STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF DETROIT (DEPT. OF WATER & SEWERAGE),
Public Employer-Respondent,

Case No. C03 B-030

-and-

SUBRINE CLABON,
Individual Charging Party.
_____/

APPEARANCES:

City of Detroit Law Department by Kimberly D. Hall, Esq., for the Respondent

Subrine Clabon, *In Propria Persona*

DECISION AND ORDER

On May 17, 2004, Administrative Law Judge (ALJ) Julia C. Stern issued her Decision and Recommended Order in the above matter finding that Respondent, City of Detroit, did not unlawfully transfer Charging Party Subrine Clabon to a different work location because of her union and other protected concerted activities. The ALJ found that Respondent had not violated Section 10(1)(a) or (c) of the Public Employment Relations Act (PERA), 1965 PA 379 as amended, MCL 423.210(1)(a) or (c), as alleged in the charges, and recommended that the charges be dismissed. The Decision and Recommended Order of the ALJ was served upon the interested parties in accordance with Section 16 of PERA. On June 9, 2004, Charging Party filed timely exceptions to the ALJ's Decision and Recommended Order.

In her exceptions, Charging Party contends that the ALJ erroneously failed to find that she had established a *prima facie* case of unlawful discrimination. She alleges that hostility arose directly after she filed her initial grievance and continued after she filed additional grievances. Upon reviewing the record carefully and thoroughly, we adopt the findings of fact and conclusions of law made by the ALJ. The evidence in the record does not establish that Respondent discriminated against Charging Party for engaging in protected concerted activity.

To establish a *prima facie* case of unlawful discrimination under Section 10(1)(c) of PERA, a charging party must show: (1) the employee engaged in union or other protected concerted activity; (2) employer knowledge of that activity; (3) anti-union animus or hostility to the employee's protected rights; (4) suspicious timing or other evidence that protected activity was a motivating cause of the allegedly discriminatory action. *Detroit Bd of Ed and IUOE Local*

547, 16 MPER 29 (2003); *Rochester Sch Dist*, 2000 MERC Lab Op 38, 42; *City of Grand Rapids (Fire Dep't)*, 1998 MERC Lab Op 703, 706.

When Charging Party filed complaints under Respondent's internal procedures, she was seeking a remedy for her individual problems. She was therefore not engaged in concerted activity pursuant to Section 9 of PERA. *University of Michigan*, 1990 MERC Lab Op 272, 295; See also *Wayne County Community College*, 16 MPER 33 (2003). Moreover, there is no evidence that any representative of Respondent was hostile toward Charging Party as a result of her filing grievances with the union. It is clear from the record that difficulties arose with her co-workers and supervisors before she ever filed a grievance and Respondent's decision to transfer her was not a result of the grievances.

For the reasons set forth above, we find that Respondent did not violate Section 10(1)(a) or (c) of PERA and adopt the ALJ's recommended Order.

ORDER

The charge in this case is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____
Nora Lynch, Commission Chairman

_____
Harry W. Bishop, Commission Member

_____
Nino E. Green, Commission Member

Dated: _____

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF DETROIT (DEPT. OF WATER & SEWERAGE),
Public Employer-Respondent,

Case No. C03 B-030

-and-

SUBRINE CLABON,
Individual Charging Party.
_____/

APPEARANCES:

Kimberly D. Hall, Esq., City of Detroit Law Department, for Respondent

Subrine Clabon, in pro per

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON MOTION TO DISMISS

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 heard at Detroit, Michigan on March 16, 2004, before Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. At the close of Charging Party's testimony, Respondent made a motion to dismiss the charge, and I indicated my intention to recommend that the Commission grant this motion. Based upon the evidence presented by Charging Party, including testimony and exhibits, and arguments made by both parties at the hearing, I make the following findings of fact and conclusions of law, and recommend that the Commission dismiss the charge for the reasons set forth below.

The Unfair Labor Practice Charge:

On February 12, 2003, the American Federation of State, County and Municipal Employees, Local 2920, filed this charge against the City of Detroit on behalf of one of its members, Subrine Clabon. On January 20, 2004, Clabon was substituted as the Charging Party. The charge alleges that on or about January 7, 2003, Respondent unlawfully transferred Clabon to a different work location because of Clabon's union and other protected concerted activities.

