STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF DETROIT (FIRE DEPARTMENT)
Public Employer-Respondent

MERC Case Nos. 19-G-1452-CE & 19-H-1646-CE

-and-

DETROIT FIRE FIGHTERS
ASSOCIATION, LOCAL 344,
Labor Organization-Charging Party
_____/

APPEARANCES:

Letitia C. Jones, Senior Assistant Corporation Counsel, for Respondent

Legghio & Israel, P.C., by Christopher P. Legghio and Meghan B. Boelstler, for Charging Party

DECISION AND ORDER

On three occasions during the summer of 2019, Respondent City of Detroit (Fire Department) (Fire Department or Employer) denied the request of Detroit Fire Fighters Association Local 344 (DFFA or Union) President Michael Nevin to "ride a firefighting rig" with his squad even though it had allowed other Union officials to do so for more than 30 years. Shortly before his request was denied, Nevin was also required to submit to a disciplinary "*Garrity"* interview as part of an administrative investigation. The Union alleged that the foregoing actions occurred in retaliation against, and to suppress, Nevin's grievance filing and other protected activities. It filed respective charges alleging that the Fire Department had violated Section 10(1)(a) and (c) of the Public Employment Relations Act (PERA), MCL 423.210(1)(a) and (c).

In a Decision and Recommended Order[1] issued on January 5, 2021, Administrative Law Judge David Peltz found that the Employer violated Section 10(1)(c) by refusing to allow Nevin to ride a firefighting rig with his squad in retaliation for his advocacy on behalf of DFFA members, and that the actions taken by the Employer would objectively tend to restrain, interfere or coerce a reasonable employee in the exercise of his or her rights, in violation of Section 10(a)(1). However, the ALJ determined that the Employer did not act unlawfully by requiring Nevin to submit to the *Garrity* interview, and recommended dismissal of that charge.

In its exceptions, the Employer asserts, in part, that there was insufficient evidence to support the ALJ's finding of anti-union animus, and that his credibility determinations were not justified. We disagree. Findings concerning motive and anti-union animus rest significantly on

[1] MOAHR Hearing Docket Nos. 19-015459 & 19-016519

witness credibility. The ALJ having observed the witness testimony and demeanor first hand, and not the Commission, is in the best position to make determinations concerning the credibility of witnesses. We will not overrule those determinations absent clear evidence to the contrary. The Employer has not advanced evidence sufficient to overturn the ALJ's credibility judgments. Accordingly, we reject those exceptions and conclude that the ALJ properly found that the Employer's refusal to allow Nevin to ride a firefighting rig constituted unlawful retaliation for Nevin's union and other protected activities engaged in as DFFA President.

The Employer also takes exception to the ALJ's having drawn an adverse inference against it for not procuring the testimony of a witness. We find no merit in that exception and conclude that the adverse inference drawn by the ALJ was appropriate under the circumstances.

Lastly, the Employer asserts that a portion of the ALJ's recommended remedy, which would allow DFFA representatives to ride the firefighting rigs "upon request", is overly broad, and, on that basis, it takes exception to the ALJ's recommended affirmative order. We find merit to the Employer's exception. Accordingly, we have modified that portion of the ALJ's proposed affirmative order.

Procedural History:

This case involves two unfair labor practice charges. On July 17, 2019, the Union filed an unfair labor practice charge in Case No. 19-G-1452-CE alleging that the Employer violated Sections 10(1)(a) and (c) of PERA by requiring Nevin to submit to a *Garrity* interview as part of an administrative investigation into the unauthorized disclosure of information, in retaliation for his Union activities. On August 8, 2019, the Union filed the charge in Case No. 19-H-1646-CE, alleging that the Employer discriminated against Nevin in violation of Section 10(1)(a) and (c) of PERA by denying his request to "ride-along" on shifts with his assigned squad company. The charges were consolidated and heard on September 26, October 30, and November 26, 2019.

On January 5, 2021, ALJ Peltz issued his Decision and Recommended Order, in which he recommended that the charge in Case No. 19-G-1452-CE be dismissed. With respect to the charge in Case No. 19-H-1646-CE, the ALJ concluded that the Employer violated Section 10(1)(a) and (c) of PERA by prohibiting Union President Nevin from riding a rig with his squad. On February 24, 2021, the Employer filed exceptions to the ALJ's Decision and Recommended Order, and, on March 8, 2021, the Union submitted a brief in support of the ALJ's Decision and Recommended Order.

No exceptions were filed over the ALJ's recommended dismissal of the charge in Case No. 19-G-1452-CE.

Facts:

Unless otherwise noted, we adopt the ALJ's findings of fact and repeat them only to the extent necessary.

I. Background

DFFA Local 344 represents a bargaining unit of approximately 769 fire fighters, emergency medical technicians, and paramedics of the City of Detroit Fire Department, including, but not limited to, Fire Chief, Deputy Fire Chief, Fire Marshall, Senior Battalion Chief and Fire Captain. The Fire Department and DFFA were parties to a collective bargaining agreement covering the period November 6, 2014, through June 30, 2019.

Michael Nevin has been employed by the Fire Department for 33 years and is currently Captain of a tactical rescue squad. He was elected President of the Union in December 2015. For the first two years of Nevin's tenure as President, the Union filed no grievances against the Fire Department. During the period 2017 to 2019 however, the Union filed approximately thirty grievances per year, as well as unfair labor practice charges and claims with the Michigan Occupational Safety and Health Administration (MIOSHA). The grievances involved contract interpretation issues, and challenges to both policy decisions made by the Fire Department and to disciplinary action imposed on unit members. In addition, the DFFA was openly critical of what it perceived to be slow 911 response times and, in November of 2018, posted Fire Department dispatch reports on social media.

The evidence revealed that Chief of Department Fire Operations, Robert Distelrath, and Nevin had a fairly adversarial relationship. At the hearing, Distelrath testified that he considered Nevin to be one of the catalysts behind the DFFA grievances, which he characterized as lacking in merit and frivolous. Distelrath further testified that, although he and Nevin had known each other for a long time, that the Union president had "broken the trust" between them by going to the media and denigrating both the Fire Chief and the Fire Department. Distelrath admitted that he and Nevin had clashed over Union matters and described his relationship with the Union president as "contentious." Distelrath also admitted that, as Fire Chief, he found certain grievances and unfair labor practice charges, including one of the charges filed by the DFFA in the instant case, "annoying", and took criticism of the Fire Department personally.

II. Denial of Nevin's Requests to "Ride the Rigs"

Under the terms of the collective bargaining agreement, members of the DFFA executive board are granted full-time Union release. Article 5, Section D of the agreement provides that the DFFA president, vice-president, secretary and treasurer "shall be permitted time off on a full-time basis with compensation to which their rank otherwise entitles them, including without limitation: salary, pension credits and contributions, seniority, etc." Notwithstanding their full-time release from normal firefighting duties, elected union officers are still expected to maintain the training,

qualifications and proficiencies required of all City of Detroit fire fighters. Based in part on that requirement, Union executive board members periodically work in the field as active fire fighters, a practice referred to as "riding the rigs."

On July 26, 2019, DFFA President Nevin submitted a written request to Chief Distelrath to "ride the rigs" with his assigned company on several dates in August. Distelrath summarily denied the request without explanation and returned Nevin's July 26 letter initialed and stamped: "DENIED -- Jul 30, 2019 -- Chief of Department."

Nevin testified that the Fire Department had always been receptive to union officers' requests to "go out to the field" with proper advance notice and, that until Chief Distelrath denied his request, there had "never been a problem." Distelrath admitted at the hearing that he had previously given Union Vice President Harp permission to ride a rig; that he told Harp that he could do so at any time; and that he believed the practice was a "good thing" for both Harp and the Department. Additionally, there is no dispute that Union Treasurer Verdine Day rode a rig just one day before Distelrath denied Nevin's July 26 request.

After denying Nevin's written request to work in the field, Distelrath ordered senior Department leadership not to allow Nevin to ride a rig at any time. Nevin subsequently engaged in conversations with other City of Detroit officials, including Labor Relations Representative Hakim Berry and Deputy Commissioner Fornell. According to Nevin, Berry asked what Nevin wanted in exchange for curtailing his Union activities. Nevin further testified that Berry asked how they could "clean up the grievances" and "make this stuff go away." Nevin told Berry that one of the things he needed was for the Fire Department to end the retaliation, including the refusal to allow him to ride a rig. Berry responded, "Well, I'll see what I can do, but I don't think I'm going to have much drag on that."

Nevin further testified that Commissioner Fornell "made it real personal." According to Nevin, Fornell told him: "You're not going to ride a rig"; that Nevin was the "guy assigning all these" ULP charges and MIOSHA complaints and giving the Department "a lot of grief"; and that as a result, Nevin was "going to enjoy some grief as well."

On August 3, 2019, Nevin called Distelrath and again requested to work in the field. Distelrath testified that he responded to the request by telling Nevin, "I don't see that happening at this time." On August 8, 2019, the Union filed the charge alleging that the Fire Department had discriminated against Nevin by denying his July 26 request to "ride-along" with his assigned squad. The Union also filed a grievance regarding the Employer's denial of Nevin's request to work in the field.

Shortly after that, Chief Distelrath called DFFA Secretary Tom Gehart to complain about the charge. Nevin was with Gehart at the time and listened to the call on Gehart's speakerphone. According to Nevin, Distelrath started the conversation by asking Gehart how he felt about the Union president's request to ride the rigs. Nevin testified that Distelrath asked Gehart whether he

thought it might impact the upcoming Union election in which Nevin and Gehart were running as opponents, and followed by asking Gehart, "What's the endgame here? What's [Nevin] after and how do you feel about it?"

