STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

AMALGAMATED TRANSIT LOCAL 26,
Labor Organization - Respondent,

Case No. CU06 D-013

-and-

WILLIAM DAWSON,
An Individual - Charging Party.
_____/

APPEARANCES:

John E. Eaton, Esq., for the Labor Organization

William Dawson, *In Propria Persona*

DECISION AND ORDER

On November 29, 2006, Administrative Law Judge Doyle O'Connor issued his Decision and Recommended Order in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, and recommending that the Commission dismiss the charges. The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of the Act. Pursuant to Rule 76, R423.176 of the General Rules of the Employment Relations Commission, exceptions to the Decision and Recommended Order were due on December 22, 2006.

No exceptions were filed on or before the specified date. Rather, we received Charging Party's exceptions on December 27, 2006. Although the envelope in which the exceptions were mailed was postmarked on December 22, 2006, it is well established that the date of filing of exceptions is the date the document is received at the Commission's office, not the date posted. See e.g. *Police Officers Association of Michigan*, 18 MPER 14 (2005); *City of Detroit (Finance Dep't, Income Tax Div)*, 1999 MERC Lab Op 444,445; *Battle Creek Police Dep't*, 1998 MERC Lab Op 684, 686; *Frenchtown Charter Twp*, 1998 MERC Lab Op 106, 110. Moreover, when the Administrative Law Judge's Decision and Recommended Order was served on the parties, the accompanying letter explicitly stated that the exceptions must be received at a Commission office by the close of business on the specified date. Accordingly, we hereby adopt the recommended order of the Administrative Law Judge as our final order and dismiss the charges.

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
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

AMALGAMATED TRANSIT LOCAL 26,
Respondent Labor Organization,

-and- Case No. CU06 D-013

WILLIAM DAWSON,
An Individual Charging Party.
_____/

APPEARANCES:

John E. Eaton, for the Respondent Labor Organization

William Dawson, in *pro per*, for the Charging Party

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE ON SUMMARY DISPOSITION

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 for hearing to Doyle O'Connor, Administrative Law Judge (ALJ) for the Michigan Employment Relations Commission. Based upon the entire record, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge and Findings of Fact:

These findings of fact are derived from the charge, from Charging Party's response to an order to show cause, and supporting documentation submitted by Charging Party, with those allegations taken in the light most favorable to Charging Party.

William Dawson filed a charge on April 10, 2006 suggesting that his former union, the Amalgamated Transit Local 26, had inadequately represented him in his efforts to secure reemployment with his former employer, City of Detroit, Department of Transportation. In support of that charge, Dawson supplied documentation establishing his efforts, dating back to 2004, to secure his Union's assistance in returning to work.

The documents supplied by Dawson establish that he was indefinitely suspended from his employment as a bus driver, upon the suspension of his driver's license, in September 2003. By

March 2004, Dawson's had secured a restricted driver's license, but was not allowed to return to work. In July 2004, Dawson's license was fully restored and Dawson sought reinstatement, with the assistance of his Union. The Employer refused to reinstate Dawson, citing the lapse of time, and converted the suspension to a termination. By September of 2004, Dawson had resorted to unsuccessfully appealing for relief from the Detroit City Council. In January of 2006, Dawson wrote to the president of the Amalgamated Transit Union in Washington, DC to complain that he had "been fighting with the [local] union presidents" since July of 2004 to try to get their assistance.

An order to show cause why the April 2006 charge against the Union, over events dating back to July 2004, should not be dismissed as untimely was issued pursuant to R423.165 (2)(c) on November 3, 2006 granting the Charging Party fourteen days to respond. Charging Party filed a response, in which he acknowledged that the Union advised him in 2004 that there was nothing more they could do for him. Dawson additionally noted that he accepted that answer at the time. Dawson asserted that he later learned, in 2006, that the Union had recently pursued grievances on behalf of other employers whom he believed to be similarly situated.

Discussion and Conclusions of Law:

Where a charge fails to state a claim under the Act, it is subject to dismissal pursuant to an order to show cause issued under R423.165. Accepting the allegations in the charge, and facts derived from the supporting documentation, as true, the complained of conduct by the Union began, and in fact last occurred, in July 2004. Unfair labor practice charges under PERA are subject to a six-month statute of limitations, which is jurisdictional and cannot be waived. *Walkerville Rural Community Schools*, 1994 MERC Lab Op 582, 583. A claim accrues when the charging party knows, or should know, of the alleged unfair labor practice. *Huntington Woods v Wines*, 122 Mich App 650 (1983), aff'g 1981 MERC Lab Op 836.

Additionally, the law is clear that when a complaint against a union is based on the union's alleged inactivity, the statute of limitations begins to run when the charging party should have reasonably realized that the union would not act on her behalf. *Washtenaw Community Mental Health*, 17 MPER 45 (2004); *Huntington Woods*, supra; *Pantoja v Holland Motor Express, Inc*, 965 F2d 323 (CA7, 1992); *Shapiro v Cook United, Inc*, 762 F2d 49 (CA6, 1985); *Metz v Tootsie Roll Industries, Inc*, 715 F2d 299 (CA7, 1983). Dawson sought to return to work with assistance from his local union in July of 2004. The Employer refused to reinstate Dawson, and instead converted his suspension to a termination. By September of 2004, Dawson had turned to other sources for assistance. It is Union's refusal to act which formed the basis of Dawson's Charge, and which commenced the running of the statute of limitations. As in *Huntington Woods*, the Dawson was aware for several years prior to filing his charge that the Respondent was refusing to take the action he requested, even if additional supporting evidence related to the claim was only secured after the passage of years. There is no allegation that the Union's allegedly improper inaction changed in nature at any point since July of 2004. The April 2006 charge is therefore untimely.

Moreover, the fact that Dawson is dissatisfied with his union's efforts is insufficient to constitute a proper charge of a breach of the duty of fair representation. *Eaton Rapids Ed Assoc*, 2001 MERC Lab Op 131; *Wayne County DPW*, 1994 MERC Lab Op 855. A union has considerable discretion to decide how, and whether or not, to pursue and present particular grievances. *Lowe v*

Hotel & Restaurant Employees Union, Local 705, 389 Mich 123, 145-146. A union's decision on how to proceed with an employee complaint is not unlawful as long as it is not so far outside a wide range of reasonableness as to be irrational. *Air Line Pilots Ass'n v O'Neill*, 499 US 65, 67 (1991); *City of Detroit (Fire Dep't)*, 1997 MERC Lab Op 31, 34-35. The April 2006 charge fails to allege arbitrary or bad faith conduct on the part of the Union, and, therefore, fails state a claim upon which relief could be granted.

RECOMMENDED ORDER

The unfair labor practice charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Doyle O'Connor
Administrative Law Judge

Dated:_____