

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

In the Matter of:

ARENAC COUNTY ROAD COMMISSION,  
Public Employer-Respondent,

-and-

TEAMSTERS LOCAL 214,  
Labor Organization-Charging Party.

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Case No. C07 H-171A  
(Compliance)

APPEARANCES:

William P. Borushko, for Respondent

Rudell & O'Neill, P.C., by Wayne A. Rudell, Esq., for Charging Party

**DECISION AND ORDER**

On September 2, 2010, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order in the above matter finding that Respondent has not failed to comply with the Commission's Order issued on June 23, 2009. The ALJ recommended that the Commission deny Charging Party's request for an order requiring that Respondent take specific action in compliance).

The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of the Act.

The parties have had an opportunity to review the Decision and Recommended Order for a period of at least 20 days from the date of service and no exceptions have been filed by any of the parties.

**ORDER**

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

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**

In the Matter of:

ARENAC COUNTY ROAD COMMISSION,  
Public Employer-Respondent,

-and-

TEAMSTERS LOCAL 214,  
Labor Organization-Charging Party.

Case No. C07 H-171  
(Compliance)

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APPEARANCES:

William P. Borushko, for Respondent

Rudell & O'Neill, P.C., by Wayne A. Rudell, for Charging Party

**DECISION AND RECOMMENDED ORDER**  
**OF ADMINISTRATIVE LAW JUDGE**  
**ON COMPLIANCE**

On April 30, 2009, Julia C. Stern, Administrative Law Judge for the State Office of Administrative Hearings and Rules, issued a Decision and Recommended Order in the above matter for the Michigan Employment Relations Commission (the Commission) finding Respondent Arenac County Road Commission to have violated Section 10(1)(e) of the Public Employment Relations Act (PERA or the Act), 1965 PA 379, as amended, MCL 423.210, by unilaterally implementing new disciplinary policies. I recommended that Respondent be ordered to take certain affirmative action to remedy this violation, including the following:

2(b). Rescind the "Employee Rules of Conduct" implemented on October 1, 2007 and, upon demand, bargain with Teamsters Local 214 over disciplinary rules and policies.

2(c). **Remove from employee files all disciplinary actions issued after October 1, 2007 that impose discipline more severe than the employee would have received for the same offense under the rules and regulations in effect prior to October 1, 2007** and make employees whole for monetary losses suffered as a result of these disciplinary actions, including interest on these sums at the statutory rate of five percent per annum, computed quarterly. [Emphasis added].

Neither party filed exceptions to the Decision and Recommended Order, and it became the final order of the Commission on June 23, 2009. *Arenac Co Rd Commission*, 22 MPER 55 (2009).

On January 19, 2010, Charging Party filed a request for a compliance hearing pursuant to Rule 177 of the Commission's General Rules 2002 AACS, R 423.177. The Commission referred the request to me. On March 8, 2010, Charging Party filed an amended request. In this request, Charging Party asserts that Respondent has failed to comply with paragraph 2(c) of the Commission's order by refusing to rescind a three day disciplinary suspension issued to Ken Smith on December 21, 2007 and make Smith whole for the pay he lost. It requested that the Commission issue an order explicitly directing Respondent to take these actions.

On March 12, 2010, Respondent filed an answer in which it denied that the Commission's order required it to rescind this suspension. Respondent further asserted that there were no material issues of fact and that the request for a compliance hearing should be denied. On March 25, 2010, Charging Party filed a response to the answer.

There is no dispute that after Smith was disciplined, Respondent rescinded the rules it promulgated on October 1, 2007 and the parties subsequently negotiated and reached agreement on a new set of rules. The issue in dispute is whether Smith would have been suspended for his conduct under the work rules in effect prior to October 1, 2007. On May 13, 2010, I held oral argument. At that time, I asked Charging Party to identify on the record any facts it believed were in dispute. Charging Party did not take issue with the facts set out in Respondent's answer, although it asserted that the Respondent agent who made the decision to discipline Smith should be required to testify as to the discipline Smith would have been given under the former rules. At the conclusion of the argument, I stated on the record that I found no material dispute of fact between the parties and that I concluded that Rule 177 did not require an evidentiary hearing. I further indicated to the parties that I would issue a decision and recommended order on compliance based on facts not in dispute, as set out below

Facts:

Between 1980 and 2007, Respondent maintained a set of written work rules titled "Rules and Regulations." The work rules listed twelve major offenses for which the penalty for a single violation was discharge. One of these was "intentional falsification of personnel records." The document also included a number of other rules for which the appropriate penalties for a first and subsequent violation of the rule were listed. For both "careless or reckless operation of Commission equipment," and "unauthorized use of Commission equipment," a written reprimand was the penalty for a first offense and a written reprimand and three days off without pay was the penalty for a second offense. The employee was subject to discharge for a third violation of these rules.

