STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

ANN ARBOR TRANSPORTATION AUTHORITY,
Public Employer – Respondent,

Case No. C05 G-147

- and -

TRANSPORT WORKERS UNION, LOCAL 171,
Labor Organization – Charging Party.
_____/

APPEARANCES:

Pear Sperling Eggan & Daniels, P.C., By David E. Kempner, Esq., for the Public Employer

Delisa Brown, for the Labor Organization

DECISION AND ORDER

On March 8, 2006, Administrative Law Judge Roy L. Roulhac issued his Decision and Recommended Order in the above matter finding that Respondent has not engaged in and was not engaging in certain unfair labor practices, and recommending that the Commission dismiss the charges and complaint as being without merit.

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

_____
Eugene Lumberg, Commission Member

Dated: _____

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
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ANN ARBOR TRANSPORTATION AUTHORITY,
Respondent–Public Employer

Case No. C05 G-147

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TRANSPORT WORKERS UNION, LOCAL 171,
Charging Party–Labor Organization.
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APPEARANCES:

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DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE ON

This case was heard in Detroit, Michigan, on October 28, 2005, 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 December 21, 2005, I make the following findings of fact and conclusions of law.

The Unfair Labor Practice Charge

On July 15, 2005, Charging Party Transport Workers Union, Local 171, filed an unfair labor practice charge against Respondent Ann Arbor Transportation Authority claiming that Respondent committed an unfair labor practice by refusing to process grievances.

Facts:

The facts are undisputed. Charging Party represents a bargaining unit of Respondent's bus drivers and other non-supervisory employees. The Employer and the Union are parties to a collective bargaining agreement that covers the period July 1, 2002 through June 30, 2007. Article III, Section 2 C, Grievance Procedures, contains a four-step grievance procedure that ends in binding arbitration. Step one provides that an employee must be present to discuss the grievance with his or her immediate supervisor within seven calendar days of the act giving rise to the grievance. Step two requires a written grievance to be filed with the human resources department and for a meeting to be held with the department manager, if requested, within seven days after receiving the step one answer. The department manager's decision may be appealed to step three within seven days and a request for arbitration is permitted within thirty days thereafter.

On May 1, 2005, bus driver John Wilson was involved in accident and was charged by Respondent with disorderly and inappropriate conduct. After a May 18, 2005 disciplinary conference, Wilson was issued a three-day suspension without pay and assessed -30 performance points. The copy of the suspension notice was placed in Wilson's and the Union's mailboxes on Thursday May 19, 2005. Wilson, however, did not receive the notice until the next day, May 20. The following Friday, May 27, 2005, the Union filed Grievance No. 07-05 at step one of the grievance procedure on Charging Party's behalf. Respondent denied the grievance contending that it was untimely because it was not filed within seven days from May 19, when the notice of suspension was placed in Wilson's and the Union's mailboxes.

A week later, on Friday June 3, 2005, the Union filed a step two appeal. In its June 15, 2005 step two response, Respondent denied the grievance and reiterated that the grievance had not been timely filed. In the meantime, on June 13, 2005, the Union filed Grievance No. 08-05 alleging that the Respondent refused to process Grievance No. 07-05 and that Grievance No 07-05 had been timely filed.

Conclusions of Law:

Charging Party claims that Respondent violated PERA by not processing Grievance No. 07-05 although it was filed within the seven-day time limit set forth in parties' collective bargaining agreement and that it refused to process Grievance No. 08-05. I find no merit to Charging Party argument.

It is well-settled that although the Commission has the authority to interpret contracts to determine whether an unfair labor practice has been committed under PERA, it will not exercise jurisdiction over every contract dispute. An alleged breach of contract is not an unfair labor practice unless a repudiation is found. *Jonesville Bd. of Educ*, 1980 MERC Lab Op 891, 900-01, *Co 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 Community Sch*, 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 Community Sch*, 1993 MERC Lab Op 763, 772 (no exceptions) The Commission will not find repudiation on the basis of an insubstantial or isolated breach *Crawford County Bd of Comm'rs*, 1998 MERC Lab Op 17, 21.

I find that the alleged contract breach in this case does not rise to the level of repudiation. The disagreement between Charging Party and Respondent clearly involves a dispute over the contract's interpretation. Charging Party claims that grievance No. 07-05 was filed with the time limits set forth in the contract, while Respondent contends that it was not. The record establishes that Respondent denied the Grievance No. 07-05 at steps one and two. However, rather than appealing Respondent's denial of the grievance to steps three and four of the grievance procedure, Charging Party elected to file an unfair labor practice charge. I find no evidence that Respondent's action frustrated the grievance process or that it completely disregarded the contract as written by refusing to process a grievance that it contended was not timely filed. 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: