

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

In the Matter of:

CITY OF DETROIT (LAKE HURON  
WATER TREATMENT PLANT),  
Respondent-Public Employer,

Case No. C98 E-90

-and-

RICHARD STABINSKI,  
An Individual Charging Party.

APPEARANCES:

June Boyd, Esq., Assistant Corporation Counsel, for Respondent

Richard Stabinski, *in pro per*

**DECISION AND ORDER**

On April 30, 1999, Administrative Law Judge James P. Kurtz issued his Decision and Recommended Order in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act (PERA), 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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Maris Stella Swift, Commission Chair

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Harry W. Bishop, Commission Member

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C. Barry Ott, Commission Member

Date: \_\_\_\_\_

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APPEARANCES:

June Boyd, Senior Ass't Corporation Counsel, for Public Employer

Richard Stabinski, Individual Charging Party, pro se

DECISION AND RECOMMENDED ORDER  
OF  
ADMINISTRATIVE LAW JUDGE

This case came on for hearing at Detroit, Michigan on September 4, 1998, before James P. Kurtz, Administrative Law Judge(ALJ) for the Michigan Employment Relations Commission, pursuant to a complaint and notice of hearing dated May 15, 1998, issued under Section 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCLA 423.216, MSA 17.455(16). The record of this contested case hearing was received on February 26, 1999, and this matter was closed by letter as of March 1, 1999. Based on the record and the written submissions of the parties, the undersigned makes the following findings of fact, conclusions of law, and recommended order under Section 16(b) of PERA:

Charge and Background Matters:

This charge was filed on May 5, 1998, by Charging Party Richard Stabinski, an individual, and a plant maintenance mechanic employed by the Respondent, City of Detroit, Water and Sewerage Department, at its Lake Huron water treatment plant. The Charging Party is also chief steward for the nonsupervisory employee bargaining unit at the treatment plant, represented by Local 207, Michigan Council 25, American Federation of State, County, and Municipal Employees (AFSCME). The Union, AFSCME Local 207, was not a party to this proceeding. In his charge, Stabinski set forth the factual summary of the events surrounding his discipline by the City on February 13, 1998, and he alleges that by such discipline the City interfered with his duties under the contract between the City and AFSCME because he had requested that the City follow proper health and safety

procedures.

The City filed a response to the charge and a motion to dismiss on August 27, 1998, which outlined the events on February 12 and 13, 1998 that resulted in the discipline. The City contended that nothing in the charge raised any issue litigable under PERA, and that the validity of the disciplinary action against Stabinski should be addressed through the grievance procedure in the collective bargaining agreement. There is no disagreement between the parties relative to the facts essential for a decision in this case. The Employer renewed its motion to dismiss after the testimony of the Charging Party at the hearing, which motion was granted on the ground that there was insufficient evidence of a violation of PERA.

#### Factual Findings:

Stabinski has been employed by the City for more than 32 years, and at the time of the events involved herein he was a plant maintenance mechanic at the Lake Huron water treatment plant in Fort Gratiot, Michigan. Prior to the events in this case he had no disciplinary record. Stabinski traces his current problems to a health and safety complaint regarding a settling basin that he filed with the State Bureau of Safety and Regulation in October 1997. He contends that after that complaint he was subjected to closer supervision than was the case with other employees. Also, from the October 1997 complaint to the time of the hearing Stabinski claims that he filed some 21 grievances under the contract. He claims that his supervisors have expressed unhappiness over the number of grievances being filed.

At the beginning of his day shift on February 12, 1998, Stabinski was given a work order to replace a leaking seal on the influent valve cylinder of the No. 7 filter bed. According to the Employer he had performed the same task without incident two or three weeks previously. Stabinski testified to various and sundry problems that he encountered before he could undertake the assigned task, including the repair of a cart to haul heavy materials, and his inability to contact his foreman for a two-hour period to obtain certain locks required to perform the valve repairs. When these problems were worked out it was determined that it was too late in the day to begin the assigned job. The Employer raised the fact that at 2:45 that afternoon Stabinski was observed in his office reading the newspaper. The job assignment was completed on February 17.

