STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

WAYNE STATE UNIVERSITY
(DEP'T OF HOUSING AND RESIDENTIAL LIFE),
Public Employer-Respondent,

Case No. C08 E-079

-and-

DONALD ROBINSON,
An Individual-Charging Party.
_____/

APPEARANCES:

Shawn Junior, Labor Relations Specialist, and A.L. Rainey, Jr., for Respondent

Donald Robinson, *In Propria Persona*

DECISION AND ORDER

On October 9, 2009, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order in the above-entitled matter, finding that Respondent has engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist and take certain affirmative action as set forth in the attached Decision and Recommended Order of the Administrative Law Judge.

The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of Act 336 of the Public Acts of 1947, as amended.

The parties have had an opportunity to review this Decision and Recommended Order for a period of at least 20 days from the date the decision was served on the parties, and no exceptions have been filed by any of the parties to this proceeding.

ORDER

Pursuant to Section 16 of the Act, the Commission adopts as its order the order recommended by the Administrative Law Judge.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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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

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Donald Robinson, *in Propria Persona*

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 423.216, this case was heard at Detroit, Michigan on April 17 and May 20, 2009 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 June 22, 2009, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

On May 1, 2008, Donald Robinson filed this charge against Wayne State University after it terminated him on April 11, 2008, alleging that his termination and other adverse actions taken against him violated Sections 10(1)(a) and (c) of PERA At the end of May 2008, Robinson was reinstated under a last chance agreement. The hearing on this charge was adjourned without date between May 7 and October 6, 2008, when Robinson amended his charge after he was discharged a second time. The charge was amended again on April 17, 2009. Robinson alleges that his two terminations and other adverse employment actions leading up to these terminations constituted unlawful retaliation against him for grievances he filed in February and March 2008.

Findings of Fact:

Robinson was hired on May 21, 2007 as a housekeeper in Respondent's department of housing and residential life. His position was included in a bargaining unit of housekeepers and maintenance staff represented by Unite Here, Local 24 (hereinafter Local 24). Robinson was assigned to work at the Towers Residential Suites, a University residential building, where his immediate supervisor was community director Emily Reetz. Robinson successfully completed his probationary period in November 2007 and had no disciplinary record prior to the events that are the subject of this charge. Reetz testified that she had no complaints about his work.

Dixon Kirkland is the associate director for facilities and housing in the department of housing and residential life. Kirkland is the immediate supervisor of all maintenance employees and indirectly supervises the housekeeping staff. In about November 2007, a vacancy arose for a handyperson, a maintenance position. Robinson applied for this position along with two other housekeepers. The housekeeper selected had more seniority than Robinson and had worked temporarily in the handyperson position during the summer. Robinson received a letter from Kirkland stating that the applicant selected had more experience. Since Robinson had worked for many years doing home renovation, he concluded that Kirkland had chosen the successful candidate because he was Kirkland's neighbor and personal friend.

Kirkland testified that as early as June 2007, he began receiving complaints from students and staff at the Towers that the building was not adequately cleaned when Robinson was working. Kirkland testified that he spoke to Robinson and Reetz about these complaints. Reetz denied this. In January or February, 2008, Kirkland took over for Reetz as the supervisor of the housekeeping staff at the Towers building. According to Kirkland, this was because Reetz was not doing her job; Reetz testified that she was told that this had nothing to do with her. Robinson contends that Kirkland did not mention these complaints to him until after Robinson filed his grievances. I find it unnecessary to resolve these conflicts because, for reason discussed later in this opinion, I find that Robinson's alleged performance deficiencies did not materially contribute to his terminations.

On February 14, 2008, Robinson filed two grievances. One addressed Kirkland's refusal to accede to Robinson's request to change his work schedule. In this grievance, Robinson asserted that a housekeeper with less seniority was working the hours that he wanted to work. The second grievance asked that he be reconsidered for the handyperson position because he had more maintenance experience than the person selected.

On February 21, 2008, Robinson, Kirkland, and Robinson's union steward, Shelia Denson, met to discuss his grievances. During this meeting, Kirkland told Robinson that he had received complaints by email from students and University staff about Robinson's work. Kirkland testified that he showed Robinson a list of the cleaning duties he was supposed to perform every day and went over them with him. According to Robinson, Kirkland ended the meeting abruptly when Robinson asked him if he could produce any of the complaints he had received.

