STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

ANN ARBOR PUBLIC SCHOOLS,
Petitioner,

Case No. S02 B-001
-and- (001) – (040)

TEAMSTERS STATE, COUNTY & MUNICIPAL WORKERS LOCAL 214,
Respondent-Labor Organization,

-and-

LADEEDRA CONNERS, ET AL.
Individual Respondents.
_____/

APPEARANCES:

Esordi Hornby, P.L.L.C., by Scott G. Hornby, Esq., for Petitioner

Rudell & O'Neill, P.C., by Wayne A. Rudell, Esq., for Respondent- Labor Organization

DECISION AND ORDER

On February 21, 2002, Petitioner Ann Arbor Public Schools (Petitioner or Employer) filed a Notice of Public School Employee Strike alleging that the Individual Respondents engaged in a strike on December 20, 2001, in violation of Section 2 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.202. Pursuant to a notice dated February 26, 2002, this matter was scheduled for hearing on March 19, and March 20, 2002, in Detroit, Michigan, before Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission.

On March 12, 2002, Respondent Teamsters State, County & Municipal Workers Local 214 (Teamsters) filed an answer and motion to dismiss. Petitioner filed a response on March 15, 2002. At the commencement of the hearing, Respondent Teamsters moved for dismissal of the petition to the extent that it applied to the Teamsters. Following oral argument by Respondent Teamsters and by Petitioner, Judge Roulhac granted the motion to dismiss.

Subsequently, Petitioner withdrew the petition as to nine Individual Respondents: Janine Amadi, Willie Mae Reeder, Bettye Davis, Regina Bishop, Gwynne Squires, Elaine Harris, Horace Frazier, Lynn Stephens, and Victoria Taylor. The petition was also dismissed as to

Wendy Smith. Evidence was taken from Petitioner and from most of the thirty remaining Individual Respondents (Respondents) on March 19 and March 20, 2001[1]. Petitioner filed a post-hearing brief on April 3, 2002. The Respondents did not file a brief. Based on the record and the post-hearing brief, we find as follows.

Findings of Fact and Conclusions of Law:

Respondents were employed by Petitioner Ann Arbor Public Schools as school bus drivers or school bus monitors at the time of the events leading to the filing of the petition and were members of the same bargaining unit. The bargaining unit is represented by Teamsters State, County & Municipal Workers Local 214, which is a party to a collective bargaining agreement with Petitioner. The collective bargaining agreement contains a no-strike clause.[2] Some members of the bargaining unit were dissatisfied with actions taken by Petitioner that affected the bargaining unit. An issue of particular dissatisfaction was disciplinary action taken by the Employer against one of the bargaining unit's stewards, Monica Wafford.

The Petitioner's Board of Education scheduled a meeting for the evening of December 19, 2001. One of the Respondents, Lloyd Wafer, distributed notices urging all bargaining unit members to attend the Board meeting at 5:30 p.m., to address the Board, and show their solidarity. Wafer believed it was important for the bargaining unit members to show their support for the union steward Monica Wafford, whom he expected to speak to the Board about unfair labor practices and grievances that the Board had not yet addressed.

Wafford did speak at the Board meeting. However, apart from Wafer's testimony that Wafford did not discuss striking, the record contains no evidence of the text of her speech. Several of the Respondents attended the meeting; some attended as a show of support for Wafford, others testified that they were there for reasons unrelated to the Union.

After the Board meeting ended, several of the Respondents remained at the meeting location. Some of these individuals participated in a vote on whether they should all call in sick the next day. One of the union stewards, Wendy Smith, counted the show of hands. The majority of those present voted in favor of the "sick-out." After leaving the meeting, two of the Respondents, Sonia Light and Marie Blair, telephoned various bargaining unit members to inform them of what was discussed at the meeting and about the subsequent vote.

At 8:38 p.m. on December 19, Kelvin Dobbins, one of the Petitioner's supervisors of transportation, was informed by one of Petitioner's bus drivers that there might be a "sick-in" the following morning. Although Petitioner does not normally require employees to provide medical excuses for absences of only a single day, Petitioner decided that all employees who called in on

[1] Several of the Respondents were represented at the hearing by Monica Wafford or Wendy Smith.

[2] Petitioner repeatedly made the point during the hearing that the collective bargaining agreement between Petitioner and the Respondents' union contains a no-strike clause. However, the presence or absence of a no-strike clause is irrelevant to these proceedings. Respondents, as public employees, are prohibited from striking by Section 2 of PERA. It is their alleged violation of PERA, not a claimed breach of a no-strike clause in a collective bargaining agreement, that is at issue here.

December 20, 2001, would be informed at the time they called that they would be required to submit a medical excuse upon their return to work.

The next day, December 20, 2001, forty-four school bus drivers and bus monitors, including each of the thirty Respondents, telephoned the Employer and reported that they would not be at work that day. Most of the Respondents told the Employer that they were ill or had prearranged medical appointments justifying the day's absence and later provided the Employer with notes from medical professionals to corroborate their excuses.

Most, if not all, of the Respondents returned to work on December 21, 2001. Petitioner believed that those who were absent for just a single day returned to work in order to be eligible for holiday pay. However, Petitioner's director of auxiliary services, Ed Light, conceded at the hearing that those employees who had sufficient sick leave to cover a valid absence would receive holiday pay.

The Petitioner began an investigation of the absences. Ed Light, Kelvin Dobbins, and the Petitioner's other supervisor of transportation, Ronald Patterson, conducted interviews of each of the Respondents. All of the Respondents except Pam Scott and Dequanda Jones submitted statements to the Employer from medical professionals. Scott and Jones each informed Petitioner during her interview that she did not think she needed a medical statement for an absence of a single day. Petitioner contacted the office of the doctor who provided an excuse for one of the Respondents to verify that the particular Respondent had seen the doctor. Although Petitioner did not contact the offices of any other medical professionals, Petitioner concluded that none of the medical statements submitted by those Respondents were valid.

Though most of the Respondents denied knowledge of the alleged strike, Petitioner concluded that they were all involved in the strike. Petitioner based its conclusions with respect to most of the Respondents on their presence at the December 19 Board meeting, the fact that most were absent only a single day, their appearance of discomfort at their interviews, their acquaintance with others believed to be strike participants, and on the general intuition of the interviewers. Petitioner also relied on hearsay information that some of the Respondents had participated in a meeting at a bowling alley some two weeks after the alleged strike, at which they purportedly agreed that they would not provide any information to the Employer's management regarding participation in the alleged strike.

All of the Respondents, except Wendy Smith, Johnny Coleman and Renea Wright, continue to be employed by Petitioner.

Teamsters

We concur with Judge Roulhac's decision to dismiss the petition insofar as it applies to Respondent Teamsters. PERA Section 2a(4), MCL 423.202a(4), the provision that would allow a labor organization to be fined based on a finding that its members engaged in a strike, was found to be unconstitutional in *Michigan State AFL-CIO, et al* v *Michigan Employment Relations Commission*, unpublished opinion of the Wayne County Circuit Court, decided March 2, 1995 (Docket Nos. 94-420652-CL & 94-423581-CL). No appeal was taken from that portion of the decision.

Moreover, the petition does not allege that the Teamsters committed any action that violated PERA. We have considered Petitioner's argument that the Teamsters may be held liable under the Mass Action Theory of *United States* v *International Union, United Mine Workers,* 77 F. Supp. 563; 51 LRRM 2721 (1948), but note that many more recent courts have criticized the theory and generally require evidence of some action by the union leadership encouraging or ratifying a strike before a union will be held liable. See *Consolidation Coal Co* v *Local 2216, United Mine Workers*, 779 F2d 1274; 121 LRRM 2156 (1985). See also *Consolidation Coal Co* v *United Mine Workers, Local 1261*, 725 F2d 1258, 1260-1261; 115 LRRM 2470 (1984).

Individual Respondents

Turning to the question of whether the Individual Respondents engaged in a strike, we must first look at the definition of "strike" contained in Section 1(j) of PERA:

> [T]he concerted failure to report for duty, the willful absence from one's position, the stoppage of work, or the abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment for the purpose of inducing, influencing, or coercing a change in employment conditions, compensation, or the rights, privileges, or obligations of employment. For employees of a public school employer, strike also includes an action described in this subdivision that is taken for the purpose of protesting or responding to an act alleged or determined to be an unfair labor practice committed by the public school employer.

We conclude that a strike occurred. Forty-four of approximately 130 employees were absent from work on December 20, 2001. This represents an increase in absenteeism of 480% over the 9.1 absenteeism rate of the remainder of the two-week period between December 9-December 22, 2001. Moreover, the testimony from Lloyd Wafer in particular, establishes that employees were unhappy about alleged unfair labor practices by the Petitioner. Testimony by Gary Saunders, Sonia Light, and Marie Blair establishes that a strike vote was held and that the majority of those present voted to strike. After the vote, lists were provided to Sonia Light and Marie Blair so that they could telephone bargaining unit members to inform them of what had occurred with respect to the meeting and the vote. It is, therefore, evident that there was a "concerted failure to report for duty. . . . for the purpose of protesting or responding to an act alleged . . . to be an unfair labor practice committed by the public school employer.".

The more difficult question in this case is which of the employees were absent for the purpose of participating in the strike. Of the thirty Respondents about whom evidence was offered, twenty-two admitted to Petitioner during its investigation that they attended the Board meeting. Of those twenty-two Respondents, eight said they left when the meeting was over, or were distracted by an unrelated confrontation between two of the employees, such that they did not hear any discussion regarding the strike. Of the fourteen remaining, only Gary Saunders, Sonia Light, and Marie Blair, admitted knowing that a strike vote was held. Where, as in this case, the strike is conducted by employees calling in sick, absent an admission by the suspected striker, direct evidence that a public employee engaged in a strike of this nature is likely to be sparse. Accordingly, any determination of whether particular employees engaged in a strike must necessarily rely on circumstantial evidence.

Sonia Light and Marie Blair

We find that Sonia Light and Marie Blair assisted in organizing the strike as they have admitted contacting coworkers to inform them of the strike vote. Under those circumstances, a reasonable person in either of their positions would have reported to work unless she was genuinely too ill to work or unless she wanted her employer to believe that she was participating in the strike. Although they both submitted medical excuses, we must question the veracity of those excuses as both employees have admitted their participation in efforts to organize the strike and neither gave specific testimony from which we can conclude that their absence was due to illness. We find it is more likely than not that both Sonia Light and Marie Blair participated in the strike. Accordingly, we find that Respondents Sonia Light and Marie Blair violated Section 2 of PERA and are each subject to a fine in an amount equal to one day of pay.

Gary Saunders

Gary Saunders denied participation in the strike and testified that he was absent on December 20 because he was ill. Saunders admitted that he knew about the strike, and was there when the majority of those present after the Board meeting voted to strike. His girlfriend, Sonia Light, whom he calls his "better half," played a central role in the organization of the strike by calling coworkers to inform them of the strike vote. Under those circumstances, a reasonable person in Saunders' position would have reported to work unless he was genuinely too ill to work or unless he wanted his employer and coworkers to believe that he was participating in the strike.

Saunders vague testimony that he was ill, without any specifics regarding symptoms that might have been severe enough to keep him from being able to work, is unconvincing. Saunders, like his girlfriend Sonia Light, had a note from his doctor excusing his absence. However, when we consider the evidence regarding his activities on December 19, we find no more reason to credit his doctor's note than we do to credit hers. We do not find credible his testimony that he was absent due to illness. We find it is more likely than not that Gary Saunders participated in the strike and violated Section 2 of PERA. He is, therefore, subject to a fine in an amount equal to one day of pay.

Johnny Coleman

Johnny Coleman testified that he had been sick for a week and a half with the flu. He testified that he had gone to the doctor on the Saturday before the strike, December 15, 2001, at which time he received medication and the doctor's excuse that he provided to his employer. Coleman testified that it was not advisable for him to drive a school bus while taking the medication his doctor gave him, so he had refrained from taking the medication to be able to work Monday through Wednesday. According to Coleman, he was too sick to work on Thursday morning, but was able to return to work on Friday despite the fact that his doctor had excused him from work through January 7, 2002. He testified that he worked on December 21, "to be paid."

If Coleman is to be believed, he was sick for a week and a half with the flu, had medication that made him too drowsy to drive (which he refrained from taking until the day of the strike); was too sick to work on the day of the strike; but was well enough to work the next day. We find it incredible that the only day during his week and a half of illness that Coleman was too sick to work was the day of the strike. Although Coleman initially testified that the doctor's excuse he gave to the Employer was from a December 15, 2001 doctor's visit, the excuse the Employer actually had in its possession indicated that Coleman saw the doctor on December 19, 2001. After that discrepancy was pointed out, Coleman testified that the excuse he gave to the Employer was from a second visit to the doctor. However, he did not explain why he had given the Employer that excuse instead of the purported note from the December 15 visit. Nor did he offer the alleged December 15 note into evidence. In the light of the discrepancies in Coleman's testimony, we find it more likely than not that Coleman's absence from work on December 20, 2001 was due to his participation in a strike in violation of Section 2 of PERA.

Since Coleman is no longer employed by Petitioner, Petitioner cannot deduct any fine assessed against him from his annual salary. Although Respondent's current employment status affects the means of collection of any fine that may be imposed, it has no bearing on the issue of whether he was on strike on December 20, 2001, and therefore, subject to a fine. Section 2a of PERA, 1994 PA 112, MCL 423.202a, provides in relevant part:

> (1) If a public school employer alleges that there is a strike by 1 or more public school employees in violation of section 2, the public school employer shall notify the commission of the full or partial days a public school employee was engaged in the alleged strike.
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> (4) If, after a hearing under subsection (3), a majority of the commission finds that 1 or more public school employees engaged in a strike in violation of section 2, the commission shall fine each public school employee an amount equal to 1 day of pay for that public school employee for each full or partial day that he or she engaged in the strike and shall fine the bargaining representative of the public school employee or employees $5,000.00 for each full or partial day the public school employee or employees engaged in the strike.
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> . . . .
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> (6) If the commission imposes a fine against a public school employee under subsection (4) and the public school employee continues to be employed by a

> public school employer, the commission shall order the public school employer to deduct the fine from the public school employee's annual salary. The public school employee's annual salary is the annual salary that is established in the applicable contract in effect at the time of the strike or, if no applicable contract is in effect at the time of the strike, in the applicable contract in effect at the time of the decision and order. However, if no applicable contract is in effect at either of those times, the public school employee's annual salary shall be considered to be the annual salary that applied or would have applied to the public school employee in the most recent applicable contract in effect before the strike. A public school employer shall comply promptly with an order under this subsection. A deduction under this subsection is not a demotion for the purposes of Act No. 4 of the Extra Session of 1937, being sections 38.71 to 38.191 of the Michigan Compiled Laws.
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> . . . .
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> (12) As used in this section, "public school employee" means a person employed by a public school employer.

We interpret the definition of "public school employee" to refer to a person employed by a public school employer at the time of the alleged strike. The status of an individual respondent's employment at the hearing is not relevant to the issue of whether a respondent engaged in a strike in violation of Section 2 of PERA. Moreover, Section 2a(4) does not make the imposition of a fine contingent upon the continued employment of the public school employee. It is only the collection of the fine by the public school employer under Section 2a(6) that is contingent upon the employees continued employment. Accordingly, Johnny Coleman is subject to a fine in an amount equal to one day of pay.