On the morning of Friday, February 13, at the request of Stabinski a meeting was held with Employer representatives, including his foreman, relative to first step grievances. According to Stabinski, his foreman became angry during the meeting, but no explanation for this was given in the record. After the first grievance was handled, the foreman asked that another AFSCME Local 207 steward be summoned. After the steward arrived, Stabinski was given a written reprimand by his foreman for "poor work performance" on February 12. When asked about the reprimand, the Union representatives were only told that it was because no work was done on the job assignment the day before. Stabinski filed a grievance the same day, which was still pending at the time of the hearing in this case. A third step denial was issued by the Employer under date of July 22, 1998, in which it was noted that no work was done on the assignment from 10:00 a.m.-2:00 p.m., because the grievant

claimed “he did not have safety gloves.”

After the above incident, Stabinski filed a health or safety complaint with the Bureau of Safety and Regulation on April 7, and again on April 9, 1998. These complaints resulted in an investigation and the issuance by the Bureau on June 23, 1998 of a couple of citations, but without any monetary penalty. After these health and safety complaints, the superintendent of the plant remarked to Stabinski in about June 1998, when they were discussing safety issues in the superintendent’s office, that the grievances and complaints would make the plant look bad downtown and could cause problems.

#### Discussion and Conclusions:

Charging Party contends that the City fabricated the incident leading to his discipline, in order to make an example of him for writing too many grievances or questioning management on health or safety issues. He argues that the discipline had to be caused by his union activity, even though no direct statement to that effect has been made by the Employer. As contended by the Employer in its motion to dismiss at the hearing, there is no evidence in the record that Stabinski was disciplined for his Union or protected concerted activities. No link or nexus has been established between the admitted protected activities of Stabinski and the issuance of the February 13 discipline. The fact that discipline is issued to a union steward or representative, even one as active as Stabinski was in this case, does not automatically, without more, mean that the discipline was issued as a result of the union or protected activity of the employee. *Detroit Police Dep’t*, 1992 MERC Lab Op 497, 504; *Lowell Light and Power*, 1986 MERC Lab Op 877, 882.

It is the Charging Party’s burden to prove or establish the connection or link between the Employer’s discipline and the exercise of his union responsibilities. See *Battle Creek Police Dep’t*, 1998 MERC Lab Op 727, 730, 736-738; *Univ. of Mich.*, 1989 MERC Lab Op 873, 880. Employer discipline or adverse action involving union officers and agents are often problematical, especially if the individual involved has been militant in his/her activities, but such difficulties do not relieve a charging party from the burden of showing that the specific employer action in question was motivated by union animus or hostility. *Grand Rapids Fire Dep’t*, 1998 MERC Lab Op 703, 706-707, 718-719. Such evidence of the connection between the discipline and the union activity of Stabinski is absent in this case.

The expressed unhappiness of the water plant’s supervision over the grievances and complaints filed by Stabinski is not, standing alone, sufficient evidence that the February 13, 1998 discipline was motivated by his protected activities, rather than by the Employer’s perception of his failure to properly perform his assigned duties on February 12. Employers are not expected to be welcoming or enamored at the filing of grievances or complaints with State agencies, and expressions of dismay over such matters are part of the give and take of labor relations, unless such expressions are accompanied by threats or direct action against the offending steward or complainant sufficient for a finding of union animus or hostility. See *City of Oak Park*, 1995 MERC Lab Op 576, 581, 584; *Standish-Sterling Comm. Schools*, 1993 MERC Lab Op 251, 259.

Other than the general dissatisfaction over the number of grievances and complaints expressed by the plant's supervision, no such union animus or hostility directed at Stabinski is established in this record, and the record does not justify a finding that the February discipline is merely a pretext to punish Stabinski for his protected activities. There is at least some evidence to support the Employer's perception that an appropriate effort to perform the assignment on the day before had not been made by Stabinski. Under the above case law, whether the discipline meted out to Stabinski was justified in the first place, and/or whether it was too harsh under the circumstances and the law of the shop, are issues that must be answered by the grievance procedure under the collective bargaining agreement, and not by this Commission. See also *Livingston Human Services Agency*, 1990 MERC Lab Op 217, 220. Since the evidence herein is insufficient to find a violation of PERA, I recommend that the Commission issue the following order:

ORDER DISMISSING CHARGE

Based upon the findings and conclusions set forth above, the unfair labor practice charge filed in this matter is dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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James P. Kurtz  
Administrative Law Judge

Dated: \_\_\_\_\_