, and July 19, 2002, as the date when the first paychecks containing the wage increases were issued. The latter date is supported by the record.

that Respondent receives from the State. Respondent maintains that the parties did not intend this term to include supplemental increases given to only some districts.

We have carefully and thoroughly reviewed the record and the arguments raised in the exceptions. We adopt the findings and conclusions of the ALJ based on the authority cited in her decision. Because the dispute is over the meaning of the term "foundation allowance" as used in the parties' collective bargaining agreements, it should be addressed under the contractual grievance procedures. *Village of Romeo*, 2000 MERC Lab Op 296, 298; *Central Michigan Univ*, 1997 MERC Lab Op 501, 507. These procedures have been invoked by the grievances filed by Charging Parties, there is no claim that Respondent has disputed the Charging Parties' right to grieve, and the evidence does not establish that Respondent has repudiated the collective bargaining agreements. Consequently, Charging Parties have not demonstrated that Respondent violated its duty to bargain in good faith under Section 10(1)(e) of PERA. In accord with these conclusions, and the findings of fact set forth above, we issue the following order:

ORDER

Pursuant to Section 16 of PERA, we hereby adopt the recommended order of the ALJ as our order in this case.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____
Nora Lynch, Commission Chairman

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Harry W. Bishop, Commission Member

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Nino E. Green, Commission Member

Dated: _____

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Labor Organizations-Charging Parties.
_____/

APPEARANCES:

Logan, Huchla & Wycoff, P.C., by Charles E. Wycoff, Esq., for the Respondent

Amberg, Firestone & Lee, P.C., by Joseph H. Firestone, Esq., for the Charging Parties

DECISION AND RECOMMENDED ORDER I. OF ADMINISTRATIVE LAW JUDGE

Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, this case was heard at Detroit, Michigan on June 10, 2003, before Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. Based upon the entire record, including post-hearing briefs filed by the parties on July 23, 2003, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge and Positions of the Parties:

The Gibraltar Secretaries/Aides Association, the Gibraltar Custodial/Maintenance Association, and the Gibraltar Transportation Association filed this charge against the Gibraltar School District on January 17, 2003. The Gibraltar Secretaries/Aides Association represents a bargaining unit of office clerical employees, aides, child development specialists and child development assistants employed by the Respondent. The Custodial/Maintenance Association represents custodial and maintenance employees, and the Transportation Association represents bus driver, bus aides, dispatchers, substitute dispatchers, and extra-board substitutes. Respondent and Charging Parties were parties to separate collective bargaining agreements covering the 2002-2003 school year. All three contracts provided for wage increases effective

July 1, 2002. Each contract tied the amount of the wage increase to the per-pupil "foundation allowance" that Respondent received from State of Michigan for the 2002-2003 school year. Charging Parties allege that Respondent repudiated these contract provisions, and thereby violated its duty to bargain in good faith, by excluding part of Respondent's foundation allowance in calculating the amount of the wage increases.

Respondent asserts that the charge is untimely under Section 16(a) of PERA because the alleged unfair labor practice occurred on July 1, 2002, more than six months before the charge was filed and served on Respondent. It also denies that it violated its duty to bargain in good faith by repudiating its obligations under the contract. According to Respondent, the parties have a bona fide dispute over the interpretation of the term "foundation allowance" in their contracts, and that the dispute should be resolved through the grievance arbitration procedure.

Motion to Reopen the Record:

On September 29, 2003, Respondent filed a motion to reopen the record to admit a copy of an arbitration award addressing grievances filed by the Charging Parties over the computation of their 2002-2003 wage increases. The arbitrator issued his award on September 22, 2003. Charging Parties filed a brief in opposition to the motion on October 8, 2003.

R 423.166 states:

> (1) A party to a proceeding may move for reopening of the record following the close of a hearing conducted under Part 7 of these rules. A motion for reopening of the record will granted only upon a showing of all of the following:
>
> (a) The additional evidence could not with reasonable diligence have been discovered and produced at the original hearing.
>
> (b) The additional evidence itself, and not merely its materiality, is newly discovered.
>
> (c) The additional evidence, if adduced and credited, would require a different result.

