

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

In the Matter of:

CITY OF DETROIT,  
Public Employer-Respondent,

Case No. C06 E-120

-and-

ASSOCIATION OF MUNICIPAL ENGINEERS,  
Labor Organization-Charging Party.

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APPEARANCES:

Robert J. Dinges and Associates, by Robert J. Dinges, Esq., for Charging Party

City of Detroit Law Department, by Shannon A. Holmes, Esq., for Respondent

**DECISION AND ORDER**

On July 8, 2008, Administrative Law Judge (ALJ) Julia C. Stern issued her Decision and Recommended Order in the above case finding that Respondent, City of Detroit (Employer), did not violate Sections 10(1)(a) and (c) of the Public Employment Relations Act (PERA), 1965 PA 379 as amended, MCL 423.210(1)(a) and (c), when it issued a disciplinary suspension on May 31, 2006, to an employee who was serving as the president of Charging Party, Association of Municipal Engineers (Union). However, the ALJ found that subsequent disciplinary actions against that employee and against Charging Party's vice-president were unlawful interferences with those employees' Section 9 rights and discriminated against the two employees for engaging in protected concerted activity. The Decision and Recommended Order of the ALJ was served upon the interested parties in accordance with Section 16 of PERA. On July 31, 2008, Charging Party filed exceptions to the ALJ's Decision and Recommended Order. Respondent did not file exceptions, and did not respond to those filed by Charging Party.

In its exceptions, Charging Party alleges that the ALJ erred in finding that the May 31, 2006 disciplinary suspension of the Union president was lawful. The Union argues that the discipline was motivated by its president's participation in protected union activity and that the punishment was disproportionate to the alleged offense.

Upon reviewing the record carefully and thoroughly, we find no merit to Charging Party's exceptions.

## Factual Summary:

We adopt the findings of fact set forth in the ALJ's Decision and Recommended Order and repeat them only as necessary.

Charging Party represents a bargaining unit of supervisory professional licensed engineers employed in several City departments, the majority of whom work in the department of water and sewerage (DWSD). Vinod Sharma, a DWSD employee, served as Charging Party's president during the period at issue. Sharma was given disciplinary suspensions on May 31, 2006, and January 19, 2007, as well as a written reprimand on February 27, 2007. The ALJ found that the last two disciplinary actions against Sharma were discriminatory and unlawfully interfered with Sharma's rights as protected by Section 9 of PERA. The only disciplinary action at issue here is the May 31, 2006 disciplinary suspension of Sharma.

On May 10, 2006, Sharma's immediate supervisor, Stephen Addo, asked Sharma to review the mechanical specifications in a proposal to replace pumps in the wastewater treatment plant and to submit his comments on the proposal by Friday, May 12. Sharma testified that there were only 3 or 4 points on the specifications that related to mechanical issues; he contended that those were very minor points. During that same week, several bargaining unit members phoned Sharma to complain about the layoff and demotions that the Employer had instituted earlier that week. Sharma also received calls from bargaining unit members complaining about the assignment of overtime.

On May 12, Sharma went to Addo's office where they had a brief discussion in which Sharma asked Addo about the allocation of overtime and explained that members of his bargaining unit were complaining. Sharma also mentioned the layoff and demotions of bargaining unit members before leaving Addo's office and going back to work. Later that same day, Addo asked Sharma to return to his office to discuss the pump proposal. Sharma again raised the issues of the demotions and overtime assignments. Addo replied, "You are raising such silly questions. Nobody likes you in management." Addo then asked Sharma to discuss the pump proposal. Sharma replied that with respect to the mechanical specifications, there was nothing to discuss because the contractor was not assuming responsibility for the performance of the pumps. He complained that the pumps in the bid were substantially overpriced and questioned whether a no-bid contract of that amount could be approved, given the City Council's recent reduction in the allowable dollar amount for no-bid contracts. As Sharma began to discuss the cost of the proposal and his concerns about Respondent's financial difficulties, Addo directed Sharma to talk about the contract proposal. Sharma responded that he had no comments on the proposal. Addo then informed Sharma that he was to have his comments in on Monday, May 15.

Later, Addo sent an e-mail to Sharma indicating that he had tried to discuss the pump proposal with Sharma, but found Sharma argumentative and too focused on overtime issues rather than the mechanical issues related to the pump proposal. Addo directed Sharma to provide his comments about the pump proposal no later than 9:00 am on Monday, May 15, 2006. Sharma sent Addo an e-mail on May 15, again indicating his concern about the cost of the proposal and his disagreement with the Employer's decisions to accept a no-bid contract and to

waive any requirement that the contractor guarantee the performance of the pumps. He further stated "I have no comments on the portion I have been asked to comment." The following day, Addo again directed Sharma to submit comments on the proposal. Sharma replied that he had no more comments.

On May 31, 2006, Addo suspended Sharma for three days based on insubordination during "his behavior at the meeting with his supervisor [on May 12] and refusal without good cause to perform the job assignment as directed." Sharma testified that he did not refuse to do the assignment and did in fact complete it.

#### Discussion and Conclusions of Law:

In its exceptions, Charging Party asserts that Respondent's decision to suspend Sharma on May 31 was based on a desire to interfere with and punish him for his union activities. The record in this case establishes that, as Charging Party's president, Sharma aggressively pursued the interests of bargaining unit members. He did so during the first meeting with Addo on May 12, 2006, and attempted to do so again during his second meeting with Addo that day. However, the second meeting was called by Addo for the single purpose of discussing Sharma's comments on the mechanical specifications of the contract proposal. Despite being instructed to comment on the proposal's mechanical specifications, Sharma proceeded to discuss aspects of the Employer's financial policy related to the contract proposal, which he believed affected Charging Party's bargaining unit members. Although Sharma was advocating on behalf of Charging Party's bargaining unit members during the second May 12 meeting, that was not the reason for the meeting. Even after he was directed to discuss the contract proposal's mechanical specifications, Sharma refused to do so and said he had no comment. Accordingly, for the reasons stated in her decision, we agree with the ALJ's conclusion that Sharma's actions at the second May 12 meeting were not protected under PERA.

Although Sharma had the right to advocate for his bargaining unit members, he did not have the right to do so during work hours when he had received specific, reasonable, and lawful orders to perform his job duties. Sharma's refusal to discuss the mechanical specifications of the contract proposal on that occasion, along with his subsequent refusal in his May 15 e-mail to Addo was a refusal to follow the legitimate orders of the Employer and provided the Employer with a lawful reason to discipline him. The May 31, 2006 suspension was not motivated by Sharma's protected concerted activity.

Charging Party further contends that Sharma's actions in declining to comment on those points of the pump proposal on which he had been directed to comment was neither unusual nor did it merit discipline. We disagree. After being directed in writing to perform the work delegated to him, Sharma again refused to do so and put his refusal in writing. Sharma testified that there were only 3 or 4 minor points on the specifications that related to mechanical issues, but neither his e-mail to Addo nor his comments during the May 12 meeting mentioned any of those points. He failed to give any details regarding the mechanical specifications, and failed to give any explanation for his failure to do so. The wording of Sharma's May 15 e-mail indicates a clear disregard of the Employer's directive that he provide his comments on the mechanical specifications of the contract proposal. Given Addo's repeated requests, and the extensions of

time granted to enable Sharma to complete the assignment, Sharma's actions were insubordinate. Accordingly, we find that the Employer's actions in disciplining Sharma for his refusal to provide comments on the mechanical specification of the contract proposal was not an unlawful interference with Sharma's right to engage in protected concerted activity.

Additionally, Charging Party contends that the three-day suspension issued to Sharma was "very severe and unheard (sic) in the history of the City." This is contrary to the testimony of Respondent's human resources consultant, Maria Young, who testified that according to Respondent's employee handbook for the wastewater treatment plant, a three day suspension is the proper penalty for a first offense of insubordination. Neither of Charging Party's witnesses testified about the degree of discipline normally meted out for insubordination or similar violations of the Employer's rules. Thus, we find no basis in the record to conclude that the Employer unlawfully discriminated against Sharma by suspending him from work for three days for his insubordination.

Both employer and employee must realize that there are parameters that constrain their activities; they must be mindful of them and adhere to them.

For the foregoing reasons we find that the Employer did not violate Section 10(1)(a) or (c) of PERA when it suspended Sharma for three days on May 31, 2006. We concur in the findings of the ALJ with respect to the other sanctions against Sharma. We have also considered all other arguments submitted by Charging Party and conclude that they would not change the result in this case. We affirm the ALJ's decision.

**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

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Christine A. Derdarian, Commission Chair

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

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

STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

CITY OF DETROIT,  
Public Employer-Respondent,

Case No: C06 E-120

-and-

ASSOCIATION OF MUNICIPAL ENGINEERS,  
Labor Organization-Charging Party.

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APPEARANCES:

Shannon A. Holmes, Esq., City of Detroit Law Department, for Respondent

Robert J. Dinges, Esq., Robert J. Dinges and Associates, for Charging Party

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, this case was heard at Detroit, Michigan on April 27 and 30, 2007, before Judge Julia C. Stern of the State Office of Administrative Hearings and Rules, on behalf of the Michigan Employment Relations Commission. Based upon the entire record, including post-hearing briefs filed by the parties on June 6, 2007, I make the following findings of fact, conclusions of law, and recommended order.

I. The Unfair Labor Practice Charge:

The Association of Municipal Engineers filed this charge against the City of Detroit on May 26, 2006. The charge was amended on July 24 and December 28, 2006 and February 5 and March 5, 2007. Charging Party represents a bargaining unit of supervisory professional licensed engineers employed by Respondent. Charging Party has members in several City departments, but the majority work in the department of water and sewerage (DWSD or the department). The charge, as amended, alleges that Respondent violated Sections 10(1)(a) and (c) of PERA by interfering with efforts of Charging Party president Vinod Sharma and Charging Party vice president Kailash Mahajan to investigate grievances and participate in the grievance process and by disciplining Sharma in May 2006, January 2007, and February 2007 and Mahajan in January 2007 because of their union activities. The charge, as amended, also alleges that Respondent violated its duty to bargain in good faith by failing to provide Charging Party with information requested by it on September 6, 2006.

## II. Request to Reopen the Record:

Charging Party attached to its post-hearing brief as "exhibits" a number of documents, including copies of emails and letters dated prior to the hearing in this case. Some of these documents were admitted into the record at the hearing. Others were not produced or offered at that time. Charging Party did not file a motion to reopen the record to admit these additional documents.

On December 11, 2007, Charging Party filed a motion to reopen the record to admit the following documents: (1) a letter from Respondent to Charging Party dated October 30, 2007 indicating that it had compiled information requested by Charging Party on January 25, 2007; (2) an email from Vinod Sharma to his supervisor asking for approval of overtime for April 27 and April 30, 2007, the dates he attended the unfair labor practice hearing in this case, and an email from the supervisor denying the request on the basis that Sharma was not entitled to overtime for conducting union business; (3) time records for Kamlesh Kumar, Jason Williams, and Clement Udeozar, for the period December 16 through 30, 2006; and (4) records showing the times all individuals, including Kumar, Williams and Udeozar, entered and exited Respondent's wastewater treatment plan (electronic swipe records) on December 20, 2006. Kumar, Williams, and Udeozar are officers of the union representing Respondent's nonsupervisory engineers. According to Charging Party, the time records and electronic swipe records demonstrate that Respondent discriminated against Sharma by refusing his request for overtime to attend the Commission hearing because they show that Respondent paid Kumar, Williams, and Udeozar overtime on a day that they were absent for union business. Respondent opposed the request to reopen.

Under Rule 166(1) of the Commission's General Rules, 2002 AACS R 423.166 (1), a motion to reopen the record may be granted only upon a showing of all of the following:

- a. The additional evidence could not with reasonable diligence have been discovered and produced at the original hearing.
- b. The additional evidence itself, and not merely its materiality, is newly discovered.
- c. The additional evidence, if adduced and credited, would require a different result.

According to Charging Party, it could not produce the time records and electronic swipe records at the hearing because Respondent did not provide them in a timely fashion when it requested them in January 2007. However, Charging Party seeks to admit these documents to support an allegation that Respondent unlawfully discriminated against Sharma by not paying him overtime on April 27 and April 30, 2007 for time spent attending the Commission hearing on this charge. This allegation was not part of the charge in this case. Since the evidence Charging Party seeks to admit would not affect the result in this case, its motion to reopen the record is denied. Charging Party did not file a motion to reopen the record to admit the additional documents attached to its brief or explain why it could not have produced these documents at the hearing. Therefore, these documents are also not admitted.

### III. Alleged Interference and Discrimination:

#### A. Sharma's Union Activities in 2006 and Early 2007

Vinod Sharma has been employed by the DWSD since 1983 as a mechanical engineer and has worked as a supervisory senior associate engineer in the DWSD's wastewater treatment plant since 1990. Sharma became president of Charging Party on February 25, 2005, after holding the office of vice-president. Kailash Mahajan, a supervisory electrical engineer in the wastewater treatment plant, became Charging Party's vice-president in 2005 after being its secretary. In 2006 and 2007, water systems engineer Stephen Addo was Sharma's immediate supervisor. Addo was also Mahajan's immediate supervisor through January 2007. Both Sharma and Mahajan testified at the hearing in this case. Addo did not testify.

In late 2005, Respondent realized that it would have a severe budget deficit for the fiscal year beginning in July 2006. In early 2006, layoffs to deal with the budget deficit were being discussed. DWSD is largely funded by monies paid by City and suburban customers for the DWSD's services, rather than by tax money. There was an expectation among DWSD employees that they would, therefore, escape layoff. In early March 2006, DWSD director Victor Mercado met with representatives of all the unions representing DWSD employees. At the time of the meeting, Respondent's City Council was considering a proposal to raise water rates but had not done so. Mercado told the union representatives that DWSD employees might have to be laid off. During this meeting, Sharma asked Mercado several pointed questions about DWSD operations that made Mercado uncomfortable. Mercado did not testify at the hearing in this case.

In the spring of 2006, Respondent and Charging Party were operating pursuant to a collective bargaining agreement that had been continued on a day-to-day basis since June 2005. The parties had not been able to reach a new agreement when Respondent proposed to Charging Party and other City unions that they agree to substantial economic concessions for the 2006-2007 fiscal year. Charging Party's bargaining team, including Sharma, took the position that concessions were not appropriate for its unit because the DWSD was not funded from Respondent's general fund. The parties met frequently in April and May 2006 but could not reach agreement.

On April 27, 2006, Sharma requested and was granted personal leave time to attend a large public meeting held to discuss DWSD water rates. About one hundred people, including Mercado and DWSD deputy director Gary Fujita, were at this meeting. Sharma saw no other union representatives in attendance, but did see several department administrative assistants that he recognized. At the meeting, Fujita came over to Sharma and asked him how he had come to be there. Sharma told him that he had come on his personal time. When Sharma returned to work, he heard from other employees that someone from DWSD management had called to verify that he had taken personal leave. A few days later, Sharma submitted a request to Respondent under the Freedom of Information Act (FOIA) for the names of the DWSD employees who had attended the public meeting and for documents indicating that the administrative assistants had been formally approved to attend. Sharma explained that he wanted

to know why administrative assistants had attended the meeting when no engineers were released to attend.

In late April, Respondent announced plans to eliminate a large number of positions in the DWSD, as well as in other departments. Many nonsupervisory engineers were laid off. One member of Charging Party's bargaining unit was laid off, and five or six others were demoted to nonsupervisory positions effective May 8, 2006. Charging Party filed several grievances over the layoffs/demotions, as well as an unfair labor practice charge (Case No. C06 E-104, filed on May 8, 2006)

After the layoffs/demotions were announced, Sharma repeatedly complained to Addo and Addo's immediate supervisor, Sidney Bailey, about alleged favoritism in the assignment of overtime among engineers. Charging Party's contract does not provide for equalization of overtime, and overtime among engineers is supposed to be distributed according to the needs of the projects on which they are working and the priorities of the department. However, according to Sharma, a group of engineers under Bailey's supervision were being allowed to work unlimited overtime with no restrictions and were even paid for overtime that they did not work. In the middle of May, Mercado asked for an investigation after receiving an anonymous letter containing the same complaints that Sharma had made to Addo and Bailey. On May 12, as discussed in more detail below, Sharma was complaining about overtime assignments when Addo said to him, "You are raising such silly questions. Nobody likes you in management."

The instant charge was originally filed by Sharma on Charging Party's behalf on May 26, 2006. As indicated above, it was amended four times between May 2006 and February 2007. During this period, Charging Party filed or had pending four other unfair labor practice charges. Case No. C05 I-219, filed on September 15, 2005, was heard by an administrative law judge on February 6 and August 18, 2006 and resulted in an order requiring Respondent to pay retroactive pay to Charging Party's members and to provide Charging Party with certain requested information. *City of Detroit*, 20 MPER 15 (2007). Case No. C06 E-104 was filed on May 8, 2006 and heard on September 15, 2006. This charge, which was eventually dismissed, alleged that Respondent violated its duty to bargain by failing to provide Charging Party with adequate notice of the May 2006 layoff and demotions. *City of Detroit*, 20 MPER 46 (2007). Case No. C06 J-257 was filed on October 26, 2006 and alleged that that Respondent had violated the subcontracting clause of the parties' contract. An administrative law judge recommended on December 19, 2006 that the charge be summarily dismissed. *City of Detroit*, 20 MPER 102 (2007). In addition, a charge filed by Charging Party in 2003, Case No. C03 D-092, was pending before an administrative law judge after being remanded from the Commission for further findings.

## B. Sharma's May 31, 2006 Suspension

### 1. Findings of Fact:

On May 31, 2006, Sharma received a three-work day suspension for insubordination, a group III offense under the department's work rules. Insubordination is defined in the work rules as: (1) refusal or failure without good cause to accept and perform job assignments as directed;



or (2) becoming involved in an unnecessary or prolonged discussion with a supervisor contrary to such supervisor's directive.

On May 10, 2006, Addo gave Sharma an assignment to review the mechanical specifications in a contractor's proposal for the installation of four temporary pumps at the wastewater treatment plant. This assignment had some history. Sometime around 2000, the DWSD had begun discussing replacing the pumps in about 25 clarifiers, devices used in cleaning wastewater. A contract was awarded to study, design and install these pumps, but the project was stalled after the first pumps did not perform to expectations. In early 2006, the maintenance department at the plant asked to have the four pumps replaced immediately because they were repeatedly failing. After informal discussions with contractors, the department decided to hire a contractor to install temporary pumps on a no-bid contract and to waive any requirement that the contractor guarantee the performance of the pumps.

One contractor submitted a proposal to replace four pumps at a cost of over \$1.5 million dollars. Addo was assigned to review the proposal and assess whether its specifications met the wastewater plant's needs. Addo, in turn, assigned Sharma to review the mechanical portions of the proposal. Addo gave Sharma the assignment as Sharma was about to leave for the day on May 10 and told him to submit his comments by Friday, May 12. He also assigned Charging Party vice-president Mahajan, an electrical engineer, to review the electrical portion of the contract. Addo approved two hours of overtime for that day for both men to review the proposal.

Throughout the week of May 8, Sharma received many calls at work from members who had been demoted or who were incensed at the layoffs/demotions that had just gone into effect. Several members complained to Sharma about other individuals' overtime. On May 12, Sharma went into Addo's office and asked him what was going on with the overtime among these employees. Addo asked him why he was worried about it, and Sharma explained that his members were complaining. Sharma then began talking agitatedly about the demotions and layoff. Addo told Sharma that he needed to make a phone call, and Sharma returned to work.

