STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

TRAVERSE CITY POWER AND LIGHT,
Public Employer-Respondent,

Case No. C11 D-086

-and-

UTILITY WORKERS OF AMERICA, LOCAL 285,
Labor Organization-Charging Party.
_____/

APPEARANCES:

Sondee Racine & Doren, P.L.C. by John P. Racine, for Respondent

James Gennett, National Representative, Utility Workers of America, for Charging Party

DECISION AND ORDER

On October 7, 2011, 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 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

_____
Edward D. Callaghan, Commission Chair

_____
Nino E. Green, Commission Member

_____
Christine A. Derdarian, Commission Member

Dated: _____

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

TRAVERSE CITY POWER AND LIGHT,
Public Employer-Respondent,

Case No. C11 D-086

-and-

UTILITY WORKERS OF AMERICA, LOCAL 285,
Labor Organization-Charging Party.
_____/

Sondee Racine & Doren, P.L.C. by John P. Racine, for Respondent

James Gennett, National Representative, Utility Workers of America, for Charging Party

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON SUMMARY DISPOSITION

On May 16, 2011, the Utility Workers of America, Local 285, filed the above unfair labor practice charge with the Michigan Employment Relations Commission (the Commission) against Traverse City Light and Power pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216. Charging Party represents a bargaining unit of employees of the Respondent. The charge alleges that Respondent violated its duty to bargain by unilaterally altering a pension benefit or benefits set forth in the parties' collective bargaining agreement. The alleged change occurred in or around May 2010. Pursuant to Section 16, the charge was assigned to Julia C. Stern, Administrative Law Judge for the Michigan Administrative Hearing System.

On August 4, 2011, Respondent filed a motion for summary disposition asserting that the charge did not state a claim upon which relief could be granted. On August 9, 2011, pursuant to Rule 165 of the Commission General Rules, 2002 AACS, R 423.165, I issued an order to Charging Party to show cause why the charge should not be dismissed. The order directed Charging Party to file a written response or amended charge which cited the section or sections of PERA which Respondent was alleged to have violated, explain the nature of the alleged violation(s), and explain why the charge was timely under Section 16(a) of PERA. The order stated that if the charge and response to the order did not state a timely and valid claim, or if no response was filed to the order, I would issue a decision recommending that the charge be dismissed without a hearing. Charging Party did not respond to this order. On September 9, 2011, I sent Charging Party a second order, in the form of a letter, directing it to file a response or amended charge, if it wished to proceed with the charge.

Charging Party did not respond to this order. Based on the facts set out 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:

The charge asserts that around May 2010, Respondent "elected to put a self imposed moratorium on the MERS program," thereby allegedly violating a provision in the parties' existing collective bargaining agreement. According to the charge, Charging Party filed a grievance over the contract violation. However, the parties mutually agreed to put the grievance in abeyance while Respondent considering reinstating the program. On or about April 15, 2011, Respondent notified Charging Party that it would not reinstate the program and officially denied the grievance. The charge alleges that Respondent's actions unilaterally violated the language of the current contract and disregarded negotiated contract language.

Discussion and Conclusions of Law:

If a term or condition of employment is covered by a provision in a current collective bargaining agreement, and the parties have agreed to a grievance resolution procedure ending in binding arbitration, the details and enforceability of the provision are generally left to arbitration. *Port Huron Ed Ass'n v Port Huron Area Sch Dist*, 452 Mich 309, 317-321 (1996). As the Commission stated in *St Clair Co Road Comm*, 1992 MERC Lab Op 533 at 538:

> Where there is a contract covering the subject matter of the dispute which has provisions reasonably relied on for the action in question, and the contract also has a grievance procedure with final and binding arbitration, the Commission finds that the contract controls and no PERA issue is present.

The Commission does not generally find a violation of the duty to bargain in good faith based on a party's violation or violations of a collective bargaining agreement unless the facts indicate that the party has repudiated that agreement. The Commission has defined "repudiation" as an attempt to rewrite the parties' contract, a refusal to acknowledge its existence, or a complete disregard for the contract as written. *Central Michigan Univ*, 1997 MERC Lab Op 501; *Redford Twp Bd of Ed*, 1992 MERC Lab Op 894. For the Commission to find an unlawful repudiation, the contract breach must be substantial and have a significant impact on the bargaining unit, and there must be no bona fide dispute over interpretation of the contract language. *Plymouth-Canton Cmty Schs*, 1984 MERC Lab Op 894, 897.

Section 16(a) of PERA states that 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 Section 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.

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). In the instant case, Charging Party did not specifically allege that Respondent repudiated the pension provisions of the collective bargaining agreement, but the statement in the charge that Respondent disregarded the contract could be interpreted as asserting that claim. However, Charging Party twice failed to respond to my orders to explain the nature of its charge. In addition, the alleged unilateral change in this case appears to have occurred on or around May 2010, which would be outside the statute of limitations. As set forth in the charge, the parties agreed to hold the grievance Charging Party filed over this change in abeyance. However, Charging Party did not assert that the statute of limitations under PERA was tolled by this agreement, despite my orders to it to explain why the charge was timely. I find that under the circumstances of this case, Charging Party's failure to respond to my orders to show cause was equivalent to an abandonment of its claims. I find the charge to be untimely on its face under Section 16(a) and find that the charge, as filed, does not state a claim upon which relief can be granted under PERA. I recommend, therefore, that the Commission issue the following order.

RECOMMENDED ORDER

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Julia C. Stern
Administrative Law Judge
Michigan Administrative Hearing System

Date: _____