STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

UTICA COMMUNITY SCHOOLS,
Public Employer-Respondent,

Case No. C04 L-320

- and -

UTICA EDUCATION ASSOCIATION and
LAWANDA PARKER,
Charging Parties.
_____/

APPEARANCES:

Thrun Law Firm, by William G. Albertson, Esq., for the Respondent

Fink, Zausmer and Kaufman, by Harvey I. Wax, Esq., for Charging Parties

DECISION AND ORDER

On July 24, 2006, Administrative Law Judge Julia C. Stern (ALJ) issued her Decision and Recommended Order finding that Respondent, Utica Community Schools (Employer), violated Section 10(1)(a) and (c) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210(1)(a) and (c), by eliminating Charging Party Lawanda Parker's assignment and extra curricular position as assistant high school band director, in retaliation for her union activity of filing and pursuing a grievance concerning class size. The ALJ held that when Parker, who was the head building representative for Charging Party Utica Education Association (the Union) at Respondent's Eisenhower High School, filed the grievance, she was engaged in a protected concerted activity and that the Employer knew of her role in filing the grievance and acted with anti-union animus when it eliminated her assignment and position. The Decision and Recommended Order was served on the interested parties in accordance with Section 16 of PERA.

Respondent received an extension of time to file exceptions and on September 15, 2006, it filed timely exceptions to the ALJ's Decision and Recommended Order. In its exceptions, Respondent alleges that the ALJ erred in finding that it demonstrated anti-union animus and that such animus motivated its decision to remove Parker from her assignment and position. It also excepts to the ALJ's finding that "but for" the protected activity, Respondent would not have eliminated the assignment and position. Respondent further excepts to the ALJ's finding that

the persons who made the decision to remove Parker from her assignment and position had knowledge of her grievance. After receiving two extensions of time, on November 13, 2006, Charging Parties filed a timely brief in support of the ALJ's Decision and Recommended Order. We have reviewed all of the exceptions filed by Respondent and find them to be without merit.

Factual Summary:

The facts in this case are set forth fully in the ALJ's Decision and Recommended Order and will be summarized here only as needed. The Utica Education Association represents the teachers working in the Utica Community Schools. Lawanda Parker is a teacher and a member of the association who has worked for the Employer since 1975. During her tenure, Parker held various Union positions and in the spring of 2003, she was elected head building representative for the Eisenhower High School. At that time, she worked as the assistant band director at the school, assisting the band director for two class periods. During three other periods, she taught social studies. She also had an extra circular position of assistant band director.

Pursuant to the collective bargaining agreement between the Employer and the Union, there is a maximum student load of 155 students per high school teacher, with exceptions in physical education, instrumental music, and vocal music. The agreement requires that teachers be compensated when their loads exceed the maximum. Parker, having investigated complaints from other teachers, discovered what appeared to be an imbalance in class sizes. She created a chart to illustrate the imbalance and provided it to administration. Discussions ensued among teachers regarding this issue and it was suggested that a formal grievance be filed.

In January of 2004, Parker and another Eisenhower building representative, Jackie Noonan, went to Principal Robert Van Camp's office to discuss class size issues. Van Camp suggested to Parker that the problem could be solved by taking Parker out of band and putting her back into the classroom full time. According to Noonan, Van Camp seemed angry and Noonan told him, "You don't know what you're doing. Don't go down this road."

After the meeting, Van Camp notified both Parker and Noonan that he decided not to remove Parker from her assignment and position of assistant band director. However, in a memo to the Eisenhower staff, Van Camp referred to Parker's unwillingness to give up her band assignment and stated that it was "unfortunate that she had not volunteered to provide relief to her colleagues." In February of 2004, the Union filed a written grievance over class sizes at Eisenhower, and the grievance was taken to step three at the assistant superintendent level. At the end of the 2003-2004 school year, the Union's grievance committee decided not to pursue the grievance to arbitration.

In the winter of 2003-2004, a committee of administrators was formed by Respondent to make recommendations for cutting the budget in all areas effective the following school year. The committee made its recommendations to the school board in March of 2004. Although it

recommended the elimination of thirty full-time teaching positions, the assistant band director was the only position that the committee specifically named for elimination. In June 2004, the board of education adopted the recommendations, deciding that the three teachers with assignments of assisting the band director would be re-assigned to other classes and that Parker's assistant band director position would be eliminated.

On May 12, 2004, Parker filed a grievance stating that Van Camp had deprived her of her band assignment and her extracurricular position and its compensation in retaliation for her filing the class size grievance. In June 2004, Parker received her class schedule for the 2004-2005 school year. She was assigned to teach two additional social studies classes, she was not assigned to assist the band director, and her extracurricular position had been eliminated.

Discussion and Conclusions of Law:

When a charging party alleges that an adverse action was motivated by anti-union animus, the burden of proof is on the charging party. *Schoolcraft College Ass'n of Office Personnel, MESPA v Schoolcraft Cmty College*, 156 Mich App 754, 763 (1986). The charging party must demonstrate that protected conduct was a motivating or substantial factor in the respondent's decision to take the action about which the charging party has complained. *MESPA v Evart Pub Schs*, 125 Mich App 71, 73-75 (1983). To establish a prima facie case of discrimination under Section 10(1)(c) of PERA, a charging party must establish: (1) that the employee engaged in union or other protected concerted activity; (2) that the employer had knowledge of that activity; (3) anti-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. *Rochester Sch Dist*, 2000 MERC Lab Op 38, 42; *Univ of Michigan*, 1990 MERC Lab Op 272, 288. If the charging party establishes a prima facie case of discrimination, the burden shifts to the respondent to demonstrate with credible evidence that the same action would have taken place even in the absence of the protected conduct. However, the ultimate burden of showing unlawful motive remains with the charging party. *Napoleon Cmty Schs*, 124 Mich App 398 (1983). See also *UAW v Sterling Heights*, 176 Mich App 123, 129 (1989).

Under Section 9 of PERA, public employees have the right to engage in lawful concerted activities for the purpose of mutual aid and protection. Concerted activities protected by PERA include actions undertaken by one employee on behalf of others even in the absence of the participation or authorization of a labor organization. See *City of Detroit Water and Sewerage Dep't*, 1993 MERC Lab Op 157 (no exceptions). An employee filing a grievance under a collective bargaining agreement is protected from adverse action for filing that grievance as long as the grievance is made in good faith. *MERC v Reeths-Puffer Sch Dist*, 391 Mich 253, 265-66 (1974). An employer cannot lawfully threaten, either expressly or impliedly, to penalize employees for filing grievances. *City of Lincoln Park*, 1983 MERC Lab Op 362.

It is undisputed that Parker was engaged in activity protected by the Act when she complained to Van Camp and others about the class sizes of other teachers. Furthermore, Van Camp knew that Parker was leading the Union's efforts to get Respondent to address the class size problem at Eisenhower. Parker met with administrators on numerous occasions to discuss the class size problem prior to the grievance being filed. In addition, Parker, along with another building representative, personally filed the grievance with Van Camp, providing him with further notice of her involvement.

Charging Party also established anti-union animus on the part of Van Camp and Respondent. In proposing to eliminate Parker's position when she approached him with Union concerns about class sizes, Van Camp demonstrated his anger toward the Union and toward Parker for acting on the Union's behalf. Van Camp made numerous statements regarding the removal of Parker from her position as assistant band director, including his disappointment that she did not volunteer to remove herself. From Van Camp's actions, taken as a whole, anti-union animus on the part of Respondent can be inferred, establishing one prong of a prima facie case of unlawful discrimination.

In order to establish a prima facie case, Charging Parties must show not only that Respondent had animus toward Parker because of her protected activities, but that this animus was a motivating cause of the alleged discriminatory actions. The ALJ found Noonan and Parker were generally credible witnesses and credited their testimony regarding the meeting in which Van Camp proposed to remove Parker from her assistant band director position.[1] Following this meeting, the only position specifically recommended for elimination by Respondent's committee was assistant band director. Further, although the committee did not specifically recommend that the assistant band director's extracurricular assignment be eliminated, it was eliminated nonetheless, as previously proposed by Van Camp in response to Parker's requests. The fact that the committee's only specific recommendation was exactly what Van Camp had proposed cannot be discounted as mere coincidence.

Suspicious timing is also a factor in determining the cause behind discriminatory actions. We agree with the ALJ that the passage of a mere four months between the time when the issue was first raised with Van Camp to the time that Parker's assistant band director assignment and position were eliminated, coupled with the other actions previously discussed, constitutes sufficient evidence that Parker's complaints were a motivating cause of the adverse action taken.