About 45 minutes later, Addo called Sharma into his office to talk about the pump proposal. Sharma started again to talk about the demotions and the unfairness of the overtime assignments. Addo said to him, "You are raising such silly questions. Nobody likes you in management." Addo then asked him about the pump proposal. Sharma said that since the contractor would not assume responsibility for the performance of the pumps, there was really nothing about the mechanical specifications to discuss. He then pointed out that the price of the pumps and components in the bid were between two and three times higher than the manufacturer's price. Sharma told Addo that he did not see how a no-bid contract of this size could be justified, especially since Respondent's City Council had recently expressed concern about no-bid contracts and had lowered the dollar amount of contracts that required bids. Addo told Sharma not to worry about the money. Sharma asked him how he could not worry about the money when people were getting laid off and Mercado had claimed there was no money. Addo replied that he did not want to hear a lecture from Sharma, but to talk about the contract. Addo asked him if these were his comments, and Sharma said that he had no comments. Addo told him he was extending the deadline for his comments to Monday, May 15. Later, Addo sent Sharma the following e-mail with a copy to Bailey:

On Wednesday, May 10, 2005 [sic], I gave copies of the bid proposal for the RAS pumps to you and Mr. Mahajan and asked for your review and comments. I also requested that the review comments should be submitted to me on Friday, May 12, 2005 [sic] so as to be able to transmit them to the WCG on Monday, May 15, 2006. Moments later, you and Mr. Mahajan requested overtime for two (2) hours each to do this assignment and I approved the requests. On Thursday, May 11, 2006, you requested additional two hours overtime for the same task and I denied it because the amount of work involved should not require four hours overtime to complete. During my review, I made some observations in both the electrical and mechanical sections of the proposal. I realized that these observations would be beneficial for your review processes. Therefore, I had a brief meeting with Mr. Mahajan and discussed the electrical issues with him; I tried to do the same with you today to discuss the mechanical issues. But during the discussion, you became argumentative and irritated and wanted to discuss overtime and other irrelevant issues instead. I tried to get you to let us focus on the issues at hand but you continued to argue. I had to discontinue the discussion at that point because I realized that it was going to be impossible to reason with you. This correspondence is to remind you that I will still be expecting your comments. Therefore I am extending the dealing to 9:00 am of Monday, May 15, 2006.

On the morning of May 15, Sharma sent Addo the following e-mail:

Since cost of the project is not your concern and pumps are temporary [sic]. You have waived the hydraulic performance of any kind from the pumps [sic]. I have no comments on the portion I have been asked to comment. Actually no specifications are needed because it is a no bid contract and pumps can be purchased by just mentioning the model number.

On May 16, Addo told Sharma again to submit comments on the proposal. Sharma said that he had no more comments. On May 31, Addo gave Sharma a three-day suspension for insubordination for "his behavior at the meeting with his supervisor [on May 12] and refusal without good cause to perform the job assignment as directed." Addo also recommended that Sharma be required to participate in anger management classes.

## 2. Discussion and Conclusions of Law:

Charging Party argues that the discipline Sharma received on May 31, 2006 was part of a campaign to "browbeat" Sharma into silence and "make the Association's business come to a standstill." As the fact sheet attached to the May 31 disciplinary notice indicates, Sharma was disciplined, in part, because of his conduct during his second meeting with Addo on May 12, 2006.

Employee's concerted complaints about waste and corruption in their workplace, when reasonably related to their working conditions, are protected by the Act. For example, in *Sanilac Co Rd Comm*, 1967 MERC Lab Op 107, the Commission held that the employer unlawfully

discharged employees who appeared at a meeting of the county board to argue for larger wage increases and presented the board with a list of alleged examples of waste and corruption by their employer. In addition, both the National Labor Relations Board (NLRB) and the Commission have long held that employees engaged in concerted protected activities must be given latitude to speak or behave in ways that might be unacceptable in another context. *Bettcher Manufacturing Corp*, 76 NLRB 526, 527 (1948); *Unionville-Sebewaing Cmty Schs*, 1981 MERC Lab Op 932. For example, in *Baldwin Cmty Schs*, 1986 MERC Lab Op 513, the Commission held that an employee who shouted, waived a pencil and accused his supervisor of being a homosexual in a grievance meeting had not engaged in conduct that removed him from the protection of the Act. In *University of Michigan*, 2000 MERC Lab Op 192, the Commission held that an employee could not lawfully be disciplined for swearing and calling a supervisor a "con artist" in a grievance meeting. A union representative, however, is not excused from obeying the legitimate orders of his supervisor simply because he is attempting to represent the interests of his members. See *AFSCME v City of Troy*, 185 Mich 739 (1990). Whether particular conduct is protected depends, in part, on where and under what circumstances it takes place, including whether the conduct occurs in a grievance meeting, a supervisor's office, or "on the shop floor" in the presence of other employees, and whether the conduct is spontaneous or in response to provocation. *City of Detroit*, 18 MPER 27 (2005).

The second meeting between Sharma and Addo in Addo's office on May 12, 2006, was called by Addo for the purpose of discussing the mechanical specifications in the proposal Sharma had been assigned to review. Sharma knew this. When Sharma began complaining again about the department's assignment of overtime, Addo made it clear that he only wanted to talk about the specifications. This was a legitimate order, since the meeting was not a grievance or other meeting called to discuss employee concerns. Despite Addo's directive, however, Sharma began criticizing the department's handling of the pump contract, suggesting that the department was wasting money that could have been used to keep his members in their jobs. When Addo asked him if these were his comments on the contract, Sharma responded that he "had no comments." According to Charging Party, Sharma was not guilty of insubordination since he performed his assignment and told Addo, truthfully, that he had nothing to say about the aspects he was asked to review. However, neither Sharma's remarks at that meeting nor his May 15 email were responsive to Addo's demand that he assess the adequacy of the mechanical specification in the proposal. I find that Sharma's conduct in his second meeting with Addo on May 12 was not protected, despite the fact that he attempted in this meeting to raise issues of legitimate concern to his members. First, Sharma refused his supervisor's legitimate order to confine his comments at that meeting to the mechanical specifications in the contractor's proposal. Second, Sharma never told Addo, at any time, that he had reviewed the proposal and found no problems with the mechanical specifications. The three day suspension Sharma received for this offense, even though it was his first, was consistent with the department's work rules. I conclude that Respondent did not discipline Sharma on May 31, 2006 because of his union activities.

### C. Increase in Sharma's Work Load

#### 1. Findings of Fact:

In the fall of 2006, Addo assigned Sharma to be the project manager on a large project. According to Sharma, nine or ten individuals from different sections, including electrical engineers, were originally assigned to this project. These engineers were eventually reassigned, leaving Sharma to work on it alone. Around the same time, Addo began removing Sharma's subordinates and reassigning them to other sections. In early 2006, Sharma supervised four engineers. By December 2006, he had only three. At the time of the hearing in this case in April 2007, Sharma had only one subordinate, an employee who was recovering from a heart attack and could not handle much work. When Sharma complained, Addo told him that he should not assign so much work to his subordinate and should do the work himself.

#### 2. Discussion and Conclusions of Law:

Charging Party alleges that Addo deliberately increased Sharma's workload to prevent him from having time to engage in union activity and to retaliate against him for his activities. However, as indicated above, the department had fewer engineers after the May 2006 layoffs. Charging Party produced no evidence that Sharma was treated differently from other senior associate engineers in the DWSD. I conclude that the record does not support a finding that the increase in Sharma's workload constituted discrimination against him because of his union activities.

