

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

In the Matter of:

SUBURBAN MOBILITY AUTHORITY FOR
REGIONAL TRANSPORTATION (SMART),
Respondent-Public Employer,

Case No. C99 G-124

-and-

MAZYN D. BARASH,
An Individual Charging Party.

APPEARANCES:

Mazyn D. Barash, *In Pro Per*

DECISION AND ORDER

On May 31, 2000, Administrative Law Judge Roy L. Roulhac issued his Decision and Recommended Order in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, and recommending that the Commission dismiss the charges 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 any 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

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Dated: _____

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DECISION AND RECOMMENDED ORDER
OF
ADMINISTRATIVE LAW JUDGE

Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210, MSA 17.455(10) *et seq.*, this case was heard in Detroit, Michigan on November 9, 1999, by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission. The proceedings were based upon an unfair labor practice charge filed by the Charging Party Mazyn D. Barash against SMART (the "Employer") on July 16, 1999. Based upon the record, and a summary filed by Charging Party on December 29, 1999, I make the following findings of fact and conclusions of law, and issue a recommended order pursuant to Section 16(b) of PERA:

The Charge:

In his July 16, 1999 charge, Charging Party Barash claims that the Employer engaged in activity to harm him because of his involvement with union activity by denying him his rights under the collective bargaining agreement. The Employer did not file an answer nor appear at the hearing.

Findings of Fact:

Charging Party Mazyn D. Barash is employed by SMART as an assistant mechanic and is a committee person for the United Automobile Workers, Local 417. The Union and the Employer are parties to a collective bargaining agreement which covers the period January 2, 1995 to January 8, 1999.

In November 1998, Charging Party experienced an on-the-job back injury and for several months thereafter was on a workers compensation disability leave of absence. According to Charging Party, his doctor released him to return to work, with restrictions, on May 22, 1999. Thereafter, he returned to work and was nominated to be a candidate for union committee person during a June 1 election. The results indicated that a run-off election between Charging Party and another candidate would be held the following week.

In the meantime, the Employer received a letter from its physician which recommended that Charging Party be placed on a four to six week work-hardening program. On June 1, the Employer informed Charging Party of the doctor's work-hardening recommendation and instructed him not to report to work the following day, June 2. Charging Party told the superintendent that he felt the Employer was interfering in an election to sway the run-off vote to someone else because he would not be on active duty and would not be allowed on the premises. Despite the superintendent's order, Charging Party

reported to work. After working a few hours, Charging Party was told that he would not be paid for that day and was issued a written reprimand for willfully disregarding a direct order not to report to work. In the June 8, 1999 run-off election, Charging Party was elected committee person. He was approved to return to work, without restrictions, on June 14. A month later, the instant charge was filed.

Conclusions of Law:

Charging Party's claims that the Employer interfered with his right to engage in protected activity by placing him on medical leave during a union election. He also asserts that the Employer violated the collective bargaining agreement by failing to offer him a restricted duty assignment and for requiring him to pay his insurance premiums for June 1999. The latter claims are contract issues which this Commission has no jurisdiction to resolve.

Charging Party offered no evidence to show that the Employer's decision to place him on a medical leave interfered with his right to engage in protected activity. Nor has he demonstrated that the Employer even knew he was a candidate to become a union committee person. His own evidence shows that he was placed on a medical leave on June 2, 1999, because of a physician's recommendation that he undergo four to six week of work-hardening before returning to work. Moreover, the run-off election was held during Charging Party's medical leave and he won the election. Even if he had lost, Charging Party offered no evidence to show that the Employer's decision to place him on a leave of absence was designed to interfere with his right to compete for a union office. I therefore recommend that the Commission issue the following order:

Recommended Order

The unfair labor practice charge is dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Roy L. Roulhac
Administrative Law Judge

Dated: _____