STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

ST. CLAIR COUNTY PROBATE COURT
(JUVENILE CENTER),
Public Employer-Respondent

-and- Case No. C01- H-164

TEAMSTERS STATE, COUNTY, AND
MUNICIPAL WORKERS, LOCAL 214,
Labor Organization-Charging Party
_____/

APPEARANCES:

Fletcher, Galica, Clark, Tomlinson & Fealko, P.C., by Gary A. Fletcher, Esq., for the Public Employer

Rudell & O'Neill, P.C., by Wayne A. Rudell, Esq., for the Charging Party

DECISION AND ORDER

On September 25, 2002, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order in the above-entitled matter, finding that Respondent has engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist and take certain affirmative action as set forth in the attached Decision and Recommended Order of the Administrative Law Judge.

The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of Act 336 of the Public Acts of 1947, as amended.

The parties have had an opportunity to review this Decision and Recommended Order for a period of at least 20 days from the date that the decision was served on the parties, and no exceptions have been filed by any of the parties to this proceeding.

ORDER

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

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 and 423.216, this case was heard at Detroit, Michigan on November 21, 2001 and February 2, 2002, before Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. Based upon the entire record, including post-hearing briefs filed by the parties on or before April 26, 2002, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

Teamsters State, County, and Municipal Employees, Local 214, filed this charge against the St. Clair County Probate Court on August 13, 2001. The charge was amended on September 26, 2001, and again at the hearing on November 21, 2001. The charge, as amended, alleges that on or about May 9, 2001, Respondent violated Sections 10(1)(a) and (c) of PERA by suspending Christopher Volpe for legitimate actions taken by him in the course of performing his duties as a union steward. Charging Party also alleges that Respondent violated Section 10(1)(a) by refusing Volpe's request for union representation. In addition, Charging Party alleges that Respondent violated its duty to bargain under Section 10(1)(e) by refusing to allow Charging Party

representatives to view a surveillance videotape showing some of the events that allegedly led to Volpe's suspension. Finally, Charging Party alleges that on or about March 2001, Respondent violated its duty to bargain by unilaterally repudiating its practice of giving full-time, rather than part-time, child care workers the opportunity to substitute for absent employees under certain circumstances.

Facts - Events Surrounding Volpe's Suspension:

Charging Party represents a bargaining unit of full-time and regular part-time employees of the St. Clair County Probate Court Juvenile Center (the Center). Christopher Volpe is employed at the Center as a full-time child care worker on the afternoon shift. Volpe is also Charging Party's steward. John Vizdos is the superintendent of the Center. At the time of the hearing Vizdos had been superintendent for 12 years.

On April 18, 2001,Volpe filed a grievance asserting that Respondent had violated the overtime scheduling provisions of the collective bargaining agreement by assigning a part-time child care worker to fill in for an absent employee instead of calling in a full-time employee to work overtime. Volpe contended that Respondent was required to offer a substitute assignment on a weekend day shift to the most senior full-time employee, unless two full-time child care workers were already scheduled to work that shift. Vizdos denied the grievance on April 26, 2001. Volpe and Vizdos met to discuss the grievance on May 7 but failed to resolve the issue.

At the beginning of his afternoon shift on May 8, Volpe asked Assistant Superintendent Pam Motte if he could look at some old shift replacement sheets. Volpe wanted to review these records to determine if they supported his claim of a past practice. Motte gave him the documents, but Vizdos overheard their conversation and told Motte not to give Volpe any more records. According to Vizdos, this was because under the contract Volpe was not entitled to conduct this type of union business on work time. Vizdos also felt that Volpe should come to him with any request to see documents.

Volpe returned about ten minutes later and asked Motte when he could look at more records. Motte told him that Vizdos had told her not to give them to him. Volpe left to retrieve his copy of the contract. A few minutes later, he entered Vizdos' office and asked if Vizdos had a minute to talk. Vizdos told him to come in. Volpe sat down and asked Vizdos if he had told Motte not to give him records. Vizdos said he had. Vizdos asked Volpe what he was looking for, and Volpe told him. Vizdos then said that from then on, Volpe was to direct any request to look at documents to him. At that point, Volpe took out the contract and began to read several sections out loud. Vizdos started speaking while Volpe was reading. Vizdos testified that he was trying to explain his position regarding access to records. Volpe kept reading, and Vizdos kept trying to talk over him. Eventually, Vizdos was simply repeating, "You're not listening, you're not listening." When Volpe stopped reading, he rose from his seat and started to leave the room. Vizdos angrily told him to sit down. According to Vizdos, he was still trying to get Volpe to listen to his position. Volpe turned around and looked at Vizdos, who again ordered him to sit down. According to Volpe, he said, "I came here of my free will to talk about union business." According to Vizdos, Volpe said, "I won't be treated like an animal, " and "You can't tell me what to do." The men agree, however, that Volpe did not sit down again but left Vizdos' office.

When Volpe left the office, he entered the Center's lobby and headed toward the main part of the building. Vizdos followed him into the lobby. The Center's receptionist and two employees who had been attracted by the commotion were in or near the lobby and witnessed this part of their conversation. Pacing back and forth in the lobby, Vizdos demanded again that Volpe return to Vizdos' office. Vizdos admitted that he was very angry and that his voice was loud. Volpe refused to return to the office. According to Volpe and one of the employee witnesses, Volpe said at this point that he refused to be treated like a dog or animal. Vizdos told Volpe he was suspended for insubordination.[1] After telling Volpe that he was suspended, Vizdos told Volpe to leave the building immediately. Volpe said that he wanted to call his union representative. Volpe then exited the lobby through the door to the main part of the building and turned down the hall leading to the staff room. Child care workers typically keep their personal belongings, including keys and wallets, in lockers in the staff room; the staff room also contains a phone for the employees' personal use. Vizdos followed Volpe out of the lobby and stood in the door of the staff room, blocking Volpe's entrance. Vizdos said, "I'm not letting you in the staff room." Vizdos told Volpe to leave the building immediately or he would call the police. Volpe told him to go ahead. [2] By this time other employees had arrived at the staff room. One employee took Vizdos gently by the shoulders and persuaded him to return to his office. Volpe entered the staff room and called Charging Party's business agent, leaving a message. Volpe then collected his keys and wallet and left the building through the lobby door. Vizdos and Volpe agree that Volpe was in the staff room for no more than five minutes.

On May 9, Volpe was notified that he was suspended without pay for three days for insubordination. Charging Party filed a grievance over the suspension.

The lobby of the Center has a surveillance camera that records events on tape. Tapes are normally kept for a short period before being recorded over. On May 9, Vizdos looked at the tape of events in the lobby on May 8. At the first step grievance meeting on Volpe's grievance, the steward assigned to the grievance asked Vizdos for a copy of this tape. Vizdos said that there wasn't anything relevant on it. At the second step meeting, Charging Party's business agent asked Vizdos to send him a copy of any tapes that showed the incidents for which Volpe had been suspended. Vizdos did not reply; the business agent assumed that Vizdos intended to comply with his request. In early July, Vizdos sent the tape to Grant Nixon, Respondent's court administrator and Vizdos' supervisor. The third step meeting on the grievance was held on July 11. The business agent told Nixon at this meeting that Charging Party wanted to see the tape. Nixon said that he (Nixon) hadn't looked at it, and the business agent told Nixon that he should

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[1] According to Volpe, Vizdos also said something about firing or wanting to fire Volpe. Vizdos denied telling Volpe that he was fired or might be fired. According to Vizdos, he did say that he would like to fire Volpe, but this was after the incident was over and Vizdos had returned to his office. The testimony of witnesses to the incident supported Vizdos' version.

[2] Vizdos testified that immediately after Vizdos told Volpe that he was suspended, Volpe said that it would take the police to remove him from the building. I don't credit Vizdos' recollection on this point. The bulk of the testimony indicates that Volpe left the lobby for the staff room almost immediately after Vizdos told him that he was suspended. It therefore seems more likely that the conversation about the police occurred after Vizdos followed him there.

review it. During a contract negotiation session held in mid-July, the business agent repeated his request to view the tape to Respondent's chief negotiator, John Dean. Dean made a neutral reply, and the business agent assumed from Dean's response that Charging Party would get the tape. On August 6, 2001, Nixon issued a written third step answer to Volpe's grievance. Nixon said in his answer that he had looked at the tape, and that it had no value. Nixon never gave the Charging Party a copy of the tape or offered to let Charging Party representatives view it. After August 6, Nixon returned the tape to Vizdos without instructions to preserve it. By the middle of August, the tape had been reused.

