

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

In the Matter of:

FLAT ROCK COMMUNITY SCHOOLS,
Public Employer-Respondent,

Case No. C05 G-144

-and-

CAROL J. STEWART,
Individual-Charging Party.

APPEARANCES:

Thrun Law Firm, by Martha J. Marcero, Esq., for Respondent

Green, Green, Abrams and Kent, P.C., by Christine A. Green, Esq., for Charging Party

DECISION AND ORDER

On November 19, 2008, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act, 1965 PA 379, as amended, and recommending that the Commission dismiss the charges and complaint.

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

Christine A. Dardarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
EMPLOYMENT RELATIONS COMMISSION**

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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 Detroit, Michigan on December 17 and 18, 2007, before Administrative Law Judge Julia C. Stern of the State Office of Administrative Hearings and Rules for the Michigan Employment Relations Commission. Based upon the entire record, including post-hearing briefs filed by the parties on or before February 6, 2008, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

Carol J. Stewart, a school bus driver, filed this charge against her former employer, the Flat Rock Community Schools, on July 8, 2005. The charge was amended on December 15, 2005. In May 2004 and again in January 2005, Stewart filed grievances asserting that Respondent violated its collective bargaining agreement with Stewart's collective bargaining representative, the Flat Rock ESP Association (the Union) by failing to post certain bus runs for bid.¹ The runs in question had been or were assigned to Denise Reeves, the steward for the Union. Stewart asserts that other drivers, including Reeves and alternate steward Renae Boyer,

¹ Stewart also filed a charge against the Union over its failure to proceed to arbitration on these grievances. This charge was dismissed on motion for summary disposition on December 4, 2006. See *Flat Rock ESP Association, MEA*, 19 MPER 79 (2006).

began harassing her at work because they were angry at her grievance. According to Stewart, this harassment began shortly after she filed her first grievance, continued through the 2004-2005 school year, and commenced again in the fall of 2005. In October 2005, Respondent's superintendent put a memo in Stewart's personnel file which Stewart perceived as discipline or a precursor to it. In November 2005, Stewart resigned.

Stewart's charge alleges that Respondent retaliated against her for filing the grievances by refusing to discipline the offending drivers or take other action to stop the harassment. Stewart contends that her resignation under these circumstances amounted to a constructive discharge.

Findings of Fact:

Stewart's Grievances

Stewart was hired by Respondent as a substitute school bus driver in January 2001. In November 2002, she became a regular driver and a member of the Union's bargaining unit. Respondent employs approximately ten regular bus drivers and several bus aides. Respondent's bus drivers select their bus runs for the upcoming school year by seniority at a meeting at the end of August. Drivers bid by seniority on combination am/pm runs that require the driver to work several hours in the morning and another several hours in the late afternoon. There are also a limited number of midday kindergarten runs. Drivers with a regular am/pm run can also bid on a kindergarten run if the kindergarten run does not conflict with the hours of their regular run. Because having a kindergarten run gives a driver more hours, the kindergarten runs are usually selected by the drivers with the most seniority. Runs that become vacant during the school year are posted for bid.

The Union's bargaining unit also includes a bus dispatcher position. Until 2003, the dispatcher worked a few hours in the morning and another few hours in the afternoon. The dispatcher did not drive except in an emergency, i.e. when no regular driver or substitute was available. For some time before the 2003-2004 school year, the dispatcher position was vacant. The drivers, however, wanted a full-time dispatcher. In part because of a request made by the Union's staff representative, Respondent hired a dispatcher for the 2003-2004 school year.

In August 2003, Stewart bid on and was awarded a regular am/pm run of four and one-half hours per day for the 2003-2004 school year. At that time Stewart did not have enough seniority to obtain a kindergarten run. Reeves had more seniority than Stewart and obtained a run that included a kindergarten component.

At the beginning of October 2003, Stewart left on a long-term medical leave. Shortly before Stewart's leave began, the newly-hired dispatcher also left on a medical leave. The dispatcher position was posted, but no regular driver or bus aide bid on it; the dispatcher worked fewer hours per week than even regular drivers without kindergarten runs. After no regular driver bid, Respondent superintendent Charlene Coulson and the Union's staff representative discussed what to do about the position. They agreed that it should be filled with an experienced driver. They also agreed that the dispatcher ought to be allowed to drive when she could so that

she would not suffer a loss in hours from taking the position. The Union and Respondent did not put their agreement into writing at the time, although they understood that it would eventually be incorporated into their contract.

Respondent transportation superintendent Mark Przybylo, the drivers' immediate supervisor, asked Reeves if she would take the dispatcher position on a temporary basis. She agreed. Reeves was allowed to keep her kindergarten run and to drive so-called extra duty runs, including field trips. Reeves' am/pm run was posted as a vacant run in accord with the contract. When no regular driver applied, the run was assigned to a substitute driver.

