

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

In the Matter of:

LIVONIA PUBLIC SCHOOLS,
Respondent-Public Employer,

Case No. C97 G-153

-and-

LIVONIA EDUCATION ASSOCIATION,
Charging Party-Labor Organization.

APPEARANCES:

Keller, Thoma, Schwarze, Schwarze, DuBay & Katz, P.C., by Gary P. King, Esq., for Respondent

Amberg, McNenly, Zuschlag, Firestone, and Lee, P.C., by Joseph H. Firestone, Esq., for Charging Party

DECISION AND ORDER

On September 28, 1999, Administrative Law Judge Nora Lynch issued her 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

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Date: _____

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APPEARANCES:

Gary P. King, Esq., Keller, Thoma, Schwarze, Schwarze, DuBay & Katz, P.C., for the Public Employer

Joseph H. Firestone, Esq., Amberg, McNenly, Zuschlag, Firestone and Lee, P.C. for the Charging Party

DECISION AND RECOMMENDED ORDER
OF
ADMINISTRATIVE LAW JUDGE

Pursuant to the provision of Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210, MSA 17.455(10), this matter came on for hearing at Detroit, Michigan, on May 11, July 29, July 31, September 14, October 6, and November 9, 1998, before Nora Lynch, Administrative Law Judge for the Michigan Employment Relations Commission. The proceedings were based upon unfair labor practice charges filed by the Livonia Education Association on July 11, 1997, alleging that the Livonia Public Schools had violated Section 10 of PERA. Based upon the record and briefs filed on or before March 15, 1999, the undersigned makes the following findings of fact and conclusions of law, and issues the following recommended order pursuant to Section 16 (b) of PERA:

The Charge

The charge alleges that:

Respondent's building principal, and other administrators have engaged in conduct. . . which constitutes an attempt to interfere with,

restrain, or coerce employees in the exercise of their rights guaranteed by Section 9 of the PERA and represents attempts to harass and retaliate against members in regard to terms or conditions of employment in order to encourage or discourage membership in Charging Party in violation of Section 10(1)(a) and (c) of PERA.

The particular individuals involved are Dolores Dean and Donna Mehock, building representatives for the Charging Party at Franklin High School. The principal at Franklin is Michael Fenchel; the assistant principals are Lyndon Lewis, Richard Emrich, and Diane Burk.

In its charge, Charging Party sets forth five incidents which it claims demonstrate that the administrators at Franklin have discriminated against Dean and Mehock because of their Union activities: 1) Fenchel's treatment of Dean and Mehock regarding a possible grievance over a comp day; 2) Altering the teaching schedules of Dean and Mehock; 3) Activities prior to and at the meeting on May 2, 1997 regarding schedule changes; 4) Reporting of the death of a guinea pig in Mehock's classroom; 5) Criticism of Dean due to a student's use of her computer password. At hearing, a sixth allegation was added: the refusal of administrator Lewis to sign Dean out on the last day of school.

General Factual Background:

Before the specific allegations of the charge are discussed, a general history of the relationship between the Union representatives and administrators will be set forth as background. The events described below occurred prior to and during the period of time that the actions giving rise to the charge took place.

The Livonia Education Association (LEA) represents a bargaining unit of K-12 teachers employed by the Livonia Public Schools. The LEA and the district are parties to a contract which covers the period 1997-1999. The MEA representative assigned to Livonia Public Schools is Joyce Casale.

Delores Dean has worked for the district since approximately 1968. She has taught at Franklin for 18 years and has served as chairperson of the business department for the past two years. Dean has served in the past as an LEA building representative and during the 1995-96 school year as head building representative. Donna Mehock has been employed by the district for 30 years; for the past 18 years she has been employed at Franklin High School and is chairman of the family life department. She also serves as an LEA building rep and has been an active participant in LEA projects.

Michael Fenchel was hired by the district at approximately the same time as Dean and at that time they enjoyed a friendly relationship. Fenchel has been a teacher and an administrator in other schools within the district and has served as principal at Franklin for the past 10 years. Fenchel described his management style as being a "people person," meaning he believed it important for a building principal to be visible to staff and students. As a result, he often visited different areas of the

building to get a feeling for potential issues or problems. Shortly after Dean became head building representative, Fenchel expressed a concern to Casale as to Dean's emotional stability and her ability to handle a leadership role in the LEA in addition to her other responsibilities. He requested Casale to keep an eye on the situation.

Dean filed a number of grievances after becoming head building rep. These included grievances regarding the fluctuation of temperature in the classrooms; class size and discrepancies in scheduling; classroom furniture; moving staff parking; meetings scheduled beyond 3:00 p.m., and similar matters. According to Dean, it was during this time frame that her relationship with Fenchel deteriorated:

The relationship became very hostile with Mike and I. He became very aggressive. He would walk into the classroom and walk out. He started monitoring my whereabouts in the building. New labs sat empty; brand new labs sat empty. I was not allowed to move my students into the new labs. That continued to be a concern. My kids were not given the same opportunities.

In February of 1997, Fenchel sent a memo to certain staff members which included the following reminder:

Staff Check-Out Reminder

Staff members needing to leave before 3:00 p.m. are reminded that they are to check out with one of the four administrators to make specific arrangements ahead of time. Staff members should then notify the appropriate secretary on the specific day they are leaving. Teachers are also reminded that medical appointments, car appointments, etc., should be scheduled outside the school day.

Dean had previously been asked by Fenchel to reschedule a dentist appointment because it conflicted with a meeting. Because she felt that others had been allowed to leave early for various reasons, and she had heard complaints from teachers about the memo, Dean made an appointment to meet with Fenchel on this issue. When Dean asked him why he had issued the memo, Fenchel replied that it was district policy. Dean responded that she intended to contact Assistant Superintendent John Rennels to get a clarification of the policy. A subsequent meeting was held with Casale also in attendance. According to Dean, Fenchel expressed irritation that Casale was there. Dean brought up the issue of favoritism and pointed out to him that under the contract, all employees were to be treated in the same manner. Fenchel responded that as building principal he could make the decision as to who was allowed to leave early.

In March of 1997, Mehock heard that her co-op time, as well as that of Dean, would be cut for the following year. She sent a memo to the superintendent and assistant superintendent protesting this proposed action and indicated that she believed that it was being taken because they had been active in LEA business and had been threatened and intimidated by Fenchel. Rennels subsequently met with Mehock, Dean and Casale. According to Mehock, he acknowledged that there had been problems in the building and agreed to set up an internal investigation to be conducted by Personnel Director Ed Navoy and Human Resources Director Paul Derwich.

Casale sent a memo to Rennels in April stating in part:

I am writing to reinforce the understanding between the Association and the District that Dee Dean and Donna Mehock will not meet alone with Mike Fenchel. Because of the investigation that is being conducted on Dee and Donna's complaint, it is even more imperative that any meeting that is necessary will include me or another appropriate MEA representative.

Dean wrote to Rennels in May complaining that despite the above memo, Fenchel had initiated contact with her on three occasions. These included requesting display materials for a vocational education showcase; returning a truant student to her classroom; and contacting her in regard to a scheduling meeting. Dean stated that none of these contacts were necessary and could have been handled without personal contact. She indicated her belief that Fenchel was retaliating against her due to a complaint filed with the U.S. Equal Employment Opportunity Commission (EEOC) for age discrimination.¹ She then requested that Rennels take steps to restrict Fenchel's contacts with her for the remainder of the school year, limiting him to written contact unless a union rep was present. Rennels responded by memo of May 9, 1997, denying her request. He stated that the incidents she described were purely school-related topics having nothing to do with her discrimination charges. Rennels stressed the need for a principal to have the ability to converse with each staff member on educational and school business matters.

Dean testified that she and Mehock needed class lists in order to perform their co-op functions. This was particularly important for the 1997 school year because of her reduced contact with the business department. According to Dean, class lists were kept in a black binder in Lewis' office and in former years they had been available to any staff member. Dean testified that when she attempted to review the lists in 1997, Lewis' secretary refused to give them to her. According to Lewis, at the beginning of the semester, teachers are given the class lists that pertain to their classes. Other class lists are only given to those who have a direct need for them. Lewis testified that the procedure is to leave a written request with his secretary, or speak to him directly to obtain the lists.

