STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF ST. CLAIR SHORES,
Public Employer-Respondent,

Case No. C01 A-027

-and-

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 25, AND ITS AFFILIATED LOCAL 1015,
Labor Organization-Charging Party.
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APPEARANCES:

Lange and Cholak, P.C., Craig W. Lange, Esq., and Tara R. Schemansky, Esq., on the brief, for the Respondent

Miller Cohen, P.L.C., by Eric I. Frankie, Esq., and Bruce A. Miller, Esq., for the Charging Party

DECISION AND ORDER

On August 29, 2003, Administrative Law Judge (ALJ) Julia C. Stern issued her Decision and Recommended Order in the above matter finding that Respondent City of St. Clair Shores (Employer), committed unfair labor practices in violation of Sections 10(1)(a) and (c) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210(1)(a) and (c). The ALJ found that Respondent violated Section 10(1)(a) of PERA by unlawfully threatening and intimidating Karen Scheid and Rosanne Minne in carrying out their duties as officers of Charging Party, American Federation of State, County and Municipal Employees, Council 25, (AFSCME) and its affiliated Local 1015. The ALJ also found that Respondent violated Section 10(1)(c) of PERA by discriminating against Scheid with respect to the terms of her employment because of Minne's union activity.

The Decision and Recommended Order of the ALJ was served upon the interested parties in accordance with Section 16 of PERA. On September 29, 2003, Respondent filed timely exceptions to the ALJ's Decision and Recommended Order and a brief in support of the exceptions. Charging Party was granted an extension to file a response to the exceptions, and its timely brief in support of the ALJ's Decision and Recommended Order was filed on October 13, 2003. In its exceptions, Respondent alleges that the ALJ

erred in concluding that Rayes exhibited antiunion animus and objects to her findings of PERA violations by threats and retaliation against Scheid and Minne. We have carefully examined the record in this matter and find that the exceptions have merit.

Discussion:

The facts of this case were accurately set forth in the ALJ's Decision and Recommended Order and will only be summarized as necessary here. Scheid and Minne work in the Respondent's Community Development and Inspection Department (CDID), under the direction of Christopher Rayes, the CDID director. Scheid has worked in the CDID since 1994. Her current position is code enforcement officer. Scheid is Local 1015's recording secretary. Minne is a housing rehabilitation specialist, and has worked in the CDID since 1990. Minne is AFSCME's chief steward for salaried employees. The record reveals that there have been conflicts and disagreements between supervisor Rayes and employees Scheid and Minne extending back several years.

Alleged Violations of 10(1)(a):

The first 10(1)(a) violation found by the ALJ involved an exchange between Rayes and Minne over the dress code. In August of 2000, after having previously been told by Rayes that her deck shoes were in violation of the Friday casual day dress code, Minne expressed to Rayes that she was unhappy with what she saw as his uneven enforcement of the employee casual day dress code. Minne indicated that if it was not corrected, she would file a grievance over the matter. Rayes then told Minne that if she filed a grievance, it would limit the ability of employees to wear what they were allowed to wear because the City might not permit a casual day if it was going to cause problems on a regular basis. The ALJ found that Rayes' statement was a threat to retaliate against CDID employees by making the dress code more restrictive if Minne chose to file a grievance over it.

The second incident involved a statement by Rayes that he believed Scheid and Minne were a negative influence in the department, which the ALJ interpreted as an illegal threat against Scheid. Scheid and Rayes had a conversation in the fall of 2000, after coming back from an inspection together. During the conversation, Scheid told Rayes that since Minne had additional responsibilities, maybe she deserved an upgrade. Rayes told her that they were no different than the clerks in the department, and did not deserve an upgrade. Rayes then told Scheid that she and Minne had a negative influence on the department.

Expressions of opinion by management representatives, even if critical of unions or union officers, do not violate Section 10(1)(a) unless there is a threat of retaliatory action. *City of Southfield*, 1987 MERC Lab Op 126, 141; *City of Detroit Water & Sewerage*, 1985 MERC Lab Op 777, 781; *Redford Twp*, 1982 MERC Lab Op 1289, 1300. An employer cannot lawfully threaten, either expressly or impliedly, to penalize employees because of the filing of grievances. *New Haven Cmty Schs*, 1990 MERC Lab Op 167, 179.

To determine whether an employer's remarks constitute a threat, both the content and the context in which they occurred must be examined. *City of Ferndale*, 1998 MERC Lab Op 274, 277. With respect to the dress code, Rayes' statement was merely a hypothetical of what the City could do. Even if Rayes had authority to influence the City's policy, which is not established by the record, we do not interpret Rayes' words as an implicit threat to alter the dress code if Minne chose to file a grievance. There is nothing in the context surrounding his statement to imply that Rayes intended to take any action with respect to the dress code. We, therefore, conclude that Rayes did not violate Section 10(1)(a) of PERA.

Nor does Rayes' action in telling Scheid that she and Minne were a negative influence in the department establish a violation of Section 10(1)(a). Rayes was expressing his view of how the two women affected the department as a whole. The record demonstrates that in addition to the conflicts between Rayes and these two employees, other staff members also had problems with Scheid and Minne. Rayes did not refer to the Union, and other than the fact that Scheid and Minne held positions with the Union, it is impossible to relate Rayes' comments to any union activity. We find that Rayes' remarks cannot be construed as threatening retaliation for any past or proposed union activity and do not establish a violation of 10(1)(a).

Alleged Violation of Section 10(1)(c):

The ALJ based her finding of a PERA violation on the postponement and eventual denial by Rayes of Scheid's request to attend a conference sponsored by the Michigan Association of Code Enforcement Officers (MACEO). Scheid approached Rayes several times and requested approval to attend the three-day MACEO conference seminar that was scheduled for March of 2001. Rayes eventually responded by telling her that he was going to postpone deciding whether to approve the request until he could determine the extent of Scheid's involvement in Minne's allegations against him. At a January 2001 meeting with AFSCME representatives and the assistant city manager, Minne had expressed complaints about Rayes, including his enforcement of the dress code, his denial of a lead abatement training request, his referring to her as a clerk, and the fact that he had discontinued taking her to lunch. Rayes later denied Scheid's request to attend the MACEO conference based on the fact that he believed the topics to be covered at the conference were not relevant to Scheid's daily tasks, and the topics had been covered at previous conferences Scheid had attended.

In order to establish a prima facie case of discrimination under Section 10(1)(c) of PERA, the Charging Party must establish: (1) that the employee engaged in union or other protected concerted activity; (2) the employer had knowledge of that activity, (3) union animus or hostility towards the employee's protected activity; and (4) suspicious timing or other evidence that the protected activity was a motivating cause of the alleged discriminatory actions. *Univ of Michigan*, 1990 MERC Lab Op 272; *Evart Pub Schs*, 1982 MERC Lab Op 384, *affd MESPA v Evart Pub Schs*, 125 Mich App 71.

We agree with Respondent that Charging Party has failed to establish that Rayes' denial of Scheid's request was motivated by union animus. We note that the ALJ dismissed the majority of the numerous allegations in this case because Charging Party failed to establish the necessary connection between the incident and union activity. We reach the same conclusion here. The ALJ credited Scheid's testimony that Rayes told Scheid he was temporarily denying her request to attend the MACEO conference until he could determine the extent of her involvement in Minne's allegations against him. However, crediting Scheid's testimony on this point establishes that, at most, Rayes temporarily postponed deciding on the request. Any negative effect on Scheid that resulted from postponing this decision was *de minimis.* The ultimate denial of Scheid's request was based upon legitimate considerations: that the seminar issues did not relate to Scheid's daily tasks, and that they had been covered in past seminars. In addition, approval to attend such conferences was not automatic and Respondent routinely denied many other such requests. We conclude that Charging Party has failed to establish a Section 10(1)(c) violation.

Based on the above discussion, we conclude that the unfair labor practice charges in this matter must be dismissed and issue the order set forth below.

ORDER

The charges in this case are hereby dismissed in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____
Nora Lynch, Commission Chairman

_____
Harry W. Bishop, Commission Member

_____
Nino E. Green, Commission Member

Dated: _____

NOTICE TO EMPLOYEES

After a public hearing before the Michigan Employment Relations Commission, the City of St. Clair Shores has been found to have committed unfair labor practices 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 NOT interfere with, restrain or coerce employees in the exercise of their rights guaranteed by Section 9 of PERA by: (1) implicitly threatening AFSCME Local 1015 recording secretary Karen Scheid by telling her that she and union steward Rosanne Minne were "negative influences in the department;" (2) threatening to make the dress code in the Community Development and Inspection Department more restrictive if Minne filed a grievance.

WE WILL NOT discriminate against employees to discourage their membership in a labor organization by refusing, in January 2001, to approve Karen Scheid's request to attend a conference because Minne had accused Rayes of discriminating against her because of her (Minne's) union activities.

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CITY OF ST. CLAIR SHORES

By: _____

Title: _____

Date: _____

This notice must be posted for a period of 30 consecutive days and must not be altered, defaced or covered by any material. Any questions concerning this notice or compliance with its provisions 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.

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Miller Cohen, P.L.C., by Eric I. Frankie, Esq., for the Charging Party

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 June 28, July 12, July 17, July 26, August 14, August 22, and September 12, 2001, and on January 17 and February 5, 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 June 10, 2002, I make the following findings of fact, conclusions of law, and recommended order.

I. The Unfair Labor Practice Charge and Overview:

The American Federation of State, County and Municipal Employees, Council 25, and its affiliated Local 1015, filed this charge against the City of St. Clair Shores on January 25, 2001. Charging Party represents a bargaining unit of nonsupervisory hourly and salaried employees of the Respondent. Charging Party alleges that between August 2000 and January 2001, Respondent violated Sections 10(1)(a) by threatening and otherwise attempting to intimidate Karen Scheid, Local 1015's recording secretary, and Rosanne Minne, its chief steward for salaried employees, from carrying out their activities as officers of the Charging Party.

Charging Party also alleges that Respondent violated Section 10(1)(c) of PERA by discriminating against Scheid and Minne with respect to the terms of their employment because of their union activities.

Both Scheid and Minne work in Respondent's Community Development and Inspection Department (CDID). Scheid is a code enforcement officer (CEO), and Minne's title is housing rehabilitation specialist. Christopher Rayes is the director of the CDID. Charging Party asserts that Rayes demonstrated his hostility toward Charging Party and began threatening and intimidating Scheid and Minne almost immediately after they became union officers in 1998. In support of that claim, Charging Party introduced evidence of Rayes' hostility toward Scheid's and Minne's union activities dating back to July 1998.

Charging Party alleges that Rayes committed numerous violations of the Act during the six months immediately before the filing of the charge, or between August 2000 and January 2001. Specifically, Charging Party alleges that Rayes violated Section 10(1)(a) by: (1) threatening Scheid's employment; (2) insulting her personally and belittling her job; (3) telling her he was keeping her under surveillance; (4) monitoring her daily activities by requiring her to enter all information about her work into a computer database which could be accessed by the public, by requiring her to sign out whenever she left the office, and by ordering her to have her city-owned car marked so that it could be easily identified; (5) undermining her ability to do her job effectively; (6) setting her position up for elimination; (7) forcing her to confront a threatening resident. Charging Party also alleges that Rayes violated Section 10(1) (a) of PERA by: (1) threatening reprisal if Minne filed a grievance over the CDID's dress code, and calling her "defiant" for questioning his enforcement of the code; (2) threatening Minne for attempting to obtain information she needed to investigate a grievance; (3) making repeated anti-union remarks and giving Minne copies of newspaper articles which were anti-union in tone; (3) belittling Minne's job; (4) spying on Minne and searching her work computer; (5) attempting to monitor her daily activities by requiring her to drive a clearly marked car in the field and by requiring her to sign out when leaving the office.

Charging Party alleges that Rayes discriminated against Scheid in violation of Section 10(1) (c) of PERA by: (1) endangering Scheid's safety by requiring her to drive a marked car; (2) adding new responsibilities to her job; (3) refusing to reimburse her for her membership in a professional organization; (4) denying her request to attend a work-related conference; (5) assigning her to perform clerical duties, including assisting the department's clerks at the public counter; (6) reassigning her clerical assistant so that Scheid would have to train a new one. Charging Party alleges that Rayes discriminated against Minne in violation of Section 10(1) (c) by: (1) enforcing the dress code against her in a discriminatory fashion; (2) denying her request for lead abatement training; (3) removing duties from her position to "water down" her job; (4) assigning her to perform clerical duties; (5) reassigning her clerical assistant so that Minne would have to train a new one.

As explained below, I agree with Charging Party that Rayes demonstrated anti-union animus dating back to 1998. In discussions with Minne, Rayes frequently criticized unions in general, and Charging Party in particular. Rayes consistently referred to the Charging Party as "you people." This, and other evidence discussed below, indicates that Rayes perceived

Charging Party as a challenge to his authority, and that he saw his relationship with the union as "us" (Rayes and the supervisory staff of the department) versus "them" (Scheid, Minne and Charging Party). I find that in August 2000, Rayes unlawfully threatened to retaliate against CDID employees by making the department's dress code more restrictive if Minne filed a grievance over the dress code. I also find that in late August or early September 2000, Rayes unlawfully threatened Scheid in violation of Section 10(1)(a) when he told her that she and Minne were "a negative influence in the department." In addition, Ifind that Rayes discriminated against Scheid in violation of Section 10(1)(e) of PERA by refusing, in January 2001, to approve her request to attend a conference because Minne had recently complained to Rayes' superiors that he was targeting her because she was the chief steward. As discussed below, I credit Scheid's testimony that Rayes told her that he was denying her request until he could "determine her involvement" in Minne's allegations against him.

However, I find no other violations of the Act by Rayes occurring within the six months before the filing of the charge. As noted above, I find that Rayes was hostile to Scheid's and Minne's union activities. However, I find that the record also shows a personality conflict between Rayes and the two women that went beyond Rayes' resentment of their union roles. Between August 2000 and January 2001, Rayes took actions and made statements which Scheid and Minne found personally offensive or with which they disagreed. With respect to some of these actions and statements, I credit Rayes' testimony over that of Scheid or Minne because the two women did not testify to the context in which Rayes' made certain remarks. In other cases, the evidence did not support Charging Party's claims. For most of these allegations, however, I find no violation of PERA because Respondent adequately explained the reasons for Rayes' actions or statements, and demonstrated that there was no connection, or reasonable basis for believing that there was a connection, between them and Rayes' anti-union attitudes.

II. **Findings of Fact**::

A. Background Facts

Christopher Rayes has been director of the CDID since April 1998. The CDID's responsibilities include planning, zoning, housing rehabilitation, business licenses, certificates of occupancy, building permits, water resources, code enforcement, engineering plans and coordination of road repaving and park construction projects. Positions within Charging Party's bargaining unit in the CDID include rehabilitation coordinator, code enforcement officer, building official/inspector, mechanical/plumbing inspector, electrical inspector/code enforcement officer, senior construction inspector, construction inspectors, engineering aide, and several clerks. In addition to Rayes, four supervisors are part of a bargaining unit represented by the St. Clair Shores Professional Employees Association (PEA). These four are the city planner, K.C. Forthofer, the chief building official, Victoria Mazzola, and the two assistant department directors, Jerry Peruski and Dan Bertolo.

Rosanne Minne was hired in the CDID as a clerk in 1990. In 1994, Minne became the clerical support person for the housing rehabilitation coordinator. As a clerk, Minne's responsibilities included working at the counter where residents and contractors come to apply for permits and handle other business, and answering the CDID's main phone line. Minne was

appointed acting housing rehabilitation coordinator in August 1998. In January 2000, the housing rehabilitation coordinator position was put in the AFSCME unit and posted for bid. Minne was the only applicant to pass the test for the position, and was permanently appointed to the job in February 2000. As housing rehabilitation coordinator, Minne oversees the City's federally assisted housing rehabilitation program for individual homeowners. Minne reviews homeowner applications, checks credit histories, inspects homes and looks for hazardous conditions and major roofing, plumbing, electrical work, etc. that needs to be performed, writes specifications for the work, bids it out to contractors, monitors the contractors' progress, and makes changes in the specifications as necessary.

The code enforcement officer (CEO) is responsible for enforcing Respondent's property maintenance codes and ordinances, including signs, improper uses in zoning classifications, dumping, garbage, weeds, dead trees, lawn maintenance, downspouts, and abandoned vehicles. The CEO does daily patrols, investigates complaints, brings code violations to the property owner's attention and tries to achieve voluntary compliance, makes referrals to other city departments, writes citations, and goes to court to prosecute code violators. The CEO also answers questions from citizens about property codes and ordinances. In addition, the CEO is also responsible for issuing business licenses, although most of this work is done by a clerical. Karen Scheid was hired in the CDID as a clerk in 1994 and served as the assistant to the CEO, Tom Cusmano. As Cusmano's clerical assistant, Scheid handled many of the in-office responsibilities of the CEO, including writing letters and violations notices for Cusmano's signature and returning phone calls from residents with complaints. Scheid also frequently accompanied Cusmano on field inspections. Scheid was permitted to attend monthly meetings held during the day by the Michigan Association of Code Enforcement Officers (MACEO), which allowed her to be certified by that organization as a CEO. Like Minne, Scheid was regularly assigned to work at the counter and answer the CDID's main phone line. In November 1998, Scheid was appointed CEO after Cusmano retired.

In the spring of 1998, while she was still a clerk, Scheid was appointed to fill a vacancy as Local 1015's recording secretary. As recording secretary, Scheid maintains the union files, takes minutes at union meetings, and handles union correspondence. Scheid investigates and types grievances and takes notes at grievance meetings. She also attends contract bargaining sessions and takes notes for the union. In October 1998, Scheid was reelected as recording secretary and Minne was elected chief steward for salaried employees. Minne's responsibilities include investigating, filing, and processing grievances for all salaried employees in Charging Party's bargaining unit.

As noted above, when Scheid was Cusmano's assistant she frequently accompanied him on inspections. On July 2, 1998, Cusmano asked Rayes, as usual, to allow Scheid to accompany him on an inspection. Rayes told Cusmano, and then Scheid herself, that he would not allow Scheid to go out into the field "until all the complaining and grievances in the department had stopped." Scheid testified that Rayes also said that she "was behind the filing of a particular grievance in the department, and the niceties were going to stop until the grievances stopped." Rayes did not deny making these remarks, in substance. Rayes testified, however, that he was referring to a complaint by Pat Vendetelli, then Charging Party's steward for salaried employees, that Cusmano had been giving Scheid a "leg up" on receiving his position after Cusmano retired.

Rayes explained that, in late June, he and Linda Paladino, Respondent's assistant city manager/personnel director, had met with Vendetelli to go over the job description for the CEO position in anticipation of Cusmano's October retirement. At that meeting, Vendetelli complained about Scheid's accompanying Cusmano out into the field. Vendetelli said that if Scheid's position was going to be a training position, Charging Party should have had input. According to Rayes, he decided to stop Scheid from going out in the field with Cusmano in response to Vendetelli's complaints. Rayes did not specifically deny using the words attributed to him by Scheid, and I credit her account. However, I credit Rayes' explanation, which was consistent with the events that followed, including the grievance filed by Vendetelli and other union members in the CDID after Scheid was appointed CEO.

Scheid testified that in October 1998, Rayes became visibly upset when she informed him of her reelection as recording secretary. According to Scheid, Rayes threw papers down on his desk and kicked a desk drawer shut. Scheid testified that she said, "Well, we're professionals here. This should work," and Rayes replied, "I hope so, but I don't think so." Rayes could not recall this incident, and I credit Scheid's account. Both Scheid and Minne testified that after their election, Rayes consistently referred to Charging Party as "you people." Rayes did not deny this, and I credit Scheid and Minne's testimony.

Minne's first day as steward was October 15, 1998. That day, many union members came to talk to her about filing a grievance over Scheid's promotion to the position of CEO. On October 16, Rayes issued a memo to all department heads within the City. The memo stated that he had discussed with both Scheid and Minne his "concerns over having two members in our department on (Charging Party's) board." Rayes asked the department heads to limit discussions between their employees and Scheid or Minne during the workday to between 3:00 and 5:00 pm. Although Minne complained to Rayes that her job often required her to be in the field during that period, Rayes did not alter the policy.

Soon after Scheid's appointment as CEO in November 1998, three employees filed grievances asserting that they had not been given the same opportunities to learn the job that Scheid had been given. These grievances were denied by an arbitrator in June 2000. During the period the grievances were pending, Rayes repeatedly told Scheid that she did not need the union, that the union was not going to do anything for her, and that the union was not going to tell him how to run his department. Rayes did not deny making these remarks. According to Rayes, he said these things while attempting to reassure Scheid that Respondent did not intend to settle the grievances by removing Scheid from the CEO position. Rayes testified that sometime during these same discussions he also told Scheid that she was "paranoid." Rayes denied accusing Scheid of being paranoid in any other context. However, according to Rayes, he told both Minne and Scheid, on several different occasions, that no one, not even the union, was going to tell him how to run his department. I credit Rayes' testimony that he called Scheid paranoid while attempting to reassure her about her job status. However, I note that Rayes admitted that he said, in other contexts, that not even the union was going to tell him how to run the department.

On April 16, 1999, Rayes issued Minne a written warning for asking part-time employees about their job duties. The written warning stated that Minne's questioning was creating

"unnecessary friction and fear," and directed Minne to address her questions only to Rayes. Minne testified that shortly before she received the written warning, she and Scheid had lunch with a part-time clerical employee where they discussed filing a grievance over Respondent's failure to fill a full-time clerical vacancy in the CDID. According to Minne, the conversation upset the part-time employee. Rayes did not testify about the circumstances leading to this warning. Instead, Rayes testified that at least ten employees had complained to him, over a period of years, about Minne's manner of speaking to them. According to Rayes, some of these employees complained that Minne corrected them in front of members of the public, and others said that she was rude to them. I note that Rayes did not testify that the April 16 warning was prompted by a complaint about Minne's rudeness, and that Rayes did not accuse Minne in the written warning of threatening employees or even speaking rudely.

According to Scheid, in July 1999, she and Mazzola had a disagreement about an inspection, and Scheid went to complain to Rayes about Mazzola. Scheid testified that Rayes told her that he would take the side of a supervisor over a union employee whether the supervisor was right or wrong, and would get rid of the union employee before he got rid of the supervisor.[1] According to Scheid, Rayes said something similar a short time later. This second conversation occurred after she and Rayes had inspected a kennel together, and the subject was again a conflict between Scheid and Mazzola. According to Scheid, Rayes said that the difference between AFSCME and the PEA was that a PEA member would do whatever he told them to do whenever he told them to do it, and that they did not question him. Scheid testified that Rayes then said that this was why he would always take the side of a PEA member over an AFSCME member. Rayes did not remember either of these conversations. Rayes testified, however, that he has explained to both Scheid and Minne on several occasions that if a complaint is made by an employee about a supervisor, he will not accuse the supervisor of doing something wrong in front of the employee, but will speak to the supervisor privately. I credit Scheid's testimony. I find Scheid's version of Rayes' remarks to be more consistent with Rayes' impatient nature, as exhibited both by his other actions in this case and by his restless demeanor on the witness stand.

In May 2000, Scheid was in the city clerk's office, in the area behind the counter, when Rayes walked by. Rayes stated that she looked "pretty good behind that counter," and that maybe she should consider transferring there. The clerks behind the counter said, "Oh, no, we don't want all those complaints." Rayes remarked, "You see, Karen, you're a negative influence wherever you go."

Scheid testified that shortly after Scheid became CEO, Rayes put a stop to her receiving copies of staff and city council minutes. Scheid also testified that after she became CEO, Rayes added responsibility for removing illegal temporary signs to duties of the position. Scheid testified that when Cusmano was CEO, he had an agreement with Mike Lozon, the director of the department of public works (DPW), that DPW workers would remove temporary signs placed illegally on the right- of way or on telephone poles in exchange for Scheid (on Cusmano's behalf) writing letters to the owners of hazardous dead or dying trees. After Scheid became CEO, Rayes ordered her to get out of her car during her regular patrols and physically remove illegal temporary signs; he also began sending her out to pick up signs when city councilpersons called

[1] Scheid originally testified that this conversation occurred in August 2000. However, on cross-examination she admitted that it probably took place in July 1999.

in with complaints. Rayes testified that if a sign is too high, too large, or stuck in concrete, the CEO should contact the DPW to remove it. Otherwise, according to Rayes, the removal of temporary signs on weekdays is the CEO's job. Rayes testified that, as far as he was aware, Cusmano had picked up signs on weekdays. While Rayes testified that signs were the CEO's responsibility, Scheid testified that Cusmano, when he was CEO, had an agreement with the DPW director that the DPW would pick up signs in exchange for Scheid's clerical services. I find no conflict between Rayes' and Scheid's testimony on this point.

Scheid also testified that during the winter of 1999-2000, Rayes added responsibility for snow removal violations to her job. According to Scheid, when Cusmano was CEO, the construction inspectors did all the field work on snow removal violations, while Cusmano merely wrote up citations and handled enforcement. Scheid testified that in the winter of 1999-2000, when there was an increase in the number of snow removal violations, Rayes directed Scheid to go out in the field, write tickets for these violations, and notify the residents and business owners. Rayes denied directing Scheid to take care of snow removal violations. According to Rayes, identifying snow removal violations is, and has always been, the responsibility of the construction inspectors. Rayes testified that he was not aware that Scheid was handling snow removal violations in the field until sometime between October and December 2000, when Scheid brought this to his attention. Rayes then immediately ordered the construction inspectors to resume doing the work. Respondent's records showed that the construction inspectors issued most of the snow removal citations during the winter of 2000-2001. I credit Scheid's testimony that Rayes told her to take care of snow removal violations during a period of heavy snowfall in the winter of 1999-2000. However, I credit Rayes' testimony that he was not aware that Scheid continued to handle the snow removal violations until the late fall of 2000.

According to Scheid, Rayes refused to give her competent full-time clerical assistance after she became CEO. Scheid testified that, because she has never had a full-time assistant, she has to do much of her own clerical work. In addition, each time a new clerical is assigned to her, she has to train her in code enforcement procedures. As noted, Scheid was Cusmano's clerical assistant. When Scheid became CEO in November 1998, she asked for full-time clerical help. Rayes assigned a clerk to help her with business licenses only. After a few months, this clerk left for another position. Scheid then had no clerical assistance until the summer of 1999, when one clerk was hired to assist both Scheid and Minne. This clerk was fired before the end of her six-month probationary period. Julie Kandt was hired to replace her in December 1999 or January 2000.

B. Facts - Alleged Section 10(1)(a) Violations

1. Scheid:

According to Scheid, sometime between August 2000 and January 2001, Rayes said that he had "the power to make or break her," that she was paranoid and weak, and that he might have to send her to counseling. Scheid testified that Rayes threatened to make someone with less seniority and less experience her supervisor. She testified that Rayes told her, "I am going to water down your job responsibilities so that you don't have an opportunity for promotion." As noted above, Rayes testified that sometime between November 1998 and June 2000, he told

Scheid that she was paranoid when she expressed fear that Respondent might remove her as CEO to settle the grievance over her appointment. Rayes denied making these other statements. I note that Scheid did not testify regarding the context in which these inflammatory remarks were allegedly made. I find Scheid to be a generally credible witness. However, Scheid's intense dislike for Rayes was obvious from her demeanor on the witness stand, and I find that her interpretation of otherwise innocuous remarks could have been affected by that dislike.

Scheid testified that sometime between August 2000 and January 2001, Rayes said that the City Council did not feel that she was the appropriate person for the position, and that her biggest obstacle with the City Council was gender-related. Rayes testified that sometime between Scheid's appointment and about June 2000, he told Scheid that it would not look good with City Council for her to be asking for more help with code enforcement after being on the job for such a short time, especially since Cusmano had done the job by himself for many years. According to Rayes, he then informed Scheid that some members of the council did not support her being in the position of CEO, and some had expressed concerns about her ability to do the job because of her gender. Rayes maintained that he assured these council members that their fears were unfounded. Rayes did not explicitly deny making the remarks Scheid attributed to him in the fall or winter of 2000, and I credit her testimony on this point.

Scheid also testified that sometime in late August or early September 2000, Rayes mentioned to her that Minne had asked for a wage upgrade. According to Scheid, Rayes told her that neither she nor Minne deserved an upgrade, that Scheid was making good money for a person with minimal education, and that she and Minne were no different from the clerks in the department. Rayes then accused both Scheid and Minne of being "a negative influence in the department." Rayes did not recall this conversation. He admitted telling Minne, however, that he thought her current pay classification was fair. He also testified that he told both Minne and Scheid several times that the clerks deserved as many training opportunities as anybody else in the department, and that he thought that training for the clerks was a greater priority than training for other staff because the clerks were nearly all new and unfamiliar with community development. Rayes admitted he might have said, in this context, that Scheid and Minne were no better than the clerks. Rayes also testified that in July 2000, after Scheid asked him to move her position to the PEA unit, he told her that she was bringing nothing more to the position than Cusmano had. According to Rayes, he did not intend to denigrate Scheid's job performance, but was simply trying to explain why he did not think that he could justify moving her position to the supervisory unit. I note again that Rayes did not explicitly deny making the remarks Scheid attributed to him, and I credit Scheid's testimony.

Between August 2000 and January 2001, Rayes told Scheid that she could not speak directly to any supervisor in the department, and that everything must go through him. Rayes also told members of the City Council not to speak directly to her. Scheid also asserted that Rayes refused to provide her with "feedback." Scheid testified that on numerous occasions during this period Scheid called residents to follow up on a complaint, or wrote a citation, and then discovered that Rayes or Forthofer had resolved the complaint without telling her or were in the middle of discussing it with the resident. According to Rayes, he receives complaints from residents about actions taken by nearly all CDID employees, including Scheid. According to Rayes, he usually shares these complaints with the employee. He admitted, however, that on

occasion he has neglected to inform an employee that he, another supervisor or the City Council has resolved matters with a resident.

Scheid testified that sometime in the late summer 2000, Rayes forced her to confront a threatening resident without a cell phone. Other CDID inspectors had cell phones, but Rayes had previously denied Scheid's requests to be provided with one. In August or September 2000, Scheid had to go to the home of a resident to order him to have his grass cut. The resident had a criminal history, and was reported to have an arsenal of guns. Scheid went to Rayes and repeated her request for a cell phone, citing the circumstances of her visit. Rayes told her that she could call in on the radio. When Scheid said she had trouble getting anyone in the department to respond to the radio, Rayes said that this was because she had a soft voice. According to Rayes, the City Council's policy is to provide cell phones only to CDID employees who have to talk to contractors or members of the public from the field and therefore cannot use the radio. Rayes testified that he did not believe he could justify the expense of providing Scheid with a phone.

In early September 2000, Scheid asked City Manager Mark Wollenweber to meet with her to discuss her workload. In about February 1999, Scheid started complaining to Rayes about her workload. Scheid suggested that certain ancillary duties be shifted to others, and that seasonal help be hired, to allow her more time to respond to code violation complaints. Scheid was not satisfied with Rayes' response to her suggestions. Wollenweber said he would set up a meeting, and told her to prepare a list of issues to discuss. On September 20, Wollenweber met with Scheid, Rayes, Mazzola and the engineering inspector to discuss how to make code enforcement more efficient. Scheid handed out a memo listing her suggestions for shifting work, and a spreadsheet she had prepared comparing her duties with those of code enforcement officers in several similar communities, and with the duties Cusmano had performed. During the meeting, Mazolla suggested that building licenses, a responsibility of the CEO, be combined with certificates of occupancy and handled by a clerk. Wollenweber suggested a few other ways her work might be redistributed. Rayes and Scheid had discussed many of her suggestions. According to Rayes, however, he was angry because he felt Scheid had gone over his head. Rayes was mostly silent during the meeting. At some point in the meeting, Rayes made a paper airplane out of Scheid's memo. After the meeting, Rayes complained to Scheid that she had gone over his head. Rayes said that the items on the list were "chicken sh-t" and "a bunch of crap." Rayes also said that Scheid "was negative and played the victim." In addition, Rayes told Scheid that she should have a better attitude, and that she had "not climbed out of the hole you people dig for yourselves."

In December 2000, Rayes hired Cusmano as a contract employee to do code enforcement. In December 2000, Rayes also sent a memo to the police chief asking if the police department would consider taking over responsibility for code enforcement. According to Rayes, he knew that some police departments did code enforcement. Rayes also testified that since he and Scheid were not getting along, he thought Scheid might be happier in the police department. The police chief responded that he was interested, but wanted to fill the position with a sworn officer, or to post it and select his own candidate. Rayes testified that after he received the police chief's response, Rayes dropped the matter.

