

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

In the Matter of:  
OAK PARK, CITY OF,  
Respondent-Public Employer,

Case No. C02 D-099

- and -

OAK PARK PUBLIC SAFETY OFFICERS ASSOCIATION,  
Charging Party – Labor Organization.

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APPEARANCES:

Kella Thoma, P.C., by Bruce Bagdady, Esq., and Jonathon A. Rabin, Esq., for the Respondent

Police Officers Association of Michigan, by Peter W. Craven, Esq., for the Charging Party

**DECISION AND ORDER**

On January 16, 2003, Administrative Law Judge Roy L. Roulhac issued his Decision and Recommended Order in the above matter finding that Respondent has not engaged in and was not engaging in certain unfair labor practices, and recommending that the Commission dismiss the charges and complaint as being without merit.

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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APPEARANCES:

Kella Thoma, P.C., by Bruce Bagdady and Jonathon A. Rabin, Esqs., for the Public Employer

Peter W. Craven, Assistant General Counsel, POAM, for the Labor Organization

DECISION AND RECOMMENDED ORDER  
OF ADMINISTRATIVE LAW JUDGE

This case was heard in Detroit, Michigan on August 12, 2002, by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission 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 proceeding was based upon unfair labor practice charges filed on April 26, 2002, by Charging Party Oak Park Public Safety Officers Association, a labor organization, against Respondent City of Oak Park, a public employer. Based upon the record and post-hearing briefs filed by October 1, 2002, I make the following findings of fact, conclusions of law, and recommended order pursuant to Section 16(b) of PERA.

The Unfair Labor Practice Charges:

Charging Party claims that Respondent violated Section 10(1)(a) of PERA by forcing one of its members to submit to an interview without union representation.

Findings of Fact:

The facts are essentially undisputed. On March 31, 2002, Lieutenant James Rourke assigned two of Charging Party's members, Officers Megan Townsend and James Anderson, to accompany a prisoner to the hospital. While at the hospital, Officer Townsend was called by Sergeant James Hostetler to find out if she were interested in working overtime. She declined, and the Sergeant asked to speak with Officer Anderson. Officer Townsend told Sergeant Hostetler that Officer Anderson was not with her.

When Officers Townsend and Anderson returned to the station, Lieutenant Rourke and Sergeant Hostetler interviewed each one separately about Officer Anderson's failure to stay with the prisoner. Officer Townsend was interviewed first. Officer Townsend testified that she knew that the subject of the interview was about Officer Anderson's failure to stay with the prisoner. She nevertheless believed that there was a "possibility" that she would be disciplined although she had not done anything wrong. At her request, Lieutenant Rourke permitted Union representative Frank Rehling to be present during the interviews. After Officer Anderson's interview was completed, because of variations in Officer Townsend's and Officer Anderson's versions of what had transpired at the hospital, Lieutenant Rourke decided to re-interview Officer Townsend to determine exactly how long Officer Anderson had left her alone with the prisoner. When Lieutenant Rourke called Officer Townsend in for the second interview, he told her, in the presence of representative Rehling, that he was 100% convinced that Officer Townsend had done nothing wrong, but that he wanted to know how long she had been left alone, and that she would not be disciplined.

Lieutenant Rourke advised Union representative Rehling that he could not speak to Officer Townsend prior to her second interview because he was now a witness. Rehling responded that since he could not effectively represent Officer Townsend without speaking with her, another union representative should be allowed to be present. Lieutenant Rourke did not accept Rehling's request that another representative be present. Officer Townsend had been told, in Officer Rehling's presence, that Officer Townsend was not going to be disciplined. Representative Rehling then told Officer Townsend that he, "had been advised of the same thing in the past, and then after the interview, [ I ] eventually was disciplined."

According to Officer Townsend, because of representative Rehling's statement, she believed that there was a potential that she would be disciplined. However, she knew that she had not done anything wrong and had no basis to believe that Lieutenant Rourke's assertion that she would not be disciplined was untrue. During the second interview, Officer Townsend was ordered to answer how long she had been alone with the prisoner.

#### Conclusions of Law:

In support of its claim that Officer Townsend was coerced, under threat of discipline, into answering questions without the availability or presence of a union representative, Charging Party relies on the Commission authority adopting the rule set forth in *National Labor Relations Board v Weingarten, Inc.*, 420 US 251 (1975). The Commission and the Courts have adopted the view that under *Weingarten*, the right to representation is limited to situations where the employee reasonably believes that the investigation will result in disciplinary action. *Wayne-Westland Education Association v Wayne-Westland Community Schools*, 176 Mich App 361 (1989); *Saginaw Township*, 1989 MERC Lab Op 1158; *City of Detroit*, 1990 MERC Lab Op 302. "Reasonable belief" is measured by objective standards under all the circumstances of the case. *City of Detroit*.

The only issue to be decided in this case is whether Officer Townsend had a reasonable belief that she would be disciplined as the result of her second interview. Charging Party claims that despite Lieutenant

Rourke's statement that Officer Townsend would not be subject to discipline, she had a reasonable expectation that she would be disciplined because of Officer Rehling's advice and her belief during the first interview that discipline was a possibility. I find that Officer Townsend was not reasonable in her belief that she would be disciplined during the second interview.

Officer Townsend was specifically told that she would not be disciplined and acknowledged that she had not done anything wrong and had no basis to believe that Lieutenant Rourke's assertion that she would not be disciplined was untrue. Officer Townsend's reliance on Officer Rehling's advice that he had been disciplined despite being told that he would not is misplaced. I find that Rehling's unsubstantiated and general statement would not cause a reasonable person to believe that the second investigation would result in discipline, especially since Officer Townsend knew that she had not left the prisoner alone and was told by Lieutenant Rourke that she had not done anything wrong. *City of Detroit*, 2000 MERC Lab Op 302; *City of Grand Rapids*, 1980 MERC Lab Op 18. I also find no merit to Charging Party's claim that Officer Townsend had a reasonable belief that she would be disciplined during the second interview because she believed that discipline was a possibility during her first interview. Officer Townsend was provided with Union representation during the first interview and she was not disciplined. Further, prior to the second interview, Lieutenant Rourke told her that the second interview would be limited to determining how long Officer Anderson had left her alone and that he was 100% convinced that she had done nothing wrong and would not be disciplined. Based on the above discussion, I recommend that the Commission issue the order set forth below:

RECOMMENDED ORDER

The unfair labor practice charge against the City of Oak Park is dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Roy L. Roulhac  
Administrative Law Judge

Dated: \_\_\_\_\_