Wendy Smith

Concluding that the Commission could not fine a Respondent who is no longer employed by Petitioner, during the hearing, the ALJ dismissed the petition as to Wendy Smith. The Commission does not agree with this interpretation of Act 112. However, Petitioner did not object to the dismissal of the petition with respect to Smith. Moreover, in its post-hearing brief, Petitioner did not argue that the ALJ had erred by dismissing her from the case. Accordingly, we will not consider whether Smith violated Section 2 of PERA as the issue has been waived by Petitioner

Lloyd Wafer

When interviewed by the Employer, Lloyd Wafer asserted that he did not know of the strike until after it had occurred. We find his assertions unconvincing since he was at the Board meeting to urge the employees to stand together and support Ms. Wafford. He also played a major role in ensuring that bargaining unit members were present at the Board meeting. Moreover, the Petitioner offered unrebutted evidence that Mr. Wafer has another job and worked the shifts at that job immediately preceding and following the strike. Since he was well enough to work his other job, it is more likely than not that, despite his doctor's excuse, he was well enough to perform his job with Petitioner. Accordingly, we find that Respondent Lloyd Wafer participated in an illegal strike in violation of Section 2 of PERA and is subject to a fine in an amount equal to one day of pay.

Pam Scott and Dequanda Jones

Two of the remaining Respondents, Pam Scott and Dequanda Jones, neither testified nor offered doctor's statements to excuse their absences. The evidence that they were absent on the day of the strike is sufficient to require them to provide an explanation for their absence. According to Dobbins's notes of his interview with Jones, she reported that she was absent because she was sick on December 20. However, she failed to provide the Employer with documentation of her alleged illness. Patterson testified that he interviewed Scott, but did not have his notes of the interview at the hearing. Although his testimony implies that she alleged she was sick on December 20, he testified that she did not tell him what her alleged ailment had been. Like Jones, Scott also failed to provide the Employer with any documentation of any supposed illness. Moreover, though given the opportunity to testify at the hearing both Jones and Scott declined to do so. Neither Jones nor Scott offered any evidence to rebut the evidence that she was on strike. Their failures to offer any evidence of a legitimate reason for their absences leads us to conclude that there was no legitimate reason. Accordingly, we find that Respondents Pam Scott and Dequanda Jones participated in an illegal strike in violation of Section 2 of PERA and each are subject to a fine in an amount equal to one day of pay.

The Remaining Respondents

With respect to the remaining Respondents, Petitioner has offered little to convince us that they were not legitimately absent. The record contains sufficient evidence to establish that there was a strike and that these Respondents were absent from work on the day of the strike, but Petitioner failed to offer sufficient competent evidence to establish that the remaining Respondents were absent because they were participating in the strike. For the remaining Respondents, the only evidence of the reason they were absent is their unrebutted testimony of illness or prearranged medical appointments and the medical excuses furnished to Petitioner.

Given Respondents' allegations and Petitioners' admissions of past incidents of high absenteeism, it is possible that at least some of the remaining twenty-three Respondents, Ladeedra Conner, Lisa Daniels, Alice Elliott, Brenda Cheek, Candace Pruitt, Kim Terry, Monique Proctor-Hurley, Jerry Cross, Renea Wright, Shari Tellis, Tracey Miller, Aaron Weir, Lennette Mallory, Darel Cagins, Columbus James, Lynda King, Rebecca Tubbs, Ethel Scott,

Wendi Bleicher, Paula Wojahn, Stan Clinton, Jacqueline Moore, and Annie Blair were absent on December 20, for reasons that had nothing to do with the strike. Ed Light acknowledged that there had been days in the past when there was excessively high absenteeism. He testified that at the time he was hired by Petitioner, about fifteen months prior to the hearing in this matter, one of the major concerns of the school district was absenteeism and the failure to provide services on days of high employee absenteeism. Kelvin Dobbins testified that he could recall times when the absenteeism rate had been as high as twenty-six or twenty-seven, but denied recollection of absenteeism rates above thirty.

Petitioner offered evidence that during the eight work days before the strike and the day after the strike, there was an average of 9.1 employees absent each day. While we assume forty-four absences on December 20, or approximately one-third of the employees, is an unusually high absenteeism rate, there is insufficient evidence in the record to determine the typical rate of absenteeism. Certainly, the Employer would have had the data in its records to determine the average absenteeism rate for mid-December for the past several years. The evidence of the data necessary to calculate the average absenteeism rate on December 20 for the past several years should have been within the Employer's possession and could have been offered into evidence.

Petitioner chose to dismiss nine of the original Respondents from this action. We can only speculate as to why Petitioner excluded that number of employees from the case as there appears to be little that differentiates the remaining twenty-three Respondents from the nine employees who were dismissed. Comparing the evidence offered about the remaining twenty-three Respondents with what we know about the nine who were dismissed from the case, it appears that the Employer arbitrarily selected those nine because that number corresponds with what the Employer contends is the average absenteeism rate.

Although initially including them in the group of employees engaged in the strike, Petitioner withdrew the charges against Janine Amadi, Willie Mae Reeder, Bettye Davis, Regina Bishop, Gwynne Squires, Elaine Harris, Horace Frazier, Lynn Stephens, and Victoria Taylor because it concluded that their absences were for legitimate reasons. Upon initial questioning about the criteria used to exclude these nine individuals from the group believed to be strikers, Ed Light testified to two factors: one of those excluded was absent two or more days before December 20; and they did not attend the December 19 Board meeting. Indeed, we note from the Employer's Exhibit 1 that one of the nine employees dismissed from the case, Lynn Stephens, was absent on December 19 and December 20. However, Ladeedra Connor, one of the remaining twenty-three Respondents, was also absent on those two days. Moreover, Connor did not attend the Board meeting. There does not seem to be anything that distinguishes Stephens from Connor. During the cross-examination of Ed Light, it was pointed out that two of the nine dismissed from the case, Regina Bishop and Horace Frazier, attended the Board meeting, a factor the Employer claimed to have considered incriminating. Several of the remaining twenty-three Respondents did not attend the Board meeting, but the Petitioner apparently did not find that exculpatory. Petitioner offered no explanation for the inconsistency. Petitioner's claimed basis for differentiating between the nine employees dismissed from the case and the remaining twenty-three Respondents is not credible.

Petitioner's explanations for including most of the Respondents in the group of alleged strikers were based on such things as the employee's appearance of discomfort during their interview, the fact that the employee associated with others suspected of being involved in the strike, the fact that the employee was well liked by his coworkers, or simply a feeling or general intuition that the employee was somehow involved. Mere suspicion is not enough to establish a violation of the law. There must be substantial evidence to establish the alleged violation. See *MERC* v *Detroit Symphony Orchestra*, 393 Mich 116 (1974).

When questioned as to why Tracey Miller was not taken off the list of accused strikers since she had not attended the Board meeting and some of the nine removed from the list had done so, Ed Light testified that Ms. Miller had not been forthcoming during the investigation. However, he strenuously objected when she suggested that those employees who had provided information were removed from the list based on their cooperation. He went on to testify that attendance at the meeting at which the strike vote was taken was not the sole factor and various factors were considered. However, the other factors Petitioner claims to have considered were not delineated.

Similarly, when Ron Patterson was asked why Aaron Weir was included in the group of suspected strikers, Patterson testified that Weir was included in the group because it was believed that he knew about the "sickin" because he hangs around with the general group that has problems with management. When asked to identify the members of that group, Patterson responded "most of the people in this [hearing] room."

It is apparent that despite their medical excuses, at least Sonia Light, Marie Blair, Gary Saunders, Johnny Coleman and Lloyd Wafer engaged in a strike in violation of Section 2 of PERA. It is possible that some of the other Respondents offering medical excuses did so as well. However, Petitioner failed to offer sufficient evidence to establish that the absences of these remaining Respondents were motivated by anything other than illness or other medical concerns.

