STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

FULTON SCHOOLS (FULTON ADULT AND ALTERNATIVE EDUCATION CONSORTIUM),
Respondent-Public Employer,

-and-

LAURALEE M. LOWE,
An Individual Charging Party in Case No. C98 G-145,

-and-

KATHLEEN S. CANFIELD,
An Individual Charging Party in Case No. C98 G-146,

-and-

SUE GOTT,
An Individual Charging Party in Case No. C98 G-147,

-and-

JEAN HARTSELL,
An Individual Charging Party in Case No. C98 G-148,

-and-

LYNN GALLAGHER-MAIN,
An Individual Charging Party in Case No. C98 G-149.
_____/

APPEARANCES:

Thrun, Maatsch and Nordberg, P.C., by Donald J. Bonato, Esq., for Respondent

Fortino, Plaxton, Moskal & Constanzo, P.C., by Anthony G. Constanzo, Esq., for Charging Parties

DECISION AND ORDER

On February 29, 2000, Administrative Law Judge Nora Lynch issued her Decision and Recommended Order in the above matter finding that Respondent Fulton Schools, fiscal agent for the Fulton Adult Alternative Education Consortium, did not violate Section 10 of the Public Employment Relations Act (hereafter "PERA"), 1965 PA 379, as amended, and recommending that the Commission dismiss the charges and complaint. The Decision and Recommended Order was served upon the parties in accordance with Section 16(b) of PERA. On March 23, 2000, individual Charging Parties Lauralee M. Lowe, Kathleen S. Canfield, Sue Gott, Jean Hartsell and Lynn Gallagher-Main filed timely exceptions to the Decision and Recommended Order of the ALJ. Respondent filed a brief in support of the ALJ's Decision and Recommended Order on March 29, 2000.

The facts of this case were accurately set forth in the ALJ's Decision and Recommended Order and need not be repeated in detail here. This matter arose after the Fulton Consortium Association (hereafter "FCA") was elected as the bargaining representative of 20 of Respondent's employees. Three of the Charging Parties, Lowe, Gott, and Hartsell, were members of the FCA's negotiating committee and began negotiating with Respondent for a collective bargaining agreement in the spring of 1997. Canfield and Gallagher-Main had been supporters of the FCA from the beginning. The negotiations did not go smoothly and eventually the FCA filed two unfair labor practice charges alleging that Respondent was negotiating in bad faith and engaging in unlawful discrimination. These charges were settled on January 27, 1998.

In February of 1998, Respondent's superintendent, Lawrence Lloyd, contacted a consultant in the area of community and adult education to help determine whether the alternative education program needed to be restructured as a result of State funding changes and declining student enrollment. The consultant's study, sent in early March, concluded that the program was overstaffed. Lloyd and Respondent's director, Philip Garcia, together determined that ten employees should be laid off. They included Garcia's sister, cousin, and niece, Gallagher-Main, Lowe, Canfield, Gott, and three others. Hartsell was reassigned to a teaching position because she had tenure. Gallagher-Main was laid off because she was employed by a private management company and, therefore, Respondent would not be required to pay her unemployment compensation.

The layoffs and reassignment took effect on March 27, 1998. Thereafter, Lowe, Canfield, Gott, Hartsell and Gallagher-Main filed unfair labor practice charges alleging that Respondent took such action shortly after the negotiating committee contacted the Michigan Education Association (hereafter "MEA") about representing the bargaining unit, and that their layoffs and reassignment were in response to their union activities. In the summer of 1998, new leadership took over the FCA and renamed it Adult/Alternative Independent Employees (hereafter "AAIE"). The AAIE began a new round of negotiations with Respondent in the fall of 1998, and the parties apparently reached an agreement on a collective bargaining agreement after a limited number of negotiating sessions.

