STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

MADISON PUBLIC SCHOOLS,
Respondent-Public Employer,

Case No. C04 F-165

-and-

LENAWEE COUNTY EDUCATION
ASSOCIATION, MEA/NEA,
Charging Party-Labor Organization
_____/

APPEARANCES:

Thrun Law Firm, P.C., by Joe D. Mosier, Esq., for Respondent

White, Schneider, Young, & Chiodini, P.C., by Shirlee M. Bobryk, Esq., for Charging Party

DECISION AND ORDER

On March 1, 2006, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order in the above-entitled matter, finding that Respondent has engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist and take certain affirmative action as set forth in the attached Decision and Recommended Order of the Administrative Law Judge.

The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of Act 336 of the Public Acts of 1947, as amended.

The parties have had an opportunity to review this Decision and Recommended Order for a period of at least 20 days from the date the decision was served on the parties, and no exceptions have been filed by any of the parties to this proceeding.

ORDER

Pursuant to Section 16 of the Act, the Commission adopts as its order the order recommended by the Administrative Law Judge.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____
Nora Lynch, Commission Chairman

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Nino E. Green, Commission Member

_____
Eugene Lumberg, Commission Member

Dated: _____

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White, Schneider, Young, & Chiodini, P.C., by Shirlee M. Bobryk, Esq., for Charging Party

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 at Detroit, Michigan on December 7, 2004, before David M. Peltz, Administrative Law Judge (ALJ) for the Michigan Employment Relations Commission. Based upon the entire record, including the transcript of hearing, exhibits and post-hearing briefs filed by the parties on or before January 26, 2005, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

Charging Party Lenawee County Education Association (LCEA) is the collective bargaining representative for all professional certified teaching personnel of Respondent Madison Public Schools. The charge, which was filed on June 22, 2004, alleges that Respondent violated Sections 10(1)(a) and (b) of PERA by pressuring Charging Party's members to become candidates in an internal Union election in violation of Sections 10(1)(a) and (b) of PERA.1

1 The charge was originally filed in the name of the Madison Education Association (Madison EA) and later amended to reflect the LCEA as the proper representative of Respondent's teachers.

Findings of Fact:

James Hartley has been employed as superintendent of the Madison Public Schools since 1976. Kindergarten teacher Mary Radant was elected president of the Madison Education Association in 2003. Prior to the 2003 election, Hartley tried to convince Radant not to run for office, telling her that he did not believe that she was "well-suited" for the position of Union president. Following the election, Hartley and Radant had a strained relationship. According to Hartley, Radant had "a difficult time understanding some things and being able to make decisions" and she was not an effective Union representative. Hartley testified that he felt labor relations might "improve" if someone other than Radant was president. For her part, Radant testified that she was "scared to death" of Hartley, so much that she began carrying a tape recorder around to document her conversations with him.

Radant's term as president was scheduled to expire in 2004, and she decided to run again for the position of Union president in the upcoming election, which was scheduled to be conducted on May 14, 2004. Prior to that date, Hartley approached elementary school teachers Linda Schmidt Kaufman and Dina Payne separately and asked each of them to consider running for Union office in the upcoming election.2 Hartley told Kaufman and Payne that he had a great deal of respect for them as teachers, that he believed they would be fair, and that he would be able to work with them as Union representatives. Hartley also told Kaufmann and Payne that he was frustrated by the atmosphere within the school district, and he indicated to Payne that he was having a difficult time resolving issues with the current Union officials.

After briefly considering Hartley's proposal, both Kaufman and Payne ultimately decided not to seek leadership positions within the Union. Together, they met with Hartley at the elementary school the following day and informed him of their decision. They also expressed their support for the current Union leadership and offered to assist the school district with team building. Hartley was disappointed, but he accepted their decision not to run in the election. Once again, Hartley indicated to the teachers that he was frustrated with the atmosphere within the school district, and he expressed a desire to "move forward." According to Payne, Hartley further stated that he wanted to

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Respondent contends that the charge should be dismissed because there is no evidence that the LCEA's governing board authorized the filing of the charge. Although the LCEA replaced the Madison EA as the exclusive bargaining representative for Respondent's teachers in 1980, the title page of the current collective bargaining agreement identifies the bargaining representative as the "Madison Education Association LCEA, MEA, NEA," and the terms "Madison Education Association" and "Lenawee County Education Association" are used interchangeably throughout the agreement. Moreover, MEA uniserv director Jim Berryman was present at the hearing as a representative of both labor organizations. Whether LCEA's governing board should have been consulted prior to the filing of the charge constitutes an internal union matter outside of the Commission's jurisdiction.

2 Hartley did not specify any particular Union position in his conversations with Kaufman and Payne.

be able to work with people, and that he did not feel that was occurring with the current Union officers.

Hartley also had conversations with elementary school teacher and former Union president Steven Lasky during the 2003-2004 school year. Lasky testified that Hartley approached him in the fall of 2003 during a football game and told him that he was upset with Radant and suggested that he once again seek the position of Union president. Lasky contends that Hartley approached him again in a school hallway during the spring of 2004. According to Lasky, Hartley stated that the current Union officers were doing a poor job and complained that Charging Party was filing too many grievances.

Although Hartley conceded that he had several conversations with Lasky in 2003 and 2004, he testified that he could not recall ever specifically suggesting that Lasky run for Union president or criticizing Radant's performance to Lasky. Hartley testified that his discussions with Lasky pertained to "how we could move forward in the school district and have positive relationships." Hartley did admit that he had conversations with Kaufman and Payne during which he suggested that they run for Union office. However, he denied making any remarks which were critical of the current Union leadership during the course of those discussions. Hartley testified that the reason he approached Kaufman and Payne was because he had been contacted by employees who were concerned that there would be no Union election unless "some teachers stepped forward to volunteer" to run for office.

I found Kaufman, Payne and Lasky to be reliable witnesses with a good recollection of events, and I credit their testimony. As noted, Hartley admitted that he told Radant prior to the 2003 election that he did not consider her well-suited for the position of Union president, and that he found her difficult to deal with and ineffective. Moreover, Hartley conceded that he felt the relationship between labor and management might improve if Radant were no longer president. Given these facts, I find it likely that Hartley did indeed make comments which were critical of Radant and other Union officials while in the course of soliciting Lasky, Kaufman and Payne to run for Union office, and that, in so doing, he expressed his preference for them over the incumbent Union officials.

On May 3, 2004, MEA uniserv director Jim Berryman sent an e-mail message to Hartley complaining about the superintendent's "personal involvement in recruiting individuals to run for positions with the Union." The e-mail alleged that Hartley's conduct constituted a violation of Section 10 of PERA. In the Union election which followed, Radant and two other incumbent officers were reelected. One other position, Union treasurer, was filled by a new candidate who ran in the election unopposed.

Discussion and Conclusions of Law:

Charging Party contends that Respondent violated Sections 10(1)(a) and (b) of PERA by pressuring teachers to run for office in an internal Union election. Section 9 of PERA guarantees public employees the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other lawful concerted

activities for the purpose of collective bargaining or other mutual aid and protection. Section 10(1)(a) of the Act prohibits an employer from interfering with, restraining, or coercing public employees in the exercise of these rights. Section 10(1)(b) makes it unlawful for an employer to initiate, create, dominate, contribute to, or interfere with the formation or administration of any labor organization.

In construing PERA, both the Commission and the courts have been guided by the construction placed on the analogous provisions of the National Labor Relations Act (NLRA), as amended 29 USC § 151. *St Clair Intermediate Sch Dist v Intermediate Educ Ass'n*, 458 Mich 540 (1998); *Rockwell v Crestwood Sch Dist Bd of Ed*, 393 Mich 616 (1975). The test of whether Section 10(1)(a) of PERA, or its identical provision in the NLRA, Section 8(a)(1), has been violated does not turn on the employer's motive for the proscribed conduct or the employees subjective reactions to it, but rather whether the employer actions, may reasonably be said, tends to interfere with the free exercise of protected employee rights. See e.g. *City of Greenville*, 2001 MERC Lab Op 55, 58; *Carry Companies of Illinois v NLRB*, 30 F3d 922, 934 (CA 7 1994); *Mediplex of Danbury*, 314 NLRB 470, 472 (1994); *Cooper-Jarrett*, 260 NLRB 1123 (1982); *American Freightways Co*, 124 NLRB 146, 147 (1959).