### D. Sharma and Mahajan's January 2007 Suspensions

#### 1. Findings of Fact:

On January 19, 2007, Sharma received a three calendar (one work) day suspension for leaving the work site without the approval of his supervisor, a group III offense under the department's rules, and for failing to follow proper procedure when leaving the work site to conduct union business on January 4. On January 26, 2007, Mahajan received a three calendar (one work) day suspension for these same offenses on January 19.

Article 5 of the collective bargaining agreement between Charging Party and Respondent provides for paid release time for Charging Party's president and other Charging Party representatives to conduct union business. Article 5 states, in pertinent part:

C. The Association Representative or the alternate, during his/her regular working hours and without loss of time or pay, may investigate and present grievances to the Employer after obtaining permission from his/her immediate supervisor. Such permission shall not be unduly withheld or delayed, with the understanding that the time will be devoted to the proper handling of the grievance and will not be abused. Any alleged abuse by either party will be a proper subject for a Special Conference.

D. The Association President (or member of the bargaining unit in addition to the grievant, designated in the contract) shall be permitted to take time off with pay to handle special conferences, grievances and participate in arbitration cases. Other duties associated with being an Association President and directly related to wages, hours and working conditions of bargaining unit members may arise which must be addressed in the capacity of Association President during business hours. In this regard, upon request, a meeting will be convened between the Association and the appropriate department representative to discuss this matter and resolve any difficulties being experienced.

Sharma, Mahajan and former Charging Party president Donald McReynolds all testified to the procedure for notifying a supervisor when leaving the worksite for union business prior to January 2007. McReynolds, who works at a different DWSD facility than Sharma and Mahajan, testified that when he had to leave to attend to union business as president he told his immediate supervisor approximately when he would be leaving, but not when he would be back or the nature of his business. At McReynolds' facility, however, he has to put his destination on a sign-out sheet whenever he leaves, and he did that when he left for union business. When McReynolds wanted to take Sharma, then Charging Party's vice-president, to a meeting with him, he simply gave Addo the date and time that Sharma needed to leave. Sharma and Mahajan do not have a sign-out sheet at their location. They testified that if Sharma wanted to leave to conduct union business he simply informed Addo that he was leaving for union business and told him approximately how long he would be gone. Sharma did not tell Addo where he was going. Sharma and Mahajan also testified that if Sharma wanted Mahajan or another union officer to accompany him, he simply notified Addo or the other officer's supervisor that the officer would be leaving for union business.

In March 2006, Addo called Sharma and Mahajan into his office after they had been away from the worksite on union business and asked them questions about where they had been. Addo told them that he had been told to investigate how often they were leaving on union business and how long they were gone. On three occasions in 2006, Addo told Sharma that he could not take Mahajan along with him on union business when Sharma requested this because Sharma could handle it himself. One of these occasions was a Commission hearing on an unfair labor practice charge filed by Charging Party.

On August 25, 2006, Addo sent Sharma an email telling him that when he asked for a release to conduct union business off-site, he was required to provide the location of the union business, the start time, the approximate duration of the business, and the time he would return to the site. Sharma did not agree that he could be required to provide this information under the contract, but did not raise the issue of the email with Addo or file a grievance. Sharma testified, however, that he continued to inform Addo that he was leaving on union business and telling him the approximate time he would return, and that Addo let him go without asking him where he was going or any other details.

The hearing in this unfair labor practice case was scheduled for January 8, 2007. On January 4, Sharma planned to visit the Commission offices to pick up subpoenas for this hearing.

and to ask a question about the due date on a brief on another of his unfair labor practice cases. That morning, a training session was held for the employees under Addo's supervision. After the training session, Sharma told Addo that he was going to be gone from the site for union work for a few hours. Addo gave him a project and told him to turn it in before leaving. Sharma completed the work at 12:45 pm and e-mailed it to Addo, then left the premises at 12:48. When Sharma left, Addo was at lunch. Sharma went to the Commission offices and, on the way, stopped at another work site and had a brief discussion with one of his members about a grievance issue. Sharma spent between 45 minutes to 1 hour driving from his work site to the member's work site, and another half hour driving to the Commission offices. He returned to his work site at 4:09 pm. On January 12, Sharma was called to a meeting with Addo and Bailey and questioned about where he had been on January 4. Sharma was told that he had not followed procedures for leaving on union business and was going to be disciplined for his actions on that day.

Because of what had happened on January 12, on January 17 Sharma requested a special conference under Article 5(D) of the collective bargaining agreement. On January 18, Addo told Sharma that DWSD assistant director Louise Lieberman was arranging the conference and that if she called him, he was to go. Addo was not at work on January 19. In the morning, Lieberman called Sharma and told him to leave his work site and come to the labor relations office in thirty minutes. Sharma told Lieberman that he needed three union people for the conference and that he had a meeting with a vendor regarding a contract. Lieberman told him that he had to come as soon as possible, and took the phone number of the vendor and called to cancel the meeting. Sharma told Mahajan, who works on the same floor, about the conference, and called McReynolds, who works at a different location, to tell him that he would pick him up and bring him to the conference. Sharma left a message on Addo's voice mail stating that he and Mahajan were leaving to go to the special conference and told Addo's secretary to tell him.

When Sharma, Mahajan and McReynolds arrived at the special conference, there were three DWSD representatives, including Lieberman, and two representatives from Respondent's labor relations office present. Sharma explained that he had asked for the conference because supervisors were giving the union a hard time about release time. Sharma explained what had happened at the January 12 meeting, and said that he felt that Addo and Bailey were trying to intimidate him. Respondent's representatives told Sharma that he had to have permission to leave on union business. Sharma argued that, as Charging Party's president, he only had to inform his supervisor under the Section 5(D) of the contract. Respondent's representatives disagreed, and labor relations representative Maria Young reminded Sharma that he was paid by Respondent and that his first obligation was to perform his work. At some point in the meeting, DWSD manager Gean Powell asked Mahajan if he had permission to attend this conference. Sharma told Powell that he had asked Mahajan to be there and had left a message with Addo stating that he was taking Mahajan with him because Addo was not in. Sharma told Powell that Mahajan had a right to be at the meeting. Respondent's representatives told Mahajan to answer Powell's question himself, and he repeated what Sharma had said.

As noted above, on January 19, 2007, Sharma was suspended for failing to comply with procedures for leaving the worksite to attend to union business on January 4 and leaving the work site during working hours without permission of his supervisor. On January 26, Mahajan

was suspended for leaving the worksite without informing his supervisor on January 19 to attend a union special conference that he was not officially released to attend.