In December 2000, Respondent completed the transfer of code enforcement data to its new software program, Equalizer. In 1997, Respondent purchased software to keep track of its code enforcement compliance efforts. Access to this database was limited to Scheid and Rayes. In October 1999, the CDID decided to purchase Equalizer, in part, because Equalizer would allow it to directly access Macomb County's property assessment database. The Equalizer database was eventually supposed to include all or almost all activities within CDID. However, Rayes decided that initially it would track only permits, code enforcement, rental inspection, and electrical, plumbing, building and engineering inspections. Between April 2000, when Rayes decided to put code enforcement data on Equalizer, and the completion of the transfer of the data in December 2000, Scheid made several complaints about the new system. First, Scheid complained about other CDID staff members' having access to her data. Second, she complained that too many people had the ability to modify or delete data. Scheid's third complaint was about Rayes' decision to have CDID staff give out information from the Equalizer database to members of the public without requiring these individuals to file a Freedom of Information Act (FOIA) request. Scheid also told Rayes that she thought that the data might give a misleading picture of her work performance, because she generally had a backlog of complaints in the summer. In response to Scheid's second complaint, Rayes told Scheid that if anyone tried to delete data, the system could track it. However, he eventually limited modify and delete access to Scheid and her clerical assistant. With respect to her third complaint, Rayes informed Scheid that he had been told that information on open code enforcement cases was not privileged under the FOIA. According to Rayes, CDID does not give out information over the phone to callers who won't identify themselves, or who ask for too much data, but that he believes that in the ordinary case individuals should not have to file a FOIA request to get public information easily available on the computer. Rayes admitted telling Scheid, sometime in the course of responding to her complaints, "You are just concerned that I am going to be able to track you with this information."

During the winter of 2000, Scheid used her own vehicle, a four-wheel drive, when it was snowing badly. Rayes told her that she would not be reimbursed because she had not asked permission to use her own vehicle. Scheid apologized, and said, "I'm trying to make an effort to let you know what I'm doing," because he had previously accused her of not keeping him informed of her actions. Rayes replied, "I know everything you do."

2. Minne:

In August 2000, while Charging Party and Respondent were negotiating a new collective bargaining agreement, another labor organization filed a petition seeking to represent Charging Party's unit. Soon after, Rayes remarked to Minne that the union membership was divided and that it did not know what it wanted. According to Minne, Rayes also said that AFSCME was disorganized, that management was always superior to the workers, and that management was always right. Rayes did not deny making these remarks. Later the same day, Rayes placed a copy of a newspaper article on Minne's desk. The article suggested that employees stop expecting so much from their managers and take more responsibility for their own actions and careers.

Minne testified that around the time the representation petition was filed, Rayes began referring to her as a clerk. According to Minne, Rayes also once told her that she was not an

inspector. Rayes denied calling Minne a clerk. Minne did not explain the context in which Rayes allegedly made these remarks, and I do not credit her testimony on this point.

Charging Party alleges that in August 2000, Rayes threatened to make the CDID's dress code more restrictive if Minne filed a grievance over the dress code. According to Minne, Rayes told her that if she filed a grievance regarding the dress code, "it would severely limit the other employees to wear what they were allowed to wear." According to Rayes, he said that if Minne filed a grievance, "it would probably have a detrimental effect on casual day, because I don't think the City's going to fight over doing a good thing for the employees by letting them have a casual day if, in fact, its going to cause problems on a regular basis." The record does not indicate that Minne and Rayes were discussing the City's dress code for casual day. I credit Minne testimony on this point.

In early to mid-September of 2000, Rayes left a piece of paper with two newspaper clippings on her desk. One clipping contained a job advertisement for a director of community development in another state. The other clipping was a similar advertisement for a housing rehabilitation technician. Rayes underlined some of the stated job qualifications for the director position, including "initiative." Around this same time, Rayes also gave Minne a copy of a newspaper article titled "A Superior CEO: A Profile." According to Rayes, he gave Minne the first job advertisement because Minne had said that she was not used to working for a boss who was so driven, and Rayes wanted to show her that setting high goals was a requirement for his job. According to Rayes, he gave her the second one to show her what persons performing her job duties were paid in other places. Rayes testified that he gave Minne the article on CEOs so that she could measure his job performance by the standards set forth in the article.

During the fall of 2000, Minne and Rayes had a series of grievance meetings. During these meetings, Rayes repeatedly referred to Minne and the union as "you people." Rayes also said that "people" were not going to tell him how to run his department. Minne testified that in a grievance meeting in October 2000, Rayes told her that she "only represented the weak people." Rayes did not deny making this remark, in substance. According to Rayes, he said that '"only those who don't feel they can represent themselves would need to go to the Union for representation, and those that have a stronger personality would generally handle it themselves."

In October 2000, as she was on her way to inspect a rehabilitated home, Minne saw Assistant CDID Director Jerry Peruski following her in an unfamiliar truck. Later that day, Peruski asked her an inconsequential question that implied that he had not been in that part of the City. Minne and Scheid also noticed Peruski following them in December 2000, when Scheid was accompanying Minne on an inspection. Later that same day, Minne saw Peruski following her again as she was going alone to another site.

In the same month, Minne approached Dan Bertolo, CDID's other assistant director, and told him that she thought she was being mistreated by Rayes. According to Minne, Bertolo told her that both she and Scheid were being targeted by Rayes, and that the best thing for Minne to do would be to keep her mouth shut and do a good job. According to Bertolo, Minne asked him if he knew why she and Scheid were being singled out. Bertolo testified that he told Minne that he and Rayes did not discuss personal matters, and she would have to talk to Rayes. According

to Bertolo, he said, "the only thing I can tell you is, come in to work every day, do the best job that you can possibly do, keep your mouth shut, and in time, things always tend to work themselves out." Bertolo admitted on cross-examination that he also told Minne that if he were in her position, he would consider quitting the Union board because it would be "a distraction." On the witness stand, Bertolo appeared uncomfortable and hesitant. I credit Minne's testimony that Bertolo told her that she and Scheid were being targeted by Rayes.

On or about December 18, 2000, Minne went to the payroll department and asked the payroll clerk for information on an employee, Keith Ketelhut, who had asked her to file a grievance on his behalf. Minne had received payroll information for other employees in the past simply by asking the payroll clerk. Minne requested a number of documents on Ketelhut. After Minne returned to the CDID, the payroll clerk telephoned her. The clerk said that her supervisor would not allow Minne to have the information. Minne went to Linda Paladino's office. Paladino told Minne that she had to make a written request and obtain the grievant's signature to release the information. After following Paladino's instructions, Minne received the information she wanted. When she arrived back at the CDID, Rayes told her that she should have asked the payroll clerk for this type of information, and that she was not supposed to conduct union business before 3:00 p.m. without asking his permission.

Minne was not at work on Friday, January 5, 2001. When Minne came in on Monday, January 8, she found that her computer was on, and that and someone had logged in by entering her name and password. Other than Minne, only Rayes and the City's information technology department had access to this password. When Minne sat down at her computer, she discovered that she had access to the personal databases of every employee at City Hall, including the city manager and finance director. Minne immediately called the information technology department. She was told that no one from that department had been on her computer. When Minne told Rayes what had happened and asked him if he had used her computer, he denied it.

In early January 2001, Rayes sent an e-mail to all employees indicating that jeans of any color were not within the dress code. As Minne was wearing a pair of black cotton slacks that had rivets that day, she felt that Rayes' e-mail was directed at her. Minne went to Rayes and told him he was enforcing the dress code unfairly because other inspectors were wearing jeans to the office. Rayes told Minne that her pants were jeans, and told her not to wear them again. According to Rayes, Minne told him to feel her pants, because they were not denim. After Minne made this remark, Rayes told her that she was "defiant."

3. Scheid and Minne:

Before August 2000, City-owned vehicles driven by CDID employees bore only the City's name. On June 20, 2000, Rayes sent a memo instructing the DPW to mark all City cars belonging to the CDID with decals displaying the title of the individual assigned to drive the car, the CDID's phone number, the car's vehicle number and the car's radio call number. In August, Rayes told Scheid to take her vehicle to the DPW garage to be decaled; she was the first employee instructed to do this. Shortly after Scheid had her car marked, Rayes told Minne to get the decals put on her car. None of the other employees who drive City cars were required to get the decals until four or five months later, after Minne complained. According to Rayes, after

Minne's car was marked he instructed two other inspectors to get the decals put on their cars, but they procrastinated. Rayes testified that after Minne complained, Rayes insisted, and eventually all the cars were marked.

On January 10, 2001, Rayes announced at a staff meeting that he was instituting a sign-out sheet. According to the minutes of the meeting, Rayes said that everybody but certain inspectors was to sign out – those inspectors either had permanent out-of-office assignments or already had a separate printed sheet showing their daily schedule. The first sign up sheet went up on January 19. Some, but not all, of the employees who should have signed out actually did so; some signed out only sometimes. Minne complained to Rayes that not all employees were signing out. According to Rayes, after Minne complained he sent an e-mail, on January 16, directing everyone to sign out. However, some employees did not begin signing out until early February.

C. Facts - Alleged Section 10(1) (e) Violations

1. Scheid:

Charging Party alleges that Rayes discriminated against Scheid when, in August 2000, he required her to have her City-owned car marked with decals, including a decal identifying her as the code enforcement officer. Scheid objected to having her car so identified because she felt that driving a conspicuously marked care increased her risk of being confronted in the field by an irate citizen. As discussed above in Section II (B)(3) above, Scheid was the first CDID employee Rayes told to take her car to be marked.

Scheid testified that in the fall of 2000, Rayes ordered her to do a "blitz" of the City and identify dead or dying or other trees that might present a safety hazard, even though Rayes knew that she was not trained to do this task. Scheid testified that until early that fall, when he retired, DPW head Mike Lozon identified dead and dying trees, talked to the homeowners and took violators to court, while she and/or Cusmano took care of the paperwork. According to Scheid, after Lozon retired, Scheid had to talk to homeowners and take violators to Court. Although Scheid initially testified that she was told to do the "blitz," she later testified that she was never required to actually identify hazardous trees, and that someone from the DPW always did this. Rayes testified that before Lozon retired, Cusmano and Scheid took care of everything connected with trees except actually identifying them. According to Rayes, in the fall of 2000, Scheid showed him a list of dead and dying trees that was very old. Rayes told her to give the list to the DPW, and to go out with the foresters and verify that the trees were still standing. According to Rayes, he never ordered Scheid to actually identify dead or dying trees. As noted above, Scheid's testimony on this point was inconsistent, and I credit Rayes.

Certain zoning issues, e.g. home businesses and special land use requests, have always been part of code enforcement. In the fall of 2000, Scheid was presented with a new zoning issue and asked Rayes for more training. Rayes replied that the Zoning Board of Appeals meetings were open to the public if she wanted to attend them on her own time.

Sometime between August 2000 and January 2001**,** Rayes denied Scheid's request to continue her city-paid membership in the Michigan Association of Housing Officials (MAHO). Rayes had approved Scheid's request for the previous year. According to Rayes, he decided to deny Scheid's request because no one else in the CDID had been reimbursed for their membership in this organization, and Cusmano had not been a member of that organization.

On January 23, 2001, at Minne's request, Charging Party representatives, including several AFSCME officials, met with Assistant City Manager Linda Paladino to discuss the CDID dress code and Rayes' enforcement of it. At this meeting, Minne stated that she felt that Rayes was targeting her because she was the union steward. In addition to the dress code, Minne brought up Rayes' denial of her request for lead abatement training, his referring to her as a clerk, what she felt was his accusation that she was doing work that should have been done by Forthofer, and the fact that Rayes stopped taking her out to lunch after she became steward but continued to lunch with other CDID employees. Scheid testified that a few weeks after the above meeting, Rayes told Scheid that he was temporarily denying her request to attend a conference sponsored by the Michigan Association of Code Enforcement Officers until he could determine her involvement in the allegations against him. Rayes denied saying this and denied that his rejection of her request was connected to the January 23 meeting. According to Rayes, he and Scheid had talked about the conference before January, but he had not approved her going. According to Rayes, he received Scheid's request to attend the conference on January 16, 2001, and said nothing about it until February 20, when he sent her a memo indicating that the topics addressed in the individual seminars were not directly relevant to her job duties or had been offered in other seminars closer to home. I credit Scheid's testimony on this point. As I noted above, I find Scheid to be generally credible and, in this case, her recollection of Rayes' remark was specific and detailed.

2. Minne:

The City has a dress code, but individual department directors may set their own dress codes. In July 2000, Rayes announced at a staff meeting that CDID employees could no longer wear jeans, tennis shoes or similar shoes, or shorts. Sometime in August 2000, Rayes told Minne that her deck shoes were outside the dress code. Minne disagreed. Rayes and Minne then discussed Rayes' new dress code, and Minne told Rayes that his code was in conflict with the City's dress code.[2] They discussed whether Rayes was enforcing the dress code fairly, and whether the pants worn by some of the female staff were shorts. Rayes did not discipline Minne for violating the dress code.

In September 2000, Minne attended a conference where new HUD regulations concerning lead abatement were discussed. After the meeting, Minne also asked Rayes if she could attend two training classes on lead abatement. The first was a class on containing and disposing of lead on construction projects, and the second involved assessing lead risks. Although the CDID uses outside contractors to test for the presence of lead before a rehabilitation projects begins, Minne argued that she needed the assessment training to write specifications and understand reports. Rayes told her that she did not need either training class. According to Rayes, he denied Minne's request to take any lead abatement classes in September

[2] The City's dress code explicitly allows deck shoes.

2000 because HUD had postponed the deadline for the City to turn in its lead abatement implementation plan. In the spring of 2001, Minne attended four days of training on handling lead-based materials. On Forthofer's recommendation, the building inspector was sent to a seminar on assessing lead risks; Forthofer told Rayes that in her opinion Minne did not need this training to do her job.

Minne testified that in the fall of 2000, Rayes took some of Minne's job responsibilities away in order to "water down" her job. According to Minne, she had been handling certain block grant funds since Harold "Skip" Schwartzenberg retired as CDID director in 1996. Rayes testified that Schwartzenberg was rehired as a contractor to serve as block grant coordinator until the new city planner, Forthofer, was ready to take over this part of her job. Both before and after his retirement, Schwartzenberg delegated the responsibility for handling certain block grant funds to Minne. According to Rayes, Schwartzenberg's contract was supposed to end as soon as Forthofer was ready to assume his responsibilities. By the fall of 2001, Rayes felt that Forthofer should have been ready to assume her duties as block grant coordinator, including handling the funds that Schwartzenberg had entrusted to Minne. Rayes and Wollenweber met with Schwartzenberg. Later, Rayes met with Minne, Forthofer and several other employees to discuss turning over to Forthofer duties that other employees, including Minne, had been doing.

3. Scheid and Minne:

On October 2, 2000, Rayes sent an e-mail to all clerical support staff, plus Scheid and Minne, directing them to arrange their schedules so that at any given time there were always more than two people in the office to serve the counter and answer the phone. The other inspectors in the department did not receive this e-mail. After October, Rayes sent Scheid and Minne e-mails about a once a month directing them to help at the counter and/or answer phones on a specific day or days when the support staff was short staffed. Rayes admitted that he did not ask other department employees to assist the support staff in this fashion because, except for Mazzola (who had also once been a clerk in the department) other CDID employees did not know how to the process the paperwork generally handled at the counter.

On January 15, 2001, Rayes switched the assignment of Scheid and Minne's clerical assistant, Julie Kandt, and another CDI clerk, Barbara Jenken. As a result, Scheid and Minne had to train Jenken to do their work. According to Rayes, he made this switch because Kandt had complained to him about Minne and Kandt was preparing to go on maternity leave.

III. Discussion and Conclusions of Law:

A. Rayes' Animus toward Scheid and Minne's Union Activities:

Respondent asserts that there is no evidence that Rayes had anti-union animus. Charging Party maintains that Rayes' animus toward Scheid's and Minne's union activities extended back to 1998, when the two women first became union officers. I agree with Charging Party, and base my conclusion on the following facts:

1. Rayes' reaction when Scheid told him, in October 1998, that she had been reelected to the position of Local 1015 recording secretary.

2. The fact that Rayes repeatedly said to the two women that no one, not even the union, was going to tell him how to run his department. This comment indicates that Rayes viewed Charging Party and the grievance process as a challenge to his authority.

3. The written warning Rayes issued to Minne on April 16, 1999 for asking other CDID employees about their job duties. Minne was chief steward at the time, and her questions were related to the investigation of a possible grievance. Rayes did not accuse Minne of actually threatening other employees or of improperly discussing union business during working time.

4. Rayes' July 1999 remark to Scheid that he would take the side of a supervisor over a union employee and would get rid of the union employee before he got rid of the supervisor. A manager's statement that he will always take the side of a supervisor against the supervisor's subordinates does not evidence anything except, possibly, poor management skills. However, the fact that Rayes used the word "union employee" rather than "subordinate" is further evidence that Rayes viewed his relationship with Charging Party as "us" versus "them."

5. Rayes' August 2000 statement that if Minne filed a grievance over the CDID's dress code, it would impact "employees being allowed to wear what they were allowed to wear." As noted above, I credit Minne's version of this conversation, and I find that Rayes' threatened to make the CDID's dress code more restrictive if Minne filed a grievance.

6. Rayes' comment to Scheid, after the September 20, 2000 meeting to discuss her workload, that she should have a better attitude and "had not climbed out of the hole you people dig for yourselves."

7. Statements made by Rayes to Minne during grievance meetings during the fall of 2000, including Rayes' repeated references to Charging Party as "you people," his statements that the union was not going to tell him how to run his department, and Rayes statement that only "weak" people filed grievances instead of handling matters themselves.

B. Alleged Threats and Coercion

Section 10(1)(a) makes it unlawful for employers to interfere with, restrain or coerce employees in the exercise of their Section 9 rights. Section 9 of PERA guarantees public employees the right to organize together, to form, join or assist in a labor organization, to negotiate or bargain collectively with their public employers through representatives of their own free choice, and to engage in lawful concerted activities for the purpose of collective negotiation or bargaining or other mutual aid and protection. An employer violates Section 10(1)(a) by threatening to retaliate against an employee because of his or other employees' union or other concerted protected activities. In determining whether a particular action or statement constitutes an unlawful threat, the standard is whether a reasonable employee would interpret the statement as a threat, express or implied. *City of Greenville*, 2001 MERC Lab Op 55, 56; *Detroit Water & Sewerage Dept*, 1983 MERC Lab Op 561.

1. Scheid:

I find that Rayes unlawfully threatened Scheid in violation of Section 10(1)(e) of PERA when, in late August or early September 2000, Rayes told Scheid that she and Minne were "a negative influence in the department." According to Scheid's testimony, which I have credited, the conversation leading to this threat began when Rayes mentioned to her that Minne had asked for a wage upgrade. Rayes then said to Scheid that neither she nor Minne deserved a salary upgrade, that Scheid was making good money for someone with minimal education, and that she and Minne were no different from the clerks. It was at this point, that Rayes said that she and Minne were a negative influence in the department. I note that there is no indication that Scheid had asked for a wage upgrade or complained about her salary, either in this conversation or earlier. There is no explanation for Rayes' tirade against Scheid except the fact that, as Charging Party representatives, the two women were linked in Rayes' mind. I find, in this context, that when Rayes said that Scheid was a "negative influence, " he was referring to her union activities, and that this remark carried an implicit threat to retaliate against her for these activities.

Contrary to the Charging Party's argument, I find that Rayes' did not threaten Scheid's position when he stated to her that the City Council did not feel that she was the appropriate person for the CEO job because of her gender. Rayes did not imply that he agreed with the Council's assessment. I also disagree with Charging Party that Rayes violated Section 10(1)(a) of PERA by making a paper airplane out of her memo from the September 20, 2000 meeting, by telling her that the items in her memo were "chicken sh-t" and "a bunch of crap," or by telling her she should have a better attitude and "had not climbed out of the hole you people dig for yourselves." Rayes was reacting angrily to what he felt was Scheid's attempt to go over his head to Wollenweber with her complaints about the way work was assigned, and, although his reference to the "hole you people dig for yourselves" clearly referred to the union, his remarks contained no threat of reprisal. Charging Party argues that Scheid was engaged in activity protected by the Act when she presented her memo at that meeting, because the discussion at the meeting was about her terms and conditions of employment. However, Scheid's memo addressed only her individual concerns, and she made no claim that Rayes' failure to adopt her suggestions violated the union contract. I conclude that Scheid was not engaged in concerted protected activity when she outlined her complaints about her workload at the meeting on September 20, 2000.

I find no merit to the claim that Rayes coerced Scheid in the exercise of her Section 9 rights by telling her not to speak directly to city council members or to supervisors other than him, or by failing to inform her when he, or another city representative, settled a code enforcement dispute with a resident. There is no evidence to support Charging Party's claim that by these actions, Rayes was attempting to force Scheid out by undermining her ability to do her job.

Charging Party asserts that Rayes' hiring of Cusmano, and his memo suggesting that the CEO position be transferred to the police department in December 2000 also constituted unlawful threats to Scheid's employment. I find these arguments to be without merit. There is no evidence from which a reasonable person could draw a connection between Rayes' actions and

Scheid's union activity. Scheid had complained since at least early 1999 that she was overworked, and both Rayes and Wollenweber agreed that Scheid needed help in code enforcement. Rayes hiring of Cusmano as a contract employee, like his order to the electrical inspector/code enforcement officer to spend more time doing code enforcement, was simply an attempt to address this problem. As to the December memo to the police chief, Rayes candidly admitted that he suggested the transfer because he and Scheid weren't getting along. However, Rayes immediately dropped the idea when he discovered that the police chief wanted to choose his own CEO and therefore Scheid would probably lose her position.

I also disagree with Charging Party's argument that Rayes threatened to retaliate against Scheid for her union activity by spying on her work when he said, during his discussion with Scheid of the Equalizer program, "You're just concerned that I'm going to be able to track you with this information." The CDID's previous software program gave Rayes access to Scheid's database, and Scheid's many complaints about Equalizer did not include the fact it allowed Rayes to view her data. I find that this statement was made in mocking exasperation at Scheid's many complaints about the Equalizer program, and that Rayes was not threatening to keep Scheid under surveillance. I also find, contrary to Charging Party's argument, that Rayes' comment to Scheid, in the winter of 2000, that he "knew everything she did," was merely a flippant response to her telling him that she was making an effort to keep him informed of her actions, and not an admission that he was monitoring her activities.

Charging Party also alleges that Rayes attempted to intimidate Scheid by forcing her, sometime in the late summer of 2000, to go to the home of a resident with a criminal history. As the record makes clear, this was a dispute between Rayes and Scheid over whether she needed a cell phone in addition to her radio. Scheid did not assert that Rayes refused to allow her to take someone else with her or request police protection. Moreover, there is no indication of a connection between Scheid's union activities and this incident.

2. Minne:

I find that in August 2000, Rayes violated Section 10(1)(a) of PERA by threatening, in a discussion with Minne over the CDID's dress code, to make that dress code more restrictive if she filed a grievance over it.

Charging Party asserts that Rayes also violated Section 10(1)(a) of PERA in the fall of 2000 when, during grievance meetings with Minne, he referred to AFSCME members as "you people," said that not even the union was going to tell him how to run his department, and said that only "weak people" filed grievances. As discussed above, I find that Rayes demonstrated, by these comments, that he viewed the Charging Party as a permanent antagonist and a challenge to his authority. However, anti-union statements do not violate Section 10(1)(a) unless they include an explicit or implied threat. *Edwardsburg Public Schools,* 1994 MERC Lab Op 870. I find that Rayes' remarks carried no threat of retaliation against Minne or the grievants she represented. Likewise, Rayes negative remarks about Charging Party after the filing of the representation petition in August 2000 – his statement that the union membership did not know what it wanted, that AFSCME was disorganized, and that management was always superior to the workers and

always right – were not explicit or implicit threats. I find that these remarks were legitimate expressions of opinion, and did not violate Section 10(1)(a).

Charging Party also alleges that Rayes violated Section 10(1)(a) by calling Minne "defiant" for questioning his application of the dress code in January 2001, and by giving Minne a series of newspaper articles which were anti-union in tone. Rayes did not discipline Minne for violating the dress code, and called her defiant only after she told him to feel her pants because they were not denim. I also find no implied threat against Minne in any of the three newspaper clippings that Rayes gave Minne between August 2000 and January 2001. First, I can discern no "anti-union" tone in any of these articles. More important, I note that while giving an employee a copy of a job advertisement might be considered an implied threat under some circumstances, the clipping Rayes gave Minne included an advertisement for a position similar to his as well as one for a position similar to hers. Moreover, Rayes' explanation of his motives was reasonable.

I also find no violation in the statements Rayes made to Minne in December 2000. When Minne returned from asking for payroll information on Keith Ketelhut, Rayes did not threaten her when he said that that Minne should not have asked a payroll clerk for payroll information about another employee. In addition, as the record indicates, since 1998 Rayes' policy had been to allow Scheid and Minne to conduct union business only between 3:00 p.m. and 5:00 p.m., unless they asked permission. In this instance, Rayes was merely reminding Minne of this policy. I also find that the evidence does not support Charging Party's claim that Respondent "denied information Minne needed to investigate a grievance" on this occasion. In fact, after Minne made her request to Paladino, she was given the information she wanted.[3]

3. Scheid and Minne:

Charging Party also asserts that Rayes violated Section 10(1)(a) of PERA by attempting to monitor Scheid's and Minne's activities by: (1) in the fall of 2000, ordering Scheid and Minne to mark their cars in a conspicuous manner; (2) directing Assistant Director Jerry Peruski to follow Minne between October and December 2000; (3) accessing the files in Minne's computer; (4) requiring both Scheid and Minne to sign out when they left the office. I note, first, that Charging Party has not alleged that Rayes attempted to monitor Minne's or Scheid's union activities. Insofar as the record discloses, Minne and Scheid generally performed their duties as steward and recording secretary while in the office, and Charging Party's claim is that Rayes attempted to monitor them while they were performing their duties in the field. Charging Party has not explained how these incidents constituted attempts to coerce Scheid and Minne in the exercise of their Section 9 rights. Moreover, the record indicates that neither the sign-out policy nor Rayes' order to mark the department's care applied only to Scheid and Minne. Although Scheid and Minne were the first two employees ordered to take their cars to be marked, all CDID employees with City-owned vehicles were to have their cars decaled. Similarly, the evidence establishes that the sign-out policy announced on January 10, 2001, was to apply to everyone in the CDID except those inspectors who already had sheets showing their whereabouts. As to the other allegations, the fact that Minne and Scheid saw Peruski in the field on a couple of

[3] Minne was able to obtain Ketelhut's consent to the release of the information. It is unnecessary to determine here if Respondent had a duty to provide this information to the union without his consent.

occasions does not demonstrate that Rayes was tracking Minne's activities, and there is no direct evidence that Rayes accessed Minne's computer in January 2001 or why he might have done so.

C. Alleged Discrimination

Section 10(1)(c) prohibits employers from discriminating in regard to hire, terms or other conditions of employment in order to encourage or discourage membership in a labor organization. Elements of a prima facie case of unlawful discrimination under Section 10(1)(c) of PERA include union animus or hostility towards the exercise of protected rights, and suspicious timing or other evidence that protected activity was a motivating factor in the allegedly discriminatory action. If a prima facie is established, the burden shifts to the employer to produce evidence that the same action would have taken place even in the absence of the protected conduct, but the ultimate burden of showing unlawful motive remains with the Charging Party. *MESPA v. Evart Public Schools*, 125 Mich App 71, 74 (1982); *Benton Harbor Area Schools*, 2002 MERC Lab Op ___ (Case No. C01 D-075, decided October 25, 2002); *City of Grand Rapids (Fire Dept*), 1998 MERC Lab Op 703, 706. In this case, both Scheid and Minne held union office, and Rayes' knowledge of their union activities is not in dispute. As stated in Section III (A) above, I find that Rayes had union animus. However, Charging Party must produce evidence that union activity was a motivating factor in the Respondent's actions,

1. Scheid:

I find that Rayes discriminated against Scheid in violation of Section 10(1)(e) of PERA by refusing, in January 2001, to approve her request to attend a conference sponsored by MACEO because Minne had alleged, in a meeting held a few weeks earlier, that he was targeting her (Minne) because of her union activities. As noted above, I credit Scheid's statement that Rayes told Scheid that he was temporarily denying her request to attend the conference until he could determine her involvement in Minne's allegations.

As discussed above, in June 2000 Rayes sent a memo to the DPW indicating that he wanted all City-owned cars used by CDID employees to receive a number of identifying decals. Although Scheid was the first CDID employee Rayes' ordered to have her City-owned car marked with decals, and although Scheid clearly objected to having her car identified in this manner, I find that the record is insufficient to establish that Scheid's union activities were a motivating factor in Rayes' decision to send Scheid's car to be marked first. As discussed above, all the CDID's cars were to receive the decals. Scheid and Minne promptly complied with Rayes' order to have their cars marked, but the next two individuals on the list, both inspectors, did not. Had these two inspectors not avoided complying with Rayes' directive, Scheid and Minne would not have been the only CDID employees driving around for several months with decaled cars.

Charging Party asserts that Rayes discriminated against Scheid by refusing to pay her membership in the Michigan Association of Housing Officials. Rayes asserted that he did this to save money. Again, I find the evidence to be insufficient to find that Scheid's union activity was a motivating factor in this decision. Charging Party did not produce evidence that in 2000 Rayes approved the payment of professional membership dues for other employees.

Charging Party alleges that Rayes discriminated against Scheid by requiring her to put more information into the Equalizer system than other employees. However, the record indicates while not all CDID data was immediately entered into Equalizer, Scheid's code enforcement database was not the only one to be put into the system at the beginning. Charging Party also alleges that Rayes discriminated against Scheid by taking away her responsibility for business licenses and by ordering her to do work outside of her classification. However, while Mazzola suggested removing business licenses from Scheid's job description as a way to ease her work load at the meeting with Wollenweber held on September 23, 2000, the record does not indicate that this ever happened. In addition, the record does not indicate that Rayes added duties to Scheid's position between August 2000 and January 2001. Charging Party asserts that Rayes gave Scheid new responsibilities outside her job description in four areas - dealing with zoning issues, the removal of illegal temporary signs, snow removal violations, and responsibility for dead and dying trees. According to the record, zoning has always been part of the CEO's job description, and Scheid's responsibilities for temporary signs did not change within the statutory charge period. The record indicates that while Scheid may have been directed, during the winter of 1999-2000, to help in identifying snow removal violations, this was not made a permanent part of her job. The record also indicates that, except for actually identifying the trees, the CEO's job duties have included responsibility for dead and dying tree violations.

2. Minne:

I find no evidence that Rayes discriminated against Minne in violation of Section 10(1)(c) of PERA.

Charging Party alleges that Rayes denied Minne access to lead assessment training in September 2000 because of her union activities. However, the record indicates that in September 2000, Rayes decided to put off arranging for lead risk training for CDID employees because HUD had postponed the implementation of its new regulations. Rayes later accepted Forthofer's recommendation that the CDID's building inspector, and not Minne, receive training in assessing lead risks, while Minne attended a four-day course on handling and disposing of lead contaminated materials.

Charging Party also alleges that Rayes applied the dress code against Minne in a discriminatory manner. However, Minne was never disciplined, or even formally warned about violating the dress code. The record shows nothing more than a disagreement occurred between Rayes and Minne over whether deck shoes were "like tennis shoes" or whether cotton pants with rivets were jeans.

3. Scheid and Minne:

Charging Party alleges that Rayes' discriminated against Scheid and Minne by directing them to serve the counter and answer the phone; duties that are not in their job descriptions and are performed by clerks in the DPW. Rayes explained that he assigned Scheid and Minne to help with these duties when the clerks were short handed because Scheid and Minne, having been clerks, knew what to do. While it is clear that Scheid and Minne found this assignment offensive,

and there was no indication that it would have been burdensome to train other CDID employees to work at the counter, I cannot conclude that Rayes assigned Scheid and Minne these duties to retaliate against them because of their union activities.

I also cannot conclude that in January 2001, Rayes switched the assignments of clerks in order to retaliate against Minne and Scheid by forcing them to train a new clerical assistant. As Rayes and Mazzola both testified, Minne and Scheid's clerical assistant had complained to them about Minne, and she was preparing to go on maternity leave.

IV. Summary:

I find that Rayes violated Section 10(1)(a) of PERA in August 2000 by threatening to retaliate against CDID employees by making the department's dress code more restrictive if Minne filed a grievance over the dress code. I also find that in late August or early September 2000, Rayes unlawfully threatened Scheid in violation of Section 10(1)(a) when he told her that she and Minne were "a negative influence in the department." I find that Rayes discriminated against Scheid in violation of Section 10(1)(e) of PERA by refusing, in January 2001, to approve her request to attend a conference because Minne had recently complained to Rayes' superiors that he was targeting her because of her union activities. For reasons set forth above, I find that the numerous other allegations in this charge lack merit. Accordingly, I recommend that the Commission issue the following order:

RECOMMENDED ORDER

Respondent City of St. Clair Shores, its officers and agents, are hereby ordered to:

1. Cease and desist from interfering with, restraining or coercing employees in the exercise of their rights guaranteed by Section 9 of PERA, including implicitly threatening Karen Scheid with retaliation for her union activities by calling Scheid and Minne a "negative influence in the department," and threatening to retaliate against CDID employees by making the department's dress code more restrictive if Rosanne Minne filed a grievance over the dress code.

2. Cease and desist from discriminating against employees to discourage their membership in a labor organization, including refusing, in January 2001, to approve Karen Scheid's request to attend a conference because Minne had accused Rayes of discriminating against her because of her (Minne's) union activities.

3. Post the attached notice in conspicuous places on the Respondent's premises, including all areas 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: _____