STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

GRAND TRAVERSE COUNTY,
Public Employer-Respondent in MERC Case Nos. C16 K-113/Hearing Docket No.16- 032172, C16 K-114/Hearing Docket No. 16-032173, C16 K-116/Hearing Docket No.16-032175, C16 K-117/Hearing Docket No. 16-032176,

-and-

86TH DISTRICT COURT,
Public Employer-Respondent in MERC Case No C16 K-115/Hearing Docket No.16-032174,

-and-

GRAND TRAVERSE COUNTY SHERIFF,
Public Employer-Respondent in MERC Case No. C16 K-117/Hearing Docket No.16-032176,

-and-

TEAMSTERS LOCAL 214,
Labor Organization-Charging Party.
_____/

APPEARANCES:

Cohl, Stoker & Toskey, P.C., by Peter A. Cohl, for the Respondents

Robert V. Donick, Business Representative, for Charging Party

DECISION AND ORDER

On February 14, 2017, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order in the above matter finding that Respondents 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

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: March 29, 2017

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

GRAND TRAVERSE COUNTY,
Public Employer-Respondent in Case Nos. C16 K-113/Docket No.16-032172-MERC, C16 K-114/Docket No. 16-032173-MERC, C16 K-116/Docket No.16-032175-MERC, and C16 K-117/Docket No. 16-032176-MERC,

-and-

86TH DISTRICT COURT,
Public Employer-Respondent in Case No C16 K-115/Docket No.16-032174-MERC,

-and-

GRAND TRAVERSE COUNTY SHERIFF,
Public Employer-Respondent in Case No. C16 K-117/Docket No.16-032176-MERC,

-and-

TEAMSTERS LOCAL 214,
Labor Organization-Charging Party.
_____/

APPEARANCES:

Cohl, Stoker & Toskey, P.C., by Peter A. Cohl, for the Respondents

Robert V. Donick, Business Representative, Teamsters Local 214, for Charging Party

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

On November 9, 2016, Teamsters Local 214 filed the above unfair labor practice charges with the Michigan Employment Relations Commission (the Commission) against Grand Traverse County, the 86th District Court, and the Grand Traverse County Sheriff (Respondents) pursuant to Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210. The charges were consolidated and, pursuant to Section 16 of PERA, assigned to Julia C. Stern, Administrative Law Judge (ALJ) for the Michigan Administrative Hearing System.

On December 27, 2016, Respondents filed a motion for summary dismissal of all five charges. On January 20, 2017, Charging Party filed a brief in opposition and a cross-motion for summary disposition.

Respondents filed a response to the cross-motion on January 24, 2017. Based on the facts set out below, which include facts alleged in the charges and other facts set out in the pleadings but not in dispute, I make the following conclusions of law and recommend that the Commission issue the following order:

The Unfair Labor Practice Charges:

Charging Party brings these charges on behalf of five bargaining units it represents in Grand Traverse County. The unit in Case No. C16 K-113/Docket No.16-032172-MERC is a general unit consisting of non-supervisory employees of Grand Traverse County (General Unit). Case No. C16 K-114/Docket No.16-032173-MERC covers a unit of employees of Grand Traverse County in its Health Department (Health Department Unit). The unit in Case No. C16 K-115/Docket No.16-032174 consists of employees of the 86th District Court, for which Grand Traverse County is the funding unit (Court Unit). The employees in the unit covered by Case No. C16 K-116/Docket No.16-032175-MERC are employed by Grand Traverse County in its Central Dispatch Department (Central Dispatch Unit). The unit in Case No. C16 K-117/Docket No. 16-032176-MERC consists of officers with the rank of lieutenant and captain employed by Grand Traverse County and the Grand Traverse County Sheriff (Command Officer Unit). All five units are or were covered by collective bargaining agreements which required employees to pay 6% of the cost of a specific health care plan (the "base plan"), with Respondents picking up the remaining 94% of the cost. On April 27, 2016, Respondents' County Board of Commissioners (the Board) passed a resolution, set out in full below, announcing that effective January 1, 2017, all employees of the County (which included employees in the Court Unit) would be required to pay 20% of the cost of their health care plan. This change was implemented as announced on January 1, 2017.

Charging Party alleges that Respondents' unilateral implementation of this change violated its duty to bargain. The Command Officer Unit is covered by a collective bargaining agreement that expires on December 31, 2017. Charging Party alleges that the Respondents repudiated this collective bargaining agreement, and engaged in a mid-term modification of its terms, by raising the employees' contribution during the term of the agreement. As set out below, the contracts covering the other four units expired on December 31, 2016, but contained automatic renewal language. Charging Party asserts that even if the contracts covering these units expired on December 31, 2016, and under Section 15b of PERA employees in these units are required to absorb any increases in the premium for their existing health plan, Respondents are prohibited from implementing any increase in the employee share of the premium beyond that required by Section 15b. Charging Party also argues, in the alternative, that these four contracts were not "terminated" by Respondents' notice of its intent to modify them and that Respondents had a contractual obligation to continue to pay 94% of the cost of the plan until the parties reached new agreements or impasse.

