STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

SOUTHFIELD PUBLIC SCHOOLS
Public Employer - Respondent,

Case No. C01 G-141

-and-

SOUTHFIELD ASSOCIATION OF SCHOOL ADMINISTRATORS, SASA, AFL-CIO
Labor Organization - Charging Party.
_____/

APPEARANCES:

Miller, Canfield, Paddock and Stone, P.L.C., by George D. Mesritz, Esq., for Respondent

Mark Cousens, Esq., for Charging Party

DECISION AND ORDER

On July 31, 2003, Administrative Law Judge Roy L. Roulhac issued his 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

Nora Lynch, Commission Chair

Maris Stella Swift, Commission Member

Harry W. Bishop, Commission Member

Dated: _____

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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 and 423.216, this case was heard in Detroit Michigan on February 5, March 22, and April 11 of 2002 by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission. On July 16, 2001, Charging Party Southfield Association of School Administrators, SASA AFL-CIO filed an unfair labor practice charge against Respondent Southfield Public Schools alleging that the Respondent's superintendent reassigned one of its member in retaliation for her concerted union activities in violation of Sections 10(1)(a) & (c) of PERA. Based on the entire record, I make the following findings of fact, conclusions of law, and recommended order.

FINDINGS OF FACT:

Charging Party represents most of the Respondent's administrative employees. Respondent hired Diana Karwowski, in 1991 as supervisor of special education. In 1995, Karwowski was named supervisor of elementary education. As elementary education supervisor II, Karwowski formed a curriculum committee, which over the next six years, under her leadership and direction, created a common curriculum for all of Respondent's elementary schools.

In March 2000, Karwowski refused an offer to become director of special education, a non-bargaining unit position. However, she accepted a promotion to a newly created supervisor III position. In this capacity, in addition to her existing duties in elementary and bilingual education, she was responsible for supervising Geralyn Janeczko, the director of special education. A year later, in March 2001, in response to then interim Superintendent Cecil Rice's request to investigate how Respondent might save money in special education, Karwowski and Janeczko reported that over $300,000 could be saved if Respondent ended its practice of educating some of its special education students at centers outside the District.

In the meantime, during the 2000-2001 school years, Karwowski became Charging Party's president. On April 24, 2001, Respondent held a public hearing to address Respondent's decision not to renew bargaining unit member Mary Mayo's contract as a principal. During the meeting, a board member asked Karwowski whether Mayo's evaluation was proper. Karwowski answered that proper procedures had not been followed and that recently Mayo received an unsatisfactory from Rice.[1] According to Karwowski, Rice negatively responded to her comments by shaking his head and looking up at the ceiling.

On June 5, 2002, during a labor-management meeting, Rice announced that on June 25, he would disclose Respondent's reorganization plan. Thereafter, Karwowski spoke with colleague Elaine Green who told her that another colleague, Ollie Colvard, told her (Green) that Rice said that Karwowski's career was "finished in Southfield." During direct examination, Karwowski testified that when she confronted Colvard and asked if it were true that Rice said that her career was finished, Colvard started to cry and said "yes." According to Karwowski, when she asked Colvard why Rice would treat her that way after all she had done for the District, Colvard said, "you put him out there with the Board on Mary Mayo."

Colvard denied that Rice ever told her that Karwowski career was over because of her conduct at the Mayo hearing. Colvard also denied that Rice ever said anything to indicate that he was upset or angry about Karwowski's conduct during Mayo's public hearing. According to Colvard, the only negative thing she heard Rice say about Karwowski was that she had better shape up or her job would be in jeopardy because she missed several meetings.

On June 20, 2002, Rice met with Oakland Schools Assistant Superintendent for Student Performance Wanda Cook-Robinson and other administrators regarding Respondent's special education program. Rice was advised that the general school population was declining and that the number of special education students was increasing. Rice was advised that the District could save money by educating special education students within the District.

[1] Karwowski also met several times with Rice to discuss the non-renewal of Mayo's contract and filed several requests for information.

On June 25, Rice met with Karwowski and representatives of other unions about Respondent's reorganization plans. Rice advised them that because special education students was the fastest growing segment of the student population, he was considering returning to the District over 125 special needs students who were being educated outside the District. To implement this aspect of the reorganization, Rice announced that he was changing Karwowski's areas of responsibility from, primarily, elementary education and bilingual education to special education and bilingual education. Karwowski was informed that the change would not impact her salary or rank. At the meeting, Karwowski complained that her reassignment was punitive and accused Rice of knowing that she was not interested in working primarily in special education and suggested that someone else be hired. While acknowledging that more resources were needed in special education, Karwowski testified that she did not want special education to be her primary responsibility although she agreed that she was perceived as being the "heavy hitter" in special education.

Conclusions of Law:

To establish a *prima facie* case of discrimination under Section 10 of PERA, a party must 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. *City of Detroit*, 1992 MERC Lab Op 597.

In its post-hearing brief, Charging Party claims that Karwowski, in her capacity as Union president, engaged in protected activity by answering a Board member's question during Mayo's April 24, 2001, public hearing, and visibly opposed Respondent's non-renewal of Mayo's contract. According to Charging Party, Respondent Rice was aware of Karwowski's protected activities on Mayo's behalf because superintendent Rice reacted to Karwowski's response by shaking his head and looking up at the ceiling. Charging Party also claims that Rice knew of Karwowski's participation in Mayo's Board hearing because Colvard told both Karwowski and Green that Superintendent Rice told her (Colvard) that Karwowski's career in Southfield was over because Karwowski put Rice "out there with the Board."

Charging Party contends that Respondent's union animus toward Karwowski's actions is evident from Rice's statements to Colvard about Karwowski. In Charging Party's view, Respondent's improper motivation in changing Karwowski's assignment to special education can be inferred from the suspicious timing of events. According to Charging Party, at the beginning of June 2001, shortly after Mayo's public hearing, Rice told Colvard that Karwowski's career was finished, and on June 25 presented his reorganization plan which sidelined Karwowski to the special education backwater, although she had been told in January 2001 that she would spend more time in elementary education.

Charging Party urges this tribunal to give probative effect to the admittedly hearsay testimony of Karwowski and Green who quoted Colvard who, in turn, quoted Rice. According to Charging Party, two persons testifying independently provided completely credible recitations of Colvard's repetition of Rice's threat. Charging Party argues that Karwowski's and Green testimony should not be ignored because they demonstrate Rice's considerable anger at Karwowski for her union activities.

I find no merit to Charging Party's arguments. Section 75 of the Administrative Procedures Act (APA), MCL 24.275, permits administrative agencies to admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. However, it is well established that MERC's factual findings must be supported by competent, material, and substantial evidence on the record considered as a whole. *Bloomfield Hills School District* v. *Bloomfield Hills Support Personnel Association/MESPA*, (Mich App, Docket No. 231709, unpublished, August 6, 2002); *Port Huron Ed Ass'n* v. *Port Huron Area School Dist*, 452 Mich 309, 322; 550 NW2d 228 (1996); *Gogebic Community College Michigan Educational Support Personnel Ass'n* v. *Gogebic Community College*, 246 Mich App 342, 348-349; 632 NW2d 517 (2001). This evidentiary standard is likened to the amount of evidence that a reasonable mind would accept as sufficient to support a conclusion. While it consists of more than a scintilla of evidence, it may be substantially less than a preponderance. Clearly, the double hearsay evidence upon which Charging Party rely is not the type that a reasonable mind would accept as sufficient to support a conclusion and is insufficient to establish any element of a *prima facie* case of discrimination in this case.

I have carefully considered all other arguments advanced by Charging Party and conclude that they do not warrant a change in the result. I, therefore, recommend that the Commission issue the order set forth below:

RECOMMENDED ORDER

The unfair labor practice charge is dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Roy L. Roulhac
Administrative Law Judge

Dated: _____