

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

In the Matter of:

BELLAIRE PUBLIC SCHOOLS,  
Public Employer-Respondent,

Case No. C03 K-245

-and-

BELLAIRE EDUCATIONAL SUPPORT  
PERSONNEL ASSOCIATION,  
Labor Organization-Charging Party.

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APPEARANCES:

Betz & Bloss, P.C., by Marshall W. Grate, Esq., and Barbara A. Ruga, Esq., for Respondent

White, Schneider, Young and Chiodini, P.C. by Timothy J. Dlugos, Esq., for Charging Party

**DECISION AND ORDER**

On April 27, 2005, Administrative Law Judge (ALJ) Julia C. Stern issued her Decision and Recommended Order in the above matter recommending dismissal of Charging Party Bellaire Educational Support Personnel Association's unfair labor practice charges. The ALJ found Charging Party failed to show that Respondent Bellaire Public School removed Charging Party's President, Deborah Baker, from her position as student council sponsor due to union or other activity protected by Section 9 of the Public Employment Relations Act (PERA), 1965 PA 379 as amended, MCL 423.209.

The ALJ's Decision and Recommended Order was served upon the interested parties in accordance with Section 16 of PERA. Charging Party filed timely exceptions to the ALJ's Decision and Recommended Order on May 20, 2005. Respondent timely filed a brief in support of the ALJ's Decision and Recommended Order on May 31, 2005.

In its exceptions, Charging Party argues that the ALJ erred because the weight of the evidence supports a finding that Respondent unlawfully removed the President from her extra-duty assignment in retaliation for protected activity. After reviewing the record carefully and thoroughly, we adopt the ALJ's findings and conclusions, and affirm the ALJ's Decision and Recommended Order.

The ALJ found that Charging Party failed to establish any animus with respect to Baker's union activity, and that even if Baker had not been Union president, Respondent would have taken the same action in removing her as a sponsor because teachers are given first priority in extra duty assignments. The ALJ specifically credited supervisor Papp's testimony in reaching these conclusions.

In consideration of the ALJ's opportunity to observe and evaluate the demeanor of the witnesses, we give great weight to credibility determinations made by an ALJ and will not overturn such determinations unless they are clearly contrary to record. *Zeeland Ed Ass'n*, 1996 MERC Lab Op 499, 507; *Michigan State Univ*, 1993 MERC Lab Op 52, 54; *E Jackson Pub Schs*, 1991 MERC Lab Op 132, 139. We find the ALJ's decision to be supported by the record and accordingly affirm her findings. We therefore issue the following order:

**ORDER**

IT IS HEREBY ORDERED that the Order recommended by the Administrative Law Judge shall become the Order of the Commission.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Nora Lynch, Commission Chairman

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Nino E. Green, Commission Member

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Eugene Lumberg, 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, this case was heard at Lansing, Michigan on September 28 2004, before Administrative Law Judge Julia C. Stern for the Michigan Employment Relations Commission. Based upon the entire record, including post-hearing briefs filed by the parties on or before November 29, 2004, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

The Bellaire Educational Support Personnel Association filed this charge against the Bellaire Public Schools on November 10, 2003. The charge was amended on July 12, 2004. Charging Party represents a bargaining unit of educational support employees employed by Respondent, including bus drivers, custodians, food service workers, secretaries, paraprofessionals and aides. The charge, as amended, alleged that Respondent unlawfully retaliated against members of the bargaining unit, including Charging Party President Deborah Baker, because of their union activities. It also alleged that Respondent violated its duty to bargain with Charging Party in good faith. Before the hearing, the parties settled all allegations except Charging Party's claim that Respondent unlawfully removed Baker from her assignment as student council sponsor at the end of the 2002-2003 school year.

Facts:

In November 2002, Charging Party filed a petition to add Respondent's custodians, food service workers, secretaries, paraprofessionals, and aides to Charging Party's existing unit of bus drivers. At the time the petition was filed, these employees were not represented by a union. Charging Party was certified as the bargaining representative for the new unit on March 17, 2003. On April 30, 2003, Charging Party's membership elected Deborah Baker, building secretary at the high school/middle school, as president of the union.

Sponsorship of the high school student council is an extra duty assignment available to teachers who are part of a bargaining unit represented by the Bellaire Education Association (BEA). Teachers who volunteer for extra duty assignments are paid either a percentage of their salary or stipends as specified in the BEA contract. Respondent generally posts extra duty assignments only when an assignment becomes vacant or the teacher holding the assignment receives an unsatisfactory evaluation. Non-teachers regularly fill extra duty coaching positions, and, in the 1990s, Respondent employed a drama director who was not a teacher when no teacher would take the position. With these exceptions, and Baker's assignment as student council sponsor, teachers have performed all extra duty assignments.

Respondent's School Board has a long-standing policy, Board policy JHC-2, requiring that student councils be under the direct control of the building principal or designated faculty representative. Until about January 2001, Respondent's administrative rules also required all student organizations and clubs to be sponsored by a teacher.

At the end of the 1998-1999 school year, the teacher who had served as high school student council sponsor left Respondent's employ. Respondent posted the assignment, but no one from the BEA responded. Janice Papp was the principal of the high school/ middle school and Baker's immediate supervisor.<sup>1</sup> After receiving the approval of Respondent's superintendent, Papp approached Baker and asked her if she would consider taking the assignment. Baker agreed, and in October 1999 Baker and another non-teacher, Debbie Baylon, became co-sponsors of the student council. Baker and Baylon served as the student council sponsors for the 1999-2000 school year.

At the end of each school year, Papp distributes a list of paid and unpaid committee and extra duty assignments to all teachers and asks them to apply. No teacher expressed interest in the high school student council assignment at the end of the 1999-2000 school year, and Baker and Baylon continued to serve as student council sponsors for the following school year.

In January 2001, Respondent's superintendent brought the fact that Baker and Baylon were sponsoring the high school student council to the attention of the School Board. Papp provided the Board with a copy of a revised rule, which Respondent later adopted. The revised rule states:

When possible, every school club shall be sponsored by a member of the faculty appointed by the building principal from a list of applicants. If no interest is

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<sup>1</sup> Before becoming the principal, Papp was a member of the BEA unit and served as its grievance chair.

shown by a faculty member, applications from other interested parties may be accepted . . .

After Baylon resigned sometime after January 2001, Baker handled the student council assignment alone. No teachers expressed interest in serving as high school student council sponsor for the 2001-2002 or 2002-2003 school years, and Baker continued in the position. There is no dispute that Baker did a good job as the high school student council sponsor.

According to Papp's uncontradicted testimony, after a meeting of a teacher committee in the spring of 2003, Papp and several teachers discussed teacher involvement in extracurricular assignments. They talked about how some teachers seemed to handle all the work, and how fewer teachers held extra curricular positions than in the past. Papp mentioned that under Board policy, a teacher should be sponsoring the high school student council, but that no teacher had expressed interest. One of the teachers at the meeting, band instructor John Buebe, told Papp that he might be interested.

Sometime after this meeting, Papp learned that another teacher, Kim Clark, was also interested in the position. Papp did not remember whether she first heard of Clark's interest from Baker. However, Papp testified that she received a written communication from Clark indicating that she would be interested in serving with Baker as a co-sponsor of the student council. In this communication, Clark explained that as a new teacher she felt that she would need help in the assignment. Papp spoke to Clark, who reiterated that she did not want to hold the assignment alone. Papp told Clark that another teacher had expressed interest, and that under Board policy she had to look at a faculty member. Papp then went to Superintendent Jack Wallington, who told her to post the position.

In about the third week of May, Baker met with Papp to tell her of Clark's interest in serving as co-sponsor. Baker testified that Papp told her that she would not be serving as student council sponsor for the 2003-2004 school year. Papp said that another teacher, Buebe, had expressed interest in the position, and that it was part of the teacher's contract that a teacher was supposed to be the student council sponsor. According to Baker, Papp also said that Baker would be too busy to perform the student council duties because the retirement of an office aide would leave her with additional work. Papp testified that she told Baker that two teachers had expressed interest in the position. She said that Respondent was posting the position, and, assuming that Respondent had an official application, a teacher would get the assignment. According to Papp, Baker responded, "In other words, you are firing me." Papp testified that she tried to assure Baker that the decision was not personal or a reflection on the job she had done, but rather because the Board's policy was to have a teacher sponsor.

Sometime after the end of the school year, Papp went to Buebe and asked him to put his request to be student council sponsor in writing. She mentioned that Clark was also interested, but did not want to do it alone. Papp suggested that Buebe and Clark be co-sponsors. Buebe told Papp that if Clark wanted the assignment she could have it, since he had enough to do with the band. Papp could not recall whether her conversation with Buebe occurred before or after the student council assignment was posted.

Papp then spoke with Clark again. Papp suggested that Clark serve as the official sponsor and pay Baker to help her. Clark told Papp that she was not interested in the position unless Baker was her co-sponsor. Papp could not recall whether this conversation occurred before or after the assignment was posted.

The high school student council assignment was posted sometime after the school year ended. Ed Stoneburner, another teacher, applied and was awarded the position for the 2003-2004 school year.

On June 12, 2003, Papp and Baker met to discuss Baker's year-end evaluation. They discussed her work, which was satisfactory, and the anticipated increase in her work due to the office aide's retirement. Baker asked Papp if she had any concerns. According to Baker, Papp replied that she was concerned that now that Baker was part of a union she could no longer trust her. According to Papp, she responded as follows:

What I said is I know that this may be awkward . . . I said to her that it is going to be necessary for her to separate or compartmentalize, I don't know which word I used, her duties as my secretary from her duties as the president of the Union. Debbie assured me that it would not be a problem.

