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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF DETROIT (DEPARTMENT OF TRANSPORTATION),
Public Employer-Respondent,

-and- MERC Case No. C17 L-105

AFSCME LOCAL 312,
Labor Organization-Charging Party.
_____/

APPEARANCES:

City of Detroit Law Department, by LaKenna Crespo, for Respondent

Scheff & Washington, PC, by George B. Washington, for Charging Party

DECISION AND ORDER

On March 8, 2019, Administrative Law Judge Travis Calderwood issued his Decision and Recommended Order[1] in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act, 1965 PA 379, as amended, and recommending that the Commission dismiss the charges and complaint.

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 either 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

Edward D. Callaghan, Commission Chair

Robert S. LaBrant, Commission Member

Natalie P. Yaw, Commission Member

Issued: APR 30 2019

[1] MAHS Hearing Docket No. 17-026664

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STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

CITY OF DETROIT (DEPARTMENT OF TRANSPORTATION),
Public Employer-Respondent,

Case No. C17 L-105
Docket No. 17-026664-MERC

-and-

AFSCME LOCAL 312,
Labor Organization-Charging Party.

_____/

APPEARANCES:

City of Detroit Law Department, by LaKenna Crespo, for the Respondent

Scheff & Washington, PC, by George B. Washington, for the Charging Party

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE

On December 6, 2017, AFSCME Local 312 (Charging Party or Union) filed the present unfair labor practice charge against the City of Detroit, Department of Transportation (Respondent or City). Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, the above captioned case was assigned to Administrative Law Judge Travis Calderwood, of the Michigan Administrative Hearing System (MAHS), acting on behalf of the Michigan Employment Relations Commission (Commission). Based upon the entire record, including the transcript of hearing held on March 20, 2018, the exhibits admitted into the record and post hearing briefs filed by the parties on June 8, 2018, I make the following findings of fact, conclusions of law and recommended order.

The Unfair Labor Practice Charge:

Charging Party's unfair labor practice charge alleges various violations of Section 10(1)(a), (c), and (e) of the Act predicated on several incidents involving Supervisor Felton Mack that occurred in August, September and October of 2017.

At the onset of the hearing Counsel for Charging Party moved to amend the charge to include the allegation that on January 27, 2018, Mack threatened chief steward Cass Reed in

retaliation for the latter's protected activity. Over the objection of Respondent's Counsel I permitted the amendment of the charge.

Findings of Fact:

Background

Charging Party is the authorized bargaining representative of a bargaining unit comprised of bus mechanics, coach service attendants, and other related personnel employed by the City's Department of Transportation (DDOT). At the time of hearing, Charging Party's bargaining unit members worked at three separate facilities within DDOT; DDOT's central maintenance shop and two satellite garages on Shoemaker and Gilbert.

Felton Mack, at the time of the hearing, had been employed by DDOT for almost twenty-one years. Mack worked first as an auto mechanic (AM), then a general auto mechanic (GAM), both positions represented by the Charging Party, until February of 2015, at which time he assumed his current role as a supervisor and/or foreman. The promotion in 2015 resulted in his removal from Charging Party's bargaining unit. While Mack was a member of Charging Party's unit he held the positions of steward and chief steward at different times; the latter of which he held right before his promotion. According to witness testimony, after Mack applied for the position of foreman, then Union President Leamon Wilson removed Mack from the chief steward position because of a potential conflict of interest. Mack challenged the removal through the Union's internal process. However, this action soon proved moot because of Mack's subsequent promotion to supervisor.

Cass Reed, the Union's day-shift chief steward, claimed at the hearing that by the spring of 2017, approximately thirty (30) grievances had been filed against Mack. Reed stated that the number of grievances filed against Mack was "off the scale" as compared to the number of grievances he had ever filed against any other supervisor. Moreover, Reed claimed that since Mack first became a supervisor he had been "offensive to all workers."