¹This complaint was dismissed on March 10, 1998.

On May 13, 1997, Dean and Mehock wrote the following memo regarding class lists:

You will recall that I requested tentative class lists for vocationally related classes running in the fall at our April 23, 1997 meeting. This would include in-building as well as LCC.

Can you please see that Coop Coordinators receive these lists by Thurs., May 15 so that we may use these lists to place students in Coop positions that are open at this time and will open before school is out. It is imperative that we have this information at this time in order to comply with state regulations for coop.

On the same day they filed a grievance, requesting that the lists be given to them immediately. Lewis provided tentative class lists on May 19, 1997, indicating that unforeseen computer difficulties had held them up.

Fenchel acknowledged that his relationship with Dean and Mehock was “strained” and that he sometimes became frustrated when the same issues were raised over and over. Both Dean and Mehock testified that they felt they were being carefully watched and “stalked” by Fenchel. The specific allegations of the charge are discussed separately below.

1. Allegation Regarding The Comp Day Incident:

The charge alleges that when Dean and Mehock informed Union members of the resolution of a grievance, Fenchel acted rudely and belligerently toward Dean and Mehock, interrogated Dean, and told her that he was going to create his own resolution to the grievance.

Facts:

During the course of the school year, parent-teacher conferences were conducted which required teachers to remain at school during the evening hours. In exchange, teachers were given a half day comp time. In March of 1997 on the day scheduled as the comp day, the school was closed due to excessive snow. According to Dean, after a number of teachers asked her about when they would receive the comp day she went to Fenchel to inquire. She testified that he told her that the snow day alleviated the comp time and the comp day would not be given to them. Dean then called a Union meeting to discuss whether a grievance should be filed on this issue. According to Dean, she was subsequently informed by Joyce Casale that the superintendent had agreed that they would be given the half-day comp day. She then issued a memo to LEA members which read in part:

AT CONTRACT COMPLIANCE, IT WAS AGREED THAT FHS WOULD RECEIVE THEIR ½ COMP DAY. (DATE HAS NOT BEEN DETERMINED.)

Fenchel called Dean to his office to ask where she had received the above information, since he knew that the decision had been made by the administration at the cabinet level. Dean characterized Fenchel as “extremely upset.” After Dean told him that it had come from Casale, Fenchel called Casale and they both agreed that although the matter had been discussed at a contract compliance meeting between LEA and Employer representatives, that was not where the decision was made. Casale told Fenchel that she would contact Dean and a subsequent memo would be issued. Dean then issued the following memo:

ATTENTION LEA MEMBERS
RE COMP TIME

SUBJECT CORRECTION/CORRECTION/CORRECTION/CORRECTION

Joyce Casale has asked that I clarify these points

“I did *mention* FHS comp time at the contract compliance meeting, but it was at the **SUPERINTENDENTS CABINET MEETING** that the **DECISION WAS MADE TO GIVE FHS SCHOOL**, and any other school **AFFECTED BY A COMP DAY OCCURRING (sic) ON A SNOW DAY, THEIR ½ DAY”**
d/dean/3/26/97

Fenchel denied acting rudely or belligerently towards Dean at their meeting; he also denied stating that he would create his own resolution to the grievance.

2. Allegation Regarding the Meeting of May 2, 1997:

The charge alleges that Dean and Mehock were to meet with administrators to discuss changes in scheduling but were late to the meeting and the administrators left. The charge further states that the administrators then came to their classrooms, berated them in front of students for failing to attend the meeting, and then marched them down the hall. Once at the meeting they refused to discuss the schedule change but instead criticized Mehock’s operation of the pre-school.

Facts:

On the morning of May 2, 1997, the assistant principal for scheduling, Lyndon Lewis, saw Dean in the hall and told her he needed to meet with her with respect to the scheduling for the following year. Dean suggested they meet right after SPR. SPR is a period of approximately 15 minutes set aside for students to read privately; as scheduled that year it ended at 12:27. According to Dean, immediately after SPR she went to her office, collected her notebook, picked up Mehock from her office, and went to Lewis' office. She testified that they arrived there prior to 12:35. The office secretary told them that Lewis had gone to lunch. They told the secretary to let him know they had been there.

Dean testified that at approximately 1:00 p.m. Fenchel and Lewis came to her office door. According to Dean:

I was totally taken off guard. They both—Mike first started screaming at me, started pointed his fingers at me, turned beet red, crossed his arms at me—his stance was very aggressive; his stance was very intimidating—that I was irresponsible, that I was not at the meeting as required, that I was responsible for holding up the entire scheduling process.... Lyndon Lewis also began to scream at me.

According to Dean, after she went next door to get Mehock:

At that point, we were basically escorted down the hallway, Mike and Lyndy walking behind us, not 20 feet from us, but very close to us, escorting us down the hallway. It was very intimidating, and we felt like we were being marched to the guillotine for some reason.

Mehock's account of the incident was similar to that of Dean. According to Mehock, they arrived at Lewis' office between 12:30 and 12:35 and were told that he had gone to lunch. They returned to their offices. Around 1:00, she heard loud male voices in the hall and Dean came to get her. Mehock observed Fenchel, Lewis and Emrich standing in the hallway focused in their direction. They then began to walk down the hall, as Mehock described it:

We were literally escorted down the hall. My term for it was "Gestapo" style. I was embarrassed. I was upset. It was a very emotional situation for me, one that's had long standing repercussions. I kept having flashbacks of that at night. Eventually I saw a therapist and was put on Zolof, because it was repeated lack of sleeping, waking up with this going on.

The meeting was held and scheduling was discussed; according to Mehock, she and Dean did not have input but were simply told what would happen with the next year's schedule. Mehock also testified that at that meeting Lewis brought up an incident involving a pre-schooler that she thought had been resolved, saying that Fenchel had asked him to discuss it with her. In April, a pre-school child had ducked out of her classroom, past the check-out, and when the mother came to pick him up he was in the hallway. Mehock had spoken with the parent and they had resolved the matter. On April 29, 1997, Fenchel wrote a memo to Mehock explaining that he had met with the parent and that if Mehock wanted to discuss it further she should see him. When Lewis brought the matter up, Mehock testified that: ". . . it became, I guess, a disciplinary situation. It wasn't a written formal reprimand, but he didn't have all the facts." According to Lewis, he did not discuss the matter of the pre-schooler at the scheduling meeting. Fenchel testified that he did not ask Lewis to address the matter; he also testified that the April 29 memo was not disciplinary in nature but was intended to put Mehock's mind at ease that the incident had been resolved.

The administrators' version of the events of May 2 differed from that of Dean and Mehock in other respects. Lewis testified that it was essential to meet with Dean that day to finalize the business department's schedule and she had suggested they meet at 12:30. He and assistant principal Emrich waited in Lewis' office at 12:30. When Dean and Mehock did not show, after about five minutes they walked down to their offices; because they were not there, Lewis and Emrich returned to the administrative offices at approximately 12:45 and told the secretary that if Dean and Mehock showed up, they were going to lunch and would make arrangements to meet with them later. At lunch Lewis and Emrich talked to Fenchel who indicated that he would accompany them to determine why the meeting had not taken place. According to Lewis, after lunch they went to Dean's office and Fenchel asked Dean to step into the hallway; he asked her why she had not made the meeting and explained to her the importance of concluding the matter that day. Lewis testified that Fenchel did appear somewhat frustrated by the fact that Dean had not made the meeting, but his conversation was in a normal tone and volume. According to Lewis, neither he nor Fenchel screamed or yelled at Dean and Mehock. They also did not "march them down the hall" but walked quite a bit ahead of them.

Fenchel agreed with Lewis' account. He testified that Lewis and Emrich came to lunch between 12:40 and 12:45. At that time they told him that Dean had not appeared for the meeting. Fenchel testified that he suggested they finish lunch and afterwards he would accompany them to Dean's office. After lunch Fenchel went to Dean's office and asked her to go to the meeting at that time and then continued his business in the attendance office.

On May 13, Dean and Mehock filed a grievance over this incident, stating:

The action and demeanor taken by Franklin Administrators Michael Fenchel and Lyndon Lewis, on the afternoon of May 2, 1997, towards the grievants Dee Dean and Donna Mehock, were a disciplinary public reprimand without reasonable and just cause. These actions do not represent equal of (sic) treatment of employees and therefore were

arbitrary, capricious, and discriminating in nature.

This grievance was scheduled for arbitration.

3. Allegation Regarding the Alteration of Teaching Schedules:

The charge alleges that for the first time in nearly twenty years Dean and Mehock were informed that their schedules would be altered. The alterations were intended to prevent the two teachers from successfully performing their assignments. The removal of a portion of Mehock's co-op duties was done for arbitrary reasons and punitive purposes.

Facts:

Personnel Director Edward Navoy is responsible for staffing in the district. The scheduling process begins in mid-March, when he sends to each building principal a personnel staffing sheet. This consists of a computer generated list which lists every certificated staff member in the building; using certification codes, the list will indicate the teacher's current assignment and the number of tenths of their assignment in each area (two-tenths equals one hour of classroom time). About two weeks later the assistant superintendent for secondary instruction sends out staffing allocations to the middle schools and high schools. The staffing allocation informs the principal of the number of teachers to be assigned to the building for the coming year, based on projected enrollments, contractual figures, and any enhancements approved by the school board. Schedules at the middle schools and high schools are based on student demand. After counselors have met with students to assist them in making selections, the principals get a tally of how many students have elected each course. Then, based on the allocation given them by the assistant superintendent, they attempt to utilize current staff, based on seniority and certification, to meet the student demands.

Dean's Schedule:

As indicated above, Dean is currently the business department chairperson. In addition, for approximately 20 years she has served as the co-op coordinator. This involves giving on-site working experience to students who are currently enrolled in business subjects by working with local employers to meet their needs. Dean is certified to teach business, English, and all subjects in grades 7 and 8. She also carries a VB (Vocational Business) endorsement.

Dean's schedule for the second semester of the 1996-97 school year included one class of information processing, two classes of information technology, two hours of co-op time, and a conference period. At that time the department consisted of three members: Dean, Chuck Elser, and Russell Haines. Haines had the most seniority, followed by Dean and then Elser.

Navoy testified regarding factors which affected scheduling in the business department in the 1997-98 school year. Based on student demand, the number of business classes being offered decreased from ten to seven. Elser retired from the district and Cynthia DeMan replaced him in the

department. According to Navoy, certain decisions were made at the central office level which affected the business department. It was decided to attempt to more closely follow the Cooperative Education Plan Guidelines of the Michigan Department of Education. These provided with respect to teacher/coordinator qualifications:

A cooperative education teacher/coordinator must be certified as a vocational education teacher with training in cooperative education. It is also preferred that the teacher/coordinator be certified in the program area that he/she is assigned to coordinate.

In addition, in order to maximize receipt of vocational funding by the State, the district wished to insure that those classes for which vocational funding could be received were taught by teachers who were certified with the appropriate vocational certification.

Navoy testified as to how the scheduling for 1997-98 was determined under the above conditions. The seven courses to be offered consisted of one course in marketing, and one in information processing; three sections of information technology; and two sections of merchandising. Of the three business teachers, only DeMan had a Vocational Distribution (VD) certification. She was therefore assigned the marketing course and co-ops as well as the two sections of merchandising. Information processing and information technology could be taught by any teacher with a business certification, however contractually the most senior member of the department is assigned classes first, so these classes went to Haines. Haines also received a math class outside the department to fill out his schedule. This left two office co-ops for Dean in the business department. For the remainder of her schedule she was surplussed from the department and was assigned three English courses in accordance with her teacher certification. She continued her assignments as department chair and co-op coordinator.

According to Dean, although she kept insisting that there must be some assignment for her within the business department, none was offered to her. Although Dean disputed the fact that seniority had any role to play in assignments, Casale testified that in some buildings seniority did play a part in teaching assignments, particularly if an individual was to be surplussed.

Dean also testified as to the difficulties involved in her new schedule. Because she had been placed in an entirely new area it required a great deal of preparation. After being removed from the business department she has had difficulties in making contacts, and encountered conflicts with meeting times in both the English and business departments. It has also impacted on her ability to perform her duties as head building representative since she is less accessible to teachers.

Mehock's Schedule:

Donna Mehock has been chairperson of the family life department for 18 years. Her responsibilities include overseeing curriculum, scheduling, managing the budget, ordering and

maintaining equipment. She serves as director of the child care program at the high school which involves licensing and operation of the pre-school program. She is also the vocational co-op coordinator, initially serving as coordinator for health careers, and then sharing duties with respect to trade and industry (T and I) with another coordinator, Steve Huth. Mehock is certified in all subjects in grades 7 and 8, vocational economics, and counseling.

Mehock's schedule for the second semester of 1996-97 included one class in child development, two classes of pre-school, and two co-op periods: one in health and one in T and I (two tenths in each). According to Navoy, for 1997-98 the assistant superintendent for secondary instruction moved one tenth of the health co-op from Franklin to Stevenson High School, the school with the largest number of students enrolled in the health co-op program. Mehock's T and I co-op was slated to go to Huth so that he would have a total of four tenths T and I co-op. This left Mehock with one tenth of a coop. This was unworkable because either it would be scheduled for one semester only, while students are enrolled year long, or it would be scheduled both semesters for one half hour, with no other class for the other half hour. Navoy testified that Fenchel talked to the assistant superintendent to request that Mehock keep one tenth of the T and I, giving her an hour each semester to meet with co-op students. Mehock submitted a schedule request for the 1997-98 semester which included one class in child development, two classes of pre-school, and one foods class. She was given this schedule but declared it "unworkable" and a form of "harassment and intimidation." According to Mehock, as department chair she had not taught a foods class in the past; it involved additional responsibilities as well as difficult logistics with respect to her responsibilities before and after the foods class. It also caused problems with respect to her lunch hour. In July of 1997, Mehock's attorney wrote to Fenchel, detailing the problems with the schedule and stating that it was retaliatory, imposed on her after her charges of sex and age discrimination.² The attorney requested that Mehock's foods assignment be canceled and that she be given an appropriate teaching assignment such as additional co-ops, at-risk student counseling, or cafeteria duty. In the alternative, she requested that Mehock be assigned the "A" lunch period. Mehock did receive the lunch period requested.

4. The Guinea Pig Allegation:

The charge alleges that Wayne County Animal Control came to question Mehock about the death of a guinea pig in her classroom, as a result of a telephone call by Respondent's agents. This action was taken to embarrass, harass, and intimidate Mehock.

Facts:

Mehock testified that a guinea pig, or hamster, in her classroom died. The student responsible for bringing in hamster food often forgot to do so, and as a result the hamster was fed only celery, carrots, apples, and the like. According to Mehock, she received a call from "animal cruelty" that she had starved the hamster to death and that they were investigating the situation.

²Mehock filed charges with the EEOC which were dismissed on March 10, 1997.

Fenchel and Lewis both testified that they were unaware of this incident until the unfair labor practice charge was filed.

5. Allegation Regarding Student's Use of Dean's Password:

The charge alleges that the administration sought to embarrass, harass and intimidate Dean concerning a student's use of her computer password.

Facts:

Dean testified that student assistant Scott Shin was assigned to her in the labs. In order for him to help her, he needed to have access to her files. It was her practice to type in her password to open her file and Scott would input the data. When asked if she had ever given Shin her password, Dean testified "Not that I'm aware of." According to Dean, there was no written district policy about passwords. On May 1, 1997, Dean received a memo from Emrich stating that he had been notified by data management services that her computer password had been compromised and she was to change it immediately.

Due to problems with computer abuse, there had been an investigation in the district headed by assistant principal Diane Burk to determine those responsible and the extent of the problem. Burk reported to Fenchel that her investigation revealed students sharing passwords, possible drug deals, illegal pictures, threats of various sorts, and unsolicited religious/satanic literature being sent. Burk reported that Dean had compromised security by giving her password to at least three students, who in turn had shared it with others. Fenchel reported the matter to assistant superintendent Rennels. Human Resources Director Paul Derwich called a meeting on June 11, 1997, with Dean and Union representative Casale to discuss the use of Dean's password by students. He reported back to Rennels on the meeting and no further action was taken; no discipline was issued to Dean.

6. Allegation Regarding Signing out of Dean:

An amendment to the charge made at hearing alleges that on or about June 6, 1997, Lewis, the administrator responsible for checking Dean out of the co-op area, refused to do so.

Facts:

At the end of the school year there is a check-out procedure requiring that teachers perform certain tasks with respect to their classrooms and materials prior to leaving. A particular administrator is assigned to certify the completion of these tasks which is required before a final paycheck will be received. According to a document entitled "Teachers' Checkout List-Instructions," Lewis was in charge of signing Dean out from the co-op area. Dean testified that when she called Lewis to ask him to check her out of the co-op area, he refused to do so and said it was not his

responsibility. Dean subsequently went to Emrich, who checked her out. Lewis recalled that Dean had come and asked him to check out the co-op area. According to Lewis, he told Dean that he had a list of people who had already signed up and he was going in order. He suggested that she start with Ms. Burk who was responsible for the business area and he would get back with her when he could. Emrich later came to Lewis to tell him that he had checked out the co-op offices for him.

Discussion and Conclusions:

Charging Party alleges that administrators at Franklin High School engaged in numerous acts of intimidation and harassment of Dean and Mehock in response to their Union activity. Respondent maintains that Charging Party has not met its burden of proving that the administrators engaged in any actions violative of Sections 10(a) or (c) of PERA. Further, the Employer argues that the charge consists of isolated incidents which have had virtually no impact; there has been no discipline issued, no loss of wages, and no adverse evaluation of work performance.

There is no question that relations between employer and union representatives often involve tension, conflict, and disagreement. It is equally clear, however, that demonstrating that such conflict exists does not, standing alone, establish a violation of PERA. The record demonstrates many confrontations between Dean and Mehock and the administrators, Fenchel in particular. Dean and Mehock challenged his authority at every opportunity and clearly resented his leadership style. Fenchel and other administrators may not always have been particularly patient or polite, and may have expressed frustration and irritation in their interaction with Dean and Mehock, however, the record does not establish that this was motivated by their activities on behalf of the LEA or their status as building representatives.

The record demonstrates that Dean and Mehock were overly sensitive and seemed determined to interpret every action of the administrators as hostile to them. Dean's overreaction to the comp day incident is demonstrated by the tone of her second memo to the staff, with "correction" typed four times in caps and other words in bold type. While the exchange prior to the meeting of May 2 may have been unpleasant, the reaction of Dean and Mehock appears extreme to say the least, with comments such as marching Gestapo style, or going to the guillotine. Even innocuous action taken by the administration, for example the memo issued to Mehock regarding the pre-schooler, was interpreted by Mehock as discipline. The hamster incident could only be classified as silly, possibly a joke, and there is no evidence that any administrator was involved or knew of the occurrence. Dean's request that she have no personal contact with the principal and that all communication be written was unprofessional and would obviously disrupt normal business operations of the school.

No action taken by the Employer was so unreasonable as to raise a question of motivation. The schedule changes resulted from decisions made at central office rather than at the high school; considerations included the amount of student demand for certain classes, state guidelines, and seniority under the contract. There is no indication that changes were deliberately made to retaliate against Dean or Mehock. The investigation regarding Dean's password again was

initiated independent of Fenchel. Even though this was a breach of security with possibly serious repercussions with regard to student behavior, no discipline was issued, Dean was simply told to change her password. The failure of Lewis to check out Dean appears to be the result of misunderstanding or miscommunication rather than malicious or spiteful. The Union introduced additional incidents of perceived slights or alleged unfair treatment which were not specifically discussed herein. At best, these incidents are insignificant and, taken together or separately, do not raise any PERA related issue.

In summary, I find no violation of PERA has been established here. The extensive record developed in this case reveals that the LEA representatives and administrators disagreed with each other on many personnel and policy matters and their personal relationships were less than ideal. However, Charging Party has not demonstrated that any of the Employer's actions were motivated by activities protected by PERA. It is therefore recommended that the Commission issue the order set forth below:

RECOMMENDED ORDER

It is hereby ordered that the charge be dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Nora Lynch
Administrative Law Judge

DATED: _____