STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

MASON COUNTY ROAD COMMISSION,
Public Employer-Respondent,

Case No: C06 B-033

-and-

GREG C. COLLINS,
An Individual-Charging Party.
_____/

APPEARANCES:

Michael R. Kluck & Associates, by Thomas H. Derderian, Esq., for Respondent

Greg C. Collins, *In Propria Persona*

DECISION AND ORDER

On August 5, 2008, Administrative Law Judge (ALJ) Julia C. Stern issued her 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 charge. The ALJ's Decision and Recommended Order was served on the interested parties in accord with Section 16 of the Act. Pursuant to Rule 176 of the General Rules of the Michigan Employment Relations Commission, 2002 AACS, R 423.176, exceptions to the Decision and Recommended Order were due on August 28, 2008.

We received a letter from Charging Party indicating that it was his desire to appeal the ALJ's Decision and Recommended Order in this matter and in Case No. C07 L-280, the other case between these parties. The letter was stamped as received by the Bureau of Employment Relations (BER) on August 29, 2008. On September 5, 2008, Charging Party contacted the BER to inquire about the status of his appeal and was told that his letter had been received after the deadline for filing timely exceptions. Charging Party protested that he had received a postal return receipt card for the letter signed by a BER staff member. He contended that the receipt date originally written on the card was August 28, and that someone wrote over that date and changed it to August 29. Charging Party faxed a copy of the return receipt to BER and we agree with Charging Party that it does appear that someone altered the date on the return receipt, changing it from August 28 to August 29. However, even if we were to agree with Charging Party's contention that his letter was received on August 28, 2008, the letter does not qualify as a statement of exceptions pursuant to Rule 176.

Rule 176 provides in relevant part:

(3) Exceptions shall be in compliance with all of the following provisions:

(a) Set forth specifically the question of procedure, fact, law, or policy to which exceptions are taken.
(b) Identify that part of the administrative law judge's decision and recommended order to which objection is made.
(c) Designate, by precise citation of page, the portions of the record relied on.
(d) State the grounds for the exceptions and include the citation of authorities, if any, unless set forth in a supporting brief.

. . .

(5) An exception to a ruling, finding, conclusion, or recommendation that is not specifically urged is waived. An exception that fails to comply with this rule may be disregarded.

Attached to Charging Party's letter were copies of the ALJ's Decision and Recommended Order for each of the two cases, a document that appears to be part of a collective bargaining agreement, and a document that appears to be a witness statement. Charging Party's letter discusses facts related to his employment, his hearing on his claim for unemployment insurance benefits, and his belief that he should be reimbursed for the attorney fees that he paid in that matter and for the pay he lost while suspended from work. However, his letter does not specify the portion of the ALJ's decision with which he disagrees and fails to state grounds for his exceptions. Charging Party's brief letter indicating a desire to appeal without specifying the grounds for such appeal does not comply with the requirements for exceptions. See *Detroit Police Officers Ass'n*, 1999 MERC Lab Ops 387, 13 MPER 31001 (1999); *City of Detroit Building and Safety Engineering*, 1998 MERC Lab Op 359, 11 MPER 29064. Accordingly, we dismiss Charging Party's filing and adopt the Decision and Recommended Order of the Administrative Law Judge as our final order.

ORDER

For the above reasons, we hereby adopt the Administrative Law Judge's Decision and Recommended Order as our final order in this case and dismiss the charges in their entireties.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____
Christine A. Derdarian, Commission Chair

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

Dated: _____

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

MASON COUNTY ROAD COMMISSION,
Public Employer-Respondent,

Case No: C06 B-033

-and-

GREG C. COLLINS,
An Individual-Charging Party.
_____/

APPEARANCES:

Michael R. Kluck & Associates, by Thomas H. Derderian, Esq., for Respondent

Greg C. Collins, appearing personally

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 October 30, 2007, before Administrative Law Judge Julia C. Stern of the State Office of Administrative Hearings and Rules for the Michigan Employment Relations Commission. Based upon the entire record, including a post-hearing brief filed by the Respondent on December 7, 2007, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

Greg C. Collins filed this charge against his employer, the Mason County Road Commission, on February 17, 2006. The first page of this charge had, under description of the alleged violation, only these words, "discrimination, retaliation, singling me out." However, the charge included an attachment alleging that Respondent discriminated against Collins by giving him a one day suspension for asking his steward for a grievance form, while disciplining employees who committed serious offenses less severely. A copy of a grievance protesting this suspension dated February 8, 2006 was also attached to the charge.

According to Respondent, it was served only with the first page of the charge. Respondent did not file a motion for a more definite statement of the charges under Commission Rule 162, 2002 AACS 423.162, or a motion to dismiss the charges for failure to state a claim.

On the date of the hearing, Respondent asserted that the charge should be dismissed because it failed to comply with Commission Rule 151.[1] I denied Respondent's motion.

As Collins explained at the hearing, he is a member of a bargaining unit represented by Teamsters Local 214 (Local 214 or the Union). On or about January 17, 2006, Collins asked Local 214 steward Joe Fiers for two grievance forms. At the end of the workday, Collins followed Fiers out to Respondent's parking lot and asked him again for the forms. Collins was later suspended for one day and ordered to attend anger management classes because of his conduct on January 17. Collins alleges that the discipline he received constituted retaliation against him for attempting to file a grievance, a violation of Sections 10(1) (a) and (c) of PERA. On August 7, 2006, Collins was suspended again, allegedly for refusing to attend the anger management classes. Collins alleges that this suspension was also in retaliation for his filing of grievances.

Findings of Fact:

Collins has been employed as a truck driver for Respondent since about 1996. Between 1996 and 2006, Collins was disciplined about ten times for various infractions. Collins challenged all these disciplinary actions by filing grievances. He also filed several grievances over Respondent's refusal to give him assignments carrying premium pay in accord with his seniority under the Union contract. Collins estimated that during the course of his employment he had filed between fifteen and twenty grievances.

Collins has also had a number of disagreements with Local 214 representatives. In late 2005 and 2006, Collins had repeated disagreements with Local 214 steward Fiers over Fiers' representation of him, and Fiers circulated a petition to have Collins removed from the union.

Because of the bad blood between him and Fiers, Collins usually went to alternate steward Jim Durfee for union representation. However, during morning break on January 17, 2006, Collins asked Fiers for two grievance forms. Collins testified that Fiers told him that he did not have to give him the forms. According to Collins, at the end of their shift on January 17, he followed Fiers out into the parking lot and stood next to Fiers' truck while he asked Fiers repeatedly for the grievance forms. Collins testified that Fiers said, "I don't have to do anything you say," swore at him, and pushed him out of the way. Fiers then got into his truck and drove away. According to Collins, when he came to work the following day, January 18, he saw a grievance form pinned to the bulletin board. In the break room later that day, Collins confronted Fiers about the fact that Fiers had given him only one form. The two men argued. Collins then telephoned Local 214 business agent Robert Donick, who told him that he would tell Durfee to give Collins another form. Collins also went to Respondent managing director Gary Dittmer to complain about Fiers' conduct in the parking lot. Dittmer told him to write down what had happened.

[1] Rule 151 (2) (b), 2002 AACS 423.151(2) (b), states that an unfair labor practice charge shall include, insofar as it is known, a "clear and complete statement of the facts which allege a violation of LMA or PERA, including the date of occurrence of each particular act, the names of the agents of the charged party who engaged therein and the sections of LMA or PERA alleged to have been violated.

On January 30, Collins filed a grievance alleging "creation of a hostile work environment." Attached to the grievance was a letter addressed to Dittmer setting out Collins' version of the events on January 17 and 18, as set out above. In the "relief requested" section of the grievance form, Collins wrote, "Mr. Fiers needs to do his job as union steward or forfeit his position."

After receiving this grievance, Dittmer questioned Fiers and Dick Larsen and Tom McClouth, two other employees who had been in the parking lot on January 17, about what had happened in the lot. Fiers told Dittmer that he had given Collins a grievance form on January 17, and when Fiers asked what it was for, Collins said, "It is none of your f-ing business." Fiers also told Dittmer that Collins followed him out to the parking lot after work and wanted to fight, that Collins would not let Fiers get in his truck, and that Fiers pushed Collins out of the way and drove off. Fiers admitted that he and Collins had also argued the following day in the break room. Larsen told Dittmer that Collins had asked Fiers for grievance forms while the men were inside the building and then followed Fiers out into the parking lot. He said that Collins kept demanding the grievance forms, and that Fiers "nudged" Collins away from his truck but did not speak to him while the two men were in the lot. McClouth told Dittmer that Collins and Fiers were arguing in the lot, and that he heard Collins shout, "You want a piece of me?" McClouth said that Collins kept getting between Fiers and his truck, and that Fiers finally crowded past him and drove away.

