STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF DETROIT (DEPARTMENT OF PUBLIC WORKS),
Public Employer-Respondent in Case No. C01 C-055

-and-

TEAMSTERS LOCAL 214,
Labor Organization-Respondent in Case No. CU01 D-026

-and-

REGINALD V. WALLACE,
Individual Charging Party.
_____/

APPEARANCES:

City of Detroit Law Department, by Bruce A. Campbell, Esq., for the Respondent Employer

Rudell & O'Neill, P.C., by Wayne A. Rudell, Esq., for the Respondent Labor Organization

Reginald V. Wallace, in pro per

DECISION AND ORDER

On December 4, 2003, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order in the above matter finding that Respondents did not violate Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, and recommending that the Commission dismiss the charges. The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of the

Act. Pursuant to Rule 176, R423.176 of the General Rules of the Employment Relations Commission, exceptions to the Decision and Recommended Order were to be filed in the Commission office by the close of business on December 29, 2003.

No exceptions were filed in the Commission office by the specified date and time. Rather, on December 30, 2003, a letter was received from Charging Party indicating his desire to appeal. Attached to Charging Party's letter was a copy of the Administrative Law Judge's Decision and Recommended Order on which Charging Party had highlighted several sentences. Charging Party's letter stated that he wished to elaborate on the points highlighted. However, his letter did not contain that elaboration. He did not specify his exceptions or state the grounds for exceptions. Rule 176 provides in relevant part:

> (3) Exceptions shall be in compliance with all of the following provisions:
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> (a) Set forth specifically the question of procedure, fact, law, or policy to which exceptions are taken.
> (b) Identify that part of the administrative law judge's decision and recommended order to which objection is made.
> (c) Designate, by precise citation of page, the portions of the record relied on.
> (d) State the grounds for the exceptions and include the citation of authorities, if any, unless set forth in a supporting brief.
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> . . .
>
> (5) An exception to a ruling, finding, conclusion, or recommendation that is not specifically urged is waived. An exception that fails to comply with this rule may be disregarded.

Charging Party's letter indicating a desire to appeal without specifying the grounds for such appeal does not comply with the requirements for exceptions. However, even if we considered the letter to qualify as a statement of exceptions pursuant to Rule 176, such exceptions would not be considered because the document was not timely. Although the envelope in which the letter was mailed was postmarked on December 26, 2003, it is well established that the date of filing of exceptions is the date on which the document is received, not the date posted. See e.g. *City of Detroit (Finance Department, Income Tax Division)*, 1999 MERC Lab Op 444, 445; *Battle Creek Police Dep't*, 1998 MERC Lab Op 684, 686; *Frenchtown Charter Township*, 1998 MERC Lab Op 106, 110. Moreover, when the Administrative Law Judge's Decision and Recommended Order was served on the parties, the accompanying letter explicitly stated that the exceptions must be received at a Commission office by the close of business on the specified

date.

We find that the exceptions do not comply with Rule 176 and are untimely. Accordingly, we hereby adopt the recommended order of the Administrative Law Judge as our final order and dismiss the charges.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Nora Lynch, Commission Chairman

_____
Harry Bishop, Commission Member

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Maris Stella Swift, Commission Member

Dated: _____

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APPEARANCES:

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Rudell & O'Neill, P.C., by Wayne A. Rudell, for the Respondent Labor Organization.

Reginald V. Wallace, in pro per

DECISION AND RECOMMENDED ORDER
OF
ADMINISTRATIVE LAW JUDGE

Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, this case was heard at Detroit, Michigan on November 19, 2002 and April 1, 2003, before Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. Based on the entire record, including exhibits submitted at the hearing, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charges:

On March 22, 2001, Reginald V. Wallace filed the charge in Case No. C01 C-055 against his former employer, the City of Detroit. Wallace, a garbage packer operator employed in the Employer's Department of Public Works (DPW), alleged that the Employer wrongfully discharged him in June 2000.

According to Wallace, he was falsely accused of threatening James Coleman, a fellow employee and a Union steward, with a gun.

