

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

MOSAICA ACADEMY OF SAGINAW,
Respondent-Public Employer

- and -

Case No. C00 E-89

MICHIGAN EDUCATION ASSOCIATION,
Charging Party-Labor Organization

APPEARANCES:

Ellen E. Crane, Atty, Braun, Kendrick, Finkbeiner, P.L.C., for the Employer

Alexandra S. Matish, Atty, and William F. Young, Atty, White, Schneider, Baird, Young & Chiodini, P.C.

DECISION AND ORDER

On March 12, 2002, Administrative Law Judge Nora Lynch issued her Decision and Recommended Order in the above matter finding that Respondent has not engaged in and was not engaging in certain unfair labor practices, and recommending that the Commission dismiss the charges and complaint as being without merit.

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

Dated: _____

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In the Matter of:

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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 Detroit, Michigan, on March 30, 2001, before Nora Lynch, Administrative Law Judge for the Michigan Employment Relations Commission. The proceedings were based upon unfair labor practice charges filed by the Michigan Education Association (MEA) alleging that Mosaica Academy of Saginaw had violated Section 10 of PERA. Based upon the record, including briefs filed on or before July 13, 2001, 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 was filed on May 15, and amended on July 5, and September 25, 2000. The charge alleges that the Employer retaliated and discriminated against employees who engaged in protected activity during union organization efforts prior to a representation election. Specifically, it is charged that special education teacher David Dickerson was terminated because he was one of the main supporters of the Michigan Education Association's organizing drive at Mosaica.

Facts:

Mosaica Academy of Saginaw is a public school academy within the meaning of Section 1(f) of PERA.¹ Saginaw Valley State University is the chartering sponsor of the Academy. The Academy is managed by Mosaica Education, Inc. (MEI). Michael Connolly is the chief operating officer of MEI and Dr. Holmes is responsible for overseeing Michigan schools for the company. The chief administrative officer, or principal, of the Academy is Dr. Delores (Dee) Howe. The Academy has a staff of approximately 70 employees, including 25 teachers.

David Dickerson was hired by the Academy in December of 1999 as a special education teacher working with emotionally impaired students. Dickerson's educational background includes a PhD in clinical psychology. During his employment interview with Dr. Howe, the possibility of Dickerson assuming the position of school psychologist in the future was raised. They discussed the fact that in order to qualify for the position, Dickerson would have to take the licensing exam and obtain a full license as a psychologist. The exam is offered in April and October each year.

During the 1999/2000 school year, problems arose within the Academy, chiefly in regard to student discipline and communications with school administrators. These problems resulted in the resignation of two teachers in February of 2000, Adrian Shaheed and Jameson Hardy. In a memo placed in staff mailboxes on February 24, 2000, Howe referred to Shaheed's resignation and indicated that she regretted his leaving but it was his choice to make. Dr. Howe also stated:

I had a few calls last night wanting me to know that they had not been involved in the attempted sit down strike that a staff member was trying to organize. Thank you for doing your own thinking. There are several individuals who are attempting to exert a strong influence on others. Each of you made an individual commitment to me and to Mosaica. Each of you needs to determine your own future with this school, and that will of course be based on your performance throughout this year. I will answer any questions that I legally can if you bring them to me individually or in a small group.

Due to the resignations, media attention became focused on the Academy. As a result, Saginaw Valley State University directed that an internal investigation be conducted by MEI. CEO Connolly came to the Academy from New York, and met with staff, students, parents, and everyone involved with the school. His meetings with the Academy staff took place on March 8 and 9, 2000. The results of this investigation were reported on April 16, 2000 to Academy management, Saginaw Valley State University, and other interested parties. At that time the school's parent group suggested that an outside consulting firm be brought in to conduct additional interviews in an attempt to improve relations between management and staff. These interviews were conducted in May of 2000. A report was issued in June of 2000 which indicated that staff concerns involved discipline, safety, and communication.

¹ In *Mosaica Academy of Saginaw*, 2000 MERC Lab Op 281, the Commission found that Mosaica Academy was a public employer subject to PERA. This decision is currently before the Michigan Court of Appeals (Docket No. 230332).

During this time of turmoil at the Academy, there were efforts made to organize a union.² Dickerson testified with respect to his involvement in union organizing. In February of 2000 he contacted the MEA Uniserv director for the Saginaw area. He also talked to other teachers about the formation of a union. According to Dickerson, he and two or three other teachers often met in his classroom to have lunch, at which time they discussed the Union and other matters. Dickerson testified that he did not publicize these meetings and they were not prescheduled. According to Dickerson, Barb Weigandt (now Ahmen), an aide and administrative assistant, often walked by his classroom and looked in. Dickerson also testified that there was a video camera placed in his classroom after these meetings began, with a monitor in Howe's office. According to Dickerson, meetings involving the Union also took place outside the school but he did not attend.

Dickerson testified that when he began work at Mosaica, Howe was very friendly to him and engaged him in conversation before school. According to Dickerson, after he began unionization efforts, Howe's attitude changed and she rarely spoke to him. Dickerson testified that when he spoke to the consulting firm in May, he told them that the administration had problems with respect to discipline. Dickerson also testified that the interviewer did not ask any questions about unionization, although he volunteered his feelings about bringing a union to the school.

In March an anonymous memo was left in staff mailboxes which began as follows:

DO YOU REALLY WANT A UNION?

IS A UNION REALLY THE ANSWER FOR EVERYONE?

WILL YOUR VOICE REALLY BE HEARD?

CERTAIN INDIVIDUALS ARE TRYING TO ORGANIZE A UNION HERE AT MOSAICA. ONLY CERTAIN INDIVIDUALS HAVE BEEN INVITED TO THE MEETING THIS SUNDAY. WHY ONLY CERTAIN PEOPLE?

ARE THERE REALLY PROBLEMS AT MOSAICA OR DO CERTAIN INDIVIDUALS HAVE INDIVIDUAL ISSUES? A UNION WOULD INDEED CHANGE THINGS—BUT NOT ALWAYS FOR THE BETTER!!!!

The memo went on to describe the impact unionization would have at Mosaica. All staff members have access to the mailboxes; occasionally students or parents may leave notes for the teachers in their mailboxes.

Dr. Howe testified regarding her interactions with Dickerson. She first interviewed Dickerson in the fall of 1999, but no position was open. A position as special education teacher did open up in late December and Howe offered it to him as an option until he received his license as school psychologist. Dickerson was also employed elsewhere as a consultant, but wanted full time employment with the Academy. Because of the outside employment, he needed to adjust his

² The MEA filed a representation petition with the Commission on March 29, 2000, in Case No. R00 C-42. Pursuant to its decision in *Mosaica Academy, supra*, the Commission directed an election which was held on November 21, 2000. The MEA failed to demonstrate majority support in that election.

schedule in order to leave at 2 p.m. Howe agreed to this schedule with the understanding that Dickerson would submit a written plan for making up the hours; Howe did not receive a plan from Dickerson and had to remind him of the arrangement. Dickerson disputes that there was ever such an arrangement, and thought his reduced work schedule had been approved.

Howe described certain other problems that occurred with Dickerson's employment. When Dickerson left for a spring vacation, he failed to inform the aide who worked with him that he would be gone and left no lesson plans for her. Howe issued a reprimand because of this incident. She testified that she made an effort to schedule a meeting to discuss this with Dickerson, but he did not respond. It was Howe's practice to conduct regular classroom observations of teachers. Dickerson was scheduled for an in-class evaluation by Howe in March. This evaluation did not take place because when Howe came to the classroom there were no students in attendance. According to Howe, if no students were in attendance for a scheduled observation, teachers would let her know in advance so that she could reschedule. She did, however, subsequently observe his classroom performance on an informal basis.

Howe testified that she was unaware that Dickerson was involved in union organizing, and did not know that he had lunch meetings where unionization was discussed. With respect to the camera in Dickerson's classroom, all classrooms were equipped with cameras, and they were only visual, with no audio capability. Howe testified that the aide, Barb Weigandt, was responsible for supervising students at lunch time and made "hall sweeps" to make sure students were not wandering the halls; Weigandt did not report back to Howe regarding any staff lunch meetings. Howe testified that she had no involvement in choosing the outside consulting firm or in the subsequent staff interviews. She also testified that she received no feedback on what staff members said in the interviews. Howe acknowledged that she was more attentive to Dickerson in January because it was her policy to go out of her way to speak to new teachers when they began, to make them feel at home.

It was the practice at Mosaica to evaluate teachers at the end of the school year, to determine who was best suited for an assignment the following school year. This was done by the leadership team, which consisted of Howe, the assistant principal, and two curriculum directors. Dickerson was evaluated by the team on June 26, 2000; each team member prepared her own evaluation prior to group discussion. In evaluating Dickerson, three of the four team members raised concerns with his performance as a teacher and recommended that he not be brought back in that capacity; the fourth member abstained due to lack of personal knowledge. Following this meeting, Howe met with Dickerson personally to discuss his teacher evaluation. Howe was critical of Dickerson's teaching skills; she did not feel that he was addressing students' needs and stated that a classroom setting was not a good match for him. She suggested that he take the licensing exam for psychologist in the fall with the aim of returning to Mosaica as a school psychologist.

On June 27, 2000, Howe wrote to Dickerson informing him that he would not be employed as a teacher at Mosaica for the 2000-2001 school year, but stating that as soon as he completed the requirements for school psychologist they would discuss his employment with Mosaica in that position. It was Howe's understanding that Dickerson was to take the fall exam.

Discussion and Conclusions:

To establish a prima facie case of discrimination under Section 10(1)(c) of PERA, a charging party has the burden of demonstrating: 1) union or other protected concerted activity; 2) employer knowledge of that activity; 3) union animus; and 4) suspicious timing or other evidence that the employer's alleged discriminatory action was motivated by the employee's protected conduct. *University of Michigan*, 1990 MERC Lab Op 272.

The Charging Party contends that all of these elements have been established. Dickerson was clearly engaged in union organizing, based on his contacts with the MEA representative and meetings with other employees. The Charging Party asserts that a finding of Employer knowledge is supported by the fact that Howe knew of Dickerson's classroom meetings regarding unionization due to the presence of a video camera and Barb Weigandt's observations. In addition, with such a small employer, it would be unlikely that Howe would not know about an organizing campaign. With respect to union animus, Charging Party attributes the anti-union flyer to Howe, asserting that she was responsible for the majority of documents placed in school mailboxes. Charging Party also points to the fact that Howe's attitude towards Dickerson changed dramatically after his union organization efforts began. The Charging Party also alleges that the timing is suspicious, since Dickerson's termination occurred shortly after he made certain comments to the consulting firm. Finally, the Charging Party argues that the Employer had no legitimate reasons for terminating Dickerson.

I find that Charging Party's allegations of interference and discrimination are not supported by the record. Howe was a credible witness who testified with authority and candor. In contrast, Dickerson testified haltingly, had little recollection of events, and seemed unsure of himself. I credit Howe's testimony that she had no specific knowledge of Dickerson's Union involvement. Clearly she did know that there was a movement to unionize at Mosaica, however there is no credible evidence to establish that Howe knew the Union was discussed at the casual lunch meetings in Dickerson's office. The video camera in his classroom had no audio capability, and the fact that Weigandt passed by his classroom while checking for students does not establish surveillance by Howe. There is absolutely no evidence linking Howe with the anti-union flyer which appeared in staff mailboxes, to which any number of individuals had access. Howe gave a satisfactory explanation regarding the special attention paid to Dickerson at first due to his being a new teacher. Howe's assessment of Dickerson's teaching skills was supported by other members of the leadership team. Finally, although Dickerson was not offered employment as a teacher for the 2000-2001 school year, Howe did offer him future employment as the school psychologist, a position she thought more suited to his skills, as soon as he took the psychologist exam.

In *Redford Township*, 1975 MERC Lab Op 464, 466, citing *MERC v Detroit Symphony Orchestra*, 393 Mich 116, 87 LRRM 3095 (1974), 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. Based on the above discussion, I conclude that Charging Party has failed to meet this burden. I find that Charging Party has not established that Dickerson was terminated in retaliation for his Union or concerted activity, or that the Employer has interfered in any way with the rights of Mosaica employees guaranteed by Section 9 of 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: _____