STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF DETROIT,
Public Employer-Respondent,

Case No. C06 E-118

-and-

SERVICE EMPLOYEES INTERNATIONAL UNION (SEIU),
LOCAL 517M,
Labor Organization-Charging Party.
_____/

APPEARANCES:

Andrew Jarvis, Esq., City of Detroit Law Department, for the Respondent

Doris Houston, Second Vice-President, SEIU Local 517-M, for the Charging Party

DECISION AND ORDER

On May 24, 2007, Administrative Law Judge Julia C. Stern issued her 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

_____
Christine A. Derdarian, Commission Chair

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

Dated: _____

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Andrew Jarvis, Esq., City of Detroit Law Department, for the Respondent

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DECISION AND RECOMMENDED ORDER
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, this case was heard at Detroit, Michigan on October 25, 2006, before Administrative Law Judge Julia C. Stern for the Michigan Employment Relations Commission. Based upon the entire record, including a post-hearing brief filed by Charging Party on December 8, 2006, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

The Service Employees International Union (SEIU), Local 517M filed this charge against the City of Detroit (Respondent or the City) on May 23, 2006. Charging Party represents a bargaining unit of Respondent's nonsupervisory employees in selected classifications, including environmental control inspectors (ECIs). Charging Party alleges that Respondent violated its duty to bargain under Section 10(1) (e) of PERA by unilaterally altering established overtime work schedules for certain ECIs on October 29 and October 31, 2005. Charging Party asserts that its charge was timely filed under Section 16(a) of PERA because it did not learn of the change until

November 23, 2005, when it received a copy of a memo sent by the DPW director to his division heads dated September 27, 2005.

Facts:

Environmental control inspectors do rodent and other pest inspection and control work. In October 2005, one ECI was assigned to the department of public works (DPW), approximately ten were assigned to the department of environmental affairs (DEA), and slightly more than twenty worked in the department of health and wellness (DH). Charging Party's president, Yolanda Langston, was an ECI in the DH and its second vice-president, Doris Houston, was an ECI in the DEA.

Article 38 of the collective bargaining agreement between Charging Party and Respondent reads as follows:

> The City has the exclusive right to schedule overtime work and to determine whether overtime is required, provided such overtime is not scheduled to reduce the work force.
>
> Volunteer work shall be on a voluntary basis starting with the most senior employee. When there are not enough volunteers, overtime assignments shall be made according to inverse seniority. The voluntary overtime rule shall not apply where an unexpected emergency arises or it is impractical to seek volunteers. The voluntary overtime rule, the exceptions thereto and equalization of overtime shall be subject to existing departmental practice.

For many years, City employees have patrolled the City in assigned vehicles each year on the evenings of October 29, 30 and 31. Employees watch for vandalism and arson and serve as extra eyes and ears for the police and fire departments. Money for overtime for these nights is included in the City budget. Since at least 1985, ECIs have either been assigned to work overtime on these nights or have been given the opportunity to do so. In 2002, 2003 and 2004, overtime was voluntary for ECIs. ECIs could volunteer to work overtime on one, two or all three nights. ECIs who volunteered to work overtime reported to an assigned location sometime between five and six p.m., were paired with a partner, and assigned a patrol route for the evening. ECIs in the DPW and the DEA reported to a DPW equipment yard to receive their assignments, and DPW supervisors assigned to that yard supervised their patrol activities. ECIs in the DH were supervised by DH supervisors and were dispatched from a DH office. Once the ECIs left their dispatch location, they patrolled until the Mayor's office issued a directive to all employees to cease patrols for the night. Usually this was after midnight. The employees then returned to their dispatch location and punched out. An ECI who volunteered to patrol on overtime worked seven hours or more per night.

On September 27, 2005, the DPW Director sent a memo to his division heads stating that the DPW was not going to pay any of its employees to work overtime on the evenings of October 29 or 31, 2005. Charging Party was not aware of this memo.1

1 Although one ECI was assigned to the DPW in 2005, Charging Party does not allege that Respondent violated its duty to bargain by eliminating overtime for this employee.

ECIs in the DEA and DH signed up for overtime for all three evenings as they had in previous years. Both Houston and Langston signed up to work all three nights. Shortly before the end of the work day on Friday, October 28, 2005, Tinnie Person, principal environmental control inspector and the ECIs' supervisor in the DEA, informed her subordinates that those who had signed up to work overtime on October 29 and 31 would be working only four hours on each of these evenings. Houston asked Person why Charging Party had not been notified in advance about this change. Person explained that the since the supervisors at the DPW were not being paid, they only wanted to stay at the yard for four hours. Person told Houston, "Well, the DPW is not staying, so I am not staying."