When Stewart returned from leave on May 10, 2004, she filed a grievance asserting that all of Reeves' runs should have been posted. Her grievance also asserted that Reeves should not be allowed to drive field trips since they were not emergency runs. When she filed her grievance, Stewart told Union president Maryann LaPlante that Reeves could only have one job, either bus driver or dispatcher. She asked LaPlante where in the contract it said otherwise. LaPlante told Stewart that the Union and Respondent had made an oral agreement to allow Reeves to serve as temporary dispatcher and also drive a bus, but Stewart was not satisfied with LaPlante's explanation. As indicated in her charge, Stewart evidently believed that the agreement was made specifically to benefit Reeves because she was the Union steward.

Przybylo denied Stewart's grievance at the first step in June 2004, stating in his answer that the Union and Respondent had made an agreement in October 2003 and that the grievance was untimely because if there was a violation of the contract the grievance should have been filed at that time. The grievance was denied by Coulson at the third step in August 2004. After a Union membership meeting was held in the fall of 2004 to discuss the issue, Stewart was told by the Union that it would not take her grievance to arbitration.

Reeves continued to serve as dispatcher while driving a kindergarten run throughout the 2004-2005 school year. Reeves also often left the dispatch office to drive a regular am/run and she also drove field trips. Stewart felt that her earlier grievance had never been addressed. Accordingly, on January 13, 2005, Stewart filed a second grievance which asserted, essentially, that Reeves should not be allowed to drive while filling the dispatcher position. Respondent denied this grievance again on the basis that it had an agreement with the Union that allowed this. The Union's new staff representative, Gaye Shaw, made it clear to Stewart that she did not agree with the grievance. The Union refused to take the January 2005 grievance to arbitration.

Alleged Harassment by Employees and Respondent's Response

The Union officers and representatives who were aides and bus drivers agreed that Stewart's grievances lacked merit. Shortly after Stewart's first grievance was denied by Respondent, Nancy Papineau, the Union vice-president, told Stewart that her grievance "would not fly." Boyer asked Stewart why she filed the grievance. According to Stewart, Reeves told her, "I am a strong person. I will get you and I will win." Stewart testified that sometime later Reeves also accused her of "being piggish" and of attempting to bankrupt Respondent.

Stewart testified without contradiction that before she filed her first grievance in May 2004, her relationship with the other drivers was good. After she filed the grievance, some drivers refused to speak to her. In the few weeks between the filing of the grievance and the end of the 2003-2004 school year, a number of incidents took place which appeared to Stewart to be attempts by other drivers to scare or annoy her. On more than one occasion, Stewart was cut off by another driver as she was attempting to back her bus out of the bus yard. Once Reeves drove her bus at Stewart's and stopped just short of hitting her. Over the Memorial Day weekend, Stewart had to leave her bus in the street upon returning from an extra duty run because Reeves gave her the wrong key to get into the locked yard. One another occasion, Stewart waited a long time for her students to come out of school at the end of the day. When she finally went to inquire, she was told that someone had told the school to keep them inside.

At least twice before the end of the 2003-2004 school year, Stewart went to Przybylo to complain about how hostile the other drivers were acting towards her. According to Stewart, she told Przybylo that this was because of her grievance. Stewart's daughter, Kim Wisemen, a substitute driver, also went to Przybylo to complain about how her mother was being treated by the other drivers. Przybylo told Stewart and Wiseman that the other drivers could say what they wanted and that he could not do anything about it because they were adults. Przybylo admitted that Stewart complained to him about her treatment by other drivers, although he denied that she told him that she believed this was related to her filing the grievance. Since Stewart testified without contradiction that her problems with the other drivers began with the grievance, it seems unlikely that she and Przybylo would not have discussed this. I credit Stewart's testimony on this point.

At the beginning of the 2004-2005 school year, Stewart began keeping a list of remarks other drivers made to her that she believed constituted harassment. At least four different drivers told Stewart that she was too old and needed to retire, that she was a bad person, or that she had a bad attitude. They accused her of spreading rumors. Boyle called her a f-----g bitch. Other incidents occurred with the buses which Stewart believed constituted harassment by other drivers. For example, as Stewart was about to drive the football team to a game, Reeves suddenly ordered everyone off her bus and told Stewart to drive the cheerleaders instead; because the cheerleaders left the game sooner than the team, this run was shorter. As with the incidents occurring the previous spring, however, there was no way to prove that a driver had intentionally done something to Stewart. Stewart reported these incidents to Przybylo. According to Stewart, she also complained directly to Coulson, although Coulson denied hearing anything about Stewart's harassment complaints before January 2005.

