STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

SOUTHFIELD PUBLIC SCHOOLS,
Public Employer-Respondent,

Case No. C08 J-217

-and-

SOUTHFIELD EDUCATION ASSOCIATION,
Labor Organization-Charging Party.
_____/

APPEARANCES:

Floyd E. Allen and Associates, by George D. Mesritz, Esq., for the Respondent

Law Offices of Lee and Correll, by Michael K. Lee, Esq., for the Charging Party

DECISION AND ORDER

On December 16, 2008, Administrative Law Judge (ALJ) Julia C. Stern issued her Decision and Recommended Order in the above matter pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216. On August 19, 2010, the Commission received a letter from Charging Party indicating that it no longer wishes to pursue the matter and requesting that the charge be withdrawn. Charging Party's request is hereby approved. This Decision and Order and the Decision and Recommended Order of the Administrative Law Judge will be published in accordance with Commission policy.

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

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Law Offices of Lee and Correll, by Michael K. Lee, Esq., for Charging Party

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE ON SUMMARY DISPOSITION

On October 4, 2008, the Southfield Education Association filed the above charge with the Michigan Employment Relations Commission (the Commission) against the Southfield Public Schools alleging that in the spring of 2008 Respondent violated its duty to bargain under Sections 10 and 15 of the Public Employment Relations Act (PERA or the Act), 1965 PA 379, as amended, MCL 423.210 and 423.215. The charge alleges that Respondent unilaterally altered an existing term or condition of employment when it appointed Charging Party's members to accreditation standards committees in violation of the parties' past practice of permitting Charging Party to select the teacher members of committees staffed jointly by teachers and administrators. The charge was assigned to Administrative Law Judge Julia C. Stern of the State Office of Administrative Hearings and Rules pursuant to Section 16 of the Act.

On November 3, 2008, Respondent filed a motion for summary disposition pursuant to Rule 165(2) (d) of the Commission's General Rules, 2002 AACS, R 423.165(2) (d). The motion asserts that the charge fails to state a claim upon which relief can be granted under PERA because the staffing of the committees is not a mandatory subject of bargaining and because there was no repudiation of the parties' collective bargaining agreement. On November 24, 2008, Charging Party filed a response in opposition to the motion which included an affidavit from its president and copies of email correspondence between the parties. Based on the facts alleged in Charging Party's pleadings, I make the following conclusions of law and recommend that the Commission issue the following order.

Facts:

As noted above, the charge in this case was filed with the Commission on October 14, 2008. A copy of the charge, along with a notice of hearing, was served by the Commission on Respondent by certified mail on October 20, 2008. Charging Party did not submit a proof of service with the charge. However, on December 8, 2008, in response to my request, Charging Party provided a statement indicating that it served Respondent with a copy of the charge by certified mail by depositing in the mail on October 14, 2008.

Charging Party represents a bargaining unit of all certified teaching personnel, including school psychologists, ROTC instructors and school social workers employed by the Respondent. Respondent has numerous committees made up of both teachers and administrators. For at least a decade, the parties' practice has been to allow Charging Party to appoint the bargaining unit members serving on these committees. Charging Party first solicits volunteers from among its membership to serve on the committees, and then submits the names of the volunteers to Respondent. However, all members serving on committees must be approved by Charging Party's governing body, the Southfield Education Association Legislative Board (SEALB). Neither the parties' most recent collective bargaining agreement, which expired on August 11, 2008, nor their previous contracts contain any reference to how members of joint committees are to be appointed.

In early 2008, Gail Wilson, Respondent's executive director of human resources and labor relations, contacted Charging Party president Ted Peters and informed him of Respondent's intent to create committees to work on achieving or maintaining Respondent's accreditation from the North Central Association (NCA) Commission on Accreditation and School Improvement. An NCA committee was to be set up for each school building consisting of teachers and administrators from that building.

Sometime before March 12, 2008, Peters heard that Respondent had appointed members of Charging Party's unit to serve on the NCA committees. On March 12, Peters sent Wilson a memo stating that the responsibility of naming teachers to joint committees rested with the union. He said that the NCA teams created by Respondent were not appropriate. Peters listed the names of teachers who had submitted their names to Charging Party to serve on the committees and told Wilson that he was authorizing these teachers to temporarily work on their building teams until they were approved by the SEALB on March 18. Peters noted that at some buildings there were no or an insufficient number of volunteers, and he suggested that he and Wilson meet to look for a solution.

Peters did not receive a response to his memo. On April 10, Peters sent Wilson the following email:

> I keep hearing that there may be NCA Building Committees working out there. I sent you a letter on March 12, 2008 and stated that the committees will not be working until you and I agree to their make up. If they are meeting, I would expect you to stop it. Otherwise, please inform me so that we may start a grievance.

Wilson did not respond to Peters' email. On the morning of April 14, Peters sent the email again. A few minutes later, Wilson replied as follows:

> I cannot find any language in the contract re: NCA committees, their formation or their implementation. If I have missed the language, please point me in the right direction.

Later that morning, Peters sent Wilson another email:

> It was you who asked me to set up the committees. Now, it has been you who does not answer my questions. All union committees are set up by the union. Ask yourself where in the contract does it say that you can name administrators. If you can name teachers, I can name administrators.
>
> Please, I thought NCA was important. Do you wish to work this out, or to fight a fight that need not be fought?