According to a written reprimand Robinson received several weeks later, Kirkland visited the Towers building on Saturday, February 23, Sunday, February 24, Saturday, March 2 and Sunday, March 3, 2008. These were all dates on which Robinson was working. According to the reprimand, Kirkland noted that on all four days major public areas of the building for which Robinson was responsible, including the first floor lobby area, restrooms, study lounges, hallways, loading dock, and laundry rooms, did not appear to have been cleaned. He also noted that trash had not been emptied on the three upper floors of the building to which he was assigned. According to the reprimand, Kirkland tracked Robinson's movements around the building by looking at where and when Robinson had used his identification card to open doors in the building, and discovered that on all four days Robinson had gone directly to the upper floors of the building and had not even visited the areas on the lower floors which he was supposed to clean. According to the reprimand, Kirkland also examined Robinson's time cards for these four dates. He noted that while Robinson had worked eight hours each day, he had punched in and out at widely varying times.[1]

On March 11, 2008, Kirkland notified Denson that Robinson would be given a written warning for failing to call in when he was absent. Kirkland told Denson and Robinson to come to a meeting in his office the following day. At the meeting on March 12, Robinson told Kirkland that he had called in to Reetz. There was a discussion about whether Kirkland had properly notified the housekeepers at the Towers building that they were supposed to call in to him since he was now their direct supervisor. Kirkland decided not to issue the warning. Kirkland, Denson and Robinson discussed other topics at this meeting, including Respondent's policies for reporting on days that the University was closed because of snow. Sometime during this meeting, Robinson told Kirkland that other employees had complaints about him, but were afraid to speak up for fear of losing their jobs. According to Robinson, Kirkland then told them to tell other employees that there was going to be a staff meeting on March 13 so "everybody could get everything off their chests." Kirkland denied saying this, and Denson, who generally confirmed Robinson's testimony about events, did not report this statement. Rather, Denson remembers asking Kirkland to schedule a meeting to clarify the issue of his supervisory status.

After his meeting with Denson and Kirkland ended, Robinson spoke to a number of other employees and told them that if they had questions for Kirkland, they should write them down and Robinson would ask them at the staff meeting.

Kirkland testified that he called a staff meeting on March 13 to clarify Respondent's snow day reporting policies, since Denson had questioned them at their March 11 meeting. At the meeting, Kirkland explained these policies and Denson asked questions about Kirkland's new role as supervisor of the housekeeping staff at the Towers building. At some point, Robinson stated that other employees had questions but were afraid to speak, and that he was speaking for all the union members. He then said that he had more experience than the person selected for the handyperson job. He asked Kirkland if he promoted people based on their credentials or based on their relationship with him. He also asked Kirkland if he retaliated against people when they filed a grievance against him. Kirkland told Robinson that this was not a grievance meeting and this was not the appropriate place to discuss this issue. However, it is

[1] Some time thereafter, Kirkland confronted Robinson about his hours. Robinson claimed Kirkland had told him that he could come in whenever he wanted when he worked on weekends.

clear from the testimony of multiple witnesses that Kirkland went on to defend his decision to award the handyperson position to the other employee, including explaining the qualifications needed to be promoted. Denson responded with remarks supporting Robinson, and Kirkland answered her. One witness reported that Kirkland, Robinson, and Denson became involved in an extended discussion of "union issues." The meeting became noisy, with employees talking among themselves and speaking in loud tones. Other employees made remarks, including, according to one witness, asking why he (Kirkland) "was so mean." Although Kirkland denied making the following statement, I credit the testimony of many witnesses that Kirkland told Robinson that he had been lucky to have worked there for ten months, and that Robinson could either leave or Kirkland would help him leave. After Kirkland said this, the room fell silent and Kirkland ended the meeting.

On March 20, Robinson filed a grievance complaining about Kirkland's threat at the March 13 meeting. On March 21, Robinson received a written reprimand from Kirkland for failure to follow instructions and poor work performance based on Kirkland's visit to the Towers building on February 23 and 24 and March 2 and 3. In the reprimand, Kirkland stated that he had attempted to coach Robinson to improve his performance at the February 21 meeting, but that it "appeared that coaching had failed." The reprimand also stated Robinson had falsely claimed that Kirkland had told him that he could choose his own working hours on the weekends.