In recommending dismissal of the charges in this case, the ALJ found that Charging Parties had failed to present sufficient evidence to establish that Respondent's actions were motivated by their protected concerted activities. On exception, Charging Parties argue that the ALJ erred by not allowing them to present evidence showing that Respondent changed its bargaining tactics after the

new Union leadership took office. At the hearing, Charging Parties had attempted to introduce evidence that Respondent's bargaining tactics with the FCA were designed to prolong bargaining and make the negotiations difficult. Charging Parties also wanted to offer proof that Respondent's subsequent negotiations with the AAIE were short and smooth, and that Respondent reached an agreement with the AAIE within only a few bargaining sessions. In addition, Charging Parties attempted to present evidence showing that this agreement probably would have been immediately accepted by the FCA had Respondent offered its leadership the same package. Charging Parties contend that the proffered evidence, had it been admitted, would have proven that the Employer took a tougher stance with the FCA's bargaining team in order to oust them from control of the Union.

Charging Parties also take exception to another evidentiary ruling made by the ALJ at the hearing. The ALJ allowed Respondent to withdraw an exhibit which she had earlier admitted into evidence. The exhibit in question listed the names of employees whom Respondent had laid off and the dates of their last checks. Respondent had originally offered the exhibit to refute Charging Parties' argument that the timing of their layoffs and reassignment—in the middle of the school semester—suggested an unlawful motive. It purportedly showed that many employees, in addition to Charging Parties, had been laid off in mid-semester. The ALJ allowed Respondent to withdraw the exhibit over the objections of Charging Parties, and she refused their request for a continuance in order to further investigate the document. Charging Parties contend that had they been allowed time to investigate the exhibit, they could have established its relevance with respect to the charges in this case.

After carefully examining the record, we find nothing improper with respect to either of the evidentiary rulings at issue here. Charging Parties did not cite, nor could we find, any case law to support their contention that an exhibit previously admitted into evidence may not be withdrawn without the consent of all parties. Even if Respondent had not been allowed to withdraw the exhibit, we see nothing in the record to suggest that the ALJ would have reached a different result in this case. Neither at the hearing nor on exception have Charging Parties adequately explained how the exhibit would have been relevant to the issue of anti-union animus. Accordingly, we conclude that the ALJ's decision allowing the Employer to withdraw the document was a proper exercise of her authority under PERA to regulate the course of the hearing. See Rule 62, R423.462 of the General Rules and Regulations of the Employment Relations Commission. With respect to the exclusion of evidence regarding Respondent's alleged change in bargaining tactics, the ALJ correctly concluded that an employer's change in bargaining positions over the course of lengthy bargaining, without more, is insufficient to establish anti-union animus. Moreover, we have previously held that events which occur several months after the alleged act of discrimination or retaliation are not directly relevant to a charge of unlawful discharge. *Northpointe Behavioral Healthcare Systems*, 1997 MERC Lab Op 530, 540.

Lastly, Charging Parties allege that the ALJ's Decision and Recommended Order was contrary to the great weight of the evidence. We disagree. In order to show a prima facie case of discrimination under Section 10 of PERA, a party has to show: (1) employee, union, or other protected activity; (2) employer knowledge of that activity; (3) union animus or hostility toward the

employee's protected rights; and (4) suspicious timing or other evidence that protected activity was a motivating cause of the alleged discriminatory actions. *Rochester School District*, 2000 MERC Lab Op ____ (Case No. C98 K-224, issued 2/23/00). Although anti-union animus may be proven by indirect evidence, mere suspicion or surmise will not suffice. Rather, the party making the claim must present substantial evidence from which a reasonable inference of discrimination may be drawn. *Detroit Symphony Orchestra*, 393 Mich at 126; *County of Saginaw*, 1990 MERC Lab Op 775, 780 (no exceptions). In this case, there is simply no evidence even suggesting that Charging Parties' union activities were a factor in Respondent's decision. To the contrary, the record suggests that Respondent was motivated by changes in funding and a decline in student enrollment.

We have carefully considered Charging Parties' remaining exceptions and conclude that they do not merit a change in the result of this case.

ORDER

Pursuant to Section 16 of PERA, we hereby adopt the recommended order of the ALJ as our order in this case.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____
Maris Stella Swift, Commission Chair

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Harry W. Bishop, Commission Member

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C. Barry Ott, Commission Member

Dated:_____

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APPEARANCES:

Donald J. Bonato, Esq., Thrun, Maatsch, and Nordberg, P.C., for the Public Employer

Anthony G. Costanzo, Esq., Fortino, Plaxton, Moskal,& Costanzo, P.C. for the Charging Parties

DECISION AND RECOMMENDED ORDER

OF
ADMINISTRATIVE LAW JUDGE

Pursuant to the provisions 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 Lansing, Michigan, on October 20, 1998, January 26, and May 5, 1999, before Nora Lynch, Administrative Law Judge for the Michigan Employment Relations Commission. The proceedings were based upon unfair labor practice charges filed on July 21, 1998, and amended on September 10, 1998, by Individual Charging Parties Lauralee Lowe, Kathleen S. Canfield, Sue Gott, Jean Hartsell, and Lynn Gallagher-Main, alleging that the Fulton Schools had violated Section 10 of PERA. Based upon the record, including briefs filed by the parties on or before July 20, 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 Charges:

The amended charges[1] by Lowe, Canfield, Gott, and Main, all contain the following identical language:

> I am filing an unfair labor practice complaint or charges against the Fulton Schools premised on my March 27, 1998 lay off by the Fulton Schools. A total of 10 consortium employees were either laid off or demoted. Of the 10, 6 were certified teachers. One of those was a teacher in name only with no teaching duties. The remainder comprised, with the addition of Joe Smolka, all of the due paying members of the Fulton Consortium Association, the entire union negotiating committee. Further, the layoff followed very quickly, contact of the MEA by the negotiating committee as to possible future representation. I believe my lay off was motivated by my union activities.

Hartsell=s charge differs only in asserting that her demotion/reassignment was the result of her union activities.

[1]As originally filed, the charges were signed by the individuals but indicated that they were being filed by the Fulton Education Association. The amendments removed the name of the Association as a Charging Party and clarified that the charges were filed by the individuals.

Facts:

Fulton Schools is the fiscal agent for the Fulton Adult Alternative Education Consortium. As fiscal agent, Fulton Schools is responsible for the collection of revenues and the management of the Consortium. The Consortium is composed of the Fulton Schools, St. Louis Public Schools, and the Shepard Public Schools, and currently operates programs at three sites: St. Louis, Shepard, and Middleton, Michigan. A number of other school districts were formerly part of the Consortium. At that time programs were also operated at sites in Ashley, Ovie-Elsie, Beal City, Fowler, and Pewamo-Westphalia. Lawrence Lloyd is the Superintendent of Fulton Schools. Philip Garcia is the Director of the Consortium and reports directly to Lloyd.

In early 1997, employees of the Consortium formed a labor organization known as the Fulton Consortium Association. A representation election was held in March 1997 pursuant to a petition filed with the Commission in Case No. R97 A-15 in a bargaining unit of all Consortium employees. The bargaining unit consisted of approximately 20 employees, including teachers, program managers, coordinators, teacher aides, vocational teachers, support and custodial staff. Charging Party Lynn Gallagher-Main was not eligible to vote in the election since she had retired from the Consortium and after March 1996 provided services to the Consortium pursuant to an employee leasing agreement between the Gratiot Management Company and the Fulton Schools. The fifteen employees voting in the election all selected the Fulton Consortium Association which was subsequently certified by the Commission as the representative of the above described bargaining unit.

The parties began negotiations for a collective bargaining agreement in the summer of 1997. The Association team consisted of Jeanne Hartsell, Sue Gott, and Lauralee Lowe. Hartsell testified that she had conversations with Garcia at the beginning of negotiations with respect to how bargaining would proceed. According to Hartsell, after she indicated that the Association would not be using an attorney, Garcia responded that Lloyd would refuse to work with the negotiating team, that he would turn it over to the school attorney, and that the Association would be Abled dry with attorney fees.@ Garcia testified that he had no recollection of such a conversation with Hartsell.

Bargaining did not go smoothly and in August of 1997 the Association filed an unfair labor practice charge against the Employer alleging bargaining in bad faith (Case No. C97 H-180). Not all of the members of the bargaining unit agreed with the positions taken by the negotiating team. Employee Debra Cunningham testified that she had concerns about the negotiations process. She contacted other employees by telephone expressing her views that the way things were going, a contract would never be reached and the program could be shut down. After these contacts, Cunningham helped draft a memo to Lloyd and Association attorney Anthony Costanzo dated September 26, 1997, signed by thirteen employees, expressing their dissatisfaction with the proposals of the Association=s negotiating team. During this time period a number of personal complaints with respect to the conduct of Hartsell, the head of the bargaining team, were also sent to Lloyd. On November 17, 1997, Lloyd wrote a memo to employees responding to these complaints, particularly with respect to an agency shop provision proposed by the Association. Lloyd began the memo as

follows:

> I have received several communications over the last few weeks indicating that employees of the Fulton Adult/Alternative Education Consortium are concerned. Apparently employees believe that they will be required to become dues paying members of the Fulton Consortium Association. As you know, the Consortium and the Association are currently involved in the negotiation of an initial Collective Bargaining Agreement between them. The concerns communicated to me apparently result from proposals made by the Association during the negotiation process.

Lloyd went on to define agency shop and what was being proposed at the table. He concluded as follows:

> Some of the concerns which have been communicated to me involve matters which can be best characterized as internal union issues. As an employer, the Consortium should refrain from becoming involved in disputes between members of the bargaining unit which involve internal union issues, such as the union=s constitution, by-laws, policies and leadership structure. These are issues which should be addressed by members of the bargaining unit and the union if there are concerns.

The unfair labor practice charge concerning bad faith bargaining as well as a subsequent charge alleging discrimination filed by the Association on October 8, 1997 (Case No. C97 J-208) were scheduled for hearing on January 27, 1998. The charges were settled by the parties on that day prior to the opening of the hearing. At that time the Association=s attorney, Costanzo, notified the Employer=s attorney, Donald Bonato, that the Employer need not rush its response to recent proposals, as the leadership of the Association was considering looking to the Michigan Education Association for representation. Lloyd testified that he was pleased when he learned of the intent to contact the MEA, because the MEA had represented the certified and noncertified employees of Fulton Schools for a long time and they had a good relationship. Lloyd also testified that he had no way of knowing who was paying dues to the Association; the Employer was not involved in making dues deductions for the Union. Lloyd testified that due to the unanimous vote in the representation election, he assumed everyone in the bargaining unit was a dues paying member.

Superintendent Lloyd testified with respect to the factors leading up to the layoff of employees. The focus of the Consortium programs had changed from adult education to alternative education after the 1995-96 school year due to a change in funding at the State level. According to

Lloyd, because of this change, he began questioning the necessity of certain consultant and quasi-administrative type positions common in adult ed programs, but unusual in alternative education. In addition, enrollments had dropped. The amount of state aid received for alternative education students is directly related to the number of students enrolled. This number is determined by blending counts taken twice a year in September and February. The numbers are expressed as FTE=s or full time equivalents, since individuals may be enrolled part-time. According to Lloyd, when the fall 1997 student count came in, it was roughly 65 students lower than the previous February count. Because the February counts are often higher than the September counts, Lloyd elected not to implement a layoff at that time. He decided to seek outside assistance in analyzing the Consortium to determine if restructuring was necessary. On January 15, 1998, Lloyd contacted Plante & Moran, a large accounting firm, to discuss a potential analysis. He also contacted the Michigan Association of School and Business Officials for this purpose on January 20, 1998. On January 27, 1998, Lloyd also attempted to reach Dr. Hugh Rohrer, a consultant in the area of community and adult education. He eventually made contact with Dr. Rohrer on February 2, 1998, and subsequently retained him to do the study based on his fees and availability.