Wilson did not respond to Peters' email. Sometime thereafter, the SEALB passed a resolution asking its members not to participate in the NCA committees. On April 25, 2008, Respondent, in a letter signed by its legal counsel, sent Peters a letter chastising Charging Party for this action. Respondent stated that it considered serving on these committees to be part of the teachers' assigned job duties. It also threatened to discipline Peters or any other employee who either refused to complete his or assigned job duties or directed another employee not to do so. However, Charging Party does not assert that any member of the unit was disciplined for refusing to serve on an NCA committee or that any unit member was assigned to serve on a committee against his or her will.

Discussion and Conclusions of Law:

Section 16(a) of the Act states:

> No complaint shall be based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the commission and the service of a copy thereof upon the person against whom the charge was made.

Commission Rule 151(4), R 423.151(4) reads:

> Upon filing of a charge, the charging party or parties shall be responsible for the timely and proper service of a copy thereof upon the charged party or parties against whom the charge is made as prescribed in R 423.182.

Commission Rule 182(2), R 423.182 (2) reads as follows:

> Where service of any document or pleading, other than an unfair labor practice charge filed under R 423.151, is effected by mail of private delivery service, the

> date of service is the date of deposit with the United States post office or other carrier. For service of an unfair labor practice charge filed under R 423.151, or where service of any document is effected by hand, by facsimile transmission, or by any other method authorized by these rules, the date of service is the date of receipt.

The six month period in Section 16(a) begins to run when the charging party knows or should have known of the alleged violation, i.e., when it knows of the act which caused its injury and has good reason to believe that the act was improper or done in an improper manner. *City of Detroit*, 18 MPER 73 (2005); *AFSCME Local 1583*, 18 MPER 42 (2005); *Huntington Woods v Wines,* 122 Mich App 650, 652 (1983), aff'g 1981 MERC Lab Op 836.

When Charging Party president Peters sent his memo to Respondent representative Wilson on March 12, 2008, Charging Party knew or suspected that Respondent had appointed members of the bargaining unit to the NCA committees without Charging Party's involvement. On April 10, Peters sent Wilson an email which, among other things, asked if this was true. Wilson's April 14 email and her failure to reply to Peters' response implicitly confirmed Peters' suspicions. It also told Charging Party that Respondent did not acknowledge an obligation to allow Charging Party to appoint the teacher members of the committees. I find that by the end of the day on April 14, 2008, Charging Party knew of the unilateral change that constitutes the alleged unfair labor practice in this case. The statute of limitations in Section 16(a), therefore, began to run on that day. The charge in the instant case was filed with the Commission on October 14, 2008, six months to the day after the statute began to run. However, the charge was not served on Respondent in accord with Rule 182(2) until sometime after that date. Respondent did not argue in its motion that the charge was untimely filed. However, the limitation contained in Section 16(a) 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. I conclude that the charge was untimely as it was not filed and served on Respondent within six months of the alleged unfair labor practice as required by Section 16(a) of PERA. I recommend, therefore, that the Commission dismiss the charge on this basis.

Under Section 15 of PERA, a public employer has an obligation to bargain over the "wages, hours, and other terms and conditions of employment" of its employees represented by a union. When a contract is silent on a mandatory subject of bargaining, a past practice regarding that subject may attain the status of a term or condition of employment which cannot be unilaterally altered by the employer. *Amalgamated Transit Union, Local 1564 v SEMTA*, 437 Mich 441, 454-455 (1991). However, matters which do not relate to any aspect of the employment relationship are not "terms or conditions of employment." See *NLRB v Borg-Warner Corp*, 356 US 342, 349-350 (1958).

In its motion for summary disposition, Respondent argues that the staffing of the NCA committees is not a mandatory subject of bargaining since it does not impact the terms and conditions of employment of bargaining unit members. Charging Party disagrees. It argues that the fact that the building committees operate at the behest and for the benefit of the school district and are staffed by teachers creates a sufficient nexus between the staffing of the

committees and the employment relationship to require Respondent to bargain over how committee members are appointed. I find that Charging Party has not alleged any facts in its charge or pleadings to support its claim that how NCA committee members are appointed, or their identities, impacts its unit members' terms and condition of employment. I note that although an accreditation committee might conceivably have the authority to effectively recommend changes in terms and conditions, Charging Party has not asserted that the NCA committees have that authority in this case. Based on the facts as alleged, I conclude that Respondent did not have a responsibility to bargain over its decision not to permit Charging Party to appoint the teacher members of the NCA committees in this case.

Charging Party also argues that Respondent had an obligation to bargain over the assignment of new job duties, i.e., those relating to the NCA committees, to Charging Party's unit members. This raises a different question than that posed by the original charge. That is, since joint committees have previously been staffed by volunteers, does Respondent have an obligation to bargain over making the NCA committee assignments compulsory? However, the facts as alleged in charge do not indicate that this change was actually made. On April 25, 2008, Respondent stated that it considered serving on the committees to be part of the teachers' normal job duties and threatened to discipline any member of the unit who refused to complete his or her assigned duties. However, Charging Party has not asserted that Respondent assigned committee duties to any unit member who did not want to serve. I conclude that the charge in this case does not state a claim upon which relief can be granted under PERA. I recommend that charge be dismissed on this basis and because it was untimely filed, and 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: _____