

**STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMMISSION  
LABOR RELATIONS DIVISION**

In the Matter of:

CITY OF DETROIT, DEPARTMENT  
OF WATER & SEWERAGE,  
Public Employer-Respondent,

-and-

MERC Case No. C16 F-069  
Hearing Docket No. 16-018893

ASSOCIATION OF MUNICIPAL ENGINEERS,  
Labor Organization-Charging Party.

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**APPEARANCES:**

Steven H. Schwartz & Associates, P.L.C., by Steven H. Schwartz, for Respondent

Partho Ghosh, for Charging Party

**DECISION AND ORDER**

On December 27, 2016, Administrative Law Judge David M. Peltz (ALJ) issued his Decision and Recommended Order on Summary Disposition in the above matter finding that the charge should be dismissed as untimely under § 16(a) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210. The ALJ initially found that Charging Party failed to respond to a show cause order. Additionally, the ALJ found that the charge was untimely under § 16(a) because it was based on an alleged unfair labor practice that occurred approximately three years prior to the filing of the charge. The ALJ's Decision and Recommended Order was served upon the interested parties in accordance with § 16 of PERA.

After requesting an extension of time, Charging Party filed exceptions to the ALJ's Decision and Recommended Order on Summary Disposition on February 21, 2017. After being granted an extension of time, Respondent filed its brief in support of the ALJ's Decision and Recommended Order on Summary Disposition on March 28, 2017.

In its exceptions, Charging Party contends that it was precluded from filing a charge until December 14, 2015 because of an Order issued by the United States District Court for the Eastern District of Michigan on November 4, 2011.

In its brief in support of the ALJ's Decision and Recommended Order, Respondent contends, among other things, that the charge is barred by PERA's six-month statute of limitations and should also be dismissed due to Charging Party's failure to respond to the ALJ's Order to Show Cause. Respondent specifically notes that Charging Party was not precluded from filing a timely charge by the U. S. District Court.

We have reviewed the exceptions filed by Charging Party, and find them to be without merit.

Factual Summary:

On June 29, 2016, Charging Party, the Association of Municipal Engineers (AME), filed the instant charge against the City of Detroit, Department of Water & Sewerage (DWSD). The charge alleges that, before the City of Detroit filed for bankruptcy, the DWSD unilaterally imposed a ten (10) percent reduction in wages and benefits.

In an order issued on July 12, 2016, ALJ Peltz directed the AME to show cause why the charge should not be dismissed as untimely under Section 16(a) of PERA. Charging Party was warned that a timely response to the order must be filed to avoid dismissal of the charge without a hearing. Although Charging Party's response to the Show Cause Order was initially due by August 2, 2016, Charging Party was granted an extension of time until September 30, 2016.

On December 27, 2016, having heard nothing further from Charging Party, ALJ Peltz issued his Decision and Recommended Order on Summary Disposition and recommended that the unfair labor practice charge be dismissed as untimely.

Discussion and Conclusions of Law:

Under Commission Rule 165(2), summary disposition is appropriate where a charge fails to state a valid claim under PERA, where a charge is untimely or where there is no genuine issue of material fact. In such instances, the ALJ is authorized to issue an order requiring a party to assert facts and arguments of law in support of its contention to avoid the grant of summary disposition in the opposing party's favor. *ATU Local 26*, 30 MPER 22 (2016); *Wayne Cnty*, 24 MPER 25 (2011). Relying on *Smith v Lansing Sch Dist*, 428 Mich 248 (1987), we have consistently held that an evidentiary hearing is not warranted where no material factual dispute exists. *AFSCME Council 25, Local 207*, 23 MPER 101 (2010); *Muskegon Hts Pub Sch. Dist*, 1993 MERC Lab Op 869, 870; *Police Officers Labor Council*, 25 MPER 57 (2012). Where, however, a material factual dispute exists, summary disposition is not appropriate. *Saginaw Cnty Sheriff*, 1992 MERC Lab Op 639 (no exceptions).