Respondent could not have produced the arbitrator's award at the hearing, since it was not issued until after the record had closed. However, for reasons discussed below, I conclude that the award would not require a different result in this case. For that reason, I recommend that Respondent's motion to reopen the record be denied.

Facts:

On April 11, 2000, Respondent and Charging Party Secretaries/Aides Association signed a collective bargaining agreement covering the term July 1, 2000 through June 30, 2003. The section of the contractual wage schedule setting out the wage increase for the 2002-2003 school year reads,"2%-4% Foundation Allowance." On October 27, 2000, Respondent and the

Transportation Association signed a collective bargaining agreement covering the period July 1, 2000 through June 30, 2003. The agreement stated that the wage increase for the 2002-2003 school year would be, "2%-4% - increase based on percent increase in State Foundation Allowance." In 2000, Respondent and the Custodial/Maintenance Association agreed to extend their 1998-2000 agreement through the 2002-2003 school year. The agreement included the following provision:

> The 2000-2001 estimated percentage increase in the foundation allowance is four percent (4%). Per the CM agreement for the school years 1999/2000, 2000/2001, 2001/2002, and 2002/2003 the salary will be calculated based upon the existing salary schedule plus the total of one-half (1/2) of one percentage point less than the percent change in the basic per pupil foundation grant paid to the District by the State for the 1998-99 school year, as compared to that for the 1997-98 school year. Annual percentage increase shall be no more than three and one-half (3.5%) percent or less than two (2%) percent. The 2000-2001 salary is increased by three and one-half percent (3.5%).

Article 2 of the State School Aid Act, MCL 388.1620 refers to the amount school districts receive from the State on a per-pupil basis as the "foundation allowance." Each year, the legislature determines the amount of the foundation allowance for the upcoming school year, and amends Section 20 of the State School Aid Act to reflect that amount.

Sometime before 1994, the State of Michigan issued an industrial facilities tax exemption certificate to an employer with a facility located in the Gibraltar School District. The issuance of that exemption had a significant impact on Respondent's tax revenues. After the State changed its school funding system in 1994, Respondent embarked on a lobbying campaign to obtain reimbursement from the State for these lost revenues.

There was no discussion of the meaning of the term "foundation allowance" during negotiations for any of the three collective bargaining agreements discussed above. Before contract negotiations began, Respondent told the president of the Secretaries/Aides Association that Respondent had a lobbyist in Lansing seeking additional funds for the school district. However, there was no evidence that any of the parties discussed the possible impact on salaries should Respondent succeed in its lobbying efforts.

As a result of Respondent's lobbying efforts and those of other districts, the State School Aid Act as amended in 2002 provided for a supplemental appropriation of $250 per student for Respondent, and other districts similarly situated, commencing with the 2002-2003 school year. In 2002-2003, Respondent received the $200 per pupil increase in the basic foundation allowance received by other school districts in the state. It also received a supplemental increase of $250 per pupil.

When Respondent calculated the wage increases due to members of Charging Parties' bargaining units beginning with the pay period ending July 1, 2002, it based its calculations on the increase in the basic foundation allowance only. According to Respondent's calculation, the increase in the foundation allowance was 3%. On July 16, 2002, unit members received their first

paychecks including these wage increases. On August 13, 2002, the MEA Uniserv Directors servicing these units sent a letter to Respondent, pointing out that, according to published state aid figures, the percentage increase in Respondent's foundation allowance was 4.66%. The superintendent replied on August 26, explaining that Respondent's basic foundation allowance had been increased by $200 per pupil, or 3%, and that it was Respondent's position that the $250 supplemental increase should not be included in calculating the salary increases under Charging Parties' contracts.

On November 8, 2002, Charging Parties filed grievances maintaining that the Respondent had violated the wage provisions in their contracts by excluding the $250 adjustment to the foundation allowance from its calculation of the wage increases due on July 1, 2002. In January 2003, Charging Parties made a demand for arbitration of these grievances under the grievance procedures of their contracts.

