STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF DETROIT (HUMAN RIGHTS DEP'T)
Respondent-Public Employer,

-and-

SENIOR ACCOUNTANTS, ANALYSTS &
APPRAISERS ASSOCIATION,
Charging Party-Labor Organization in Case No. C99 H-154,

-and-

M. DIANE BUKOWSKI,
An Individual Charging Party in Case No. C99 H-158
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APPEARANCES:

City of Detroit Law Department, by Daryl Adams, Esq., Senior Litigator, for Respondent

Ronald Gracia,, President, for Charging Party

M. Diane Bukowski, in pro per

DECISION AND ORDER

On August 30, 2000, Administrative Law Judge Julia C. Stern issued her 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: _____

STATE OF MICHIGAN

EMPLOYMENT RELATIONS COMMISSION
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In the Matter of:

CITY OF DETROIT (HUMAN RIGHTS DEPT),
Public Employer-Respondent

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M. DIANE BUKOWSKI,
An Individual, Charging Party in Case No. C99 H-158
/

APPEARANCES:

Daryl Adams, Esq., Senior Litigator, City of Detroit Law Dept., for the Respondent

Ronald Gracia, President, for the Charging Party Labor Organization

M.Diane Bukowski, in pro per

DECISION AND RECOMMENDED ORDER
OF
ADMINISTRATIVE LAW JUDGE

Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), as amended, MCL 423.210 & 423.216; MSA 17.455(10) & 17.455(16), this case was heard at Detroit, Michigan on March 16, 2000, before Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. Based upon the entire record, including a post-hearing brief filed by the Respondent on May 31, 2000, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charges:

The charge in Case No. C99 H-154 was filed on August 20, 1999, by the Senior Accountants, Analysts and Appraisers Association (the Union) against the City of Detroit. The charge in Case No.

C99 H-158 was filed on the same date by M.Diane Bukowski. The charges were consolidated on December 14, 1999. Bukowski is a member of a bargaining unit of employees of the City of Detroit represented by the Union. The two charges involve the same event. Both allege that Respondent violated Section 10(1)(a) of PERA by suspending Bukowski for refusing to meet with her supervisors without the presence of a Union representative.

Facts:

At the time of the events covered by the charge, Bukowski was employed as an intermediate governmental analyst in the contract compliance division of the City of Detroit Department of Human Rights (DHR).[1] In February 1999, Robert Ealy was manager of the contract compliance division. Kim Harris was a supervisor in this division and Bukowski's immediate supervisor. At this same time, Bukowski was an active member of an organization called the Coalition Against Police Brutality. Bukowski was aware that Ealy was suspicious of her Coalition activities.[2] Bukowski periodically received personal phone calls at work relating to her Coalition activities and these constituted the majority of her personal calls. On February 11, 1999, a manger in the DHR (Bukowski would not identify this person at the hearing) told Bukowski that her involvement in the Coalition had been discussed in a meeting of departmental management staff that day.

A staff meeting was scheduled in the contract compliance division for 10:00 a.m. on the morning of February 12, 1999. Ten minutes before the staff meeting, Harris called Bukowski and asked her to come to his office. When Bukowski arrived, she asked what this was about. Harris told her that he wanted to talk to her "regarding employee complaints." Because of what Bukowski had heard about the management meeting, she assumed this had something to do with her Coalition activities. Moreover, the contract compliance division staff had recently moved from private offices to cubicles, and Bukowski suspected that the Coalition-related calls she received at work were the subject of the employee complaints. Bukowski asked for a union representative. Harris assented, and left his office. Bukowski phoned Karl Shaw, the Union's acting secretary, from Harris' office. A few minutes later, Harris called Bukowski and told her that Ealy had told him that union representation was not necessary. Harris said either that "the meeting was not going to be disciplinary in nature," or that "it was not a disciplinary action."[3] Harris also told Bukowski that Ealy

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[1] By the date of the hearing, Bukowski had retired.

[2] In 1998, Bukowski filed a grievance accusing Ealy of keeping a secret file on her. When Bukowski was permitted to view this file, she found newspaper articles about the Coalition which quoted her and newspaper pictures of her at Coalition demonstrations. This grievance was still pending in February 1999.

