

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

INGHAM COUNTY AND INGHAM COUNTY SHERIFF,
Respondent - Public Employer,

Case No. C03 G-166

-and-

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

APPEARANCES:

Cohl, Stoker, Toskey & McGlinchey, P.C., by John R. McGlinchey, Esq., for the Public Employer

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

DECISION AND ORDER

On January 27, 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

Nora Lynch, Commission Chairman

Harry W. Bishop, Commission Member

Nino E. Green, Commission Member

Dated: _____

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DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE

This case was heard in Lansing, Michigan, on June 23, 2004, by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission (MERC) pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216. Based on the record and post-hearing briefs filed by September 21, 2004, I make the following findings of facts and conclusions of law.

The Unfair Labor Practice Charge :

Charging Party Capitol City Lodge No. 141, Fraternal Order of Police filed an unfair labor practice charge alleging that Respondent Ingham County and Ingham County Sheriff unilaterally changed the method for calculating the cost that employees must pay to purchase service credit from the Municipal Employees Retirement System (MERS) for retirement purposes. On August 21, 2004, Respondent filed an answer denying the allegations set forth in the charge and raised the affirmative defense that the charge was not filed the within six-month statute of limitations set forth in Section 16(a) of PERA.

The facts giving rise to the charge are undisputed. On March 20, 2002, the County sent a proposed resolution to amend the County's policy on purchasing retirement service credit to all bargaining units, including Charging Party. The Ingham County Board of Commissioners adopted the policy as Resolution No. 02-101 on April 9, 2002. A year later, in an April 3, 2003 letter, Charging Party demanded that the Employer bargain over the policy. The bargaining request was refused and Charging Party filed the instant unfair labor practice on July 29, 2003.

Pursuant to Section 16(a) of PERA, no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Commission. The Commission has found that when the charge involves a unilateral change in working conditions, the statute of limitations begins to run from the date Charging Party knew or should have known of the change; the limitations period commences upon the date of announcement of the change rather than the date of implementation. *Detroit Water and Sewerage*, 1990 MERC Lab Op 400; *Detroit Recreation Dept*, 1990 MERC Lab Op 388. The statute of limitation under PERA is jurisdictional and cannot be waived. *Southfield Public Schools*, 1984 MERC Lab Op 10048; *Walkerville Rural Community Schools*, 1994 MERC Lab Op 582, 583.

In the instant case, Charging Party knew of Respondent's intent to amend its policy on purchasing retirement credit in March 2002. The policy was amended on April 9, 2002, with the adoption of Resolution No. 02-101. The charge filed on July 29, 2003, more than fifteen months later, is clearly untimely and is barred by Section 16(a) of PERA. Because the charge was not filed within the statutory time period, it is unnecessary to decide whether Respondent's conduct violated its duty to bargain as Charging Party alleges. 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

Roy L. Roulhac
Administrative Law Judge

Dated: