STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF GREENVILLE,
Respondent-Public Employer,

Case No. C99 K-206

-and-

POLICE OFFICERS ASSOCIATION OF MICHIGAN,
Charging Party-Labor Organization.
_____/

APPEARANCES:

Law, Weathers, and Richardson, P.C., by John H. Gretzinger, Esq., for Respondent

Frank Guido, Esq., for Charging Party

DECISION AND ORDER

On August 31, 2000, Administrative Law Judge (hereafter "ALJ") Roy L. Roulhac issued his Decision and Recommended Order in the above matter finding that Respondent City of Greenville interfered with, restrained, and coerced employees in violation of Section 10(1)(a) of the Public Employment Relations Act (hereafter "PERA"), 1965 PA 379 as amended, MCL 423.210; MSA 17.455(10)(1). On September 25, 2000, Respondent filed timely exceptions to the Decision and Recommended Order of the ALJ. Charging Party filed a timely response to the exceptions and brief in support of the ALJ's decision on October 6, 2000.

Charging Party represents a unit consisting of public safety officers employed by the City of Greenville. The dispute in this case arises out of a meeting between City Manager George Bosanic and Brian Blomstrom, a probationary public safety officer. In March of 1999, six public safety officers, including Blomstrom, attended a City Council meeting in an attempt to persuade the Employer to purchase two public safety cruisers instead of one. At the meeting, Officer Wayne Dillon expressed his view that the additional cruiser was needed for safety reasons. Thereafter, Bosanic met privately with Dillon and Officer Mark Tomkinson, the Union's president and vice-president, respectively, to discuss the matter further. On April 21, 1999, the Mayor sent a letter to the six public safety officers indicating that he was happy to see them in attendance at the meeting, but that the officers did not follow proper protocol. The Mayor wrote that, "to be effective and to be proper, all city employees are to bring issues to the

department head and then to the City Manager . . . . This did not happen prior to your visit on March 16th."

On May 5, 1999, Officer Blomstrom had an unscheduled meeting with Bosanic in his office at City Hall. During the conversation, Bosanic informed Blomstrom that he and his fellow officers could have been issued a written reprimand as a result of their participation in the March 16th meeting, and that such a reprimand might have resulted in the loss of his job due to his status as a probationary employee. While assuring Blomstrom that he was not "in trouble," Bosanic indicated that his presence at the City Council meeting could be construed as a show of support for Dillon and an indication that he is "one of the officers that likes to stir up trouble." Bosanic warned Blomstrom that such a reputation could be detrimental to a newer employee such as himself. Bosanic also told Blomstrom to be careful of Dillon and Tomkinson because they seemed to have "hidden agendas." Finally, Bosanic stated that he did not want to see Blomstrom "act like the other officers act or have – people have the same idea of the way the other officers act by how the union was handling the issue." Several months after the meeting, the Union filed an unfair labor practice charge alleging that Bosanic's remarks interfered with, restrained, and coerced Blomstrom in the exercise of his rights guaranteed under Section 9 of PERA. Based upon the content and context of the City Manager's statements, the ALJ concluded that the Employer had violated Section 10(1)(a) of PERA.

On exception, Respondent argues that there is no evidence in the record to support the ALJ's determination that the City Manager made any statements during the May 5th meeting which could be construed as an express or implied threat in violation of PERA. When determining whether an employer has engaged in unlawful activity, the totality of the circumstances surrounding the action will be examined. *North Central Community Health Services*, 1998 MERC Lab Op 427; *Residential Systems*, 1991 MERC Lab Op 394, 406. To determine whether an employer's statements constitute an implied or express threat, both the content and context of the remarks must be analyzed. *New Haven Comm Schools*, 1990 MERC Lab Op 167, 179. In the instant case, Bosanic essentially warned Blomstrom to stay away from the other officers who attended the March 16th meeting. Two of those officers, Dillon and Tomkinson, were Union representatives at that time. Moreover, the incident which precipitated these remarks was a meeting at which Blomstrom and his fellow officers were engaging in protected concerted activity by raising safety concerns with their Employer. Bosanic implied that management did not like the way that the Union handled the situation, and he suggested to Blomstrom that his participation at the City Council meeting could have resulted in the loss of his job. Taking Bosanic's remarks as a whole and viewing them in light of the context in which they were made, we agree with the ALJ that the statements could reasonably be interpreted as a threat to dissuade Blomstrom from engaging in further protected activity.

Respondent raises several other issues on exception, none of which warrant extensive consideration or discussion. For example, Respondent argues that there is no evidence in the record to support the ALJ's finding that Blomstrom actually avoided associating with Dillon and Tomkinson as a result of Bosanic's remarks. In addition, the Employer contends that Bosanic's intent in making the statements was benign, and that he maintained a friendly and non-threatening demeanor during his meeting with Blomstrom. It is well-established that a violation of Section 10(1)(a) does not depend upon the employer's motive, or on whether the employee would actually be coerced. The standard applied is whether a reasonable employee would interpret the statement as a threat. *Detroit Fire Dep't*, 1988 MERC Lab Op 561; *Detroit Water & Sewerage Dep't*, 1983 MERC Lab Op 157, 167; *Black Angus (Clinton)*,

1974 MERC Lab Op 29. See also *Carry Companies of Illinois v NLRB*, 30 F3d 922, 934; 146 LRRM 3069 (CA 7, 1994); *Smithers Tire*, 308 NLRB 72; 140 LRRM 1289 (1992). Thus, the Employer's arguments concerning motive and effect are simply not relevant to the unfair labor practice charge at issue in this case. Because we find the City Manager's statements could reasonably be construed as being coercive in nature, we agree with the ALJ that Respondent violated Section 10(1)(a) of PERA.

ORDER

For the reasons set forth above, we hereby adopt the recommended order of the ALJ as our order in this case.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____
Maris Stella Swift, Chair

_____
Harry W. Bishop, Member

_____
C. Barry Ott, Member

DATED: _____

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF GREENVILLE,
Respondent - Public Employer

Case No. C99 K-206

- and -

POLICE OFFICERS ASSOCIATION OF MICHIGAN,
Charging Party - Labor Organization
_____/

APPEARANCES:

Law, Weathers & Richardson, by John H. Gretzinger, Esq., for the Public Employer

Frank Guido, Esq., for 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, MSA 17.455(10) *et seq*., this case was heard in Detroit, Michigan on January 25, 2000 by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission. The proceedings were based upon an unfair labor practice charge filed by the Police Officers Association (the Union or Charging Party), against the City of Greenville (Employer or Respondent) on November 4, 1999. Based upon the record, and briefs filed by April 3, 2000, I make the following findings of fact and conclusions of law, and issue a recommended order pursuant to Section 16(b) of PERA:

The Charge:

In its November 4, 1999 charge, Charging Party claims that Respondent violated Section 10(1)(a) and (c) of PERA by notifying one of its members that his presence, and that of several others, at a City Council meeting was improper and they could be issued written reprimands, although their presence at the meeting was to support the Union. The Union also contends that its member was notified by the City Manager that his presence at the meeting constituted support of the Union and would be construed as such by the City Council in future matters, and because he was on probation, such action could be a basis for loss of employment. On December 3, 1999, Respondent filed an answer denying the charge.

Findings of Fact:

The Police Officers Association of Michigan is the exclusive bargaining agent for employees employed by the City of Greenville's public safety department. On Tuesday, March 16, 1999, the Greenville City Council's agenda included a recommendation to purchase one public safety cruiser. In the audience were six public safety officers: Wayne Dillon, Mark Tomkinson, Shelly Ehlert, Randy Elzinga, and probationary employees, Brian Blomstrom and Darren Jones. After the department director's presentation in support of purchasing one vehicle, Mayor Jon Aylsworth asked the officers if anyone had anything to say. Officer Dillon advised the council of the need to purchase two vehicles and expressed his view that it was unsafe to drive a car with more that 100,000 miles. After the meeting, City Manager George Bosanic met with Dillon and Tomkinson, the Union's president and vice-president, respectively, regarding the Union's concerns about patrol vehicle purchases and safety.