Discussion and Conclusions of Law:

Volpe's Suspension

I find, first, that Volpe was engaged in concerted protected activity when he participated in a discussion with Vizdos in Vizdos' office about Volpe's access to records that were arguably relevant to a grievance. The fact that Volpe and Vizdos were not discussing a formal grievance is not material. See, e.g., *Detroit Board of Education*, 1998 MERC Lab Op 636.

Respondent maintains that Volpe was guilty of insubordination during and immediately after that discussion, and that it could lawfully discipline Volpe for his insubordination. Respondent cites *AFSCME v Troy*, 185 Mich App 739 (1990), in which the Court of Appeals held that two union officials were properly disciplined for insubordination when they directed another employee not to attend a meeting with management without a union representative present. Charging Party responds that Vizdos acted unlawfully by ordering Volpe to continue the discussion, citing *United States Postal Service*, 259 NLRB 1414 (1981); *Syn-Tech Windows Systems, Inc.*, 294 NLRB 791 (1989), and *Robins Engineers and Constructors, a Division of Litton Systems*, 271 NLRB 915 (1984).

The National Labor Relations Board (NLRB) has long held that employees must be given some latitude to speak or behave during collective bargaining or grievance discussions in a way that might be unacceptable in another context. "Not every impropriety committed during [the course of protected activity] places the employee beyond the protective shield of the Act." *NLRB v Thor Power Tool Co.*, 351 F2d 584 (7th Cir, 1965). Because grievance meetings require a free and frank exchange of views, and often arise from highly emotional and personal conflicts, employees may be protected from discipline for rude and even insubordinate behavior that occurs during the course of such meetings. *United States Postal Service v NLRB*, 652 F2d 409, 411 (5th Cir, 1981); *Bettcher Mfg.Corp.*76 NLRB 526, 527 (1948).

The Commission has frequently found conduct that would normally be unacceptable in the workplace to be protected when it occurred in the course of activity covered by Section 9 of the Act. In *Unionville-Sebewaing Schools*, 1981 MERC Lab Op 932, the Commission affirmed the finding of its administrative law judge that an employee's conduct during a meeting called to discuss employee complaints was protected even though the employee called the superintendent of schools a "liar" and said, " I guess the only thing I can think to do is hit you." See also *University of Michigan*, 2000 MERC Lab Op 192 (swearing and calling a supervisor a "con artist" protected in the context of a grievance meeting); *City of Detroit (Dept of Water &*

Sewerage, 1988 MERC Lab Op 1039 (racial slur); *Baldwin CS*, 1986 MERC Lab Op 513 (shouting, waiving a pencil, and accusing a supervisor of being a homosexual); *Isabella Co. Sheriff's Dept.*, 1978 MERC Lab Op 689 (rising from seat, raising voice, and shaking a finger at supervisor).

None of these cases, however, involved an employee's refusal to obey a direct order of his supervisor. As Respondent notes, in *Troy*, two union officers were found not to be engaged in protected activity when they refused to obey their employer's order to stop interfering with the employer's attempts to interview an employee. The employer wished to interview the employee regarding possible misconduct committed by another employee, and the two union officers insisted that the employee not participate in the interview without the presence of a union representative. The Court noted that both the Commission and its administrative law judge had held that the employee had no right to have a union representative present during this type of interview. The Court also cited *Manville Forest Products Corp.,* 269 NLRB 390 (1984), in which the NLRB held that a union representative was not engaged in protected conduct when he advised employees not to respond to employer questions in connection with the investigation of alleged misconduct in the plant. The Court quoted the Board in *Manville:*

> The Board has never held that a union official's advice is entitled to such wide-ranging protection. If, for example, a union steward interferes with management by advising employees to refuse to obey their superior's orders, such conduct is unprotected. *Stop & Shop,* 161 NLRB 73 (1966) . . . it is within an employer's legitimate prerogative to investigate misconduct in its plant and to do so without interference from any of its employees –including those who are union officials. Thus, if a steward interferes with such an inquiry by advising employees not to cooperate – advice which, if followed, could lawfully result in the employees themselves being disciplined – it defies logic to conclude that such advice is entitled to protection solely because of its source.

In *United States Postal Service,* 259 NLRB 1414 (1981), cited by Charging Party, the NLRB held that an employer was guilty of an unfair labor practice when it threatened a steward with a suspension for refusing the employer's order to attend a meeting between the employer and a member of the bargaining unit unless the employer told the steward the purpose of the meeting. The Board said, at 1417-18:

> Involved here is not a question concerning the right of an employer to order an employee to attend a meeting, or its right to discipline an employee for insubordination for refusing to attend such a meeting. It is clear that [the supervisor's] conversation with [the steward] was not *vis-à-vis* the supervisor-employee relationship which existed between them. It had nothing to do with [the

steward's] work performance or his status as an employee. [The supervisor] was addressing [the steward] as a union steward and was issuing orders to [the steward] concerning [the steward's] functioning in that capacity.

Charging Party also relies on *Syn-Tech*, *supra.* In that case the NLRB held that the Employer unlawfully discharged a union steward for his conduct after the employer representative received an important phone call during a grievance discussion. The employer representative asked the steward to leave. According to the employer representative, the steward continued arguing his position instead of leaving, even though he could see that the employer representative was trying talk on the phone. According to the employer representative, before he left the room the steward pointed his finger at the employer representative and said if the steward's demands weren't met the employer "would see what would happen." The Board held that even if the employer's testimony were credited, the steward's conduct would not be sufficient to remove him from the protection of the Act.

In *Robins*, *supra*, the Board found that a union steward was engaged in protected activity when he refused his supervisor's order that he (the steward) appoint a temporary steward before the regular steward left the job site to conduct some personal business. The Board held that by discharging the steward the Employer interfered with the steward's right to engage in or not engage in union activity, and intruded on the internal affairs of the union.

During the meeting in Vizdos' office on May 8,Volpe continued to read from the contract while Vizdos was attempting to explain his position regarding Volpe's access to records. Volpe's behavior could be characterized as rude and/or disrespectful. However, this type of behavior is clearly protected by PERA when it is part of activity otherwise protected by Section 9 of the Act. I conclude that Volpe's remark about being treated like an animal falls into the same category. The record establishes that Volpe and Vizdos' discussion about Volpe's access to the schedule sheets quickly deteriorated into argument. Volpe's comment about being treated like a dog was a spontaneous remark made in the course of this argument. As noted above, the Commission has found even more disrespectful remarks to be protected by the Act when made in the context of a grievance discussion.

The more difficult issue here is whether Respondent acted unlawfully by disciplining Volpe for disobeying Vizdos' order to remain in his office and/or return there. An employee, whether or not he is a union representative, is required to obey his supervisor's directives. As the *Troy* and *Manville* cases illustrate, a union officer is not shielded by the Act when he or she instructs employees to disregard an employer's orders, even if the union officer believes in good faith that these orders are unlawful or in violation of the contract. In this case, however, Volpe did not refuse to comply with Vizdos' directive restricting Volpe's access to employer records. Nor did Volpe instruct any other employee to disobey Vizdos' orders. The record indicates that Vizdos' order that Volpe return to Vizdos' office had nothing to do with Volpe's work or his work performance. Rather, Vizdos insisted that Volpe return to his office to *continue their discussion regarding Volpe's access to records.* That is, Vizdos wanted Volpe to listen to Vizdos' contractual justification for limiting Volpe's access to employer records. I conclude that,

as in *Postal Service, supra,* Vizdos was attempting to use his authority as a supervisor to coerce Volpe into engaging in union activity, i.e. continuing his participation in a grievance discussion. I conclude further that Vizdos' violated Section 10(1)(a) and (e) of the Act both by ordering Volpe to return to his office and by disciplining Volpe for his refusal to do so,

Volpe was also allegedly disciplined for insubordination for refusing to leave the premises after Vizdos told him he was suspended. After telling Volpe that he was suspended, Vizdos unreasonably ordered Volpe to leave the building immediately, without his personal belongings and without speaking to a union representative. I find that this unreasonable order, like Vizdos' repeated insistence that Volpe return to his office, was an attempt to intimidate and coerce Volpe in the exercise of his Section 7 rights. Moreover, Volpe did not disobey Vizdos' order to leave the Center. After Volpe was told to leave, he immediately left the lobby and went to the staff room, where he kept his keys and wallet and where there was a private telephone. After Volpe was permitted to retrieve his belongings and leave a message for the union representative, he left the building immediately.

For reasons discussed above, I conclude that Respondent violated Section 10(1)(a) and (c) of PERA by suspending Christopher Volpe for three days for his alleged insubordination on May 8, 2001.

Volpe's Request for Union Representation

Charging Party also alleges that Respondent violated Section 10(1)(a) of PERA by denying Volpe his right to union representation after Vizdos told him he was suspended. As indicated above, I find that Vizdos' unreasonable command that Volpe leave the Center without phoning his union representative was part of Vizdos' unlawfully coercive conduct. However, no investigative interview was conducted prior to Vizdos' announcement that Volpe was suspended. See *NLRB v Weingarten, Inc*, 420 US 251(1971); *Wayne-Westland EA v Wayne Westland CS*, 176 Mich App 361 (1989), *lv den* 433 Mich 910 (1989). I conclude that Charging Party has not demonstrated that Volpe had a right to union representation during any phase of the May 8 incident.

Charging Party's Request to View the Surveillance Tape

Respondent asserts that it was not required to allow Charging Party to view the videotape as it requested because the camera in the lobby does not record sound. Therefore, according to Respondent, the tape would not have been of any use to Charging Party and was not relevant to Charging Party's statutory duties.

Under Section 10(1)(e) of PERA, an employer must supply requested information that will permit a union to engage in collective bargaining and police the administration of the contract. *Plymouth-Canton CS,* 1998 MERC Lab Op 545, 551-52; *Wayne County,* 1997 MERC Lab Op 679; *Ecorse PS,* 1995 MERC Lab Op 384-387. Where the information sought concerns the wages, hours, or working conditions of bargaining unit employees, the information is presumptively relevant and will be ordered disclosed unless the employer rebuts the presumption. *City of Detroit, Dept of Transportation,* 1998 MERC Lab Op 205; *Wayne County,*

supra. See also EI DuPont de Nemours & Co v NLRB, 44 F2d 536 (6th Cir, 1984). The standard applied for relevancy is a liberal discovery-type standard. The employer has a duty to disclose the requested information as long as there exists a reasonable probability that the information will be of use to the union in carrying out its statutory duties. *Wayne County, supra; See also Pfizer, Inc.*, 266 NLRB 916 (1984). When a union requests a document pertaining to the wages, hours or working conditions of bargaining unit employees, but does not know precisely what the document contains, the union is entitled to examine the information and determine for itself whether the information is relevant to matters in dispute. *Hofstra Univ.*, 324 NLRB 557,558 (1997).

In this case Charging Party made three requests to Respondent to view the videotape from the Center's lobby showing the exchange between Vizdos and Volpe on May 8. At the time it requested to view the tape, Charging Party had a grievance pending over Volpe's suspension. I find that Respondent had a duty to allow Charging Party to view the tape and decide for itself whether the tape was relevant. I conclude that Respondent violated Section 10(1)(e) of PERA by failing to give Charging Party an opportunity to view this videotape.

Facts- Alleged Unilateral Change in Call-In Practices:

Full-time child care workers at the Center work 40 hours per week. Part-time child care workers work a regularly scheduled 16-hour week. Both full-time and part-time employees work permanent schedules.

In 1982, Respondent issued a written policy entitled "Instructions for Substitute Worker Call-Ins," which listed the order in which various categories of employees were to be called to fill vacancies. This policy stated that "when a full-time male was needed" in the detention program, full-time male detention staff was to be called first, followed by full-time treatment staff, and then supervisory staff. For "all other replacements," part-time staff was to be called first, then standby employees, followed by full-time staff and then supervisors.

In 1983 Respondent issued a written policy entitled "Instructions Regarding Minimum Full-Time Staffing Requirements On Each Shift." The 1983 policy stated that at least one full-time male must be on duty in the detention program during the day shift, Monday through Friday, and on the midnight shift any day. It also stated that least two full-time employees, including at least one full-time male, must be on duty in the detention program on afternoon shifts, on holidays, and on weekend day shifts. In addition, at least one full-time male was to be on duty in the treatment program at all times.

Article 16, Section 8 of the parties' current collective bargaining agreement covers the scheduling of substitutes. Section 8(a) states, "the scheduling of substitute employees shall be within the sole discretion of the Employer." Section 8 then describes how open slots will be filled "so far as practicable." Section 8(b)(1) states that part-time and standby employees "will not be required to be used" when this would result in less than two full-time employees staffing a shift.

The record indicates that since 1983 Respondent attempted to schedule at least one full-time male child care worker for each shift. However, Respondent has not adhered to its 1983 policy regarding the scheduling of two full-time employees on weekend day shifts. Only one full-time child care worker has been regularly scheduled to work during the day shift Saturday since 1996, and only one on the Sunday day shift since 1998.

Volpe testified that he examined the shift replacement sheets for the period between November 1999 and July 2001. According to Volpe, full-time employees regularly assigned to a weekend day shift were absent on 30 to 40 occasions during this period. According to Volpe, until March 21, 2001 their replacements were either full-time employees or a notation was made on the schedule that no full-timer was available.

Motte has been responsible for calling and scheduling child care worker replacements since she became assistant superintendent in 1999. She testified that in scheduling replacements she does not follow the 1982 or 1983 policies, but follows instructions given her by Vizdos. In scheduling replacements, Motte first makes sure that there will be at least one full-time male working the shift. Some positions require a female staff member, either full-time or part-time, and for these Motte calls females in order of seniority. For other vacancies, Motte decides whether to fill the vacancy with a full-time or part-time employee. Motte calls part-time employees first, in order of seniority, unless Motte and/or Vizdos conclude that circumstances, such as an unusually large number of residents in the Center, require more full-time staff to be on duty. Motte testified, however, that many vacancies are filled at the last minute, when someone calls in sick. If Motte is not there, a shift supervisor or even the receptionist may do the call-in. Notations made on the shift replacement sheets suggest that some of these individuals may in fact call full-time employees before calling from the part-time list.

Discussion and Conclusions of Law:

In order to create a term or condition of employment through past practice, the practice must be mutually accepted by both parties. *Amalgamated Transit Union v SEMTA*, 437 Mich 441, 454 (1991). Where a collective bargaining agreement is ambiguous or silent on the subject where the past practice has developed, there need only be tacit agreement that the past practice would continue. *Port Huron Ed Assn v Port Huron SD*, 452 Mich 309, 325 (1996). However, where a particular subject is "covered by" a provision of a collective bargaining agreement, the parties have created a set of enforceable rules for themselves, and neither party may modify a term of the contract without negotiation and agreement of the parties. *St.Clair SD v IEA/MEA*, 458 Mich 540, 563-568 (1998). Where unambiguous language in an agreement conflicts with a past practice of the parties, the unambiguous language controls unless the past practice is so widely acknowledged and mutually accepted that it creates an amendment to the contract. *Port Huron*, 328-329.

I find that Article 16, Section 8 of the contract here unambiguously gives Respondent full discretion to decide whether to call in a full-time or part-time child care worker to substitute for an absent employee. Because the contract language is unambiguous, past practice is irrelevant; Respondent has the discretion to alter or ignore at will its own past practices regarding the scheduling of substitutes. However, I conclude that in any case Charging Party did not

demonstrate that until about March 2001 there was a consistent and mutually accepted past practice of calling in full-time employees to substitute on weekend day shifts, which became a term of employment. The record indicates that Respondent has not adhered strictly to the scheduling practices set out in its 1983 policy since at least 1996. The record also indicates that since at least 1999, Respondent has not consistently followed the call-in practices set out in its 1982 policy. Rather, it consistently calls full-time employees first only when a shift would otherwise be without the presence of a full-time male staff member.

In summary, based on the findings of fact and discussion set forth above, I conclude that Respondent violated Section 10(1)(a) and (c) of PERA by disciplining Christopher Volpe for his conduct on May 8, 2001. I also conclude that Respondent violated its duty to bargain in good faith by refusing to give Charging Party an opportunity to view the surveillance tape showing part of the May 8 incident. I find that Respondent did not unlawfully deny Volpe union representation on May 8, 2001. I also find that Respondent did not violate Section 10(1)(e) of PERA by unilaterally altering employees' terms or conditions of employment. I therefore recommend that the Commission issue the following order:

RECOMMENDED ORDER

Respondent St. Clair County Probate Court (Juvenile Division) its officers and agents, is hereby ordered to:

A. Cease and desist from:

1. Disciplining or otherwise discriminating against employees because of their exercise of rights protected by Section 9 of PERA.

2. Failing and refusing to bargain collectively with Teamsters State, County and Municipal Employees, Local 214, by refusing to furnish it with information relevant to the administration and enforcement of the collective bargaining agreement.

B. Take the following affirmative action to effectuate the policies of PERA:

1. Expunge from the record of Christopher Volpe the suspension issued to him on May 9, 2001,and make him whole for any monetary losses he suffered as a result of this unlawful disciplinary action.

2. Post copies of the attached notice to employees in conspicuous places on Respondent's premises, including all locations where notices to employees are customarily posted, for a period of 30 consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Julia C. Stern
Administrative Law Judge

Dated: _____