On March 25, a third step grievance meeting was held on Robinson's February and March grievances. Present at this meeting were Kirkland, Respondent's labor relations director A.L. Rainey, labor relations specialist Shawn Junior, Robinson, Denson, and Local 24 representative Steve Janowicz. Before the parties entered the meeting, Robinson asked Janowicz if he could tape the meeting. Janowicz said he did not have any problems with this. Janowicz admitted that he did not realize that Junior and Rainey might object to the meeting being recorded. Robinson placed a small recorder on the table and turned it on. When discussion turned to the March 13 meeting, the discussion became heated, and Janowicz asked Respondent's representatives to leave the room for a minute. When they returned, Rainey noticed the recorder and asked about it. Robinson admitted that he was recording the meeting. Rainey then angrily told the union representatives that the meeting was over and that he was denying the grievances. Junior demanded that Robinson give him his recorder, but Robinson refused. Rainey threatened him with termination for insubordination. After going out into the hallway to consult with his union representatives, Robinson handed over the machine. Respondent later accused Robinson of erasing the contents of the machine before giving it to Rainey, but Robinson denied this.

On March 26, Kirkland told Robinson, through Denson, that he wanted Robinson to give a statement explaining why he had recorded the meeting. Robinson refused. That afternoon, Robinson was told that he was suspended indefinitely without pay for the unauthorized taping of a meeting. Kirkland delivered the suspension letter to Robinson personally, accompanied by a campus security officer. According to the termination letter Robinson received on April 11, Robinson taunted Kirkland as he and the security officer were escorting Robinson from the premises. According to the reprimand, Robinson said:

You think you always right, you ain't because I speak the truth and the truth will come out. I only speak the truth and the truth will prevail.

You think you bad – no, you ain't that bad.

I ain't worried about this job, this ain't nothing, I eat steak everyday.

You think you have a team behind you, that ain't so, the team will be behind me, you will see.

You think you won – you ain't won yet. You'll see, I'll be back on top."

On March 27, Robinson filed two grievances, one asserting that his March 21 written reprimand was retaliation against him for filing the March 20 grievance and another protesting his suspension and the confiscation of his recorder.

Shortly after Robinson was placed on suspension, Robinson sent an email to the University president, its general counsel, and other high level University employees complaining about his treatment. Robinson's girlfriend, also a University employee, was able to send this email from Robinson's University email address because she had his user identification name and password. When Respondent saw the email, it investigated how it had been sent and discovered that Robinson's girlfriend had accessed his account.

On April 10, while Robinson was still on suspension, Kirkland called him at home. Denson sat in on this conversation in Kirkland's office. Kirkland asked Robinson why he had taped the meeting and why he had erased the contents of the recorder. He also asked Robinson if anyone else had his user identification and password for the University's computer system. Robinson replied that he would not answer because he did not feel comfortable answering questions on the phone.

On April 11, Kirkland prepared a letter terminating Robinson's employment. In the letter, Kirkland charged Robinson with dishonesty for recording the grievance meeting without authorization and deleting the contents of the recorder; threatening and disrespectful behavior towards Kirkland on March 26 while Robinson was being escorted from the building; and violating University security policies by giving his user identification and password to another employee.

Under the Local 24 collective bargaining agreement, the following offenses are not subject to progressive discipline: dishonesty; theft; falsification of records; rudeness to a student; job refusal; sleeping on duty; fraudulent collection of any contract or state provided benefit, intoxication on duty or premises or being under the influence of a nonprescription drug on duty or premises; fighting; sexual harassment; possession of weapons (guns or knife with blade over four inches); threat to a student, visitor, co-worker or member of management. In addition, the contract provides that progressive discipline is not required where the "misconduct is so aggravated, in the opinion of the Housing Authority, as to call for immediate discharge."

Local 24 filed a grievance over Robinson's termination. On May 1, Robinson filed the instant unfair labor practice charge, which was served on Respondent on May 12. On May 19, Respondent and Local 24 held a meeting to discuss Robinson's termination and his other grievances. During this meeting, Janowicz explained to Respondent that he had told Robinson that he could tape the meeting, and apologized for doing so. At the conclusion of the meeting, Robinson, on the advice of Local 24, signed a last chance agreement which stated that Robinson would be returned to work but could be immediately terminated for any violation of a same or similar manner to the charges listed in his termination letter, violation of housing department or University policy, or violation of any other work rule that occurred within one year of the signing of the document. The agreement also provided that Robinson would receive an unpaid suspension of 38 work days for time he had been off and stated that Local 24 and Robinson agreed to withdraw all grievances and unfair labor practice charges.[2] Local 24 and Respondent also entered into a separate side agreement regarding the recording of meetings or conversations between them. Robinson returned to work on May 21, 2008.