On September 4, 2007, Respondent's Board of Commissioners adopted a new document, entitled "Employee Rules of Conduct," to take effect on October 1, 2007. The "Employee Rules of Conduct" significantly altered the disciplinary penalties set out in the old work rules. The new rules increased the number of specific offenses and separated them into two groups. For any violation of the twenty-three rules in the first group, employees were "subject to disciplinary action up to and including discharge." Charging Party filed the instant unfair labor practice

charge alleging that Respondent violated Section 10(1)(e) of PERA by unilaterally promulgating these new rules.

Ken Smith is a member of Charging Party's bargaining unit. On December 15, 2007, Smith was plowing snow in Respondent's truck when he ran into an overhanging tree branch. At the time of the accident, Smith was plowing his own driveway, which he was not authorized to do. The truck was damaged; it was also wedged under the tree and could not be moved. Another employee was sent to help Smith dislodge the truck. Upon his return to the garage, Smith prepared an accident report. The accident report included a map that accurately recorded where the accident took place. In the report, Smith described the accident as follows:

Was opening up intersection of Crawford Rd at U.S. 23. Backed into driveway and got stuck. While attempting to get unstuck, the truck slid sideways and the tarp system got caught on a tree limb.

Smith's report did not mention that the driveway was his own or that he had been plowing it. Smith submitted the accident report to his supervisor. The supervisor knew the facts, and told Smith that he had better change the report. Smith then revised the report.

On December 21, 2007, Smith was issued a written reprimand with three days off without pay. The written reprimand cited two provisions of the new "Employee Rules of Conduct." These were Section 1(v), "unauthorized use of Employer's tools, equipment, premises, or facilities," and Section 1(d), "intentional falsification of Employer's records or known misrepresentation of facts to management." Both these offenses were group 1 offenses under the new rules. The reprimand also stated, "If these violations are repeated, it will be cause for discharge."

Charging Party filed a grievance over Smith's disciplinary suspension. In the grievance, Charging Party argued that Smith did not make a false statement or submit a false document, since his accident report accurately reported where the accident occurred.

#### Discussion and Conclusions:

Respondent asserts that Smith received the same discipline on December 21, 2007 that he would have received under the work rules in effect prior to October 1, 2007. It admits that the appropriate discipline for a first offense of careless and/or unauthorized use of Respondent's equipment under those work rules was a written reprimand. It maintains, however, Smith committed an additional offense for which he would have been disciplined under the old rules; he submitted an accident report that omitted the important fact that he was plowing his own driveway when the accident occurred. Respondent points out that the old rules permitted Respondent to discharge employees for intentionally falsifying a personnel record. According to Respondent, Smith was guilty of violating this rule and would have been disciplined for it. Smith was suspended, not discharged. However, Respondent had discretion under the old rules not to impose the maximum penalty and, according to Respondent, exercised it in this case as it would have under the old rules.

Charging Party makes several arguments in support of its claim that Smith was disciplined more severely than he would have been under the old rules. First, Charging Party argues that the Commission order requires Respondent to rescind Smith's disciplinary suspension and reissue or revise it because the suspension was issued under, and cited, provisions of the new rules. Second, Charging Party argues that Smith was not disciplined for falsifying a record as Respondent claims since, according to Charging Party, the accident report did not contain any affirmative misstatement of fact. It maintains that Smith was actually disciplined for violating a new rule prohibiting employees from "making known misrepresentations of facts to management." The discipline of employees for violating new, unlawfully promulgated, rules was what the Commission's order was designed to remedy. Third, Charging Party asserts that under the old rules Smith's reprimand would not have warned him that a repeat violation would be grounds for discharge.

I find none of these arguments persuasive. The order clearly does not require Respondent to rescind all disciplinary actions issued while the new rules were in effect. Respondent is required only to rescind disciplinary actions which imposed a more severe penalty than the employees would have received under the old rules. It is not clear what basis Charging Party has for asserting that under the old rules Smith would not have been warned that a repeat violation would be grounds for discharge since, according to Respondent, under the old rules Smith could have been discharged for submitting one false report. With respect to Charging Party's second argument, Respondent maintains that Charging Party is using this compliance proceeding as an inappropriate forum for an argument that Respondent lacked just cause to discipline Smith for his accident report under the old rules. I agree. Since the October 1, 2007 rules were in effect when Smith was disciplined on December 21, 2007, his reprimand cited these rules and not the rules they replaced. The facts establish, however, that Smith submitted an accident report that attempted to cover up the fact that he was performing unauthorized work when he damaged Respondent's truck, misconduct for which he might have been disciplined in the absence of any formally promulgated work rule. In addition, Respondent has demonstrated that the work rules in effect prior to October 1, 2007 included a specific rule which, at least arguably, covered this misconduct and which authorized Respondent to impose a penalty beyond a written reprimand. I conclude, based on these facts, that Smith's December 21, 2007 disciplinary suspension was not covered by the Commission's June 23, 2009 order. I recommend, therefore, that the Commission issue the following order.

**RECOMMENDED ORDER**

Charging Party's request for an order requiring Respondent to take specific action to comply with the June 23, 2009 order is denied.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern  
Administrative Law Judge

Dated: \_\_\_\_\_