Additionally, the Commission has repeatedly recognized that failure to respond to a Show Cause Order may, in itself, warrant dismissal of the charge. *Detroit Dept of Trans and ATU*, 30 MPER 61 (2016); *City of Detroit*, 30 MPER 39 (2016); *AFSCME Council 25*, 22 MPER 87 (2009); *Detroit Federation of Teachers*, 21 MPER 3 (2008). In the present case, ALJ Peltz directed Charging Party AME to show cause why its charge should not be dismissed by September 30, 2016. Nonetheless, no response to the ALJ's Show Cause Order was ever made. Charging Party's failure to respond in a timely fashion to the ALJ's Show Cause Order, in itself, warrants dismissal of the charge. Notwithstanding this, the Commission agrees with the ALJ that, even if all of the allegations in the charge are accepted as true, dismissal of the charge on summary disposition is nonetheless warranted.

Under § 16(a) of PERA, no complaint shall issue based upon any alleged unfair labor practice occurring more than six months prior to the filing of the charge with the Commission and the service of the charge upon each of the named respondents. It is undisputed that PERA's statute of limitations is jurisdictional and cannot be waived. *Walkerville Rural Cmty 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).

In this case, as noted by the ALJ, the charge asserts that the action which allegedly constituted a violation of PERA, the unilateral imposition of a reduction in wages and benefits, occurred prior to the date on which the City of Detroit filed for bankruptcy, July 18, 2013.<sup>1</sup> Nonetheless, the charge was not filed in this matter until June 29, 2016, approximately three years later.

Although Charging Party contends that it was engaged in attempts to resolve the underlying issues with the Employer during the intervening period, the Commission has repeatedly indicated that the limitations period cannot be waived by the parties and is not tolled by the pursuit of other remedies. *Washtenaw Cnty*, 1992 MERC Lab Op 471 (claim pending in circuit court); *Int'l Assoc of Firefighters, Local 352*, 1989 MERC Lab Op 522 (civil service proceedings); *Detroit Fed of Teachers Local 231, AFT, AFL-CIO*, 1989 MERC Lab Op 882 (pendency of union appeal process); *Detroit Public Schools*, 1982 MERC Lab Op 1058 (state tenure commission proceedings); *Livonia Public Schools*, 1975 MERC Lab Op 1010 (pending settlement efforts). The statute of limitations is, therefore, not an affirmative defense which can be waived; the statute prohibits the Commission from issuing a complaint regarding an action taken more than six months prior to the filing and service of a charge. That prohibition is a direct restriction on the Commission and deprives the Commission of jurisdiction to act. *Traverse Area District Library*, 25 MPER 82 (2012).

Charging Party also argues, in its exceptions, that it was prohibited from filing an unfair labor practice charge by an Order of the United States District Court dated November 4, 2011. Respondent disagrees and contends that an Order of the District Court dated December 14, 2012 expressly allowed the Charging Party to file an unfair labor practice charge over the wage and benefit reductions involved in this dispute. Charging Party's argument was not raised until it filed exceptions to the ALJ's decision. We agree with the previous findings of the Commission that we should not consider new issues not raised before the Administrative Law Judge. *Pontiac Sch Dist*, 27 MPER 52 (2014); *City of Detroit*, 1993 MERC Lab Op 131, 132; *Teamsters Local 580*, 1991 MERC Labor Op 575, 576; *City of Detroit (Fire Department)*, 1987 MERC Labor Op 417, 420; *SEMTA*, 1985 MERC Labor Op 316. Whether or not an Order of the United States District Court prohibited Charging Party from filing an unfair labor practice charge in this case was not an issue raised before the Administrative Law Judge. Consequently, it may not now be

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<sup>1</sup> In its exceptions, Charging Party asserts that DWSD imposed the wage and benefit reductions in October 2012.

considered by the Commission and the instant charge must be dismissed as untimely under § 16(a) of the Act.<sup>2</sup>

We have also considered all other arguments submitted by the parties and conclude that they would not change the result in this case.

**ORDER**

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

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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/s/  
Edward D. Callaghan, Commission Chair

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/s/  
Robert S. LaBrant, Commission Member

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/s/  
Natalie P. Yaw, Commission Member

Dated: August 16, 2017

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<sup>2</sup> The above notwithstanding, although Charging Party alleges it was precluded from filing a charge until December 14, 2015, Charging Party did not file the instant charge until June 29, 2016, more than six months later.

**STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
EMPLOYMENT RELATIONS COMMISSION**

In the Matter of:

CITY OF DETROIT, DEPARTMENT  
OF WATER & SEWERAGE,  
Respondent-Public Employer,

-and-

Case No. C16 F-069  
Docket No. 16-018893-MERC

ASSOCIATION OF MUNICIPAL ENGINEERS,  
Charging Party-Labor Organization.