On February 3, 2006, Dittmer gave Collins a letter denying his grievance on the basis that it did not state a contract violation. In this same letter, Dittmer also stated that he had investigated the parking lot incident and had determined that Collins had instigated the incident. Dittmer concluded that Collins was guilty of violating Respondent's work rule no. 6, which prohibits being "offensive in conduct or language toward a fellow employee." Collins received one day off without pay for the violation of the work rule.[2] Dittmer's letter also directed Collins to "attend anger management counseling as prescribed by management." Fiers was also disciplined for violating work rule no. 6, although he received only a written warning since this was his first violation of the rule.

On February 8, Collins filed another grievance. In this grievance, Collins wrote:

> In the past when an employee was hostile and physical, they received 5 days off without pay, with no anger management classes. Now, I am being singled out because I asked for grievance papers, so my steward pushed me. Also, I am being sent to anger management classes when I did not use profanity or physical contact. Is this fair treatment of employees [sic] when all I did was ask for a grievance paper? The severity of the steward's actions should prompt the same reprimand as his fellow employees.

[2] Under Article XVII of the collective bargaining agreement between Respondent and Teamsters Local 214, the punishment for a first offense of work rule no. 6 is a written reprimand, and a second offense warrants a one-day suspension. In April 2004, Collins was given written reprimand for violating work rule no. 6, and ordered to attend anger management classes, because he allegedly verbally harassed another employee. Dittmer testified that he gave Collins a one-day suspension on February 3, 2006 because this was his second violation, the first being the 2004 incident. However, according to the contract, Respondent is only entitled to consider written reprimands issued within one year, and suspensions issued within three years, in determining the appropriate level of discipline.

Collins testified that that another employee, a mechanic, received five days off without pay after he got into fight that involved physical contact, but that the mechanic was not ordered to attend anger management classes.

The Union processed Collins' February 8 grievance to arbitration, but withdrew it before the hearing. The Union sent Collins a check from union funds reimbursing him for the pay he lost as a result of the suspension, but Collins refused to cash it.

After Collins received the February 3 letter, Dittmer told him to sign up for anger management classes through a local Catholic social services agency. Collins attempted to do so. However, the teacher called him before classes began and told him that there were no openings. He testified that she also told him that she would contact him when there was a class with an opening. Collins told Dittmer what had happened, and the agency sent Dittmer a letter confirming that there were no openings. According to Collins, he decided to show up at a class on May 30 to show Dittmer that he was making a good faith effort to fulfill his commitment, even though he had not been notified by the agency that there were openings. According to Collins, he attended one class but did not return because he was told again by the teacher that the class was full.

Collins was off work for most of July 2006 because of an injury. Sometime that month, Dittmer called the Catholic social services agency for an update on the anger management classes. He was told that Collins had signed up for classes in May, attended one class, and refused to come again. When Collins returned to work in early August, Dittmer called him to his office to question him about this. Because Fiers had been brought in to represent him during the interview, Collins refused to answer any questions. On August 7, Dittmer wrote Collins stating that he had blatantly disregarded Respondent's directive to attend the anger management classes and suspending him without pay until he had attended a full session of classes. After Collins received the August 7 letter, he told Dittmer that he had attended one class but no others because he had been told the class was full. Collins also spoke to the supervisor at the social services agency, who insisted that Collins had refused to attend classes. Collins was permitted to return to work on August 28, 2006, after finding another local organization offering anger management classes and attending eleven classes. Collins filed a grievance over his suspension, but the Union refused to take the grievance to arbitration.

Discussion and Conclusions of Law:

Under Section 9 of PERA, public employees have the right to engage in lawful concerted activities for the purpose of mutual aid and protection. Filing an individual grievance under a collective bargaining agreement is considered concerted action, and an employee filing a grievance on his or her own behalf is protected from adverse action for filing that grievance as long as the employee acts in good faith. Moreover, this protection extends to actions that are "inextricably related" to the filing of the grievance, such as questioning other employees about incidents related to the grievances. *MERC v Reeths-Puffer Sch Dist*, 391 Mich 253, 259-265 (1974). I find that Collins was engaged in concerted activity within the meaning of PERA when he asked Union steward Joe Fiers for grievance forms on January 17, 2006.

Respondent contends, however, that Collins instigated an argument with Fiers and provoked an incident in Respondent's parking lot after his shift. According to Respondent, it properly disciplined Collins on February 3, 2006 for violating work rule no. 6, as set out in the collective bargaining agreement, "engaging in offensive conduct or language toward a fellow employee."

On January 17, 2006, Collins asked Fiers for grievance forms, and Fiers refused. Despite this refusal, Collins followed Fiers out into the parking lot after the end of their shift in order to ask him again for the forms. Fiers, Collins, and the two other employees who witnessed the incident in the parking lot each had a different version of what occurred there. Even Collins admitted, however, that he stood next to Fiers' truck demanding the forms until Fiers pushed him out of the way.

I find that Collins was not engaged in conduct protected by the Act when he followed Fiers into the parking lot on January 17, 2006 and stood by Fiers' truck demanding the grievance forms. In January 2006, Collins and Fiers had a very bad relationship. The two men had already discussed Collins' request earlier on January 17 and, according to Collins, Fiers had told him that he "didn't have to give him" the forms. Collins was clearly angry at Fiers. I find that Collins followed Fiers out to the parking lot on the afternoon of January 17 for the express purpose of provoking a confrontation. The fact that Fiers may have been rude to Collins, or may have been guilty himself of violating work rule no. 6, is irrelevant to the question of whether the conduct for which Collins was disciplined was protected by PERA.[3] Moreover, PERA does not prohibit unjust discipline, per se. Since I have concluded that Collins was not disciplined on February 3, 2006 for conduct protected by PERA, I conclude that Respondent did not violate Sections 10(1)(a) or (c) of PERA by issuing this discipline.

Collins also alleges that the three-week suspension he received in August 2006 constituted retaliation against him for his grievance filing. When a charging party alleges that an adverse action was motivated by anti-union animus, the burden of proof is on the charging party. *Schoolcraft College Ass'n of Office Personnel, MESPA v Schoolcraft Cmty College,* 156 Mich App 754, 764 (1986). The charging party must demonstrate initially that protected conduct was a motivating or substantial factor in the respondent's decision to take the action about which the charging party has complained. *MESPA v Evart Pub Schs,* 125 Mich App 71, 73-75 (1983). To establish a prima facie case of discrimination under Section 10(1)(c) of PERA, a charging party, in addition to showing an adverse action, must establish: (1) that the employee engaged in union or other protected concerted activity; (2) that the employer had knowledge of that activity; (3) anti-union animus or hostility towards the employee's protected activity; and (4) suspicious timing or other evidence that the protected activity was a motivating cause of the alleged discriminatory actions. *Utica Cmty Schs,* 20 MPER 104 (2007); *Rochester Sch Di*st, 2000 MERC Lab Op 38, 42; *Univ of Michigan,* 1990 MERC Lab Op 272, 288.

The record established that Collins filed between fifteen and twenty grievances in ten years of employment by Respondent. There is no dispute that Respondent knew of Collins'

[3] Whether a one-day suspension and a directive to attend anger management classes was the appropriate discipline for Collins' offense under the contract is also irrelevant.

protected activity. However, anti-union animus is an essential element of a discrimination charge under PERA, and the record contains no direct evidence of anti-union animus or hostility on Respondent's part to the filing of grievances. Although anti-union animus may be proven by indirect or circumstantial evidence, mere suspicion or surmise will not suffice. Rather, the charging party must present substantial evidence from which a reasonable inference of unlawful discrimination may be drawn. *City of St. Clair Shores*, 17 MPER 27 (2004); *City of Grand Rapids (Fire Dep't)*, 1998 MERC Lab Op 703, 707. Collins argues, in essence, that Respondent must have suspended him in August 2006 for filing grievances because there was no other explanation for the suspension. Inferences of animus and discriminatory motive may be drawn from the pretextual nature of the reasons offered for the alleged discriminatory actions. *City of Adrian*, 17 MPER 83 (2004 (no exceptions); *Tubular Corp of America*, 337 NLRB 99 (2001); *Fluor Daniel, Inc*, 304 NLRB 970 (1991). In this case, however, Respondent suspended Collins after it was informed by the local Catholic social services agency that Collins had signed up for anger management classes and refused to attend. Even if this information was incorrect, the evidence does not indicate that the reason Respondent gave for suspending Collins in August 2006 was a mere pretext. I find no evidence on this record that Respondent was hostile toward Collins because he filed grievances, and I conclude that Collins did not establish that Respondent suspended him in August 2006 because of his protected activities.

In accord with the findings of fact and conclusions of law set forth above, I conclude that Respondent did not violate Sections 10(1)(a) and (c) of PERA when it disciplined Collins on February 3 and August 6, 2006. I recommend, therefore, 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
State Office of Administrative Hearings and Rules

Dated: _____