STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF DETROIT,
Public Employer – Respondent,

-and-

Case No. C12 K-224
Docket No. 12-001857-MERC

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 25 AND ITS AFFILIATED LOCALS 542, 229, 2920 AND 2394,
Labor Organization – Charging Party.
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APPEARANCES:

Jason McFarlane, City of Detroit Law Department, for Respondent

Shawntane Williams, Staff Attorney, for Charging Party

DECISION AND ORDER

On April 24, 2013, Administrative Law Judge David M. Peltz issued his 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

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Edward D. Callaghan, Commission Chair

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Nino E. Green, Commission Member

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Robert S. LaBrant, Commission Member

Dated: _____________

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

CITY OF DETROIT,
Respondent-Public Employer,

Case No. C12 K-224
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AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 25 AND ITS AFFILIATED LOCALS 542, 229, 2920 AND 2394,
Charging Party-Labor Organization.
______________________________________/

APPEARANCES:

Jason McFarlane, for Respondent

Shawntane Williams, for 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 to David M. Peltz, Administrative Law Judge (ALJ) of the Michigan Administrative Hearing System, acting on behalf of the Michigan Employment Relations Commission (MERC). Based on the pleadings, briefs and the transcript of oral argument which was held on March 19, 2013 in Detroit Michigan, I make the following findings of fact and conclusions of law.

This case arises from an unfair labor practice charge filed on November 19, 2012, by the American Federation of State, County and Municipal Employees (AFSCME) Council 25 and its affiliated Locals 542, 229, 2920 and 2394. The charge alleges that the City of Detroit violated PERA by unilaterally changing job classifications for the Senior Tree Artisan and Tree Artisan Helper classifications.

On March 19, 2013, the parties appeared for hearing before the undersigned. I took oral argument on the issue of whether the charge was timely filed pursuant to Section 16(a) of PERA, which requires that a charge be filed within six months from the date of the occurrence of the unfair labor practice. After considering the arguments made by counsel for each party on the record, I concluded that the allegations set forth in the charge were untimely and that summary disposition was appropriate pursuant to Commission Rule R 423.165(1). See also *Detroit Public*

Schools, 22 MPER 19 (2009) and *Oakland County and Oakland County Sheriff v Oakland County Deputy Sheriffs Assoc*, 282 Mich App 266 (2009). Accordingly, I rendered a decision from the bench in which I recommended dismissal of the charge. The substantive portion of my findings of fact and conclusions of law are set forth below:

Findings of Fact

The City and the Locals specified in the charge are parties to a contract which expired on June 30, 2012. Negotiations for a new collective bargaining agreement have transpired since the date of expiration and, according to the charge, "[c]ontinuation of forced agreements are in effect."

The Union asserts that the week of March 26, 2012, the City sent notice to the Union indicating that [it was] implementing unilateral changes to job classifications for two positions, those being Senior Tree Artisan and Tree Artisan Helper, and the charge goes on to explain exactly what those changes were.

According to the charge, Mel Brabson, the staff representative for the applicable bargaining units, sent a written demand to Lamont Satchel, Director of Labor Relations for the City, on April 12, 2012. The demand states, according to the charge, "We believe these alterations change the terms and conditions of work; we demand that you cease and desist any changes to the said mentioned job classifications; and we demand to bargain over these issues." Thereafter, there was a special conference held and, according to the charge, the City, at that time and continuing to date, has refused to bargain over the changes which were made.

Discussion and Conclusions of Law

To be timely under Section 16(a) of PERA, a charge must be filed within six months of the date the charging party knows or has reason to know of the unfair labor practice. *Wines v Huntington Woods*, 97 Mich App 86 (1990). When a charge alleges a unilateral change in terms and conditions of employment, the statute of limitations runs from the date the employer announces the decision [rather than from another date, such as the implementation date or the date upon which there was a subsequent refusal to bargain]. *Detroit Dept of Water & Sewerage*, 1990 MERC Lab Op 400, 404; *Tuscola County Intermediate Sch Dist*, 1985 MERC Lab Op 123, 125. The statute of limitations is jurisdictional and cannot be waived. *Police Officers Labor Council, Local 355*, 2002 MERC Lab Op 145, 146.

With respect to unilateral change cases, the Commission has specifically rejected the theory that a unilateral change constitutes a continuing violation. *Reese Public Schools*, 1989 MERC Lab Op 476; *Livonia Pub Sch*, 1983 MERC Lab Op 992; *Cass County Sheriff*, 1993 MERC Lab Op 455; *Lapeer County*, 19 MPER 45 (2006).

* * *

> In the instant case, the charge was filed on November 19, 2012. However, all of the relevant [incidents] appear to have occurred much longer than six months prior to the filing of the charge. According to the charge itself, the City announced the change the week of March 26, 2012. Although [the Union] asserted a bit earlier [today] that the Locals were not aware at the time of the change, the charge indicates otherwise. The charge [alleges] that the City sent notice [of the change] to the Union on March 26.
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> But regardless of that fact, the charge also explicitly states that the [staff representative for each of the bargaining units] made a demand to bargain over the alleged unilateral change on April 12, 2012, so there can be no question based upon that allegation that the Union was aware of the change on April 12, that they knew or should have known of the unfair labor practice on that date and, therefore, regardless of what may have occurred afterword, I must conclude based on established Commission case law, that the charge was not timely filed and must be dismissed on that basis.[1]

Based on the findings of fact and conclusions of law set forth above, I issue the following recommended order:

RECOMMENDED ORDER

The unfair labor practice charge is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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David M. Peltz
Administrative Law Judge
Michigan Administrative Hearing System

Dated: April 24, 2013

[1] The transcript excerpt reproduced herein contains typographical corrections and other minor edits for clarity purposes. The completed unedited transcript is maintained within the Commission case file.