

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

In the Matter of:

SOUTH HAVEN PUBLIC SCHOOLS,  
Respondent-Public Employer,

-and-

TEAMSTERS LOCAL 214,  
Charging Party in Case Nos. C02 L-260 & C03 D-088

-and-

SOUTH HAVEN BUS DRIVERS ASSOCIATION  
Petitioner in Case No. R03 A-019

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**APPEARANCES:**

Ronald R. Ward, Esq., for the Public Employer

Pinsky, Smith, Fayette & Hulswit, LLP, by Michael L. Fayette, Esq., for Teamsters Local 214

Amelia Paul for the South Haven Bus Drivers Association

**DECISION AND ORDER**

On December 23, 2003, Administrative Law Judge David M. Peltz 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

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Nora Lynch, Commission Chairman

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Harry Bishop, Commission Member

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Maris Stella Swift, 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, these cases were heard at Lansing, Michigan on May 2, 2003 and June 19, 2003, before David M. Peltz, Administrative Law Judge for the Michigan Employment Relations Commission. Based upon the entire record, including the transcripts of hearing and briefs filed by the parties on or before August 27, 2003, I make the following findings of fact, conclusions of law and recommended order.

The Unfair Labor Practice Charges and Petition:

Teamsters Local 214 is the collective bargaining representative for a unit of bus drivers and bus aides employed by the South Haven Public Schools. In Case No. C02 L-260, filed on December 6, 2002, and clarified on March 19, 2003, Teamsters Local 214 (hereinafter Charging Party) alleged that the

school district violated PERA by failing to collect union dues in accordance with the parties' collective bargaining agreement, which was scheduled to expire on July 1, 2003.

On January 31, 2003, the South Haven Bus Drivers Association filed a petition seeking certification as bargaining representative of the school district's bus drivers and bus aides. Shortly thereafter, in a letter to the Michigan Employment Relations Commission dated February 20, 2003, Charging Party requested that the representation petition be blocked until resolution of its unfair labor practice charge in Case No. C02 L-260. Charging Party filed a formal motion to block the representation election on March 19, 2003.

On April 4, 2003, the Director of the Bureau of Employment Relations notified the parties by letter that the unfair labor practice charge and petition for election would be consolidated, and that the petition for representation election would be held in abeyance "until it can be determined whether the blocking request has merit." An evidentiary hearing was scheduled on the matter for May 2, 2003.

On April 21, 2003, Teamsters Local 214 filed its charge in Case No. C03 D-088, asserting that the South Haven Public Schools violated Section 10(1)(a), (b) and (c) of PERA by treating the Union's chief steward, Robin Perry, differently than it did Linda Olsen, an active supporter of the South Haven Bus Drivers Association. Specifically, the charge alleged that the Employer unlawfully discriminated against Perry by:

1. Disciplining Robin Perry for action Supervisor Jackie Washegesic has refused to discipline Linda Olsen [sic.]
2. Using a strained and contorted reading of a work rule against falsifying work records in order to justify a two-day suspension of Robin Perry.

The actions by Supervisor Jackie Washegesic are for the purpose of assisting in the initiation and creation of and to dominate the South Haven Bus Driver's Association, as well as to discriminate in regard to higher [sic], terms or conditions of employment in order to encourage membership in the South Haven Bus Driver's Association and to discourage membership in Teamsters State, County and Municipal Employees Local No. 214.

In a letter accompanying its April 21, 2003 unfair labor practice charge, Teamsters Local 214 asserted that the new allegations should also serve to block the election in Case No. R03 A-019. Charging Party argued that an election should not be held in this matter because the actions of the Employer had sent a message to employees "about which labor organization is favored by their Supervisor." Case No. C03 D-088 was consolidated with the prior charge and petition.

At the start of the hearing, the parties stipulated that there are no issues in dispute which would prevent an election in Case No. R03 A-019 other than the blocking charges. On June 19, 2003, during the second day of hearing in this matter, Teamsters Local 214 withdrew its charge in Case No. C02 L-260.