On both Saturday, October 29, ECIs from the DEA, including Houston, reported to a DPW yard to receive their patrol assignments. Supervisors at the yard told Houston that since they were not being paid, they were not going to stay any longer than four hours. DEA ECIs patrolled from about six p.m. to about 10:30 pm on both Saturday, October 29 and Monday, October 31. On these nights ECIs in the DH, including Langston, patrolled from about six pm to sometime between one and two a.m., when they were released by the Mayor's office. On Sunday, October 30, both groups patrolled from about four pm to 1:15 am.

Shortly after October 31, Houston discussed the events of the weekend with her members, and the consensus was that it was not fair that DEA ECIs had only been allowed to work four hours of overtime on October 29 and 31, when DH inspectors had worked a full shift. Charging Party filed a grievance over the change in scheduled overtime for ECIs in the DEA and over the disparity between the overtime received by the inspectors in the DEA and the DH.2 After the grievance was filed, Person's supervisor, Willow Williams, told Houston that she had not been aware that all the ECIs had not worked full shifts of overtime on October 29 and 31 and that Person had acted on her own. Houston testified that she understood Williams to be telling her that this would not happen again in 2006.

On about November 23, 2005, Charging Party came into possession of the September 27, 2005 memo from the DPW director to his division heads. Charging Party maintains that until it received a copy of this memo, it did not know that DPW supervisors were not paid for supervising patrols on the evenings of October 29 and 31.

Discussion and Conclusions of Law:

Pursuant to Section 16(a) of PERA, an unfair labor practice charge that is filed more than six months after the commission of the alleged unfair labor practice is untimely. The limitation contained in Section 16(a) of PERA is jurisdictional and cannot be waived. *Washtenaw Cmty Mental Health*, 17 MPER 45 (2004); *Police Officers Labor Council, Local 355*, 2002 MERC Lab Op 145; *Walkerville Rural Cmty Schs*, 1994 MERC Lab Op 582. The six month period begins to run when the charging party knows or should have known of the alleged violation. *Huntington Woods v Wines*, 97 Mich App 86, 89 (1980). It is not necessary that the charging party recognize that it has suffered invasion of a legal right. Rather, the limitation period commences when the charging party knows of

2 The record did not indicate when the grievance was filed.

the act which caused the injury, and has good reason to believe that the act was improper or done in an improper manner. *Huntington Woods v Wines* 122 Mich App 650, 652 (1983).

The alleged unfair labor practice in this case took place on October 29 and October 31, 2005. Charging Party did not file its unfair labor practice until May 23, 2006, more than six months later. Charging Party argues that the statute of limitations did not begin to run until November 23, 2005, when it first saw the DPW director's September 27, 2005 memo stating that DPW employees would not be paid overtime on October 29 or October 31. However, on the morning of November 1, 2005, Charging Party knew that Respondent had limited environmental control inspectors in the DEA to four hours of overtime on October 29 and October 31. It also knew that environmental control inspectors in the DH, including Charging Party president Langston, had been permitted to work a full shift of overtime on those dates. I find that Charging Party had sufficient information at this time to conclude that Respondent had acted improperly, even if it did not know at that time that DPW supervisors had not been paid to work overtime. I find that that statute of limitations in this case began to run on November 1, 2005, when Charging Party knew of the acts which caused its injury and had good reason to believe that these acts were improper. I conclude, therefore, that the charge filed on May 23, 2006 was untimely under Section 16(a) of the Act.

I also find that the facts do not establish that Respondent violated its duty to bargain. When a matter is "covered by" a collective bargaining agreement, the union has exercised its bargaining rights and any dispute involving the terms of the agreement is to be left to the contract's grievance-arbitration procedure. *Port Huron EA v Port Huron Area Sch Dist,* 452 Mich 309, 321 (1996): *Dearborn Pub Schs,* 19 MPER 73 (2006); *Houghton Lake Cmty Schs,* 1997 MERC Lab Op 42. In this case, the scheduling, assignment and distribution of overtime was "covered by" Article 38 of the parties' collective bargaining agreement. The Commission has found a violation of the employer's duty to bargain when the employer's breach of contract amounted to a "repudiation" of the collective bargaining relationship. See, e.g. *Jonesville Bd of Ed,* 1980 MERC Lab Op 891, 900-901; *City of Detroit,* 1984 MERC Lab Op 937, aff'd 150 Mich App 605 (1985); *Cass City Pub Sch,* 1980 MERC Lab Op 956, 960. However, the Commission will not find repudiation based on an insubstantial or isolated breach of contract. *Plymouth-Canton Cmty Schs*, 1984 MERC Lab Op 894, 897: *Crawford Co,* 1998 MERC Lab Op 17, 21; *Linden Cmty Schs,* 1993 MERC Lab Op 763, 772 (no exceptions). In this case, the breach of contract, if there was one, was an isolated incident resulting from the actions of a single supervisor. I conclude that the dispute in this case is a contractual dispute that should be resolved through the parties' grievance-arbitration procedure rather than by the Commission. I recommend, therefore, that the Commission issue the following order.

RECOMMENDED ORDER

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern
Administrative Law Judge

Dated: _____