In about October 2004, Boyer came up to Stewart in the bus drivers' lounge and threw a packet of documents at her that Boyer said she had obtained from the Internet. Boyer told Stewart that "nobody would represent her on the harassment." In November or December 2004, Boyer, while driving her bus immediately behind Stewart's, said over the radio, "I wish I had a bazooka." When Stewart complained to Przybylo about this remark, Przybylo spoke to Boyer, who denied that the comment was directed at Stewart. In early January 2005, Stewart had to drive a bus without a radio. Throughout the day, other drivers made remarks to each other over the radio about Stewart. Wiseman heard these remarks and reported them to her mother. When

Stewart reported this to Respondent business manager Nancy Hadley, Hadley told her just to do her job to the best of her ability.

Coulson admitted learning about Stewart's problems with other employees sometime in January 2005. She told Stewart to report each incident to Przybylo immediately and to follow up with a written complaint. When Stewart filed her second grievance, on January 13, 2005, she gave Coulson the list she had been keeping since September of remarks made by other drivers. The following day, Coulson wrote to Stewart to remind her to report each incident to Przybylo as it happened and to also make a written report immediately so that incidents could be addressed as they happened and not months later.

After Coulson received Stewart's list, she spoke with Reeves, Boyer and another driver named in the list, Julie Stief, about some of Stewart's allegations. According to Coulson, the drivers denied making most of the remarks attributed to them. Coulson concluded that there was not enough evidence to support taking disciplinary action against any of the drivers.

Stewart came to Coulson's office after school on several occasions after January 13 to report incidents of alleged harassment. For example, Stewart told Coulson that another driver had blocked her access to the yard by washing her bus in the entranceway near the gate.

On March 2, 2005, Coulson met with Stewart, Przybylo, Shaw, LaPlante, and Papineau to discuss Stewart's complaints. All but Papineau testified at the hearing, and all the witnesses agreed that sometime during the meeting, Stewart asked Coulson if she "knew what a contract was." Shaw interrupted and said that there was nothing more to be discussed about the grievances Stewart had filed. According to Stewart, she replied that if there had not been a grievance, there would have been no harassment. According to Stewart, everyone then got up and left the meeting. The other witnesses, however, testified that the meeting continued for at least an hour, that there was discussion of the specific incidents mentioned in Stewart's January 13 list, and that Stewart was asked to provide more detail about some of the incidents. Coulson testified that she told Stewart that in any job things are sometimes said and that Stewart should not take these things personally. Shaw testified that there was discussion during the meeting of what process should be used for Stewart's complaints. According to Coulson, she told Stewart again that if she had a complaint she needed to let Przybylo know immediately and then follow up with a written statement in a timely manner. Coulson said if Przybylo was not immediately available she should bring the complaint to her or leave a message on her voicemail. Stewart admitted on cross-examination that during this meeting she was asked and answered a few questions about her harassment allegations and about the hostility of the other drivers. I credit Coulson's and Shaw's testimony regarding what took place at the March 2 meeting.

In late March and early April 2005, Stewart filed three incident reports alleging that drivers were telling other drivers not to talk to her, that Reeves had deliberately failed to inform her of a schedule change, and that a driver had again blocked her from leaving the bus yard by parking a bus in the exit to wash it. During this period, Coulson also received written complaints from other drivers about Stewart's conduct toward them. On April 25, Coulson wrote Stewart that she could find no evidence that drivers had told other employees not to speak to her. She informed Stewart that there had been a last minute change in the school schedule on the day in

question. Finally, she told Stewart that she would have Przybylo talk to drivers about where they washed their buses.

Stewart testified that after school began for 2005-2006 school year, Reeves again asked her if she was trying to bankrupt the district and told her she was being piggish. Reeves also told Stewart that she was too old and needed to retire. Stewart complained to Przybylo that the other drivers were “saying the same things and doing the same things” that they had done the previous year. Stewart also spoke again to Hadley, who told her that she would speak with the other drivers. Finally, Stewart went to see Coulson in Coulson’s office and told her that “this stuff was still going on downstairs.”