Facts:

As set out above, the five contracts covering the Command Unit, the Court Unit, the General Unit, the Health Department Unit, and the Central Dispatch Unit all provide or provided that employees were required to contribute 6% to the cost of a specified health plan, referred to in these contracts as the base or $250/500 deductible plan. The details of the plan are set out in appendixes to these agreements. The Central Dispatch contract included the following additional language not contained in any of the other four agreements:

> Commencing January 1, 2017, the Employer may offer a second lower cost health care plan (HMO HSA 80% coverage plan.). Employees shall have the option to select this plan.

> Notwithstanding the above section, if the County Board of Commissioners, for subsequent plan years commencing 2017, implements, in its discretion and pursuant to 2011 PA 152, either a hard cap election of employee contributions necessary to meet the requirement that the Employer pay no more than 80% of the total annual costs of all the medical benefit plans election, than the above section(s) shall be superseded and unit employees will be required to make contributions under the election made by the Board of Commissioners.[1]

The collective bargaining agreement covering the Command Unit became effective on January 1, 2015, and expires on December 31, 2017. The term of the agreement covering the Central Dispatch Unit is January 1, 2016, to December 31, 2016. The terms of the other three agreements are January 1, 2015 to December 31, 2016. The four contracts with December 31, 2016, expiration dates include this language.

> This Agreement shall be effective . . . and shall remain in full force and effect until the 31st day of December, 2016. It shall automatically be renewed from year to year thereafter unless either party notifies the other, in writing, . . . days prior to the anniversary date that it desires to modify this Agreement.

The contracts covering the General Unit and Health Department Units required ninety days' notice, the agreement covering the Central Dispatch Unit required 120 days' notice, and the agreement covering the Court Unit required 150 days' notice.

On April 20, 2016, Respondent County Administrator Tom Menzel sent a memo to all County employees, and to employees of the 86th District Court, describing financial challenges the County was currently facing, including increasing health care and pension costs.

Menzel informed employees that the following week he would submit a resolution to the Board setting the health premium contribution rate for all employees at 20% of the cost of their plan, effective January 1, 2017. Menzel also informed employees that effective January 1, 2017, the County would offer employees two health insurance options. One would be the base insurance plan it currently provided, which would continue to have in-network deductibles of $250/$500. The new plan, which included health savings accounts, would have in-network deductibles of $1,300/$2,600 but a lower monthly premium. Menzel sent a separate memo to representatives of all the unions representing County employees notifying them of his intentions.

On April 27, 2016, the Board passed a resolution that read, in pertinent part:

> Grand Traverse County adopts the "80/20" Cost Sharing Model whereby the County's cost will be limited to no more than 80% of the total premium costs in order to comply with the requirements of 2011 PA 152 for the Health Plan coverage year commencing January 1, 2017. Employees will contribute 20% of the total premium costs.

The Board also authorized the Respondent County to provide employees with the option to switch to a new health plan with a lower premium, "subject to any notice or bargaining obligation." Charging Party does not dispute that it knew that the Board passed the April 27 resolution.

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1 The Publicly Funded Health Insurance Contribution Act, 2011 PA 152, MCL 15.561 et seq., places limitations on the amounts public employers may pay toward their employees' health care costs. Public employers may elect to comply with Act 152 through either the "hard cap" option set out in Section 3 of Act 152 or the "80/20" option set out in Section 4.

In 2016, Respondents provided Charging Party with timely notices of its intent to modify all four agreements. The parties disagree over whether these notices served to terminate the agreements on December 31, 2016 or merely to reopen them.

On May 20, 2016, the Police Officers Association of Michigan (POAM), and two other labor organizations affiliated with it, filed four unfair labor practice charges against Grand Traverse County and the Grand Traverse County Sheriff (Case Nos. C16 E-050 through C16 E-53/Docket Nos. 16-014890-MERC through 16-014893-MERC). The charging parties in those cases, between them, represent four separate bargaining units of employees of the County and /or Sheriff. Each of these units have collective bargaining agreements covering the period January 1, 2015, to December 31, 2017. These agreements provide that unit employees electing health insurance coverage will be required to contribute 6% of the costs of a health care plan described in the appendix to each contract. The plan set out in these contracts is the same $250/$500 deductible plan that Respondents offer to employees in Charging Party's bargaining units. The charges filed by the POAM and its affiliates alleged that the April 27, 2016, Board resolution constituted a repudiation and mid-term modification of its collective bargaining agreements.

The above charges were assigned to me. On November 9, 2016, I issued a Decision and Recommended Order on Summary Disposition finding that the Respondents County and Sheriff violated their duty to bargain in good faith when the Board adopted the April 27, 2016, resolution. Respondents filed exceptions to my decision. These exceptions are currently pending before the Commission.

