STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

OAKLAND COUNTY HEALTH DEPARTMENT,
Respondent-Public Employer,

Case No. C99 D-73

-and-

UNITED AUTOMOBILE WORKERS, LOCAL 889
Charging Party-Labor Organization.
_____/

APPEARANCES:

Brown, Schwartz & Patterson, by Craig S. Schwartz, Esq., for the Public Employer

Frank Monaghan, International Representative, for the Labor Organization

DECISION AND ORDER

On September 15,2000, Administrative Law Judge Roy L. Roulhac issued his Decision and Recommended Order in the above matter finding that Respondent has not engaged in and was not engaging in certain unfair labor practices, and recommending that the Commission dismiss the charges and complaint as being without merit.

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

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, MSA 17.455(10) *et seq.*, this case was heard in Detroit, Michigan on March 22, 2000, by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission. The proceedings were based upon an unfair labor practice charge filed on April 19, 1999, by the United Automobile Workers against the Oakland County Health Division. Based upon the record and briefs filed by June 2, 2000, I make the following findings of fact and conclusions of law, and issue a recommended order pursuant to Section 16(b) of PERA:

The Charge:

In its November 4, 1999 charge, Charging Party claims "the Employer terminated the employment of Joseph Lawson, III for joining the union" in violation of Section 423.210 of PERA. The Employer filed an answer denying the charge and raised several affirmative defenses, including Charging Party's inability to establish a *prima facie* case of discriminatory discharge.

Findings of Fact:

The facts are essentially undisputed. The Respondent and the Union are parties to a collective bargaining agreement which covers public health sanitarians and sanitarian technicians who work in Pontiac, Southfield and Walled Lake. The collective bargaining agreement incorporates by reference the

Oakland County Merit Rules. Rule 7 requires that all County employees serve a six-month probationary period. The parties' contract also contains a letter of agreement which indicates that during new employee orientation, the Employer will remain neutral regarding union representation and only provide factual information in response to questions.

Joseph Lawson and two other employees, Dana Sagamang and Sean Nalepka, were hired as public health sanitarian technicians on August 10, 1998. Lawson and Nalepka were assigned to the Walled Lake office. Their job duties required them to inspect restaurants, public swimming pools, day care centers and other businesses and public facilities to ensure compliance with the Public Health Code. During the orientation, the employees were told that they might be asked by the Union to become a member. On November 2, 1998, Lawson approached Union representative Linda Varonich and asked how he could join the union. Varonich gave Lawson a union authorization and dues checkoff card which he signed and returned to her. Varonich sent the card to the Oakland County Personnel Department in Pontiac for processing. Varonich and Lawson testified that they did not inform Lawson's supervisor's that Lawson had signed a union authorization card.

On December 22, 1998, Lawson received a favorable mid-probationary evaluation from his supervisor, Barry Wyatt. In mid-January, Wyatt was replaced as Lawson's supervisor by Al Drenchen. On February 4, 1999, a week before Lawson's probationary period ended, Drenchen conducted an audit of Lawson's work activities. He randomly selected and visited establishments listed on Lawson's activity reports to verify quality and the employee's interaction with the business operators.[1] Drenchen visited Always an Occasion, a business operated by Melissa Harrison. Lawson had indicated on his activity log that he inspected her facility for one and a half hours on January 26, 1999, and again for twenty minutes on February 2, 1999. Harrison, whose business had been inspected several times by the Health Division, reported to Drenchen that she asked Lawson why she had been inspected so often, and Lawson told her, "if we don't have a lot to do, then we come to easy places so we don't have a lot of paperwork to do."

Drenchen also visited Highland Lanes on February 4, 1999, which Lawson had inspected three days earlier. During Lawson's one and a half-hour inspection, he found one non-critical violation relating to missing floor tiles behind the bar. However, during Drenchen's audit, he found three critical and four non-critical violations of the Public Health Code.[2]

At 9:15 a.m. on February 5, 1999, Drenchen met with Lawson to discuss his concerns about his inspections of Always an Occasion and Highland Lanes. Lawson was directed to report to Drenchen each day at 4:00 p.m., to allow Drenchen to review his daily activities. During the meeting, Lawson submitted an Employee Attendance Report indicating that he would work eight hours that day. After the meeting, Drenchen went to Hot Rod Lincoln Coney Island which Lawson inspected on February 3. Lawson's

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[1]Drechen also conducted a random audit of Sean Nalepka's work activities.