On April 21, 1999, the Mayor wrote a letter to the six public safety officers. He expressed his happiness to see them in the audience, encouraged them to visit more often, and advised them that the issue they brought before the council did not follow the proper protocol. He wrote that, "to be effective and to be proper, all city employees are to bring issues to the department head and then to the City Manager (conversely, if council members had concerns with City employees, they, too, are to go through the City Manager). This did not happen prior to your visit on March 16th."

On May 5, a few weeks later, City Manager George Bosanic overheard Blomstrom's voice in the hall outside his office and invited him in. Blomstrom immediately asked Bosanic if he were in trouble and was told no. During the meeting, Bosanic discussed the proper procedure for bringing matters before the City Council. Bosanic told Blomstrom that it was a direct violation of the City Charter for employees to speak to the City Council without first discussing the issue with their department head and the city manager. Bosanic also told Blomstrom that he could pursue disciplinary action against all of the officers who attended the meeting if he were the person some officers portrayed him as being; but because he had heard good things about the new officers, Blomstrom and Jones, a written reprimand would not look good on their records and could result in the loss of employment.

Bosanic also told Blomstrom that the City Council could construe his presence at the March 16 meeting as support of Wayne Dillion and as, "one of the officers that likes to stir up trouble and cause trouble and that would not be a good reputation to have." Blomstom was told to be careful of Tomkinson and Dillon because it seemed they had secondary ideas and hidden agendas. Bosanic related to Blomstrom that he did not want him to get caught up in the way certain officers handle situations with City Hall and how the Union was handling the patrol vehicle purchase issue. After the thirty minute meeting, one-third of which related to the above discussion, Blomstrom and Bosanic shook hands.

Shortly after leaving the half hour meeting, Blomstrom spoke with Dillon and Tomkinson about the incident with Bosanic. They advised him to write down everything he was told. Blomstrom's May 5, 1999, two and one-half page single-spaced statement, was introduced in the record as Charging Party Exhibit 1. Subsequently, according to Blomstrom, he was nervous about hanging out with and speaking to the Union's president and vice-president and kept a lower profile because he did not want to lose his first

job out of college. Blomstrom testified that he resisted the Union's desire to file an unfair labor practice charge while he was on probation for fear of retaliation by the Employer. Blomstrom's probationary period, which could have been extended for up to two years, ended on September 2, 1999, a year after he was hired. The Union filed the instant charge on November 4, 1999, the day before the end of the six month statute of limitations.

Conclusions of Law:

Section 9 of PERA protects employees' right to form, join or assist labor organizations for the purpose of collective negotiation, bargaining, or other mutual aid and protection. Generally, a threat to discipline an employee for engaging in protected concerted activity constitutes a Section 10(1)(a) violation. In determining whether an alleged threat violates PERA, the Commission uses an objective standard to evaluate the coercive effect of employer statements. *Williams A. VanNorman, d/b/a Sight and Sound TV,* 1976 MERC Lab Op 739, 743. The standard is whether a reasonable employee would interpret the statements as threats, not whether an employee in fact felt threatened. See also, *Black Angus (Clinton),* 1974 MERC Lab Op 29; *Iosco County Medical Care Facility*, 1999 MERC Lab Op 299, 329. The content and context of an employer's remarks must be analyzed to determine whether they constituted an implied or express threat. *New Haven Community Schools*, 1990 MERC Lab Op 167, 179.

Respondent agrees that Blomstrom engaged in protected activity by attending the March 16, 1999, City Council meeting, but disputes the Union's assertion that Bosanic made any statements during the May 5 meeting which could fairly be construed as an express or implied threat. Charging Party would have this tribunal believe that Blomstrom was expressly threatened when City Manager Bosanic told him that everyone who attended the March 16 meeting could be reprimanded and a written reprimand could be a problem for Blomstrom, a probationary employee. I disagree. Bosanic prefaced his remarks about disciplining everyone who attended the meeting, in violation of the City Charter, by telling Blomstrom he could pursue disciplinary action if he were the person some officers portrayed him, but he had heard good things about Blomstrom and Jones, and the receipt of a written reprimand by probationary employees would not be viewed favorably. Contrary to Charging Party's assertion, Blomstrom was not threatened with discipline or told that he could be reprimanded for attending City Council meetings. Further, Bosanic's comments about the proper procedure to present matters to the City Council was not coercive.

However, I reach a different conclusion when considering the context and content of the City Manager's statement that things would not go well for Blomstrom if he continued to associate with Dillon and Tomkinson. The Employer seeks to downplay the coercive nature of these remarks by suggesting that it is not unlawful for a public employer to criticize the ability of its officers and Bosanic's reference to Dillon and Tomkinson had nothing to do with their union status, but dealt more with who Blomstrom should select as his mentors. Even if an employer may legitimately criticize the ability of its employees, I find the clear import of Bosanic's statements is that Dillon and Tomkinson create controversy and as a new employee, Blomstrom should avoid associating with them because the City Council would get the impression that he was a troublemaker. Although Bosanic may not have referred to Dillon and Tomkinson as Union officers, he knew they were Union leaders. Bosanic expressed his dissatisfaction to Blomstrom about how the Union was handling the vehicle purchase issue and met with Dillon and Tomkinson, in their

capacity as union officers, shortly after the March 16 City Council meeting to discuss patrol vehicle safety and purchase.

Bosanic's message to Blomstrom about associating with Dillon and Tomkinson did not go unheeded. Blomstrom testified that after his meeting with Bosanic, he was nervous about hanging out with and speaking to Dillon and Tomkinson. Although an employee's subjective belief about the coercive effect of an employer's statement is not controlling in determining whether a statement is an express or implied threat, I find Blomstrom's reaction to the City Manager's statement was consistent with that of a reasonable employee under similar circumstances. See *Iosco County Medical Care Facility*, *supra*. Clearly, as City Manager, Bosanic was in a position to affect the direction of Blomstrom's career. I find Bosanic's conduct violated Section 10(1)(a) of PERA.

Charging Party claims that City Manager Bosanic's comments on May 5, 1999, also violated Sections 10(1)(c). This section of PERA makes it unlawful for employers to discriminate against employees for engaging in protected concerted activities. However, in this case, Charge Party has presented no evidence that the Employer discriminated or took any adverse action against Blomstrom. Therefore, I recommend that the portion of the charge alleging a Section 10(1)(c) violation be dismissed.

I have carefully considered all other arguments raised by Respondent and they do not warrant a change in the result. Included are arguments that Bosanic's statements were non-coercive because the May 5 meeting was unplanned, non-confrontational, and no adverse action resulted. Based upon the above discussion, I recommend that the Commission issue the order set forth below:

Order

Respondent City of Greenville, its officers and agents shall:

1. Cease and desist from interfering with, restraining or coercing employees in the exercise of their rights guaranteed by Section 9 of PERA.

2. Insure that all employees are free to engage in lawful, concerted activity through representatives of their own choice, for the purpose of collective bargaining or other mutual aid or protection, as provided in Section 9 of the Public Employment Relations Act.

3. Post, for a period of thirty (30) consecutive days, the attached notice in conspicuous places on Respondent's premises, including places where notices to employees are customarily posted.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Roy L. Roulhac
Administrative Law Judge

Dated:_____

NOTICE TO ALL EMPLOYEES

PURSUANT TO AN ORDER OF THE MICHIGAN EMPLOYMENT RELATIONS COMMISSION, AFTER A PUBLIC HEARING AT WHICH IT WAS FOUND THAT THE CITY OF GREENVILLE HAD COMMITTED AN UNFAIR LABOR PRACTICE IN VIOLATION OF THE PUBLIC EMPLOYMENT RELATIONS ACT,

WE HEREBY NOTIFY OUR EMPLOYEES THAT

WE WILL cease and desist from interfering with, restraining or coercing employees in the exercise of their rights guaranteed by Section 9 of PERA.

WE WILL insure that all of our employees are free to engage in lawful, concerted activity through representatives of their own choice, for the purpose of collective bargaining or other mutual aid or protection, as provided in Section 9 of the Public Employment Relations Act.

THE CITY OF GREENVILLE

By_____

Title _____

Dated:_____

This notice must remain posted for a period of thirty (30) consecutive days and must not be altered, defaced, or covered by any other material. Questions concerning this notice should be directed to the Michigan Employment Relations Commission, 14th Floor, 1200 Sixth Street, Detroit, MI 48226. (313) 256-3540.