STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

UNIVERSITY OF MICHIGAN,
Public Employer-Respondent,

Case No. C02 K-241

-and-

UNIVERSITY OF MICHIGAN SKILLED TRADES UNION,
Labor Organization-Charging Party.
_____/

APPEARANCES:

University of Michigan, Office of the General Counsel, by David J. Masson, Esq., for the Respondent

Corriveau & Associates, P.C., by, Richard Corriveau, Esq., for the Charging Party

DECISION AND ORDER

On February 5, 2003, Administrative Law Judge Julia 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

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Dated: _____

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APPEARANCES:

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

Richard Corriveau, Corriveau & Associates, P.C., for the Charging Party

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

On November 8, 2002, the University of Michigan Skilled Trades Union filed the above charges against the University of Michigan, alleging that the Respondent violated its duty to bargain in good faith under Section 10(1)(e) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210. Charging Party alleges that Respondent unilaterally repudiated a term and condition of employment established by past practice when it limited the union release time of Charging Party's vice-president to eight hours per month. On December 23, 2002, Respondent filed a motion for summary disposition pursuant to R 423.165(c). Respondent asserts that the charge is barred by the statute of limitations contained in Section 16(a) of PERA. On December 26, I issued an order to show cause why the charge should not be dismissed for the reasons stated in the motion. Charging Party filed its response on January 16, 2003. Based on the facts as set forth in Charging Party's pleadings, and the arguments contained in Respondent's motion and Charging Party's response, I make the following conclusions of law and recommend that the Commission issue the following order.

Background:

Charging Party represents a bargaining unit of skilled trades employees of the Respondent. The last several contracts between the parties provided that Charging Party's vice-president would be released eight hours per month to "attend to Trade Board business." However, Respondent, in practice, permitted the vice-president to use up to 1,000 hour of release time per year. The vice-president used this time to investigate grievances, attend grievance meetings, and conduct other union business. During the summer of 2000, the parties were negotiating a new contract to cover the period August 1, 2000 through July 31, 2003. Charging Party proposed that the practice of granting the vice-president up to 1,000 hours of release time per year be reduced to writing and made part of the contract. Respondent acknowledged the existence of the practice, but rejected Charging Party's proposal. On October 3, 2000, the parties executed a new contract containing the same release time language as their previous agreement.

On May 2, 2002, the parties held a special conference to discuss release time for the vice-president. At that meeting, Respondent indicated that, in its opinion, the vice-president was being released to attend meetings that, per the contract, should be attended only by the president or steward. Respondent stated that, under the contract, the vice-president's role did not include grievance processing. On May 10, 2002, Respondent sent Charging Party a letter stating, "effective immediately the Vice President will not be scheduled or released to attend to representation matters, unless specifically allowed by the CBA."

Respondent did not act immediately to implement this change. On July 14, 2002, however, the vice president's supervisor told him that the department planned on enforcing the Human Resources department's position on his release time. Charging Party immediately filed a grievance. Respondent denied the grievance on September 13, 2002. In its response, Respondent indicated that the grievance was untimely because Respondent had stated its position on proper release time for the vice-president in its May 10, 2002 letter. On September 18, Charging Party made a demand to bargain over the effect of the change in release time. The parties met on October 23, 2002, at which time Respondent informed Charging Party that it intended on "sticking by the communication of May 10, 2002."

As indicated above, the charge was filed with the Commission on November 8, 2002. Charging Party did not send a copy of the charge to Respondent. The Commission mailed a notice of hearing and a copy of the charge to Respondent by certified mail on December 4, 2002. According to the return receipt, the Respondent received the charge on December 9, 2002.

Discussion and Conclusions of Law:

Section 16(a) of PERA prohibits the Commission from acting on an unfair labor practice "occurring more than 6 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 statute provides for only one exception: where the person aggrieved is prevented from filing a charge by reason of service in the armed forces. The Commission has held that the statute of limitations in Section 16(a) is jurisdictional and cannot be waived. *Walkerville Rural Community Schools*, 1994 MERC Lab Op 582; *Shiawasee County Rd. Comm.*, 1978 MERC Lab Op 1182. Moreover, under Commission Rule 151, R 423.151, a charging party is responsible for the timely and proper service of a copy of the charge upon the charged party. Pursuant to

Commission Rule 182, R 423.182(2), the date of service of an unfair labor practice charge is the date of receipt. Since Respondent did not receive a copy of the charge until December 9, 2002, the charge is untimely as to any alleged unfair labor practice occurring prior to June 9, 2002.

When a charge alleges that the employer has changed existing wages, hours, or terms and conditions of employment without satisfying its obligation to bargain, the statute of limitations begins to run from the date that the employer announces the change, not the date the employer implements the change. *City of Detroit (Dept of Water & Sewerage),* 1990 MERC Lab Op 400, 404; *Detroit Bd. of Ed,* 1974 MERC Lab Op 813.

Charging Party asserts that Respondent did not state with finality that it intended to adhere to the (literal) language of the collective bargaining agreement until October 23, 2002. However, the facts alleged in the charge indicate that after May 2, 2002, Respondent consistently took the position that the vice-president was entitled to only eight hours of release time per month.

For reasons stated above, I find that Respondent's motion should be granted and the charge be dismissed as untimely. I recommend that the Commission issue the order set forth below.

RECOMMENDED ORDER

The unfair labor practice charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern
Administrative Law Judge

Dated: _____