On March 27, 2007, Bailey issued the following memo to Sharma and Mahajan:

This is a confirmation of long standing WWTP practice and one of the procedures associated with AME officers conducting union business during working hours.

As Association officer you have the right and the responsibility to conduct association business on City time. Together, as Association officers and WWTP management, we must assure that these activities have no or minimal impact on WWTP operation. To do this you must coordinate these activities with your supervisor.

As such, when you submit a request to conduct business [sic] on City time, provide the following information to your supervisor:

1. The time of your departure
2. The location of the association business
3. The approximate length of time you will be at that location

## 2. Discussion and Conclusions of Law:

It is well established that an employer has no statutory duty under PERA to allow union representatives to conduct union business on work time, or to pay union representatives for time spent conducting union business. *City of Detroit (Dept of Public Works)*, 2001 MERC Lab Op 73; *Fairview Medical Care Facility*, 1981 MERC Lab Op 1048, 1059; *City of Birmingham*, 1974 MERC Lab Op 642; *City of Detroit (General Hospital)*, 1968 MERC Lab Op 378. Accordingly, an employer does not interfere with the rights of its employees under Section 9 of PERA simply by monitoring a union officer's use of work time for union business, or by requiring him to provide information about what he is doing. *City of Grand Rapids*, 1980 MERC Lab Op 18, 27. Union release time is a mandatory subject of bargaining under PERA, and the parties may agree to paid or unpaid release time for union officers. *Central Michigan Univ*, 1994 MERC Lab Op 527. However, disputes over the interpretation of a contract provision providing for release time, like other contractual disputes, are normally to be resolved through the grievance procedure. *Belding Area Schs*, 20 MPER 105 (2007) (no exceptions); *City of Detroit*, 17 MPER 84 (2004) (no exceptions).

In this case, the parties' collective bargaining contract contains a provision covering union release time for union representatives and the union president. On August 25, 2006, and again on March 27, 2007, Respondent announced procedures that Charging Party's representatives were to follow when requesting release time. I find that Respondent did not interfere with employees rights under Section 9 of PERA by instructing Charging Party's officers to comply with these procedures. If Charging Party believed that these procedures were inconsistent with Article 5 of the parties' contract, it had an obligation to file a grievance.

Sharma testified, however, that between August 25, 2006 and January 4, 2007, Addo continued to allow him to leave on union business without asking him where he was going. There is no indication that Sharma was ever required to provide any information in writing before being allowed union release time. On the morning of January 4, 2007, according to Sharma, he told Addo that he was leaving to conduct union business for a few hours. Addo did not say no, or ask him where he was going, but told him to complete a project first. When Sharma had completed the assignment, Addo had left for lunch. Sharma left the worksite. According to Sharma's testimony, his behavior on January 4 was consistent with his behavior on earlier occasions when he had been allowed to leave on union business. That is, he told Addo in the morning that he was leaving for union business and approximately how long he would be gone.

In order to establish a prima facie case of discrimination under Section 10(1)(c) of PERA, a charging party must show, in addition to an adverse action that: (1) the employee engaged in union or other protected concerted activity; (2) the employer had knowledge of that activity; (3) there was anti-union animus or hostility to the employee's protected rights; and (4) suspicious timing or other evidence existed that the protected activity was a motivating cause of the allegedly discriminatory action. *Waterford Sch Dist*, 19 MPER 60 (2006); *Northpointe Behavioral Healthcare Systems*, 1997 MERC Lab Op 530, 551- 552. 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 Evert Pub Schs*, 125 Mich App 71, 74 (1983); *Wright Line, a Division of Wright Line, Inc.*, 662 F2d 899 (CA 1, 1981).

I find that Charging Party met its burden to establish the first three elements of a prima facie case. Between the spring of 2006 and early 2007, Sharma was a very active opponent of the department's decision to layoff and demote members of his unit. In March 2006, Addo told Sharma and Mahajan that he had been told to investigate how often Sharma was leaving on union business and how much time he was gone. In April 2006, DWSD deputy director Fujita recognized Sharma in a crowd of one hundred people at a water rate meeting and took the time to ask him how he came to be there. On May 12, Addo told Sharma, "You make such silly arguments. Nobody in management likes you." The record establishes that DWSD management was aware of Sharma's activities and that these activities annoyed or angered some of them.

Between May 2006 and January 2007, Sharma actively pursued four unfair labor practice charges against Respondent, including one scheduled for hearing in the week of January 8, 2007. On January 19, 2007, Sharma was suspended, not merely warned, for allegedly failing to follow proper procedure for requesting union release time on January 4. However, according to Sharma's un rebutted testimony, before he left on January 4 he gave Addo the same type of information that he had provided on many other occasions when he left for union business. I find that the timing of the discipline and other evidence supports a finding that Respondent's animus toward Sharma's union activities was a motivating cause of the decision to suspend him on January 19, 2007. Since Respondent did not present evidence to demonstrate that it would have suspended Sharma on January 19 in the absence of these activities, I conclude that Sharma's January 19, 2007 suspension constituted unlawful discrimination against him because of his union activities in violation of Section 10(1) (c) of PERA.



I also find that the discipline issued to Kailash Mahajan on January 26, 2007 constituted a violation of Section 10(1) (c) of PERA. On the morning of January 19, 2007, DWSD assistant director Lieberman called Sharma to inform him that the special conference he had requested had to be held immediately. Lieberman made it clear that the conference could not be postponed. Addo, Mahajan's supervisor, was not in the office on January 19. However, Sharma left Addo a message indicating that he was taking Mahajan with him to the special conference. After Sharma began arguing with Respondent representatives at the conference over whether as union president he needed permission to leave on union business, Respondent turned to Mahajan and asked him if he had gotten permission to come to the conference. On January 26, Mahajan was suspended for leaving the workplace to attend the conference without permission. However, Respondent provided no explanation of what Mahajan should have done to obtain permission to attend the conference, since Addo was not in the office when Mahajan needed to leave and the conference was likely to conclude before Addo returned to work. I find that Mahajan was disciplined on January 26 because of own protected activity, his connection to Sharma, and Respondent's animus toward Sharma's union activities.

#### E. Sharma's February 27, 2007 Written Reprimand

##### 1. Findings of Fact:

On February 27, 2007, Sharma received a written reprimand for poor work performance. The reprimand was for failing to complete an assignment to obtain proposals from vendors for a project by the due date of February 12, 2007. According to Sharma's testimony, this was the first reprimand for poor work performance he had received in more than twenty years of employment with Respondent.

On December 18, 2006, Addo received an engineering service request from Jared Richards, the superintendent of operations, to create engineering specifications and cost estimates for replacing leaking joints in piping at the DWSD's dechlorination facility so that the job could be bid on the open market. These pipes were leaking dangerous sodium chloride gas and the maintenance department was having trouble keeping them repaired. Addo passed this assignment on to Sharma on December 20, and told him to contact Richards directly and report back to him when Addo returned to work on January 2. He also said that he thought that the department already had specifications for the job. Addo told Sharma to call several contractors and get them to submit estimates. He also told Sharma specifically not to delegate this work to a subordinate.

