STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

DETROIT PUBLIC SCHOOLS,
Respondent-Public Employer in Case No. C02 F-126,

-and-

TEAMSTERS, LOCAL 214,
Respondent-Labor Organization in Case No. CU02 F-035,

-and-

JOSEPH P. WILLIAMS,
An Individual Charging Party.
_____/

APPEARANCES:

Gordon J. Anderson, Esq., for the Public Employer

Rudell & O'Neill, P.C., by Wayne A. Rudell, Esq., for the Labor Organization

Joseph P. Williams, *in pro per*

DECISION AND ORDER

On April 15, 2003, 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

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Dated: _____

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DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE

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 heard at Detroit, Michigan on October 4, 2002, before David M. Peltz, Administrative Law Judge 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:

On June 5, 2002, Joseph P. Williams filed unfair labor practice charges against his former employer, Detroit Public Schools, and his bargaining representative, Teamsters, Local 214. In the identically worded charges, Williams alleged that the Employer and the Union denied him due process, and he requested that he be "re-employed" with the school district and made whole for "all benefits lost."

On August 5, 2002, Teamsters, Local 214 filed a motion seeking dismissal of the charge in Case No. CU02 F-035. The motion was based, in part, upon the Union's contention that the charge was not filed within the six-month statute of limitations period. The Union also argued that dismissal was warranted because the charge failed to state a claim upon which relief could be granted under PERA. Alternatively, the Union argued that Williams should be required to state his allegations against the Union with greater specificity.

On August 27, 2002, I issued an order directing Charging Party to file a more definite statement in conformance with Rule 151(c) of the General Rules and Regulations of the Employment Relations Commission. On September 9, 2002, Williams filed a response in which he alleged that the Respondents failed to notify him of the date of his disciplinary rehearing. In addition, Charging Party asserted that the Union did not properly investigate his case.

In an order entered on September 12, 2002, I held that Charging Party's response was sufficient to give proper notice to the Union of the specific incidents and violations of PERA that Williams wished to litigate. The Union's arguments in support of dismissal of the charge were taken under advisement.

Findings of Fact:

Charging Party was employed by the Detroit Public Schools as a bus mechanic at the school district's east side bus terminal. On June 27, 2000, Charging Party allegedly dispensed gasoline from a pump belonging to the school district into his private vehicle. Charging Party learned of the allegations against him on September 7, 2000, when he was called into a meeting with the head foreman. During the meeting, Charging Party denied the charges and asserted that the gas pump in question was locked at the time of the alleged theft.

The Employer conducted a disciplinary hearing concerning the allegations in September of 2000. Charging Party heard nothing further about his case until later that fall, when he learned that the Employer's representative who conducted the hearing, Donald Estill, had died. Because of Estill's death, the Employer reheard the matter on December 19, 2000. Charging Party did not attend that hearing. On December 23, 2000, Charging Party was notified by the school district that his employment was terminated effective December 26, 2000.

The Union filed a grievance on Charging Party's behalf. Following a step-two hearing, the Employer denied the grievance on March 28, 2001. Thereafter, the Union's grievance panel notified Charging Party of its decision not to process the grievance to arbitration. Williams appealed that decision to

the Union's internal appeals board, which heard the matter on May 1, 2001. In a letter dated May 24, 2001, the appeals board notified Williams that it agreed with the grievance panel's decision not to take his case to arbitration, and that the "grievance review and appeal process in this matter is concluded." Charging Party received the letter on May 30, 2001.

Discussion and Conclusions of Law:

Pursuant to Section 16(a) of PERA, no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Commission. The Commission has consistently held that the statute of limitations is jurisdictional and cannot be waived. *Walkerville Rural Community Schools*, 1994 MERC Lab Op 582, 583. Under PERA, a cause of action accrues when the charging party knows, or has reason to know, of facts which provide notice of an alleged breach. *Huntington Woods v Wines*, 122 Mich App 650 (1983), aff'g 1981 MERC Lab Op 836. See also *Washtenaw County*, 1992 MERC Lab Op 471, and cases cited therein.

Both of the charges in the instant case were filed on June 5, 2002.1 Therefore, any cause of action which accrued prior to December 5, 2001, is outside of this Commission's jurisdiction. I find that Charging Party's claim against his former Employer in Case No. C02 F-126 accrued no later than December 26, 2000, the effective date of his termination. Because the charge was not filed within six months of that date, Case No. C02 F-126 must be dismissed as untimely.

With respect to charge in Case No. CU02 F-035, Charging Party learned in early 2001 that his grievance would not be processed to arbitration. His appeal of that decision was rejected by the Union in a letter dated May 24, 2001. Although Charging Party contends that he did not receive that letter until sometime in June of 2001, a return receipt introduced into the record by the Union establishes that the letter was received at Williams' residence on March 30, 2001. Since the charge against the Union was not filed within six months of that date, it too must be dismissed pursuant to Section 16(a) of PERA.

Based upon the above discussion, I recommend that the Commission issue the following order:

RECOMMENDED ORDER

It is hereby recommended that the unfair labor practice charge be dismissed.

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1 At the hearing, Williams argued that he initially filed charges in this matter in December of 2001, but that he never received a response from the Commission. However, this Commission has no record of any such charges, and Williams failed to bring any documents to the hearing to support of this contention. Moreover, even if Williams had filed charges in December of 2001, they would still be untimely given that both of the claims accrued more than six months prior to that date.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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David M. Peltz
Administrative Law Judge

Dated: _____