

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

In the Matter of:

CHARLES STEWART MOTT COMMUNITY
COLLEGE,

Respondent - Public Employer,

- and -

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 591,

Charging Party - Labor Organization.

Case No. C03 E-107

APPEARANCES:

The Williams Firm, P.C., by Timothy R. Winship, Esq., and Andrea M. Voelker, Esq., for Respondent

Shedd, Frasier & Grossman, PLLC, by Howard R. Grossman, Esq., for Charging Party

DECISION AND ORDER

On March 19, 2004, 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

Nora Lynch, Commission Chairman

Harry Bishop, Commission Member

Maris Stella Swift, Commission Member

Dated: _____

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DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE

Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210, *et seq.*, this case was heard in Detroit, Michigan on November 12, 2003, by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission. This proceeding was based upon unfair labor practice charges filed against Respondent Charles Stewart Mott Community College by Charging Party Service Employees International Union, Local 591. Based upon the record and post-hearing briefs filed by February 5, 2004, I make the following findings of fact, conclusions of law and recommended order pursuant to Section 16(b) of PERA.

The Unfair Labor Practice Charge:

On May 15, 2003, Service Employees International Union, Local 591 filed the following unfair labor practice charge against Respondent:

On January 9, 2003 an Arbitration was held between the above parties concerning the

termination of JoAnn Niedecken, a member of Service Employees International Union Local 591. An essential witness for JoAnn Niedecken and the Union who was to testify on her behalf was intimidated and coerced by the employer not to testify. Therefore, the case was prejudiced and the Union did not prevail. The Union requests the employer to be held to have committed an unfair labor practice which vitiated the arbitration procedures and that the employee be reinstated and made whole.

Findings of Fact:

On January 8, 2003, the Union president Sandy Hill asked bargaining unit member Sandra Godfrey to testify the next day at an arbitration hearing involving Respondent and Joanne Niedecken. Godfrey told Hill that she would. However, she did not show up. Godfrey testified that she did not show up because on January 8, her supervisor Michael Benner called her into his office and told her “that it was not in my best interest to testify for Joanne . . . because whatever I would say would not help her case, but help his case.” During cross-examination, Godfrey stated that Benner also told her that he understood that she had to testify and that it was up to her whether she attended or not and that it was best if she did not testify.

Benner contradicted Godfrey’s version of their conversation. According to Benner, several months prior to the January 9, 2003, while delivering or picking up mail, Godfrey, who works in a building two miles off-campus, came into his office and said that she was concerned about testifying at Niedecken’s arbitration hearing and that she did not know if she had to testify, and if she did, she did not think that she could help the Union’s or Niedecken’s case because she did not work in the same building. Benner testified that he told Godfrey that the College expected her to show up and answer questions as honestly as possible.

Conclusions of Law:

Charging Party claims that the clear weight of the evidence shows that Godfrey was threatened and intimidated by Benner into not testifying at Niedecken’s arbitration hearing. Moreover, according to Charging Party, because it should be presumed that Respondent’s unfair labor practice prevented Niedecken from having a fair arbitration hearing and resulted in an award against her, an appropriate make-whole remedy should include setting aside the arbitration award. I find no merit to Charging Party’s assertion.

I find that Charging Party failed to show by a preponderance of evidence that Respondent threatened and intimidated Godfrey from testifying at Niedecken’s arbitration hearing. Godfrey’s testimony that Benner threatened her is no more credible than Benner’s testimony that he did not and that he told her that she was expected to show up and testify honestly. I, therefore, conclude that the Respondent did not violate PERA. I also find it unnecessary to decide whether, as Respondent argues, the Commission lacks jurisdiction to determine whether a party commits an unfair labor practice by intimidating a witness in an unrelated grievance arbitration proceeding. Based on the above findings of facts and conclusions of law, I recommend that the Commission issue the order set forth below:

RECOMMENDED ORDER

The unfair labor practice charge is dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Roy L. Roulhac
Administrative Law Judge

Dated: March 19, 2004