Distelrath initially testified that he made the call to Gehart in his capacity as a fellow member of the DFFA. However, he later conceded that the DFFA's filing of the ULP charge was also a matter of interest to him as Chief. Distelrath testified that he told Gehart that Nevin's pursuit of the matter was a "frivolous" use of Distelrath's Union dues, and that he asked the DFFA secretary why the Union was wasting money by challenging his decision to deny Nevin's request. According to Distelrath, Gehart responded by stating that he felt it was good for all Union officers to ride the rigs, and asked Distelrath to reconsider his decision. Distelrath told Gehart that he was not opposed to giving the issue further consideration, but that it was no longer solely his decision because the Union had filed an unfair labor practice charge and a grievance. Distelrath stated, "We have Labor Relations involved. We have the Law Department [involved]."

At some point during the conversation, Distelrath also asked Gehart several questions tying Nevin's request to ride a rig to the upcoming Union election. For example, Distelrath asked Gehart whether Nevin's request was related to the election; whether Nevin planned to campaign for reelection while riding with his squad; and, if granting Nevin's request would require the Fire Department to give all the other candidates for Union office the same opportunity to work in the field. Distelrath admitted that he may have also asked whether allowing Nevin to ride a rig would hurt Gehart politically.

On September 6, 2019, Nevin submitted a second written request to Chief Distelrath to ride the rigs with his squad on September 30, 2019, October 6, 2019, and October 14, 2019. Distelrath again denied Nevin's request. Distelrath testified, "I was incredulous that he was asking again and didn't – didn't know the reasoning behind it and I gave him the same answer I gave him the first time." Around this same time, DFFA Vice President Harp also requested to ride a rig with his assigned squad. Distelrath denied that request as well, telling Harp that Union officers would not be allowed to ride until the unfair labor practice was resolved. Harp testified that this was the first time the Fire Department had denied his request for a ride along.

Although Distelrath testified that he based his decision to deny Nevin's request to ride the rigs solely on the language of the contract, nothing in the record indicates that he relied upon or invoked the contract either in responding to Nevin's various requests, or during the call with Gehart when he complained about the Union's filing of unfair labor practice charges.

Discussion and Conclusions of Law:

Section 10(1)(a) of PERA makes it unlawful for a public employer to interfere with, restrain or coerce public employees in the exercise of rights guaranteed to public employees under Section 9 of the Act, including the right to engage in "concerted activities for the purpose of collective negotiation or bargaining or other mutual aid and protection." While anti-union animus

is not required to prove a violation of Section 10(1)(a), there must nevertheless exist sufficient evidence that the employer's actions "objectively interfered with the employee's exercise of protected activity." *Huron Valley Schools*, 26 MPER 16 (2012); *Macomb Academy*, 25 MPER 56 (2012).

Section 10(1)(c) of PERA makes it unlawful for a public employer to "Discriminate in regard to hire, terms, or other conditions of employment to encourage or discourage membership in a labor organization." The elements of a prima facie case of unlawful discrimination under PERA are, in addition to the existence of an adverse employment action: (1) union or other protected activity; (2) employer knowledge of that activity; (3) anti-union animus or hostility toward the employee's protected rights; and (4) suspicious timing or other evidence that the protected activity was a motivating cause of the alleged discriminatory action. *Taylor Sch Dist v. Rhatigan*, 318 Mich App 617, 636 (2016); *Saginaw Valley State Univ*, 30 MPER 6 (2016); *Utica Community Schs*, 28 MPER 11 (2014); *Grandvue Medical Care Facility*, 27 MPER 37 (2013); *City of Detroit*, 24 MPER 11 (2011); *Grand Valley State Univ*, 23 MPER 70 (2011); *Univ of Michigan*, 2001 MERC Lab Op 40, 43; *Grandvue Medical Care Facility*, 1993 MERC Lab Op 686, 696.

Anti-union animus may be proven by indirect evidence, however mere suspicion or surmise will not suffice. 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); *City of Grand Rapids (Fire Dep' t)*, 1998 MERC Lab Op 703, 707. Only after a prima facie case is established does the burden shift to the employer to produce credible evidence of a legal motive and that the same action would have been taken even absent the protected conduct. *MESPA v Evart Pub Sch*, 125 Mich App 71, 74 (1983); *Wright Line, A Division of Wright Line, Inc*, 251 NLRB 1083 (1980). See also *City of St Clair Shores*, 17 MPER 27 (2004); *North Central Cmty Mental Health Services*, 1998 MERC Lab Op 427, 436. The ultimate burden, however, remains with the charging party. *City of Saginaw*, 1997 MERC Lab Op 414, 419; *MESPA v Evart Pub Sch*, 125 Mich App at 74; *Birmingham Public Schools*, 33 MPER 12 (2019).

There is no dispute that Nevin was engaged in protected union and other concerted activity, and that Chief Distelrath and other high level Fire Department officials had knowledge of such activities. There is likewise no dispute that other DFFA officers had been allowed to "ride the rigs" in the past with virtually no objection from the Fire Department. The Fire Department's denials of Nevin's requests followed on the heels of a period of significant grievance filing and other activities engaged in by Nevin on behalf of DFFA members. Distelrath admitted his displeasure concerning Nevin's activities, and his testimony reveals a significant level of hostility toward those activities. Both his actions in denying Nevin's requests, and his statements to Gehart, indicate his intent to interfere with, and prevent Nevin from engaging in activities protected by PERA. The statements of City officials Berry and Fornell are further evidence of restraint and coercion, all of which objectively interfered with Nevin's exercise of protected activity and violated Section 10(1)(a).

Regarding the allegation of discrimination under Section 10(1)(c), the Employer asserts that there was insufficient evidence to support the ALJ's finding of anti-union animus, and disputes some of the ALJ's credibility resolutions, claiming that this case presents merely a "Nevin said/Distelrath said" scenario. As we have recently stated however, "[q]uestions of motive rest significantly on the credibility of witnesses." *Grand Rapids Employees Independent Union,* 33 MPER 41 (2020). In that regard, we have emphasized that "the ALJ is in the best position to observe and evaluate witness demeanor and judge the credibility of specific witnesses."' *Grand Rapids Employees Independent Union*, 34 MPER 26 (2020). In accordance with the rulings of the Michigan courts, we have further stated that "we will not overturn the ALJ's determinations of witness credibility unless presented with clear evidence to the contrary."' *Id*. (quoting *City of Detroit,* 24 MPER 11).

The record evidence is more than sufficient to establish that the Fire Department's decision to deny Union President Nevin's requests to ride a rig was motivated by animus toward his protected activity. Further, in the instances when Nevin's testimony conflicted with that of Distelrath, the ALJ credited the testimony of Nevin over that of Distelrath. Specifically, he stated that he did not find Distelrath a credible witness; that his testimony regarding his rationale for denying Nevin's requests was particularly unconvincing; that he was, at times, evasive in responding to questions, and his general demeanor on the witness stand did not reveal him to be honest and forthright; and, that his testimony was rife with inconsistencies and dubious claims. (ALJ Decision p. 15). Conversely, the ALJ observed that "[a]s a whole, Nevin seemed to testify in an honest and truthful manner regarding the events giving rise to this dispute, including his interactions with Chief Distelrath and others within the Department." (ALJ Decision p. 16).

While the Employer may disagree with the ALJ's determinations of witness credibility, it bears the burden of producing by clear evidence that those conclusions were not supported by the record, and were, therefore, erroneous. Here, the Employer has not presented the Commission with evidence sufficient to disturb the ALJ's credibility determinations. Based on the evidence of animus, suspicious timing, and disparate treatment, and consistent with the ALJ's credibility determinations, we conclude that Nevin's union and other protected activities were a motivating cause for the discriminatory action taken against him. We likewise conclude that the Employer failed to produce credible evidence either of a legal motive, or that the same action would have been taken even absent Nevin's protected conduct. Consequently, we find that there is sufficient evidence to conclude that the Employer violated Section 10(1)(c) when it prohibited DFFA President Nevin from riding a rig with his squad.

The Employer argues, alternatively, that the ALJ's Decision conflicts with the collective bargaining agreement. However, neither Article 5, Section D, nor any other provision of the agreement prohibits the Fire Department from granting a Union officer's request to ride a rig. Article 5, Section D states only that Union officers "shall be permitted" full-time release. And, as noted by the ALJ and borne out by the evidence, "...there was a longstanding and widely acknowledged past practice of Respondent allowing Union officers to work in the field from which

the Fire Department deviated only after Charging Party, under Nevin's leadership, began filing numerous grievances and unfair labor practice charges."

Furthermore, Distelrath never contemporaneously referred to any provision of the parties' agreement as the basis for his denial of Nevin's requests. He also never disputed Harp's testimony regarding his history of riding a rig and, not only admitted that he had given Harp permission to do so, but also that he had told Harp that he could ride a rig anytime, and that he believed the practice was a "good thing" for both Harp and the Department. Distelrath's testimony, coupled with the compelling evidence of a long-standing past practice that existed coincident with the terms of the agreement, and virtually non-existent language in the agreement prohibiting a union officer from "riding a rig", render the Employer's contractual defense utterly unpersuasive.

However, even if the collective bargaining agreement allowed the Fire Department discretion to deny a Union officer's request to ride a rig, the Commission has previously recognized that a decision by an employer may nevertheless violate PERA if the employer's actions are the result of unlawful motivation. See *Southfield Public Schools*, 25 MPER 36 (2011) (actions that may be within the legitimate authority of an employer may be unlawful when those actions are motivated by anti-union animus) and *City of Detroit (Police Department)*, 23 MPER 85 (2010) (even where an employer has broad discretion regarding particular employment related decision-making, that otherwise unfettered discretion cannot be used for discriminatory purposes). Because we have concluded that the Employer's decisions were motivated by anti-union animus, the language of the collective bargaining agreement is of no moment, even if it had privileged the Employer to deny Nevin's requests, which it did not.

The Employer also objects to the ALJ's having drawn an adverse inference against it for failing to procure the testimony of former Deputy Chief Biondo. However, the Commission has long recognized that an adverse inference may be drawn regarding any factual question to which a witness is likely to have knowledge when a party fails to call that witness, if he or she "may reasonably be assumed to be favorably disposed to the party." *County of Ionia*, 13 MPER 31014 (1999); *Northpointe Behavioral Healthcare Systems*, 1997 MERC Lab Op 530.

Here, the Employer elected not to call Biondo to testify. Biondo, having formerly held the position of Deputy Chief, can fairly be characterized as a witness that "may reasonably be assumed to be favorably disposed" toward the Fire Department. Nevin testified about his conversation with Biondo on October 30, 2019. As such, there was more than enough time to allow the Fire Department to summon Biondo to testify before the last day of hearing on November 26, 2019. Although counsel for the Employer asserted that Biondo was unavailable to testify because he was no longer employed by the Fire Department, and was "out of state," there was no showing that the Employer ever attempted to secure Biondo's appearance by subpoena or otherwise, either in advance of the hearing, or any time up to the last day of hearing. Under such circumstances, the ALJ properly drew an adverse inference from Biondo's failure to testify. However, even if the ALJ

had erred, the evidence remains sufficient to find that the Employer violated PERA when it denied Nevin's requests to "ride the rig". *Macomb Academy,* 25 MPER 56 (2012).

In conclusion, we reject the Employer's exceptions to the ALJ's findings on the merits of the charge and agree with the ALJ that the City of Detroit (Fire Department) violated Section 10(1)(c) of PERA by refusing allow Union President Nevin to ride a rig with his squad, because such actions were taken in retaliation for Nevin's protected activities on behalf of the DFFA members. We further find, consistent with the ALJ, that the actions taken by the Employer against Nevin would objectively tend to restrain, interfere or coerce a reasonable employee in the exercise of his or her rights under the Act, in violation of Section 10(1)(a).

With regard to the ALJ's recommended remedial Order, the Employer asserts that the ALJ erred in recommending an Order that would arguably require the Employer to allow members of the DFFA executive board the opportunity to ride a rig with their assigned squads any time they request to do so. The Employer contends that compliance with such an Order could unreasonably interfere with its operations. To the extent that the ALJ's recommended Order could be interpreted to require the Fire Department to grant such requests regardless of a lack of any prior notification and regardless of the frequency and duration of the requested rides, or other legitimate operational considerations, we agree that the proposed remedy is overly broad. Consequently, we will modify that portion of the affirmative remedy to require the Fire Department, "upon reasonable request", to allow members of the DFFA executive board the opportunity to ride a rig with their assigned squads. In doing so, we are not condoning denials of future requests where such denials lack a legitimate, identifiable, and consistent operational basis.

We have considered all other arguments submitted by the Parties and conclude that they would not change the result in this case. After a careful and thorough review of the record, we affirm the ALJ's Decision and Recommended Order as modified herein. Accordingly, we issue the following order.

ORDER

The unfair labor practice charge filed by the Detroit Fire Fighters Association, Local 344 against the City of Detroit (Fire Department) in Case No. 19-G-1452-CE; Docket No. 19-015459-MERC is hereby dismissed in its entirety.

With respect to the charge in Case No. 19-H-1646-CE; Docket No. 19-016519-MERC, the City of Detroit (Fire Department), its officers and agents, are hereby ordered to:

1. Cease and desist from:

    a. Interfering with, restraining, or coercing employees, including but not limited to Michael Nevin, in the exercise of rights guaranteed in Section 9 of the Act, including the right to hold or seek union office

and to pursue grievances and unfair labor practice charges on behalf of members of the DFFA bargaining unit.

b. Discriminating or retaliating against employees, including but not limited to Michael Nevin, regarding terms or other conditions of employment in order to discourage the holding of office in a labor organization or the pursuit of grievances and unfair labor practice charges.

2. Take the following affirmative action to effectuate the purposes of the Act:

a. Upon reasonable request, allow members of the DFFA executive board the opportunity to ride a rig with their assigned squads.

b. Post the attached notice to employees in conspicuous places on Respondent's premises, including all places where notices to employees are customarily posted and post it prominently on any website maintained by the Fire Department for employee access for a period of thirty (30) consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Tinamarie Pappas, Commission Chair

Robert S. LaBrant, Commission Member

William F. Young, Commission Member

Issued: May 11, 2021

NOTICE TO ALL EMPLOYEES

The CITY OF DETROIT (FIRE DEPARTMENT), a public employer under the PUBLIC EMPLOYMENT RELATIONS ACT (PERA), has been found to have committed unfair labor practices in violation of this Act. Pursuant to the terms of the order of the MICHIGAN EMPLOYMENT RELATIONS COMMISSION, we hereby notify our employees that:

WE WILL cease and desist from interfering with, restraining, or coercing employees, including but not limited to Michael Nevin, in the exercise of rights guaranteed in Section 9 of the Act, including the right to hold or seek union office and to pursue grievances and unfair labor practice charges or take other protected concerted actions on behalf of members of the bargaining unit represented by the Detroit Fire Fighters Association (DFFA), Local 344.

WE WILL cease and desist from discriminating or retaliating against employees, including but not limited to Michael Nevin, regarding terms or other conditions of employment in order to discourage the holding of office in a labor organization or the pursuit of grievances and unfair labor practice charges.

WE WILL upon reasonable request, allow members of the DFFA executive board the opportunity to ride a rig with their assigned squads.

WE ACKNOWLEDGE THAT all of our employees are free to engage in lawful activity for the purpose of collective bargaining or other mutual aid and protection as provided in Section 9 of PERA.

CITY OF DETROIT (FIRE DEPARTMENT)

By: _____

Title: _____

Date: _____

This notice must be posted for a period of 30 consecutive days and must not be altered, defaced or covered by any material. Any questions concerning this notice or compliance with its provisions may be directed to the office of the Michigan Employment Relations Commission, Cadillac Place Building, 3026 W. Grand Blvd, Suite 2-750, P.O. Box 02988, Detroit, MI 48202-2988. Telephone: (313) 456-3510.

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

In the Matter of:

CITY OF DETROIT (FIRE DEPARTMENT), Respondent-Public Employer,	Case No. 19-G-1452-CE; Docket No. 19-015459-MERC
-and-	
DETROIT FIRE FIGHTERS ASSOCIATION, LOCAL 344, Charging Party-Labor Organization.	Case No. 19-H-1646-CE; Docket No. 19-016519-MERC

_____/

APPEARANCES:

Letitia C. Jones, Senior Assistant Corporation Counsel, for the Respondent

Legghio & Israel, P.C., by Christopher P. Legghio and Meghan B. Boelstler, for Charging Party

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE

These consolidated cases arise from unfair labor practice charges filed by the Detroit Fire Fighters Association (DFFA) Local 344 against the City of Detroit (Fire Department). 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 cases were heard in Detroit, Michigan by David M. Peltz, Administrative Law Judge (ALJ) for the Michigan Office of Administrative Hearings and Rules (MOAHR), acting on behalf of the Michigan Employment Relations Commission (the Commission). Based upon the entire record, including the transcript of the hearing, exhibits and post-hearing briefs, I make the following findings of fact, conclusion of law and recommended order.

The Unfair Labor Practice Charges and Procedural Background:

This matter has a somewhat tortured procedural history. On July 17, 2019, the Union filed an unfair labor practice charge in Case No. 19-G-1452-CE; Docket No. 19-015459-MERC alleging that Respondent violated Sections 10(1)(a) and (c) of PERA by threatening to discipline DFFA President Michael Nevin in retaliation for his Union activities. The charge, hereafter referred to as *DFFA No. 1*, was scheduled for hearing in Detroit, Michigan on August 27, 2019.

On August 8, 2019, the Union filed another charge against the City, this time asserting that Respondent discriminated against Nevin in violation of Section 10(1)(a) and (c) of PERA by denying his request to "ride-along" on shifts with his assigned squad company. This charge, *DFFA 2*, was assigned Case No. 19-H-1646-CE; Docket No. 19-016519-MERC. Although there is a space on the Commission's official charge form which requires the filing party to list all related MERC cases, the DFFA did not reference the charge in *DFFA 1*, nor did the Union move to consolidate these matters. A hearing in *DFFA 2* was scheduled for September 26, 2020.

On August 22, 2019, five days before the scheduled hearing in *DFFA 1*, the City filed a motion for more definite statement in connection with that charge. A prehearing conference was held by telephone on August 23, 2019, during which counsel for Charging Party set forth the Union's theory of the case in detail. Specifically, the Union asserted that Respondent violated PERA by subjecting Nevin to a disciplinary interview after the contractual timeline for imposing discipline had expired. At the conclusion of the conference, there was no longer any claim by the City's counsel that Respondent did not understand the nature of the allegations and, therefore, no order for more definite statement was issued. However, the parties agreed to adjourn the hearing in *DFFA 1* and reschedule the matter for September 26, 2019, the same date as the hearing in *DFFA 2*. At the City's insistence, it was agreed that separate records would be made in these cases.

On August 30, 2019, Respondent filed a motion for more definite statement in *DFFA 2*. The motion was inadvertently placed in the *DFFA 1* case file and the Union never filed any response to the new motion. For those reasons, I did not become aware of the existence of the motion until September 18, 2019, when counsel for the City notified my office that it was still waiting for clarification of the allegations in *DFFA 2*. After several unsuccessful attempts to arrange a prehearing conference, I informed the parties that the motion for more definite statement would be discussed on the record at the start of the hearing on September 26, 2019.

On September 25, 2019, the Union filed a more definite statement of the charge in *DFFA 2* in the form of a proposed amended charge. The proposed amended charge alleged that the City's denial of Nevin's request to ride-along with his squad was contrary to past practice.

The parties appeared for hearing as scheduled on September 26, 2019. At the start of the hearing, Respondent moved for dismissal of the charge in *DFFA 2* on the ground that the allegations in that matter had not been pled with specificity in advance of the hearing to allow the City the opportunity to prepare a defense. In response, counsel for the Union proposed that the hearing proceed in *DFFA 1* and that the hearing in *DFFA 2* be adjourned to give the City time to review the newly filed amended charge. The City opposed that proposal. I decided to move forward on both cases, but indicated that I would hold the record open for a brief period of time so that the City could present additional evidence, if necessary, in *DFFA 2*.

Shortly after the commencement of opening statements in *DFFA 1*, an issue arose regarding whether the Union would be permitted to introduce evidence relating to the charge in *DFFA 2* to show proof of anti-union animus in *DFFA 1*. Counsel for the City was adamant

that the matters remain separate and indicated that Respondent was not prepared to go forward if the cases were to be heard together. After careful consideration of the arguments of the parties, I determined that consolidation of the cases would best promote the just, economical and expeditious determination of the issues presented and, therefore, ordered that the cases would be heard and decided together pursuant to my authority under Rule 164, R 423.164, of the General Rules and Regulations of the Employment Relations Commission. As a result of that decision, the hearing was adjourned and rescheduled for a later date. The hearing ultimately recommenced on October 30, 2019, and was completed on November 26, 2019. Post hearing briefs were filed by the parties on or before March 30, 2020.

Findings of Fact:

I. Background

Charging Party represents a bargaining unit consisting of approximately 769 fire fighters, EMTs, paramedics and other non-civilian employees of the City of Detroit Fire Department, including, but not limited to, Fire Chief, Deputy Fire Chief, Fire Marshall, Senior Battalion Chief and Fire Captain. The bargaining unit also includes several civilian positions such as Fire Dispatcher and Fire Boat Mechanic. The City and the Union are parties to a collective bargaining agreement covering the period November 6, 2014, through June 30, 2019. The contract contains a Management Rights provision, Article 3, Section B, which gives Respondent the authority to manage the operations of the Fire Department, including the authority to determine the content and nature of the work to be performed and to establish, regulate, determine, revise or modify, at any time, the policies, practices, protocols, processes, techniques, methods, means and procedures used in the Department. The agreement also contains a grievance procedure, Articles 8 and 9, culminating in final and binding arbitration.

Michael Nevin has worked for Respondent as a fire fighter for 33 years and is currently captain of a tactical rescue squad. In December of 2015, Cpt. Nevin was elected to a three-year term as President of the DFFA. For the first two years of Nevin's presidency, no grievances were filed by the Union. In 2016, Robert Distelrath became Fire Chief. During the period from 2017 to 2019, the DFFA filed approximately thirty or more grievances per year, as well as an unspecified number of unfair labor practice charges and claims with the Michigan Occupational Safety and Health Administration (MIOSHA). The grievances involved contract interpretation issues, challenges to policy decisions by the department and matters pertaining to the discipline of unit members. In addition, the DFFA was openly critical of slow 911 response times and, in November of 2018, posted Fire Department dispatch reports on social media. The publication of those reports led to a criminal investigation of Nevin, as explained in more detail below.

At the hearing in this matter, Chief Distelrath testified that he views Cpt. Nevin as one of the catalysts behind the DFFA grievances, matters which Distelrath believes lack merit and are frivolous. Distelrath explained that he and Nevin have had a long association, but that the Union president had "broken the trust" between them by going to the media and denigrating both the Fire Chief and the Fire Department. The Chief admitted that he and Nevin have clashed over Union matters and he described his relationship with the Union president as "contentious." Distelrath testified that he reached out to Nevin and complained

about the "mistreatment" he had received at the Union president's hands. Distelrath conceded that as Fire Chief, he finds the grievances and unfair labor practice charges, including one of the charges filed by the DFFA in the instant case, "annoying" and that he takes criticism of the Fire Department personally.

II. "Riding the Rigs"

Under the terms of the collective bargaining agreement, members of the Union executive board are granted full-time Union release. Article 5, Section D of the contract provides that the DFFA president, vice-president, secretary and treasurer "shall be permitted time off on a full time [sic] basis with compensation to which their rank otherwise entitles them, including without limitation: salary, pension credits and contributions, seniority, etc." Nevertheless, elected union officers are expected to maintain the training, qualifications and proficiencies required of all City of Detroit fire fighters. Based at least in part on that requirement, Union executive board members periodically work in the field at fires and accident scenes with their assigned squads, a practice referred to by the parties as "riding the rigs" or "ride-alongs."

There was considerable testimony elicited at hearing concerning the benefits of riding the rigs for fire fighters, the department and the Union. Cpt. Nevin testified that riding the rigs enables DFFA officers to maintain their professional proficiencies and assists them in representing bargaining unit members, an experience that would otherwise not be available to them while on paid release time. Nevin explained:

> [It] is very important for me to be in the field and to feel that hot water pouring down my neck and feel the heat of those buildings and to live and breathe with my members and operate with the same equipment and to see how that equipment works . . . .
>
> So that's why they made me President of the Union because of my sense of what – what they really need and unless you're out there actually on the assembly line with the workers, it's pretty hard to represent them and I've always been in the field. Always.
>
> * * *
>
> We've got new gear. We've got new tanks. All these things that I helped bring on working in collaboration with the City and I like to put the stuff on and wear it myself so I can speak, just like I can today to you when you're – when I'm asked a question about a safety matter of an injury. I can speak with fact – matter of fact material, like, I can tell you exactly how the equipment responds, how the men and women feel.

Similarly, DFFA vice president William Harp, a lieutenant assigned to Engine 56 who has worked for the City of Detroit Fire Department since 1989, testified that although DFFA executive board members are assigned to do Union work on a full-time basis, they are first and foremost fire fighters. Lt. Harp testified that periodically riding the rigs allows

Union officers to keep abreast of changes in personnel, building occupancies, tools and apparatus, such as airbags, chainsaws and the "Jaws of Life."

Cpt. Nevin testified that DFFA officers have historically worked in the field without Respondent raising any concern or objection. In fact, Nevin testified that the City has always been receptive to the practice and that he cannot recall any instance during his 33 years as a City of Detroit fire fighter in which Respondent denied a Union officer's request to ride with his or her company. According to Nevin, DFFA officers would often "jump on a rig" when there were downed wires or when the department was short on staffing. Nevin testified credibly and without contradiction that he worked in the field approximately eight to ten times since 2015, typically with the permission of Deputy Chief Biondo. Nevin testified that the entire Union executive board rode together with Biando's approval during "Devil's Night" in 2016 and 2017, and that each board member rode a rig separately for that same event in 2018. In support of this contention, Charging Party introduced an excerpt from a newsletter published by the International Association of Fire Fighters (IAFF) which contained a photo of members of the DFFA executive board working in the field on Devil's Night in 2016.

Nevins also rode with his assigned squad when he was a member of the DFFA executive board in the 1990s during the tenure of Fire Chief Ray George. According to Nevin, Chief George encouraged the practice and shamed Union officers who were not riding rigs. Nevin also regularly rode a rig when Dan McNamara was Fire Chief. In fact, Nevin testified that he worked in the field so often during that period that he drew complaints from the DFFA president who wanted him to spend more time on Union activities.

Lt. Harp also described a long history of riding a rig with his company. Harp testified credibly that from the date he was elected in December of 2015 through the summer of 2019, he worked in the field between eight and twelve times. Harp testified that he requested permission each time by notifying his battalion chief and sending a text message to the Fire Chief, and that three or four of those requests were made during Distelrath's tenure as Chief. In fact, Harp recalled that sometime in 2017 or 2018, Distelrath told him to ride a rig whenever he wanted to as long he provided the Chief with advanced notice of his intention to do so. Harp rode rigs for special events, such as Devil's Night, when there was heavy call volume and during a windstorm, as well as on ordinary workdays. He also worked in the field approximately two months prior to the hearing in this matter when there was a five-alarm fire on Mack Avenue with approximately 60 people missing. Harp did not get Distelrath's permission to respond to the fire, but the Chief observed him at the scene. Harp also rode rigs when he was a Union officer in 2000.

Chief Distelrath was initially called to testify in this matter by the Union as part of its case-in-chief. In response to questioning from counsel for Charging Party, Distelrath described a conversation he had with former DFFA president Dan McNamara 20 to 25 years ago. Distelrath testified that he asked McNamara why Union officers do not work in the firehouse. According to Distelrath, McNamara explained that the focus of the executive board members should be on Union business and that performing fire suppression work would distract from that purpose. Distelrath testified that he argued with McNamara in favor of allowing union officials to perform firefighting work, at least occasionally, but that McNamara would not allow it.

Chief Distelrath asserted that the Fire Department has never had to utilize DFFA officers for ride-alongs because of staffing issues. When he was initially called as a witness by Charging Party, Distelrath described only two occasions in which Union officers have ridden a rig and performed fire suppression work since he was appointed Fire Chief in 2016. According to Distelrath, several Union officers, including Cpt. Nevin and Lt. Harp, worked in the field for Devil's Night in 2017. Distelrath asserted that the executive board members were given permission to do so by Deputy Fire Commissioner David Fornell, a civilian employee who is above Distelrath on the Fire Department's chain of command. Distelrath testified that he was aware that Fornell had approved the ride-alongs and that he could have prevented the Union officers from working in the field by talking to Fornell, but that he chose not to do so. In response to a question from counsel for the Union, Distelrath conceded that his inaction constituted tacit approval of Fornell's decision. Distelrath testified that he was unaware of any other instance in which Nevin had worked in the field as a fire fighter. Distelrath further testified that the Fire Department denied multiple requests from Deputy Chief Shinske to ride rigs during his six years as a Union officer. Shinske was not called to testify in this matter.

The other ride-along referenced by Chief Distelrath during his initial testimony in this matter involved DFFA Treasurer Verdine Day. According to Distelrath, Day rode on a Fire Department rig on July 29, 2019, with the approval of her Battalion Chief. Distelrath testified that the ride-along was allowed by Respondent because Day was nearing retirement and she wanted an opportunity to work in the field with her nephew. Distelrath contends that he was not aware that Day had engaged in a ride-along at the time it occurred and that he only learned of it after the events giving rise to this dispute. Distelrath conceded that he did not address the incident with the Battalion Chief who had approved the ride-along, but that he would have initiated such a discussion if he had a problem with that decision.

After Lt. Harp testified and relayed his experiences working in the field, Chief Distelrath was recalled and testified as a witness for Respondent. At that time, Distelrath acknowledged that he gave Harp permission to work in the field during a windstorm on March 8, 2017. According to Distelrath, Harp told the Fire Chief that he was going to jump on a rig that evening and Distelrath responded by instructing Harp to inform the Battalion Chief. Distelrath testified that he approved Harp's request because it was a busy day and because he felt it would be good for both Harp and the Fire Department and that he did not give the matter much thought. Distelrath also recalled that he told Harp that he could work in the field anytime as long as he provided Respondent with notice in advance. However, Distelrath could not remember whether Harp ever availed himself of that option on any other occasion.

III. Denial of Nevin's Requests to Ride the Rigs

Prior to the events giving rise to this dispute, Deputy Chief Biondo told Cpt. Nevin that he could ride a rig whenever he wanted to do so. At the time he made this statement, Biondo was acting chief in Chief Distelrath's absence. Nevin testified that despite Biondo's broad grant of approval, he would never seek to work in the field without first seeking the permission of his Battalion Chief.

In or around July of 2019, Cpt. Nevin told Deputy Chief Biondo and another unnamed senior chief that he planned to work in the field with his squad. "I said, 'I'm going to go out and ride,'" Nevin recalled. Nevin testified credibly that Biondo warned him to wait and talk to Chief Distelrath first. When Nevin asked why, Biondo responded, "I don't think he's very happy with you right now and I don't want to get in trouble." Biondo instructed Nevin to write Distelrath a letter requesting permission to work in the field. Notably, Respondent failed to call Biondo to testify as a witness in this matter.[1]

Cpt. Nevin followed Biondo's advice. On July 26, 2019, he wrote to Chief Distelrath and requested permission to work fire-fighting shifts with his assigned company on August 5, 2019, August 12, 2019, and August 26, 2019. Four days later, Distelrath denied Nevin's request in writing without any explanation or rationale provided. The letter was simply stamped "DENIED Jul 30, 2019 Chief of Department" along with Distelrath's handwritten initials. Nevin testified that he was shocked when he received the denial and that he believed Distelrath had gotten "the effect he was looking for."

After denying Cpt. Nevin's written request to work in the field, Chief Distelrath ordered Senior Chief Freeman not to allow Nevin to ride a rig at any time. At hearing, Distelrath testified that he issued this directive after learning that there had been other instances in which DFFA executive board members had ridden rigs and that he did not want it to occur again without his knowledge. However, Distelrath conceded that the order was specific to Nevin. When asked by counsel for the Union why he did not make the directive broader to apply to all Union officers, Distelrath testified, "That is obviously an oversight on my part and I appreciate you pointing it out to me." Nevin subsequently learned of the existence of the order from one of the senior chiefs.

Around this time, Cpt. Nevin had conversations with various officials during which his request to ride a rig was mentioned. Nevin testified that during once such conversation, Hakim Berry, a member of the City administration, asked the DFFA president what Nevin

[1] Nevin testified regarding his conversation with Deputy Chief Biondo on October 30, 2019, the first full day of hearing in this matter. At that time, counsel for the City asserted that Biondo was unavailable to testify because he is no longer employed by Respondent and due to the fact that he was "out of state." However, there was no showing by Respondent that the City ever attempted to procure Biondo's appearance, either in advance of the hearing or prior to the next day of hearing on November 26, 2019. Under such circumstances, I draw an adverse inference from Biondo's failure to testify.

wanted in exchange for curtailing his Union activities.[2] According to Nevin, Berry inquired as to how they could "clean up the grievances" and "make this stuff go away." Nevin told Berry that one of the things he needed was for Respondent to end the retaliation, including the Fire Department's refusal to allow him to ride a rig. Berry responded, "Well, I'll see what I can do, but I don't think I'm going to have much drag on that."

Cpt. Nevin also testified regarding a conversation he had with Deputy Commissioner Fornell during which Fornell made it clear to Nevin that Respondent would not allow him to work in the field. According to Nevin, Fornell specifically stated, "You're not going to ride a rig." Nevin then described the discussion which followed:

> Q (counsel for Charging Party): What – what did you say to ---
>
> A (Nevin): I said, "why don't you step up? And you know this is wrong." He's – and how can you ask me not to do my job as a Union guy?
>
> Q: And – did you – did he respond with regard to you riding the rigs?
>
> A: Yeah.
>
> Q: What did –
>
> A: Yes.
>
> Q: -- did he say?
>
> A: He said "Well, that's a decision you made in your representation of your members and we have to do what we have to do." And he made it real personal.
>
> Q: Meaning?
>
> A: Well, you're the President of the Union. You're the guy assigning all of these ULP's and MIOSHA forms and you're giving us a lot of grief, so you're going to enjoy some grief as well.

As was the case with Biondo, Respondent failed to call either Berry or Fornell to testify in this matter.

At some point during the summer of 2019, Cpt. Nevin called Chief Distelrath and verbally renewed his request to work in the field. Distelrath testified that he responded to the request by telling Nevin, "I don't see that happening at this time." According to Distelrath, there was no further substantive discussion of the issue because there was a bad connection and that Nevin ultimately hung up on him. Nevin recalled the conversation slightly differently. According to Nevin, Distelrath told him that he had denied the request for "personal" reasons, but that he was still considering the issue of ride-alongs for Union

[2] Nevin identified Berry as Respondent's CEO, while Berry is listed as an employee of the City's labor relations department in several exhibits.

officials and that he would get back to Nevin at some point in the future. Nevin denied that he hung up on the Chief.

On August 8, 2019, the Union filed its charge in Case No. 19-H-1646-CE; Docket No. 19-016519-MERC alleging that the City discriminated against Nevin by denying his request to "ride-along" with his assigned squad. Charging Party also filed a grievance regarding the denial of Nevin's request to work in the field. Thereafter, Chief Distelrath called DFFA Secretary Tom Gehart to complain about the Union's filings. Nevin was with Gehart at the time and listened to the call on speakerphone. According to Nevin, Distelrath started the conversation by asking Gehart how he felt about the Union president's request to ride the rigs. Nevin testified that Distelrath queried Gehart as to whether he thought it might impact the upcoming Union election in which Nevin and Gehart were running against each other. Nevin testified that Distelrath asked Gehart, "What's the endgame here? What's [Nevin] after and how do you feel about it?"[3]

Chief Distelrath initially testified that he made the call to Gehart not in his capacity as Fire Chief, but as a fellow member of the DFFA. However, he later conceded that Charging Party's filing of the ULP charge was a matter of interest to him as Chief as well. Distelrath testified that he told Gehart that Charging Party's pursuit of the matter was a "frivolous" use of his Union dues and that he asked the DFFA secretary why the Union was wasting money by challenging his decision to deny Nevin's request. According to Distelrath, Gehart responded by indicating that he felt it was good for all Union officers to ride the rigs and that he asked the Chief to reconsider his decision. Distelrath told Gehart that he was not opposed to giving the issue further consideration, but that it was no longer solely his decision due to the Union having filed a ULP charge and grievance. Distelrath stated, "We have Labor Relations involved. We have the Law Department [involved]."

At some point during the conversation, Chief Distelrath asked Gehart several questions tying Cpt. Nevin's request to ride a rig to the upcoming Union election. Distelrath asked Gehart whether Nevin's request was related to the election, whether Nevin planned to campaign for reelection while riding with his squad and if granting Nevin's request would require the Fire Department to give all the other candidates for Union office the same opportunity to work in the field. Distelrath admitted that he may have also asked whether allowing Nevin to ride a rig would hurt Gehart politically. As the telephone conversation continued, Distelrath became uneasy because Gehart was steering the discussion in a direction he had not intended and because he could hear Nevin in the background.

On September 6, 2019, Cpt. Nevin submitted to Chief Distelrath a second written request to ride the rigs. This time, Nevin sought to work in the field with his squad on September 30, 2019, October 6, 2019, and October 14, 2019. Once again, Distelrath denied Nevin's request. Distelrath testified, "I was incredulous that he was asking again and didn't

[3] Counsel for Respondent objected to Nevin's testimony concerning Chief Distelrath's statements to Gehart based on hearsay. The statements were clearly admissible, as Distelrath had already testified in this matter and was subject to examination by the City's attorney. Moreover, the statements were made by the Fire Chief and, therefore, constituted an admission by a party opponent. In contrast, the statements attributed to Gehart, who did not testify, are indeed hearsay and are not being considered in this decision for the truth of the matters allegedly asserted by him during the conversation.

– didn't know the reasoning behind it and I gave him the same answer I gave him the first time." Around this same time, Lt. Harp also requested to ride a rig with his assigned squad. Distelrath denied that request as well, telling Harp that Union officers would not be allowed to ride until this unfair labor practice was resolved. Harp testified that this was the first time he had ever received such resistance from the Fire Department.

At hearing, Chief Distelrath asserted that his sole reason for prohibiting Cpt. Nevin from riding with his squad was Article 5(D) of the agreement which, as noted, provides that members of the DFFA executive board "shall be permitted time off on a full time basis with compensation."[4] Nevertheless, Distelrath testified that even after Nevin submitted his second request, he continued to reassess the issue and the Chief admitted at hearing that his position on the matter might ultimately change. Distelrath explained, "[T]hat doesn't mean that in the future there might not be an adjustment or a permanent policy put into place, a procedure. . . . [T]here's no process in place to allow it and there – there should be – if – if it's going to be allowed, there should be a formal process in place."

In an apparent attempt to distinguish Nevin's situation from the other instances in which Union officers have ridden a rig, Distelrath testified that he subjected Nevin's request to a higher level of scrutiny because it was made in writing, a method which he described as "extraordinary." According to Distelrath, Nevin typically communicated with him by having the Union secretary send him an email, whereas this request came directly from the DFFA president himself. Distelrath testified, "[W]hen [Nevin] submitted a written request, it was outside anything that I had experienced before. It immediately made me suspicious and made me consider the process. His written request made the matter ripe for review." When asked why he treated Lt. Harp's earlier request differently, Distelrath again referenced the form in which Nevin had submitted his request and the fact that Nevin's request covered multiple dates. According to Distelrath, "Usually, the Union officer just comes in the evening and rides the rig for the night." As will be discussed in more detail below, I did not find Distelrath a credible witness and further conclude that his testimony regarding his rationale for denying Nevin's requests was particularly unconvincing.

IV. Investigation of Nevin

In late November of 2018, Cpt. Nevin purportedly disclosed computer-aided dispatch (CAD) reports from the Fire Department to support the Union's claims of slow 911 response times by emergency personnel. The information, which was posted on Facebook, allegedly contained personally identifying information pertaining to two witnesses to a fatal shooting. Chief Distelrath learned of the posting in a meeting with the Fire Commissioner, Deputy Chief Puricelli and Chief of Communications Wyatt. During that meeting, Distelrath was informed that the matter had been referred to the Internal Affairs (IA) division of the City of Detroit Police Department.

[4] At various points during his testimony, Chief Distelrath referenced other reasons which might justify a prohibition on DFFA officers riding a rig. For example, Distelrath testified that if members of the Union executive board were allowed to work in the field, it might require the City to pay them overtime under the Fair Labor Standards Act (FLSA). However, there was no claim that any of these other factors played a role in Distelrath's decision-making at the time he denied Nevin's requests.

On December 3, 2018, Police Lt. Jeffrey Han assigned the IA investigation of Cpt. Nevin to Sgt. Deanna Wilson. Sgt. Wilson received the preliminary investigation materials, including the incident report and other documents relating to the disclosure of the CAD sheets. She then met with Chief Distelrath in an attempt to obtain copies of the fire department's employee manual and social media policy. Distelrath advised Wilson that the employee manual was in the process of being revised and that the Fire Department did not have its own social media policy but instead utilized the policy applicable to City employees generally. The only document which Wilson received from Distelrath during the meeting was a disciplinary matrix which Wilson described as "not helpful." Wilson testified that she had no further interaction with Distelrath during her investigation.

On December 17, 2018, Sgt. Wilson submitted a warrant regarding Cpt. Nevin to Wayne County Prosecutor Kim Worthy. The prosecutor's office returned the warrant to Wilson two days later, indicating that additional information was required. Accordingly, Wilson's investigation continued. As part of that investigation, Wilson asked Nevin to submit to a *Miranda* interview which he declined.[5] On March 21, 2019, Wilson went off work on medical leave. Prior to taking time off, she resubmitted the warrant request to the prosecutor's office. Nevin's case was not reassigned to another IA investigator in her absence. On April 22, 2019, while Wilson was off work, the prosecutor's office once again denied the warrant request. That decision effectively ended the criminal investigation of Nevin for the disclosure of unauthorized information.

Sgt. Wilson testified that at the conclusion of every criminal case involving an employee of the City of Detroit, she is required to complete an administrative investigation, regardless of the ultimate disposition of the criminal matter. As part of the administrative investigation, Wilson is mandated to conduct a *Garrity* interview with the subject of the investigation to determine whether there are any departmental misconduct issues.[6] Wilson testified that she has conducted *Garrity* interviews under such circumstances "every single time without fail" with the sole exception being situations in which the employee in question has resigned his or her position with the City. Under such circumstances, an entry is placed in the administrative report alerting the IA division to proceed with the *Garrity* interview if the employee ever seeks to have his or her employment reinstated. Wilson testified that if an employee fails to appear for a scheduled *Garrity* interview, she would note that fact in her investigative report.

Sgt. Wilson returned from medical leave on June 5, 2019. On June 11, 2019, she notified Cpt. Nevin by letter that he was required to appear for a *Garrity* interview with the IA division of the Police Department on June 24, 2019. The interview was subsequently rescheduled at Nevin's request for June 26, 2019. On that date, Nevin attended the interview and answered the questions asked of him.

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[5] *Miranda v Arizona*, 384 US 436 (1966).

[6] *Garrity* provides that when an employee is compelled under threat of discipline to answer questions during an investigatory interview, any statements obtained from that employee may not be used against them in a subsequent criminal action. *Garrity v New Jersey*, 385 US 493; 87 S Ct 616; 17 L Ed 2d 562 (1967).

On August 6, 2019, Sgt. Wilson issued an investigatory report dated August 6, 2019, in which she recommended that the allegations of unauthorized disclosure of information involving Nevin be sustained. Wilson then submitted that report to her commanding officers for final decision. Wilson testified that she was never told what to put into her report and that other than briefing her supervisors within the IA division on the status of the investigation, she did not discuss her conclusions with anyone, including officials from the Fire Department. Ultimately, no discipline was imposed on Nevin by Respondent. However, Nevin did not learn of that fact until the second day of the hearing in this matter. Nevin testified that even after the prosecutor dismissed the warrant, he was told by Deputy Commissioner Sydney Puricelli that the Fire Department was still looking at a possible violation. According to Nevin, Puricelli indicated that the Fire Department was not done with the matter and that "they were going to dig."

V. Timing of *Garrity* Interview

Article 10 of the parties' contract sets forth the disciplinary procedure for members of Charging Party's bargaining unit. Section C, "Investigation/Discipline" provides:

> Investigations regarding any potential or alleged misconduct, actions, or omissions that may result in discipline will be completed as expeditiously as practicable. If it determines that disciplinary action is warranted, the Department will provide the Employee with written notice of potential disciplinary action (with a copy to the Association) as soon as practicable after the completion of the investigation but in no event more than forty-five (45) days after the Department knew or should have known about the act that forms the basis for the disciplinary action. Except as provided in Section H, no discipline will be implemented or incorporated into an Employee's file until the completion of the applicable procedures set forth below.
>
> In the event an agency/entity outside the Department is responsible for conducting the investigation and providing its findings and recommendation(s) to the Department (e.g., Human Rights, Detroit Police Department, Inspector General, etc.) the Department has forty-five (45) days to notify the member of the potential discipline and referral to outside agency/entity. In those instances, the Department will have six (6) months to prefer [sic] charges against the identified member.

In a letter dated January 11, 2019, Chief Distelrath provided formal notice to Cpt. Nevin that due to the ongoing criminal investigation by IA, Respondent was extending the timeframe for the notification of potential discipline to six months from November 30, 2018, the date upon which the Fire Department became aware of the unauthorized disclosure of information. Distelrath testified that other than the sending of this letter to Nevin and his initial meeting with Sgt. Wilson, he had no other involvement in the investigation. However, Distelrath was copied on a grievance filed by Charging Party on June 25, 2019, regarding the *Garrity* interview and testified that he probably had a discussion with Deputy Chief

Puricelli regarding the Fire Department's response to that grievance.[7] Distelrath further testified that the investigation may have been a topic of discussion at labor relations meetings which he regularly attended.

As noted, the *Garrity* interview of Cpt. Nevin occurred on June 26, 2019, almost one month after the date by which Respondent would have been required to notify Nevin of potential disciplinary action. It was the duty of Chief Distelrath to keep track of the May 30, 2019, deadline. However, Distelrath did not mark that date in his calendar or take any action after that deadline came and went. Distelrath testified that no further action was necessary on his part because the Fire Department had decided not to issue any discipline to Nevin in connection with the allegations of unauthorized disclosure of information. Distelrath asserted that he did not discover that Nevin had been subject to a *Garrity* interview until he learned of that fact while preparing for hearing in this matter. However, he later admitted to having been copied on the Union's grievance over the scheduling of the *Garrity* interview.

Sgt. Wilson testified that she was completely unaware of the contractual deadline for imposing discipline on fire fighters and that she did not learn of that restriction until the date of the *Garrity* interview with Cpt. Nevin. However, she testified that even if she had known of that provision earlier, that fact would not have altered the course of her investigation.

Discussion and Conclusions of Law:

Charging Party contends that the City of Detroit violated Sections 10(1)(a) and (c) of PERA in connection with its treatment of DFFA President Michael Nevin. Specifically, Charging Party asserts that Chief Distelrath took the unprecedented step of denying Cpt. Nevin's requests to ride with his assigned squad in retaliation for, and to suppress, his Union activities. Charging Party further contends that the *Garrity* interview of Nevin was retaliatory and that the Fire Department unlawfully failed to take action to prevent that untimely interview from taking place.

Section 10(1)(a) of PERA makes it unlawful for a public employer to interfere with, restrain or coerce public employees in the exercise of rights guaranteed to public employees under Section 9 of the Act, including the right to engage in "concerted activities for the purpose of collective negotiation or bargaining or other mutual aid and protection." 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. *Huron Valley Sch*, 26 MPER 16 (2012); *Macomb Academy*, 25 MPER 56 (2012).

Section 10(1)(c) of the Act prohibits a public employer from discriminating against employees in order to encourage or discourage membership in a labor organization. Analysis of whether an employer's action against employees violates Section 10(1)(c) of the Act is governed by the test first enunciated by the National Labor Relations Board (NLRB) in *Wright Line, A Division of Wright Line, Inc*, 251 NLRB 1083 (1980), enf'd 662 F2d 899

[7] The grievance was denied by Executive Fire Commissioner Eric Jones on June 28, 2019, two days after the *Garrity* interview took place, on the ground that the Fire Department "does not control law enforcement proceedings of the Detroit Police Department."

(CA 1, 1981) and approved by the United States Supreme Court in *NLRB v Transportation Management Corp*, 462 US 393 (1983). Under the *Wright Line* test, as adopted by the Commission in *MESPA v Evart Pub Sch*, 125 Mich App 71, 74 (1983), the charging party has the initial burden of establishing that union activity was a motivating factor in the adverse employment action by proving: (1) union or other protected activity; (2) employer knowledge of that activity; (3) anti-union animus or hostility toward the employee's protected rights; and (4) suspicious timing or other evidence that protected activity was a motivating cause of the alleged discriminatory action. *Huron Valley Sch, supra; Univ of Michigan*, 2001 MERC Lab Op 40, 43; *Grandvue Medical Care Facility*, 1993 MERC Lab Op 686, 696. Only after a prima facie case is established does the burden shift to the employer to produce credible evidence of a legal motive and that the same action would have been taken even absent the protected conduct. *MESPA, supra*. The ultimate burden, however, remains with the charging party. *City of Saginaw*, 1997 MERC Lab Op 414, 419.

A charging party may meet the *Wright Line* burden with evidence short of direct proof of motivation. In other words, the employer's actual state of mind need not be established. See e.g., *Macomb County (Juvenile Justice Center)*, 28 MPER 4 (2014); *City of Royal Oak*, 22 MPER 67 (2009); *Stadium Mgmt Co*, 1977 MERC Lab Op 458; *St. Lawrence Hospital*, 1971 MERC Lab Op 1173. Inferences of animus and discriminatory motive may be drawn from competent circumstantial evidence, including, but not limited to, the timing of the adverse employment action in relation to the protected activity, indications that the respondent gave false or pretextual reasons for its actions, and the commitment of other unfair labor practices by the employer during the same period of time. *Keego Harbor*, 28 MPER 42 (2014); *Inkster Housing & Redevelopment Auth*, 23 MPER 21 (2010) (no exceptions). See also *Volair Contractors, Inc*, 341 NLRB 673 (2004); *Tubular Corp of America*, 337 NLRB 99 (2001); *Shattuck Mining Corp v. NLRB*, 362 Fd 466, 470 (CA 9, 1966). If it is found that the employer's actions are pretextual, the employer fails by definition to show that it would have taken the same action in the absence of the protected conduct and it is unnecessary to perform the second part of the *Wright Line* analysis. *Limestone Apparel Corp*, 255 NLRB 722 (1981), enf'd 705 F.2d 799 (CA 6, 1982); *Metropolitan Transportation Services*, 351 NLRB 657, 659 (2007); *NLRB v IBEW, Local 429*, 514 F3d 646 (2007).

There can be no dispute in this matter that Cpt. Nevin was engaged in protected concerted activity of which Chief Distelrath and other high level Fire Department officials were aware. Nevin was elected DFFA president in December of 2015 and he remained in that position throughout the events giving rise to this dispute. From 2017 to 2019, the Union filed approximately thirty grievances each year, a marked increase from the number of grievances filed during the previous three-year period, as well as an unspecified number of unfair labor practice charges and MIOSHA claims. The record establishes that Distelrath, who became Fire Chief in 2016, was aware of these filings, as was Deputy Fire Commissioner Fornell. At hearing Distelrath identified Nevin as one of the catalysts driving the grievances, while Nevin testified that Fornell characterized him as the individual responsible for all the Union activity. Under Nevin, the Union also publicly criticized Fire Department response times, including by way of posting dispatch reports on social media.

The record also establishes that Chief Distelrath and others within the Fire Department harbored animus towards Nevin's protected activity. Although Distelrath is

himself a longstanding member of the DFFA, the Chief admitted that he and Nevin have a troubled and contentious relationship. In its post-hearing brief, Respondent attempts to characterize the difficulties between Distelrath and Nevin as arising from a personal dispute; however, it is clear from Distelrath's own testimony that it was Nevin's vigorous representation of Charging Party's members which drew the Fire Chief's ire. Distelrath testified that he and Nevin have frequently clashed over Union matters and he described the grievances and unfair labor practice charges filed by Charging Party under Nevin's leadership as "troublesome and annoying." Distelrath also conceded that he takes criticism of the Fire Department personally. Distelrath's testimony, along with the pretextual nature of the Chief's explanation for denying Nevin's requests, as set forth in detail below, would be sufficient to support a finding of anti-union hostility on the part of Respondent. This conclusion is further buttressed, however, by Nevin's testimony concerning conversations he had with Fornell and Berry. Nevin testified that Fornell told him that he deserved "grief" for filing unfair labor practice charges against Respondent and that Berry asked him what it would take to curtail his Union activities.

The next issue is whether Chief Distelrath's decision to deny Cpt. Nevin's requests to ride a rig was motivated by his animus towards Nevin and the DFFA. Distelrath testified that the sole reason he prohibited Nevin from riding with his squad was because of Article 5, Section D of the parties' collective bargaining agreement, which he contends requires that the DFFA president, vice-president, secretary and treasurer work exclusively in their capacity as Union officers while serving as members of the executive board. Distelrath's explanation for denying Nevin's requests is entirely unconvincing. First, the Fire Chief was not a credible witness. He was, at times, evasive in responding to questions, and his general demeanor on the witness stand did not reveal him to be honest and forthright. Moreover, his testimony was, as described in detail below, rife with inconsistencies and dubious claims – starting with his reliance on the language of the collective bargaining agreement. Article 5, Section D does not, as Distelrath claims, prohibit Respondent from allowing a Union officer to voluntarily ride a rig. Rather, the provision merely states that Union officers "shall be permitted" full-time release. In any event, the contract constitutes an agreement between Charging Party and the Respondent. Thus, Distelrath was not obligated to abide by his own interpretation of the contract if the DFFA was agreeable to an alternative reading of the provision, which it clearly is in this matter.

The language of Article 5, Section D notwithstanding, the record in this matter overwhelmingly establishes that there was a longstanding and widely acknowledged past practice of Respondent allowing Union officers to work in the field from which the Fire Department deviated only after Charging Party, under Nevin's leadership, began filing numerous grievances and unfair labor practice charges. Nevin, a 33-year veteran of the Fire Department, testified that members of the DFFA executive board have always worked in the field and that until the events giving rise to this dispute, Respondent was receptive to the practice. In fact, Nevin was not aware of the Department ever denying a request from a Union official to work in the field. According to Nevin, former Fire Chief Ray George openly encouraged Union officers to ride rigs. Nevin himself has a long history of working in the field while simultaneously serving as a DFFA officer. Nevin rode a rig so often during one period that he received criticism from Dan McNamara, then-present of the DFFA. According to Nevin, DFFA officers would often "jump on a rig" when there were staffing shortages or in response to incidents such as downed wires. Nevin testified that he worked

in the field approximately eight to ten times since 2015 and that the entire DFFA executive board rode for "Devil's Night" in 2016, 2017 and 2018. That latter claim was supported by an IAFF newsletter containing a photo of Union officers, including Nevin, working in the field for Devil's Night in 2016.

Admittedly, Cpt. Nevin was a somewhat problematic witness as well. He was argumentative, difficult and, at times, disruptive. However, this appeared to stem largely from his genuine frustration over the disparate manner in which he was treated by the Fire Department. As a whole, Nevin seemed to testify in an honest and truthful manner regarding the events giving rise to this dispute, including his interactions with Chief Distelrath and others within the Department. Moreover, his claims regarding Respondent's longstanding practice of allowing Union officers to work in the field were corroborated by the testimony of DFFA vice president Harp. Lt. Harp recalled that he worked in the field between eight and twelve times from December of 2015 through the summer of 2019, including several times during Distelrath's tenure as Fire Chief. In fact, Harp testified that on one such occasion, Distelrath explicitly told him that he could ride a rig whenever he wanted. Harp rode rigs on ordinary workdays and in response to special incidents. He also worked in the field when serving as a Union officer in 2000. The only time Respondent ever denied Harp the opportunity to ride a rig occurred after Distelrath had rejected Nevin's requests to work in the field.

Respondent did not present any evidence disputing the existence of an established practice of DFFA executive board members riding rigs without objection from the Fire Department. Distelrath himself seemingly acknowledged the commonplace nature of this practice when he used the word "usually" to describe the way ride-alongs typically occurred. Notably, Distelrath did not even attempt to contradict Nevin's testimony concerning the long history of DFFA members riding rigs. Rather than denying that Nevin had repeatedly worked in the field, Distelrath testified that except for Devil's Night 2017, he was simply unaware of any other instances in which Nevin rode a rig. Distelrath also never disputed Harp's testimony regarding his history of riding a rig. In fact, after Harp took the stand as a witness for Charging Party and described working in the field on numerous occasions, Respondent recalled Distelrath to the stand and he not only acknowledged that he gave Harp permission to ride a rig in 2017, but that he also told Harp that he could do so anytime and that he believed the practice was a "good thing" for both Harp and the Department. It is also undisputed that DFFA Treasurer Verdine Day rode a rig with Fire Department approval on July 29, 2019, just one day before he denied Nevin's initial request to ride with his squad.

Distelrath's insistence that it was Article 5, Section D of the contract which caused him to deny Nevin's requests is belied by the fact that he apparently had no such concerns when he granted Harp permission to ride a rig in 2017, or when he learned of the other ride-alongs described above.[8] It is also remarkable that Distelrath never referenced the contract as being an issue when he called Gehart to complain that the Union had filed a grievance on Nevin's behalf. Rather, Distelrath raised different concerns during that conversation,

[8] At hearing, Distelrath's testified that he held Nevin's request to greater scrutiny because it was submitted by Nevin in writing. Such a claim is, quite frankly, absurd and worthy of no further consideration.

including questioning if Nevin intended to use the ride-along to campaign for Union office and whether granting the request would cause harm to Gehart politically. Finally, Distelrath's directive to Senior Chief Freeman barring Nevin from riding a rig also contradicts Distelrath's claim that he was motivated by the language of the contract. Had Distelrath truly believed that Article 5, Section D of the agreement required a prohibition on elected Union officers working in the field, he would have presumably not limited the scope of his order to Nevin. When asked by counsel for the Union why the directive was not broader in scope, Distelrath testified flippantly, "That is obviously an oversight on my part and I appreciate you pointing it out to me."

The above evidence is more than sufficient to establish that the decision to deny Cpt. Nevin's requests to ride a rig was motivated by his animus towards Nevin and the DFFA, However, Charging Party also presented additional testimony linking the denial of Nevin's request to ride a rig to his protected concerted activities. For example, Nevin testified that after previously giving him permission to ride a rig at any time, Deputy Chief Biondo suddenly reversed course and warned Nevin not to do so without first talking to Chief Distelrath. According to Nevin, Biondo stated that the Fire Chief was not very happy with him at the time. Similarly, Nevin testified that Deputy Fire Commissioner Fornell explicitly referenced Nevin's union activities when explaining why he was not allowed to ride a rig. According to Nevin, Fornell stated, "Well, that's a decision you made in your representation of your members and we have to do what we have to do." Such testimony, which I credit, further establishes that the Fire Department's motivation for denying Nevin's request was unlawful.

For the above reasons, I conclude that Respondent violated Section 10(1)(c) of PERA by refusing allow Cpt. Nevin to ride a rig with his squad in retaliation for Nevin's vigorous advocacy on behalf of Charging Party's members. For the same reasons, I conclude that the actions taken by Respondent against Nevin would objectively tend to restrain, interfere or coerce a reasonable employee in the exercise of his or her rights under the Act, in violation of Section 10(a)(1). I reach a different conclusion, however, with respect to the *Garrity* interview of Cpt. Nevin.

Charging Party contends that the *Garrity* interview, which occurred after the contractually imposed deadline for the Fire Department to notify Nevin of disciplinary action, was unlawful. The problem with this argument is that there is simply no evidence in the record establishing that Chief Distelrath or any other official of the Fire Department participated in the investigation of Nevin or the scheduling of the *Garrity* interview in any meaningful way. The investigation was conducted solely by Sgt. Wilson, an employee of the City of Detroit Police Department's Internal Affairs division. Although Distelrath testified that he met with Wilson, that interaction occurred very early during the IA investigation. According to Distelrath, Wilson came to his office for the purpose of obtaining copies of Fire Department rules and regulations and other relevant documents. Distelrath testified that he had no further involvement in the investigation of Nevin other than attending regular labor relations meetings at which the topic may have been discussed, and having been copied on the grievance which Charging Party filed on Nevin's behalf concerning the scheduling of the *Garrity* interview.

Chief Distelrath's testimony concerning his participation, or lack thereof, in the investigation was corroborated by Sgt. Wilson, whose account I found to be highly credible. Wilson recalled having met with Distelrath towards the start of her investigation to procure a copy of an employee manual and social media policy. Wilson described the documents she received from Distelrath as "not helpful" and testified that she had no further interaction with the Fire Chief. With respect to the *Garrity* interview, Wilson explained that she is required to complete an administrative investigation at the conclusion of every criminal case involving a City employee and that a *Garrity* interview is a necessary component of such an investigation. Wilson testified that she has conducted *Garrity* interviews in every case unless the subject of the investigation resigns employment. Although there was a substantial delay between the conclusion of the criminal investigation of Nevin and the scheduling of his *Garrity* interview, Wilson explained that she was off work on medical leave when the Wayne County Prosecutor denied the warrant request and that she scheduled the interview with Nevin shortly after she returned to work. At the time, Wilson was unaware of the deadline set forth in Article 10 of the parties' contract; however, Wilson testified unequivocally that she would not have altered the course of her investigation had she known of the existence of that provision. For this reason, I find no merit to Charging Party's contention that Distelrath or any other official of the Fire Department violated the Act by failing or refusing to stop the *Garrity* interview from taking place, as such an attempt would have been futile.

I have carefully considered the remaining arguments set forth by the parties in this matter and conclude that they do not warrant a change in the result. For the reasons set forth above, I conclude that Respondent violated Sections 10(1)(a) and (c) of PERA by prohibiting Cpt. Nevin from riding a rig with his squad. Respondent did not, however, act unlawfully by requiring Nevin to submit to a *Garrity* interview as part of the administrative investigation into the unauthorized disclosure of information. Accordingly, I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The unfair labor practice charge filed by the Detroit Fire Fighters Association, Local 344 against the City of Detroit (Fire Department) in Case No. 19-G-1452-CE; Docket No. 19-015459-MERC is hereby dismissed in its entirety.

With respect to the charge in Case No. 19-H-1646-CE; Docket No. 19-016519-MERC, the City of Detroit (Fire Department), its officers and agents, are hereby ordered to:

1. Cease and desist from:

    a. Interfering with, restraining, or coercing employees, including but not limited to Michael Nevin, in the exercise of rights guaranteed in Section 9 of the Act, including the right to hold or seek union office and to pursue grievances and unfair labor practice charges on behalf of members of the DFFA bargaining unit.

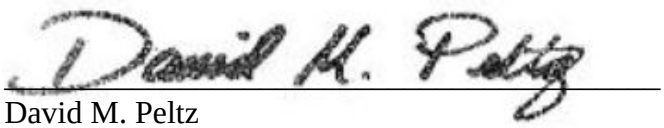
    b. Discriminating or retaliating against employees, including but not limited to Michael Nevin, regarding terms or other conditions of employment in order to discourage the holding of office in a labor organization or the pursuit of grievances and unfair labor practice charges.

2. Take the following affirmative action to effectuate the purposes of the Act:

    a. Upon request, allow members of the DFFA executive board the opportunity to ride a rig with their assigned squads.

    b. Post the attached notice to employees in conspicuous places on Respondent's premises, including all places where notices to employees are customarily posted and post it prominently on any website maintained by the Fire Department for employee access for a period of thirty (30) consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION



David M. Peltz
Administrative Law Judge
Michigan Office of Administrative Hearings & Rules

Dated: January 5, 2021

NOTICE TO ALL EMPLOYEES

The CITY OF DETROIT (FIRE DEPARTMENT), a public employer under the PUBLIC EMPLOYMENT RELATIONS ACT (PERA), has been found to have committed unfair labor practices in violation of this Act. Pursuant to the terms of the order of the MICHIGAN EMPLOYMENT RELATIONS COMMISSION, we hereby notify our employees that:

WE WILL cease and desist from interfering with, restraining, or coercing employees, including but not limited to Michael Nevin, in the exercise of rights guaranteed in Section 9 of the Act, including the right to hold or seek union office and to pursue grievances and unfair labor practice charges or take other protected concerted actions on behalf of members of the bargaining unit represented by the Detroit Fire Fighters Association (DFFA), Local 344.

WE WILL cease and desist from discriminating or retaliating against employees, including but not limited to Michael Nevin, regarding terms or other conditions of employment in order to discourage the holding of office in a labor organization or the pursuit of grievances and unfair labor practice charges.

WE WILL upon request, allow members of the DFFA executive board the opportunity to ride a rig with their assigned squads

WE ACKNOWLEDGE THAT all of our employees are free to engage in lawful activity for the purpose of collective bargaining or other mutual aid and protection as provided in Section 9 of PERA.

CITY OF DETROIT (FIRE DEPARTMENT)

By: _____

Title: _____

Date: _____

This notice must be posted for a period of 30 consecutive days and must not be altered, defaced or covered by any material. Any questions concerning this notice or compliance with its provisions may be directed to the office of the Michigan Employment Relations Commission, Cadillac Place Building, 3026 W. Grand Blvd, Suite 2-750, P.O. Box 02988, Detroit, MI 48202-2988. Telephone: (313) 456-3510.