On November 30, 2016, the Board adopted a resolution stating that it was "willing to modify the requirement of employees paying 20% of their health insurance premiums which was adopted by the Board of Commissioners on April 27, 2016," under the conditions set out in the November 30 resolution. In the resolution the Board offered to permit employees in eight of its bargaining units to pay 15%, rather than 20%, of their health insurance premium effective January 1, 2017, if all eight bargaining units agreed to and ratified an agreement to this effect by December 14, 2016. The eight bargaining units included Charging Party's General Unit, Health Department Unit, Central Dispatch Unit, and Court Unit. The resolution also offered the same proposal to the five units covered by contracts that did not expire until December 31, 2017. These units were Charging Party's Command Unit and the four units represented by the POAM and its affiliates. The November 30 resolution stated that unless all five of the units with contracts expiring on December 31, 2017, agreed to and ratified agreements by December 14, 2016, the "Sheriff's budget will be reduced by an amount equating to the additional funds that the taxpayers have to provide for employee health insurance for those five bargaining units, provided the other eight units above agree to the 15% and its requirements." Finally, the resolution provided that "in the event of an agreement," the 15% contribution would also apply to all non-union employees. The resolution also included this language:

> BE IT FURTHER RESOLVED THAT the deadline for the eight bargaining units is December 14, 2016, due to the fact that the Board of Commissioners must pass another resolution before December 31, 2016, modifying its prior resolution mandating the 80/20 option under PA 152 of 2011.

Most of the eight units named in the first part of the resolution, including the four represented by Charging Party, refused to agree to the 15% premium contribution. The five units named in the second part of the resolution also did not all agree. Accordingly, Respondents implemented the 20% employee contribution for all its employees on January 1, 2017.

Discussion and Conclusions of Law:

Respondents' motion for summary dismissal rests on several grounds. One of these grounds is that the charges were untimely filed because the alleged unfair labor practices occurred, and Charging Party knew of them,, on April 27, 2016, when the Board passed a resolution which both adopted the "80/20" method of complying with Act 152 for its "medical benefit plan coverage year" beginning January 1, 2017, and announced that all employees would begin contributing 20% of the cost of their health care plans effective that date. Charging Party argues that the Board's November 30, 2016, resolution put into question whether the Board would actually carry out the change it announced in April. It argues that under these circumstances, the statute of limitations did not begin to run until January 1, 2017, when the medical benefit plan coverage year commenced and Respondents implemented the change in the employee contribution. Therefore, it argues, the charges it filed on November 9, 2016 were timely.

Pursuant to Section 16(a) of PERA, the Commission is prohibited from finding a violation of PERA based on any unfair labor practice occurring more than six months prior to the filing of the charge with the Commission.

When the alleged unfair labor practice is a unilateral change in a term or condition of employment, the date of a unilateral change is the date of the announcement, resolution or other action finalizing the change, and not the date of implementation. *Interurban Transit Partnership*, 21 MPER (2009); *Tuscola Intermediate Sch Dist*, 1985 MERC Lab Op 123; *Detroit Bd of Ed*, 1974 MERC Lab Op 813.

The statute of limitations under Section 16(a) is jurisdictional. *Walkerville Rural Comm Sch*, 1994 MERC Lab Op 582, 583. The limitations period commences when the charging party knows or should have known of the acts constituting the unfair labor practice and has good reason to believe the acts were improper or done in an improper manner. *Huntington Woods v Wines*, 122 Mich App 650, 652 (1983). The statute of limitations is not tolled by the attempts of an employee or a union to seek a remedy elsewhere, including the filing of a grievance, or while another proceeding involving the dispute is pending. See e.g. *Univ of Michigan*, 23 MPER 6 (2010); *Wayne Co*, 1998 MERC Lab Op 560.

In this case, the Board, in a resolution it adopted on April 27, 2016, announced Respondents' intention to require all Respondents' employees to pay 20% of the cost of their health care plans effective January 1, 2017. As noted above, under established Commission case law, the date of an alleged unilateral change in terms and conditions of employment is the date of the announcement, resolution, or other action finalizing the change, not the date of implementation. In this case, the Board's April 27, 2016, resolution was clearly the act which finalized the change. Because the decision would have been considered by the Commission, on these facts, to be a *fait accompli*, Charging Party could have legitimately filed charges alleging that this decision violated Respondents' duty to bargain at any time within the six months following the April 27, 2016, resolution. However, it did not file its charges until more than six months later, on November 9, 2016. On November 20, 2016, more than six months after its original resolution and after the instant charge was filed, the Board passed another resolution in which it offered to decrease the contribution to 15% if certain conditions were met. However, the resolution made clear that if the conditions were not met, the change announced in the April 27, 2016, resolution would be implemented. I find that the Board's adoption of the November 20, 2016, resolution did not constitute a separate unfair labor practice, and that the alleged unfair labor practice, for purposes of Section 16(a), occurred on April 27, 2016. Since Charging Party knew of the Board's April 27 resolution and had good reason to believe it was improper at that time, it was obligated to file its charge within six months of that date. I conclude that the charges filed on November 9, 2016 were untimely and should be dismissed on that basis. I recommend, therefore, that the Commission grant Respondents' motion for summary disposition and issue the following order.

RECOMMENDED ORDER

The charges are hereby dismissed in their entireties.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern
Administrative Law Judge
Michigan Administrative Hearing System

Dated: February 14, 2017