Lloyd informed the Board by memo of March 3, 1998, that he had employed Rohrer to perform an independent study in order to be ready for a probable challenge by the Association should a reduction in staff be necessary. Lloyd=s memo to the Board set forth his concerns as well as his rationale for a reduction in force:

> Bottom line is that while the program may be generating more revenue this year because of the high February 1997 FTE count, during this fiscal year we are servicing fewer students than last year, but our total teaching related expenditures are greater. In February of 1997 we had 204 FTE students. In February of 1998 we had 138 FTE students. The point that is being made is that when comparing total teaching related expenditures to students being served on a monthly basis this year to last year, we are either overstaffed in the Adult/Alternative Education program this year or were understaffed last year. Current student to teacher ratios in some instances this year would indicate that a reduction in the workforce is needed.
>
> Historically for the past eight to ten years, when staffing reductions needed to be made in this program, the administration acted. With ongoing negotiations this year, it seems that any administrative action concerning personnel is challenged and the consortium organization attempts to relate such action back to the negotiations process and to active individual members. Thus two unfair labor practice claims to date, and threats of many others.
>
> While administratively it is believed that the size of the workforce

> needs to be reduced to stay within acceptable limits based on students and revenue, any such action is most certainly to be challenged by the organization. Please know that this belief has no relationship to the current status of negotiations, but rather an ongoing effort to be fiscally responsible to the Board of Education and the Fulton Community.

In March of 1998, Dr. Rohrer spent four days visiting the three consortium sites with Garcia. Rohrer testified that he spent the time observing, talking to employees, and reviewing documents provided by Garcia, which included enrollment figures. The deadline for Dr. Rohrer=s report had been established as March 13, 1998. Dr. Rohrer testified that although March 13 was the date on the cover of his report, he had actually sent it to Lloyd earlier. Rohrer faxed his report to Lloyd on March 9; Lloyd suggested that he correct some typographical errors and Rohrer resubmitted the report by fax on March 11, 1998. As reflected in his analysis, Rohrer recommended that staffing be reduced, including teachers and management staff.

Lloyd testified that he was not surprised by Rohrer=s analysis and recommendations because they confirmed Lloyd=s opinion that the Consortium was overstaffed. According to Lloyd, he and Garcia jointly made the decisions as to where cuts would be made, taking into consideration sites, programs, and enrollment, rather than seniority. Lloyd testified that Main=s services were terminated because she was not a member of the bargaining unit but was employed through Gratiot Management Company and releasing her would not result in an unemployment compensation obligation. Although Hartsell=s position was eliminated, because she possessed teacher tenure, she was reassigned to a teaching position with no loss of pay or benefits. There were ten employees selected for layoff; they included Garcia=s sister, cousin, and niece.

On March 13, 1998, Lloyd sent a letter to Costanzo, informing him of the impending layoffs:

> I am sending you this correspondence because I am unaware of who the elected president of the Fulton Consortium is. The February 1998 Alternative Education membership count totals are approximately sixty students less than the February 1997 totals. As the Consortium is aware, while the membership totals are much lower, the total wages are actually higher this year than last year at this time. I=m writing to advise you that the administration will recommend to the Board of Education the following layoffs and or reassignments at a Special Board Meeting to be held on Tuesday, March 17, 1998, at 7:30 p.m. in the High School Media Center.

The letter listed the five members of the certified staff designated for layoff: Lauralee Lowe, Sue Gott, Lynn Main, Kathy Canfield, and Diane Sutherland. It also named five members of the support staff to be laid off, and indicated that Jean Hartsell would be reassigned. The minutes of the March 17 Board meeting reflect the following:

> Mr. Garcia, Director of the Adult/Alternative Program, gave a report comparing the pupil counts and equivalent FTE=s for 1997 and 1998 school years.
>
> Mr. Lloyd reported that after receiving the lower student count in February and the independent evaluation, impending layoffs are a simple math problem of less money coming in, therefore cut backs are needed to keep this program in the black.

The layoffs were approved by the Board, to be effective March 27, 1998.

On April 9, 1998, an unfair labor practice charge in Case No. C98 D-72 was filed by the Fulton Consortium Association, signed by Hartsell as chief of the negotiating committee, alleging that the layoffs were the result of the union activities of the negotiation committee and dues paying members of the Association.