The Commission has not had occasion to consider whether it is a violation of PERA for an employer to solicit its employees to run for Union office. However, the National Labor Relations Board (NLRB) has repeatedly held that an employer violates Section 8(a)(1) of the NLRA by interfering with internal union elections. For example, in *Monks Inn*, 232 NLRB 978 (1977), several employees were engaged in a discussion about potential candidates to replace the outgoing shop steward. The employer's assistant director joined the conversation and told the employees that he did not care who was elected as long as they did not chose the current assistant shop chairman for the position. The assistant director further stated that he could not deal with the assistant shop chairman. The Board held that as a supervisor and member of management, the assistant director's remarks "opposing the election of [the assistant shop chairman] constituted interference on the part of Respondent with the rights of employees to engage in their union activities and activities for their mutual benefit protected by Section 7 of the Act, in violation of Section 8(a)(1) of the Act." *Id.* at 982.

The Board reached a similar conclusion in *McDaniel Ford, Inc*, 322 NLRB 956, 961 (1997). In that case, the Board held that the employer violated Section 8(a)(1) of the Act when the company's president wrote a letter to employees informing them that its representatives were having a difficult time working with the current shop steward and suggesting that employees elect a new steward in his place. Similarly, in *Cooper-Jarrett*, *supra* at 1123-1124, the Board found a Section 8(a)(1) violation based upon the fact that the employer's chairman made comments which were critical of the union steward and told the employees that they should vote him out of union office. See also *Caterpillar, Inc*, 1996 WL 33321284 (supervisor unlawfully interfered with internal union election by stating a preference among the candidates); *Chicago Magnesium Castings Co*, 240 NLRB 400, 405 (1979) (an employer has no right to interfere or seek to control the selection of its employees' representatives who are to deal with the employer for purposes of collective bargaining).

In the instant case, Hartley not only criticized the leadership of the Madison Education Association, he actively solicited bargaining unit members to run for Union office. Although an employer does not violate PERA merely by attacking the motives or abilities of union officers, *Lincoln Park*, 1983 MERC Lab Op 362, 364; *Redford Twp*, 1982 MERC Lab Op 1289, 1300, I conclude that the record, viewed as a whole, establishes that Hartley interfered in the administration of the Union by attempting to influence the outcome of the internal Union election. I find that such conduct was inherently destructive of the employees' Section 9 rights and a clear violation of Sections 10(1)(a) and (b) of PERA.

I have carefully considered the remaining arguments and conclude that they do not warrant a change in the outcome of the decision. For the foregoing reasons, I recommend that the Commission issue the order set forth below:

RECOMMENDED ORDER

Madison Public Schools, its officers, agents, and representatives shall:

1. Cease and desist from interfering with the rights of its employees under Section 9 of PERA and with the administration of the Union by soliciting employees to run for office in internal Union elections.

2. Post the attached notice to employees in a conspicuous place for a period of thirty (30) consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

David M. Peltz
Administrative Law Judge

Dated:_____

NOTICE TO ALL EMPLOYEES

After a public hearing before the Michigan Employment Relations Commission, MADISON PUBLIC SCHOOLS, a public employer under the PUBLIC EMPLOYMENT RELATIONS ACT (PERA), has been found to have committed unfair labor practices in violation of this Act. Pursuant to the terms of the Commission's order, we hereby notify our employees that:

WE WILL NOT interfere with the rights of employees under Section 9 of PERA and with the administration of the Union by soliciting employees to run for office in internal Union elections.

ALL of our employees are free to engage in lawful activity for the purpose of collective bargaining or other mutual aid and protection as provided in Section 9 of the Public Employment Relations Act.

MADISON PUBLIC SCHOOLS

By: _____

Title: _____

Date: _____

This notice must be posted for a period of 30 consecutive days and must not be altered, defaced or covered by any material. Any questions concerning this notice or compliance with its provisions may be directed to the office of the Michigan Employment Relations Commission, Cadillac Place Building, 3026 W. Grand Blvd, Suite 2-750, P.O. Box 02988, Detroit, MI 48202-2988. Telephone: (313) 456-3510.