Facts:

Subrine Clabon is employed as an office assistant III in Respondent's Department of Water & Sewerage. Clabon has held her current position since 1999. Clabon is part of a bargaining unit of Respondent's employees represented by AFSCME Local 2920.

In January 2002, Clabon's immediate supervisor was Darrlyn Elliott-Hoskins (Hoskins). Clabon was assigned to do typing for certain individuals in the engineering section, including Ronald Schultz. Per Hoskins' instructions, engineering section employees were supposed to give anything that needed to be typed immediately to Hoskins, who would assign the work to a typist. On January 29, 2002, Schultz approached Clabon's desk and told her that he needed some work done right away. Clabon told Schultz that he had to speak to her supervisor. Schultz became angry and belligerent. Clabon left her desk, found Hoskins, and told her about the situation. Later, Hoskins spoke to Delip Patel, Schultz's supervisor, about Schultz's outburst. After interviewing two other employees who had witnessed the incident, Patel concluded that Schultz's actions did not warrant discipline. Hoskins and Patel agreed, however, that Schultz should no longer give any work to Clabon directly. However, on February 14, Clabon complained to Hoskins and Patel that Schultz was using excuses to stand close to her desk and stare at her in an intimidating manner.

On April 4, 2002, Hoskins told Clabon that Schultz had sent a letter to Patel recommending that Clabon be reprimanded for poor work performance. Clabon was not reprimanded. However, effective April 15, Clabon was reassigned to the timekeeping office where she would not have to interact with Schultz.

Working in the timekeeping office on May 1, 2002, Clabon received a vacation request from Patel that did not have his supervisor's signature. Clabon telephoned Patel's supervisor, A.B. Davis, and left a phone message. When Davis called her back, Clabon asked if she could accept Patel's vacation request without his signature. Davis angrily told Clabon not to bother him with such matters, and accused her of trying to check up on her bosses. Clabon replied that she was only doing her job. On May 3, Davis asked to meet with Patel and Clabon. Davis asked Clabon why she had felt the need to call him about Patel's vacation request. Clabon said that she believed that she was not supposed to record leave as approved unless a supervisor signed the leave request. Davis told Clabon that she was never to call his office again, and that if she did she would be charged with insubordination.

On May 8, Clabon met with her union representative and Hoskins to discuss what had occurred at Clabon's meeting with Davis. On May 15, Hoskins sent Clabon a memo telling her to direct any questions or concerns she had about Patel's time to Hoskins, or, in her absence, to other supervisors listed in the memo. Hoskins asked Clabon not to contact Davis directly.

On May 23, 2002, Clabon filed two grievances under the union contract. One alleged that Hoskins was doing bargaining unit work in the timekeeping office. The other alleged "harassment and retaliation." In that grievance, Clabon asserted that Respondent had put her into the timekeeper position to get her away from Schultz, with whom the harassment started. She

also asserted that Hoskins and Davis' criticism of her decision to call Davis on May 1 constituted harassment.

Respondent has an internal procedure for investigating and processing complaints of job harassment. This procedure is separate from and unrelated to the union grievance procedure. Sometime in November, 2002, a representative from Respondent's labor relations division approached Clabon and told her that that the union grievance procedure was not the proper forum for dealing with complaints of job harassment. The labor relations representative suggested that Clabon use Respondent's internal complaint procedure to file a complaint against Schultz.

In the summer of 2002, Clabon encountered a number of difficulties doing her job in the timekeeping office. On August 16, 2002, Clabon wrote to the assistant superintendent of the department asking for more training. Clabon did not get a response to her letter. However, on September 3, Hoskins sent Clabon and her fellow payroll clerks a memo setting out new procedures for recording time and for dealing with overtime or leave time submitted without documentation. On September 4, 2002, Clabon wrote to the director of the Department of Water and Sewerage complaining about job harassment. In accord with Respondent's internal procedures for job harassment complaints, Clabon's complaint was assigned to investigators in Respondent's human resources department.

In late September or early October, Hoskins spoke to Clabon about the number of personal visitors she was receiving, and about her smoking in the hallway. Clabon accused Hoskins of singling her out. On October 2, 2002, Hoskins wrote a memo to eight staff members, including Clabon, reminding them they should not engage in socializing, eating, or other non-work related activities at their work stations.

On October 18, 2002, Clabon had a meeting with Hoskins, the assistant superintendent of the department, and two union representatives. At this meeting, Hoskins went over Clabon's timekeeping duties. On October 23, 2002, Clabon sent a memo to the individuals investigating her September 4 harassment complaint. Clabon told them that Respondent was harassing her by sending her memos about how to do her job, while at the same time telling her that she did not have to do certain things. Clabon told the investigators that she felt that the purpose of these memos was to give Respondent an excuse to discipline her if she failed to do something she had been told not to do. On October 30, 2002, Hoskins sent Clabon a memo listing her duties, and informing her that she would be receiving refresher training on timekeeping procedures. On November 13, 2002, Clabon filed a job harassment complaint against Hoskins under Respondent's internal procedure. Clabon alleged that Hoskins was singling her out for criticism of her job performance.

On December 12, 2002, Clabon met with Hoskins, Clabon's union representative, a labor relations representative, and the assistant superintendent. The assistant superintendent told Clabon that he had heard that she was having trouble in timekeeping, and he asked her if she wanted to transfer. Clabon said no. The assistant superintendent then said that he believed Clabon and Hoskins had a personality conflict, and that it would be best if they were separated. Clabon denied that she and Hoskins had a personality conflict, and told the assistant

superintendent that her problems all stemmed from the fact that employees were not submitting the proper documentation with their leave requests. In a memo later that day, Clabon was informed that effective January 6, 2003, she was temporarily reassigned to perform timekeeping duties at another job location. At the new location, Clabon reported to a different supervisor.

Discussion and Conclusions of Law:

Section 10(1)(c) of PERA prohibits a public employer from discriminating against employees in order to encourage or discourage membership in a labor organization. Section 10(1)(a) makes it unlawful for an employer to interfere with, restrain or coerce public employees in the exercise of rights guaranteed to employees under Section 9 of the Act. Section 9 states:

> It shall be lawful for public employees to organize together or to form, join or assist in labor organization, to engage in lawful concerted activities for the purpose of collective negotiation or bargaining or other mutual aid and protection, or to negotiate or bargain collectively with their public employers through representatives of their own free choice. [Emphasis added]

A person who in good faith asserts an individual grievance based on a provision of a collective bargaining agreement is protected by PERA, because the collective bargaining agreement is the result of "concerted activities by the employees for their mutual aid and protection." *MERC v Reeths-Puffer School Dist.,* 391 Mich 253,261 (1974). However, individual complaints about working conditions are not protected, because what Section 9 of PERA protects is the right of employees to act together. *Hesperia Bd of Ed.,* 1969 MERC Lab Op 104, 109. See also *Detroit Bd of Ed,* 1989 MERC Lab Op 890; *City of Adrian,* 1985 MERC Lab Op 764.

In order to establish a prima facie case of unlawful discrimination under Section 10(1)(a) or (c) of PERA, a Charging Party must show: (1) employee union or other protected concerted activity; (2) employer knowledge of that activity; (3) anti-union animus or hostility to the employee's protected rights; (4) suspicious timing or other evidence that protected activity was a motivating cause of the allegedly discriminatory action. *Detroit Bd. of Education and IUOE Local 547,* 2003 MERC Lab Op _____ (Case Nos. C02 D-077 and CU02 D-017, issued May 19, 2003); *Rochester School District*, 2000 MERC Lab Op 38, 42; *City of Grand Rapids (Fire Dept),* 1998 MERC Lab Op 703,706.

I find that Clabon was not engaged in concerted activity protected by the Act when she filed complaints of "job harassment" under Respondent's internal procedures. Clabon's complaints were made alone and on her own behalf, and in pursuing these complaints Clabon was not attempting to enforce any provision of the union contract. Clabon's filing of her two grievances on May 23, 2002 was conduct protected by PERA. However, there was no indication that Hoskins, or any other representative of Respondent, was hostile toward Clabon's exercise of her right to file these grievances. As Clabon herself admits, her problems with her supervisors apparently started earlier, with her clash with Schultz and Clabon's subsequent complaints about his belligerent attitude toward her. By the time that Clabon filed her grievances, she had angered Davis, and her relationship with Hoskins had started to deteriorate. I find no evidence that Clabon's grievance filing activity was a motivating factor in her problems with Hoskins, or in

Respondent's decision to transfer her to work under a different supervisor six months later. I conclude that Clabon has not set forth a prima facie case of unlawful discrimination under Section 10(1)(a) or 10(1)(c) of PERA. Therefore, I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Julia C. Stern
Administrative Law Judge

Dated: _____