In June 2008, Kirkland and Kristi Normand, Kirkland's supervisor, decided to assign Robinson to a different building. When they told Trycennia Dean-Motley, the community director for that building, about this change in assignment, she asked them if Robinson could be temporarily assigned to work as a handyperson for the summer since she had no handyperson in her building at that time. Dean-Motley testified that Kirkland told her that Robinson had "put him through hell over the past several months," and that Kirkland would never let him work as a handyperson. Kirkland denied making this remark, but I credit Dean-Motley's testimony.

In July 2008, Kirkland called Robinson and Denson to his office and told them that Robinson was going to receive a disciplinary write up for an unexcused absence. Robinson and Denson convinced him that Robinson had provided a doctor's excuse, and Robinson was not disciplined. In August 2008, Robinson filed a grievance accusing Kirkland of harassment, although it was not clear from the record if a specific event provoked this action. Around this same time, Robinson also tried to schedule a private meeting with a department director to discuss Kirkland's hostility toward him. When told that Kirkland would also have to be present, Robinson cancelled the meeting.

On September 26 or 30, 2008, Kirkland called Robinson to a meeting in Kirkland's office with his union steward and Janowicz. At this meeting, Kirkland accused Robinson of falsifying his time records. Respondent's housekeepers punch time clocks, but they are also required to log in to a computerized time keeping system and record their hours at the end of a pay period. Kirkland showed Robinson and his union representatives records indicating that Robinson had used his floating holiday twice. Robinson explained that his leave bank online still showed the floating holiday after he had used it, and said that he had forgotten and used it again. Kirkland also had Robinson's time cards and printouts from the time keeping system for four dates – June 5, June 10, August 1, and August 25, 2008. The time cards showed that Robinson was punched in for less than eight hours on the first three dates, and had not punched in at all on August 25.

[2] As discussed above, the instant charge was pending when Robinson signed this document but he did not withdraw it.

However, eight hours of regular time had been entered into the time keeping system for all four dates.

At the hearing in this case, Robinson testified that he worked a full eight hours on August 1. He said that a co-worker told him that he had accidentally punched Robinson's card when leaving for a break and that Robinson forgot to make a notation to that effect on his time card. Robinson admitted that he entered eight hours of regular time instead of personal leave time into the computer system for August 25, but claimed that this was a mistake. Robinson testified that he was unable to enter his hours for the pay period June 2 through June 15, 2008 in the payroll system. According to Robinson, he contacted Normand, Kirkland's supervisor, who entered and submitted his time from her office. Robinson testified that he believed that she just entered eight hours for each day without looking at the time cards. By the date of the hearing, Normand had left both Respondent's employ and Michigan, and was not available to testify. Respondent argued that nobody but Robinson could have entered his hours in the payroll system initially, but the evidence was equivocal. Payroll system records for the June 2-15 pay period state that Robinson "originated" a request to submit his hours on June 5, but that the request was "submitted" by Normand on June 17. Similar records for other pay periods indicated that normally an employee both "originates" his request and "submits" it before the submission is approved by a supervisor.

On October 6, 2008, Robinson received a letter terminating him for falsifying his time records. The letter noted that Robinson had received a written reprimand for failing to follow instructions and poor work performance on March 21, 2008, and that he had signed a last chance agreement on May 19, 2008 which provided that any subsequent violation of housing department or University instructions or policies within one year of that date would result in his immediate termination. The termination letter quoted the following statement from the last chance agreement, "Only the fact of whether or not the specifics of the charge actually happened may be challenged [in a grievance]. The appropriateness of discharge for a proven infraction is not subject to challenge, per Article 17C and D of the contract."

Discussion and Conclusions of Law:

The elements of a prima facie case of unlawful discrimination under Sections 10(1) (a) and (c) of PERA are, in addition to the existence of an adverse employment action or actions: (1) union or other protected activity; (2) employer knowledge of that activity; (3) anti-union animus or hostility towards the employee's exercise of his protected rights; and (4) suspicious timing or other evidence that protected activity was a motivating cause of the alleged discriminatory actions. *Southfield Pub Schs,* 22 MPER 26 (2009); *Grandvue Medical Care Facility*, 1993 MERC Lab Op 686. See also, *Waterford Sch Dist*, 19 MPER 60 (2006), *Northpointe Behavioral Healthcare Systems*, 1997 MERC Lab Op 530, 551-552. If the Charging Party establishes a prima facie case that the adverse employment actions were caused, at least in part, by his protected activities, the burden shifts to the employer to produce credible evidence of a legal motive and that the same action would have been taken even absent the protected conduct. *MESPA v Evart Pub Sch*, 125 Mich App 71, 74 (1983); *Wright Line, A Division of Wright Line, Inc*, 662 F2d 899 (CA 1, 1981); See also, *City of St Clair Shores*, 17 MPER 27 (2004); *North Central Cmty Mental Health Services,* 1998 MERC Lab Op 427, 436.