At some point in time, Reed and Union Vice-President Muneer Islam met with DDOT management representatives, including Director of Vehicle Maintenance Larry Luckett and Shoemaker garage Superintendent Michael Eason to discuss the issues with Mack.[1] According to Reed, the meeting concluded with Luckett indicating that he would speak with Mack regarding his behavior. Mack was not a part of that meeting. Moreover, Mack denied ever attending any meeting with Reed or other Union officials to discuss the grievances against him. Additionally, Mack denied ever being approached by management, presumably Luckett and/or Eason, regarding complaints or grievances made against him. Eason, during his testimony was never asked whether he spoke to Mack regarding the grievances or the above refenced meeting. Eason did however testify that at some point he brought Reed and Mack together and got them to "apologize to one another." Luckett, who was present at the hearing, was not called to testify by either side.

[1] Charging Party's post-hearing brief claimed that the meeting occurred in spring of 2017. However, throughout the testimony of Reed, Islam and Eason, there is no definitive time period established as to when the meeting occurred.

August 17, 2017

On August 17, 2017, Mack, who had already worked as the day-shift supervisor, was forced to stay over past his shift to act as the afternoon-shift supervisor when the foreman assigned to the CSAs was absent. According to testimony provided by Charles Gray, a chief steward, the work hours for those bargaining unit members assigned to the afternoon shift had long been established as beginning at 5:30 p.m., with a break at 7:00 p.m., a lunch at 8:00 p.m., 8:30 p.m., or 9:30 p.m., and a second break at 10:30 p.m. However, on this day Mack told the Coach Service Attendants (CSAs) that they were going to work the first five hours straight without a break. When challenged by Gray, the chief steward claims Mack responded by stating, "I run this here, and they are going to go to lunch when the fuck I say to go. I can give a shit about no union contract." Gray further claimed that because of Mack's direction the CSAs worked until 10:00 p.m. without a break. Gray went on to state that the next day Mack had the CSAs return to the original schedule. According to Gray's testimony, Mack told the chief steward that Luckett told him "[he] can't do that."

Mack, during his testimony, did not deny altering the shift times, but stated he did so to get "better production." Mack admitted that he received "pushback" over his changes and that Luckett called him that day after which it went back to the original schedule. Mack claimed that this happened before the first regularly scheduled break and that everyone received both their breaks and lunch period that day.

Late August 2017

Roughly two weeks after the above incident, on a Saturday in late August of 2017, Gray was called into the office at Shoemaker where Mack informed the CSA that he had missed his first break period. Gray did not dispute that he overworked his break but stated, during cross-examination, that it was not uncommon for a CSA to take a break later than usual if they were working on cleaning a bus and wanted to finish before breaking. Gray further claimed that, while taking a break later than scheduled might be in violation of the contract between the parties, he did so often with his supervisor's permission. On the day in question however, Gray did not seek permission from Mack, the supervisor at the time, to work past his regularly scheduled break.

Gray went on to testify that after Mack confronted him, the supervisor then sent him home after only three hours into his shift. As a result of being sent home early on Saturday, Gray testified that he was precluded from working overtime the next day.[2] During the exchange, Gray testified that he asked Mack "why do you have this deep hatred toward [the Union]?" Gray, in describing Mack's response stated, "He just said that he had been removed as chief steward and that he had this animosity towards the Union, you know, especially Union officials."

Mack, when explaining what occurred, testified that Gray had taken an unauthorized break and had left to go the store. Mack went on to state that "as far as the contract, on weekends if you're not scheduled, you ain't [sic] supposed to leave the property." Mack claimed that he

[2] Testimony provided at the hearing indicates that there is an agreement between the parties that an individual must work at least 4 hours on the sixth day in a work week in order to be eligible to work overtime on the seventh day.

confronted Gray about leaving and that the CSA "got upset" and "left." Mack testified that he did tell Gray that if he left, he would not be able to come and work the next day.

