STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

THE UNIVERSITY OF MICHIGAN,
Public Employer - Respondent,

Case No. C08 A-004

-and-

MICHIGAN AFSCME, LOCAL 1583,
Labor Organization - Charging Party.
_____/

APPEARANCES:

Gregory Zelanka, Bargaining Chair, University of Michigan Employees Local 1583, for Charging Party

David J. Masson, Esq., Assistant General Counsel, for Respondent

DECISION AND ORDER

On March 19, 2008, 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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Gregory Zelanka, Bargaining Chair, University of Michigan Employees Local 1583, for Charging Party

David J. Masson, Esq., Assistant General Counsel, for Respondent

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON SUMMARY DISPOSITION

On January 4, 2008, Michigan AFSCME Local 1583 filed the above charge with the Michigan Employment Relations Commission against the University of Michigan, pursuant to Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210. The charge was assigned to Administrative Law Judge Julia C. Stern pursuant to Section 16 of the Act.

On January 16, 2008, pursuant to Rule 165 of the Commission's General Rules, 2002 AACS, R 423.165, I issued an order to Charging Party to show cause why its charge should not be dismissed as untimely filed under Section 16(a) of PERA and/or because it failed to state a claim upon which relief could be granted under PERA. On February 12, Charging Party requested that the charge be held in abeyance pending arbitration of the grievances attached to the charge. Charging Party did not address the issues raised in the order. Respondent objected to the request and asserted that the charge should be dismissed. I gave Charging Party until February 27 to file a substantive response to my January 16 order, but it did not do so.

The Unfair Labor Practice Charge:

The charge reads as follows:

> The University of Michigan is in violation of PERA for refusing to bargain in good faith with the Union [over changes in] the condition of employment that were instituted in the following departments: (1) mail services; (2) patient food and nutrition services; (3) parking services; (4) security services; (5) materiel services; (6) nursing; (7) unit for laboratory services. All of these departments instituted [changes in] conditions of employment and refused to bargain over these conditions on or about April 2, 2007 and has been going on ever since [sic]. The Union requested to bargain over each and was denied each time. These conditions include the way our members log their time at work in/out, assigning tools to our members as a condition of employment, having members take classes for their jobs, instituting a 24 hour call-in to return to work, issuing a time clock that was not part of their conditions of employment when they were hired.

Attached to the charge was a letter dated April 2, 2007 from Charging Party to Respondent demanding to bargain over four changes in the terms and conditions of employment of bargaining unit members that, according to the letter, had already been implemented. Also attached were six grievances filed by Charging Party under its collective bargaining agreement with Respondent. The grievances were dated April 22, June 22, July 11, July 26, August 29 and October 3, 2007. The July 11 grievance asserted that Respondent violated the collective bargaining agreement by replacing paper time sheets with an electronic time sheet, and the August 29 and October 3 grievances asserted that Respondent violated the contract by instituting a requirement that employees punch a time clock. The July 26 grievance asserted that the Respondent violated the contract by requiring that employees having direct or indirect contact with laboratory animals complete a medical questionnaire. None of these grievances gave the specific dates on which the alleged contract violations/unilateral changes occurred.

Discussion and Conclusions of Law:

Under Section 16(a) of PERA, the Commission lacks jurisdiction to find an unfair labor practice occurring more than six month prior to the filing of the charge with the Commission and the service of a copy thereof upon the person against whom the charge is made. Accordingly, an unfair labor practice charge that is filed more than six months after the commission of the alleged unfair labor practice is untimely. The Commission has held that 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; i.e. when it knows of the injury and had good reason to believe that it was improper. *City of Detroit,* 18 MPER 73 (2005); *AFSCME Local 1583*, 18 MPER 42 (2005); *Huntington Woods v Wines*, 122 Mich App 650 (1983), aff'g 1981 MERC Lab Op 836.

The charge in this case was filed with the Commission on January 3, 2008. Allegations of unilateral changes occurring before July 3, 2007, therefore, are untimely under Section 16(a), unless Charging Party did not know or have reason to know of these changes at the time they occurred. The charge, on its face, does not state when the unfair labor practices are alleged to have occurred, although the attachments to the charge suggest that most, if not all, of the alleged

unilateral changes took place outside the statutory time period. Charging Party was given the opportunity to clarify its charge and explain why it was not untimely, but did not do so. I recommend, therefore, that the charge be dismissed as untimely filed under Section 16(a) of PERA.

In addition, the charge also appears to allege – as set out in the grievances filed on filed on August 29 and October 3, 2007 – that Respondent unlawfully implemented a requirement that employees punch a time clock. The Commission has long held that an employer's methods of recording time and attendance are matters within its entrepreneurial control and are not mandatory subjects of bargaining. In *Michigan Education Special Services Association*, 1969 MERC Lab Op 536, the Commission concluded that an employer's decision to require employees to keep track of the number of sales stops they made during a day was not a unilateral change in a mandatory subject of bargaining. In *Hurley Hospital (City of Flint*), 1973 MERC Lab Op 74, it held that the employer had a managerial right to change from handwritten sign-in sheets to a time clock, and in *City of Detroit (Dept of Public Works)*, 1991 MERC Lab Op 534, it held that an employer whose employees had been signing in and out each day did not have to bargain over the implementation of a computerized system requiring employees to scan their identification badges when they came in and left work. In *40th Judicial Circuit Court*, 2000 MERC Lab Op 350, the Commission concluded that an employer who had not had a sign-in policy had the right to institute one without bargaining with the union. I find that Charging Party's allegation that Respondent unilaterally changed terms and conditions of employment by implementing a requirement that employees punch a time clock does not state a claim under PERA. If the Commission concludes that this allegation is not untimely filed, I recommend that it dismiss it on this basis. 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: _____