On September 6, 2005, Stewart was backing her bus out of the yard when another bus backed into her path. Stewart wrote out a complaint and gave it to Przybylo, who said he would talk to the drivers. Stewart also spoke to Coulson, who told her that she would handle it. During this same week, Coulson received three complaints about Stewart’s conduct while driving a bus. Two were from other drivers. One driver said that Stewart had dropped off a kindergarten student who had been put on her bus by mistake without noticing that no parent was there to pick the student up. The other reported that Stewart had left a student sitting alone on her bus while she walked another student into a school, a violation of the rules. On September 9, Coulson met with Stewart to discuss these complaints, and another from a parent who complained that Stewart would not let her child sit in the back of the bus. Coulson also told Stewart to fill out another report on the September 6 incident with more details. Stewart told Coulson that she was not aware that the first student was a kindergartener because the student did not have a name tag, that the second incident had not happened, and that she had a rule that kindergarten and first grade students had to sit in the front of her bus. Coulson told Stewart that she was satisfied with her explanations. On September 12, Coulson gave Stewart a memo summarizing what had been discussed at the meeting, including Stewart’s responses to the complaints against her. The memo stated that it was being placed in Stewart’s personnel file. Coulson testified that she wrote this memo to document that she had addressed these complaints about Stewart’s conduct.

On October 1, 2005, Stewart’s doctor filled out a form indicating that Stewart should be given medical leave for stress-related symptoms. The leave was later extended through November 14. After Stewart’s doctor released her to return to work in the middle of November, Stewart resigned.

Discussion and Conclusions of Law:

A person who in good faith asserts an individual grievance based on a provision of a collective bargaining agreement is protected by Section 9 of PERA because the collective bargaining agreement is the result of “concerted activities by the employees for their mutual aid and protection.” An employee may not be discharged or otherwise discriminated against for attempting in good faith to enforce a right claimed under a collective bargaining agreement. *MERC v Reeths-Puffer School District*, 391 Mich 253, 265-66 (1974). Stewart, therefore, was engaged in activity protected by PERA when she filed her two grievances and attempted to persuade the Union to pursue them.

Stewart maintains that from May 2004 until her resignation in the fall of 2005, she was harassed by other drivers because she filed the two grievances. None of the drivers who were alleged to have participated in this conduct were called as witnesses in this case. I find that Stewart produced credible evidence that some other drivers, including Reeves and Boyer, were upset at her grievances challenging the agreement to allow Reeves to drive a bus while serving as dispatcher. Stewart also testified, without contradiction, that throughout this period other drivers criticized her and made insulting remarks about her age. She also testified to numerous incidents which might have been attempts by other drivers to frighten or annoy her.

This charge, however, involves Respondent's conduct, not the conduct of Stewart's fellow employees. More specifically, the issue in this case is Respondent's motivation for failing to discipline the drivers or take more aggressive action to put a stop to the conduct about which Stewart complained. When a charging party alleges that an employer's adverse action was motivated by hostility toward him or her for filing and pursuing a grievance under a collective bargaining agreement, the burden of proof is on the charging party. *Utica Cmty Schs*, 20 MPER 104 (2007). See also *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 employer's decision to take the action about which the charging party has complained. *MESPA v Ewart 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, in addition to the fact that adverse action was taken against him or her, (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 action. *Rochester Sch Dist*, 2000 MERC Lab Op 38, 42; *Univ of Michigan*, 1990 MERC Lab Op 272, 288.

As noted above, Stewart was engaged in protected concerted activity when she filed grievances and attempted to persuade the Union to pursue them. There is no dispute that Respondent had knowledge of Stewart's protected activities. Respondent denied the grievances on the basis that it had an agreement with the Union to do what it did. However, there is no evidence that Respondent was hostile toward Stewart because she filed or insisted on pursuing them. Stewart argues that a retaliatory motive should be inferred in this case from circumstantial evidence, including Respondent's "cavalier" treatment of Stewart's complaints and its failure to thoroughly investigate them. Although anti-union animus or hostility can be inferred from circumstantial evidence, in this case there are other reasonable explanations for Respondent's conduct. First, underlying Stewart's complaints was a dispute between her and her fellow employees over the propriety of the Union entering into the agreement that allowed Reeves to both act as dispatcher and drive runs that would otherwise have gone to lower seniority drivers. Przybylo's responses to Stewart's complaints indicate that he was, reasonably enough, reluctant to become involved in a dispute of this nature. Moreover, with the possible exception of Boyer's remark about wishing for a bazooka, the individual incidents about which Stewart complained did not, standing alone, offer clear grounds for discipline. There may have been other things that Respondent could have done, including speaking more firmly to the offending drivers, that might have reduced the problems between Stewart and her co-workers. However, the mere fact that Respondent did not take these steps does not support an inference that Respondent was hostile

toward Stewart because she filed or pursued her grievances. I conclude that Stewart failed to establish a prima facie case that Respondent's failure to act in this case was motivated, even in part, by her protected concerted activities. I recommend, therefore, that the Commission issue the following order.

RECOMMENDED ORDER

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Julia C. Stern
Administrative Law Judge

Dated: _____