At the hearing, Papp explained that she meant that she felt there might be a conflict of interest between Baker's role as union president and her role as Papp's secretary because Baker's job gave her access to confidential staff, student, and medical information.

#### Discussion and Conclusions of Law:

In order to establish a prima facie case of discrimination under Sections 10(1)(a) and (c) of PERA, Charging Party must establish: (1) that the employee engaged in union or other protected concerted activity; (2) the employer had knowledge of that activity; (3) union animus or hostility towards the employee's protected activity; and (4) suspicious timing or other evidence that the protected activity was a motivating cause of the alleged discriminatory actions. *City of St. Clair Shores*, 17 MPER ¶ 76 (2004); *City of Grand Rapids (Fire Dep't)*, 1998 MERC Lab Op 703, 706; *Univ of Michigan*, 1990 MERC Lab Op 272, 288. Once a prima facie is established, the burden shifts to the employer to produce credible evidence that the same action would have taken place even in the absence of the protected conduct, but the ultimate burden of showing unlawful motive remains with the Charging Party. *MESPA v Ewart Public Schools*, 125 Mich App 71, 74 (1982); *City of Grand Rapids, supra*; *Residential Systems Co*, 1991 MERC Lab Op 394, 405.

Charging Party asserts that Papp demonstrated her hostility toward Baker's union activities when she told Baker in late May 2003 that she was being removed from the student council assignment because at that time the position had not been posted and no teacher had expressed a firm intention to take the assignment. Charging Party also argues that Papp's union animus is established by her statement to Baker on June 12 that Papp could no longer trust her because she was now in the union.

Papp and Baker have slightly different versions of their conversation in late May 2003. I find that even if Papp told Baker that she was being removed from the student council assignment, this statement does not establish that Baker's union activity caused her removal. Clearly, Respondent always would have preferred to have a teacher in this assignment. In May 2003, Papp had an indication that a teacher or teachers might be interested. Nothing in the conversation between Papp and Baker in May, except its timing, suggests that Baker's removal as student council sponsor had any connection to her union activity. The timing of an employer's action in relation to the employee's union activity is one factor to be considered in determining motivation. However, timing, by itself, is not sufficient to establish that the employee's protected activity was a motivating factor. *Macomb Twp (Fire Dep't)*, 2002 MERC Lab Op 64, 73; *City of Detroit (Water & Sewerage Dep't)*, 1985 MERC Lab Op 777, 780.

Papp and Baker have significantly different versions of their June 12, 2003 conversation. I credit Papp's version. My conclusion that Papp testified truthfully and accurately is based in part on the demeanor of the two witnesses. I also base my credibility finding on the fact that Papp was a former union grievance chair, and, according to Baker, Papp said that she could no longer trust Baker because she was now in the union. A union background does not immunize a supervisor against hostility toward union activity on the part of his or her subordinates. However, I find it unlikely that Papp, with some exposure to union-management relationships, would have made such an openly anti-union statement. According to Papp's version of the June 12 conversation, she simply reminded Baker of her obligation to maintain the confidentiality of the information she had access to as Papp's secretary. This statement, taken alone and in the absence of any other evidence suggesting union animus, does not establish that Papp was hostile toward Baker's union activity.

Since Charging Party did not establish that Baker's union activity was a motivating cause of her removal as high school student council sponsor, I must recommend to the Commission that the charge be dismissed. However, even if Charging Party had established a prima facie case, I find that Respondent presented credible evidence that it would have taken the same action even if Baker had not been the union president. Respondent's policy was to have teachers serve as sponsors for student clubs and organizations, particularly student councils. It reiterated this policy when it amended its administrative rules in 2001 to accommodate Baker's appointment as the high school student council sponsor. Papp testified, without contradiction, that in the spring of 2003, she raised the issue of a teacher sponsor for the high school student council in the context of a discussion with teachers about the lack of teacher involvement in school activities outside the classroom. She testified that Buebe responded by stating that he might be interested, and that Respondent decided to post the student council position at a time when Papp believed that two teachers were interested in the position. In its brief, Charging Party asserts that by the time the position was actually posted, both teachers had withdrawn their interest. However, Papp could not recall the sequence, and there was no other evidence to establish that this was the case. I find that the evidence on the record supports Respondent's claim that it posted the high school student council position because teachers had expressed interest in it.

Based on the findings of fact, discussion and conclusions set forth above, I conclude that Charging Party failed to show that Respondent removed Deborah Baker as high school student

council sponsor because of Baker's union or other activity protected by Section 9 of PERA. I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The unfair labor practice charge is dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern  
Administrative Law Judge

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