Petitioner's brief challenges the validity of many of the medical excuses. However, in general, Petitioner did not object to the admission of the excuses into evidence and even offered some into evidence or gave testimony corroborating some Respondents' claims that a medical excuse had been provided. We recognize that in some proceedings medical excuses would be admitted under Section 75 of the Administrative Procedures Act (APA), MCL 24.275, which provides in relevant part:

> In a contested case the rules of evidence as applied in a nonjury civil case in circuit court shall be followed as far as practicable, but an agency <u>may</u> admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. . . . . Objections to offers of evidence may be made and shall be noted in the record. (Emphasis added.)

Section 75 of the APA gives the administrative agency the discretion to determine whether "evidence of a type commonly relied upon by reasonably prudent men in the conduct of their affairs" that is otherwise not admissible under the rules of evidence should be considered. It is our opinion that the medical excuses are hearsay and are not within any recognized exception to

the hearsay rule. Had Petitioner objected to the admission of the medical excuses as hearsay, we would not have admitted those documents in a proceeding under Section 2a of PERA. The excuses go to the heart of a central issue in this case – the motive of the individual Respondents for being absent from work. A determination of that motive should be based on more than an unverified hearsay document.

Ed Light testified that the Employer questioned the legitimacy of the medical excuses. However, those Respondents who provided medical excuses simply did what Petitioner asked them to do. There is no evidence that Petitioner warned the employees when they called in sick that they would be presumed to be on strike and denied sick leave unless they proved to the Employer's satisfaction that they were absent for legitimate reasons. There is no evidence that Petitioner warned the employees who called in that a medical statement would not be sufficient to persuade the Employer that their absence was medically necessary. Petitioner could have informed the employees, as they called in, that they would be presumed to be on strike unless they provided a release allowing Petitioner to verify the reasons for their absence. There is no evidence that Petitioner did that. Petitioner only contacted one doctor's office to verify that one of the Respondents had been seen by the doctor. Petitioner did not contact the other Respondents' doctors' offices. Instead, it appears that Petitioner simply accepted the medical excuses.

Petitioner apparently expects us to reject the medical excuses, although Petitioner provided no evidence that might support such a rejection. At a minimum, if Petitioner doubted the validity of a particular Respondent's medical documentation, we would have expected Petitioner to contact the medical professional who signed the excuse. If that contact failed to assure Petitioner of the legitimacy of the proffered reason for that Respondent's absence, Petitioner could have then required that Respondent to provide additional verification. If any of the Respondents had refused to comply with a reasonable request for information by Petitioner, evidence of that could have provided a basis for rejecting the excuses offered by those Respondents.[3] However, Petitioner took none of the action set forth above to verify the legitimacy of the medical excuses.

We are persuaded by the credibility of the testimony of some of the remaining twenty-three Respondents that their excuses are legitimate. We find it somewhat suspicious that most of the remaining twenty-three Respondents were ill to work on the day of the strike, but were well enough to work the next day and that the remaining ones would have prescheduled medical appointments that just happened to be scheduled on the day of the strike. Although we might have questions about the veracity of some of the medical excuses offered by the other Respondents, without testimony or detailed affidavits from the medical professionals who wrote the excuses, there is no evidence that the excuses are anything other than what they purport to be, documentation of legitimate reasons for absence from work. Therefore, we find that the evidence offered by Petitioner does not establish that the remaining Respondents who submitted medical excuses as required by Petitioner were on strike. Accordingly, the charges must be dismissed against Ladeedra Conner, Lisa Daniels, Alice Elliott, Brenda Cheek, Candace Pruitt, Kim Terry, Monique Proctor-Hurley, Jerry Cross, Renea Wright, Shari Tellis, Tracey Miller, Aaron Weir,

[3] Only two of the Respondents, Pam Scott and Dequanda Jones, fall into that category.

Lennette Mallory, Darel Cagins, Columbus James, Lynda King, Rebecca Tubbs, Ethel Scott, Wendi Bleicher, Paula Wojahn, Stan Clinton, Jacqueline Moore, and Annie Blair.

ORDER

The charges in this case are hereby dismissed as to Respondent Teamsters State, County & Municipal Workers Local 214.

The charges are dismissed as to Individual Employee Respondents Janine Amadi, Willie Mae Reeder, Bettye Davis, Regina Bishop, Gwynne Squires, Elaine Harris, Horace Frazier, Lynn Stephens, Victoria Taylor, Ladeedra Conner, Lisa Daniels, Alice Elliott, Brenda Cheek, Candace Pruitt, Kim Terry, Monique Proctor-Hurley, Jerry Cross, Renea Wright, Shari Tellis, Tracey Miller, Aaron Weir, Lennette Mallory, Darel Cagins, Columbus James, Lynda King, Rebecca Tubbs, Ethel Scott, Wendi Bleicher, Paula Wojahn, Stan Clinton, Jacqueline Moore, Annie Blair and Wendy Smith.

Respondent Sonia Light is hereby ordered to pay a fine in an amount equal to one day of pay in the amount of $99.44, her regular daily wage. In accordance with Section 2a(6) and (7) of PERA, MCL 423.202a (6) and (7), Petitioner is ordered to deduct said fine from Sonia Light's annual salary and transmit the money to the state treasurer for deposit in the school aid fund within thirty (30) days of the date of this Order.

Respondent Marie Blair is hereby ordered to pay a fine in an amount equal to one day of pay in the amount of $96.42, her regular daily wage. In accordance with Section 2a(6) and (7) of PERA, MCL 423.202a (6) and (7), Petitioner is ordered to deduct said fine from Marie Blair's annual salary and transmit the money to the state treasurer for deposit in the school aid fund within thirty (30) days of the date of this Order.

Respondent Gary Saunders is hereby ordered to pay a fine in an amount equal to one day of pay in the amount of $111.37, his regular daily wage. In accordance with Section 2a(6) and (7) of PERA, MCL 423.202a (6) and (7), Petitioner is ordered to deduct said fine from Gary Saunders' annual salary and transmit the money to the state treasurer for deposit in the school aid fund within thirty (30) days of the date of this Order.

Respondent Johnny Coleman is hereby ordered to pay a fine in an amount equal to one day of pay in the amount of $100.17, his regular daily wage. Said fine shall be paid by cashier's check or money order, with Case No. S02 B001 (019) clearly indicated on the check or money order, made payable to the State of Michigan, and sent to the Department of Consumer and Industry Services, Bureau of Employment Relations, 3026 W. Grand Boulevard, Suite 2-750, P.O. Box 02988, Detroit, Michigan 48902-2988, within thirty (30) days of the date of this Order.

Respondent Lloyd Wafer is hereby ordered to pay a fine in an amount equal to one day of pay in the amount of $104.46, his regular daily wage. In accordance with Section 2a(6) and (7) of PERA, MCL 423.202a (6) and (7), Petitioner is ordered to deduct said fine from Lloyd

Wafer's annual salary and transmit the money to the state treasurer for deposit in the school aid fund within thirty (30) days of the date of this Order.

Respondent Pam Scott is hereby ordered to pay a fine in an amount equal to one day of pay in the amount of $104.46, her regular daily wage. In accordance with Section 2a(6) and (7) of PERA, MCL 423.202a (6) and (7), Petitioner is ordered to deduct said fine from Pam Scott's annual salary and transmit the money to the state treasurer for deposit in the school aid fund within thirty (30) days of the date of this Order.

Respondent Dequanda Jones is hereby ordered to pay a fine in an amount equal to one day of pay in the amount of $105.14, her regular daily wage. In accordance with Section 2a(6) and (7) of PERA, MCL 423.202a (6) and (7), Petitioner is ordered to deduct said fine from Dequanda Jones's annual salary and transmit the money to the state treasurer for deposit in the school aid fund within thirty (30) days of the date of this Order.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Maris Stella Swift, Commission Chair

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Harry W. Bishop, Commission Member

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C. Barry Ott, Commission Member

Dated:_____