Therefore, the only remaining issue is the discipline of the Union's chief steward, Robin Perry, over attendance issues and for falsification of records.

### Findings of Fact:

Charging Party represents sixteen bus drivers employed by the South Haven Public Schools. In May of 2002, Robin Perry, a bus driver with the school district since about 1993, began serving as chief steward for the bargaining unit. Sometime between May and August of 2002, bus driver Amelia Paul commenced an organizing drive on behalf of the South Haven Bus Drivers Association (SHBDA) seeking to replace Teamsters Local 214 as representative of the bargaining unit. Bus driver Linda Olsen was the most vocal and visible proponent of the SHBDA organizing drive.

On August 22, 2002, transportation supervisor Jackie Washegesic conducted a "Welcome Back" meeting for the bus drivers in preparation for the upcoming school year. Among those in attendance at the meeting were Perry, Olsen, Paul, and union steward Kathleen Cochran. At the conclusion of the meeting, Washegesic told the assembled drivers, "That's all I have," and began to exit the room. Perry and Cochran testified that as Washegesic walked out, she gazed in the direction of Olsen, who promptly stood up, went to the front of the room and made a brief speech about the SHBDA's organizing efforts. Perry and Cochran contend that Olsen then approached them individually and requested that they call a Union meeting to address the SHBDA's organization efforts.

Paul's testimony with respect to the August 22, 2002, "Welcome Back" meeting differed from that of Perry and Cochran. Paul testified that following Washegesic's departure from the room, Olsen spoke individually to several drivers and asked them to call a meeting concerning the SHBDA. However, Paul denied that Olsen made any presentation to the group as a whole on that date.

### I. Tardiness Issue

The collective bargaining agreement between Charging Party and the school district provides that no employee will be disciplined or discharged without just cause, and that the Employer will "follow the principles of progressive discipline." The general administrative rules governing the day-to-day conduct of the district's drivers are set forth in the Transportation Handbook. With respect to arrival times, the handbook states, "Report to work on time. This requires you to come into the office 10 minutes before the run begins. . . . [and conduct] a pretrip inspection." Drivers are given a three-minute grace period before they are considered late for disciplinary purposes.

#### A. Robin Perry

The record establishes that Robin Perry had a history of arriving for work more than three minutes past her scheduled report time. Perry admitted at the hearing in this matter that she was late for work a number of times during the 2001-2002 school year, and she was given a written warning for this conduct on October 26, 2001. That warning referenced sixteen incidents in which Perry punched in more than three minutes late during the fall of 2001. Perry's attendance problems continued into the 2002-2003 school

year.

The first instance during the fall of 2002 in which Perry was late reporting for her morning run occurred on September 13, 2002, when she punched in fourteen minutes past her scheduled report time. Thereafter, Perry punched in five minutes late on the morning of September 18, 2002, and seven minutes past her scheduled report time on September 25, 2002. On September 30, 2002, Washegesic wrote Perry a short note concerning each of these incidents and warning her to “Please be sure to give yourself plenty of time to get here.”<sup>1</sup>

On October 22, 2002, Perry failed to report for her morning run. Instead, she called the office from her home approximately five minutes after her scheduled report time and indicated that she had overslept. Two days later, on October 24, Perry arrived three minutes past her scheduled report time. On that same date, Washegesic gave Perry a written reprimand citing the five prior instances that semester in which Perry had been late for her morning run. The reprimand also made reference to Perry’s tardiness problems during prior school years. Washegesic concluded the letter by warning Perry, “Inappropriate conduct in the future will result in further disciplinary action.”

Perry was again late for work on the morning of November 13, 2002, when she punched in four minutes past her report time. Thereafter, she was three minutes late on December 2 and December 3, 2002, and 21 minutes late on December 13. On January 7, 2003, Washegesic suspended Robin Perry for seven days for failing to report to work on a timely basis during the fall of 2002. The written notice referred to the Employer’s progressive discipline policy and cited four prior incidents in which Perry had been disciplined, including the October 24, 2002, reprimand cited above, as well as a 1999 written reprimand for backing into a car at an intersection and a verbal reprimand in April of 2001 for failing to conduct a pre-trip inspection.

Perry grieved the suspension, arguing that she was being treated differently than other drivers. One of the drivers to which Perry compared her attendance record was Linda Olsen.

#### B. Linda Olsen

Linda Olsen’s scheduled report time for the 2002-2003 school year was initially 6:25 a.m., and she never arrived more than three minutes late while that time was in effect. On November 18, 2002, Olsen’s report time was changed to 6:20 a.m. to accommodate a change in her route. Following that change, Olsen punched-in four minutes late on the mornings of November 25, 26 and December 3, and five minutes late on December 2 and December 4.

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<sup>1</sup> The September 30, 2002 note also refers to an incident in which Perry was four minutes late for an afternoon run. Time cards submitted by the parties appear to indicate that Perry and Olsen each reported late for their afternoon runs on more than one occasion during the fall of 2002. However, there was virtually no testimony concerning the school district’s afternoon punch-in procedures, and the parties made no real attempt at hearing or in their briefs to assist the undersigned in interpreting the time cards with respect to Perry and Olsen’s afternoon attendance history. Therefore, in determining whether the Employer treated Perry and Olsen differently, this decision will focus solely on the morning arrival times of Perry and Olsen.

On December 13, 2002, Olsen received a memo from Washegesic which stated, "Since we adjusted your AM report time you have been continuing to report at the later time on several dates. It is necessary that we maintain regular times to allow you time for adequate pre trip inspections. Please correct this to allow you to be better prepared for your route." Thereafter, Olsen was late one additional time during the fall semester, when she arrived three minutes past her scheduled start time on December 19, 2002.

## II. Falsification Issue

On the morning of November 22, 2002, an incident occurred on Robin Perry's bus in which a student allegedly stood up and reached across an aisle to pass a note. When Perry completed her run, she wrote up a student conduct report naming the individual whom she believed had committed the infraction and submitted it to Washegesic. At that time, Perry was visibly upset, and Washegesic was concerned that she might have overreacted to the incident. Later that day, Washegesic called Perry to her office to discuss the matter further. Washegesic asked Perry whether she was sure that she wanted to submit the report. Perry indicated that she felt the student's behavior was "really, really bad" and that she wanted the conduct report to be processed.

A student conduct report can result in discipline of the student named therein, including a suspension of transportation privileges. In order to defend any disciplinary action which might be taken, Washegesic decided to view a videotape recorded in Perry's bus during the route. When she reviewed the tape, however, Washegesic was unable to find the incident described by Perry in her report. Washegesic called Perry back into her office so that they could view the tape together. After watching the tape several times with Washegesic, Perry could not find evidence to corroborate her account of the incident. At the hearing, Perry admitted that the student she named in the conduct report was not the individual who committed the infraction which occurred that morning.

On December 2, 2002, Washegesic suspended Perry for two days for violating a provision in the Transportation Handbook which states that drivers may be disciplined up to and including discharge for "Falsifying records, whether they are bus trip inspection sheets, student conduct records, or repair records."

The written notice of discipline also referred to the Employer's progressive discipline policy, and cited three other incidents in which Perry had been disciplined: the October 24, 2002, reprimand for tardiness, the 1999 written reprimand for backing into a car at an intersection, and the 2001 verbal reprimand for failing to conduct a pre-trip inspection. Perry filed a grievance challenging the suspension.

There have been two prior instances at the school district in which bus drivers have been disciplined for falsifying records. In one incident, a driver was terminated for reporting more runs than she was actually driving. Another driver was disciplined for filling out a report concerning a pre-trip inspection which she did not actually perform, and for failing to report a mirror bracket which was in need of repair.

## III. Settlement of Grievances

On April 13, 2003, Charging Party and the Employer entered into a settlement agreement concerning both of Robin Perry's grievances. Pursuant to that agreement, Perry's two-day suspension for the alleged falsification of a student conduct report was rescinded, and the seven-day suspension given to Perry for being late to work was changed to a two-day suspension. The agreement also required the Employer to compensate Perry for wages lost due to seven of the nine days of suspension which she served, and to provide Charging Party with copies of time records of bus drivers as requested by the Union. In exchange, Charging Party agreed to withdraw both grievances with prejudice.

#### Discussion and Conclusions of Law:

Charging Party contends that the South Haven Public Schools violated PERA by targeting Robin Perry for discipline because of her position as chief steward for the Union, and by treating her differently than Linda Olsen, one of the principal proponents of the organizing drive by a rival association. The elements of a prima facie case of unlawful discrimination under PERA are: (1) employee, union or other protected concerted activity; (2) employer knowledge of that activity; (3) anti-union animus or hostility to the employee's exercise of his or her protected rights; (4) suspicious timing or other evidence that protected activity was a motivating cause of the alleged discriminatory action. *Grandvue Medical Care Facility*, 1993 MERC Lab Op 686, 696. If Charging Party succeeds in establishing a prima facie case of discrimination, the burden then shifts to the employer to produce credible evidence of a legal motive and that the same action would have taken place even in the absence of the protected conduct. The ultimate burden, however, remains with the union. See *Napoleon Community Schools*, 124 Mich App 398 (1983).

After carefully reviewing the record in this matter, I conclude that Charging Party has failed to prove that the Employer's actions were in retaliation for Perry's activities on behalf of Teamsters Local 214. 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. *MERC v Detroit Symphony Orchestra*, 393 Mich 116, 126 (1974); *County of Saginaw*, 1990 MERC Lab Op 775, 780 (no exceptions). In the instant case, the only evidence which Charging Party offered in support of its assertion that the Employer favored the rival organization was testimony concerning the drivers meeting held at the start of the 2002-2003 school year. Both Perry and Cochran testified that as Washegesic concluded the meeting and left the room, she gazed in the direction of Olsen, who then made a speech to the assembled drivers concerning the SHBDA. Even if I were to credit Perry and Cochran's account of the incident, to infer solely from this testimony that Washegesic somehow sanctioned Olsen's conduct or harbored animus toward Charging Party would be to engage in speculation and conjecture within the meaning of *Detroit Symphony Orchestra, supra*, and I decline to do so here. Nevertheless, I will briefly address each of Charging Party's allegations of disparate treatment below.

#### I. Attendance Issue

The first instance of disparate treatment alleged by Charging Party involves the suspension of Robin Perry for issues relating to tardiness. As noted, Perry was initially suspended for seven days for failing to report to work by her scheduled punch-in time. Charging Party contends that Linda Olsen was actually late

for work more times and for a greater number of total minutes than Perry over the same period of time, yet she received no warnings from the Employer and had no disciplinary action taken against her. In making this argument, however, Charging Party has calculated the number of times Olsen was late for her morning bus run using a start time of 6:20 a.m. as of September 11, 2002. Yet, there is no credible evidence in the record that Olsen's start time was changed as early as September 11. Washegesic testified credibly that Olsen's start time changed from 6:25 to 6:20 beginning on November 18, 2002, and the Employer submitted documents into evidence which corroborate Washegesic's testimony.<sup>2</sup> When Olsen's time cards are analyzed utilizing a start time of 6:25 a.m. through November 18, 2002, and a start time of 6:20 a.m. each day thereafter, it becomes apparent that her record with respect to tardiness was significantly better than Robin Perry's.

The time cards indicate that Perry punched in more than three minutes past her scheduled report time of 7:05 a.m. eight times during the fall 2002 semester, for a total of sixty minutes late. With respect to two of those incidents, Perry punched in more than 10 minutes past her report time (14 minutes on September 13 and 21 minutes on December 13). In addition, Perry overslept and missed driving her morning run entirely on the morning of October 22, 2002. During that same time period, Olsen was late six times for a total of only twenty-two minutes. The most Olsen was late on any given day was five minutes. Based on the evidence submitted at hearing, I find no merit to Charging Party's contention that Perry was late "substantially less" than Olsen.

It is also a mischaracterization of the evidence for Charging Party to contend that Olsen was never given any warnings concerning her conduct. Washegesic issued a memo to Olsen on December 13, 2002 which referred to her tardiness problems and instructed her to remedy the situation. Moreover, Charging Party's attempt to compare the Employer's treatment of Perry with that of Olsen makes no sense given Perry's disciplinary record and prior attendance problems. Unlike Perry, Olsen had no history of chronic tardiness, nor is there any indication that Olsen had previously received any reprimands or suspensions which might have been a factor under the Employer's progressive discipline policy.<sup>3</sup>

## II. Falsification of Student Conduct Report

I also find no evidence suggesting that the Employer acted unlawfully in suspending Perry for falsifying a student conduct report. Perry concedes that the report which she submitted to Washegesic on November 22, 2002, identified the wrong student as the perpetrator of the infraction. Moreover, it is undisputed that a student who is the subject of such a report could face disciplinary action, including a

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<sup>2</sup> In attempt to discredit Washegesic's testimony, Charging Party cites in its brief a statement purportedly made by Kathleen Cochrane at the hearing concerning Olsen's report time. Charging Party writes that Cochrane testified to have been "standing by the time card [machine] at 6:23 a.m. at least a month earlier than . . . November 18 . . . when Linda Olsen came in and exclaimed that she was 'late again.'" According to Charging Party, "If 6:25 were her starting time, Olsen would not have been 'late again' at 6:23 a.m." However, Charging Party fails to cite the particular page in the record where this quote allegedly appears, and I was unable to find that statement, or anything even closely resembling it, anywhere in the transcript.

<sup>3</sup> The only evidence in the record pertaining to an attendance issue involving Olsen prior to the fall of 2002 is a written warning from Washegesic indicating that Olsen missed a portion of her high school route on February 1, 2002.



suspension of transportation privileges. Given Perry's admission, and in light of the possibly serious ramifications of filing such a report, the decision to suspend Perry for two days does not appear indicative of an intent on the part of Washegesic to discriminate against her because of her position as chief steward.

Charging Party contends that the school district's decision to discipline Perry for this incident constituted a "desperate and unreasonable application of the [its] rule against falsification. According to Charging Party, the term "falsification" requires an intent to deceive, and there was no evidence in this matter suggesting that Perry willfully made a false statement. The transportation handbook, however, does not define falsification or state that intent is a necessary element of the offense. Nor does the evidence establish that the school district has required a finding of intent or willfulness when applying this provision. At the hearing, Washegesic recalled only two prior incidents involving application of the rule against falsification. With respect to one of those incidents, a driver was disciplined, in part, for failing to report a broken mirror bracket which Washegesic indicated "she should have known needed repairing." There is nothing in the record establishing that this unnamed driver was aware of the mechanical problem and intentionally failed to report it.

For the reasons set forth above, I recommend that the Commission issue the following order and direction of election:

ORDER AND DIRECTION OF ELECTION

It is hereby ordered that the unfair labor practice charges in Case Nos. C02 L-260 & C03 D-088 are dismissed in their entirety.

It is further ordered that an election shall be conducted amongst the employees in the collective bargaining unit of bus drivers and bus aides employed by the South Haven Public Schools. The aforesaid employees shall vote pursuant to the attached Direction of Election to determine whether or not they wish to be represented for purposes of collective bargaining by Teamsters Local 214, the South Haven Bus Drivers Association, or neither.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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David M. Peltz  
Administrative Law Judge

Dated: \_\_\_\_\_