STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

SUBURBAN MOBILITY AUTHORITY FOR
REGIONAL TRANSPORTATION,
Respondent- Public Employer,

Case No.C01 D-67

-and-

KEITH CHRISTIAN
An Individual Charging Party
_____/

APPEARANCES:

Thomas D. LaCombe, Attorney for Respondent

Keith Christian, In Pro Per

DECISION AND ORDER

On October 22, 2001, Administrative Law Judge Roy L. Roulhac issued his Decision and Recommended Order in the above matter finding that Respondent has not engaged in and was not engaging in certain unfair labor practices, and recommending that the Commission dismiss the charges and complaint as being without merit.

The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of the Act.

The parties have had an opportunity to review the Decision and Recommended Order for a period of at least 20 days from the date of service and no exceptions have been filed by any of the parties.

ORDER

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

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Dated: _____

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APPEARANCES:

Thomas D. LaCombe, Attorney, for the Public Employer

Keith Christian, In Pro Per

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE

Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210, MSA 17.455(10) *et seq*., this case was heard in Detroit, Michigan on July 24, 2001, by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission. This proceeding was based upon an unfair labor practice charge filed against Respondent Suburban Mobility Authority for Regional Transportation (hereafter, "SMART") by Charging Party Keith Christian. In his two-page April 4, 2001 charge, Charging Party Keith claims that he was threatened with additional discipline for filing a grievance. Respondent filed an answer denying the charge on May 2, 2001. Based upon the record and briefs filed by SMART on September 12, 2001, I make the following findings of fact, conclusions of law, and recommended order pursuant to Section 16(b) of PERA:

Findings of Fact:

Charging Party Christian is employed as a bus driver at SMART's Macomb terminal. He is represented by the Amalgamated Transit Union, Local 1564. SMART and Local 1564 are parties to a collective bargaining agreement that covers the period January 1, 1999 to December 31, 2002. The contract contains a grievance procedure that ends in binding arbitration.

In early March 2001, Union Steward Michael Sibley; James Barton, the superintendent of the Macomb terminal; and Charging Party Christian met to discuss Respondent's plan to suspend

Christian for fifteen to thirty days for various rule infractions, including boarding passengers from the second lane and over-charging passengers. Sibley and Barton's negotiations resulted in an agreement to suspend Christian for five days. However, after agreeing to the five-day suspension, Christian indicated that he wished to file a grievance. Both Barton and Sibley informed Christian that if he elected to file a grievance that challenged the five-day suspension, the original 15-30 day suspension was back on the table. Christian testified that he agreed to accept the five-day suspension because he could not afford the additional time off.

Conclusions of Law:

Charging Party claims that the Employer threatened to increase his five-day suspension to 15-30 days if he filed a grievance. Under Section 9 of PERA, employees have the right to file grievances free from employer threats. *MERC v. Reeths-Puffer School District*, 391 Mich 253, 265-66 (1974), *aff'g* 1970 MERC Lab Op 967; *University of Michigan*, 1995 MERC Lab Op 81, 84. Employees also have the right to use the grievance procedure without fear of punishment or reprisal. *City of Detroit (DOT)*, 1978 MERC Lab Op 1302. It is the chilling effect of a threat and not its subjective intent that PERA was created to address. *University of Michigan*, 1990 MERC Lab Op 272, *aff'd* Court of Appeals, Dkt. No. 128678 (7/16/92, unpublished). However, the employer's remarks must be analyzed in light of the context in which they occurred, as well as to their content, to determine whether they constitute an implied or express threat. *New Haven Community Schools*, 1990 MERC Lab Op 167, 179.

I find nothing in this record to establish that SMART threatened Charging Party with additional discipline if he filed a grievance. Rather, I find that the Union and SMART's representative engaged in settlement discussions that resulted in an agreement to suspend Charging Party for five days instead of fifteen to thirty days. It was only after Charging Party expressed his interest in filing a grievance challenging the lesser discipline was he was told that the agreement to reduce his suspension to five days was off the table if he elected to file a grievance. I find that SMART's statement did not constitute an implied or express threat. Rather, Respondent's action was merely part of the normal give and take inherent in negotiations. Compare *City of Kalamazoo*, 2001 MERC Lab Op ____ (June 1, 2001). Based on the above discussion, I find that Charging Party failed to establish that Respondent violated PERA. I, therefore, 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: _____