On May 11, 1998, a memo written by Cunningham was sent to Lloyd signed by fourteen staff members stating that they wished to Adisaffiliate@ from the Association:

> We the presumed members of the AFulton Consortium Association@ wish to inform you that we do not agree or stand behind the Association/and or Ms Hartsell or any of the allegations that have been or has now been presented to you.
>
> We would like to inform you that in sending this letter to you, we have disaffiliated ourselves from the Association and Ms. Hartsell.

The memo was signed by fourteen bargaining unit employees. After this memo was received by Lloyd, he consulted with the Employer=s attorney. On the basis that a majority of the unit did not want to be involved with the existing union, Bonato filed a decertification petition with the Commission in June of 1998. Bonato testified that he checked the RD-Decertification box on the Commission form based on the language which indicated that it should be checked when A30% or more of employees in the unit assert that the certified or currently recognized bargaining representative is no longer their representative.@ When he was informed by the Commission election

agent that the proper vehicle was an RM petition, the petition was withdrawn. On June 30, 1998, the Employer filed a Motion to Dismiss the charge filed in Case No. C98 D-72 on the basis that the May 11, 1998 memo demonstrated that the majority of the individuals who comprise the Fulton Consortium Association did not authorize the filing of the charge and did not support or agree with the unfair labor practice charge.

On July 22, 1998, Cunningham filed a decertification petition with the Commission in Case No. R98 G-88, with the appropriate showing of interest. On August 18, 1998, the petition was withdrawn by Cunningham as follows:

> I hereby withdraw my petition for decertification in this matter.
>
> The Fulton Consortium Association, certified collective bargaining agent at Fulton Schools, has changed its name to Adult /Alternative Independent Employees, has internally solved its problems and now represents the vast majority of the employees in the bargaining unit for the purposes of collective bargaining.

On August 20, 1998, as President of the renamed group, Cunningham withdrew the unfair labor practice charge in Case No C98 D-72, filed by the Fulton Consortium Association. Cunningham testified that she had no conversation with Lloyd or Garcia during this time period having anything to do with the Union. Negotiations with the renamed organization began in the fall of 1998.

Discussion and Conclusions:

It is Charging Parties= contention that they were laid off, or transferred in the case of Hartsell, because they were the Acore union supporters.@ They assert that from the time the Union was recognized, Lloyd set out on a course of conduct to break the Union. Although no direct evidence was introduced to support this assertion, Charging Parties cite numerous incidents/circumstances which allegedly support an inference of illegal motivation. These include the timing of the layoffs, the particular individuals selected, lack of economic justification for the layoffs, and Employer interference with internal union affairs. As discussed below, I find that the evidence does not support such an inference and Charging Parties have failed to satisfy their burden of proving that the challenged layoffs and reassignment were motivated by activity protected by PERA.

Charging Parties maintain that the timing of the Employer=s action is suspect, since the layoffs occurred shortly after the MEA was contacted. Other than the fact that a representation was made to the Employer=s attorney that the negotiating team planned to contact the MEA, no evidence was introduced as to whether this was done, or who made the contact. Lowe testified that she knew nothing about it. More importantly, Lloyd testified credibly that he welcomed the involvement of the MEA; he had previous contacts with the MEA as bargaining agent for Fulton

Schools employees and they had a good relationship. Charging Parties also find it suspicious that Lloyd called Dr. Rohrer on the same day that he was told of the intent to contact the MEA. The record reflects that Lloyd had already decided to have an independent analysis of the Consortium performed and earlier that month had made calls to two possible candidates for this purpose; the call made to Dr. Rohrer was simply in furtherance of a plan made before any mention of the MEA.

Charging Parties allege that retaliation is demonstrated by the fact that the Employer=s actions were directed at all members of the negotiating committee and all dues paying members. While it is true that bargaining team members Hartsell, Gott, and Lowe were affected, they were only three of the eleven employees laid off or transferred. Three of the other employees laid off were relatives of Garcia, the administrator who participated in making the layoff decisions with Lloyd. The evidence supports the conclusion that the Employer made reasonable, impartial decisions as to who would be laid off; the argument that members of the bargaining team were singled out for layoff is not supported by the record. Further, although Canfield and Main may have been dues payers, there is no evidence that Lloyd knew who the dues paying members were and he specifically denied such knowledge. The Employer was not involved in making dues deductions. Lloyd testified that he assumed that all employees were dues paying members since the Association had been voted in unanimously. While it is true that due to communications Lloyd received, he also knew that internal problems had developed within the Union and that agency shop was an issue of concern to employees, there is no evidence in the record that he knew which individuals were financially supporting the Association. Without such knowledge, there is no basis for concluding that Lloyd selected employees for layoff on this basis.

