

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

In the Matter of:

CITY OF LANSING,
Public Employer-Respondent in Case No. C05 I-206,

-and-

TEAMSTERS LOCAL 580,
Labor Organization-Respondent in Case No. CU05 F-021,

-and-

CLARENCE W. OSBORNE, JR.
An Individual-Charging Party.

APPEARANCES:

Sue Graham, Labor Relations Specialist, City of Lansing, for the Respondent Employer

Rudell & O'Neill, PC, by Wayne A. Rudell, Esq., for the Respondent Labor Organization

R. Earl Selby, Esq., for Charging Party Clarence Osborne

DECISION AND ORDER

On June 7, 2007, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order in the above matter finding that Respondents 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. The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of the Act. Pursuant to Rule 76, R423.176 of the General Rules of the Employment Relations Commission, exceptions to the Decision and Recommended Order were due on July 2, 2007.

No exceptions were filed on or before the specified date. Rather, we received Charging Party's exceptions by regular mail on July 3, 2007.¹ Although the exceptions were dated June 29,

¹ Responses to the exceptions were filed by Respondent Teamsters Local 580 on July 5, 2007 and by Respondent City of Lansing on July 10, 2007. However, the Commission did not consider either response since the exceptions are not timely filed.

2007, it is well established that the date of filing of exceptions is the date the document is received at the Commission's office. See e.g. *Amalgamated Transit Local 26*, 20 MPER 1 (2007); *Wayne Co Cmty College Dist*, 18 MPER 54 (2005); *Frenchtown Charter Twp*, 1998 MERC Lab Op 106, 110 aff'd sub nom *International Union v Frenchtown Charter Twp*, unpublished opinion per curiam of the Court of Appeals, issued November 2, 1999 (Docket No. 211639), 1999 WL 33432169. See also *City of East Grand Rapids*, 20 MPER ____ (2007) (Case No. C06 J-258, CU06 J-050 & CU06 J-051 reconsideration denied 5-24-07) where we stated "In sending the exceptions by regular mail, Charging Party bore the risk of delay", citing *Talamantes-Penalver v INS*, 51 F3d 133, 136 (CA 8, 1995); *Anssari-Gharachedaghy v INS*, 246 F3d 512 (CA 6, 2000).

When the Administrative Law Judge's Decision and Recommended Order was served on the parties, the accompanying letter explicitly stated that the exceptions must be received at a Commission office by the close of business on the specified date. Accordingly, we hereby adopt the recommended order of the Administrative Law Judge as our final order and dismiss the charges.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Christine A. Derdarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, 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, this case was heard at Lansing, Michigan on July 20 and August 29, 2006, before Administrative Law Judge Julia C. Stern for the Michigan Employment Relations Commission. Based upon the entire record, including a post-hearing brief filed by the Respondent Employer on October 27, 2006, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charges:

Clarence W. Osborne filed the charge in Case No. CU05 F-02 on June 6, 2005. Although Osborne listed both his collective bargaining agent, Teamsters Local 580 (the Union), and his former employer, the City of Lansing (the Employer) as Respondents on his charge form, the charge included no allegations against the Employer and the charge was docketed as a charge against the Union only. A copy of the charge was mailed by the Commission to the Union on June 22, 2005. On

July 11 and August 12, 2005, Osborne filed amended charges which largely consisted of allegations against the Employer. He did not serve either the Union or the Employer with copies of the amended charges as he was required to do by Rule 153(1) of the Commission's General Rules, 2002 AACRS 423.153(1). On September 8, 2005, Osborne filed a separate charge against the Employer, Case No. C05 I-206. The two charges were then consolidated for hearing. Copies of all the charges and amendments were mailed to the Employer on September 21, 2005, and to the Union on November 14, 2005. At the first day of hearing, I ruled that the amended charges filed on August 12 would be made part of Case No. C05 I-206.

Osborne's charge against the Employer alleges that it violated Sections 10(1) (a) and (c) of PERA. On February 23, 2005, Osborne filed a grievance over a work directive given to him by his supervisor, Diane Lee. Osborne asserts that numerous adverse actions taken against him between February 23, 2005 and his resignation on August 1, 2005, including a ten-day suspension issued to him on May 9, 2005, constituted unlawful retaliation against him for filing this grievance and two others filed in May 2005.²

Osborne's charge against the Union alleged that it violated its duty of fair representation by failing to put a stop to the Employer's discrimination against him. At the close of Osborne's testimony, I granted the Union's oral motion to dismiss the charge for failure to state a claim.

Facts:

Until his resignation, Osborne was employed as a property appraiser in the city assessor's office, a division of the Employer's finance department. He was also an alternate union steward. In February 2005, Osborne was classified as a senior personal property appraiser. As the only appraiser assigned full time to personal property, Osborne's duties included conducting audits and preparing tax assessments for the personal property assets of businesses and defending these assessments before the State Tax Tribunal and State Tax Commission. He reported directly to Diane Lee, who also supervised appraisers assigned to commercial real estate. Osborne also worked closely with the city assessor, David Tijerina, who was Lee's supervisor.

All the witnesses agreed that there was friction between Osborne and Lee long before February 2005. According to Osborne, the problem began when Lee objected to him leaving his job when his naval reserve unit was temporarily activated in 2002. Tijerina and Lee testified that it started earlier, when Lee became Osborne's supervisor in 1994 or 1995, or in 1997, when Osborne became the personal property appraiser. According to Tijerina, Osborne was very knowledgeable in the area of personal property and often made suggestions that Lee did not appreciate. Osborne testified that Lee did not understand what the personal property position entailed. According to Lee, she found Osborne's work performance to be substandard almost from the time that she became his supervisor. She testified that she constantly had to send work back to him to redo, that she had complaints from taxpayers about his work, and that she had to explain procedures to him multiple times. Jan Budden, an appraiser who retired in 2003, testified that during her tenure with the

² At the hearing, Osborne asserted that his resignation constituted a constructive discharge. However, Osborne did not make this claim in his charge.

assessor's office Lee often made negative comments about Osborne's work and "just didn't appear to like him."

The relationship between Osborne and Lee was complicated by disagreements between Tijerina and Lee. In 2003, Tijerina criticized Lee's work performance, and Lee filed a grievance against him for failing to give her clear work directives. Tijerina also tended to side with Osborne in his conflicts with Lee. These conflicts mostly remained within the assessor's office, but in late 2003, Osborne received a memo from the then-director of the finance department, Doug Rubely, directing him to follow the chain of command and not to bypass Lee for work assignments.

Osborne's February 23, 2005 grievance arose from a disagreement between him and Lee over a work assignment. The city assessor's office inspects and values the personal property of businesses throughout the year. However, businesses are supposed to file an annual personal property statement with the assessor's office by February 20 of each year. As they arrive, the personal property statements are distributed among all the commercial appraisers, who input data from the statements into the computer and compute or recompute the assessed and taxable value of the business's property based on this data. After February 20, the assessor's office sends out assessment notices. Taxpayers can appeal their assessment to the City's board of review at its meeting held on the second Tuesday following the first Monday in March. The City is required by law to send out tax assessment notices at least ten days before the board of review meets. If a business has not filed its personal property statement by the deadline, or if for some other reason the data from the statement has not been entered into the City's computer before the assessment notices go out, the assessor's office uses an estimated value for the property and the notice states that the business failed to file a statement. A substantial number of businesses file their personal property statements after February 20, or do not bother to file at all, and address their arguments over the value of their property directly to the board of review. Nevertheless, the assessor's office tries to compute values from those personal property statements filed by February 20 before the notices are issued so that the notices are as correct as possible. Since most of the personal property statements are filed close to the February 20 deadline, in late February all appraisers, including Lee, work on personal property statements and appraisers are expected to spend most of their time in the office.

On February 8, 2005, Osborne attended a tax commission hearing to oppose a business's request to amend its previous year's personal property statement. When Osborne told the tax commission that the amendments were so significant that the City needed to conduct an audit, the corporation's attorney said Lee had told him on the telephone that the City was not going to do an audit. The commission told Osborne to do the audit and present his findings at its next meeting. Osborne also promised the commission that he would do an audit on another case before the commission's next meeting. About a week after the February 8 tax commission hearing, Osborne told Lee about the audits he was required to do before the next tax commission meeting. Lee said that Osborne should have told the tax commission that he had more important things to do. She told him that he should be working on his personal property statements since they needed to be completed by the end of the day on February 23.

On February 19, 2005, Osborne prepared a memo describing what had occurred at the tax commission meeting and what Lee had said about the audits. Osborne implied in his memo that opportunities to collect city revenue were being missed because his workload was too heavy.

Osborne sent copies of this memo to Tijerina, finance department director Glen Kirk, and deputy finance department director Jill Rhode. On February 22, Osborne prepared a grievance protesting Lee's assigning him work that interfered with his ability to complete the audits for the tax commission. The grievance read as follows:

Reasons for Grievance: Deviation from generally [sic] accounting practice and principle (GAAP). Article 1(b) management rights; Article 13 work assignments – to normally be assigned to exercise discretion or apply technical knowledge.

Osborne testified that he feared that if he failed to comply with the tax commission's deadline he might lose his tax examiner's certification.

On the morning of February 23, Lee reminded all her staff, including Osborne, that data from the personal property assessments had to be entered into the computer by five p.m. so that the assessment notices could be prepared for printing. Osborne told Lee that he had a grievance to file, and left the office. He did not tell Lee where he was going or how long he would be gone. Osborne took the grievance to a Union stewards' meeting taking place that morning.³ The grievance was passed around among the stewards at this meeting. Osborne's steward, R.L. Hester, was not at the meeting because he was on vacation. Union president Mike Parker told Osborne to wait to file the grievance until Hester returned. Osborne spent about two hours at the stewards' meeting. Osborne then returned to the assessor's office where he discussed his grievance and the February 19 memo with Tijerina. At some point during that day, Tijerina signed the grievance and accepted it. Osborne also went to deputy finance director Rhode's office to discuss the grievance and his February 19 memo with her. Later he received a phone call from finance director Kirk asking to see him. Osborne went to Kirk's office, where he and Kirk discussed the February 19 memo. Osborne returned to his desk sometime after four p.m. and worked until about six p.m. He did not finish the work Lee had told him to complete by five p.m.

Osborne should have turned in his weekly time card on February 23, but did not do so. On February 24, Lee filled out a time card for him showing one and one-half hours of paid time, and gave the time card and the following memo to Tijerina:

On Wednesday, February 23, 2005, Clarence Osborne was absent from his work station without approval. He was at his desk for a few minutes shortly after his start time at 8:30 a.m., and appeared again in the office at approximately 1:30 p.m. When his Supervisor went to his work station to ask where he had been he was no longer there and did not come back to work until sometime after 4:15 p.m. when his Supervisor left the office.

The for reason [sic], Clarence has an unexcused absence for at least 6.5 hours on February 23, 2005.

According to Lee, she had not seen Osborne's grievance when she wrote this memo or later when she filed disciplinary charges against him. When Hester returned from vacation, he met with

³ As an alternate steward, Osborne had a contractual right to attend and be paid for attending this meeting.

the Employer at the second step of the grievance procedure, which under the contract was finance department director Kirk. There was no indication in the record that Lee participated in any discussion of this grievance until the meeting to discuss Osborne's discipline on April 29.

On February 24, Osborne filled out a time card indicating that he had spent four hours at work and four hours on union business on February 23. He gave the time card and a memo explaining what he had done on February 23 to Tijerina. Tijerina told Lee that docking Osborne's pay was not an appropriate action under the Employer's progressive discipline system, and he approved Osborne's time card. The following day, Lee placed several memos in Osborne's office mailbox accusing him of missing staff meetings and otherwise misusing his time. Osborne prepared a written reply to these accusations and gave copies to both Lee and Tijerina.

On February 28, Lee notified Osborne that she intended to file formal charges of misconduct against him for his conduct on February 23 and to recommend that he be disciplined. Osborne also received a memo from Lee stating that beginning on March 1, he was to be at his desk from 8:00 a.m. to 5:00 p.m. to meet with taxpayers and schedule board of review appointments. Because Osborne lived a long way from his workplace, Lee had previously permitted him to begin work at 8:30 a.m.

At the beginning of March, the tax commission called Osborne and told him that it was meeting on March 7 at 9 am. Osborne told Tijerina about this meeting on March 2. He did not mention it to Lee. The night before the meeting, he left a note on the office grease board indicating that he was going to the meeting. Later that day he filled out a time card showing overtime hours worked over the weekend. When questioned, Osborne explained that he had worked at home on the documents to be presented to the tax commission because he did not have time to complete them at work. Both Lee and Tijerina refused to approve his time card, citing the Employer's policy against paying overtime for time worked at home. On March 8, Lee sent Osborne a memo reprimanding him for failing to report to work before going to the meeting and failing to let her know about the meeting in advance so that she could get it postponed. Later that day, Osborne gave Lee a long written reply to her memo. In his reply, he complained again about his workload. He also accused Lee of showing no interest in tax appeal proceedings and of general incompetence.

Sometimes around the end of March, Osborne was notified that as part of a reorganization of the assessor's office, his position as senior personal property appraiser was being eliminated and that he was being reclassified as an appraiser. The personal property work was to be distributed among all appraisers in the assessor's office. Osborne was reassigned to work in the City treasurer's office, but after only a few hours was sent back to the assessor's office. Despite his title change, Osborne continued to be assigned most of the personal property work.

On March 24, Lee filed charges against Osborne based on his conduct on February 23. Lee asserted that on the morning of February 23, she had reminded Osborne that he had to enter all personal property assessment data into the computer by five p.m. on that date. She maintained that Osborne had deliberately failed to complete his assignment by the deadline, failed to provide notice of his whereabouts during that day, and turned in a false timecard. She accused Osborne of violating work rules prohibiting employees from being absent without permission, insubordination,

unproductive work, and falsifying City records. Lee asked that Osborne be given a written reprimand for each of these offenses and that he be suspended for ten days.

In accord with its disciplinary procedures, the Employer set up a “pre-determination” meeting to give Osborne an opportunity to present a defense to these charges. The meeting was scheduled for March 30. Tijerina showed up for the meeting, although he had not been asked to do so by the Employer’s personnel department, and a Lansing City councilwoman also appeared at Osborne’s request. Osborne presented the Employer’s personnel department representatives with a thirteen page written rebuttal to the charges. The meeting did not begin on time and was eventually cancelled because Union president Parker had another appointment. The meeting was rescheduled for April 29.

Both Parker and Hester, Osborne’s steward, attended the April 29 meeting. While waiting for the meeting to begin, Parker and Hester joked with the Employer representatives, and they discussed golf and other personal issues. At the meeting on April 29, Osborne discussed his attendance at the tax commission meeting on February 8, the memo he wrote on February 19, and his February 23 grievance. He explained how he had spent his time on February 23. He maintained that he could not have completed the personal property statements Lee had assigned him in the allotted time. He also said that Lee had set a “false deadline” for completing the statements because so many businesses did not file personal property statements with the assessor’s office but presented them directly to the board of review. Osborne also complained that his workload was far heavier than that of any of the other assessors.

At the April 29 meeting, Lee presented her version of the events on February 23. She also described Osborne as having a history of work-related problems, and made unfavorable comments about Osborne’s work performance. Kirk and Rhode described their meetings with Osborne on February 23. They contended that both meetings together had taken only a little over an hour. Parker and Hester argued at the meeting that that the proposed ten day suspension was too severe a punishment for the offenses charged. During the pre-determination meeting, which continued on May 3, the Employer and Union representatives discussed the events which gave rise to the February 23 grievance. Parker admitted at that meeting that the Union had not moved the grievance beyond the second step and that he was not sure what had happened to it.

On May 9, Osborne was given written reprimands and a ten-day suspension for being insubordinate in refusing to do the work assigned by his supervisor, for being absent from the workplace without permission, and for falsifying his time card. Osborne served his suspension from May 16 through May 27. On May 13, the Union filed two grievances over the suspension, including one asserting that the Employer was discriminating against Osborne.

Osborne returned to work on June 3. Osborne testified that on his first day back, Lee assigned Osborne 169 personal property audits to perform by August 1.⁴ Osborne had been averaging about five audits every quarter, and had never done more than seven in two months. When Osborne complained to Tijerina, he assigned some of Osborne’s audits to other appraisers, who in turn complained to Lee.

⁴ Lee denied making this assignment.

On June 9, Osborne was talking to Tijerina about a business that was being garnisheed for back taxes when Lee approached him and began talking angrily about the personal property audits he was supposed to be doing. When Osborne walked away, Lee followed him and, according to Osborne, bumped him with her shoulder. Osborne then called 911. A City police officer was dispatched to the assessor's office. After the officer had interviewed the parties and left, Lee called Kirk to advise him of the incident. On July 7, the police department notified the Employer's personnel department that Osborne had made a non-emergency 911 call. On July 26 or July 27, Osborne was called to a meeting with finance director Kirk and Employer assistant personnel director John Bensinger. At this meeting, Bensinger and Kirk told Osborne that his 911 call had been improper. They also discussed his relationship with Lee. Osborne was told that he was to do whatever Lee told him to do, and that he was not to talk to Tijerina. Osborne was given a written "counseling statement" that included the following:

Ms. Lee is and has been your supervisor. As your supervisor she will assign your job duties, collect completed job assignments, evaluate your performance and set forth the job expectations you are required to uphold. You are to communicate directly with Ms. Lee and accept communications from Ms. Lee in a professional manner. You have been previously counseled regarding your behavior toward your supervisor Ms. Lee and this behavior will not be tolerated. (See the attached memorandum from Doug Rubely, for example.) Do not bypass Ms. Lee as your supervisor by going directly to the City Assessor.

On July 27, Osborne sent Lee an e-mail asking her to remove herself as his supervisor. Lee replied on August 1, telling Osborne that she could not do that and that all appraisers were under her supervision. Later that day Osborne came to Lee's office and gave her a letter stating that he was resigning effective August 15. In his letter, Osborne cited the fact that his position as personal property appraiser had been eliminated. At the hearing, Osborne testified that his resignation was precipitated by Kirk and Bensinger's criticisms of his conduct on July 27 and Lee's refusal to remove herself as his supervisor.

On August 19, a fourth step meeting was held on all of Osborne's pending grievances. The principal issue discussed at this meeting was whether Osborne was guilty of insubordination by leaving to file a grievance and then meeting with assistant finance director Rhodes to discuss Lee's behavior instead of completing the assignment Lee had given him. The Union argued that he was not. The parties also discussed Osborne's discrimination complaint and the June 9 incident leading to the 911 call. Nothing was resolved at this meeting. As of the date of the hearing, these grievances were still pending but the Union had not taken action to move them to the next step of the grievance procedure.

Discussion and Conclusions of Law:

Osborne's Charge Against the Employer

In order to establish a prima facie case of unlawful discrimination under Section 10(1) (c) of PERA, a charging party must show: (1) an employee's union or other protected concerted activity; (2) employer knowledge of that activity; (3) anti-union animus or hostility to the employee's protected rights; and (4) suspicious timing or other evidence that the protected activity was a motivating cause of the allegedly discriminatory action. *Waterford Sch Dist*, 19 MPER 60 (2006); *Northpointe Behavioral Healthcare Systems*, 1997 MERC Lab Op 530, 551- 552.

Section 9 of PERA protects the rights of public employees "to engage in lawful concerted activities for the purposes of collective negotiation or bargaining or other mutual aid and protection." 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 Sch Dist*, 391 Mich 253, 261 (1974). Osborne, therefore, was engaged in activity protected by PERA when he filed his grievance on February 23, 2005. However, not all Osborne's conduct on that day was protected by PERA. Although a union and employer may agree to paid time off for union business, Section 9 does not give an employee the right to conduct union business during time when he or she is being paid to work. *City of Detroit (General Hospital)*, 1968 MERC Lab Op 378 (no exceptions); *City of Detroit (Public Lighting Dep't)*, 17 MPER 73 (2004) (no exceptions). Moreover, while an employer who assigns work to an employee for the sole purpose of preventing him from filing a grievance may be found to have interfered with the employee's exercise of his Section 9 rights, Section 9 does not give an employee the right to disobey his employer's order to perform assigned work in order to engage in union activity. See, e.g. *Univ of Michigan*, 1979 MERC Lab Op 54 (no exceptions). In this case, Osborne knew at least several weeks before February 23, 2005 that Lee expected him to complete his personal property assessments by the end of that workday. Clearly, Lee did not give Osborne this assignment to prevent him from filing a grievance on that day. I find that Osborne did not have a right under PERA to ignore Lee's directive to complete his personal property statements by the end of the day on February 23 in order to attend a stewards' meeting and discuss his grievance with the Union and his supervisors. Whether or not the deadline Lee set was necessary or in the best interest of the City is irrelevant to the question of whether Osborne's conduct was protected by the statute. As Lee's subordinate, Osborne had the obligation to comply with her orders to the best of his ability. Osborne's own testimony establishes that he did not do that on February 23, 2005.

I agree with Osborne that at least some of the adverse actions Lee took against Osborne after February 23, 2005 were a direct result of his conduct on that date. First, Lee attempted to dock Osborne's pay for being absent from the office for the better part of the day without her permission. After being told by Tijerina that this was not the proper approach, Lee initiated formal disciplinary charges. The timing of other actions, including Lee's decision to change Osborne's work schedule, her March 8 reprimand of Osborne for failing to advise her that he would be attending a meeting, and the decision in early March to abolish Osborne's specialized job title of personal property appraiser suggest that these actions were also connected to Osborne's conduct on February 23. However, as discussed above, on February 23, 2005, Osborne engaged in both conduct protected by the Act – the filing of a grievance asserting a contract right – and the unprotected conduct of ignoring his supervisor's order to complete an assignment.

In order to establish a prima face case of illegal discrimination under PERA, Osborne must show that his protected conduct was at least a motivating factor in the actions taken against him. As noted above, employer anti-union animus or hostility toward an employee's protected activities is an essential element of a finding of unlawful discrimination under Section 10(1) (c) of PERA. There is no direct evidence here that Lee had anti-union animus or was hostile toward Osborne because he filed a grievance. A finding of anti-union animus can be based on circumstantial evidence, including the timing of the adverse action in relation to the protected activity. In this case, as Osborne admitted, Lee and Osborne had an adversarial relationship dating back to at least 2000. After February 23, 2005, Lee immediately began taking serious actions against him. However, on February 23 Osborne not only filed a grievance, he disregarded Lee's directive to complete a work assignment. Moreover, it is not clear that Lee even knew that Osborne had filed a grievance against her when she took the first of these adverse actions. Although Osborne told Lee on February 23 that he was going to file a grievance, he did not tell her what the grievance was about or show it to her. Since Osborne was an alternate steward and the regular steward, Hester, was on vacation, Lee could not necessarily have assumed that she was the subject of this grievance. I find nothing in the evidence to suggest that Lee's subsequent actions were motivated by hostility toward Osborne's grievance rather than anger at his apparent flouting of her directive to complete the personal property assessments. There is also nothing in the record to indicate that finance director Kirk or assistant personnel director Bensinger were motivated by hostility toward Osborne's grievances when they reprimanded him in late July 2005 for attempting to avoid Lee's supervision by going directly to Tijerina. I conclude that Osborne failed to establish that the adverse actions taken against him between February 23 and August 1, 2005 were motivated even in part by his union activity. I recommend, therefore, that the charge against the Employer be dismissed.

Osborne's Charge Against the Union

Osborne's original charge against the Union alleged that it had been arbitrary and capricious in its handling of a grievance and had "acted in bad faith by allowing management to violate the union contract." In the July 11 amendment to his charge, filed after I had ordered Osborne to provide more detail regarding his allegations, Osborne alleged that Parker and Hester "took a somewhat lax attitude toward the seriousness of the contract violations," as evidence by their joking with the Employer representatives before the April 29 pre-determination meeting. He also alleged that the Union had "lost, misplaced, or forgotten" his February 23 grievance. In the amended charge filed on August 12, Osborne asserted that the Union had failed to schedule a meeting on the May grievances filed over his discipline and complained that it told him to "do what his supervisor told him," and that "the amount of his workload didn't matter." At the hearing, Osborne responded to the questioning of the Union's counsel by stating that the Union's handling of his February 23, 2005 grievance was no longer part of his charge. He stated that his complaint against the Union was that it had not put an end to the Employer's discrimination against him. As noted in the findings of fact, Osborne testified that the Union argued prior to his suspension that the punishment was too harsh, and that it filed and processed grievances over this suspension. Osborne admitted that he did not ask the Union to grieve any of the other adverse actions that were taken against him after February 23, 2005.

A union's duty of fair representation under PERA is comprised of three distinct responsibilities: (1) to serve the interests of all members without hostility or discrimination toward any; (2) to exercise its discretion in complete good faith and honesty, and (3) to avoid arbitrary conduct. *Goolsby v Detroit*, 419 Mich 651,679(1984); *Eaton Rapids EA*, 2001 MERC Lab Op 131,134. See also *Vaca v Sipes*, 386 US 171, 177 (1967). As I stated on the record at the hearing, I find that Osborne failed to state a claim against the Union for breach of its duty of fair representation toward him. I recommend, therefore, that the charge against the Union be dismissed and that the Commission issue the following order.

RECOMMENDED ORDER

The charges are dismissed in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Julia C. Stern
Administrative Law Judge

Dated: _____