STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

HARRISON TOWNSHIP,
Public Employer-Respondent,

-and-

Case No. C12 I-186
Docket No. 12-001621-MERC

MICHIGAN AFSCME COUNCIL 25, AFL-CIO,
Labor Organization-Charging Party.
_____/

APPEARANCES:

Keller Thoma, P.C., by Dennis B. DuBay, for Respondent

Tere McKinney, Staff Attorney, for Charging Party

DECISION AND ORDER

On January 10, 2014, Administrative Law Judge Julia C. Stern issued a 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

_____/s/_____
Edward D. Callaghan, Commission Chair

_____/s/_____
Robert S. LaBrant, Commission Member

_____/s/_____
Natalie P. Yaw, Commission Member

Dated: February 25, 2014

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

HARRISON TOWNSHIP,
Public Employer-Respondent,

Case No. C12 I-186
Docket No. 12-001621-MERC

-and-

MICHIGAN AFSCME COUNCIL 25 AND ITS AFFILIATED LOCAL 1103.14,
Labor Organization-Charging Party.
_____/

APPEARANCES:

Keller Thoma, P.C., by Dennis B. DuBay, for Respondent

Tere M. McKinney, Staff Counsel, AFSCME Council 25, for Charging Party

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON MOTIONS FOR SUMMARY DISPOSITION

On September 21, 2012, AFSCME Council 25 and its affiliated Local 1103.14 filed the above unfair labor practice charge with the Michigan Employment Relations Commission (the Commission) against Harrison Township. The charge alleges that the Respondent violated §§10(1)(a) and 10(1)(e) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210, by unilaterally altering an existing term or condition of employment. Pursuant to §16 of PERA, the charge was assigned to Julia C. Stern, Administrative Law Judge (ALJ) for the Michigan Administrative Hearing System.

On October 22, 2012, Respondent filed a motion for summary disposition asserting that the charge was untimely filed and that it failed to state a claim upon which relief could be granted. On November 14, 2012, Charging Party filed a response in opposition to the motion. Charging Party subsequently indicated that it intended to file a cross-motion for summary disposition, and the matter was held in abeyance. Charging Party filed its motion on September 13, 2013. Respondent filed a response in opposition to this motion on September 19, 2013, and a supplemental response on October 3, 2013.

Based on facts as set forth in the charge and pleadings and not in dispute, I make the following conclusions of law and recommend that the Commission issue the following order.

The Unfair Labor Practice Charge:

Charging Party represents a bargaining unit of employees of Respondent. A collective bargaining agreement covering this unit expired on December 31, 2011. Under this agreement, Respondent was required to make lump sum longevity payments to eligible unit employees on the pay periods following their annual anniversary dates. The amounts of the payment varied with the employees' length of service. The charge alleges that Respondent repudiated the collective bargaining agreement and/or unilaterally altered terms and conditions of employment by refusing, on and after March 23, 2012, to make longevity payments to employees in the amounts established by the expired contract.

Facts:

In June 2011, the Legislature adopted 2011 PA 54 (Act 54), which added §15b to PERA. Section 15b (1) states:

> Except as otherwise provided in this section, after the expiration date of a collective bargaining agreement and until a successor collective bargaining agreement is in place, *a public employer shall pay and provide wages and benefits at levels and amounts that are no greater than those in effect on the expiration date of the collective bargaining agreement.* The prohibition in this subsection includes increases that would result from wage step increases. Employees who receive health, dental, vision, prescription, or other insurance benefits under a collective bargaining agreement shall bear any increased cost of maintaining those benefits that occurs after the expiration date. The public employer is authorized to make payroll deductions necessary to pay the increased costs of maintaining those benefits. [Emphasis added].

Article 32 of the collective bargaining agreement referenced above required Respondent to make longevity payments to unit employees in accord with this schedule:

Years of Continuous Service	Lump Sum Payment
Fifth through ninth year	$1,000
Tenth through fourteenth year	$2,000
Fifteenth through nineteenth year	$3,000
Twentieth year and above	$4,500

Payment was to be made in the first paycheck after the employee's anniversary date. As noted above, the collective bargaining agreement containing Article 32 expired on December 31, 2011. On June 27, 2012, the parties entered into a new collective bargaining agreement. Between

December 31, 2011 and June 27, 2012, there was no collective bargaining agreement in effect covering this unit.

A number of unit members reached their anniversary dates and were eligible for lump sum longevity payments between December 31, 2011 and June 27, 2012. Respondent asserts, and Charging Party does not dispute, that all but two of these unit members were not eligible under the language of the expired agreement to receive a higher longevity payment in 2012, and that all but two unit members were paid the same lump sum amount on their 2012 anniversary date that they would have received had the collective bargaining agreement remained in effect. The two exceptions were bargaining unit members Earl Tesch and Rochelle Leon. Earl Tesch reached his five year anniversary date on March 1, 2012. Although Tesch was not eligible for and did not receive a longevity payment in 2011, he would have been eligible for a payment of $1,000 in 2012 under the expired contract. Rochelle Leon's anniversary date was either April 1 or April 15. On her anniversary date in 2012, Leon had accumulated fifteen years of continuous service. In 2011, Leon received a $2,000 longevity payment. Under the expired contract, Leon would have been eligible for a payment in 2012 of $3,000.

On March 13, 2012, after Tesch did not receive a longevity payment in his first paycheck after his March 1 anniversary date, Charging Party filed a grievance asserting that Tesch met the requirements to receive longevity pay and should have received it. On March 23, 2012, Respondent gave Charging Party a written answer to the grievance which stated:

> Denied due to PA 54 of 2011. Further, the grievance is denied based on the fact that the issue is with state law and not the CBA.