Charging Parties also argue that the layoffs were not justified because there was no overall loss of revenue and the Employer could have afforded to continue to employ these individuals. The record establishes that Lloyd had been contemplating restructuring the program for some time and chose to have an independent study performed by Rohrer for this purpose. The evidence supports the Employer=s assertion that it based its action on dropping enrollment figures in the alternative education program and the resulting changes in student/teacher ratios. As argued in Respondent=s post-hearing brief, an employer is not obligated to continue to overstaff a program simply because the program is not operating at a loss.

Although Charging Parties allege that the record supports the implication that Lloyd fostered dissension within the Union, there is no evidence of any improper contacts between Cunningham, the leader of the splinter group, and Lloyd or Garcia. I credit Cunningham=s testimony that she did not discuss Union problems with them. She communicated with Lloyd through memos signed by a majority of employees. After receiving the memos evidencing a lack of majority support, the Employer=s attorney filed an election petition with the Commission. The fact that he mistakenly checked the RD box on the form rather than the RM box does not establish that the Employer was sponsoring a decertification effort; the petition was withdrawn when the error was discovered. Hartsell=s testimony that she was told by Garcia that the Employer intended to Ableed them dry with attorney fees@ in negotiations is not credible; in the same conversation she had indicated to Garcia that the Association was not using an attorney in bargaining. In addition, Garcia had no recollection of

such a conversation.

The claim made by Charging Parties that the Employer=s actions Agutted@ the union is simply not supported by the evidence; rather what occurred was a change in Union leadership. The record clearly establishes that after bargaining began there was disagreement within the Union. The majority of employees chose to dissociate themselves from the positions taken by the bargaining team and Jean Hartsell and communicated this to Superintendent Lloyd. This group, led by Cunningham, eventually assumed the leadership of the Union. There is no evidence that this internal union dispute was caused in any way by the Employer=s representatives. The Employer continued to recognize and bargain with the Union after it changed its name and new leadership took over. [2]

In summary, Charging Parties rely entirely on suspicion and innuendo to support their claims of discrimination. In *Redford Twp*, 1975 MERC Lab Op 464, the Commission stated that a charging party must do more than create suspicion or surmise, but must adduce substantial evidence from which a reasonable inference of discrimination may be drawn. In that case, the Commission cited *MERC v Detroit Symphony Orchestra*, 393 Mich 116, 87 LRRM 3095 (1974) in which the Michigan Supreme Court warned against Aconvoluted conjecture tantamount to speculation@ when considering inferences of illegal motivation. In the instant case, there is not even a hint of animus on the part of the Employer toward the Union or the activities of employees on its behalf. See *Kalamazoo Public Library*, 1994 MERC Lab Op 486,492; *Bay City Board of Comm (Health Dept)*, 1980 MERC Lab Op 1141, 1147. No causal nexus has been established between Charging Parties= status as members of the bargaining team or union supporters and the Employer=s layoffs and reassignment. Further, since Main is not an employee of the Consortium, her charge is dismissible on its face.

Based on the above discussion, it is recommended that the Commission issue the order set forth below:

RECOMMENDED ORDER

It is hereby ordered that the charges filed in these cases be dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

[2] In order to support the charges of discrimination, Charging Parties= attorney attempted to introduce evidence to demonstrate that the Employer=s approach to bargaining changed after the new group took over. Respondent=s objection to this evidence was sustained. The fact that the Employer changed positions over the course of lengthy bargaining does not evidence illegal motivation or employer dominance or assistance.

Nora Lynch
Administrative Law Judge

DATED: