STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

IONIA COUNTY,
Public Employer-Respondent,

Case No. C14 I-110
-and- Docket No. 14-024744-MERC

GORDON H. DOUGLAS,
An Individual Charging Party.
_____/

Cohl, Stoker and Toskey, P.C., by Mattis D. Nordfjord, for the Respondent

Gordon H. Douglas, appearing on his own behalf

DECISION AND ORDER

On September 29, 2015, Administrative Law Judge Travis Calderwood issued his Decision and Recommended Order in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act, 1965 PA 379, as amended, and recommending that the Commission dismiss the charges and complaint.

The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of the Act.

The parties have had an opportunity to review the Decision and Recommended Order for a period of at least 20 days from the date of service and no exceptions have been filed by either of the parties.

ORDER

Pursuant to Section 16 of the Act, the Commission adopts the recommended order of the Administrative Law Judge as its final order.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: November 25, 2015

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Respondent-Public Employer,

-and-

GORDON H. DOUGLAS,
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Cohl, Stoker and Toskey, P.C., by Mattis D. Nordfjord, for the Respondent-Public Employer

Gordon H. Douglas appearing on his own behalf

DECISION AND RECOMMENDED ORDER

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 Travis Calderwood, Administrative Law Judge (ALJ) for the Michigan Administrative Hearing System, acting on behalf of the Michigan Employment Relations Commission (Commission). An evidentiary hearing was held on November 19, 2014, in Lansing, Michigan. Based upon the entire record, including the transcript of the hearing, exhibits and post-hearing brief filed by the Respondent on January 2, 2015, I make the following findings of fact, conclusions of law and recommended order.

Unfair Labor Practice and Procedural History:

On September 29, 2014, Gordon H. Douglas ("Douglas" or "Charging Party"), filed the present unfair labor practice charge against his employer, Ionia County ("Respondent" or "Employer"). That charge as filed states in its entirety:

I was denied union rep at [sic] disciplinary meeting.

Included with the Charge is a charge form used by the National Labor Relations Board for the filing of charges against employers covered under the National Labor Relations Act, 29 USC 141 *et seq*. That form provides the following statement:

I was denied union rep in a discipline meeting on 8/21/14 by Robin Anderson.

Findings of Fact:

At all times relevant to these proceedings, Charging Party was employed as an Animal Control Officer within the Ionia County Animal Shelter. Charging Party has been a County employee in some form or another for approximately the past twenty years.

Sometime in July or August of 2014, Charging Party requested to take personal paid-time off for August 14, 2014, and August 19, 2014. Charging Party's direct supervisor, Robin Anderson, the County's Animal Control Manager, initially granted the request. However, on August 5, 2014, Anderson received notice that the County's other Animal Control Officer, Ron Teaker, a part-time employee, would be unable to cover Charging Party's shift on August 14, 2014, or on August 19, 2014. Anderson then contacted Charging Party by email to let him know that his time-off requests were no longer granted and that he would be expected to work those days as regularly scheduled. Anderson testified that she did this because she was concerned with getting ready for an upcoming open house that was scheduled for August 23, 2014, and that she couldn't take time away from that to cover the shifts that Charging Party had requested off.

On August 14, 2014, Charging Party called Anderson's cellphone to let her know that he would not be coming into work that day. Charging Party did not report to work on August 14, 2014. Charging Party did report to work on August 19, 2014.

On August 21, 2014, Anderson called Charging Party and directed him to report to the County Administrator's office that day to meet with both her and County Administrator, Stephanie Hulbert.1 Charging Party asked whether the meeting was disciplinary in nature and whether he needed to have his representative from the Union present. Anderson answered no to both questions.

At the August 21, 2014, meeting, Charging Party was given a letter signed by Anderson that stated in relevant part:

> I [Anderson] noticed you turned in your time sheet today. It was left on my desk. The time period is from August 10 through August 23, 2014. You put down overtime. As you know, you are required to be at work both Friday and Saturday, August 22 and 23, 2014.
>
> The collective bargaining agreement at Article 9, Section 5 states that you are only to be paid for overtime for time "worked" over 40 hours. Therefore, I am denying your overtime request because you did not "work" over 40 hours during that time period.
>
> Further, on August 10, 2014, you left work 2 ½ hours early without following proper notice procedure. You did not inform me of your desire to take off on that day. Therefore, I am denying payment for the 2 ½ hours for not working.
>
> Also, your daily for August 11 showed 8 hours of work but you put down 8 ½ hours

1 Ms. Hulbert has since married and has changed her last name to Fox and will be referred to as such.

> of work on your time sheet. At this point I will have you compensated for the 8 ½ hours until this matter can be further clarified.
>
> In addition, you asked for paid time off on August 14, 2014. I denied your request because I could not get Ron [Teaker] to cover for you. I told you I needed you to be at work so I could prepare for the upcoming open house. In spite of my denial of your request, you took the time off. I am denying payment for that personal time off.
>
> Further, disciplinary notice will be given to you in the near future regarding this matter and other alleged problems with your work performance, which I will address under a separate correspondence. After you receive those allegations, you will have an opportunity to respond and you may have your union business agent present.

Charging Party testified that at the meeting, after being given the letter, he was asked by Anderson whether the information contained therein was correct. Anderson testified that the purpose of the meeting was to inform Charging Party that there were issues with the timesheet which she and Fox wished to communicate to Charging Party, in addition to letting him know that his paycheck would be docked several hours of pay. Anderson and Fox testified that they did not need Charging Party to confirm the information in the letter. Both also claimed that they did not ask any investigatory questions at the meeting.

On August 26, 2014, a grievance was filed by the Union on behalf of Douglas challenging the decision by Anderson to deny payment for the eight (8) hours of personal time referenced at the August 21, 2014, meeting and in the letter of the same date.

On August 27, 2014, Charging Party was provided a letter, dated that same day and signed by Anderson, which set forth several allegations of inappropriate behavior. That letter also directed Charging Party to attend a meeting later that afternoon with both Anderson and Fox to respond the allegations set therein. That letter further indicated that Charging Party could have his union representative present.

Charging Party, accompanied by Union Steward Ron Teaker, met with Anderson and Fox on August 27, 2014. At that meeting, the parties discussed the allegations contained in the August 27, 2014, letter.

Discussion and Conclusions of Law:

The Commission, in adopting the reasoning of *NLRB v Weingarten, Inc,* 420 US 251 (1971), in *Univ of Michigan,* 1977 MERC Lab Op 496, has held that an employee is entitled to union representation at an investigatory interview when the employee reasonably believes that the interview may lead to discipline, and invokes his right by requesting the presence of a union representative. *City of Kalamazoo*, 1996 MERC Lab Op 556; *Charter Twp of Clinton,* 1995 MERC Lab Op 415. The union representative is "expected to play an active advocacy role, not merely serving as a witness, and is entitled to consult privately with the individual employee." *Kent Co*, 21 MPER 61 (2008). One fundamental purpose of having the union representative present is to aid the

employee in answering questions asked by the employer and in presenting facts. *City of Oak Park*, 1995 MERC Lab Op 576 (no exceptions).

The Charging Party argues that the *Weingarten* doctrine applies to the August 21, 2014, meeting between himself, Anderson and Fox; I do not agree with that contention. Prior Commission case law has consistently held that an employer does not violate Section 10(1)(a) of PERA by refusing to provide the employee with a union representative at a meeting called solely to inform an employee of a disciplinary decision. *Walled Lake Con Schs*, 1985 MERC Lab Op 448 (no exceptions); *City of Wyoming*, 1983 MERC Lab Op 1024 (no exceptions); *City of Detroit (Law Department)2*, 1981 MERC Lab Op 282, (no exceptions); *City of Detroit (DOT)*, 1991 MERC Lab Op 390 (no exceptions).

The record is clear that the August 21, 2014, meeting between Fox, Anderson and Charging Party was not investigative in nature given the testimony provided by the Employer's witnesses, that the meeting was simply held for the purpose of informing Charging Party of the actions that the Respondent was taking with respect to his paycheck, i.e., docking hours. While Charging Party did claim that he was asked whether the information contained in the letter he was provided at the meeting was correct, a claim denied by both Employer witnesses, the fact remains that the same letter already indicated what actions the employer was going to undertake, the docking of pay. Although it is not necessary for the undersigned to make a credibility determination given the aforementioned, I would credit the testimony of the Employer's witnesses over that of Charging Party regarding whether investigative questions were asked, by nature of the consistency between the two witnesses.

Accordingly, I recommend that the Commission issue the following order:

RECOMMENDED ORDER

It is hereby ordered that the unfair labor practice charge be dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Travis Calderwood
Administrative Law Judge

Dated: September 29, 2015

2 In *City of Detroit (Law Dept.)* the ALJ, when presented with similar facts regarding an actual request for union representation during an informational meeting, declined to find any violation of PERA. There the employee at the onset of a meeting asked whether union representation was necessary to which the employer responded no. Following that, the employee was provided a letter detailing certain deficiencies in his performance. The meeting ended and shortly thereafter the employee was informed that he was terminated.