[2] The critical violations were: no soap at the hand sink and operator was not washing his hands before serving beverages; the operator was not using a sanitizer to wash bar glasses; and there was no vacuum breaker on the men's urinal. The four additional non-critical violations found by Drenchen were: beer cooler moldy and dirty, dirty floors, ceiling in poor repair, and no test kit available to test the sanitizer lever.

activity report indicated that he had inspected the facility for one hour and a half and found no violations. Drenchen testified that the owner told him that Lawson had been at his facility forty-five minutes "tops."

After working three hours on February 5, Lawson told a clerk in the Health Division that he was going home sick. Lawson changed his attendance sheet to reflect that he should be paid for three hours and granted a leave without pay for five hours. Section 13.1.1 of the Merit Rules requires that a leave without pay must be recommended by an employee's department head and approved by the personnel department. Lawson acknowledged that he did not comply with Section 13.1.1 nor advise Drenchen that he would not be present for their 4:00 p.m. meeting.

Drenchen reported Lawson's unauthorized leave and the inspection discrepancies to Keith Krinn, the chief of the health division's environmental activities section. Drenchen recommended that Lawson's employment be terminated. During a meeting with Krinn and Drenchen on February 8, 1999, two days before his probationary period ended, Lawson was terminated. Lawson declined the Employer's offer of union representation. Both Drenchen and Krinn testified that they did not know that Lawson had signed a union authorization card prior to his termination.

Conclusions of Law:

To sustain a charge that an employer's discharge or other discriminatory action violated PERA, the charging party must present evidence of protected concerted activity, employer knowledge, suspicious timing, and anti-union animus. See *Northpointe Behavioral Healthcare Systems*, 1997 MERC Lab Op 530, *enf'd*, CA Case No. 214734 (11/30/98); *Olivieri/Cencare Foster Care Homes*, 1992 MERC Lab Op 6; *MESPA* v *Evart Public Schools*, 125 Mich App 71, 74 (1983). The Union claims that Lawson was an acceptable employee for twenty-three of his twenty-seven week probationary period and was discharged because he, unlike two other probationary employees, signed an authorization card to become a Union member. The Union questions why Lawson was offered Union representation when he was discharged on February 8, if Drenchen and Krinn truthfully testified that they did not know Lawson had already signed an authorization card. The Union also argues that the deficiencies uncovered during the two field audits of Lawson's work were not severe enough to warrant his discharge.

I find that Charging Party has failed to sustain its burden of proof. The evidence presented by Charging Party reveals that Lawson engaged in protected activity on November 2, 1998, when he signed a union authorization card. However, the Union has failed to establish two key elements: employer knowledge of Lawson's protected activity and anti-union animus. The absence of Employer knowledge alone compels requires dismissal of Charging Party's case. Compare *Brynes* v *Mecosta-Osceola Intermediate School District*, 114 Mich App 500 (1983); *Allendale Schools*, 1997 MERC Lab Op 215; *Plainview Schools*, 1989 MERC Lab Op 464. Not only did the Union's own witnesses, Lawson and Varonich, testify that they did not tell Lawson's supervisors that he had signed an authorization card, but both Drenchen or Krinn credibly testified that they did not know of Lawson's protected activity.

Therefore, I conclude that Charging Party's proofs fall short of demonstrating that Lawson was discharged in violation of Section 10(1)(c) of PERA. I have carefully considered all other arguments raised by Charging Party and find they do not warrant a change in the result. Accordingly, I recommend that the

Commission issue the order set forth below:

Order

It is hereby ordered that the charge be dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Roy L. Roulhac
Administrative Law Judge

Dated:_____