[3] Harris did not testify at the hearing. My findings of fact regarding the conversations between Harris and Bukowski, therefore, are based on Bukowski's testimony. Bukowski testified on direct that Harris said nothing about the purpose of the meeting except that it dealt with employee complaints. On cross-examination, she admitted that he might have said the meeting "was not disciplinary in nature." The record also contains a written statement which Bukowski identified as her written recollection of the events of February 12 made immediately after they occurred. This document was admitted at Bukowski's request and without objection by either Respondent or the Union. In this document, Bukowski states that Harris told her that "it was not disciplinary

wanted to attend the meeting. By this time the staff meeting was beginning, and both Bukowski and Harris went in. Shaw was also there, and before the meeting began he told Bukowski to have her supervisor call his supervisor so that he could be released to come and represent her after the staff meeting. Ealy conducted the staff meeting. One of the items on the staff meeting agenda was "office policies and procedures." Ealy said that there had been some problems with telephone conversations of a personal nature being overheard by employees working in the next cubicle, and he asked employees to use the phone in the conference room if they needed to make a personal call.

After the staff meeting, at about 12:00 p.m., Harris told Bukowski to come to a meeting in Ealy's office at 2:00 p.m. Bukowski went to Ealy to ask him to get Shaw released. Ealy refused, telling Bukowski that she didn't need union representation. Bukowski phoned the DHR's personnel office, but could not find anyone available to talk to her. She then talked to Susan Glaser, the Union's vice-president, who was not able to make it to the 2:00 p.m. meeting, but who put her in touch with Union President Ron Gracia. After Bukowski had explained the situation to him, Gracia said he would call Ealy. Later he called Bukowski to tell her that Ealy had not returned his phone call and that he(Gracia) had a conflict with the 2:00 p.m. meeting but would be there at some point. Gracia told Bukowski that if he was not there at 2:00 p.m. Bukowski should wait for him.

When Bukowski did not arrive at Ealy's office at 2:00 p.m., Harris called her. Bukowksi told him that she was waiting for Gracia who was on his way. Shortly thereafter, Ealy came into Bukowski's work area and demanded that she come into the meeting immediately or be subject to disciplinary action. Bukowski said again that she was waiting for Gracia. Gracia arrived at about 2:15. At Harris' request, Harris and Gracia met privately. After considerable discussion, Harris told Gracia that no disciplinary action would come from his meeting with Bukowski, that it was not for that purpose. At this point Ealy came into the room and said to Gracia, "Why are you here? I didn't have a meeting with you." After Ealy left Harris said again that there would be no disciplinary action coming out of the meeting. Harris said that it was a routine meeting to clarify some things and that "they were not building a case against Diane." After that remark, Gracia went to Bukowski's cubicle. He told her that, based on what Harris had said, union representation would not be necessary. Gracia told Bukowski to go to the meeting, but to contact him if anything unusual happened. Bukowski went to Harris' office. Harris told her that when she was talking on the phone in her private cubicle she should keep her voice down or else go and use the phone in the conference room. Harris also told Bukowski that she would be disciplined for refusing to meet with Ealy.

On February 22, 1999, Bukowski was issued a one day notice of suspension for insubordination for refusing to attend the scheduled 2:00 p.m. meeting. Bukowski served her suspension on February 25, 1999.

Discussion and Conclusions of Law:

In *NLRB v Weingarten, Inc*, 420 US 251, 88 LRRM 2689 (1971), the Supreme Court affirmed the ruling of the National Labor Relations Board (NLRB) that an employer violates the

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action."

National Labor Relations Act, 29 USC § 151, et seq., when it denies an employee's request that the employee's union representative be present at an investigatory interview which the employee reasonably believes might result in disciplinary action. The Commission adopted the *Weingarten* Court's reasoning in *University of Michigan*, 1977 MERC Lab Op 496. Therefore, an employer who disciplines an employee for refusing to attend a meeting without union representation violates Section 10(1)(a) of PERA when that employee has a reasonable belief that the meeting could have led to discipline. *Wayne-Westland EA v Wayne Westland CS*, 176 Mich App 361 (1989), *aff'g* 1987 MERC Lab Op 624; *lv den* 433 Mich 910 (1989).

The right to request representation as a condition of participation is limited to investigatory interviews. No *Weingarten* right attaches when the sole purpose of the meeting is to convey information to the employee. There is no *Weingarten* right at a meeting to inform an employee of disciplinary action previously decided upon. *Baton Rouge Water Works Co*, 246 NLRB 995 (1979). See also *City of Detroit (DOT)*, 1991 MERC Lab Op 390; *City of Wyoming*, 1983 MERC Lab Op 1024. An employer is not required to provide union representation for run-of-the-mill "shop floor" discussions, including the giving of instructions and the correction of work techniques. *Quality Mfg Co*, 195 NLRB 197, 79 LRRM 1269 (1972). An employee has no right to union representation at a meeting called solely to convey management's complaints about him. *Walled Lake Consolidated Schools*, 1985 MERC Lab Op 448. Therefore, an employee is not entitled to union representation at a meeting whose sole purpose is to remind or inform him of a work rule, work procedure, or the existence of other employees' complaints about him. In summary, the right to representation under *Weingarten* is limited to situations where the employee reasonably believes that the investigation will result in disciplinary action. "Reasonable belief" is measured by objective standards under all the circumstances of the case. *Quality Mfg, supra*, 198; *Weingarten*, at 258.

In this case Bukowski requested union representation at her meeting with her supervisor. Respondent refused her request. Shortly after 2:00 p.m. on February 12, 1999, Bukowski was ordered to meet immediately with her supervisor and manager. Bukowski refused to enter the meeting until her union representative arrived. Bukowski later received a suspension for insubordination for her conduct in refusing this order. The sole issue here is whether at the time she refused to enter the meeting, Bukowski reasonably believed that attending the meeting would lead to her being disciplined.

I note, first, that Bukowski was told only that the meeting concerned co-worker complaints about her. Bukowski deduced, apparently correctly, that these complaints were about her personal phone calls. Moreover, Bukowski knew that many of her personal phone calls involved her activities with the Coalition Against Police Brutality, and she had objective evidence that her manager, Ealy, was hostile to these activities. Harris did not tell Bukowski whether Respondent intended to question her about her use of the phone. Therefore, when she was first asked to meet with Harris about "co-worker complaints," Bukowski had a reasonable basis for believing that the meeting might be an investigatory interview which would lead to discipline.

As Respondent points out, however, the record indicates that Harris eventually also told Bukowski either that "the meeting was not going to be disciplinary in nature," or that "it was not a

disciplinary action." Respondent argues that because of Harris' assurances, Bukowski could not have reasonably believed that she would be subjected to disciplinary action. The Commission has found, at least in one case, that an employee could have a reasonable belief that a meeting with his employer would lead to disciplinary action even though the employer assured him to the contrary. *Wayne Westland CS*, 1987 MERC Lab Op 624; *aff'd* 176 Mich App 361 (1989). However, the fact that an employee is told by his or her employer prior to a meeting that discipline will not result is obviously relevant to the reasonableness of the employee's belief that he or she will be disciplined. See *Spartan Stores, Inc v NLRB,* 628 F2d 953 (6th Cir, 1980) (employer assured employee that "nothing would happen to him as a result of the meeting.") In the instant case, Harris told Bukowski before the meeting that "the meeting is not going to be disciplinary in nature, or "it is not a disciplinary action." Harris told Gracia much the same thing after Gracia arrived at the scene. I find that despite Bukowski 's suspicions about Ealy's motives, after Harris told Bukowski that the meeting did not have a disciplinary purpose, she no longer had reasonable cause to believe that the 2:00 p.m. meeting was to be an investigatory interview which might lead to her being disciplined. I conclude, therefore, that Respondent did not violate Section 10(1)(a) of PERA when it suspended Bukowski for her refusal to attend the meeting with Harris and Ealy at 2:00 p.m. on February 12, 1999, without the presence of a union representative. In accord with this conclusion, and the findings of fact and discussion and conclusions of law set out above, I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The charges in this case are hereby dismissed in their entireties.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern
Administrative Law Judge

Dated: _____