The filing of a grievance based on a provision of a collective bargaining agreement is protected activity under Section 9 of PERA because a 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). The grievant need not show that the grievance has actual merit; an employee cannot be disciplined or discharged for filing or pursuing a grievance as long as the grievance is not advanced in bad faith, with malice, or lacks arguable merit. *Reeths-Puffer*, 265-266. I find that Robinson's filing of grievances on February 14 and March 20, 2008 was activity protected by the Act even if, as Respondent asserts, the applicant hired for the handyperson job in early 2008 had better credentials than Robinson.

In addition to protecting the act of filing, PERA also protects acts taken by employees in pursuit of their grievances. For example, in *Reeths-Puffer*, the Commission and the Court found that a grievant was engaged in protected activity when she attempted to question other employees to gain information to support her grievance. In the instant case, whatever the original purpose of the March 13 staff meeting, the evidence established that after telling Robinson that this was not the time to discuss his grievance, Kirkland proceeded to discuss Robinson's promotion grievance with Robinson and Denson in front of the assembled employees. I find that Kirkland's willingness to discuss the grievance converted the staff meeting into a forum for Robinson to express his dissatisfaction with the promotion process. Accordingly, I find that Robinson was engaged in protected concerted activity when he spoke about his grievance at the March 13 staff meeting.

The Commission has long held that comments and statements made during grievance meetings are part of the *res gestae* of protected activity and are entitled to protection. Because tempers may become heated in the course of grievance meetings, collective bargaining sessions and other protected activities, the Commission recognizes that employees cannot be held to the same standards of conduct while engaged in these activities as when dealing with their supervisors in the workplace. Thus, the Commission has repeatedly held that rude, insulting, or even threatening remarks for which an employee could legitimately be disciplined if made "on the shop floor" are protected under PERA when made during a grievance meeting or in the course of other protected concerted activity. *City of Detroit*, 22 MPER 32 (2009); *Eaton Co Trans Authority*, 21 MPER 35 (2008); *Genesee Co Sheriff's Dept*, 18 MPER 4 (2005); *Baldwin Cmty Schs*, 1986 MERC Lab Op 513; *Isabella Co Sheriff's Dept*, 1978 MERC Lab Op 689, 174; *Unionville-Sebewaing Area Schs*, 1981 MERC Lab Op 932, 934. Since I have found that the March 13, 2008 meeting effectively became a grievance meeting, I find that Respondent could not have lawfully disciplined Robinson for the rude and confrontational remarks he made at this meeting.

Robinson was not directly disciplined for his statements about his grievance at the March 13 meeting, but Kirkland was so angered by them that at the end of the meeting he implicitly threatened to fire him. Less than a month later, Robinson was terminated. I conclude that Robinson has established the first three elements of a prima facie case of unlawful discrimination – that he engaged in protected conduct, that the Respondent had knowledge of that conduct, and that Kirkland was hostile toward Robinson's exercise of his protected rights. To establish a causal relationship between this hostility and his April 11 discharge, Robinson points to the timing of various adverse actions taken against him by Kirkland in relation to his protected

activities. That is, Robinson worked for Respondent from May 2007 until he filed his two grievances on February 14, 2008 without receiving any discipline. At the February 21, 2008 grievance meeting, Robinson was told that complaints had been made about his work. Two days after Robinson's initial grievance meeting with Kirkland, Kirkland went to inspect Robinson's worksite. He returned the next day and the next weekend, and on all four days allegedly discovered that Robinson had failed to clean the major public areas of the building for which Robinson was responsible and had allegedly not even entered these areas during his shift to inspect them. However, Kirkland waited more than two weeks to give Robinson a written reprimand for this misconduct - after the March 13 staff meeting and after Robinson had filed yet another grievance complaining that Kirkland had threatened him at this meeting. On March 13, after arguing with Robinson about his grievance, Kirkland threatened to fire him. Twenty-one days later, Robinson was terminated.

