

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

In the Matter of:

WAYNE COUNTY (SHERIFF'S DEPARTMENT),  
Respondent-Public Employer,

Case No. C96 E-95

-and-

AFSCME COUNCIL 25 and its affiliate, LOCAL 3317,  
Charging Party-Labor Organization.

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**APPEARANCES:**

Wayne County Labor Relations, by John L. Miles, Esq., for Respondent

Martens, Ice, Geary, Klass, Legghio, Israel & Gorchow, P.C., by Fritz Neil, Esq., for Charging Party

**DECISION AND ORDER**

On August 19, 1999, Administrative Law Judge Roy L. Roulhac issued his Decision and Recommended Order in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, and recommending that the Commission dismiss the charges and complaint.

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

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Maris Stella Swift, Commission Chair

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Harry W. Bishop, Commission Member

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C. Barry Ott, Commission Member

Date: \_\_\_\_\_

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APPEARANCES:

For Respondent: Wayne County Labor Relations  
By John L. Miles, Esq.

For Charging Party: Martens, Ice, Geary, Klass, Legghio, Israel & Gorchow, P.C.  
By Fritz Neil, Esq.

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, MSA 17.455(10) and 17.455(16), this case was heard in Detroit, Michigan on November 21, 1996 and January 27, 1999, by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission (MERC).<sup>1</sup> The proceedings were based upon an unfair labor practice charge filed by Charging Party on May 2, 1996. Based upon the record, including post-hearing briefs filed by April 1, 1999, I make the following findings of fact and conclusions of law, and issue a recommended order pursuant to Section 16(b) of the PERA:

The Unfair Labor Practice Charge:

In its May 2, 1996, unfair labor practice, Charging Party alleges that Respondent violated Section 10(1)(a) and (c) of PERA by engaging in the following conduct:

Since on or about February 26, 1996, the employer, through its agents, has

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<sup>1</sup>The three-year delay between hearings resulted from Charging Party's attempt to enforce a Commission subpoena in the Wayne County Circuit Court. See footnote 6, *infra*.

undertaken and conducted a disciplinary internal affairs investigation of Ronald Olszewski, President of AFSCME Local 3317, and told him he needed permission to conduct union business, because of his activities on behalf of Local 3317 and for engaging in other protected, concerted activity. [sic]<sup>2</sup>

Findings of Fact:

The latest collective bargaining agreement between Respondent Wayne County and Charging Party AFSCME Council 25 and its affiliate Local 3317 covered the period December 1, 1993 through November 30, 1996. The agreement contains a grievance procedure ending in binding arbitration.

Ronald Olszewski began his employment in the Wayne County Sheriff Department in February 1973. He attended law school from 1979 until 1982, and became a member of the State Bar of Michigan in 1983. Thereafter, he was granted approval to practice law in a law firm during specified hours. After two years, he was assigned to the Department's airport division as the Freedom of Information Officer and ended his affiliation with the law firm. He was then approved to engage in a limited law practice - wills, trusts, real estate closings, etc. - which did not require his attendance in Wayne County's criminal courts. A number of other County employees, including members of the Sheriff's Department also held outside employment, including the practice of law.

Olszewski was promoted to detective in 1989 or 1990. Nine months later he was promoted to sergeant and became a member of Charging Party's bargaining unit. In May 1991, he began a workers' compensation leave of absence after sustaining an on-the-job injury which resulted in damage to the optic nerve in his left eye. During the leave he continued to practice law. Olszewski returned to work on restricted duty in January 1993, and was assigned to the jail division on the afternoon shift. Sometime later in 1993, Olszewski was promoted to lieutenant and in December was elected to a two-year term as vice president of Charging Party's bargaining unit.

In early 1994, approximately two months after his election, a grievance was filed on Olszewski's behalf because he had not been assigned to the day shift.<sup>3</sup> After a special conference, he was assigned to the day shift at Records Court. Shortly thereafter, his leave days were changed from the weekend to midweek, he was demoted to sergeant, and was reassigned to the afternoon shift at the jail. After another grievance was filed, Olszewski's rank as a lieutenant was restored, and he was

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<sup>2</sup>On May 9, 1996, Respondent terminated supplemental worker's compensation benefits which Olszewski had been receiving as a result of an on-the-job injury because of its claim that Olszewski had refused to report for his light duty assignment. After Charging Party filed a second unfair labor practice charge, his benefits were restored and the charge was withdrawn.

<sup>3</sup>Article 10.03 D of the parties agreement states that the union president, vice-president, and chief stewards will be assigned to the day shift of their respective assignments.

assigned to the Hamtramck facility.<sup>4</sup>

While on disability, he received \$480 per month and supplemental payments from Respondent to bring his income to within 75% of his \$47,689 annual salary. While on leave, Olszewski continued to practice law and perform his union duties, including serving on the bargaining committee for a successor contract. On October 2, 1995, the commander of the Sheriff's Department executive division sent a letter to Olszewski which advised him that in accordance with section H, subsection 2 of the Wayne County Sheriff's manual, officers on sick leave for more than 30 days and officers on worker's compensation were required to be relieved of their police authority until such time as they are able to return to duty and perform their police function. Olszewski was directed to return his weapons, badges, handcuffs, departmental keys and police identification. He returned all of the requested equipment except his identification badge, which he did not acknowledge having until April 3, 1996.<sup>5</sup>

On November 30, 1995, while still on leave, Olszewski was elected president of Charging Party's bargaining unit. As president he was paid \$5,000 per year by the Union. At some time between October and November 1995, Olszewski was directed to report for restricted duty. He was assigned to work at Circuit Court filing summons and subpoenas. According to Olszewski, unlike the former union president, he was required to inform the court's clerical staff when he was leaving the building to conduct union activities, where he was going, and the nature of his activities. Olszewski testified that between December 1995 and May 1996, approximately 85 to 90 per cent of his time was spent performing union duties. According to Olszewski, on several occasions, during discussions with Respondent's agents he suggested a number of alternate light duty assignments, including considering his duties as union president, creating a quasi-legal position at the airport, and teaching at the academy. None of his suggestions was accepted.

A few months later, on February 29, 1996, undersheriff Melvin E. Turner authorized Sergeant Palmer Coleman, Jr., to conduct an investigation into allegations of outside employment by Olszewski. Turner's action was in response to the following memorandum, dated February 28, 1998, from Lt. Rodney B. Pitts:

This date I received a call from Mr. Dave Ferguson, Mich. Department of State Police, Lansing, Mi . . . Mr. Ferguson and I have met several times over the past two years

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<sup>4</sup>Olszewski testified that by the time he was assigned to Hamtramck, he had been elected president and he was required to inform the commander about what union activities he was engaged in, where he was going, and when. However, as shown below, he was not elected president until November 30, 1995.

<sup>5</sup>When questioned about his failure to turn his identification during the March 27, 1996, interrogation, Olszewski claimed a lack of knowledge of its whereabouts and stated that didn't remember whether it was turned in or not.

relative to computer issues as Dave is assigned to the MSP Data Center.

He inquired if I knew a “retired” Lt.[sic] Ron Olszewski that had phoned him recently representing a company called “STG of Michigan”, who [sic] specialize in Law enforcement computer software.

I advised Mr. Ferguson that I was unaware of Lt. Olszewski having retired and I last spoke to Lt. Olszewski when he was recently elected Union President. Dave seemed surprised to learn that Olszewski was not retired and I reiterated that I would not have direct knowledge if that were indeed the case. I suggested that it would be appropriate for me to notify the Undersheriff of this matter.

Sometime prior to March 12, 1996, Olszewski was notified that he had been subject to an internal affairs investigation since February 29. Information contained in the internal investigation file indicates that the investigation’s focus was to: determine whether Olszewski misrepresented himself to state officials while attempting to sell computer software; investigate an allegation of outside employment; verify outside income; determine whether the Worker’s Compensation statute contained any provisions for imposing criminal or civil sanctions against employees who collect wages in excess of their entitlement; determine whether an employee on Worker’s Compensation and unable to perform duties for the Department could actively run the Union and receive monies, and determine whether he had been granted permission to conduct union business on county time while he was receiving Worker’s Compensation.

The investigation disclosed, among other things, that: in a 1995 Domestic Profit Corporation Annual Report filed with the Michigan Department of Commerce by Olszewski on July 13, 1995, he was listed as president of Strategic Technology Group of Michigan, Inc. (STG); Olszewski, on STG’s behalf, sought to sell crash report writer software to the Michigan State Police; and Olszewski represented to the Michigan State Police that he was a retired lieutenant. As part of the internal affairs investigation, Olszewski was interviewed on March 27, 1996. The interview was tape recorded.<sup>6</sup> Questions were asked regarding Olszewski’s failure to return his police identification as requested on October 2, 1995, his law practice, his union activities, and his efforts to sell software to the Michigan State Police, among other subjects.

According to Olszewski, in March 1996, Mark Ulicny, the deputy director of labor relations suggested that he “go forward and fill out the necessary documents or paperwork at the Pension Retirement Board” and discussed the possibility of creating a position at the airport in the

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<sup>6</sup>The agreement provides that if a tape recording is made of questioning during an investigation, the employee shall have access to the tape if any further proceedings are contemplated. Charging Party sought and on September 15, 1998, was granted enforcement by the Wayne County Circuit Court of a subpoena *duces tecum* to produce not only the tape but the entire internal investigation file.

communication division. The position at the airport was not created. In September 1996, Olszewski was notified by Wayne County's Retirement Commission that on August 26, 1996, his request for a duty disability retirement had been approved, effective September 6, 1996, based on the recommendation of their medical director, Dr. Henry D. Kaine. His July 11, 1996, medical report indicated that Olszewski's complaints - double vision, headaches and eye strain - were essentially unchanged. Dr. Kaine noted that Olszewski should continue wearing his glasses to alleviate some of his double vision, he should have no problems teaching law classes at the academy, and should be able to perform all normal daily activities.<sup>7</sup>

### Conclusions of Law:

Where it is alleged that discharge or other discriminatory action is motivated by anti-union animus, the burden is on the charging party to demonstrate that protected conduct was a motivating or substantial factor in the employer's decision. *MESPA v Ewart Public Schools*, 125 Mich App 71, 74(1983). Thereafter, the burden shifts to the employer(s) to demonstrate that it would have taken the same action even in the absence of the protected conduct. An employer cannot simply present a legitimate reason for its actions but must persuade, by a preponderance of the evidence, that the same action would have taken place even in absence of protected conduct. The elements of a *prima facie* case are union activity, employer knowledge, timing and anti-union animus. See *Northpointe Behavioral Healthcare Systems*, 1997 MERC Lab Op 530, *enf'd*, CA Case No. 214734.

Charging Party would have this tribunal believe that Respondent conducted an internal investigation of, and interrogated Olszewski, a union official, simply because he conducted union business during working hours while receiving money and benefits from Respondent. It also asserts that the investigation concerned Olszewski's alleged failure to obtain permission to maintain an outside law practice although he had written permission since 1983, and other County employees also had outside practices. All of Charging Party's assertions mischaracterize the evidence and seek to confuse the issue by diverting attention from the true reason for Respondent's investigation.

Charging Party ignores evidence which unambiguously reveals the events which prompted Respondent's action - unauthorized outside employment and misrepresentation of employment status to promote his business. Despite going to great lengths to enforce the Commission's subpoena to compel production of Olszewski's internal investigation file, nowhere in Charging Party's thirty-three page brief does it comment on the February 28, 1996, memorandum in the file which clearly sets forth the basis for Respondent's investigation. Charging Party conveniently fails to mention that Olszewski engaged in outside employment, without approval, by working for STG to sell computer software to

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<sup>7</sup>Section 37.31 C of the parties' agreement provides that after two years on worker's compensation, officers will be presumed eligible for duty disability retirement and application will automatically be made on their behalf for such retirement. It also states that if they are determined to be ineligible, they may continue receiving benefits beyond the two year period.

the Michigan State Police and falsely representing that he was a retired lieutenant. It also fails to acknowledge any interest Respondent might have had in determining whether Olszewski's earnings from his work as union president, his outside law practice, and other activities were in excess of those permitted under the Worker's Compensation statute. Rather than attempting to explain Olszewski's involvement with STG, Charging Party pretends that it does not exist.

All of Charging Party's claims which suggest that Olszewski's was a victim of anti-union animus have been carefully considered and do not warrant a change in the result. Rejected are allegations, among others, that anti-union animus can be inferred from the 1994 change in Olszewski's shift and leave days; the October 1995, request to Olszewski to turn in his badge, identification card and weapons; and Olszewski 's assignment to perform clerical work as his light duty assignment.

There is nothing on the record to support a finding that Respondent violated section 10(1)(a) or (c) of PERA by conducting an internal investigation of. or interrogating Olszewski about his union activities or outside employment while on worker's compensation disability leave. Therefore, I recommend that the Commission issue the following order:

RECOMMENDED ORDER

The unfair labor practice charge is dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Roy L. Roulhac  
Administrative Law Judge

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