

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

In the Matter of:

MACOMB COUNTY CLERK,
Public Employer-Respondent,

MERC Case No. C17 C-023

-and-

INTERNATIONAL UNION, UAW REGION 1, LOCAL 412,
Labor Organization-Charging Party.

APPEARANCES:

Karen Spranger¹ for Respondent on Exceptions, and Frank A. Cusumano, Jr., for Respondent before the Administrative Law Judge

Shira Roza, Assistant General Counsel, for Charging Party

DECISION AND ORDER

On September 22, 2017, Administrative Law Judge Travis Calderwood (ALJ) issued his Decision and Recommended Order² in the above matter finding that Respondent Macomb County Clerk violated § 10(1)(a) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210(1)(a). The ALJ found that remarks by Respondent Macomb County Clerk (Employer) to a member of the bargaining unit represented by Charging Party International Union, UAW Region 1, Local 412 (Union) were threatening and coercive under PERA, and therefore, violated § 10(1)(a). The ALJ's Decision and Recommended Order was served upon the interested parties in accordance with § 16 of PERA.

Respondent filed exceptions to the ALJ's Decision and Recommended Order, a brief in support of the exceptions, and a motion to reopen the record on October 16, 2017. Charging Party filed its brief in support of the ALJ's Decision and Recommended Order

¹ At the time of the incidents discussed in this decision and through sometime around March 27, 2018, Karen Spranger served as the Macomb County Clerk. She no longer serves in that position. At the time of the hearing in this matter, Respondent was represented by attorney Frank A. Cusumano, Jr. Respondent's exceptions, brief in support, and motion to reopen the record were filed by Ms. Spranger.

² MAHS Hearing Docket No. 17-006263

and its brief in opposition to Respondent's motion to reopen the record on October 26, 2017.

In her exceptions, Respondent contends that the ALJ erred by: finding the testimony of Charging Party's witness, Lisa Emerson, to be credible; by not requiring Macomb County to be joined as party; and by finding that Respondent committed an unfair labor practice.

We have reviewed the exceptions filed by Respondent and find them to be without merit.

Motion to Reopen the Record

Exceptions Exhibits 1 and 2 Regarding Emerson's Presence on January 12, 2017

In her motion, Respondent asserts that the record should be reopened to allow her to submit, as new evidence, the documents that she attached to her exceptions as Exceptions Exhibits 1 and 2. She identified Exceptions Exhibit 1 as a January 12, 2017 time off sheet for Lisa Emerson, an employee of the Macomb County Clerk's office. Respondent identified Exceptions Exhibit 2 as an overtime list. Respondent seeks to have the Commission consider Exceptions Exhibits 1 and 2 as evidence that Emerson was not present at work on January 12, 2017, the date on which Charging Party alleges that the conversation occurred between Respondent and Emerson in which Respondent made a comment in violation of Emerson's rights to engage in concerted activity protected under PERA. Respondent claims that these documents challenge Emerson's credibility.

Rule 166 of the Commission's General Rules limits reopening of the record to those cases in which there is a showing that:

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

Respondent contends that the documents she seeks to submit could not, with reasonable diligence, have been discovered and produced at the original hearing. She asserts that it was the testimony at that hearing that led her to do the research leading to her discovery of the proffered exhibits. She, therefore, contends that the additional evidence, and not merely its materiality, is newly discovered.

We disagree with Respondent's contentions. It is apparent from our review of the record that Exceptions Exhibits 1 and 2 are documents that, with reasonable diligence,

could have been discovered by Respondent and produced at the hearing. The charge against Respondent, filed March 16, 2017, states at paragraph 13:

On or around January 12, 2017, the Clerk approached bargaining unit member Lisa Emerson and asked her whether she “had an issue” with the staff that the Clerk had unlawfully appointed. When Emerson told the Clerk that she preferred not to answer, the Clerk responded, “that’s okay, grievances have to be signed and I will know what side of the fence you are on.”

Respondent should have known from reading the charge that Charging Party claimed that one of the incidents that formed the basis of the charge involved a January 12, 2017 conversation between Clerk Spranger and Emerson. Thus, Respondent had from the date on which she received the charge, soon after March 15, 2017, until the date of the hearing on August 18, 2017, to locate records or other evidence supporting her contention that Emerson was not present at work on January 12, 2017. However, at the hearing, Respondent offered no testimony to support her current claim.

In any event, Respondent contends that Exceptions Exhibits 1 and 2 show that Emerson did not work on January 12, 2017. It is not clear from reviewing those documents that they support that contention. Both documents appear to indicate that Emerson was on sick leave for about one-tenth of an hour on January 12, 2017. Charging Party notes in its response to Respondent’s motion that the two documents indicate that Emerson took six to eight minutes of sick leave on the morning of January 12. Charging Party asserts that those documents suggest that Emerson was absent for a short time in the morning but was there for the remainder of the workday. Charging Party also contends that Exceptions Exhibit 2 indicates that Emerson worked overtime on January 12 from 4:30 p.m. until 7 p.m. The copy of Exceptions Exhibit 2 that was attached to Respondent’s exceptions does not list Emerson as having worked overtime on January 12, 2017. However, that document is clearly not the original document, it has various unexplained cross outs, and it appears to have possible deletions. Therefore, we could not draw the conclusions asserted by either party with respect to Exceptions Exhibit 2 in the absence of testimony and the original document.

Moreover, the documents that Respondent requests the Commission to consider with respect to Emerson’s presence on January 12, 2017, are not material. The issue regarding the conversation about which Emerson testified is whether Respondent’s statements to Emerson violated § 10(1)(a). The date on which that conversation occurred does not make any difference as to whether Respondent’s statements were unlawful. Moreover, if Emerson made a mistake about the date, such a mistake would not affect her credibility with respect to the substance of the conversation. Even if the documents Respondent seeks to have admitted were credited to support Respondent’s assertions about Emerson’s presence in the Clerk’s office on January 12, 2017, this would not establish anything more than an error by Emerson about the date of the conversation. Thus, even if these documents were excepted into evidence, they would not require a different result.

Respondent has failed to set forth grounds for reopening the record with respect to this issue.

The ALJ's Denial of Respondent's Motion for Joinder

Respondent also claims that the ALJ erred in denying her motion for joinder of Macomb County. She also claims that she was denied her due process rights because the documents relevant to the motion for joinder were not shared with her prior to the evidentiary hearing in this matter. As indicated in the ALJ's decision, in response to Respondent's motion for joinder, the ALJ sent a letter to Macomb County regarding the motion. Respondent asserts that she did not receive a timely copy of that letter or of the County's response to the ALJ's letter. She asserts that although these documents were mentioned in the ALJ's Decision and Recommended Order, they were not discovered until the "exceptions were being researched." Spranger contends that the "totality of the record was withheld from Respondent Macomb County Clerk by [sic] ALJ either intentionally, or inadvertently." She contends that these documents were not shared with her previously and prejudiced her due process rights.

On May 31, 2017, Respondent filed the Motion for Joinder of Macomb County (Human Resources and Labor Relations) as a Necessary Party. At the time, Respondent was represented by an attorney, Frank A. Cusumano, Jr. On June 15, 2017, the ALJ sent a letter to the Macomb County Human Resources and Labor Relations Director, Eric Herppich, asking the County to either consent to joinder under Rule 157 of the General Rules of the Michigan Employment Relations Commission, 2014 AACS, R 423.157 or submit its written objections to being joined as a party in this matter. The ALJ's letter to Herppich, was copied to both Charging Party's attorney and Respondent's attorney. The County's objections to joinder were filed on June 27, 2017. The cover letter to the County's objections indicates that copies of the objections were also sent to Charging Party's attorney and Respondent's attorney. On July 7, 2017, the ALJ issued an interim order finding that joinder of the County was not necessary to render complete relief on the matters alleged in the charge. Respondent's motion for joinder was denied. The ALJ's interim order was sent to the parties along with an Order Rescheduling Hearing, which indicates that copies were sent to both Charging Party's attorney and Respondent's attorney. Therefore, even if Spranger did not personally receive these documents, it is evident that they were provided to her counsel. Service of those documents on Respondent's attorney is service on Respondent. See *Detroit Federation of Teachers*, 1985 MERC Lab Op 1214.

Respondent also contends that the ALJ erred by failing to join Macomb County as a necessary party. Respondent asserts that "the ALJs [sic] failure to adhere to the Rule 157 Motion for Joinder is clearly his misrepresentation of finding of facts."

Rule 157, Joinder of Parties provides:

Persons having such an interest in the subject of the action that their presence in the action is essential to permit the commission to render complete relief shall be made parties and aligned as charging parties or respondents in accordance with their respective interests. If the persons have not been made parties, then the commission or administrative law judge shall, on motion of either party, order them to appear in the action, and may prescribe the time and order of pleading.

As the ALJ noted in his interim order, “the only relief available to Charging Party [for the alleged unlawful comments by the Clerk to Emerson] would be in the form of a cease and desist order and a notice posting.” There is nothing in the record to support Respondent’s contentions that the ALJ erred by failing to grant her motion for joinder or that she was deprived of due process. Respondent has also failed to set forth grounds for reopening the record with respect to this issue. For the foregoing reasons, Respondent’s motion to reopen the record is denied.

Factual Summary:

We adopt the findings of fact as set forth in the ALJ’s Decision and Recommended Order and will not repeat them here, except as necessary.

Testimony Regarding Union Exhibit 2, the December 23, 2016 Macomb Daily Article

Macomb County Chief Election Clerk Roger Cardamone testified regarding the transition of leadership in the Macomb County Clerk’s department after Spranger was elected. Cardamone, was an active member of the supervisory bargaining unit in the Clerk’s office, Unit 75 of UAW Local 412. He testified that he had read a December 23, 2016 article in the Macomb Daily, (Union Exhibit 2) that dealt with issues regarding Spranger’s move into the position of Macomb County Clerk. He testified that the article mentioned Spranger’s “desire to fire all of the UAW 412 supervisors and replace them with her supporters.”

Lisa Emerson has been employed as the chief court clerk in the Macomb County Clerk’s office since 2001. At the time Spranger took office as the Macomb County Clerk, Emerson was the union steward for the supervisory bargaining unit. Emerson testified that she understood from the Macomb Daily article that Respondent’s intent was to replace the bargaining unit members with her supporters. Emerson pointed out that her name was mentioned in the Macomb Daily article, and that made her feel that her job was threatened. Emerson had not met Spranger at the time that the article was published.

In her testimony at the hearing, Spranger indicated that the source of the information in the article was her campaign manager, Joseph Hunt. However, she testified that she did not authorize Hunt to tell the newspaper that she wanted to replace Local 412

represented employees with her own appointees but acknowledged that she did want “to exercise [her] right to appoint deputies.”

On cross-examination, Spranger admitted that she had requested \$15,000 to seek independent counsel to resolve ongoing disputes with the Office of Account Executive. When she was asked whether those disputes involved displacing, reassigning, or demoting UAW represented employees, she testified that the document was typed by her deputy and was not reviewed by her before it was sent. When she was asked whether she was seeking the authority to displace, reassign, or demote UAW represented employees, she merely stated that that was what her deputy put in the document. She then stated that what was written was true. However, when asked whether she wanted to replace the employees who were represented by the union with employees that she appointed, Spranger testified that she “would have to say no.”

Spranger’s January 12, 2017 Comment to Emerson

On January 12, 2017, Spranger asked Emerson whether Emerson had a problem with the staff whom Spranger had appointed and who were not members of the bargaining unit. Emerson responded by telling Spranger that she did not want to get in the middle of that matter, that she was just there to do her job, and that she would rather not answer the question. Spranger responded by indicating that it was fine if Emerson did not want to answer the question and said, “it’s not good, but it’s okay.” Spranger then said, “That’s okay, grievances have to be signed and I’ll know what side of the fence you are on.”

Emerson was disturbed by Spranger’s comments and made notes of the conversation shortly thereafter. She reported Spranger’s comment to the County’s human resources department and to her union.

Discussion and Conclusions of Law:

Respondent’s exceptions largely echo the assertions made in her motion to reopen the record. She argues that Exceptions Exhibits 1 and 2 should be considered and that those documents indicate that Emerson was not at work on January 12, 2017. As noted above, there is no basis to reopen the record to admit those documents. Moreover, admitting those documents for the purpose of establishing that Emerson was not at work on January 12, 2017, would not change the material facts. The material facts include the circumstances under which Emerson worked for the Clerk and the statement that Clerk Spranger made to Emerson, stating, “grievances have to be signed and I’ll know what side of the fence you are on.” The issues before us are whether the ALJ erred by finding that Respondent made that statement to Emerson, or by finding that Respondent violated § 10(1)(a) of PERA.

The ALJ’s Credibility Finding

The determination of whether Respondent, Macomb County Clerk Karen Spranger made the statement attributed to her by Charging Party is largely a question of credibility.

Emerson testified to the substance of the statement and the circumstances under which the statement was made. At the close of the hearing, the ALJ stated that he found the testimony by Emerson to be consistent and credible and was going to base his decision on her statement of events. The ALJ further indicated in his decision that to the extent that there was a credibility issue between Spranger and Emerson with respect to the comment attributed to Spranger, Emerson's testimony was more credible.

In consideration of the ALJ's opportunity to observe and evaluate the demeanor of the witnesses, we give great weight to credibility determinations made by the ALJ and will not overturn such determinations unless they are clearly contrary to the evidence in the record. *City of Inkster*, 26 MPER 5 (2012); *Redford Union Sch Dist*, 23 MPER 32 (2010); *Eaton Co Transp Auth*, 21 MPER 35 (2008); *Bellaire Pub Sch*, 19 MPER 17 (2006). Moreover, we have been reminded in opinions by the Michigan Supreme Court³ and the Michigan Court of Appeals⁴ of the importance of giving due regard to the credibility findings of the administrative law judge hearing the case. After thoroughly reviewing the record, we find that the record supports the ALJ's credibility finding.

The ALJ's Finding That Respondent's Statement Violated § 10(1)(a) of PERA

Section 10(1)(a) of PERA prohibits public employers from interfering with, restraining, or coercing public employees in the exercise of their rights guaranteed in § 9. Section 9 includes the rights to:

Organize together or form, join, or assist in labor organizations; engage in lawful concerted activities for the purpose of collective negotiation or bargaining or other mutual aid and protection; or negotiate or bargain collectively with their public employers through representatives of their own free choice."

PERA § 9(1)(a), MCL 423.209(1)(a).

The "lawful concerted activities" in which public employees have a right to engage under § 9(1)(a) include such things as serving as a union steward and the filing or processing of grievances. As the ALJ notes in his decision, Emerson, the union steward for her bargaining unit, testified that Spranger's comment that "grievances have to be signed and I'll know what side of the fence you are on," was very disturbing, such that she reported it to the County's human resources department and to the Union.

Conduct which is "inherently destructive" of important employee rights may violate § 10(1)(a) regardless of the employer's motive. *City of Detroit (Fire Dep't)*, 1988

³ *MERC v Detroit Symphony Orchestra, Inc*, 393 Mich 116, 125-128 (1974).

⁴ *City of Detroit v Detroit Fire Fighters Ass'n, Local 344*, 204 Mich App 541, 554-557 (1994); *Warren Ed Ass'n v Warren Consolidated Sch*, unpublished opinion per curiam of the Court of Appeals, issued April 12, 2007 (Docket No. 265643).

MERC Lab Op 561; 1 MPER 19112; *City of Detroit (Fire Dep't)*, 1982 MERC Lab Op 1220. We would consider threatening retaliation for filing or signing a grievance to be inherently destructive of rights guaranteed by § 9(1)(a). As we stated in *New Haven Cmty Sch*, 1990 MERC Lab Op 167, 179; 3 MPER 21051, “Although an employer is not restricted by PERA from criticizing the union's grievances or even its motives or the ability of its officers, it cannot lawfully threaten, either expressly or impliedly, to penalize employees because of the filing of grievances.” See also *City of Lincoln Park*, 1983 MERC Lab Op 362, 364.

In determining whether a public employer's statement to an employee violates § 10(1)(a), we must examine whether the employer's statement reasonably tended to interfere with, restrain, or coerce the employee in the exercise of her § 9 rights. The test of whether an employer's statement violates § 10(1)(a) is whether a reasonable employee would interpret the statement as an express or implied threat. *Eaton Co Transp Auth*, 21 MPER 35 (2008); *City of Greenville*, 2001 MERC Lab Op 55, 56; 14 MPER 32028; *New Buffalo Bd of Ed*, 2001 MERC Lab Op 47, 48; 14 MPER 32026. Finding a violation of § 10(1)(a) does not depend on the employer's motive or on whether the employee was actually coerced. *New Buffalo Bd of Ed*, at 49; *City of Greenville*, at 56. As we explained in *Univ of Michigan*, 1990 MERC Lab Op 272; 3 MPER 21066, “It is the chilling effect of a threat, and not its subjective intent, which PERA was created to reach.” In determining whether the public employer's statement constitutes a violation of § 10(1)(a), both the content and the context of the employer's statement must be examined. *City of Inkster*, 26 MPER 5 (2012); *New Buffalo Bd of Ed*, 2001 MERC Lab Op 47, 48; *New Haven Cmty Sch*, 1990 MERC Lab Op 167, 179; 3 MPER 21051.

Spranger's mention of grievances being signed and which side of the fence Emerson was on, would cause a reasonable employee in Emerson's position to feel that filing grievances or otherwise engaging in protected concerted activity would lead to Respondent taking action that would adversely affect her employment.

Respondent contends that there is no violation of § 10(1)(a) because there is no evidence that the Clerk took any adverse employment action or threatened to take such action. Indeed, the charge in this matter does not contain any assertion that the Clerk took adverse employment action against any members of the bargaining unit represented by Charging Party. Adverse action against the employee is not a required element of proving an independent violation of § 10(1)(a). Spranger's statement to Emerson that “grievances have to be signed and I'll know what side of the fence you are on” contained an implied threat that Spranger would take adverse action if Emerson submitted grievances in her capacity as a union steward. It is evident that Respondent's comments to Emerson would have tended to interfere with Emerson's free exercise of protected employee rights. Accordingly, we find that Respondent violated § 10(1)(a) of PERA.

We have also considered all other arguments submitted by the parties and conclude that they would not change the result in this case. For the reasons set forth above, and the reasons set forth in the ALJ's decision, we find the exceptions of Respondent to be without

merit and affirm the Administrative Law Judge's decision. Accordingly, we adopt the following Order.

ORDER

Respondent Macomb County Clerk, its officers, and agents, are hereby ordered to:

1. Cease and desist from interfering with, restraining, or coercing its employees, including but not limited to Lisa Emerson, in the exercise of rights protected by Section 9 of PERA.
2. Ensure that all employees, including but not limited to Lisa Emerson, are free to engage in lawful concerted activity, through representatives of their own choice, for the purposes of collective bargaining or other mutual aid or protection.
3. Post the attached notice signed by the Macomb County Clerk, for a period of thirty (30) consecutive days, to employees in conspicuous places on Respondent's premises, including, but not limited to, all places where notices to employees represented by the International Union, UAW Region 1, Local 412, are normally posted.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: July 18, 2018

NOTICE TO EMPLOYEES

AFTER A PUBLIC HEARING BEFORE THE MICHIGAN EMPLOYMENT RELATIONS COMMISSION (COMMISSION) ON AN UNFAIR LABOR PRACTICE CHARGE FILED BY THE **INTERNATIONAL UNION, UAW REGION 1, LOCAL 412**, THE COMMISSION HAS FOUND THE **MACOMB COUNTY CLERK** TO HAVE COMMITTED AN UNFAIR LABOR PRACTICE IN VIOLATION OF THE MICHIGAN PUBLIC EMPLOYMENT RELATIONS ACT (PERA). PURSUANT TO THE TERMS OF THE COMMISSION'S ORDER,

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL ensure that all employees, including but not limited to Lisa Emerson, are free to engage in lawful concerted activity, through representatives of their own choice, for the purposes of collective bargaining or other mutual aid or protection.

WE WILL NOT interfere with, restrain, or coerce our employees, including but not limited to Lisa Emerson, in the exercise of rights guaranteed and protected by Section 9 of PERA.

MACOMB COUNTY CLERK

By: _____

Title: _____

Date: _____

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

MERC Case No. C17 C-023

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION**

In the Matter of:

MACOMB COUNTY CLERK,
Respondent-Public Employer,

Case No. C17 C-023
Docket No. 17-006263-MERC

-and-

INTERNATIONAL UNION, UAW REGION 1, LOCAL 412,
Charging Party-Labor Organization.

APPEARANCES:

Frank A. Cusumano, Jr., for Respondent

Shira Roza, Assistant General Counsel, for Charging Party

**DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE**

On March 16, 2017, International Union, UAW Region 1, Local 412 (Charging Party or Union), filed the present unfair labor practice charge against the Macomb County Clerk (Respondent or Clerk). Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, this case was assigned to Administrative Law Judge Travis Calderwood, of the Michigan Administrative Hearing System, acting on behalf of the Michigan Employment Relations Commission (Commission).

In its March 16, 2017, charge, the Union alleges that various actions of the Macomb County Clerk violated Sections 10(1)(a) and (e) of PERA. More specifically, the Union alleges that on December 28, 2016, a bargaining unit member was approached by the "Clerk's agents" and unlawfully questioned about his union loyalties. Charging Party also claims that on January 12, 2017, the Clerk unlawfully questioned another bargaining unit member. Lastly, Charging Party alleges that the Clerk has refused to meet with it over grievances filed in January 2017.

An evidentiary hearing was scheduled for May 8, 2017. On April 24, 2017, Charging Party requested and was granted an adjournment of that hearing until June 14, 2017.

On May 31, 2017, Respondent filed several motions including a Motion for More Definite Statement, a Motion for Joinder Of Macomb County (Human Resources and Labor Relations) as a Necessary Party, and a Motion for Summary Disposition.

On June 1, 2017, Charging Party filed a First Amended Charge in which it withdrew its allegations that the Clerk violated 10(1)(e) of PERA by refusing to meet and discuss the grievances. Furthermore, Charging Party identified by name, the two individuals previously referred to only as the “Clerk’s agents.” Charging Party retained its allegations regarding the January 12, 2017, incident regarding the Clerk herself. Pursuant to Rule 153 of the Commission’s General Rules, R 423.153 (2014 AACCS) the First Amended Charge was accepted by the undersigned.

Charging Party filed its response in opposition to the Respondent’s motions on June 7, 2017. On June 15, 2017, I sent a letter to Macomb County requesting that the County either consent to joinder under Rule 157 of the Commission’s General Rules, R. 423.157, or provide in writing its objection to being joined as a party.

On June 27, 2017, Macomb County filed a written objection to the Clerk’s motion seeking its joinder.

On July 7, 2017, I issued an interim order in which I held that the Clerk’s motion for more definite statement had been rendered moot by Charging Party’s First Amended Charge. I then denied the Clerk’s motions for joinder and summary disposition for the reasons set forth in that interim order and incorporated herein by reference.

On August 18, 2017, an evidentiary hearing was held before the undersigned in Detroit, Michigan. After Charging Party’s case in chief, Respondent renewed its motion for summary disposition with respect to the portion of the Charge regarding the December 28, 2016, allegation. For reasons explained in more detail below, I concluded on the record that the Charging Party failed to establish a prima facie case that the December 28, 2016, memorandum violated Section 10(1)(a) of PERA. I then granted Respondent’s motion and indicated that a written decision and recommended order to that effect would be issued upon together with the final disposition of the entire case.

Following conclusion of Respondent’s presentation of its defense, which consisted of testimony of the Clerk, I concluded on the record that the Clerk’s actions on January 12, 2017, constituted a violation of Section 10(1)(a). I informed the parties of my findings and indicated that following the receipt of the transcript, I would issue a written decision and recommended order. That decision and recommended order is as follows.

Findings of Fact:

Following the November 2016 general election, Karen Spranger was the elected Macomb County Clerk-Elect. Clerk-Elect Spranger was to replace then Incumbent-Clerk Carmella Sabaugh sometime in very early January 2017.

Sometime on or around December 30, 2016, Roger Cardamone, the County’s Chief Election Clerk and a direct subordinate of the Clerk, returned to his office after a few days off to find a memorandum on his desk, dated December 28, 2016, and titled “Re: Transition training up until January 3rd and beyond”. That memorandum went on to state in the relevant part the following:

Dear Chief Staff Member,

You have done an outstanding job during your years of service to the residents of Macomb County in your role for the Election's department. Thank you for all the years of service.

As you know I am the new Macomb County Clerk/Register of Deeds as of January 1st, 2017. I am appointing staff/deputies as a reflection of the rights under the statutory law and not a reflection of you. I have appointed Paul Kardasz as my Chief Deputy Clerk and Erin Stahl as my Chief Deputy Register of Deeds. In great political spirit of Macomb County, I ask your help in training/showing my staff as to what you do on a day-to-day basis. My staff will be cross-trained in the Clerk's and Register of Deeds positions, as well as, Election and Court Clerk's positions and would appreciate all the time you can give us from today and beyond.

Thank you and kind regards,

Karen A. Spranger - Macomb County Clerk/Register of Deeds-Elect

Paul M. Kardasz -Newly Appointed Chief Deputy Clerk

Erin A. Stahl - Newly Appointed Chief Deputy Register of Deeds

Despite indicating that the memorandum had been sent by Clerk-Elect Spranger and Kardasz and Stahl, the document was unsigned. At the bottom of the memorandum were two statements in which someone, presumably Cardamone, could indicate by signing their name, that they would either “decline helping you in this transition” or “would be honored to assist Karen Spranger’s team in this important transition for Macomb County residents ...”

Cardamone was unable to offer admissible non-hearsay testimony as to who delivered the memorandum. Cardamone did not sign the memorandum nor did he approach Clerk Spranger with it at any time after she was sworn in as County Clerk.⁵

On January 3, 2017, Spranger was sworn in as Clerk. Sometime shortly after assuming office, Clerk Spranger sought to appoint certain individuals to serve as deputy clerks. However, there was, and continues to be, disagreement between Clerk Spranger and Macomb County over the legitimacy of those appointments.

Spranger testified that on January 6, 2017, she had an emergency meeting with the Macomb County Executive Branch regarding issues with the Macomb County Court’s e-filing system. Clerk Spranger claims that shortly after becoming Clerk she became aware of a backlog

⁵ While this portion of the Charge had been dismissed prior to Clerk Spranger’s testimony, the Clerk did testify that she had not seen that memorandum prior to the hearing and that she had not authorized anyone on her behalf with respect to the memorandum. She further claimed that at the time that the memorandum was supposedly delivered, she had been out of the state visiting relatives.

and timeliness issues with the Court's e-filings and was investigating the issue. As part of this investigation, Clerk Spranger repeatedly asked the County's Chief Court Clerk, Lisa Emmerson, another direct subordinate, for various reports regarding the Court's e-filing system. It is clear from Clerk Spranger's testimony that she was not receiving the information that she thought she was asking for from Emmerson.

On January 12, 2017, Clerk Spranger had her computer access to the County's network revoked pending allegations that unauthorized individual(s), i.e., her appointed deputies, had accessed the County's network. That night, Emmerson and other members of the Clerk's office who worked in the County Court portion of the office were working late. Clerk Spranger approached Emmerson in the Emmerson's office to inform her that earlier in the day she [Spranger] had her computer access revoked. Clerk Spranger went on to ask Emmerson whether she, Emmerson, had "a problem with the staff that she [Spranger] had appointed." Emmerson responded by stating she "did not want to get in the middle of it", that she was "just there to do [her] job" and "preferred not to answer the question." According to Emmerson, Clerk Spranger responded by saying it was fine if she did not want to answer the question and then continued with, "It's not good, but it's okay." Emmerson claims that Clerk Spranger concluded the conversation with "grievances will need to be signed and that she'll know which side of the fence [Emmerson's] on." Emmerson testified that she felt "disturbed" by Clerk Spranger's questioning of her.

Clerk Spranger, both on direct and cross-examination, was unable to recall the alleged January 12, 2017, conversation with any semblance of clarity. At one point during Clerk Spranger's testimony, the Clerk, when questioned whether she recalled concluding the conversation in the manner alleged by Emmerson, stated "I recall not saying that." Nevertheless, to the extent that there is any credibility issue between Clerk Spranger and Emmerson as to what was said by the Clerk during their January 12, 2017, conversation, I find Emmerson's recitation to be the more credible testimony as Emmerson's account was clear and unchanging, both from the time the Charge was originally filed but also during testimony given at the hearing.⁶

Discussion and Conclusions of Law:

Section 10(1)(a) of PERA makes it unlawful for a "public employer or an officer or agent of a public employer" to "interfere with, restrain or coerce public employees in the exercise of their rights guaranteed" by PERA. It is well established that a determination of whether an employer's conduct violates Section 10(1)(a) is not based on either the employer's motive for the proscribed conduct or the employee's subjective reactions thereto. *City of Greenville*, 2001 MERC Lab Op 55, 58. Instead, the test is whether a reasonable employee would interpret the statement as an express or implied threat. *Id.*; See also *Eaton Co Transp Auth*, 21 MPER 35 (2008). In order to properly make such a determination, both the content and the context of the employer's statement must be examined. *City of Inkster*, 26 MPER 5 (2012); *New Buffalo Bd of Ed*, 2001 MERC Lab Op 47.

⁶ Respondent elicited testimony from Emmerson that she had been issued three written reprimands from Clerk Spranger the week prior to this hearing. Respondent's stated purpose for doing so was to raise questions of veracity, truthfulness and witness. However, as Emmerson's testimony did not differ from what was originally alleged in filings submitted months prior to the most recent discipline, I reject Respondent's claims.

Ignoring the numerous issues surrounding the December 28, 2016, memorandum, including but not limited to who was responsible for its creation and delivery, whether then Clerk-Elect Spranger authorized it, and, more significantly, whether conduct by an individual set to assume public office can violate PERA prior to doing so, it is the finding of the undersigned that a reasonable employee in Cardamone's position would not be threatened with respect to the exercise of their Section 9 rights as guaranteed by the Act. Here the content of the memorandum is devoid of anything that could be reasonably construed as threatening or coercive under PERA; a reasonable employee could not make any connection between the memorandum's requests and protected activity. Likewise, the context of the memorandum occurring on the eve of transitioning from one leadership to another, objectively appears innocuous with respect to whether a reasonable employee should feel threatened as it relates to PERA.

With respect to the conversation between Clerk Spranger and Emmerson that occurred on January 12, 2017, it is my finding that, considering the conversation and facts surrounding it as testified to by Emmerson, a reasonable employee in her position would have perceived the final remarks by Clerk Spranger as threatening and coercive under PERA. The content of Clerk Spranger's remarks were initially nothing more than uncomfortable and awkward. However, the conversation turned to the subject of grievances, a topic any reasonable employee would associate with protected activity, and concluded with the Clerk stating the signing of grievances would determine what side Emmerson was on. It is those final statements that I find violated PERA. Furthermore, considering the context in which Clerk Spranger delivered her comments, i.e., beginning with an interrogation of whether Emmerson "had a problem" with the Clerk's actions, very clearly evokes a message that a reasonable employee would take as their participating in or initiating grievances against the Clerk would bring consequences.

I have considered all other arguments as set forth by the parties and conclude that such does not require a change in the conclusion. As such and in accord with the above findings of fact and conclusions of law, I recommend that the Commission issue the following order:

RECOMMENDED ORDER:

Respondent Macomb County Clerk, its officers and agents, are hereby ordered to:

4. Cease and desist from interfering with, restraining, or coercing its employees, including but not limited to Lisa Emmerson, in the exercise of rights protected by Section 9 of PERA.
5. Ensure that all employees, including but not limited to Lisa Emmerson, are free to engage in lawful concerted activity, through representatives of their own choice, for the purposes of collective bargaining or other mutual aid or protection.

6. Post the attached notice signed by Macomb County Clerk Karen Spranger, for a period of thirty (30) consecutive days, to employees in conspicuous places on Respondent's premises, including, but not limited to, all places where notices to employees represented by the International Union, UAW Region 1, Local 412, are normally posted.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Travis Calderwood
Administrative Law Judge
Michigan Administrative Hearing System

Dated: September 22, 2017

NOTICE TO EMPLOYEES

AFTER A PUBLIC HEARING BEFORE THE MICHIGAN EMPLOYMENT RELATIONS COMMISSION (COMMISSION) ON AN UNFAIR LABOR PRACTICE CHARGE FILED BY THE **INTERNATIONAL UNION, UAW REGION 1, LOCAL 412**, THE COMMISSION HAS FOUND THE **MACOMB COUNTY CLERK** TO HAVE COMMITTED AN UNFAIR LABOR PRACTICE IN VIOLATION OF THE MICHIGAN PUBLIC EMPLOYMENT RELATIONS ACT (PERA). PURSUANT TO THE TERMS OF THE COMMISSION'S ORDER,

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL ensure that all employees, including but not limited to Lisa Emmerson, are free to engage in lawful concerted activity, through representatives of their own choice, for the purposes of collective bargaining or other mutual aid or protection.

WE WILL NOT interfere with, restrain, or coerce our employees, including but not limited to Lisa Emmerson, in the exercise of rights guaranteed and protected by Section 9 of PERA.

MACOMB COUNTY CLERK

Karen Spranger

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