Because Charging Parties have established a prima facie case of discrimination, the burden shifted to Respondent to prove that the same action would have taken place even in the absence of the protected conduct. The Commission agrees with the finding of the ALJ that

1 We will not disturb an ALJ's credibility findings in the absence of clear evidence to the contrary. See *Bellaire Pub Schs*, 19 MPER 17 (2006); *Zeeland Ed Ass'n*, 1996 MERC Lab Op 499, 507; *Michigan State Univ*, 1993 MERC Lab Op 52, 54.

Respondent did not produce credible evidence to establish that, in the spring of 2004, it would have decided to eliminate the high school assistant band director assignment or extracurricular position even if Parker had not engaged in protected activities. We conclude that Respondent violated Section 10(1)(a) and (c) of PERA because it eliminated Parker's assignment and position in retaliation for her union activities.

We have reviewed all other arguments raised by Respondent in its exceptions and find that they would not change the result in this case. The Commission, therefore, issues 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

_____
Christine A. Derdarian, Commission Chair

_____
Nino E. Green, Commission Member

_____
Eugene Lumberg, Commission Member

Dated: _____

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

UTICA COMMUNITY SCHOOLS,
Public Employer-Respondent,

Case No. C04 L-320

-and-

UTICA EDUCATION ASSOCIATION and
LAWANDA PARKER,
Charging Parties.
_____/

APPEARANCES:

Thrun Law Firm, by William G. Albertson, Esq., for Respondent

Fink, Zausmer and Kaufman, by Harvey I. Wax, Esq. for Charging Parties

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 October 6 and November 7, 2005, 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 March 16, 2006, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

The Utica Education Association and Lawanda Parker filed this charge against the Utica Community Schools on December 8, 2004. Charging Party Utica Education Association (the Union) represents teachers and other professional employees of Respondent. Lawanda Parker is a teacher and member of the Union's bargaining unit. Parker is also a member of the Union's board of trustees and its head building representative at Respondent's Eisenhower High School. Charging Parties allege that effective August 23, 2004, Respondent removed Parker from her position as assistant band director because she filed and pursued a grievance over teacher class sizes.

Facts:

Lawanda Parker has been employed as a teacher in the Utica Community Schools since about 1975. She taught vocal music until she began to experience problems with her vocal chords. After that she taught social studies. At the beginning of the 2002-2003 school year, Parker transferred to Eisenhower High School from Jeannette Junior High when she was offered the opportunity to serve as Eisenhower's assistant band director. About 115 teachers are employed at Eisenhower. Parker's position as assistant band director had two components. Parker was assigned to assist the band director for two class periods during the regular school day. During the other three class periods she taught social studies. Assistant band director at the high school was also an extracurricular position for which Parker was paid separately. As assistant band director, Parker worked directly with students, both in the classroom and outside of school hours, including during the summer. She also helped the band director with administrative tasks for Eisenhower's orchestra and its several bands, and worked closely with a parent organization, the Band Boosters. Robert Van Camp was principal at Eisenhower when Parker transferred there. He and Parker had worked together at another school and had a good relationship.

Parker held Union positions at various times throughout her employment, including head building representative at Jeannette for several years. The Union has six building representatives at Eisenhower. In the spring of 2003, Parker was elected head building representative for the school.

Article III (F) of the collective bargaining agreement between Respondent and the Union establishes a maximum student load per high school teacher of 155 students, except in physical education, instrumental music, and vocal music. It further provides that in the event the maximum is exceeded by one or more students, teachers will receive extra pay at the rate of $6.50 per student per five days until such time as the class enrollment drops to or below the maximum student count. Many teachers at Eisenhower, particularly in math, science and social studies, routinely have class sizes that put them over the maximum student load. Since Respondent allocates teachers to its schools based on enrollment, having larger class sizes in popular courses allows Eisenhower to offer certain classes, such as advanced language classes, that do not attract large numbers of students. At the beginning of every semester, there are complaints from Eisenhower teachers about the size of their classes. Every semester, Eisenhower's administration responds to complaints by transferring students in an attempt to equalize the loads of teachers with large class sizes.

During the 2002-2003 school year, before she was elected building representative, Parker decided to investigate complaints she had been hearing from teachers at Eisenhower about student load. She discovered that some math, science and social studies teachers were assigned as many as 170 students, while other teachers had loads of less than one hundred. Parker made a chart that illustrated this discrepancy and gave it to Van Camp and Gloria Bawol, Eisenhower's assistant principal in charge of scheduling. They told Parker that it was important for the high school to offer the low enrollment classes. Parker replied that the school should do this based on increased funding and not by constantly increasing class sizes. Bawol and Van Camp told her that they would continue to try to accommodate complaining teachers by transferring students.

During the fall semester of the 2003-2004 school year, some teachers at Eisenhower had 173 students. Van Camp obtained authorization from Respondent's human resources department to pay a teacher to teach an extra class during his preparation period. At the beginning of the second semester of that school year, some teachers again had very high student loads. The problem was most acute in social studies. The administration transferred students in response to teacher complaints. However, new students enrolled, or students added classes that already had large numbers of students, so that the student load of the complaining teachers went back up. One social studies teacher complained repeatedly to Parker about his class load and demanded that she file a grievance. Van Camp again requested authorization to pay a teacher to teach an extra class, but his request was denied because of budgetary considerations.

In late January 2004, Parker again made a chart of class sizes by department. Parker gave Bawol this chart and suggested that since a number of art classes had less than eighteen students, some of these classes might be combined. The next day, Parker received a call from an angry art teacher. Trying to avoid stirring up fights among teachers, Parker and three other Eisenhower buildings representatives sent a letter to Van Camp setting out their concerns about the class size issue and asking him to pay a teacher for a sixth class assignment. The building representatives sent copies of their letter to all Eisenhower teachers. They also discussed among themselves filing a formal grievance over student load. Formal grievances were not routine at Eisenhower, and Parker had never filed one. Van Camp testified that he did not recall hearing in January 2004 that the Union might file a grievance over class sizes or student load.

Sometime in late January 2004, Parker and Eisenhower building representative Jackie Noonan, a French teacher, came to Van Camp's office to discuss the class size issue. Parker testified that when she and Noonan entered the office, Van Camp was on the phone. According to Parker, when Van Camp hung up, he said, "I just got information from [Respondent's executive director of human resources, Glenn] Patterson that we can solve this issue by putting you back into the classroom and taking you out of band." Noonan testified that at the beginning of the meeting, Parker and Van Camp discussed the class size issue while she took notes. According to Noonan, Van Camp suddenly said to Parker, in an aggressive tone, "Why don't you be part of the solution? You only teach three classes. You could absorb part of that load." Noonan testified that Van Camp then picked up the telephone and said that he could call Glenn Patterson and get authorization to do that right then. Van Camp did call Patterson. After he had hung up, he told the two women that Patterson had said that removing Parker from her band assignment and assigning her social studies classes was feasible. Parker testified that she was so stunned that she could not say anything. Noonan was angry. Both Parker and Noonan testified that that Noonan told Van Camp, "You don't know what you are doing. Don't go down this road."

Van Camp testified that after hearing Parker and Noonan's concerns, he told Parker that a partial solution to the issue would be to have her change her two band class periods to social studies classes. According to Van Camp, he was suggesting this as a temporary solution to the problem for that semester only, and that he thought that this would be feasible because the marching band, the largest band, only existed in the fall. He testified that when he made this comment, he did not know that the Union had decided to file a grievance over class size. He also

testified that he did not raise his voice during the meeting. According to Van Camp, he called Patterson and, when he got off the phone, told Parker and Noonan that reassigning Parker to teach more social studies classes might be a possibility. Van Camp testified that Noonan expressed strong opposition to his suggestion. Noonan and Van Camp exchanged a few more words, and Van Camp told the women that he would get back with them. According to Van Camp, he called Patterson back and told him that he had decided not to go forward with the change in assignments.

Based on their demeanor, I find both Noonan and Parker to be generally credible witnesses. However, it was obvious from Parker's demeanor on the witness stand that she was emotionally affected by the loss of her band assignment. Parker admitted that she was so stunned by Van Camp's statements in their meeting with Noonan that she could not speak. I believe that Noonan's recollection of the meeting was more accurate. I fully credit Noonan's testimony about this meeting, including her testimony regarding Van Camp's tone of voice.

Within a few days after this meeting, Van Camp told both Parker and Noonan separately that he had decided not to take any further action to remove Parker from her band assignment. On February 2, Van Camp wrote a long memo addressed to all Eisenhower teachers about the class size issue. Van Camp discussed both the "sixth class" proposal and the consolidation and elimination of classes in other departments and explained why neither was acceptable to Respondent. Van Camp stated in his memo:

> Looking specifically at the current problem in World Studies, the solution proposed to us involved either sixth assignment for one teacher or five preps for another teacher. Neither option was acceptable. Our solution involved a current full-time staff member who provides direct instruction only three hours per day. That was rejected.

On February 3, Parker sent Van Camp an e-mail responding to his arguments against creating a sixth assignment or eliminating classes in other departments. She also took issue with his claim that her band hours were not "direct instruction." On February 6, Van Camp sent Parker a memo responding to her February 3 arguments and distributed copies of this memo to the Eisenhower staff. He said in the memo that it was "unfortunate that she had not volunteered to provide relief to her colleagues."

On February 9, the Union's executive director, Emalee Baldwin, filed a written grievance over class sizes at Eisenhower. The grievance argued that the intent of Article III (F) was to provide compensation to teachers when student loads occasionally exceeded the cap, and that Respondent was subverting the intent of the article by regularly assigning student loads that substantially exceeded the cap. Baldwin filed the grievance with Van Camp at step two of the grievance procedure. On March 24, the Union moved the grievance to the third step and it was submitted to Respondent's assistant superintendent for human resources, David Berube. At the end of the 2003-2004 school year the Union's grievance committee decided not to take the grievance to arbitration.

In the late winter of 2003-2004, Respondent formed an executive group of administrators

to make recommendations for cutting the budget in all areas for the following school year. This group consisted of the superintendent and assistant superintendents, including Berube and Randel Eckhardt, the assistant superintendent for instruction. The group did not include any building principals. Sometime in March 2004, the executive group presented its recommendations to the school board. It recommended that Respondent offer a severance incentive plan to teachers and administrators. It also recommended that Respondent eliminate thirty full-time equivalent teaching positions beginning with the 2004-2005 school year. In the spring of 2004, three of Respondent's four high schools had a teacher assigned to assist the band director for two class periods each day. The executive group recommended that the assistant band director in the high schools assignment be eliminated. According to Eckhardt, the group based its decision on the fact that band enrollment at all four of its high schools was trending down and that, except for special education classrooms, high school band classes were the only classes where two teachers were assigned to the same class at the same time. Although the executive group recommended the elimination of thirty full-time teaching positions, high school assistant band director was the only teaching assignment specifically addressed in the group's recommendations. Decisions about the other assignments/positions to be eliminated were to be made after Respondent knew which teachers accepted the severance incentive offer. The executive group did not recommend the elimination of any extracurricular positions. Eckhardt testified that the group was not aware of any friction or disagreement between Van Camp and Parker when it made its decision to eliminate the assistant band director assignment. Van Camp testified that he never made a recommendation to anyone in the administration that the assistant band director position be eliminated at Eisenhower.

At the end of April 2004, Eckhardt told Respondent's director of secondary education that the group's recommendations included the elimination of the assistant band director position. On or about May 3, the director of secondary education met with the high school principals, including Van Camp, and explained how their teacher allocations would change for the 2004-2005 school year. The principals were specifically told at this meeting that they were not to assign a teacher to assist their band directors. In June 2004, the board adopted the board's recommendations and Respondent determined that the three teachers whose daily assignments included assisting the band director would be reassigned to classes other than band for the 2004-2005 school year.[2] At some point, Respondent also decided to abolish the extracurricular position of assistant band director. It is not clear from the record how, when or why this decision was made. Respondent did not abolish any other extracurricular position between the 2003-2004 and 2004-2005 school years and some new extracurricular positions were added.

Parker testified that on May 3, she was working in the band room during her preparation period when Van Camp came to see her. According to Parker, Van Camp said, "I just wanted to let you know that you are not going to be teaching band at all next year." Parker testified that Van Camp told her that because she had filed the grievance, she was going to have to help teach some of the social studies classes that were so large. According to Parker, Van Camp also said, "The only thing I regret is that I did not do this sooner when I threatened it the first time."