Discussion and Conclusions of Law:

Under Section 16(a) of PERA, an unfair labor practice charge must be both filed and served on the charged party within six months of the date of the alleged unfair labor practice. However, this statute of limitations is tolled during the period that an employee has no actual knowledge or reason to know of the unfair labor practice. *Wines v City of Huntington Woods,* 97 Mich App 86 (1980). The limitation period under Section 16(a) commences when the person knows of the act which caused his injury and has good reason to believe that the act was improper or done in an improper manner. *City of Huntington Woods v Wines,* 122 Mich App 650, 652 (1983). The charge in this case was filed on January 17, 2003. According to Respondent, the charge was untimely because the calculation of the wage increases for Charging Parties' members took place before July 1, 2002 and Charging Parties either knew or should have known of the alleged unfair labor practice by that date.

Charging Parties deny that they knew what the amount of the wage increases were to be until July 19, 2002, when the first paychecks containing the increases were issued. Respondent presented no evidence to support its claim that Charging Parties knew or should have known of the amount of the wage increases before this date. Charging Parties also maintain that they did not know that Respondent's calculations were based on the deliberate exclusion of the supplemental appropriation until the superintendent's letter dated August 26, 2002. Respondent also presented no evidence that Charging Parties knew or had reason to know of this fact before August 26. I agree with Charging Parties that the statute of limitations did not begin to run until, August 26, 2002, the date they had a reason to believe that Respondent's action in calculating the wage increases was improper. I conclude that charge was timely filed under Section 16(a) of PERA.

The Commission has the authority to interpret contracts to determine whether an unfair labor practice has been committed. *University of Michigan,* 1971 MERC Lab Op 994, citing *NLRB v C & C Plywood,* 385 US 421 (1967). However, the Commission has repeatedly held that it will not find a refusal to bargain based on a routine contract dispute. That is, the Commission has held that an alleged breach of contract is not an unfair labor practice unless a party has "repudiated" the collective bargaining agreement or collective bargaining relationship.

Gibraltar Custodial Maintenance Assoc., 2003 MERC Lab Op ___ Op (Case No. CU02 I-052, decided 6/30/03); *Jonesville Bd. of Ed.*, 1980 MERC Lab Op 891, 900-901; *County of Wayne*, 1988 MERC Lab Op 73, 76. Repudiation exists when (1) the contract breach is substantial, and has a significant impact on the bargaining unit, and (2) no bona fide dispute over interpretation of the contract is involved. *Plymouth-Canton CS*, 1984 MERC Lab Op 894, 897. Repudiation can be found where the actions of a party amount to a rewriting of the contract or a complete disregard for the contract as written *Central Michigan Univ.*, 1997 MERC Lab Op 501, 507; *Twp. of Redford Police Dep't*, 1992 MERC Lab Op 49, 56 (no exceptions); *Linden CS*, 1993 MERC Lab Op 763, 772 (no exceptions).

Respondent asserts that its did not "repudiate" the collective bargaining agreements, and that the charge merely involves a dispute between the parties as to the meaning of the term "foundation allowance" as used in these agreements. While Charging Parties assert that "foundation allowance" under the State Aid Act includes all monies Respondent receives from the State, Respondent maintains that the parties did not intend this term to include supplemental increases given to only some districts. Therefore, according to Respondent, it was not required to include the supplemental increase in its foundation allowance which Respondent received in 2002 in computing the wage increases due bargaining unit employees on July 1, 2002.

To support its claim that there was no "bona fide" dispute over the meaning of the term "foundation allowance," Charging Party offered the testimony of an economist with expertise on school finance. She testified that the term, as used in the School Aid Act, included supplemental increases such as that which Respondent received beginning in the 2002 school year. However, the dispute between the parties is over the meaning of the term as used in the contracts, not in the statute.

I agree with Respondent that the parties had a bona fide dispute over the interpretation of their contracts that should be resolved by the method provided in the contracts for resolving such disputes. I find that Respondent did not repudiate Charging Parties' collective bargaining agreements, and that Charging Parties' have not demonstrated that Respondent violated its duty to bargain in good faith under Section 10(1)(c) of PERA. In accord with these conclusions, and the findings of fact set forth above, I recommend that the Commission issue the following order:

RECOMMENDED ORDER

The charge in this case is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Julia C. Stern
Administrative Law Judge

Dated: _____