As discussed above, I conclude that Robinson established that Respondent was hostile toward Robinson's exercise of his protected right to file and pursue grievances under the contract. The ultimate issue, however, is whether Respondent's hostility toward Robinson's exercise of his protected rights was the "but for" cause of Robinson's April 2008 termination, i.e. whether, in the absence of this hostility, he would have been terminated in April 2008 for the conduct set out in his termination letter. All the actions for which Robinson was discharged either occurred, or were discovered, because he filed three grievances. I conclude that the evidence supports a finding that Robinson might have been disciplined for some of these actions, but not that he would have been terminated in the absence of Respondent's hostility toward Robinson's exercise of his protected rights. The collective bargaining agreement between Respondent and Local 24 includes a list of offenses for which an employee can be discharged for a first offense. These include dishonesty and threats (but not rudeness) to a member of management; they do not include violations of computer security policies. While Robinson may have acted inappropriately in attempting to record the March 25, 2008 grievance meeting without first notifying the other participants, he did not attempt to conceal his recorder or lie about it when he was asked, nor was he specifically told not to erase his recorder. The statements Robinson allegedly made to Kirkland as he was being escorted from the building after being suspended on March 26 were rude and disrespectful, but were not threats. As noted, a violation of the computer security policy is not normally a dischargeable offense. I find that these offenses, even in the aggregate, would not have resulted in Robinson's termination had Respondent not been angered by Robinson's persistent pursuit of his promotion grievance. I conclude, therefore, that Robinson's April 11, 2008 discharge violated Sections 10(1) (a) and (c) of PERA.

As evidenced by Kirkland's comment to Dean-Motley that he would not allow Robinson to perform maintenance work because Robinson had "put him through hell," Kirkland continued to be angry at Robinson in June 2008. As with Robinson's April 2008 discharge, the question with respect to his second discharge is whether Kirkland's continued hostility toward Robinson was the "but for" cause of this discharge, or whether Robinson would have been discharged for falsification of his time records even in the absence of his protected conduct. The offense, falsifying time records on multiple occasions, is a serious one. The circumstances of this accusation, however, were extremely suspicious. The discrepancies between Robinson's time cards and his time records should have been apparent to his supervisors, yet Respondent waited

months before charging Robinson with the offense, making it difficult for Robinson to back up his claims that he did not intentionally misreport his time. Robinson's second discharge notice also repeatedly cited the improperly imposed May 19, 2008 last chance agreement, pursuant to which Local 24 was arguably prohibited from grieving on the grounds that the misreporting was accidental. Had Robinson not been unlawfully discharged in April 2008, he would not have signed or been subject to the May 19, 2008 last chance agreement. That agreement, therefore, was improperly imposed upon him. Based on the evidence as a whole, including events of the previous spring and Robinson's prior unlawful discharge, I conclude that Robinson would not have been discharged on October 6, 2008 but for his earlier protected activities, and that, therefore, this discharge also violated Sections 10(1) (a) and (c) of PERA. I recommend, therefore, that the Commission issue the following order.

RECOMMENDED ORDER

Respondent Wayne State University, its officers and agents, are hereby ordered to:

1. Cease and desist from:

   a. Discharging or otherwise discriminating against employees because they have engaged in lawful concerted activity for the purpose of collective bargaining or other mutual aid or protection.

   b. In any like manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed them Section 9 of PERA, including the right to file and pursue grievances under a collective bargaining agreement.

2. Take the following affirmative action to effectuate the purposes of PERA:

   a. Offer Donald Robinson immediate and full reinstatement to his former or a substantially equivalent position, without prejudice to rights or privileges previously enjoyed.

   b. Make Robinson whole for any loss of pay which he may have suffered as a result of the discrimination against him by payment to him of a sum equal to that which he would have earned from the date of his termination on October 6, 2008 to the date of his reinstatement or rejection of Respondent's unconditional offer, less interim earnings, together with interest on these sums at the statutory rate of six percent (6%) per annum, computed quarterly.

   c. Make Robinson whole for loss of pay resulting from the thirty-eight work day unpaid suspension he received as a result of his unlawful discharge on April 11, 2008, including interest at the rate of 6% per annum, computed quarterly, and remove this suspension from his file.

d. Post the attached notice to employees in conspicuous places on Respondent's premises, including all locations where notices to employees are customarily posted, for a period of thirty (30) consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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

Dated: _____