Islam testified that employees at Shoemaker would routinely go to the neighborhood store on their breaks. According to Islam, the employees had never needed supervisory permission to do such. Islam did concede that leaving without authorization was only permitted during one's break and/or lunch period.

September 9, 2017

Approximately two weeks after the above incident, Gray and another CSA came in on another Saturday at approximately 8:40 a.m., although they were not supposed to start until 9:00 a.m. Gray testified that the two were standing by the foreman's office waiting on their job assignment. Unbeknownst to the two, their regular supervisor was absent that morning and supervision of the CSAs fell to Mack who walked past the two several times without acknowledging the two men. Gray claimed that at 9:20 a.m., while the two CSAs were still standing there waiting for their assignment, Mack walked up to them and told them to "get the hell off the property" and go home. Mack also testified that Mack said "I'm calling security."

Mack admitted that he knew the CSA supervisor was not in that morning and that he had walked past Gray and the other CSA before sending them home. He claimed however that the two men got there at approximately 8:00 a.m., and at 8:33 a.m., the two men approached him and said that their supervisor was not there and that they were ready to work. Mack testified that he told them he did not need them. He went on to explain at the hearing that the reason he sent them home was because they came to him too late. Mack, presumably in explanation as to why he did not approach the two men to give them an assignment, stated, "they're supposed to come and report to me. I'm not supposed to report to them."

Harold Robinson and Derrick Evans

Sometime on or around October 5, 2017, Mack was involved in a situation with Derrick Evans, an afternoon shift steward for mechanics at Shoemaker and GMA Harold Robinson. As explained by Evans, the steward was walking through the garage he saw Mack and Robinson arguing about whether the particular gearbox that the foreman wanted Robinson to replace on a bus was the correct part. Evans claimed that he had just changed a gear box and that the process was long and difficult and that he wanted to be sure it was the correct part before Robinson did the work. According to Evans, he overheard Robinson claiming it was not the correct gear box but that Mack said "just do what I tell you."

At this point Evans and Mack went off somewhere else to further discuss the situation. Evans claimed he showed Mack the difference between the parts. At some point Eason, the garage superintendent who was onsite that day, got involved and reportedly, even after being shown the apparent confusion regarding which gearbox was the correct one, nonetheless sided with Mack.

Evans testified that after further discussion he and Mack came to an "agreement" wherein Robinson would install a different, but incomplete, gearbox instead of the one that Evans claimed

was the wrong part. Evans and Mack then walked back to the bus that Robinson had been working on. Evans stated that Robinson was standing approximately twenty feet behind the bus near a door and was smoking. Evans described Mack as becoming "enraged" and that the foreman "went to hollering and screaming and carrying on." According to Evans, Mack told Robinson that he was going to be written up and that he was supposed to be "doing the gearbox right now." Evans claims he told Mack that Robinson did not know what he supposed to be doing. The situation escalated between Mack and Robinson to the point that Evans stepped between the two stating he did so "because of the volatility of the situation." Evans stated that Mack ordered him to get back to work and threatened him with insubordination. Evans claims that, after being threatened with insubordination, he told Mack that he would return to work "as soon as this is handled." After further back and forth, Evans testified that he began to leave and was walking backwards towards his worksite when Mack "advanced a couple of steps" and stated, "I'm still going to write you up for insubordination." According to Evans, there were no write-ups or discipline issued because of the incident and that the gearbox that Mack had originally ordered Robinson to install was in fact the wrong one.

Mack's recollection of the incident was decidedly different in most respects than that described by Evans. Mack claims that before he and Evans walked off to discuss the situation further, he had told Robinson to begin taking down the gearbox that was on the bus. Mack stated that when he and Evans returned, he saw Robinson smoking and that he went up to him and asked him what he was doing. According to Mack, before Robinson could respond Evans interrupted and said, "I told him to go out there." Mack stated that he explained to Evans that Evans could not do that and then told him to get back to work. Mack claimed that it was Evans that began "mouthing off" and followed the foreman back to the office. Moreover, Mack denied that Evans ever stepped between he and Robinson.

Cass Reed

Reed testified that shortly after the meeting described above wherein Charging Party discussed its issues involving Mack with Luckett and Eason, Mack came down a hallway toward him "hollering about something" and told Reed that he, Mack, was going to "make [his] life a living hell." According to Reed it was around this same time that Mack transferred the 60 year-old chief steward from what was considered a "pick-job", i.e., a light job which involved repairing wheel-chair lifts, to more "heavy" work where he would have to now repair kingpins, radius rods, gearboxes and axles underneath the buses. As stated above though, Charging Party did not establish the actual timing of the meeting which preceded the change in work assignments.

On or around January 27, 2018, Reed claims that Mack instructed him to clean out a bus that had been defecated in. Reed, a GMA, claimed that special training was needed for someone to be able to clean that type of situation and that he told Mack to "remove the seats [and] I'll clean the bus." Mack did remove the seats and Reed then cleaned the bus. Reed, after he had finished cleaning the bus, was walking when another unit member stopped to talk to him about overtime. At this point Mack appeared and told Reed to get back to work to which Reed replied, "what do you want me to do?" According to Reed, the two apparently went back and forth with Mack telling Reed to go back to work and Reed asking Mack what he wanted him to do. Reed testified that

then Reed "approached him" and said that "he was not another George Washington."[3] Reed claimed that Mack continued "ranting and raving." Reed testified that very soon after, police officers were at the garage and informed him that he would have to leave. At some point the police left after which Reed left as well. The record indicates that following the incident Reed was placed on a 30-day suspension, possibly pending termination, but that he was told to return to work after a few days and was given back-pay for the days he was out.

Mack, when discussing the assignment of duties generally, testified that he believed that job assignments should be rotated equally. Mack also made various claims against several members of the Union's bargaining unit that included, but was not limited to, sleeping on the buses and watching movies. Addressing the incident wherein he assigned Reed to clean out the bus which had been defecated into, Mack was adamant that after he told Reed and the other employee to return to work, Reed approached him and "kept running his mouth." Mack testified that Reed said "I'm going to have to put my hands on you." Mack claimed that he called DDOT security and that security and the transit police showed up. Mack in defending his decision to call security stated that he felt "threatened." Moreover, the foreman testified that he wanted to file a complaint against Reed over the incident but that he was instructed not to do so.

Discussion and Conclusions of Law:

Section 10(1)(e)

Addressing first the incident that occurred on August 7, 2017, Charging Party's post-hearing brief provides the most succinct description of its theory and states, "Local 312 asks that the ALJ find that Mack and thus DDOT violated Section 10(1)(e) on August 17 by unilaterally defying the contract and changing the normal hours of employment in open defiance of the union." To this point however, there was directly conflicting testimony regarding whether the changes in the CSAs' break times that day in fact occur. The Union contends that the CSAs' break times were in fact changed and that it was not until the next day that the times were returned to normal. Moreover, the Union claims that in connection with Mack's actions, the foreman also stated "I can give a shit about no union contract." Mack however claimed that he was corrected by Luckett that very same day and that it occurred in fact prior to the first scheduled break of that shift.

Under Section 15 of the PERA, public employers and labor organizations have a duty to bargain in good faith over "wages, hours and other terms and conditions of employment." Such issues are mandatory subjects of bargaining. *Detroit Police Officers Ass ' n v Detroit*, 391 Mich 44, 54-55 (1974). A party violates PERA if, before bargaining, it unilaterally alters or modifies a term or condition of employment, unless that party has fulfilled its statutory obligation or has been freed from it. *Port Huron Ed Ass ' n v Port Huron Area Sch Dist*, 452 Mich 309, 317 (1996). A party can fulfill its obligation under Section 15 of PERA by bargaining about a subject and memorializing the resolution of that subject in the collective bargaining agreement. Under such circumstances, the matter is "covered by" the agreement. *Port Huron* at 318. Bargaining unit members have a right to rely upon the terms and conditions in the contract and to expect that they will continue unchanged. *Detroit Bd of Ed*, 2000 MERC Lab Op 375.

[3] The record is devoid of any context that could attempt to explain what Mack, if he did make the statement, might have meant by it.

The above principles notwithstanding, our Commission has consistently held that it will not involve itself with purely contractual disputes or decide questions of mere contract interpretation. To that end, where the alleged unfair labor practice amounts to no more than an isolated breach of a contract and not a renunciation of the collective bargaining agreement, the charges will be dismissed. *C.S. Mott Community College*, 1982 MERC Lab Op 1478. Here, despite Charging Party's attempts to conflate such, the substance of Charging Party's 10(1)(e) allegation is merely a single contractual breach and not a contract repudiation. The Commission has defined repudiation as an attempt to rewrite the parties' contract, a refusal to acknowledge its existence, or a complete disregard for the contract as written. *Central Michigan Univ*, 1997 MERC Lab Op 501. An alleged breach of contract will be considered a repudiation when (1) the contract breach is substantial and has significant impact on the bargaining unit and, (2) no bona fide dispute exists over interpretation of that contract. See *Plymouth Canton Community School District*, 1984 MERC Lab Op 894. While Mack's comments paint a picture of his complete disregard for the contract, his actions do not rise to the level necessary for a repudiation finding. Accepting the Union's recitation of events, that the change in breaks continued for the entirety of the shift, the fact remains that the following day the schedules returned to normal. At worst, this one-day change in break time schedules, in the opinion of the undersigned, is neither substantial nor did it have a significant impact on the bargaining unit.

Section 10(1)(a) and (c)

Section 10(1)(a) of PERA makes it unlawful for a "public employer or an officer or agent of a public employer" to "interfere with, restrain or coerce public employees in the exercise of their rights guaranteed" by PERA. It is well established that a determination of whether an employer's conduct violates Section 10(1)(a) is not based on either the employer's motive for the proscribed conduct or the employee's subjective reactions thereto. *City of Greenville*, 2001 MERC Lab Op 55, 58. While anti-union animus is not a required element to sustain a charge based on a Section 10(1)(a) violation, a party must still demonstrate that the complained of actions by an employer have "objectively" interfered with that party's exercise of protected concerted activity. *Macomb Academy*, 25 MPER 56 (2012). The test is whether a reasonable employee would interpret the statement as an express or implied threat. *Id.*; See also *Eaton Co Tramp Auth*, 21 MPER 35 (2008). In order to determine what actions violate Section 10(1)(a) of PERA, in so far as they can be seen to restrain or coerce a public employee in the exercise of his or her rights under the Act, it is necessary to consider the actual actions in the context in which they occurred. See *City of Ferndale*, 1998 MERC Lab Op 274, 277; *New Haven Community Schools*, 1990 MERC Lab Op 167, 179. Furthermore, it is the chilling effect of a threat and not its subjective intent which PERA was created to reach. *University of Michigan*, 1990 MERC Lab Op 272.

Section 10(1)(c) of PERA makes it unlawful for a public employer to "[d]iscriminate in regard to hire, terms, or other conditions of employment to encourage or discourage membership in a labor organization." In order to establish a prima facie case of discrimination under Section 10(1)(c) of the Act, a charging party must show, in addition to an adverse employment action: (1) an employee's union or other protected concerted activity; (2) employer knowledge of that activity; (3) antiunion animus or hostility to the employee' s protected rights; and (4) suspicious timing or other evidence that the protected activity was a motivating cause of the allegedly discriminatory

action. *Eaton Co Transp Auth*, 21 MPER 35 (2008); *Macomb Twp (Fire Dep't)*, 2002 MERC Lab Op 64, 72; *Rochester Sch Dist*, 2000 MERC Lab Op 38, 42. Once a prima facie case is established, the burden shifts to the employer to produce credible evidence of a legal motive and that the same action would have taken place absent the protected conduct. *MESPA v Evart Pub Sch*, 125 Mich App 71, 74 (1983). However, while the ultimate burden of proof remains with the charging party, the outcome usually turns on a weighing of the evidence as a whole. *Id* at 74; *City of Grand Rapids (Fire Dept)*, 1998 MERC Lab Op 703, 706. 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. *MERC v Detroit Symphony Orchestra*, 393 Mich 116, 126 (1974). The preceding notwithstanding, a finding that a respondent's purported motive for its actions lack merit or credibility can be considered circumstantial evidence that the respondent was motivated by anti-union animus. *Detroit Pub Sch*, 30 MPER 2 (2016); *Wayne Co*, 21 MPER 58 (2008). The several incidents testified to by members of Charging Party's bargaining unit, appear to clearly provide evidence of hostile work environment between the employees and Mack and that the employees found it very difficult to work for the foreman. However, working for an unpleasant, mean-spirited, or otherwise unfair manager does not, by itself, establish a violation of PERA. See *Warren Consolidated School*, 28 MPER 70 (2015) (no exceptions).

Administrative Law Judges (ALJs), hearing cases on behalf of the Commission are continually called upon to make credibility determinations between conflicting witness testimony. In making these conclusions, ALJs rely on their own evaluation of witness testimony and can include many factors, both verbal and non-verbal. In considering the witness testimony, where in conflict, and faced with credibility determinations, it is the opinion of the undersigned that neither side's recitation of the events testified to during the hearing is more credible than the other, or in other words, each side lacks credibility to the same degree. In the instant proceeding, while each side told markedly different versions of the same events, the truth most likely falls somewhere in the middle. I note that, even with the conflicting testimony, neither side offered corroborating testimony by additional witnesses as to any of the specific incidents identified by Charging Party with its allegations,

Addressing first the incident involving Gray wherein he left work on a Saturday after the altercation with Mack regarding his working over a break, I first note that the sides conflicted on the details regarding whether Gray was ordered to leave by Mack or if he chose to leave following the interaction with Mack. Moreover, there is controversy whether Gray left the premises while working and whether this might have been at issue during the interaction between the two. I find that both versions are equally likely and that neither version appears, as a result of the witness testimony, more credible than the other. Troublesome to Charging Party's Section 10(1)(c) claim was Charging Party's inability to establish a link, beyond the mere timing that this event occurred after Mack's alteration of the CSAs break times, that could persuade the undersigned to conclude that Mack's actions in sending Gray home was in retaliation for protected activity or otherwise undertaken under the color of anti-union animus. Moreover, while the Union did attempt to bolster Gray's testimony following Mack's claims that Gray went home after the foreman had confronted him because he left the premises, I note that instead of having Gray deny leaving, it instead elicited testimony that leaving did not require authorization. In the end, Charging Party did not establish with credible evidence that Gray was sent home by Mack and, that if he were sent home by Mack,

that the action was predicated on anti-union animus or hostility towards Gray's protected rights. For these same reasons, I find that Charging Party failed to establish that Mack engaged in conduct which would tend to restrain, interfere or coerce a reasonable employee in the exercise of her rights under the Act, in violation of Section 10(a)(1).

Addressing the next allegation involving Gray, along with another CSA, I first note that, unlike the above incident, here the record clearly indicates that Mack sent the two CSAs home. The preceding notwithstanding, there is a dispute regarding timing of the actual incident, i.e., when the CSAs first appeared at the garage, whether and when Mack approached them and sent them home or whether and when they approached Mack seeking an assignment. Here too, I find that both versions are equally likely and that neither version appears, as a result of the witness testimony, more credible than the other.[4] Nonetheless, again Charging Party failed to establish a link, beyond mere timing of the event as it occurred after the above incidents, that could persuade the undersigned to conclude that Mack's actions in sending the two CSAs home was in retaliation for protected activity or otherwise undertaken under the color of anti-union animus. For these same reasons, I find that Charging Party failed to establish that Mack engaged in conduct which would tend to restrain, interfere or coerce a reasonable employee in the exercise of her rights under the Act, in violation of Section 10(a)(1).

Addressing next the incident between Mack, Evans and Robinson, the disparity between the witness testimony is subject to the same analysis and conclusions regarding credibility as set forth above.[5] Neither side was more convincing then the other. Moreover, even if I were to accept the Union's version, such does not rise to the level of a Section 10(1)(c) violation as it fails the precursor requirement that there exists an adverse employment action as everyone readily agreed that no discipline or other negative treatment resulted from the altercation. However, addressing this incident from the perspective of a possible 10(1)(a) violation, I do find that, if true, Mack's threats to find the steward insubordinate for refusing to leave could can be seen to restrain or coerce a public employee in the exercise of his or her rights under the Act. The preceding notwithstanding, the Charging Party failed to establish with convincing and/or credible evidence to establish that Mack said the statements attributed to him by Evans, and as such, I find that Charging Party failed to establish that Mack engaged in conduct which would tend to restrain, interfere or coerce a reasonable employee in the exercise of her rights under the Act, in violation of Section 10(a)(1).

In considering the incidents between Reed and Mack, while here too the versions of events contrast significantly, neither version is more credible than the other. Moreover, as stated above, Charging Party did not establish the actual timing of the meeting which preceded the change in work assignments. Nonetheless, assuming that Mack's change in Reed's work assignment is timely for purposes of PERA's six-month statute of limitations, Charging Party nonetheless failed to meet its burden as to the Section 10(1)(c) violation.[6] Charging Party's theory, as it relates to the several interactions between Reed and Mack are predicated on the notion that Mack retaliated

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[4] I note that, while presumably able to do so, Charging Party did not call the other CSA that had been with Gray when Mack sent him home.

[5] I note that here too, while presumably able to do so, Charging Party did not call Robinson to offer corroborating testimony.

[6] Charges under PERA must be filed within six months of the alleged unfair labor practice. MCL 423.216(a).

against Reed because Reed filed numerous grievances against the foreman and the aforementioned meeting between the Union and DDOT management to discuss the same. However, Charging Party failed to establish that Mack knew of the grievances or the meeting he was allegedly the focus of. Charging Party, presumably to meet this burden could have called Luckett to determine whether he spoke to Mack as claimed by Reed. Additionally, Eason, who did testify, could have been asked similar questions, but was not.

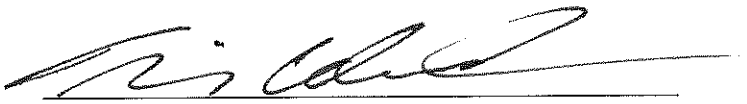
Lastly, addressing the incident that occurred in January of 2018, wherein Mack ordered Reed to clean the bus, I note that Mack first took care of the seats which Reed objected to cleaning. Moreover, as stated above, the Union has failed to establish that Mack knew of the grievances or the meeting that it claims was the impetus for Mack's alleged retaliatory actions. Moving on to the police being called and Reed's subsequent suspension and eventual return to work, the Union's 10(1)(c) claims fail here too for the same reason as above. For these same reasons, I find that Charging Party failed to establish that Mack engaged in conduct which would tend to restrain, interfere or coerce a reasonable employee in the exercise of his rights under the Act, in violation of Section 10(a)(1).

I have considered all other arguments as set forth by the parties and conclude such does not change the outcome. As such, and for the reasons set forth above, I recommend that the Commission issued the following order:

RECOMMENDED ORDER

The unfair labor practice charge filed by AFSCME Local 312 is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION



Travis Calderwood
Administrative Law Judge
Michigan Administrative Hearing System

Date: March 8, 2019