When Sharma called Richards, he discovered that he also would not be back to work until January 2. On January 3, Sharma spoke to Richards, who gave him the names of two contractors who might be interested in doing the work, including one who worked at the plant. On January 4, Sharma emailed Addo that he had scheduled a site visit, asked the sodium chloride manufacturer what piping, packing and sealant material it recommended, and would be contacting contractors who did piping work. Sharma said that he estimated that it would take about three months to put the information together, depending on the cooperation from vendors.

On the morning of January 5, Sharma and Addo had a confrontation about a report Addo wanted from Sharma on another matter. Sharma testified that he told Addo that he had given the report to another engineer for additions, and that Addo had already seen the report Sharma had done. The hearing in this unfair labor practice case was scheduled for the week of January 8. According to Sharma, Addo shouted at Sharma that he could not intimidate him by filing a case in court, that he should "do his damn union business at home," and that Respondent was going to tell the judge about Sharma's union activities at work.

Sharma went to the dechlorination facility on January 5 and met with the contractor who worked at the plant. Sharma discovered that the pipes as currently installed did not match the old specifications. Sharma called the contractor who had installed the piping that needed to be replaced. He concluded that the more expensive piping that had been installed was the right piping for the job even though the old specifications provided for a cheaper pipe. After he returned that day, he emailed Addo explaining what needed to be replaced. Sharma also noted that the drawings he had been given did not match the actual system, since work had been done after the piping was originally installed. Sharma told Addo that he needed to update the drawings, and said again that he estimated that the entire process, including meetings with vendors, design, specifications, review process and the final package would take at least three months. After receiving this email, Addo told Sharma that management wanted the process completed faster, within about a month and a half. Sharma began doing new drawings, and passed what he had done along to a draftsman. A few days later, Addo told Sharma that there was no need to do new drawings, and that he should just get several contractors out to look at the job because management wanted a price on the job quickly.

Between January 5 and February 12, Sharma contacted seven or eight contractors. Some said on the phone that they were not interested in the job. The contractors who agreed to come to the job site agreed that it was a big job. A few of the contractors simply walked away after looking at the project. Others told Sharma that they were interested but that it would take them time to prepare a proposal. One told Sharma that he did not have time to prepare a free estimate. Several asked Sharma if he had drawings for the job, and he told them that the existing drawings were not accurate. On January 25, Addo asked Sharma for an update on the project. Sharma explained that he had brought contractors to the site but that they had not provided estimates. Sharma told him that if he was in such a hurry, there was a contractor already working in the plant who would give a price. Addo told him that this contractor was not qualified to do the work.

On February 1, Addo sent Sharma the following e-mail:

Mr. Sharma:

You failed to comply with my directive per the e-mail of Wednesday, January 31, 2007, that you should provide a plausible reason/explanation why you failed to give me the update on the recommendation that we agreed on as outlined in my e-mail of 1-25-07. I am again directing you to comply with my request by 3:00 pm today, February 1, 2007. The update you have provided does not contain any pertinent information that will allow us to determine if we are making any

progress in meeting the stipulated deadline. Once more, consider the deadline of February 15, 2007 as mandatory and all necessary steps should be taken to meet it.

Sharma replied:

On 1-25-07 you said that money is not your concern just get the estimate by next Tuesday or Wednesday. I told you that I doubt by that time someone will respond. Then you said what about Friday, and I told you I'll try my best. In spite of so many other jobs, meetings and site visits I am trying my best to do the job the way you want it. Weiss today decline [sic] to provide any estimate because of their workload. Another contractor today had the site visit but said it will take a couple of weeks to provide any estimate. The holdup of progress is not the lack of my contacting the vendors, but the vendors setting their own timetables. I am prompt in reporting to you any new developments. This is a normal situation and I am dealing with it in an adequate manner.

Addo replied, on February 2:

Mr. Sharma,

Provide to me, in the form of a chart or table by 11:30 am Friday, February 2, 2007 the following: Names of all the companies vendors you have so far contacted with addresses and telephone numbers and dates of contact. Indicate those that have responded or visited the site and whether quotations or proposals have been received from them. If proposals have not been received but promised, the expected date of delivery. And, finally provide names of those vendors who have declined to participate.

Sharma sent Addo the names and contact information for six contractors he had contacted and their responses. On February 8, Addo sent Sharma another e-mail:

Mr. Sharma,

In your e-mail of 02-02-07, you indicated that you are in touch with vendors, manufacturers and installers concerning the SO2 Piping project. You are hereby directed to provide me with the relevant proposal documents you have collected from these vendors, manufacturer and installers by 10:00 am, Monday, February 12, 2007. They should be properly organized and pertinent so that they can be reviewed by me and others. Notes that this deadline is mandatory; and please refer to my earlier e-mails of 1-31-07 and 02-01-07.

Sharma testified that after he received the above e-mail he called other vendors, but still did not receive any proposals. On February 12, Sharma sent Addo an email stating that so far he had not received any proposed documents from any vendor on the SO2 piping project.

On Wednesday, February 14, the day before a scheduled pre-hearing conference regarding this unfair labor practice charge, Addo sent Sharma the following email:

On Tuesday, February 13, 2007, I inquired if the e-mail below is all the response you would give to my directive of February 8, 2007 asking you to provide me with relevant proposal documents you have collected from vendors, manufacturers and installers. I find this grossly inadequate. You have, thus, not carried out the directive that you were given. You have therefore not adequately performed your duties consistent with expectations from a Senior Associate engineer. This constitutes a poor work performance.

You and I visited the site on Friday, February 9, 2007, and that is when I discovered that the work involved is "Removal and Replacement of the sulfur dioxide piping system" – pipes, valves vaporizers, etc. etc. The piping setup is typical for all the six (6) sulfur dioxide dosing systems and what would be done for one could be repeated for the remaining five. This work would not require design and design drawings will not be required from you either. I told you this when we visited the site and reiterated the same when I met with you on Tuesday, February 13, 2007. I also indicated that I have received from the SCG the existing design drawings and you can use them if you so desire. Based on all the above, you are hereby directed to prepare a package consisting of what will be required for vendors or installers to submit proposals to get the work done. This package should be delivered to me by 10:00 am of Friday, February 23. Again, if you have any further questions, you may contact me.

Sharma replied:

On repeated request, one vendor has told me that he will try to provide me the estimate by this weekend.

On Monday, February 19, Addo wrote:

Effective today, Monday, February 19, 2007, you should discontinue all your activities on the above referenced project.

On February 20, Sharma sent Addo copies of the one estimate he had received from a contractor. Two days later, he provided another estimate and wrote Addo that another contractor had provided an oral estimate. Addo replied that he had been directed to discontinue work on the project, and to stop spending time on it. He told Sharma that if other contractors responded, to direct them to him.

Addo then had Sharma's subordinate and a draftsman come in on overtime over a weekend and prepare the drawings and specifications, and a bid proposal was prepared. On February 23, Sharma sent an email to Mercado stating that the bid proposal was incorrect because it did not reflect the piping currently in place at the facility, and that if this was used to

solicit a bid the deficiencies would have to be corrected after the bidding process was completed. The specifications were corrected before the project began.

## 2. Discussion and Conclusions of Law:

As set out in the section above, the record establishes that between the spring of 2006 and early 2007, Sharma was very actively involved in union activities, that Respondent knew of these activities, and that the DWSD management was angry or annoyed at Sharma because of his union activities. On February 27, 2007, at a time when Charging Party had several unfair labor practice charges pending, Sharma received the first discipline for poor performance that he had ever received in over twenty years as an engineer for the DWSD. Charging Party presented evidence that that between December 20, 2006, when Sharma received the assignment to obtain contractor proposals for the piping project, and February 14, 2007, when he was removed from the assignment, Sharma used his best efforts to obtain the proposals and did all that reasonably could have been required from him to complete his assignment. Respondent presented no testimony to refute this claim. Based on the record as a whole, I conclude that Sharma's alleged poor performance was a pretext, and that the written reprimand issued to him on February 27, 2007 constituted retaliation against him for his continuing union activities.

### IV. Failure to Provide Information:

#### A. Findings of Fact:

On September 6, 2006, Sharma sent Respondent the following request for information, addressed to the Freedom of Information Act (FOIA) section of Respondent's law department:

Under the Freedom of Information Act/PERA, please provide the list of DWSD employees and associated paperwork with justification who attended 2006 Regional Forum – Water and Wastewater Security and Prosperity along with Director Mr. Victor Mercado and Deputy Director Mr. Gary Fujita during regular working hours paid by the City of Detroit on April 27, 2006 held at 1151 Village Road, Dearborn, MI 48124. AME needs the information for grievance and court hearings.

Sharma had previously made a similar request to the FOIA section, citing only FOIA, and had received a list of the employees who attended the conference. On October 12, 2006, he sent the FOIA section another letter:

Received confirmed Attendee List for April 27, 2006 (2 pages). There is no paperwork with justification and approval attached for DWSD employees. I attended and took time off from work. Did any of the listed DWSD employees who attended take time off (C-time, vacation, etc) from work? If so, please provide me the associated paperwork to prove that.

Sharma did not get a reply to that request. Sometime in December 2006, the FOIA section forwarded Sharma's request to Respondent's labor relations office because the FOIA

section does not compile information. According to Respondent, as of the date of the hearing in April 2007, the labor relations office was in the process of compiling the information.

Charging Party also subpoenaed this information for the hearing scheduled for February 15, 2007 on this unfair labor practice charge.<sup>1</sup>

#### B. Discussion and Conclusions of Law:

In order to meet its duty to bargain in good faith with its employees' bargaining representative as required by Section 10 of PERA, an employer must furnish, in a timely manner, relevant information requested by a union for purposes of collective bargaining and contract administration. *City of Detroit*, 18 MPER 78 (2005); *City of Battle Creek, Police Dept.*, 1998 MERC Lab Op 684, 687; *Ecorse Pub Schs.*, 1995 MERC Lab Op 384, 387. However, when seeking information regarding employees outside the bargaining unit, there is no presumption of relevance and the union must affirmatively show the relevance of the requested information to bargaining issues in order to establish the right to such information. *Wayne Co.*, 1997 MERC Lab Op 679; *SMART*, 1993 MERC Lab Op 355; *City of Pontiac*, 1981 MERC Lab Op 57. The standard applied is a liberal discovery-type standard. The employer has a duty to disclose the requested information as long as there exists a reasonable probability that the information will be of use to the union in carrying out its statutory duties. *Wayne Co.*; *SMART*, 1993 MERC Lab Op 355, 357.

The information sought by Charging Party on September 6 consisted of requests made by individuals outside of Charging Party's unit to use paid leave time to attend the April 27, 2006 conference and documents approving these requests. Since the information relates to individuals outside its bargaining unit, Charging Party must affirmatively show the relevance of this information to bargaining or contract administration issues in order to be entitled to it. In his request, Sharma simply stated that Charging Party needed the information for grievance and court hearing. According to Charging Party, the information was relevant to show that Sharma was discriminated against when he was forced to use his leave time to attend the April 27, 2007 meeting. However, according to the record, Sharma requested and was granted permission to use personal leave to attend this conference; there is no indication that Sharma sought or was denied permission to attend on city time. An employer's duty to provide a union with information is not without boundaries. I find that Charging Party failed to establish even a reasonable probability that the information would be of use to it in carrying out its statutory duties. I conclude, therefore, that the allegation that Respondent failed to provide Charging Party with the information it requested on September 6, 2007 in a timely manner should be dismissed.

#### V. Conclusion:

In accord with the findings of fact and conclusions of law above, I find that Respondent unlawfully interfered with the Section 9 rights of Vinod Sharma and Kailash Mahajan and

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<sup>1</sup> Charging Party also requested other information, including time and overtime records for employees in the unit for various periods. However, Charging Party stated at the hearing that its charge that the Respondent refused to provide it with information covered only its request for the April 27, 2007 documents.

discriminated against them because of their union activities in violation of Section 10(1) (c) of PERA when it suspended them on January 19 and January 26, 2007, respectively. I also find that Respondent violated Sections 10(1) (a) and (c) of PERA by issuing a written reprimand to Sharma for poor performance on February 27, 2007. For the reasons discussed above, I conclude that the other allegations of the charge lack merit. I recommend, therefore, that the Commission issue the following order.

RECOMMENDED ORDER

Respondent City of Detroit, its officers, agents and representatives shall:

1. Cease and desist from interfering with the rights of its employees, including Vinod Sharma and Kailash Mahajan, to engage in union or other lawful concerted activities for the purpose of collective bargaining or other mutual aid and protection as protected by Section 9 of PERA, and from discriminating against employees because of their union activities.
2. Take the following affirmative action to effectuate the purposes of the Act:
  - a. Remove the suspension issued to Vinod Sharma on January 19, 2007 from his personnel files and make him whole for all wages lost as a result of the unlawful discipline.
  - b. Remove the suspension issued to Kailash Mahajan on January 26, 2007 from his personnel files and make him whole for all wages lost as a result of the unlawful discipline.
  - c. Remove the written reprimand issued to Vinod Sharma on February 27, 2007 from his personnel files.
  - d. Post the attached notice on Respondent's premises, including all places where notices to employees in the bargaining unit represented by the Association of Municipal Engineers are normally posted, for a period of thirty (30) consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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

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