On April 17, 2001, Wallace filed the charge in Case No. CU01 D-026 against his collective bargaining representative, Teamsters Local 214. Wallace alleged that the Union violated its duty of fair representation under Section 10(1)(3)(a)(i) of PERA by its handling of his discharge grievance. Wallace asserted that he had been unable to obtain any information about the status of this grievance, including whether it had been withdrawn or was still active. Wallace alleged that the Union failed to process his grievance diligently because of Coleman's personal animosity toward him. On June 24, 2001, while the hearing was adjourned without date at Wallace's request, the Union notified Wallace that it was withdrawing his grievance.

Facts:

Wallace was hired by the City of Detroit as a garbage packer operator in September 1995. James Coleman was Wallace's union steward. Wallace testified that Coleman's animosity toward him began in 1999, after Wallace concluded that Coleman was not distributing information to the less senior employees, and decided to take on this task himself. When Coleman asked Wallace not to do this, the two men argued.

Wallace testified that Coleman twice intervened to prevent employees from being disciplined after Wallace accused them of assaulting him. The first incident occurred in the late fall of 1999. A female employee misunderstood a question Wallace asked Coleman about employee eligibility for snow emergency overtime and began calling Wallace names. They argued. Eventually, both Wallace and the female employee signed statements accusing the other of using physical force. However, Coleman persuaded the yard supervisor not to start disciplinary proceedings against either employee. In the second incident, Wallace was injured on the job because of another employee's prank. Coleman again intervened, and, despite Wallace's complaints, the other employee was not disciplined. Wallace testified that Coleman's actions made him angry, and that after this there was "bad blood" between them. According to Wallace, the relationship deteriorated further after Wallace, in late 1999 or early 2000, pointed out that a weekend overtime list that Coleman had prepared improperly omitted employees in Wallace's seniority range.

The incident leading to Wallace's discharge took place on Friday, May 5, 2000. The Employer had notified Wallace that he was to receive training for a new assignment that he did not want. In the late afternoon, Wallace approached Coleman in the DPW yard. Wallace and Coleman began arguing loudly. Coleman briefly grabbed Wallace around the waist. According to Wallace, after remarking, "This ain't over yet," Coleman went to his van, reached in, and walked back with his hand in his pocket. Wallace testified that he then took his cell phone and briefly put it to Coleman's head as if it were a gun. Wallace and Coleman continued talking for a long time, resolved their differences, and shook hands. The following Monday, Wallace was ill. When he returned to work on Tuesday, May 9, Wallace learned that someone had reported that he had pulled a gun on Coleman.[1]

1 Coleman testified that Wallace thrust a small handgun in his face, but that he and Wallace later talked and parted amicably. According to Coleman, he did not report the incident to his supervisors.

Wallace was on medical leave between May 9 and June 22, 2000. On about June 14, 2000, Wallace made an appointment to see Diane Rudolph, human resources director for the DPW. Wallace told Rudolph that he was concerned about rumors at the yard about the incident on May 5, and wanted his side known. Rudolph asked Wallace to write a statement of what took place on May 5, and he did so. Wallace asked Rudolph if there was a videotape from the security camera in the yard. Rudolph told him she did not think the camera was working. Rudolph also collected statements from Coleman and several others, including a supervisor, who had been in the yard during Wallace and Coleman's argument. Coleman reported that Wallace had threatened him with a gun and threatened to blow his brains out. Two other employees said they saw a gun. The supervisor, who saw only part of the incident, did not see a gun. Several other employees also said that they had not seen a gun. None of the witnesses said they saw Wallace with a cell phone.

On June 22, 2000, the Employer issued Wallace a notice suspending him for 30 days, with a recommendation that he be discharged. Floyd Ware, the chief steward for the DPW, was present at the meeting at which the Employer presented Wallace with this notice. Since Ware did not learn what the meeting was about until he arrived, Ware did not say anything during the meeting, and advised Wallace to do the same. At the end of the meeting, Ware said that the Union would be filing a grievance, and asked that it be moved directly to the third step.2 The Employer agreed.

A third step hearing on the grievance took place on June 29. Before the hearing, Ware requested and obtained information from the Employer regarding Wallace's disciplinary record, which included a 10-day suspension for excessive absenteeism in 1999, and copies of the witness statements from the May 5 incident.

On about July 14, 2000, Wallace went to the Union hall to talk to Ware. Ware gave him copies of the witness statements he had received from the Employer and allowed him to take notes. Wallace told Ware that several of the witnesses who had made statements were friends of Coleman. Wallace also asked Ware to get the videotape from the security camera in the yard where the argument took place. Ware told Wallace to write down the information he thought the Union needed. Wallace gave Ware a document of about five pages. In this document, Wallace pointed out inconsistencies among the witnesses' statements, offered other arguments for discrediting Coleman's version of events, asked for a copy of the security camera videotape from May 5, and suggested that one of the witnesses who made a statement was not actually present.

On July 22, 2000, the Employer issued Wallace a termination notice. Wallace did not receive the copy of the notice that was mailed to him, and believed that he was still suspended.

On August 1, 2000, the Employer denied the grievance at the third step. The Union asked that it be advanced to the fourth step. Ware went to Wallace's home to report what had happened. Around this time, Ware asked Rudolph for the videotape. Rudolph told him she thought the camera was not working.

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2 Coleman had no role in the processing of this grievance.

On August 7, 2000, the Union and the Employer held a fourth step meeting. This is the last step of the grievance procedure before arbitration. The Employer asserted that Wallace had violated the City's workplace violence policy, and that his behavior was serious and warranted discharge. The Union maintained that Wallace had been falsely accused, and asked that he be given another chance and transferred to another division.

On October 18, 2000, the Employer denied the grievance at the fourth step. Wallace's grievance then went before the Union's grievance panel to determine whether the Union should demand arbitration. On October 31, the grievance panel, at Ware's request, sent the document Wallace had provided to Ware in July to the Employer's labor relations office. Ware asked the grievance panel to hold its decision until it received an answer to whether or not there was a videotape. The labor relations office did not respond. On December 21, the panel wrote again. Wallace received a copy of this letter, but did not understand it. Wallace testified that by this time he had concluded that the Union was not going to help him.

Sometime in early 2001, Wallace learned that he had been terminated. Wallace called Ware several times to inquire about the status of his grievance, but could not reach him. Wallace then filed the instant charges. On April 27, 2001, the Employer's labor relations department responded to the grievance panel's December 21 letter by sending it copies of time cards for all the witnesses to the incident on May 5, 2000. These time cards indicated that the witness who Wallace had believed was not present on May 5 had been working at the time. The Employer also told the grievance panel that the security camera in the yard was not operating on May 5, 2000.

On June 25, 2001, the grievance panel sent Wallace a certified letter stating that it had decided not to take his grievance to arbitration. This letter stated that none of the information that the panel received from the Employer supported Wallace's claim. The letter said that the security camera was not working on the day in question, and that the people who were available either were not in a position to see anything or supported Coleman's statements. The panel stated that it did not believe that the grievance would be "looked on favorably by an arbitrator." Attached to this letter was a statement telling Wallace how to appeal the grievance panel's decision. The grievance panel's letter to Wallace was not claimed, and on August 3, 2001, it sent another copy by regular mail. Wallace did not receive the first page of this letter; what he received stated only that the Union would be notifying the Employer that it was withdrawing his grievance. Wallace did not appeal. On November 26, 2001, the Union notified the Employer that it was withdrawing the grievance.

Discussion and Conclusions of Law:

A union's duty of fair representation is comprised of three elements: it must act in good faith, without discrimination, and avoid arbitrary conduct. *Goolsby v Detroit*, 419 Mich 651,679 1984); *Vaca v Sipes*, 386 US 171 (1967). Wallace's claim is that the Union failed to process his grievance in good faith. That is, Wallace maintains that the Union did not diligently pursue the grievance it filed over his termination because of Union steward Coleman's personal animosity toward him, and because the Union would have had to argue that Coleman lied in his statement to the Employer that Wallace had a gun. I find that the facts do not

support Wallace's claims that the Union acted in bad faith. As to his argument that the Union failed to diligently pursue his grievance because of Coleman's personal animosity, I note that both Coleman and Wallace agree that by the end of the day on May 5, they had resolved their differences. Moreover, Coleman had no role in handling Wallace's grievance; rather, the Union assigned this responsibility to DPW Chief Steward Ware. There is no indication that Ware had any animosity toward Wallace.

I also find no evidence that Ware handled Wallace's grievance in a perfunctory manner. At the meeting held on June 22, 2000, Ware did not speak on Wallace's behalf or ask questions because he did not know what the case was about. However, before the first grievance meeting, Ware requested and obtained information from the Employer, including the statements of the witnesses to the incident. Between the third and fourth step meetings, Ware also asked the Employer for the May 5, 2000 videotape from the security camera in the yard where Wallace and Coleman's dispute took place, but was told by Rudolph that the camera did not work. After the Employer denied the grievance at the fourth step on October 18, 2000, Ware attempted again to get the videotape, and asked the Union's grievance panel to hold off making its decision on whether to take the grievance to arbitration until the Employer's labor relations department responded to its request.

It is also clear from the record that the Union did not arbitrarily decide not to pursue Wallace's grievance to arbitration. Wallace was discharged for drawing a gun in the DPW yard and pointing it at Coleman. Wallace maintained that the instrument was his cell phone, not a gun. The Employer had statements from a number of witnesses who claimed to have seen the incident. Several saw a gun, and several did not. However, none of the witnesses said in their statements that Wallace pointed a cell phone at Coleman. To prevail before an arbitrator, the Union would have had to persuade an arbitrator to credit Wallace's unsupported version of events over the testimony of Coleman and other witnesses. The Union's decision not to take the grievance to arbitration was based on its conclusion that the likelihood of success did not warrant the expense of arbitrating the grievance, and was not an "impulsive, irrational or unreasoned conduct." *Goolsby, supra,* at 682.

As for Wallace's claim that he was unable to obtain any information on the status of his grievance, the evidence indicates that, at least in the early stages of the grievance, Ware gave Wallace all the information Ware had. Ware apparently did not tell Wallace that the Employer had denied his grievance at the fourth step in October 2000, or explain why the grievance panel sent the Employer a copy of Wallace's request for information in December 2000. However, Wallace did not try to get in touch with Ware at this time since, according to him, he had already concluded that the Union was not going to help him. Wallace maintained that Ware did not return his calls in the early part of 2001, but did not indicate how many times he had called or when. Accordingly, I conclude that the Union did not act in bad faith, or in an arbitrary manner in handling Wallace's grievance, and that it did not violate its duty of fair representation in this case.

In his charge against the Employer, Wallace asserts merely that he was wrongfully discharged. PERA does not provide a cause of action for "wrongful discharge" per se. Wallace did not allege that that the Employer discriminated against him for his union activity in violation of Section 10(1)(c) of PERA, or violated any other provision of the Act. The Employer remained a party in this case only because a charging party must establish both a breach of the union's duty of fair representation and a breach of the collective

bargaining agreement in order to prevail on a claim of unfair representation. *Goolsby v Detroit*, 211 Mich App 214, 223 (1995); *Knoke v East Jackson Public School Dist.* 201 Mich App 480, 488 (1993). Since Wallace has not shown that the Union violated its duty of fair representation, I need not determine whether Wallace's discharge violated the Respondents' collective bargaining agreement.

For reasons set forth above, I conclude that the Union did not violate its duty of fair representation toward Wallace in this case. I also conclude that Wallace did not establish that the Employer violated PERA by discharging him for his conduct on May 5, 2000. I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The charges are dismissed in their entireties.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern
Administrative Law Judge

Dated: _____