STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

MASON COUNTY ROAD COMMISSION,
Public Employer-Respondent,

Case No: C07 L-280

-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. C06 B-033, 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. C07 L-280

-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 and MCL 423.216, this case was heard at Lansing, Michigan on April 28, 2008, 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 post-hearing briefs filed by the parties on or before May 29, 2008, 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 December 28, 2007. The charge alleges that the Respondent discriminated and retaliated against Collins because he filed grievances when it suspended him for one day on October 8, 2007 and for one week on November 12, 2007. [1]

[1] Collins filed an earlier charge against Respondent alleging that it discriminated against him in violation of PERA by disciplining him in February and in August 2006. This charge, Case No. C06 B-033, had been heard by me when Collins filed the instant charge. My decision and recommended order in Case No. C06 B-033 recommending that the charge be dismissed has been issued this same day.

Documents Submitted After the Hearing:

On May 12, 2008, after the close of the hearing in this case, Collins sent me a document from the State of Michigan Unemployment Insurance Agency confirming that it issued him an unemployment check on July 12, 2007. On May 30, 2008, he sent me: (1) an excerpt from the collective bargaining agreement between Respondent and his union containing the work rules and the punishments for violations of these rules; (2) a document signed by Collins, dated April 25, 2008, stating that three employees told him either that he was not driving too fast on October 4, 2007 or that they could not tell how fast he was driving on that date; (3) a statement signed by Collins, dated May 7, 2008, stating that Respondent foreman Steve Stickney told him that employee Mike Hasenbank falsely accused Stickney of theft and then threatened to file harassment charges against him. Rule 166 of the Commission's General Rules, 2002 AACS R 423.166 provides that following the close of a hearing, a party may move to admit additional evidence. However, Rule 166 requires that the party seeking to admit evidence after a hearing show why this evidence could not, with reasonable diligence, have been discovered and produced at the original hearing and why the additional evidence, if credited, would require a different result. Collins did not explain why he could not have produced the documents at his hearing or how the additional evidence would change the result. I find, therefore, that these documents should not be included in the record in this case.

Findings of Fact:

Collins has been employed by Respondent as a truck driver since about 1996. He is a member of a bargaining unit represented by Teamsters Local 214 (Local 214 or the Union). Between 1996 and 2007, Collins filed over twenty grievances under the collective bargaining agreement.

On October 4, 2007, Collins was driving Respondent's truck back and forth between job sites on a highway next to which other employees were working. There were no signs up indicating construction or setting a lower than normal speed limit. According to statements the employees later gave Respondent managing director Gary Dittmer, several employees tried to radio Collins and tell him that he was going too fast, but Collins did not pick up. Finally, they asked the radio operator to talk to Collins when he called in. The operator told Collins that the employees wanted him to slow down. Collins testified that he drove more slowly. However, the employees called Dittmer to complain that Collins was still driving too fast. They also told him that they thought Collins picked up speed after the operator talked to him. Dittmer came out to where the employees were working, but left after waiting an hour without seeing Collins drive by. However, Dittmer told Respondent road foreman Ron Dugan to monitor the situation. About an hour later, Dugan was standing by the side of the highway when Collins drove by. Dugan got into his car, followed Collins, and stopped him. He said to Collins, "Weren't you told to slow down?" According to Collins, Collins replied that he had "slowed down to the speed that he thought was reasonable to get the job done." When Dugan told Collins he was going too fast,

Collins asked him how fast he wanted him to go. Dugan replied, "Two miles per hour." [2]

Dugan brought Collins back to Respondent's garage and asked for a meeting with Dittmer. Collins tried to tape record the meeting, but Dittmer told him not to. When Collins began to argue, Dittmer threatened him with discipline for insubordination if he persisted. The three men discussed the alleged speeding incident, with Dugan contending that Collins had been driving too fast for the safety of the workers. Collins asked Dittmer how fast he (Collins) had been going. When Dittmer said that he didn't know, Collins said he had been driving at a safe speed. Dittmer testified that because Collins was very irate and using a derogatory tone, he ended the meeting and sent Collins home for the rest of the day.

On October 8, 2007, Collins was given a letter suspending him without pay for the balance of the day on October 4 for a violation of Respondent's work rule no. 4, "willful, deliberate, or continued violation of or disregard for common safety practices."[3] Collins told Dittmer that he had not seen any signs indicating construction or that he should slow down, and that none of employees who had seen him knew how fast he had actually been going.

On October 1, 2007, employee Michael Hasenbank filed a grievance complaining about Collins' conduct and asking Respondent to "take appropriate action to eliminate the feeling of hostile working conditions within the employer." The grievance complained about "the overly frequent verbal disrespect by [Collins] towards supervision, union steward, alternate steward, and at times other employees." Hasenbank also complained that Collins' "goes off on a tangent about most everything that happens from cross training of employees to stockman's duties, steward's duties, etc." The grievance did not cite any specific incident. Dittmer testified that around this time, he also received complaints from other employees about Collins' comments and actions at the workplace, and that he investigated these complaints. Dittmer did not describe the nature of the other complaints about Collins or the results of his investigation.

On November 12, 2007, Collins received notice that he was being suspended for one week. In an accompanying letter, Dittmer wrote:

> Since taking [the October 8, 2007] disciplinary action, I have had the opportunity of reviewing several complaints filed by other employees alleging that you are engaging in offensive conduct toward your fellow workers. I have also investigated a grievance as filed against you by a fellow Teamsters Local 214 employee alleging offensive conduct in the workplace on your behalf. In investigating these employee complaints and the grievance as filed, I find that there is credible evidence that you have repeatedly acted in a manner that is derogatory toward your co-workers and supervisors at the Mason County Road Commission. A review of your previous work history at the Road Commission reveals that you have been repeatedly disciplined for such behavior. You have

[2] Collins testified regarding the conversation between him and Dugan. Dugan was subpoenaed to testify at the hearing, but failed to appear. At the beginning of the hearing, Collins moved for an adjournment because of Dugan's absence. After questioning Collins regarding Dugan's expected testimony, I denied the motion to adjourn.

[3] According to Collins, under the contract his discipline for a first violation of this rule should have been a written warning.

> twice previously been directed to attend anger management classes. Apparently, such efforts have not impressed on you the need to behave in the workplace in a manner that is not disruptive and/or offensive to your fellow employees and supervisors. It is the finding of the Road Commission's internal investigation that you have violated Minor Offense #6 "Being offensive in conduct or language toward fellow employees, the public, or supervision." Further, the Employer's internal investigation revealed that, on or about October 4, 2007, you submitted a false request for reasons of leave of absence [sic]. This is a violation of Work Rule #1 of Article XVII of the Collective Bargaining Agreement between the Mason County Road Commission and Teamsters Local 214. You are hereby given a one week disciplinary suspension without pay to begin on Tuesday, November 13, 2007 at 7:00 am. You are also notified that any further action on your part that is offensive in conduct or language toward fellow employees, supervision or the public will result in your termination of employment from the Mason County Road Commission. Mr. Collins, if you are to continue your employment at the Mason County Road Commission, you are going to have to change your attitude and the way you deal with fellow employees and supervision in the workplace. I will tolerate no further actions that are disruptive to the efficient operation of the Mason County Road Commission. I will tolerate no further derogatory comments on your behalf toward fellow employees, supervision, or the public.

Collins filed a grievance over this suspension on November 14, 2007. According to Collins, he was never told what specific conduct led to the November suspension. Collins testified that he believed that he was being disciplined again for the events of October 4, i.e. that the offensive conduct he was accused of was allegedly driving too fast on that date, and that under the contract his discipline should have been no more than a warning. While the grievance was being processed, Teamsters Local 214 business representative Robert Donick asked Respondent if he could interview the individuals who had complained about Collins, but, except for Hasenbank, Dittmer refused to divulge their names.

On November 29, Donick sent Dittmer a letter regarding the Hasenbank grievance. Donick stated:

> The Union believes it is the Employer's responsibility to make sure the workplace is a safe place to work. Mr. Hasenbank has stated to his Union steward that the problem has not been corrected and that he is still being harassed. . . .Please consider this letter as official notice that should anything happen, repercussion will come back to the Employer and not the Union.

The Union withdrew Collins' grievance on February 28, 2008.

Discussion and Conclusions of Law:

Collins maintains that Respondent has harassed and retaliated against him because he speaks his mind and expresses his opinion. According to Collins, Dittmer disciplines him

because “nobody else goes against him or files appeals… and … Dittmer makes sure that everybody listens to him and doesn’t write grievances because they’ll end up like me and get pink slips.” According to Collins, Dittmer has turned all the other employees against him. Collins denied ever being violent or making threats to other employees, even though other employees at the workplace use profanity and threaten him.

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.

A person who in good faith asserts an individual grievance based on a provision of a collective bargaining agreement is engaged in activity protected by PERA. *MERC v Reeths-Puffer School Dist*, 391 Mich 253, 261 (1974). An employee's honest and reasonable assertion of a right grounded in a collective bargaining agreement is an extension of the concerted action that produced the agreement, and thus is "concerted" activity, even when the employee acts alone. See *NLRB v City Disposal Systems, Inc*, 465 US 822 (1984). However, individual complaints not based on the contract and made solely by and on behalf of an individual employee are not protected, because what Section 9 of PERA protects is not a right of “free speech” but the right of employees to act together on matters of mutual concern. *Hesperia Bd of Ed*, 1969 MERC Lab Op 104, 109; *City of Detroit (Dept of Water and Sewerage),* 18 MPER 34 (2005). See also *Detroit Bd of Ed,* 1989 MERC Lab Op 890; *City of Adrian,* 1985 MERC Lab Op 764; *Meyers Industries (Meyers II),* 281 NLRB 882 (1986).

The record indicates that Collins filed more than twenty grievances under the contract between 1996 and 2007. Collins engaged in activity protected by PERA in filing and pursuing these grievances, and in asserting his rights under the collective bargaining agreement. However, as indicated above, Collins has the burden of producing evidence to support a finding that his suspensions on October 8 and November 12, 2007 were caused, at least in part, by his protected activities. To do this, Collins must demonstrate that Respondent had anti-union animus or was hostile to him because of his protected concerted activities. Collins cannot meet his burden simply by showing that Respondent did not have just cause for disciplining him. Without a finding of animus toward Collins’ protected activity, whether the discipline Collins received was proper under the collective bargaining agreement is irrelevant. I find no direct or indirect evidence of anti-union animus by Dittmer in this record. In the November 12 suspension letter, Dittmer accused Collins of having an “attitude” problem. While Collins believes that Dittmer resents him because he files grievances, I find no evidence that Dittmer’s criticism of Collins’ alleged “offensive” behavior toward others was a cloak for hostility towards Collins’ filing of grievances or asserting his rights under the collective bargaining agreement. I find that Collins did not establish a prima facie case of unlawful discrimination under Sections 10(1) (a) and (c) of PERA. I conclude, therefore, that Respondent did not violate PERA when it suspended Collins in October and November 2007. In accord with this finding, I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern
Administrative Law Judge
State Office of Administrative Hearing and Rules

Dated: _____