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**APPEARANCES:**

Steven H. Schwartz & Associates, P.L.C., by Steven H. Schwartz, for Respondent

Partho Ghosh, for Charging Party

**DECISION AND RECOMMENDED ORDER  
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). I make the following findings of fact and conclusions of law based upon the pleadings filed in this matter.

**The Unfair Labor Practice Charge and Procedural History:**

This case arises from an unfair labor practice charge filed on June 29, 2016, by the Association of Municipal Engineers (AME) against the City of Detroit, Department of Water & Sewerage (DWSD). The charge alleges that before the City filed for bankruptcy, the DWSD unilaterally imposed a ten (10) percent reduction in wages and benefits. In an order issued on July 12, 2016, I directed the AME to show cause why the charge should not be dismissed as untimely under Section 16(a) of PERA. Charging Party was cautioned that a timely response to the order must be filed to avoid dismissal of the charge without a hearing. Pursuant to that order, the AME's response was due by the close of business on August 2, 2016.

By letter dated August 1, 2016, Charging Party requested an extension of time to file its response until September 30, 2016, a request which the City did not oppose. To date, however, the AME has not filed its response to the order or sought any additional extension of time in which to file such a response.

## Discussion and Conclusions of Law:

The failure to respond to an order to show cause may, in itself, warrant dismissal of an unfair labor practice charge. *Detroit Federation of Teachers*, 21 MPER 3 (2008). In any event, I conclude that the charge, as written, fails to raise a timely claim under PERA.

Pursuant to Section 16(a) of PERA, no complaint shall issue based upon any alleged unfair labor practice occurring more than six months prior to the filing of the charge with the Commission and the service of the charge upon the respondent. 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. 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).

In the instant case, the charge asserts that the action which allegedly constituted a violation of PERA, the unilateral imposition of a reduction in wages and benefits, occurred prior to the date upon which the City of Detroit filed for bankruptcy. The City filed for bankruptcy protection on July 18, 2013, a fact which is public knowledge widely reported in the press and detailed at [www.michigan.gov/treasury](http://www.michigan.gov/treasury), the website of the Michigan Department of Treasury. See also *City of Detroit (Police Dept)*, 29 MPER 60 (2016); *City of Detroit*, 29 MPER 59 (2016); *City of Detroit*, 29 MPER 54 (2016) (no exceptions). Yet, the charge was not filed in this matter until June 29, 2016, approximately three years later.

Although the Union claims it was engaged in attempts to resolve the underlying issues with the Employer during the intervening period, it is well established that 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. *Troy Sch Dist*, 16 MPER 34 (2003); *Wayne County*, 1998 MERC Lab Op 560; *Walkerville, supra*; *Washtenaw County*, 1992 MERC Lab Op 471; *Wayne County Probate Ct*, 1992 MERC Lab Op 385; *Detroit Bd of Ed*, 1990 MERC Lab Op 781; *Int'l Assoc of Fire Fighters, Local 352*, 1989 MERC Lab Op 522; *Wayne County Community College*, 1988 MERC Lab Op 213; *Southfield Pub Sch*, 1984 MERC Lab Op 1084; *Macomb County*, 1984 MERC Lab Op 31 (no exceptions). Moreover, the Commission has expressly rejected the assertion of a “continuing violation” theory under the Act. See e.g. *County of Lapeer*, 19 MPER 45 (2006); *Detroit Bd of Ed*, 16 MPER 29 (2003); *City of Flint*, 1996 MERC Lab Op 1, 9-11.

The AME further claims that it could not have filed its charge earlier because “MERC was not accepting any charges from unions due to the involvement of the emergency manager followed by the bankruptcy of the City of Detroit.” This assertion is simply not accurate. Although all proceedings involving the City were placed on hold as a result of the bankruptcy stay, the Commission continued to accept and docket new charges during that period. See e.g. *City of Detroit (Dept of Water & Sewerage)*, 30 MPER 28 (2016).

For these reasons, it appears that the charge must be dismissed as untimely under Section 16(a) of the Act. Accordingly, I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The unfair labor practice charge filed by the Association of Municipal Employees against the City of Detroit, Department of Water & Sewerage (DWSD) in Case No. C16 F-069; Docket No. 16-018893-MERC 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: December 27, 2016