STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

COUNTY OF WASHTENAW,
Public Employer-Respondent,

Case No. C08 H-165

-and-

AFSCME COUNCIL 25, LOCAL 3052,
Labor Organization-Charging Party.
_____/

APPEARANCES:

Gallagher & Gallagher, P.L.C., by Paul Gallagher, Esq., for the Public Employer

Aina N. Watkins, Esq., Staff Attorney, for the Labor Organization

DECISION AND ORDER

On December 5, 2008, Administrative Law Judge David M. Peltz 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

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Christine A. Derdarian, Commission Chair

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

Dated:_____

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

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AFSCME COUNCIL 25, LOCAL 3052,
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APPEARANCES:

Aina N. Watkins, Staff Attorney, for Charging Party

Gallagher & Gallagher, P.L.C., by Paul Gallagher, for Respondent

DECISION AND RECOMMENDED ORDER ON SUMMARY DISPOSITION

On August 15, 2008, AFSCME Council 25, Local 3052 filed an unfair labor practice charge against Washtenaw County. 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 assigned to David M. Peltz, Administrative Law Judge (ALJ) of the State Office of Administrative Hearings and Rules, on behalf of the Michigan Employment Relations Commission.

The charge alleged that Respondent Washtenaw County breached the terms of a letter of understanding entered into between the parties by submitting a grievance to the County's reclassification committee. The charge further asserted that the Employer's submission of the grievance to the reclassification committee violated Section 10(1)(a) of PERA because such action amounted to "union animus and retaliation." Finally, the charge alleged that the County violated its duty to bargain in good faith by unilaterally transferring work previously performed by the President of Local 3052, Nancy Heine, to non-bargaining unit personnel. According to the charge, this transfer of unit work was also the subject of a grievance filed by the Union in January of 2008.

In an order dated September 4, 2008, I directed the Union to show cause why the charge should not be dismissed as untimely and for failure to state a claim under PERA. Charging Party filed a response to the order to show cause on September 23, 2008. The response failed to address the issues raised by the undersigned in the order to show cause in

any substantive respect. In a letter dated October 23, 2008, I notified the Union of the deficiencies in its response and indicated that, absent a withdrawal by no later than November 6, 2008, I would issue a decision recommending dismissal of the charge without a hearing.

On November 6, 2008, Charging Party filed an "Amended Response to the Order to Show Cause." In this pleading, the Union asserted that it had found "new evidence" establishing that the Employer had "continuously since January of 2008 unilaterally transferred bargaining unit work to a nonbargaining unit employee."

Discussion and Conclusions of Law:

According to the charge, AFSCME Council 25, Local 3052 and Washtenaw County are parties to a letter of understanding which provides, "Reclassifications are no longer part of negotiations as long as this [Reclassification] Committee is in effect, including the grievance procedure for individuals submitting reclassification request[s]." The Union contends that the County breached this agreement during a March 2008 meeting of the reclassification committee. According to the Union, the Employer improperly relied upon a pending grievance involving the alleged unlawful transfer of bargaining unit work to support its position concerning the reclassification of a unit position. The charge further asserts that the Employer's "submission" of the grievance to the reclassification committee violated Section 10(1)(a) of PERA because such action "amounts to union animus and retaliation."

The Commission has consistently held that an employer's alleged breach of contract will not constitute an unfair labor practice unless a repudiation can be demonstrated. A finding of repudiation cannot be based on an insubstantial or isolated breach of contract. *Oakland County Sheriff*, 1983 MERC Lab Op 538, 542. 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 Comm Sch*, 1984 MERC Lab Op 894, 897. The Commission will find a repudiation only when 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; *Cass City Pub Sch*, 1980 MERC Lab Op 956, 960. In the instant case, the Union has failed to plead facts which, if proven, would establish that this dispute is anything other than an ordinary disagreement over the meaning and interpretation of the parties' letter of understanding. The mere addition of a conclusory allegation of "union animus and retaliation" based upon the Employer's submission of the grievance to the reclassification committee is insufficient to transform an otherwise deficient charge into a valid claim under PERA.

Charging Party next alleges that the Employer violated its duty to bargain in good faith by unilaterally transferring bargaining unit work to a non-unit employee. Pursuant to Section 16(a) of the Act, 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 consistently held that the statute of limitations is jurisdictional and cannot be waived. *Walkerville Rural Community Schools*, 1994 MERC Lab Op 582, 583. The limitations period commences when the charging party knows or should have known of the

acts constituting the unfair labor practice and has good reason to believe the acts were improper or done in an improper manner. *Huntington Woods v Wines*, 122 Mich App 650, 652 (1983). In its charge and initial response to the order to show cause, the Union admitted that the County transferred some of Union President Heine's job duties to Shannon Whitaker, a non-bargaining unit employee, after Charging Party filed a unit clarification petition in the summer of 2007. In addition, the Union conceded that it filed a grievance over this issue in January of 2008. Thus, it is apparent that the Union was aware of the allegedly unlawful transfer of bargaining unit work more than six months prior to filing of the charge in this matter on August 15, 2008.

In an obvious attempt to resuscitate what is clearly an untimely charge, the Union now asserts in its amended response to the order to show cause that it has discovered "new evidence" establishing that the County has "continuously" transferred work from the bargaining unit since January of 2008. In support of this contention, the Union asserts that in March of 2008, the Employer unlawfully assigned to Whitaker duties which were previously performed by the Union President. This allegation constitutes nothing more than an assertion of a continuing PERA violation, a theory which the Commission has continuously and steadfastly rejected. *City of Adrian*, 1970 MERC Lab Op 579, 581, adopting the U.S. Supreme Court ruling in *Local Lodge 1424, Machinists v NLRB (Bryan Mfg Co)*, 362 US 411 (1960). See also *County of Lapeer*, 19 MPER 45 (2006); *Detroit Bd of Ed*, 16 MPER 29 (2003); *City of Flint*, 1996 MERC Lab Op 1, 9-11. Even if the "newly discovered" transfer of work amounted to an entirely separate and distinct violation for purposes of the statute of limitations, such an allegation would nevertheless be untimely given that it was first raised by the Union on November 6, 2008, more than six months after the allegedly unlawful conduct by the County.

For the above reasons, I conclude that the charge filed by AFSCME Council 25, Local 3052 in this matter is both substantively deficient and patently untimely. What makes this case particularly problematic is the fact that the Union also filed several unmeritorious responses to the order to show cause which failed to address the central and obvious deficiencies in the charge. Were it not for *Goolsby v Detroit*, 211 Mich App 214, 224 (1995), a decision which the Commission has urged the Court of Appeals to reconsider, I would follow MERC's earlier decision in *Wayne-Westland Community Sch Dist*, 1987 MERC Lab Op 381, aff'd sub nom *Hunter v Wayne-Westland Community Sch Dist*, 174 Mich App 330 (1989) and award attorney fees and costs to Respondent as compensatory damages.

RECOMMENDED ORDER

It is hereby recommended that the unfair labor practice charge be dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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David M. Peltz
Administrative Law Judge
State Office of Administrative Hearings & Rules

Dated: _____