In its motion, and in the affidavit of Respondent Township Supervisor Kenneth Verkest which it attached to the motion, Respondent asserts that it told Tesch, Leon, and Charging Party representatives that due to §15b of PERA, unit members would not receive a greater longevity lump sum payment than they had received the previous year. However, neither the affidavit nor the motion states when Respondent conveyed this information to Charging Party. Charging Party asserts that it had no reason to know that the failure to pay Tesch was not an isolated incident until it received Respondent's answer to the Tesch grievance.

In her first paycheck after her 2012 anniversary date, Leon received a lump sum longevity payment of $2000, the same amount that she had received the previous year. As discussed above, Leon would have received $3,000 in 2012 had the contract not expired under the formula set out in the expired contract. On April 4, 2012, Charging Party demanded that Respondent pay both Leon and Tesch the amounts it asserted were due them under the expired contract. Respondent refused. As noted above, Charging Party filed the instant charge on September 21, 2012.

Discussion and Conclusions of Law:

Section 16(a) of PERA states, "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 and the service of a copy thereof upon the person against whom the charge is made. . ." The six

month statute of limitations is jurisdictional. *Walkerville Rural Comm Schs*, 1994 MERC Lab Op 582; *Washtenaw Cmty Mental Health*, 17 MPER 45 (2004); *Police Officers Labor Council Local 355*, 2002 MERC Lab Op 145. The limitation period under PERA commences when the charging party knows or should have known of the alleged unfair labor practice, which is the date that it both knows of the act which caused the injury and has good reason to believe that the act was improper. *Huntington Woods v Wines*, 97 Mich App 86, 90 (1980) and 122 Mich App 650, 652 (1983).

In its motion for summary dismissal, Respondent asserts that Charging Party was aware by the time Charging Party filed the grievance on Tesch's behalf that after the contract expired Respondent intended to pay all employees the same longevity payment they had received the previous year. It argues, therefore that the statute began to run no later than March 13, 2012, and that the charge was untimely because it was not filed within six months of that date. However, Charging Party asserts that it did not know or have reason to know that the failure to pay Tesch was not an isolated incident until it received the Tesch grievance answer. It argues that since it did not know or have reason to suspect that Respondent had unilaterally altered a term and condition of employment established by the expired contract until March 23, the charge that it filed on September 21 was not untimely under §16(a). In the alternative, it argues that Respondent's failure to pay Leon the longevity pay it allegedly owed her was a separate unfair labor practice and that the charge was timely as to that unfair labor practice.

Charging Party obviously knew when it filed the Tesch grievance on March 13 that Tesch had not received a longevity payment. If this was all that it knew, Charging Party did not have good reason to believe that an unfair labor practice had been committed; Respondent's failure to pay Tesch might have been an oversight. I find that the statute of limitations began to run when Charging Party first learned of the alleged unilateral change, i.e. when it first learned that Respondent intended to freeze longevity payments at their 2011 levels after the contract expired. It appears from the pleadings, however, that there may be a dispute of fact about when Charging Party knew or should have known of Respondent's intention. I conclude, therefore, that summary dismissal of the charge on statute of limitations grounds is not appropriate.

I agree with Respondent, however, that it did not violate its duty to bargain in good faith by freezing the amount of the longevity payments it made to unit employees after its collective bargaining agreement with Charging Party expired. As noted above, §15b requires a public employer, after the expiration of a collective bargaining agreement, to "pay and provide wages and benefits at levels and amounts that are not greater than those in effect on the expiration date of the collective bargaining agreement."

Charging Party argues that §15b does not apply because the longevity payments in question are not "wages" under this provision, but rather lump sum payments made for years of service. Section 15b does not include definitions of "wages" or "benefits" as used in that section. However, the term "wages" is used in §15(1) of PERA in describing the scope of a public employer's duty to bargain; a public employer has a duty to bargain over "wages, hours and other terms and conditions of employment." In the absence of a specific definition in §15b, I conclude that the Legislature intended "wages" to have the meaning it has elsewhere in PERA and in the National Labor Relations Act (NLRA), 29 USC 150 et seq., the federal statute from

which the phrase, "wages, hours and other terms and conditions of employment" is borrowed. The term "wages" as used in the NLRA has long been held by the National Labor Relations Board (NLRB) to mean all emoluments of value accruing to employees out of their employment relationship, including pension and insurance benefits as well as wages paid on an hourly basis. *Inland Steel Company,* 77 NLRB 1, 4 (1948), enfd 170 F2d 247 (CA 7, 1948), cert denied 336 US 960 (1949). See also *Woonsocket Spinning Co,* 252 NLRB 1170 (1980) (Christmas bonus based on the employees' attendance and seniority constituted "wages" under the NLRA.)

I find that the longevity payments in this case constituted part of the unit employees' compensation for their services and, as such, constituted wages and/or benefits within the meaning of PERA. I conclude that under §15b of PERA, Respondent was prohibited from making longevity payments in amounts greater than the payments unit employees were receiving at the time the contract expired until the parties reached a new agreement. I further conclude, therefore, that Respondent did not violate its duty to bargain in good faith by freezing longevity payments between December 31, 2011 and the date the parties reached a new collective bargaining agreement in June 2012. Based on these conclusions, I recommend that Charging Party's motion for summary disposition be denied, that Respondent's motion for summary dismissal be granted, 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
Michigan Administrative Hearing System

Dated: January 10, 2014