STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

DETROIT TRANSPORTATION CORPORATION,
Public Employer-Respondent,

Case No. C15 G-103
-and- Docket No. 15-046384-MERC

TEAMSTERS LOCAL 214,
Labor Organization-Charging Party.
_____/

APPEARANCES:

Joseph Valenti, President Teamsters Local 214, for Charging Party

DECISION AND ORDER

On September 23, 2015, 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 either 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: October 30, 2015

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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TEAMSTERS LOCAL 214,
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_____/

APPEARANCES:

Joseph Valenti, President Teamsters Local 214, for the Charging Party

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON SUMMARY DISPOSITION

On July 27, 2015, Teamsters Local 214 filed the above unfair labor practice charge with the Michigan Employment Relations Commission (the Commission) against the Detroit Transportation Corporation pursuant to Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210. Pursuant to Section 16 of PERA, the charge was assigned for hearing to Julia C. Stern, Administrative Law Judge (ALJ) for the Michigan Administrative Hearing System (MAHS).

On August 7, 2015, pursuant to Rule 1513 of the MAHS rules, R 792.11513, I issued an order directing Charging Party to show cause in writing why its charge against the Employer should not be dismissed without a hearing because it was untimely filed. Charging Party did not respond to my order.

Based upon the facts asserted in the charge, I make the following conclusions of law and recommend that the Commission issue the following order.

The Unfair Labor Practice Charge and Facts:

Charging Party represents a bargaining unit of employees of the Respondent. On October 30, 2014, Charging Party filed a "class action" grievance protesting Respondent's unilateral changes in the healthcare benefits it provides to Charging Party's members. The charge asserts that the changes made by Respondent "will cost some members as much as $950 as of July 2015." The charge also

asserts that "As of this date, June 22, 2015, Respondent refused to respond to the grievance as outlined in the grievance procedure in the current collective bargaining agreement."

Charging Party alleges that Respondent's refusal to respond to the October 30, 2014, grievance and its unilateral changes to employees' healthcare benefits violated §10(1)(a) and (b) of PERA.

Discussion and Conclusions of Law:

Charging Party failed to respond to my order to show cause why its charge against the Employer should not be dismissed. The failure of a charging party to respond to an order to show cause may warrant dismissal of the charge. *Detroit Federation of Teachers,* 21 MPER 3 (2008).

Under §16(a) of PERA, the Commission lacks jurisdiction to find an 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 party against whom the charge is made. 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 § 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. When the claim is based on the alleged failure of the respondent to take some action in violation of its statutory obligations, the statute of limitations begins to run when the charging party should have reasonably realized that the respondent would not take the action. *Washtenaw Co Cmty Mental Health.* The Commission refuses to apply a "continuing violation" theory to revive a charge based on unlawful conduct that began more than six months prior to the filing of a charge even though the conduct is continuing. *City of Adrian,* 1970 MERC Lab Op 579; *Detroit Bd of Ed*, 16 MPER 29 (2003).

As noted above, Charging Party alleges that Respondent violated PERA by unilaterally changing to employees' healthcare benefits on or before October 30, 2014. However, the instant unfair labor practice charge was not filed until July 27, 2015. According to the charge, the benefit changes either did not have an impact on employees until July 2015 or the employees experienced an increased impact in July 2015. However, the six month statute of limitations under §16(a) of PERA began to run when Charging Party learned of the changes, which was clearly sometime prior to October 30, 2014. I find that the allegation that Respondent violated PERA by unilaterally implementing changes in healthcare benefits is untimely under §16(a) of PERA because the charge was not filed within six months of the date Respondent announced these changes.

Charging Party also alleges that Respondent violated PERA by refusing to respond to its October 30, 2014, grievance as required by the grievance procedure in the parties' collective bargaining agreement. The charge was filed almost nine months after the grievance. The charge, as filed, did not indicate whether Respondent simply failed to respond to the grievance or whether it

affirmatively refused to do so. If Respondent simply failed to respond to the grievance after it was filed on October 30, 2014, the statute of limitations began to run when Charging Party should reasonably have realized that it would not respond. Charging Party was given the opportunity, in response to my order to show cause, to explain why the statute had not run on its claim when it filed its charge. However, it did not do so. I conclude that if Respondent did not respond to the grievance, Charging Party should have reasonably realized within six months of the date the grievance was filed that Respondent would not respond. Therefore, I find that the allegation that Respondent violated PERA by refusing to respond to the October 30, 2014, grievance is also untimely under §16(a) of PERA.

In accord with the facts and discussion and conclusions of law set forth above, I conclude that the charge should be summarily dismissed because it was not timely filed under §16(a) of PERA. 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
Michigan Administrative Hearing System

Dated: September 23, 2015