

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

In the Matter of:

VILLAGE OF LAKE ODESSA,
Respondent-Public Employer,

Case No. C98 I-194

-and-

CHRISTIAN HANSON,
An Individual Charging Party.

APPEARANCES:

Dickinson Wright PLLC, by Phillip F. Wood, Esq., & Keith J. Brodie, Esq., for Respondent

Patrick J. Devlin, P.C., by Patrick J. Devlin, Esq., for Charging Party

DECISION AND ORDER

On March 10, 2000, Administrative Law Judge Roy L. Roulhac issued his Decision and Recommended Order in the above-entitled matter, finding that Respondent has engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist and take certain affirmative action as set forth in the attached Decision and Recommended Order of the Administrative Law Judge.

The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of Act 336 of the Public Acts of 1947, as amended.

The parties have had an opportunity to review this Decision and Recommended Order for a period of at least 20 days from the date the decision was served on the parties, and no exceptions have been filed by any of the parties to this proceeding.

ORDER

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

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:

For Respondent:

Dickinson Wright PLLC
by Phillip F Wood & Keith J. Brodie

For Charging Party:

Patrick J. Devlin, P.C.
by Patrick J. Devlin

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 Lansing, Michigan on January 20, March 5, April 1, and May 7, 1999, 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 Christian Hanson, an individual Charging Party, against the Village of Lake Odessa on September 22, 1998. Based upon the record, and briefs filed by July 15, 1999, 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 his September 15, 1998, charge, Charging Party claims that Respondent violated Sections 10 and 16 of PERA by reprimanding and terminating him because of his efforts to organize and form a labor organization. The charge also alleged Respondent has achieved a company union. However, Charging Party presented no evidence or arguments to support the assertion and I consider it to have been abandoned. Respondent filed an answer denying the allegations on January 20, 1999. At the onset of the hearing I granted Charging Party's motion to sequester witnesses.

Findings of Fact:

Background

The Village of Lake Odessa is a small, rural Michigan community in Ionia County. On April 8, 1998, its police department was staffed by Chief John Shaw; Sergeant Bryin Nelson; two full-time patrol officers, Charging Party Christian Hanson and David Bachman; and two part-time patrol officers, Matthew Wilson and Jason Kern. According to Chief Shaw, “part-time officers are generally fresh out of the academy getting their feet wet and moving on to full-time position.” Except during special events or new employee training, one full-time officer is assigned to each of three shifts which begin at 12 a.m., 8 a.m., and 4 p.m.

Hanson was hired by the (LOPD) in December 1995 and was terminated on May 7, 1998. During his 2½ years of his employment, Hanson was disciplined several times. On May 28, 1996, he received a three-day suspension for disobeying general orders and sleeping while performing sentry duty. Less than a year later, on April 8, 1997, Hanson received a written reprimand for failing to document, take a complaint, or report his pursuit of an all-terrain vehicle. In August 1997, he was given a written reprimand for making personal long-distance phone calls. Four months later, in December 1997, Hanson was suspended for six days for failing to help recover a stolen bicycle and warned he would be subject to further discipline, up to and including discharge, for future violations. Finally, on March 25, 1998, Hanson received a “written verbal warning” for failing to timely seek warrants on two bad check complaints.

In April 1998, the Lake Odessa Police Department (LOPD) was engaged in training Jason Kern, a new part-time employee. Generally, trainees receive approximately 40 hours of training while working side-by-side, hand-in-hand with a full-time officer. However, under certain circumstances, trainees have been left alone. Officer Hanson testified he was sent out alone toward the end of his training, and he and Sergeant Nelson have sent new employees out to learn the streets while they completed paperwork. Similarly, Officer Bachman testified that if training officers were behind in completing paperwork, trainees have been sent out alone to perform property checks and to learn the streets. Sergeant Nelson testified trainees may be sent out for “short periods of time to do something an officer is capable of doing,” and has sent them out alone to pick up information.

Prior to the spring of 1998, officers used their discretion in training new officers on police functions they thought trainees needed to know. In the spring of 1998, Hanson created a three page training form which included a check list of activities to be covered during three phases of training. The form was first used during Kern’s training. The LOPD also does not have a prescribed policy or procedure for officers to record their daily log of activities.

Union Activity

During the summer of 1997, Hanson discussed the idea of forming a union with Chief Shaw who, initially, encouraged unionization. Hanson testified he and Chief Shaw discussed the benefits of having a union and Chief Shaw told him: (1) unionization would “keep the police department within the police department and the Village manager’s office within the Village manager’s office”; (2) he wanted to see his officers get increased wages and more of a career-type position because of the high turnover rate; and (3) he wanted to be competitive with other departments in the area. In early September 1997, Hanson and Bachman signed and mailed union authorization cards to the Police Officers Association of Michigan (POAM), which filed a petition for election with the Commission on September 25, 1997, Case No. R97

After the cards were mailed, Hanson told Chief Shaw. Chief Shaw immediately informed John French, the Village Manager, who “chewed out” Shaw for not advising him of the unionization plans earlier. The next day, Chief Shaw told Hanson that French was very unhappy and if they unionized, training and equipment funds would be lost; Bachman’s and Hanson’s grant-funded positions might not be renewed and their full-time status could be lost; and the Village could have the Ionia County Sheriff’s Department provide police service and disband the LOPD. Chief Shaw also told Bachman that the grant positions could be lost.

The Union organizing campaign continued into the fall. A mail-ballot election was held between October 30 and November 14, 1997. Chief Shaw talked with Sergeant Nelson, Officers Hanson and Bachman about joining the Union and tried to persuade them to vote against it. On December 23, 1997, the Lake Odessa Police Officers Association was certified as the exclusive bargaining agent for full-time officers and the sergeants employed by Respondent. The three-member unit included Sergeant Nelson and Officers Bachman and Hanson. Hanson was elected president and a member of the bargaining team. Bargaining began in January 1998, and by April 14, 1998, the parties had met two or three times.

Hanson’s last day of work was April 16, 1998. Two days later, on Saturday April 18, he left for two weeks of military training in Utah. On May 1, while he was away, Hanson received a message on his pager from Chief Shaw informing him that he was suspended indefinitely. When Hanson returned on May 4, Chief Shaw gave him a written notice which stated he was suspended, pending an investigation, for falsifying records and failing to follow instructions on April 16.

Three days later, on May 7, 1998, Hanson was terminated. The written notice stated Hanson was terminated for falsifying department documents on April 14; falsifying documents and failing to obey a direct order on April 16; and falsely reporting the event of April 14 and 16 to Chief Shaw on May 4. Sergeant Nelson, the only one of the original voters left, replaced Hanson as Union president and bargaining team member. In September the parties reached agreement and entered into a contract covering the period October 1, 1998 to March 1, 2001.

The Events of April 14

Each spring, over a two-week period, the police department enforces ordinances dealing with trash and junk cars. Generally, violators are given ten days to remove trash and junk vehicles from their property. After ten days, 48 hour warning tags were issued and vehicles not moved are impounded. In 1998, Chief Shaw assigned the ordinance duty to Hanson and gave him two extra shifts to complete them. Hanson’s duties included drafting and delivering a letter and a copy of the ordinance to residents; recording the addresses on a daily log; entering them into the computer and a hand-written log; and assigning a complaint number.

According to Hanson, on April 14 he came to work between 6:45 and 6:50 a.m., and when he did not see the police car parked at the back door, surmised it was being washed or fueled up, or Officer Wilson, who worked the 12 a.m. shift, was somewhere having breakfast. Hanson testified that at 7:20 a.m., as he was removing labels from his uniform and getting dressed, he saw Wilson who asked him what he was doing there. Hanson told Wilson that Chief Shaw had given him two shifts, to use at his discretion,

to complete ordinance violations and he selected that day because he was scheduled to attend a bargaining session later that day and was running out of time before leaving for military training duty.

Wilson testified Chief Shaw asked him what time Hanson came into the Department and to write a statement of what he observed. Chief Shaw, however, testified he did not exactly know how he learned Hanson was late and made a false time card entry, but believed Wilson reported the issue to him and said Hanson arrived at 7:21 a.m. with his duffel bag in his hand. When cross-examined, Wilson related he did not recall Hanson having anything in his hand or telling Chief Shaw that Hanson was carrying something. Wilson's undated statement was introduced as Respondent Exhibit 18.

Prior to his May 1996 employment by the LOPD, Wilson worked eleven months with the Ionia County Sheriff's Department and four months at the Lansing Police Department before he was asked to resign for falsifying his daily log. Wilson had a less than friendly relationship with Hanson. He made negative statements about Hanson to Bachman, Sergeant Nelson and Chief Shaw, a social friend with whom he had "been known to go out [with]." Around May 1996, Hanson received a full-time position which Wilson coveted. Wilson became irritated because Hanson, despite receiving a three-day suspension for disobeying general orders and sleeping while on duty at Lakewood High School, was given the full-time position, while he "was in the position of needing full-time employment." In December 1997 Wilson unsuccessfully tried to get Hanson fired for failing to help recover a stolen bike. According to Wilson, he was hoping Hanson would be terminated so that he, a good officer, could become full-time. Wilson finally became a full-time officer in March 1998, when Officer David Bachman left the LOPD to accept a position with the Kentwood Police Department.

The Events of April 16, 1998

On April 16, Hanson was scheduled to work the midnight shift. Part of his duties included training Officer Jason Kern, who was hired on April 8. Kern, May 1997 law enforcement graduate of Grand Rapids Community College was a certified, experienced police officer before he was employed by the LOPD on April 8, 1998. He had worked as a police reserve for the Middleville Police Department, part-time at the Nashville and Freeport Police Departments, and had received 420 hours of police training. Officer Kern had also received 32 hours of training in the LOPD's 40 hour training program.

When Hanson and Jason reported to work the April 16 midnight shift, Sergeant Nelson reminded Hanson he needed to make a warrant pick-up in Eaton County and train Kern. Hanson told Sergeant Nelson he would be in the office most of the evening completing ordinance violations. Nelson testified that he told Hanson he was not to leave Kern unattended. Kern, who testified he overheard portions of Nelson and Hanson's conversation, stated he remembers Nelson telling Hanson to "be with Jason tonight instead of doing the ordinance violation." On cross-examination, Kern also testified, "make sure that Jason's training gets done," was a fair statement of what he overheard Sergeant Nelson tell Hanson. However, Hanson testified that at the beginning of the April 16 shift, he and Nelson had a general discussion about his shift because Kern was supposed to be with him and he also had plans to complete the ordinance project Chief Shaw had assigned him, complete follow-up paperwork, and close cases. According to Hanson, Nelson's emphasis was to make sure Kern gets trained and is shown the routine of the midnight shift - vacation and property checks, cleaning cars, and cleaning the office.

Kern worked alone during much of the April 16 midnight shift. At approximately 2:30 - 2:45 a.m., after transferring a prisoner from Eaton County to the Ionia County jail and demonstrating a property and

vacation check, Hanson gave Kern a map of the city and told him to complete the vacation checks.¹ Hanson told Kern he was going to catch up on paperwork and log ordinance violations. Kern returned to the station a couple of times during the shift. Around 4 or 4:15 a.m. Kern observed Hanson watching television.

Entries on Hanson's April 16 daily log after 02:30 hours indicate that at 03:30 hours, he was "on station with RPTS (reports); training with Kern at 0500 and 0600 hours; on station break at 0615; office maintenance/training at 0700; and report with Kern at 0730 and 0800 hours. Hanson testified the "on station RPTS" entry on his daily log was a basic statement which referred to whatever he was doing regarding his reports, follow-up investigations, e-mail, and any computer entries he made. He testified that on April 16 he made entries into the computer and into the complaint log book; transferred information from one yellow pad to another so they could be read by others in the event a citizen called while he was away. Hanson also testified, although he was not with Kern at 0500 and 0600 hours, he was advised Kern of his duties when he came back into the office.

Sergeant Nelson testified that the following night, April 17, while Kern was finishing his training with him, Kern told him he was pretty much left alone after completing the warrant transfer with Hanson on April 16. Kern testified that Nelson asked him about his training with Hanson "a day or two" after April 16. There is no entry on Kern's training checklist which indicates Nelson trained Kern on April 17 or 18. Rather, the training checklist completed by Nelson shows he trained Kern on April 8, 9, 14, and 23. According to Chief Shaw, based on information reported to him by Sergeant Nelson, he conducted an investigation by interviewing and obtaining statements from Sergeant Nelson and Officers Kern and Wilson.

Sergeant Nelson's Interview and Statement

In a one-page report dated 1:00 a.m., April 18, 1998, Sergeant Nelson wrote that on Wednesday night [April 15], just prior to the midnight shift, when Hanson and Jason Kern reported for work, he reminded Hanson to concentrate on training Kern on overnight duties after they made a warrant pick-up in Eaton County. He also wrote:

Chris told me that he was going to be in the office on the computer most of the night, entering ordinance violations that he needed to complete before leaving on his two week guard duty. I remember telling him that he needed to spend time showing Jason the overnight duties as I had scheduled him in advance to do. I asked Chris why he didn't have the Ordinance Violations already completed, and again told him that he was to train Jason, and suggested that he not leave him unattended. Chris turned, said nothing, and seemed to ignore me.

* * *

Jason told me the next day, as he was training with me that Chris had spent most of the

¹In performing property and vacation checks, officers walk around the property, shake the doors, make sure the windows are intact, check for signs of breaking and entering, and leave a property check card so the owner will know they were there.

entire shift in the office, and that Jason was thrown the vacation check book, and told to go do it. Jason seemed to hold back, and didn't want to say anything to get Chris in trouble, but it was obvious that he didn't receive much training if at all that night.

Chief Shaw, after reviewing the statement, Shaw wrote the following sentence on the bottom of Nelson's statement: "Told him to complete reports last hour of shift." On an attached second page, Chief Shaw wrote: Did you tell Hanson exactly what to train Kern on, or is it already known via FTO worksheet. If so, note [__ how?] he's knows what he's expected to do, Please note. Did you suggest that he didn't leave Kern by himself or did you tell him?". In a revised, undated and unsigned two-page statement, Sergeant Nelson wrote:

I remember telling him that he need to spend time showing Jason the overnight duties as I had scheduled him in advance to do, *and told him to complete his Ordinance Violations at the end of his shift.* I asked Chris why he didn't have the Ordinance Violations already completed (*since he knew that he was expected to train Kern*), and again told him that he was to train Jason, and *should not to* [sic] *leave Jason unattended.* Chris turned, said nothing, and seemed to ignore me. (*Chris and I train new officers using a "LOPD Training Form" that is a reminder list of things to train/review with them. We check the item off the list that we trained them on, so that we know that was reviewed with them. Chris knows exactly what to train them on, as it is listed on the training form.*)

* * *

Jason even mentioned to me that at one point around 5am that it was raining, and he came back to the office briefly to get his rain jacket, and Chris was sitting in the squad room watching TV. Jason told me that Chris asked him if he had gotten everything done yet, and then continued watching TV. Jason went back out on the road.

(Italics indicate Nelson's changes to statement)

During the March 5, 1999, hearing, Respondent introduced the undated and unsigned revised statement as Exhibit 16. During *voire dire* by Charging Party, Chief Shaw testified Respondent Exhibit 16 was prepared shortly after Sergeant Nelson's interview and to his knowledge there were no prior drafts. Three weeks later, on April 1, during cross-examination Chief Shaw was again asked whether Respondent Exhibit 16 was the only one he received from Sergeant Nelson; whether Sergeant Nelson gave him a different report indicating that he did not order Hanson to stay with Kern; and whether he ordered a change in the report to reflect an order so that Hanson could be written up for insubordination. In each instance, Chief Shaw said that he did not recall. He testified he did not know if the revised statement, "was the original or the second or third or tenth copy he gave me." When Shaw was shown Charging Party proposed Exhibit 5, the original version of Nelson's statement, he testified that he did not recall ever having seen it before, although his handwriting is on the bottom of the first page and on an attached second page.

During cross-examination Sergeant Nelson, who was sequestered during Chief Shaw's testimony, was shown Respondent Exhibit 16, his revised, two-page, undated, and unsigned statement. He testified he did not believe or recall preparing an earlier version and Respondent Exhibit 16 was the memo he wrote after Chief Shaw asked what happened. When confronted with Charging Party proposed Exhibit 5, his original statement, Sergeant Nelson acknowledged preparing it, but claimed he did not know whether it

was prepared before the revised statement. However, after stating he was “drawing a blank” about why there were two statements, Nelson testified he prepared the first one quickly; Shaw asked him to be as thorough as he could; he prepared the second one off the first one, and sat down and recalled all the details. He testified that it is standard operating procedure for officers to sign reports, but his revised statement was not signed because he overlooked it after printing it out on the computer. According to Sergeant Nelson, he did not recall Chief Shaw specifically telling him how to word his statement.

Officer Kern’s Interview and Statement

Kern testified that two to three days after April 16, he prepared, at Chief Shaw’s request, the following statement which describes exactly what happened during his training with Hanson.

04-15-98 at 23:50 hrs, I arrived at work with Officer Hanson, who was to be my F.T.O. [field training officer] for the 00:00 - 08:00 hrs shift on 04-16-98. My shift was to consist of training with Officer Hanson.

After checking into service, Officer Hanson and myself went to Eaton County Sheriff’s Department for a prisoner pick-up. Upon completing that at 02:30 hrs, Officer Hanson briefly showed me some of the area checks. Officer Hanson did this for about 6-10 minutes. We then arrived back at the office around 02:45 hrs. Officer Hanson then stated that I was to be on my own since he had to do around 20 ordinance violations in the computer and other paper work. Officer Hanson then gave me the vacation check book and told me to go and find the houses that were in the book and to check them out. Officer Hanson then stated that he would contact me when he was finished with his paper work.

From 02:45 hrs until 08:00 hrs, Officer Hanson was not with me until the end of my shift. Officer Hanson told me where to wash the patrol vehicle and how to do vacation checks. Officer Hanson briefly showed me what properties to check and showed me how to do property checks by checking Cobb’s Corner with me.

I returned one time around 04:00 hours to put on my rain jacket, at which Officer Hanson was watching T.V. and asked how it was going, at which I told him it was going ok and that I was just about done with things.

While at the jail, Officer Hanson did go over arrest procedures with me and did explain appearance tickets with me. Officer Hanson did not really go over the office detail with me and stated that I better get going on these things or he would claim overtime. I did all of the officer maintenance and had all of my reports done by 08:00 hrs.

The above statement, introduced as Respondent Exhibit 17, was also the second statement Kern prepared about his training with Hanson on April 16. When asked where the original statement was located, Kern initially testified he had no idea and “it might still be on the computer; it might not. I might have added to it. I don’t recall.” He testified later that he destroyed the first version. Chief Shaw, however, testified he did not recall having Kern prepare a second report, but if he did, it would have been to make it more detailed as he does with all police reports.

Hanson's Suspension and Termination

On May 1, shortly before his scheduled return to Michigan from military training in Utah, Hanson received a voice mail message from Chief Shaw informing him of his indefinite suspension, without pay, pending an investigation. On May 4, Hanson and the Union's business agent met with Chief Shaw and Village Manager John French. Shaw testified that when he asked Hanson for an account of his training with Kern on April 16, Hanson said after Kern and he returned to town after picking up and lodging a prisoner, he showed Kern how to perform a vacation check, and sent him out to perform other vacation and business checks while he did some paperwork. Chief Shaw testified Hanson told him on April 14, he arrived to work "at approximately a quarter to seven, ten to seven in the morning before 7:00 a.m. on April 14."

After Chief Shaw's May 4 interview of Hanson, Shaw gave him a written notice that he was "suspended without pay, pending an investigation that you allegedly failed to follow instructions, and falsified department documents on April 16, 1998." On May 7, Chief Shaw presented Hanson with the following notice of reprimand/termination:

I have completed an investigation of the incidents on 04/14/98, and 04/16/98. As a result of that investigation, I have concluded that on 04/14/98, you falsified department documents, and on 04/16/98, you failed to follow orders and falsified department documents. I have also concluded that on 05/04, you falsely reported to me the events that related to these incidents.²

On 12/12/97, you were advised that further violation of Village/Department Rules would subject you to further discipline up to, and including discharge.

Hanson's termination was upheld by the Village's personnel committee on July 29, 1998.

Conclusions of Law:

Charging Party's Prima Facie Case

To sustain a charge that an employer's discharge or other discriminatory action violated PERA, the charging party must establish a prima facie case. 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 (11/30/98); *Olivieri/Cencare Foster Care Homes*, 1992 MERC Lab Op 6; and *MESPA v Ewart Public Schools*, 125 Mich App 71, 74(1983). Thereafter, the burden shifts to the employer to demonstrate 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

²Respondent did not present the time entry card which Hanson allegedly falsified on April 14.

persuade, by a preponderance of the evidence, that the same action would have taken place even in absence of protected conduct. *Residential Systems*, 1991 MERC Lab Op 394; 125 Mich App 65 (1983). The charging party must then prove the employer's justification was a pretext and the real reason was anti-union animus. The burden to prove discrimination always remains on the charging party who must demonstrate that protected conduct was a "motivating or substantial factor" in the employer's decision.

The record demonstrates that Charging Party engaged in protected concerted activities. Hanson and Bachman spear-headed the organizing campaign by signing and mailing Union authorization cards to the POAM. Hanson was Union president and served on the bargaining team. Chief Shaw discussed the benefits of organizing a Union with Hanson and supported unionization until he was "chewed out" by the Village Manager. Thereafter, the record is replete with evidence of union animus by Chief Shaw. Significantly, he testified that he talked with the full-time employees about joining the Union and tried to persuade them to vote against it. Chief Shaw also told Bachman and Hanson if they unionized they would lose training and equipment funds, their granted-funded positions might not be renewed, and the police department could be disbanded and replaced by the Ionia County Sheriff.

Respondent relies on *Plainwell Schools*, 1989 MERC Lab Op 464, 475, for the view that statements made by Chief Shaw in September/October 1997 should not be a basis to find a discriminatory motive because the statement were not in "reasonable proximity" to Hanson's May 7, 1998, discharge. I disagree. Timing is but one factor to be considered in determining employer motivation. In *Plainwell*, the ALJ found an employee's discharge in August 1998 was not within "reasonable proximity" to his union activity four months earlier. There, unlike in this case, employer knowledge was the only element of a *prima facie* case established. Moreover, Hanson was suspended less than a month after his last bargaining session and less than two months after Bachman, who spear-headed the organizing drive with Hanson, voluntarily left the LOPD. Most important, Respondent's weak defense, its witnesses' lack of credibility, coupled with Hanson's protected activity, employer knowledge, and union animus justify an inference of discriminatory motivation.

Respondent's Reasons for Suspending and Discharging Hanson

Respondent claims it had valid reason for terminating Hanson and would have done so despite his union activity or the presence of a union. Respondent points to Hanson's poor disciplinary record and evidence he was scheduled to train Kern and specifically told not to leave Kern unattended. Nevertheless, according to Respondent, Hanson left Kern unattended and gave him no training after about 2:30 a.m. on April 16, falsified his daily log with entries showing he trained Kern, and falsified his time entry card on April 14. It is noted at the outset that Hanson's disciplinary record was poor and he was warned in December 1997, that further violations of department rules could result in discipline up to and including termination. I find, however, that the record does not contain substantial, credible evidence Hanson was suspended and terminated because he violated a department rule or policy on April 14 or 16.

April 14

The fatal flaw in Respondent's claim Hanson falsified a time card on April 14, is the absence of the card and any proof Hanson was required to report to work prior to the 8 a.m., starting time for the day shift. Respondent also presented contradictory testimony regarding Hanson's alleged offense. Chief

Shaw claimed Officer Wilson told him Hanson was carrying a duffel bag when Hanson reported for work at 7:21 a.m. Wilson, however, testified he did not recall Hanson having anything in his hand or if he told Chief Shaw that Hanson was carrying something. Further, Chief Shaw claimed not to know how he came to learn Hanson was allegedly late, but believed Wilson must have brought the issue to his attention. Wilson recalled that Chief Shaw asked him what time Hanson came to work on April 14.

Wilson's motive for reporting to Chief Shaw that Hanson arrived for work at 7:21 is also suspect. Wilson harbored a long-standing animosity toward Hanson, was social friends with Chief Shaw, and had made prior attempts to get Hanson terminated. Further, the claim that Hanson falsified his time card appears to have been an afterthought. Although Chief Shaw testified he completed his investigation by interviewing Sergeant Nelson, Kern and Wilson while Hanson was away on military leave, there was nothing in Chief Shaw's May 1 notice of suspension that Hanson falsified a document on April 14.

Chief Shaw's and Wilson's contradictory and inconsistent testimony, and Wilson's suspect motives might explain why Respondent apparently abandoned its theory that Hanson falsified his time card on April 14. There is no mention in Respondent's twenty-two page brief that Hanson's alleged April 14 falsification of documents was part of the reason he was discharged on May 7.

April 16

Respondent would have this tribunal believe Hanson was given a direct order to not leave Kern alone during his April 16 training. To support this assertion, Respondent claims Chief Shaw conducted an investigation which resulted in an undated and unsigned statement, Respondent Exhibit 16, authored by Sergeant Nelson which indicates Nelson "told" Hanson not to leave Kern alone. Chief Shaw steadfastly claimed Respondent Exhibit 16 was the only one written by Nelson until confronted with Nelson's statement dated 1:00 a.m., April 18. Chief Shaw, even after being shown Nelson's original statement with his handwriting on the bottom and on an attached second page, testified that he could not recall having seen Nelson's original statement.

Sergeant Nelson suffered a similar lack of recall. Before he was shown his original statement he swore Respondent Exhibit 16 was the only one he prepared. However, Nelson appeared to be perplexed and stunned, and testified he was "drawing a blank" when confronted with his original statement, Charging Party exhibit 6, in which he wrote he "suggested" to Hanson that Kern not be left alone. I discredit both Chief Shaw's and Sergeant Nelson's testimony and find Respondent Exhibit 16 was written by Nelson, at Chief Shaw's insistence, to make it appear Nelson gave Hanson a direct order not to leave Kern unattended.³ I also conclude that Nelson's statement was undated and unsigned because it did not reflect Nelson's true recollection of events and was introduced to deliberately mislead this tribunal.

³Chief Shaw's and Sergeant Nelson's credibility also became an issue during the hearing. I granted Charging Party's Motion to Sequester Witness. Both Shaw and Nelson were asked if they discussed the testimony of witnesses with each other. Shaw admitted he discussed Bachman's testimony with Nelson and admitted it violated the sequestration order. Nelson, however, repeatedly denied he discussed Bachman's testimony with Chief Shaw or anyone.

Moreover, Respondent Exhibit 17, Kern's second version of the events of April 16, was offered for a similar purpose. Only during cross-examination did Kern admit that it was prepared after talking to Chief Shaw. Kern first claimed he had no idea where his original was, but later testified it was destroyed. Although Kern testified that he heard Nelson tell Hanson to "be with Jason . . . instead of doing the ordinance violations", he also stated that "make sure that Jason's training gets done," was a fair statement of what he overheard Nelson tell Hanson. Significantly, there is nothing in Kern's revised statement about the conversation between Sergeant Nelson and Hanson, which he allegedly overheard, although he testified the statement he first prepared did not go into exact detail of what happened.

I also find no merit to Respondent's assertion that Hanson was discharged because he falsely stated on his daily log that he was training Kern. Respondent implies that part-time officers employed by the LOPD were untrained in police work because they were "fresh out of the police academy and getting their feet wet." However, both Wilson and Kern were experienced, certified policemen before they were employed by the LOPD. Kern had worked as a police officer in Nashville and Freeport, as a reserve in Middleville, and had completed 420 of police training prior to joining the LOPD. Further, on April 16 when he was assigned to train with Hanson, Kern had completed 32 hours of LOPD's 40 hour training program. The primary duties required of midnight shift officers - property checks, washing the patrol car, cleaning the office - were not new to Kern. Kern wrote in his statement that Hanson instructed him on how to perform these and other tasks. Although Hanson was not physically present with Kern during part of the midnight shift, he was responsible for Kern's training, inquired about his progress during Kern's return visits to the station, and the LOPD had no standard procedure for officers' to document their activities in their daily logs.

Based on the whole record, I find substantial evidence to conclude Charging Party established he was suspended and discharged for his Union activity. I also find Respondent's reasons for suspending and discharging Hanson to be a pretext. Although Hanson had a poor disciplinary record, Respondent offered no credible evidence of misconduct by Hanson on April 14 or 16, 1998. The inconsistent and incredible testimony of Respondent's witnesses and its fabricated documentary evidence were meant to cloak Respondent's true reason for disciplining Hanson. All other arguments raised by the parties have been carefully considered and do not warrant a change in the result. I recommend that the Commission issue the order set forth below:

Recommended Order

Respondent Village of Lake Odessa, its officers, agents, successors, and assigns shall:

1. Cease and desist from suspending, discharging or in any other manner discriminating against employees because they engaged in lawful concerted activity for the purpose of collective bargaining or other mutual aid or protection.
2. Take the following affirmative action necessary to effectuate the policies of the Act:

A. Offer Christian Hanson immediate and full reinstatement to his former or substantially equivalent position without prejudice to seniority or other rights or privileges previously enjoyed and make him whole for any loss of pay which he may have suffered because of discrimination against him by payment to him a sum equal to what he would have earned from the date of discrimination to the date of reinstatement offer, less interim earnings, together with interest at the statutory rate.

B. Expunge from Officer Hanson's personnel records any reference to his May 1, 1998, suspension and his May 7, 1998, discharge.

C. Post, for thirty (30) days, copies of the attached Notice to Employees in conspicuous places, including all places where notices to employees are customarily posted.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Roy L. Roulhac
Administrative Law Judge

Dated: _____

NOTICE TO EMPLOYEES

AFTER A PUBLIC HEARING BEFORE THE MICHIGAN EMPLOYMENT RELATIONS COMMISSION, **THE VILLAGE OF LAKE ODESSA** HAS BEEN FOUND TO HAVE VIOLATED THE MICHIGAN PUBLIC EMPLOYMENT RELATIONS ACT. PURSUANT TO THE TERMS OF THE COMMISSION'S ORDER, WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT discharge or otherwise discriminate against employees because of their activities protected by Section 10 of the Michigan Public Employment Relations Act.

WE WILL offer to reinstate Christian Hanson to his job as a police officer or to a substantially equivalent position and make him whole for any loss of pay, seniority or benefits previously enjoyed, less interim earnings, with interest at the statutory rate.

WE WILL expunge Officer Christian Hanson's record of any reference to his May 1, 1998, suspension and his May 7, 1998, discharge.

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

The Village of Lake Odessa

By

Dated: _____

(This notice must remain posted for a period of thirty (30) days. Questions concerning this notice shall be directed to the Michigan Employment Relations Commission, 1200 Sixth Street, 14th Floor, Detroit, Michigan 48226, (313) 256-3540.)