STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

GRANDVUE MEDICAL CARE FACILITY,
Public Employer-Respondent,

Case No. C10 C-084

-and-

JANET RENKIEWICZ and TAMARA WOOD,
Individuals-Charging Parties.
_____/

APPEARANCES:

Rhoades McKee, PC, by Mark R. Smith, for Respondent

Ellis Boal, for the Charging Parties

DECISION AND ORDER

On May 1, 2012, Administrative Law Judge (ALJ) Doyle O'Connor issued his Decision and Recommended Order in the above matter finding that Respondent, Grandvue Medical Care Facility (Employer), did not violate § 10(1) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210(1) when it discharged Charging Parties, Janet Renkiewicz and Tamara Wood. The ALJ found that Charging Parties failed to present evidence establishing that Respondent discriminated against either of them for engaging in protected concerted activity. The ALJ concluded that Respondent's decision to discharge both Charging Parties was based on its dissatisfaction with their work performance. The ALJ also determined that a "No Discussion Order" issued by Respondent did not violate § 10 as it was crafted narrowly in scope and time and did not interfere with or restrain Charging Parties from exercising their rights under § 9 of PERA. Finally, the ALJ also denied Charging Parties' motion to amend the charge to pursue a claim on behalf of a nonparty, Joe Helsley, concluding that the claim was barred by the statute of limitations. Finding no violation, the ALJ recommended that the charge be dismissed. The Decision and Recommended Order was served on the interested parties in accordance with § 16 of PERA.

After requesting and receiving two extensions of time in which to file their exceptions, Charging Parties filed exceptions to the ALJ's Decision and Recommended

Order on July 27, 2012. Respondent was granted an extension of time to file its response to the exceptions and filed its Brief in Support of Decision and Recommended Order by Administrative Law Judge on September 6, 2012.

In their exceptions, Charging Parties assert that there are no bases in the record for several of the ALJ's factual findings. They assert, for example, that there is no basis for the ALJ's conclusion that the no-talk instruction was appropriate in part because Charging Parties might taint or skew the investigation. They also assert that there were four (not three) instances of concerted employee activity and that the ALJ erred when his analysis focused only on the concerted nature of the three instances and did not consider the "confluence of the four together." Charging Parties assert that other employees who were just as guilty were not fired because they did not defend their actions and did so "much less concertedly." Finally, Charging Parties find error in the ALJ's conclusion that Renkiewicz herself failed to report the allegations when she learned of them. Charging Parties assert that Renkiewicz was on vacation at the time and learned of them only later, on the same day that Evans, the facility director, did.

In its brief in support of the ALJ's decision, Respondent counters that the ALJ properly found that the "no discussion" rule did not interfere with Charging Parties' exercise of their § 9 rights and that neither Charging Party was discharged for engaging in protected concerted activity.

We have considered the arguments made in Charging Parties' exceptions and find them to be without merit.

Factual Summary

We adopt the factual findings of the ALJ and recite them only as necessary here.

The Respondent operates a long term care facility, which includes the Horizonvue unit. The Horizonvue unit focuses on the care of residents with dementia. Kevin Evans was the administrator of the entire facility. Charging Party Renkiewicz is a registered nurse and was the manager of the Horizonvue unit. Carole Timmer is the director of nursing and, as such, reported to Evans and supervised Renkiewicz. Charging Party Wood was a social worker. The non-supervisory workforce at the facility is in a bargaining unit represented by the Service Employees International Union (SEIU). Neither Renkiewicz nor Wood are in that bargaining unit and were considered to be at-will employees by Respondent.

On December 25, 2009, a Horizonvue resident informed two nurses' aides that a Grandvue staff member, Joe Helsley, had raped her and that she had also previously been raped by another man who was then visiting the facility. The aides reported the assertion to Helsley, who promptly entered the assertion into the computerized nursing notes for the day, and reported the assertions directly to his immediate supervisor, Irene Paszkowski, the following day. Paszkowski and Helsley decided to initiate a behavioral referral to social worker Wood, who then opened a behavior log on the resident. The assertions were

discussed by the resident care committee at its regular meeting of December 30, 2009, but none of the staff believed the assertions to be credible.

On January 1, 2010, the same resident made a similar claim regarding another employee who, like Helsley, promptly entered the assertion in the central nursing notes.

On January 5, 2010, the nursing notes were finally reviewed by the assistant director of nursing, Sherry Spurrier, who reported the allegations that same day to the facility administrator, Evans. A report to the State was issued that day and an investigation was begun by the administrator and the assistant director of nursing. Evans initially met with Renkiewicz, Wood, Helsley, and Paszkowski. Evans believed that the facility's written policies required an immediate report to the state, no matter how implausible the allegation. The four employees, however, all asserted that the facility's written policies only required the reporting of credible claims of suspected abuse. The meeting ended with Evans taking Helsley off the schedule, pending conclusion of the investigation, and directing Wood and Renkiewicz to assist in the ongoing investigation by interviewing employees.

Evans then discovered the January 1 allegations made by the same resident against another male staff member and realized that these allegations went unreported as well. As a result, Evans called Renkiewicz and Wood into his office and advised them they were off the investigation. He also asked them to sit down and write out statements as to when and how they heard of the allegations, why they didn't immediately report the assertions, and what other steps they took. Both employees wrote out their statements. Evans advised Renkiewicz and Wood that they would be off work until the investigation was concluded. After Evans took their written statements, he also instructed them not to talk to anyone, including each other, about the investigation while they were off work pending the outcome.

Later that day, the facility abuse reporting policy disappeared from the facility's website. Consequently, Renkiewicz called Nurse Susan Coyle to ask about it and to attempt to secure a copy of the policy. Coyle then reported the contact to Evans, who concluded that Renkiewicz had violated his order.

On January 7, 2010, Respondent wrote the Michigan Department of Community Health (MDCH) and promised that discipline and education would be used to deal with staff members who had failed to timely report residents' claims. Discipline was then imposed on the involved employees. In recognition of the confusion caused by the conflicting statements in several Employer promulgated policies, no employee was disciplined for violation of the express work rule regarding reporting of "suspected" abuse. Wood and Paszkowski each received three-day disciplinary suspensions under Employer Work Rule 45 for not following facility procedures. Helsley was terminated for the same Rule 45 violation, with the more severe penalty premised on his prior disciplinary record. Renkiewicz was terminated under Employer Work Rule 57 for "failure to meet work performance standards" based on the Employer's stated overall dissatisfaction with her performance.

During the investigation of this matter, the Employer attempted to review the email files of the involved employees and discovered that Wood's email had been entirely purged

from her office computer. After Wood's three-day suspension was served, the information technology staff reconstructed her email records from back-up tapes and recovered more than two thousand non-work related emails. The Employer's human resources director recommended to Evans that Wood be terminated based in part on the theory that the sheer volume of email traffic was such that Wood was necessarily spending an inordinate amount of work-time on personal communications and business. Wood's immediate supervisor, Mansfield, who had earlier intervened to save Wood's job, now switched her position and advocated that Wood be terminated. On February 10, 2010, Wood was terminated on the bases that she had failed to follow policy and for conducting personal business on Employer time.

On March 25, 2010, a charge was filed on behalf of Charging Parties Renkiewicz and Wood. The charge alleged that the Respondent had violated PERA by ordering the Charging Parties not to discuss a workplace investigation with anyone else, including other co-workers. It was asserted that such an Employer directive would interfere with the exercise of protected rights, including the right to engage in concerted activity. The only relief initially sought was the finding of a violation and a cease and desist order with the posting of a notice.

On September 2, 2010, the Charging Parties filed a proposed amended charge in which they maintained that they were unlawfully terminated. They asserted that a substantial reason for Renkiewicz's termination was Respondent's perception that she disobeyed the no-discussion order by contacting a Grandvue employee. Charging Parties also asserted that Wood, along with Joe Helsley, was fired in substantial part for having met with each other, and with Irene Paszkowski, prior to their January 5, 2010 investigatory interviews. The proposed amended charge sought reinstatement, with back pay, for Wood and Renkiewicz, along with the same relief for Helsley, even though he had not filed or been named as a Charging Party in the original or proposed amended charges.

After reviewing the proposed amended charge, as well as the Employer's answer, the ALJ denied the request to amend the charge, finding that the proposed claims regarding Helsley were barred by the statute of limitations. However, he allowed the amendment to expand the claims of the existing parties.

Discussion and Conclusions of Law:

As the ALJ noted, the only issue in the case is whether the Employer's actions were based on an unlawful motive; if they were, then they are prohibited by PERA. Where an adverse employment action has occurred, the elements of a prima facie case of unlawful discrimination under PERA are: (1) union or other protected activity; (2) employer knowledge of that activity; (3) anti-union animus or hostility toward the employee's protected rights; and (4) suspicious timing or other evidence that protected activity was a motivating cause of the alleged discriminatory action. *Univ of Michigan*, 2001 MERC Lab Op 40, 43; *Grandvue Medical Care Facility*, 1993 MERC Lab Op 686, 696. A charging party must present substantial evidence from which a reasonable inference of discrimination may be drawn. *MERC v Detroit Symphony Orchestra*, 393 Mich 116, 126 (1974); *City of Grand Rapids Fire Dep't,* 1998 MERC Lab Op 703, 707.

In *Napoleon Cmty Sch*, 1982 MERC Lab Op 14, the Commission adopted the test formulated by the National Labor Relations Board in *Wright Line, Division of Wright Line, Inc*, 251 NLRB 1083 (1980), enf'd, 662 F2d 899 (CA 1, 1981), cert den, 455 US 989 (1982), for determining employer motivation when discriminatory action is alleged. See also, *City of Detroit (Housing Dep't)*, 1989 MERC Lab Op 547 aff'd, unpublished opinion of the Court of Appeals, decided February 13, 1991 (Docket No. 119519); *Walled Lake Cmty Sch*, 1985 MERC Lab Op 575; *City of Menominee*, 1982 MERC Lab Op 1420; *Detroit Bd of Ed*, 1982 MERC Lab Op 593. Under the *Wright Line* test, the charging party must first make a prima facie showing sufficient to support the inference that union or other protected concerted activity was a "motivating or substantial factor" in the employer's decision to take action adverse to an employee, despite the existence of other factors supporting the employer's actions. Once the prima facie case is met, the burden shifts to the employer to produce credible evidence that the same action would have taken place even in the absence of the protected conduct. The ultimate burden, however, remains with the charging party. *City of Saginaw*, 1997 MERC Lab Op 414, 419. See also *MESPA v Evart Pub Sch*, 125 Mich App 71 (1983).

The Termination of Renkiewicz

Charging Parties except to the ALJ's finding that Renkiewicz's termination was unrelated to any activity protected by PERA. A review of the record, however, establishes that there is no evidence that would support a finding that Renkiewicz engaged in protected activity for which she was subject to discrimination or retaliation in violation of PERA.

Initially, the Coyle conversation was not protected concerted activity. Renkiewicz called Coyle seeking a copy of the policy to use in her own defense. There was no assertion that she was acting on behalf of others in calling Coyle. Moreover, she was not seeking to enforce her rights arising from a collective bargaining agreement. She was merely looking out for her own interests and was not actually engaged in protected activity in talking to Coyle.

Concerted activity, which includes activity undertaken by one employee on behalf of others, is protected by PERA even in the absence of the participation or authorization of a labor organization. See *City of Detroit (Police Dep't)*, 19 MPER 15 (2006); *City of Saginaw*, 23 MPER 106 (2010); *Hugh H Wilson Corp v NLRB*, 414 F2d 1345, (CA 3, 1969). Individual action is concerted if "the concerns expressed by the individual are [a] logical outgrowth of the concerns expressed by the group." *C & D Charter Power Systems, Inc*, 318 NLRB 798, 798 (1995), citing *Mike Yurosek & Son*, 306 NLRB 1037, 1038 (1992), enf'd 53 F3d 261 (CA 9, 1995)[1]. Under this standard, Renkiewicz did not engage in concerted activity.

[1] Given the similarity between the language of §§ 9 and 10(1)(a) of PERA and §§ 7 and 8(a)(1) of the National Labor Relations Act (NLRA), the Commission is often guided by Federal cases interpreting the NLRA. *MERC v Reeths-Puffer Sch Dist*, 391 Mich 253, 260; 215 NW2d 672 (1974), *Detroit Police Officers Ass'n v Detroit*, 391 Mich 44; 214 NW2d 803 (1974) and *Univ of Michigan Regents v MERC*, 95 Mich App 482, 489 (1980).

Additionally, even if Renkiewicz' call to Coyle qualified as protected activity, it would not alter our analysis. Evans' concern over the perceived violation of his order played an insignificant part in his decision. The violation was perceived by him as so inconsequential that all agree that he did not even mention it at the termination meeting when he went through the litany of reasons for the termination of Renkiewicz. The "no-discussion" violation was not even known of by Wiltse, Timmer, and Spurrier when they each recommended terminating Renkiewicz over the latest incident taken together with her earlier perceived failings.

Furthermore, substantial evidence supports the ALJ's finding that the decision by the Employer to terminate Renkiewicz was based, contrary to her contention, on the belief that her performance as a manager was, and had for some time been, deficient. The former and the current directors of nursing and the assistant director of nursing, the immediate supervisors of Renkiewicz, all recommended her termination. It is clear from the record that Timmer would have terminated Renkiewicz earlier if she had been given the authority to do so. The Employer concluded that Renkiewicz had violated its policies, had failed to properly train her own subordinate staff as to those policies, had failed to appropriately respond to prior incidents, and had placed the facility at substantial risk of severe and potentially debilitating sanctions. The fact that the Employer's underlying policies were unclear, or that another employer might have handled aspects of the investigation differently, or even accepting the Charging Parties' assertion that they were essentially mere scapegoats, does not, and cannot, establish a violation of PERA. The Commission, therefore, concurs with the ALJ's finding that neither the Coyle call nor any other activity protected by PERA was a substantial or motivating factor in the discharge of Renkiewicz.

The Termination of Wood

Charging Parties also except to the ALJ's finding that Wood's three-day suspension and termination were unrelated to any activity protected by PERA. As noted above with respect to Renkiewicz's termination, there is no evidence that would support a finding that Wood engaged in protected activity for which she was subject to discrimination or retaliation in violation of PERA.

The protected nature of employee efforts to protest actions concerning wages, hours, and working conditions has long been recognized as protected under the National Labor Relations Act as well as PERA. See *Joseph DeRairo, DMD, P.A.*, 283 NLRB 592 (1987). Individual action is concerted where the evidence supports a finding that the concerns expressed by the individual are a logical outgrowth of the concerns expressed by the group. *Mike Yurosek & Sons, Inc*, 306 NLRB 1037, 1038 (1992),

In its lead case on concerted activity, *Myers Industries*, 268 NLRB 493, 497 (1984) (*Myers I*), remanded sub nom. *Prill v. NLRB*, 755 F.2d 941 (D.C. Cir. 1985), cert denied 474 U.S. 948 (1985), the National Labor Relations Board explained that "to find an employee's activity to be 'concerted,' we shall require that it be engaged in with or on the authority of other employees, and not solely by and on behalf of the employee himself." Following a

remand from the United States Court of Appeals for the District of Columbia Circuit, the Board reiterated that standard but clarified that it "encompasses those circumstances where individual employees seek to initiate or to induce or to prepare for group action, as well as individual employees bringing truly group complaints to the attention of management." *Myers Industries*, 281 NLRB 882, 887 (1986) (*Myers II*, enfd sub nom *Prill v NLRB*, 835 F 2d 1481 (C.C. Cir. 1987), cert denied 487 U.S. 1205 (1988).

These same principles have been applied to cases arising under PERA. See *MERC v Reeths-Puffer Sch Dist*, 391 Mich 253 (1974), *City of Saginaw*, 23 MPER 106 (2010), and *Inland Lakes Sch*, 1988 MERC Lab Op 1013.

Applying these principles, the Board has consistently found activity concerted when, in front of their coworkers, single employees protest changes to employment terms common to all employees. See, e.g., *Chromalloy Gas Turbine Co*, 331 NLRB 858, 863 (2000), enfd 262 F3d 184, 190 (2d Cir 2001); *Whittaker Corp*, 289 NLRB 933, 934 (1988). The concerted nature of an employee's protest may (but need not) be revealed by evidence that the employee used terms like "us" or "we" when voicing complaints even when the employee had not solicited coworkers' views previously. In *Holling Press, Inc*, 343 NLRB 301 (2004), the Board stated:

> In order for employee conduct to fall within the ambit of section 7, it must be both concerted and engaged in for the purpose of "mutual aid or protection." These are related but separate elements that the General Counsel must establish in order to show a violation of Section 8(a)(1).

Accordingly, an employee who simply pursues a personal claim, even with the assistance of other employees, is not engaged in protected concerted activity. In essence, the employee must be shown to be seeking a collective goal and may not simply be seeking to advance his or her personal claim. See e.g. *City of Detroit (Dept of Water & Sewerage)*, 18 MPER 34 (2005).

In the instant case, Charging Party alleges that she was targeted for retaliation based on the perception that she engaged in concerted activity by conferring with other employees at a meeting called by Assistant Director Spurrier on January 5, in preparation for the initial interview with Evans. Charging Party's allegation is without basis. Initially, the record establishes that Wood was not present at the January 5 meeting called by Spurrier. Additionally, even if Evans believed that Wood attended the meeting, attendance in itself at the meeting was not concerted activity engaged in for the purposes of mutual aid or protection. See e.g., *Chromalloy Gas Turbine Co*, 331 NLRB 858 (2000), enfd 262 F3d 184, 190 (2d Cir. 2001) and other cases cited above.

Furthermore, substantial evidence supports the ALJ's conclusion that Wood was suspended and later terminated based on the Employer's well-supported belief that she had engaged in workplace misconduct in dereliction of her duty.

As noted by the ALJ, the Respondent's failure to immediately fire Wood in January belies the assertion that Wood was targeted for retaliation based on the perception that she had engaged in concerted activity by conferring with other employees in preparation for the January 5 initial interview. If the Employer had taken offense at the perceived role of Wood in conferring with coworkers prior to their investigatory interview, it is implausible that they would have refrained from firing her as a result of her failure to report resident abuse. Likewise, Paszkowski, who was involved in meeting with the others before the investigatory meeting, received only a three-day suspension, the least of any of her fellow employees. Additionally, if the Employer bore such animus toward those employees who conferred with each other prior to meeting with the Employer, it is curious how Paszkowski avoided retribution and merely suffered the same three-day suspension originally imposed on Wood.

As further noted by the ALJ with regard to the Respondent's motivation for Wood's discharge, the Wood email controversy was the last straw. The Employer, after having already imposed the three-day suspension, discovered first that Wood had, apparently, purged the entirety of her computer email trail. That alone, in the face of an institution-wide investigation, could readily have caused her to be perceived as an unreliable, if not deceitful, employee. Then the Employer, through recovered files, determined that Wood had sent or received over two thousand personal, and sometimes inappropriate, emails on her work computer. The Employer legitimately concluded that the volume of traffic supported a conclusion that Wood was attending to her private business when she should have been attending to her work. Such misconduct is a legitimate business reason for terminating an employee.

The Commission agrees that the reason for the termination of Wood was the Employer's well-supported belief that she had engaged in workplace misconduct in dereliction of her duty. Therefore, there was no PERA violation arising out of her three-day suspension or her later termination.

The No-Discussion Order

In determining whether a public employer's statement constitutes a violation of § 10(1)(a), both the content and the context of the employer's statement must be examined. *New Buffalo Bd of Ed*, 2001 MERC Lab Op 47; *New Haven Cmty Sch*, 1990 MERC Lab Op 167, 179. The test is whether a reasonable employee would interpret the statement as an express or implied threat. *Eaton Co Transp Auth*, 21 MPER 35 (2008); *City of Greenville*, 2001 MERC Lab Op 55, 56; 14 MPER 32028; *New Buffalo Bd of Ed*, at 48. The issue of whether §10(1)(a) has been violated is not determined by the employer's motive for the proscribed conduct or the employee' s subjective reactions to it, but rather whether the employer' s actions may reasonably be said to tend to interfere with the free exercise of protected employee rights. *City of Greenville*, at 58.

It is undisputed that the Employer ordered Renkiewicz and Wood to refrain from any discussions with co-workers regarding the investigation of the resident complaint. As Charging Parties assert, such an order could violate § 10(1)(a) by interfering with or restraining employees in the exercise of their § 9 right to act collectively in dealing with

their employer regarding workplace issues. Further, the Commission currently holds that, under PERA, non-represented employees have the right to seek the assistance of another employee at an investigatory interview that they reasonably fear might lead to discipline, although they do not have the right to be represented by a non-employee. See *Univ of Michigan*, 1977 MERC Lab Op 496; *Detroit Bd of Ed*, 1982 MERC Lab Op 593, 604; *Univ of Michigan*, 1990 MERC Lab Op 272, 294. See also *Detroit Pub Sch*, 17 MPER 51 (2004). As such, a broad no-discussion order could have an unlawful chilling effect on the exercise by employees of their right to seek and to have assistance from a cohort in responding to the investigation. See, *NLRB v Weingarten, Inc,* 420 US 251 (1975); *Univ of Michigan*, 1977 MERC Lab Op 496; *Kent Co*, 21 MPER 61 (2008).

In the present case, however, Renkiewicz and Wood attended the joint interview and gave their written statements regarding the disputed events prior to the issuance of the no-discussion rule. While the no-discussion rule could have deterred further concerted activity by the employees, there was no evidence of any deterrence or interference in any efforts by these employees to mount a joint response to the Employer's investigation. To the contrary, Renkiewicz testified that, after consultation, she decided to simply violate the no-discussion rule and conferred with Wood, Paszkowski, and others, regarding the investigation while it was ongoing.

Under such circumstances, the Respondent did not violate § 10 of PERA. The no-discussion rule was crafted narrowly both in scope and in time. The order was issued to two managerial level employees, one of whom was a supervisor of many of the employees involved in the investigation and the other was a social worker with arguably special responsibilities related to the underlying events. While such employees do have the statutory rights afforded to all public employees to engage in concerted activity, they also have special responsibilities to an employer. See *Bloomfield Hills Sch Dist*, 2000 MERC Lab Op 363; *Village of Paw Paw*, 2000 MERC Lab Op 370; *City of Detroit*, 1996 MERC Lab Op 282. The order was not the Employer's initial step in the investigation; rather, the Employer first involved Renkiewicz and Wood in assisting with the investigation. The narrowly tailored order was issued once it became apparent to the Employer that Renkiewicz and Wood were also appropriate targets of the investigation and should be insulated from further personal involvement which could taint or skew the investigation itself or alter the likely testimony of the Charging Parties or subordinate employee witnesses. The Respondent's order, therefore, did not violate § 10 of PERA. See *Ottawa Co Sheriff*, 1996 MERC Lab Op 221.

We have also considered all other arguments submitted by Charging Parties and conclude that they would not change the result in this case. Accordingly, we adopt the findings and conclusions of the ALJ.

ORDER

IT IS HEREBY ORDERED, that the Order recommended by the Administrative Law Judge shall become the Order of the Commission.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Edward D. Callaghan, Commission Chair

_____

Robert S. LaBrant, Commission Member

_____

Natalie Priest Yaw, Commission Member

Dated: _____

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

GRANDVUE MEDICAL CARE FACILITY,
Public Employer-Respondent,

-and- Case No. C10 C-084

JANET RENKIEWICZ and TAMARA WOOD,
Individual-Charging Parties.
_____/

APPEARANCES:

Ellis Boal, for the Charging Party

Rhoades McKee, PC, by Mark R. Smith, for the Respondent

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE

Pursuant to the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.201 *et seq*, this case was assigned to Doyle O'Connor, of the Michigan Administrative Hearing System, acting on behalf of the Michigan Employment Relations Commission (MERC).

The Unfair Labor Practice Charge:

On March 25, 2010, a Charge was filed in this matter on behalf of individual Charging Parties Janet Renkiewicz and Tamara Wood[2]. It was alleged that the Employer, Grandvue Medical Care Facility, had, in January of 2010, violated PERA by ordering the Charging Parties not to discuss a workplace investigation with anyone else, including other co-workers. It was asserted that such an Employer directive would interfere with the exercise of protected rights, including the right to engage in concerted activity. The only

[2] Tamara Wood was known as Tamara Sides at the time of the filing of the Charge and prior to her marriage.

relief initially sought was the finding of a violation and a cease and desist order with the posting of a notice. The Employer filed an answer on July 21, 2010, in which it acknowledged that it had instructed the two Charging Parties not to further discuss the investigation with co-workers during its pendency and denied disciplining either employee for any alleged violation of the no-discussion order. The Employer asserted that its no-discussion order was appropriate where directed at managerial level employees and under the circumstances of an employer investigation into a complaint of abuse of a resident of the facility.

On September 2, 2010, the two Charging Parties filed a proposed amended Charge. The new allegations included that Wood and Renkiewicz had been unlawfully terminated. It was asserted that a substantial reason for Renkiewicz' termination was that she was perceived as having disobeyed the no-discussion order by contacting a Grandvue employee. It was asserted that Wood, along with Joe Helsley, was fired in substantial part for having met with each other, and with Irene Paszkowski, prior to their investigatory interviews of January 5, 2010. The proposed amended Charge sought reinstatement, with back pay, for Wood and Renkiewicz who were the original Charging Parties, along with the same relief for Helsley, even though he had not filed or been named as a Charging Party in the original or proposed amended Charges.

The Employer filed an Answer to the proposed amended Charge, which denied liability as to the new claims and objected to the proposed amendment, but only to the extent that the amendment sought to add claims for relief related to Helsley, whose claims were first brought more than six months following the termination of his employment. After a review of the proposed amended Charge, as well as the Employer's Answer, I indicated to the parties that it did appear that the proposed addition of claims for relief as to Joe Helsley was an effort to add a new party whose claims appeared on the face of it to be barred by the statute of limitations. I advised counsel that I did not anticipate taking proofs as to Helsley unless that jurisdictional question was otherwise resolved. At trial, after argument by counsel, and on the record, I denied the effort to amend the Charge to add claims as to Helsley, as barred by the statute of limitations, but allowed the amendment to expand the claims of the existing parties.

Findings of Fact:

The Respondent operates a long term care facility, which includes the Horizonvue unit that focuses on the care of residents with dementia. The facility is in a highly regulated industry with oversight by both State and Federal agencies. Kevin Evans is the administrator of the entire facility, while Charging Party Renkiewicz is a registered nurse and was the manager of the Horizonvue unit. Carole Timmer is the director of nursing; as such, she reports to Evans, and supervises Renkiewicz. Charging Party Wood was a social worker. The non-supervisory/non-managerial workforce at the facility is in a bargaining unit represented by the SEIU, with neither Renkiewicz nor Wood in that bargaining unit; rather, pursuant to Employer policy, the two were considered at-will employees.

On December 25, 2009, a Horizonvue resident asserted to two nurses aides that a Grandvue staff member, Joe Helsley, had raped her and that she had also previously been raped by another man who was then visiting the facility. The aides reported the assertion to Helsley, who promptly entered the assertion into the computerized nursing notes for the day, to which supervisory staff have regular access, and reported the assertions directly to his immediate supervisor, Irene Paszkowski, the following day. Paszkowski and Helsley jointly decided to initiate a behavioral referral to social worker Wood, who then opened a behavior log on the resident. The making of the assertions was discussed by the resident care committee at its regular meeting of December 30, 2009. None of the staff believed the assertions to have the slightest plausibility and all seemingly concurred that the allegations were instead an artifact of the resident's dementia.

On January 1, 2010, the same resident made a similar claim as to another male employee who, like Helsley, promptly entered the assertion in the central nursing notes. On January 5, 2012, the several nursing notes were finally reviewed by the assistant director of nursing, Sherry Spurrier, who reported the allegations that same day to the facility administrator, Evans. A report to the State was issued that day and an investigation was begun by the administrator and the assistant director of nursing.

Evans credibly testified that he was greatly alarmed by the delay in reporting the assertions, even though he too gave the claims no credence. As understood by Evans, the Michigan Department of Community Health (MDCH) regulations, and State law, required that the facility report any abuse

allegations, credible or not, to the State within 24 hours. Evans understood that there were possible criminal penalties for a failure to timely report such allegations and that there were onerous financial and administrative penalties which could be levied against the facility, capable of essentially shutting it down. Evans and Spurrier filed an initial report, contacted the State Police, and then by January 7, 2010, having interviewed the family of the resident and over 120 employees, they filed a more complete report. Their report to the State asserted their belief that no abuse had occurred, but that the facility had not willfully failed to timely report the allegation.

As his initial response, Evans convened a meeting with Renkiewicz, Wood, Helsley and Paszkowski on January 5th. While Evans acknowledged to the four that he concurred that the allegations were not credible, he was nonetheless obviously furious at what he perceived as an inexplicable failure on their part to immediately and formally report the claims. Evans believed that the facility's written policies clearly required an immediate reporting, no matter how implausible the allegation. The four employees all asserted, and seemingly equally believed, that the facility written policies only required the reporting of credible claims or suspected abuse. The Employer's written employee handbook supported the understanding of the employees that they were to report "suspected or observed" abuse, while the Employer's abuse prevention policy used language requiring the immediate reporting of "any allegations" of abuse. The meeting ended with Evans taking Helsley off the schedule, pending conclusion of the investigation, and directing Wood and Renkiewicz to assist in the ongoing investigation by interviewing employees.

Before the day was out, Evans found out about the January 1st allegations against another male staff and the second allegations against male visitors. Now faced with multiple allegations, which had not been promptly reported to the MDCH, Evans called the facility's general counsel to confer and was referred to criminal counsel. He also at that point called the State Police. Renkiewicz and Wood were removed from helping on the investigation and became instead targets of the investigation into the failure to report the assertions.

Evans called Renkiewicz and Wood into his office, advised them they were off the investigation, and asked them to sit down and write out statements as to when and how they heard of the allegations, why they didn't immediately report the assertions, and what other steps they took. Both employees wrote out their statements. Evans advised Renkiewicz and Wood that they would be off work until the investigation was concluded. After Evans took their written

statements, he also instructed them that they were not to talk to anyone, including each other, about the investigation while they were off work pending the outcome. Evans believed the gag order was appropriate and routine, and that it was necessary to protect the integrity of the investigation. In particular, it was the goal of the facility to get unvarnished stories from each possible employee witness and not have those stories altered, deliberately or inadvertently, by communication with the two Charging Parties, who were now aware that they were also targets of the investigation.

The facility abuse reporting policy disappeared from the facility website that day. Renkiewicz called fellow nurse Susan Coyle to ask about it and attempt to secure a copy of the policy. Coyle reported the contact to Evans, who concluded that Renkiewicz had violated the gag order, and Evans instructed Coyle to have the policy re-typed and to re-post it. In fact, a newly revised policy was posted. Renkiewicz had sought the original policy to help in her anticipated defense of her own earlier conduct. The facility revised the policy to resolve the facial conflict between the old policy and the employee handbook and to better set forth Evans' expectation that any and all allegations be immediately reported.

The January 7, 2010 report to the MDCH promised that discipline and education would be used regarding the staff who had failed to timely report the resident's now discounted claims. As part of the facility's remedial measures, its' written policies were brought into conformance, new instructional wall posters were posted, and abuse reporting instructions on stickers were affixed to staff building access cards.

Discipline was then imposed on the several involved employees. In recognition of the legitimate confusion caused by the conflicting statements in the several Employer promulgated policies, no employee was disciplined for violation of the express work rule regarding reporting of "suspected" abuse. Wood and Paszkowski each received three day disciplinary suspensions under Employer work rule 45 for not following facility procedures. Helsley was terminated for the same rule 45 violation, with the more severe penalty premised on his prior disciplinary record. Renkiewicz was terminated under Employer work rule 57 for "failure to meet work performance standards" and premised on the Employer's stated overall dissatisfaction with her performance. Evans testified convincingly that he would have terminated Wood then, but for the intervention of her immediate supervisor who pled Wood's case.

Evans' decision to terminate Renkiewicz was premised on several stated grounds. The first ground, of course, was the failure of Renkiewicz to herself promptly report the abuse allegations when she became aware of them.[3] Compounding her omission was the fact that multiple members of the staff she supervised also failed to promptly and formally report the allegations. Evans took that fact as an indicator of a major failure of leadership by Renkiewicz, who was the manager of the unit. Evans also relied on two prior incidents, each occurring on Renkiewicz' watch, involving violations of patient dignity. Central to Evans' conclusions was his perception, based on the recent and prior events, that Renkiewicz response to the events was combative and protective of the staff, rather than the response Evans' wanted, which was for Renkiewicz to accept responsibility for the events and take effective action with her staff to prevent future events.

Evans decision regarding Renkiewicz was significantly influenced by the adverse views of Renkiewicz expressed to Evans by the former director of nursing Patty Wiltse and by her replacement as director of nursing, Carol Timmer. The position taken by Timmer, with Evans, was essentially that she would be delighted to be rid of Renkiewicz. Timmer believed Renkiewicz to be obstructionist and that she lacked appropriate leadership skills. Timmer would have removed Renkiewicz regardless of the final events, which to Timmer were either the last straw or a convenient vehicle for removing an individual she perceived as ineffective at best. Assistant director of nursing Spurrier also recommended discharging Renkiewicz.

I further credit Evans testimony that he found especially problematic Renkiewicz' stated position regarding the applicable reporting rules. Renkiewicz, in defense of herself and her subordinates, relied on the fact that the Employer-promulgated work rules expressly required only the reporting of "observed or suspected" abuse. At the same time, she acknowledged that it was her belief that the applicable Federal regulations, in fact, required the reporting of any "alleged" abuse. Renkiewicz was specifically responsible for doing in-service training for her subordinate staff on their reporting obligations. Evans found it inexplicable, and unacceptable, that a ranking member of management would cut hairs so finely, and to the facility's detriment, by seemingly ignoring the more stringent Federal regulations which she knew applied to the circumstances.

[3] It is undisputed that Renkiewicz was not in the facility over the holidays when the allegations, and the failure to report them, initially occurred.

Renkiewicz was terminated on January 11, 2010, at a meeting with Evans, Timmer and human resources director Jane Korthase. The meeting was solely to deliver the termination, rather than to provide an opportunity for Renkiewicz to explain or defend her actions. The perception by Evans that Renkiewicz' communication with Coyle violated the no-discussion order was not raised in the meeting or expressly relied on in the announcement of the reasons for termination.

During his cross-examination at trial, Evans acknowledged that, in a deposition in a related matter, he had indicated that prior to terminating Renkiewicz, he had in part lost faith in her based on her violating the no-discussion rule by contacting Coyle and that he had taken that into account in firing Renkiewicz. Evans deposition testimony conflicted with a portion of the Employer's answer to this Charge, in which it asserted that no employee had been disciplined for violating the no-discussion order. Evans in his deposition acknowledged that the cited portion of the Employer's answer to the Charge was false. After a break in the deposition to consult counsel, Evans then asserted that Renkiewicz had not been disciplined specifically for violating his gag order and that he had been mistaken in characterizing the Employer's answer to the Charge as false on that question.

During the initial phase of the investigation, the Employer sought to review the email files of the several employees. Wood's email had been entirely purged from her office computer. After the three day suspension had already been imposed and served, the information technology staff managed to reconstruct Wood's email records from back-up tapes. There were over two thousand non-work related emails recovered. HR director Korthase recommended to Evans that Wood be terminated premised in part on the theory that the sheer volume of email traffic was such that Wood was necessarily spending an inordinate amount of work-time on personal communications and business. Wood's immediate supervisor, Mansfield, who had earlier intervened to save Wood's job, now switched her position and advocated that Wood be terminated. On February 10, 2012, Wood was terminated on the Charge that she had failed to follow policy and for doing personal business on Employer time. There was no indication that any supposed violation of the no-discussion rule by Wood was relied on in firing her, and no evidence that any of the managers were in fact aware of any such supposed violation of the no-discussion rule by Wood.

Discussion and Conclusions of Law:

The issues presented for decision relate solely to the lawfulness of the Employer's decisions, including the decisions to terminate Renkiewicz and Wood. The only applicable standard is whether the Employer's conduct violated PERA. It is not the function of this proceeding to determine the fairness or reasonableness of the Employer's decisions under the various standards which might apply generally to a workplace; rather, the issue is whether or not the decisions were based on an unlawful motive prohibited by PERA.

Where an adverse employment action has occurred, the elements of a prima facie case of unlawful discrimination under PERA are: (1) union or other protected activity; (2) employer knowledge of that activity; (3) anti-union animus or hostility toward the employee's protected rights; and (4) suspicious timing or other evidence that protected activity was a motivating cause of the alleged discriminatory action. *Univ of Michigan,* 2001 MERC Lab Op 40, 43; *Grandvue Medical Care Facility*, 1993 MERC Lab Op 686, 696.

Although anti-union animus may be proven by indirect evidence, mere suspicion or surmise will not suffice. Rather, the charging party must present substantial evidence from which a reasonable inference of discrimination may be drawn. *Detroit Symphony Orchestra*, 393 Mich 116, 126 (1974); *City of Grand Rapids (Fire Dep't)*, 1998 MERC Lab Op 703, 707.

In *Napoleon Community Schs*, 1982 MERC Lab Op 14, the Commission adopted the test formulated by the National Labor Relations Board in *Wright Line, Division of Wright Line, Inc*, 251 NLRB 1083 (1980), *enf'd*, 662 F2d 899 (CA 1, 1981), *cert den*, 455 US 989 (1982) for determining employer motivation when discriminatory action is alleged. See also, *City of Detroit (Housing Dep't)*, 1989 MERC Lab Op 547 *aff'd*, unpublished opinion of the Court of Appeals, decided February 13, 1991 (Docket No. 119519); *Walled Lake Community Schools*, 1985 MERC Lab Op 575; *City of Menominee*, 1982 MERC Lab Op 1420; *Detroit Bd of Ed*, 1982 MERC Lab Op 593. Under the *Wright Line* test, the charging party must first make a *prima facie* showing sufficient to support the inference that union or protected activity was a "motivating or substantial factor" in the employer's decision to take action adverse to an employee, despite the existence of other factors supporting the employer's actions. Once the prima facie case is met, the burden shifts to the employer to produce credible evidence of a legal motive and that the same

action would have taken place even in the absence of the protected conduct. The ultimate burden, however, remains with the charging party. *City of Saginaw*, 1997 MERC Lab Op 414, 419. See also *MESPA v. Evart Public Schools*, 125 Mich App 71 (1983).

The Charging Parties devoted much of their argument to assertions that the Employer policies on reporting abuse were confusing or contradictory. Those policies were arguably conflicting. The Charging Parties also argue that Evans' concerns with potential liability, in particular with possible criminal sanctions, were overblown. It is asserted that Woods and Renkiewicz were entitled to a fuller panoply of due process protections, premised on the Employer's rules for its largely unionized staff. It is also asserted that the scope of the penalty, especially as to Wood, was too severe. All of these factors may be legitimate concerns regarding the underlying subjective fairness of the Employer's decision-making and an unexplained deviation by an Employer from well established normal practices may provide inferential proof of ill motive; however, those factors are not inherently relevant to the inquiry required in an unfair labor practice. As a general proposition, PERA does not proscribe the breach of a contractual obligation or 'unfairness' and, for purposes of PERA, an employee may be terminated for a 'good reason, bad reason, or no reason at all', but an employee may not be discharged for exercising rights guaranteed by section 9 of the Act. *MERC v Reeths-Puffer School District*, 391 Mich 253 (1974). The burden is on the Charging Parties to establish that their terminations were improperly motivated in a manner proscribed by the Act, and not merely that the discharges were somehow 'unfair' or unreasonable.

The Termination of Renkiewicz[4]

I find the decision by the Employer to terminate Renkiewicz was premised on the honestly-held belief that her performance as a manager was, and had for some time been, deficient. The former and the current directors of nursing and the assistant director of nursing, the immediate supervisors of Renkiewicz, all recommended her termination. It is clear from the record that Timmer would have terminated Renkiewicz earlier if she had been given authority to do so. The Employer concluded, acting on substantial evidence, that Renkiewicz had violated its policies, had failed to properly train her own subordinate staff as to those policies, had failed to appropriately respond to

[4] The Employer had proffered the claim that Renkiewicz was an "executive" employee not entitled to the protections of the Act. The proofs fell far short of meeting the heavy burden of establishing executive status. Renkiewicz was an ordinary mid-level manager, entitled to the protections of the Act.

prior incidents occurring on her watch, and had placed the facility at substantial risk of severe and potentially debilitating sanctions. The fact that the Employer's underlying policies were unclear, or that another employer might have handled aspects of the investigation differently, or even accepting the Charging Parties' assertion that they were essentially mere scapegoats, does not, and cannot, establish a violation of PERA.

There is no record evidence from which a conclusion could be drawn that the Employer acted out of hostility toward any concerted activity by Renkiewicz. The evidence was compelling that the entire chain of command was critical of Renkiewicz' performance as manager of Horizonvue. The fact that she was at times also credited with good performance does not alter the fundamental antipathy, particularly by director of nursing Timmer, towards Renkiewicz' general performance pre-dating the terminal incident.

I find that Evans was aware, prior to the termination decision, of Renkiewicz call to Coyle seeking a current copy of the facility policy on reporting abuse. Evans considered that call to be a violation of his no-discussion order to Wood and Renkiewicz. His testimony at trial and at his deposition was conflicting, but leads to the conclusion that the perceived violation of the order further cemented in Evans' mind the belief that Renkiewicz was not a trustworthy manager.

I do not find the partial reliance on the Coyle conversation to be a violation of the Act, for several fundamental reasons. First, while the no-discussion rule had the potential of deterring protected concerted activity, there was no record support that the Coyle conversation was in fact concerted activity. Renkiewicz called Coyle seeking a copy of the policy to use in her own defense. There was no assertion that she was acting on behalf of others in calling Coyle. She was not seeking to enforce her rights arising from a collective bargaining agreement. She was merely looking out for her own interests and was not actually engaged in protected activity in talking to Coyle, and her conduct violated the Employer's order in the process.[5]

Even had the Coyle call qualified as protected activity, it would not alter my analysis. Fundamentally, Evans' concern over the perceived violation of his

[5] Notably, at trial Renkiewicz admitted that she willfully violated the no-discussion rule by having discussions with co-workers Wood and Paszkowski during the investigation, prior to her own discharge, and regarding the investigation. There was however no evidence that the Employer was aware of those other discussions at the time.

order was an objectively insignificant aspect of his decision-making. The violation was perceived by him as so inconsequential that all agree that he did not even mention it at the termination meeting when he went through the litany of reasons for the termination of Renkiewicz. The supposed no-discussion violation was not even known of by Wiltse, Timmer, and Spurrier when they each recommended terminating Renkiewicz over the latest incident taken together with her earlier perceived failings. The Coyle call was not a substantial or motivating factor in the discharge of Renkiewicz.

The Termination of Wood

There is no record evidence that would support a conclusion that Wood was fired for engaging in protected concerted activity. Wood was not even suspected by the Employer of violating its no-discussion gag rule.

The objective fact is that Evans was inclined to fire Wood immediately over her failure as the assigned social worker to immediately report an allegation of rape, regardless of the credibility of that allegation. The immediate discharge of Wood was avoided only by the timely intervention of her immediate supervisor, Mansfield. Instead of being fired, she was given a three day suspension, like Paszkowski.

The failure to immediately fire Wood in January belies the assertion that Wood was targeted for retaliation based on the perception that she had engaged in concerted activity by conferring with other employees in preparation for the January 5 initial interview. That conclusion, proposed by Charging Party, flies in the face of reason and timing. If the Employer had so taken offense at the perceived role of Wood in conferring with coworkers prior to their investigatory interview, it is implausible that they would have stayed their hand in firing her as the initial punishment over the failure to report dispute. As Wood was an at-will employee, the Employer could have reasonably defended any level of penalty imposed, as with Renkiewicz. The Employer was not hesitant in immediately firing both Renkiewicz and Helsley. Likewise, Paszkowski, who was equally perceived as having been involved in meeting with the others to get their stories straight before the investigatory meeting, received only a three day suspension. Instead of discharge, the immediate penalty received by Wood was the least of any of her cohorts, that is, the three day suspension.

The Charging Parties' theory that Wood was fired because she was perceived as having engaged in concerted activity with Paszkowski and Helsley

suffers from a fatal omission. Paszkowski was not fired. If the Employer bore such animus toward employees for conferring with each other prior to meeting with the Employer, how then did Paszkowski avoid retribution and merely suffer the three day suspension originally imposed on Wood as well? Charging Parties offer no explanation.

What is plausible is that the Employer perceived the three day suspension of Wood, and of Paszkowski, as a sufficient institutional response, especially when coupled with firing the manager who the Employer blamed as the author of the central failure to properly train the subordinate staff on the unit. What is also plausible, and what I accept as the Employer's actual motivation as supported by the proofs, is that the Wood email controversy was the last straw. The Employer, after having already imposed the three day suspension, discovered first that Wood had, apparently, purged the entirety of her computer email trail.[6] That alone, in the face of an institution-wide investigation, could readily have caused her to be perceived as an unreliable, if not deceitful, employee. Then the Employer, through recovered files, determined that Wood had sent or received over two thousand personal, and sometimes inappropriate, emails on her work computer. The Employer legitimately concluded that the volume of traffic supported a conclusion that Wood was attending to her private business when she should have been attending to her Employer's work. That conduct is a legitimate business reason for terminating an employee.

I note that Charging Party asserts that the penalty should be found to be too severe under the Employer's own policies and that the second discipline would not have been so severe had it not been for the first, assertedly improper, three day suspension. This is not a breach of contract action, and it is not the place of the Commission to determine whether a particular penalty imposed on an employee is the proper level of penalty, unless there is an underlying statutory violation in imposing the penalty.

I find that the reason for the termination of Wood was the Employer's well-supported belief that she had engaged in workplace misconduct in dereliction of her duty and that, therefore, there was no PERA violation in her three day suspension or in later termination.

[6] It was not established how or by whom Wood's computer was purged. It would not be unreasonable for the Employer to have suspected, or even concluded, that it was most likely a deliberate act by Wood.

The No-Discussion Order

It is undisputed that the Employer ordered Renkiewicz and Wood to refrain from any discussions with co-workers regarding the investigation of the resident complaint. As Charging Parties assert, such an order could violate Section 10(1)(a) by interfering with or restraining employees in the exercise of their Section 9 right to act collectively in dealing with their employer regarding workplace issues. Further, such an order could have an unlawful chilling effect on the exercise by employees of their right to seek and to have assistance from a cohort in responding to the investigation and could readily deter employees from exercising their right to have a coworker present to assist during any investigatory interview. See, *NLRB v Weingarten, Inc*. 420 US 251 (1975); *University of Michigan*, 1977 MERC Lab Op 496; *Kent County*, 21 MPER 61 (2008).

An employer's legitimate interest in attempting to protect the integrity of its investigation of a serious workplace issue would not excuse a wholesale prohibition on the exercise by employees of their equally important statutory rights. In a particular context, such an order could have the effect of deterring employees of ordinary firmness from daring to assert the right to engage in concerted activity. It is important to note that a function of the enforcement of *Weingarten* rights is to recognize the obvious disparity in power and knowledge between an average employee and an employer representative conducting an investigatory interview. A broad no-discussion rule, if applied to employees generally, would likely violate the Act by deterring, or at a minimum, having a chilling effect upon, the exercise of the statutory right to engage in concerted activity. Such prohibitions are inherently destructive of employee Section 9 rights and, therefore, a violation occurs regardless of an employer's intent or motivation. See, *Midland County Road Comm*, 21 MPER 42 (2008). Such a broad rule would make impractical any exercise by employees of their *Weingarten* right to seek assistance and counsel from co-workers when faced with an impending interview by the Employer, which could likely result in discipline. However, the facts here are not that simple.

Renkiewicz and Wood in fact accompanied each other to their joint interview and gave their written statements regarding the disputed events prior to the issuance of the no-discussion rule. While such a no-discussion rule could have a theoretically chilling effect on further concerted activity by employees, there was no evidence of any deterrence or interference in any efforts by these

employees to mount a joint response to the Employer's investigation, and although proof of actual interference is not generally necessary to support a claimed violation of Section 10(1)(a), I find the absence of actual interference in this narrow circumstance to be relevant. In fact, Renkiewicz testified that, after consultation, she decided to simply violate the no-discussion rule and, in fact, conferred with Wood, Paszkowski, and others, regarding the investigation while it was ongoing. As discussed above, the evidence did not support a finding that the discharge of Renkiewicz was substantially based on the Employer's perception that she had violated the no-discussion rule by calling a co-worker to try to ascertain the status of the Employer's posted rules on reporting violations.

I find no violation here of Section 10, or of the *Weingarten* rights of Renkiewicz and Wood, where the no-discussion rule was crafted narrowly both in scope and in time. The order was issued to two managerial level employees, one who was a supervisor of many of the employees involved in the investigation and the other a social worker with arguably special responsibilities related to the underlying events. While such employees do have the statutory rights afforded to all public employees to engage in concerted activity, they also have special responsibilities to an employer. The order was not the Employer's initial step in the investigation; rather, the Employer first involved Renkiewicz and Wood in assisting with the investigation. The narrowly tailored order was issued once it became apparent to the Employer that Renkiewicz and Woods were also appropriate targets of the investigation and should be insulated from further personal involvement which could taint or skew the investigation itself or alter the likely testimony of subordinate employee witnesses. On this issue, as on other labor relations questions, PERA requires a good faith approach to the resolution of disputes and the reasonable deference to and protection of the statutory rights of employees, not, ultimately, perfection in that effort. See, *City of Detroit (AFSCME),* C09 L-241, 25 MPER ___ (April 20, 2012).

Had I found that the no-discussion rule violated the *Weingarten* rights of the Charging Parties, I would not have ordered make-whole relief. See, *Kent County, supra*. For the reasons discussed above, no remediable damages flowed from the promulgation of the no-discussion rule; therefore, at most a finding of a violation with the posting of a notice would have satisfactorily addressed any violation.

Conclusion

I have carefully considered all other arguments asserted by the parties in this matter and have determined that they do not warrant a change in the result. For the reasons set forth above, 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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Doyle O'Connor
Administrative Law Judge
State Office of Administrative Hearings and Rules

Dated: May 1, 2012