[2] A music teacher at Respondent's Stevenson High School was assigned to assist Stevenson's band director for one class period after one of his choir classes was cancelled due to low enrollment in the fall of 2004. Eckhardt testified that Stevenson's principal was not authorized to make this reassignment.

Parker testified that she did not say anything to Van Camp; she was so unhappy that she just wanted to be alone. Van Camp testified that he told Parker that the assistant band director position had been eliminated at all the high schools and that she would be teaching five periods of social studies during the next school year. Van Camp denied making any reference to grievances during this conversation.

As noted above, I find Parker to be a generally credible witness, but I do not fully credit her testimony regarding the above conversation. I find it unlikely that Van Camp would have explicitly mentioned the grievance or used the word "threatened" in this conversation. However, I find that Van Camp did tell Parker that she would not be teaching band at all, i.e. that her extracurricular position had also been eliminated, and that he told her that he regretted not eliminating her band assignment after the January meeting.

On May 12, Parker wrote out a grievance asserting that Van Camp had deprived her of her band assignment, including the extracurricular position and its compensation, to retaliate against her because she had filed the class size grievance. Parker stated in the grievance that Van Camp told her that he was taking this action because she had filed a grievance on class size. Building representative Nancy Nichols accompanied Parker to Van Camp's office to give him the grievance. After he read it, Van Camp said angrily that the grievance distorted what he had said on May 3. After an uncomfortable silence, Nichols asked Van Camp if other positions were being cut. Van Camp said that all the high schools were losing their assistant band director positions. Nichols asked if there were other positions being eliminated in their building. Van Camp said that there were, but did not offer specifics.

On June 11, 2004, Parker received her class schedule for the 2004-2005 school year. Parker was assigned to teach two additional social studies classes. When Parker returned to work in August 2004, she was not assigned to teach band, and her extracurricular assignment had been eliminated.

Discussion and Conclusions of Law:

In order to establish a prima facie case of discrimination under Section 10(1)(c) of PERA, a charging party must establish: (1) that the employee engaged in union or other protected concerted activity; (2) that 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 case 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 Evart Pub Schs*, 125 Mich App 71, 74 (1982); *Residential Systems Co,* 1991 MERC Lab Op 394, 405.

A public employee is protected by PERA when, acting as an individual but in good faith, he or she files a grievance based on a provision in a collective bargaining agreement. *MERC v Reeths-Puffer Sch Dist*, 391 Mich 253, 261-262 (1974). However, the right to engage in

concerted protected activity for mutual aid and protection as guaranteed by Section 9 of PERA extends beyond the filing of a formal grievance under a contractual grievance procedure. A union officer engages in activity protected by the Act when he or she presents the employer with the complaints of other employees regarding wages, hours, or working conditions, even if no formal grievance is filed. See, e.g. *City of Menominee*, 1982 MERC Lab Op 585. Parker, the Union's head building representative at Eisenhower High School, engaged in union activity protected by the Act when she complained to Van Camp and Bawol about the class sizes of other teachers, when she presented Bawol with a chart in January 2004 purporting to show the disparities in class sizes among departments and suggested that classes in certain departments be combined, when she and other Eisenhower building representatives sent Van Camp a letter in January 2004 asking Respondent to pay a teacher for a sixth assignment, and when she and Noonan met with Van Camp to discuss the class size issue. Van Camp and Bawol knew of these actions, and they knew that Parker was leading the Union's efforts to get Respondent to address the class size problem at Eisenhower. Within weeks of this meeting, the Union filed a grievance over class sizes at Eisenhower. On March 24, assistant superintendent for human resources David Berube received the grievance at step three. Neither Berube nor human resources executive Glenn Patterson testified in this matter, and I find it reasonable to infer that administrators in Respondent's human resources department knew of Parker's role in the filing of the February 9 grievance.

I also find that Charging Parties met their burden of showing animus toward Parker's protected activities. Before Van Camp met with Noonan and Parker in January 2004, he and Bawol had made it clear to Parker that they did not want to solve the class size problem by eliminating specialized classes with low enrollment. Since Van Camp could not obtain authorization to pay a teacher to teach a sixth class, there was some possibility that if Parker continued to press the issue Van Camp would be forced to eliminate low enrollment classes. As discussed in the findings of fact above, I fully credit Noonan's version of Van Camp's behavior and his demeanor during his meeting with her and Parker in late January 2004. I conclude that his conduct at this meeting, including calling Patterson in the women's presence to confirm that he could reassign Parker, indicate that Van Camp was angry with Parker for proposing and pursuing an unpalatable solution to the class load problem. I conclude that his February 2 and February 3 memos to the Eisenhower faculty in which he suggested that Parker's personal interests were standing in the way of solving the class size problem also demonstrate Van Camp's hostility toward Parker's protected activity.

In order to make a prima facie case of unlawful discrimination, Charging Parties must show not only that Respondent had animus toward Parker because of her protected activities, but must also demonstrate that this animus was at least a motivating cause of the alleged discriminatory actions. As noted above, suspicious timing is often a factor in determining cause. In late January 2004, Van Camp called human resources director Patterson and asked if it would be feasible to remove Parker from her assistant band assignment and assign her more social studies classes. Van Camp spoke again to Patterson about Parker when he told Patterson he had decided not to do this. A week or two later, on February 9, the Union filed a grievance over class sizes at Eisenhower. Around this time, an executive group that included the assistant director of human resources was formulating recommendations for cutting the budget for the next school year. The group decided to recommend that the high school assistant band director assignment be

eliminated. This was the only teacher assignment addressed in their recommendation. They did not recommend that the high school assistant band director extracurricular assignment be eliminated. The group delivered their recommendations to the school board sometime in March. On May 3, Van Camp told Parker that both her high school assistant band director assignment and her extracurricular position had been eliminated. His information was accurate. When Parker returned to school in the fall of 2004, she had neither a band assignment nor an extracurricular band position. In sum, within four months of the date that Van Camp angrily suggested that Parker be reassigned from the band, Respondent had effectively eliminated both her regular assignment and her extracurricular position. I conclude that in this case the timing of Respondent's elimination of Parker's assignment is sufficient to support a conclusion that Parker's protected activities were a motivating cause of Respondent's decision to eliminate its high school assistant band director assignment and extracurricular position.

Respondent maintains that its decision to eliminate the high school assistant band director assignment and extracurricular position at all its high schools was unrelated to the Parker's protected conduct. It presented evidence that an executive group considered the elimination of the assignment sometime before the end of March 2004 and that it had legitimate reasons for eliminating the assignment. However, Respondent did not explain how the assistant band director assignment – one that involved only three teachers – came to be the only teacher assignment addressed in the executive group's March 2004 recommendations. It also did not explain how, when or why the high school assistant band director extracurricular position was eliminated. I find that Respondent did not meet its burden of producing credible evidence to show that it would have decided in the spring of 2004 to eliminate its high school assistant band director assignment or extracurricular position even if Parker had not engaged her protected activities. Based on the evidence as a whole, I conclude that Respondent violated Section 10(1)(a) and (c) of PERA when it eliminated this assignment and position because I find that retaliation against Parker for her union activity was the "but for" cause of its actions.

In accord with the findings of fact and conclusions of law set forth above, I recommend that the Commission issue the following order. I note that I have not recommended that Respondent be ordered to reinstate the assistant band director assignment and extracurricular position at high schools other than Eisenhower because Charging Parties did not request this relief.

RECOMMENDED ORDER

The Utica Community Schools, its officers and agents, are hereby ordered to:

1. Cease and desist from interfering with, restraining or coercing Lawanda Parker or other members of the bargaining unit represented by the Utica Education Association in the exercise of their rights to engage in union and other protected concerted activity for mutual aid and protection under Section 9 of the Public Employment Relations Act.

2. Cease and desist from discriminating against Lawanda Parker because of her union activity.

3. Take the following affirmative action to effectuate the purpose of the Public Employment Relations Act:

a. Reinstate Lawanda Parker's part-time assignment as assistant band director at Eisenhower High School as it existed prior to August 2004; reinstate the extracurricular position of assistant band director at Eisenhower High School and offer Parker the position.

b. Make Parker whole monetary losses she suffered as a result of the elimination of the extracurricular position of assistant band director at Eisenhower High School, including interest at the statutory rate of five percent per annum, computed quarterly.

c. Post the attached notice to employees in places on the Respondent's premises, including all places where notices are customarily posted, for a period of thirty consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Julia C. Stern
Administrative Law Judge

Dated: _____