

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

In the Matter of :

CITY OF LIVONIA,
Public Employer-Respondent,

Case No. C07-G-156

-and-

MICHIGAN AFSCME COUNCIL 25,
Labor Organization-Charging Party.

APPEARANCES:

Roumell & Lange, P.L.C., by Gregory T. Schultz and Elizabeth A. Young for Respondent

Miller Cohen, P.L.C., by Timothy A. Greimel and Bruce A. Miller for Charging Party

DECISION AND ORDER

On November 19, 2008, Administrative Law Judge (ALJ) Julia C. Stern issued her Decision and Recommended Order in the above matter finding that Respondent, the City of Livonia (Employer), violated Sections 10(1)(a), (c), and (d) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210(1)(a), (c), and (d), by discharging Ann Maria Camerella, an employee represented by Charging Party, Michigan AFSCME Council 25 (Union), because of her union activities. The ALJ held that the Employer's rationale for terminating Camerella was pretextual, and that its decision was motivated by anti-union animus and hostility toward her campaign efforts on behalf of the Union. The ALJ recommended that we order Respondent to cease and desist from such unlawful activity and to take affirmative action to make Camerella whole.

The Decision and Recommended Order was served on the interested parties in accordance with Section 16 of PERA. After requesting and receiving an extension of time, Respondent filed exceptions to the ALJ's Decision and Recommended Order on January 12, 2009. Charging Party filed its Brief in Support of the ALJ's Decision and Recommended Order on March 9, 2009, after being granted four extensions of time.

In its exceptions, Respondent argues that the ALJ erred in finding that Charging Party established a prima facie case of discrimination. It contends that Charging Party failed to show a causal connection between Camerella's union activity and her discharge. Respondent also claims that the ALJ erred in failing to find that the Employer demonstrated with credible

evidence that Camerella would have been discharged even in the absence of the protected conduct. We have reviewed Respondent's exceptions and find them to have merit.

Statement of Facts:

Respondent operates a recreation center that is part of its parks and recreation department. The center's staff includes: the recreation center facility manager, Tom Murphy; five other full-time supervisory employees; between five and seven part-time building supervisors; and twenty-five to thirty nonsupervisory employees.

In August 2003, Camerella was hired by the recreation center's fitness manager, Scott Spahr, to work as a part time equipment desk attendant. Sometime later, Spahr recommended her for promotion to part-time building supervisor. After interviewing with Murphy, she obtained the position in March 2004. As building supervisor, Camerella worked from twenty to twenty-five hours per week, generally between 5:00 p.m. and 11:00 p.m. She was responsible for: sometimes opening up the building in the morning; sometimes locking the building at night; collecting and verifying the count of money from the cash registers at closing; regularly inspecting locker rooms and other areas of the facility during her shift; and overseeing the work of the employees staffing the front desk, equipment desk, concession stands, gym, and fitness center. She was required to be familiar with the center's employee handbook in order to make sure the employees were following its policies. Further, she was responsible for monitoring the behavior of minors using the facility, and responding to complaints from the center's customers.

Murphy was Camerella's direct supervisor, but when he was not on duty, she and the other part-time building supervisors took direction from whichever full-time supervisor was present during their shift. Murphy was authorized to discipline employees for infractions of Respondent's policies, but could not discharge them without the approval of the parks and recreation department superintendent, Karen Kapchonick.

Respondent's Discipline of Camerella before the Union Campaign

Respondent has written rules of conduct for employees contained in its General Employee Handbook, a copy of which was received by Camerella on April 20, 2005. The handbook gives notice of Respondent's policies on a wide variety of issues including such topics as dress code, lunch periods and breaks, phone calls, and time card procedure. It indicates the behavior Respondent expects from its employees, and that discipline could result from infractions of the policies, but it does not specify the discipline, or range of discipline that may be imposed for infractions. Respondent also has a Building Supervisor Team Handbook, which covers the conduct that is expected of building supervisors, delineates some of their specific duties, and provides guidance on how they should handle certain situations that may arise. Camerella acknowledged receiving both handbooks and that she had been trained on the information contained in those handbooks on September 22, 2005.

On a number of occasions throughout Camerella's employment, Murphy counseled Camerella on her actions with regard to cell phone use, taking extended or multiple breaks, smoke breaks, filling out paperwork properly, or calling in at the last minute to have someone cover for her. Murphy did not always write up these infractions. Murphy estimated that he had

documented counseling of Camerella for fifteen different incidents before July 2006 and had given her official write ups. After that date, he estimated that he gave her probably another dozen "unofficial" write-ups. The official disciplinary notices issued to Camerella were made part of her personnel file and, according to Murphy, each could have formed the basis for discharge. However, the unofficial ones were not included in her personnel file, as they were for incidents about which Murphy believed only counseling was necessary to encourage Camerella to change her behavior.

Camerella, who was hired in August 2003 and became a building supervisor in March 2004, received her first disciplinary write-up in August 2004, when she was cited for carelessness because she failed to lock the outside doors at the end of the day and she failed to return cash bags to the counting room. Murphy did not include this write-up in Camerella's personnel file, but kept it in his counseling file. However, less than a year later, in April 2005, Murphy gave Camerella an official written reprimand, which he included in her personnel file, for tardiness in excess of an hour on each of two days and for failing to punch in or have her time card signed on a third day. Also in April 2005, Murphy added a written disciplinary notice to his counseling file indicating that he had reprimanded Camerella for failing to prepare an accurate report of an incident in which children were punished for apparent misbehavior at the center. Camerella signed the disciplinary notice indicating her agreement with the reprimand on May 3, 2005.

In June 2005, an oral reprimand was placed in Camerella's personnel file for leaving a bag of money at a cash register at closing instead of taking it into the counting room. The reprimand also noted that incident reports must be completed in full. As with the August 2004 counseling, this write-up noted that the closing supervisor is required to verify that all the cash bags have been returned to the accounting room each night. The written notice of the oral reprimand also noted that when closing, Camerella was permitted to park in the back lot after 8:30 p.m. and when opening, she was allowed to enter through the receiving room but was required to move her car to the main lot before 7:00 a.m.

On September 19, 2005, Murphy gave Camerella an official written reprimand for being tardy twice within one week. This was her second official reprimand for tardiness.

In February 2006, Murphy talked to Camerella about complaints he had received from another employee. Murphy also talked with Camerella about the dress code and the parking rules. Sometime after that, Murphy talked to Camerella about complaints he received from an anonymous employee stating that Camerella was writing up employees for taking breaks that were too long while taking too many breaks herself. Murphy did not prepare a disciplinary notice for either of these meetings with Camerella, but kept notes of the incidents in his counseling file.

In May 2006, Murphy issued a third official written reprimand to Camerella. The reprimand was given to her because she incorrectly verified or failed to verify two cash register reports. At the same time Camerella was orally warned against abusing the break time policy by taking multiple shorter breaks, an infraction about which Murphy had previously counseled her.

Camerella's Union Activity

In June 2006, Charging Party started a campaign to organize unrepresented employees in Respondent's parks and recreation department. On July 10, 2006, Charging Party filed a petition with MERC for a representation election. Respondent contested this action for various reasons, and hearings were held before a MERC ALJ on Charging Party's representation petition on November 13, 2006, December 21 and 22, 2006, and January 19, 2007. Camerella, having been subpoenaed by Charging Party, was present for each hearing and testified at the final one. It was Camerella's understanding that Charging Party wanted her to testify to help it rebut Respondent's contention that the employees seeking representation were only seasonal and casual employees. The Commission issued a Decision and Direction of Election on November 7, 2007. An election was conducted in April 2008; the Union did not receive a majority of the votes cast.

Camerella was a union organizing committee chairperson and arranged several organizing meetings at local restaurants. She also talked to employees and tried to persuade them to sign union authorization cards. Employees were told by Respondent that no one was to discuss the Union while they were on the clock and the full-time supervisors were told to watch out for union activity occurring while employees were supposed to be working.

As of late July 2006, Murphy knew that Camerella was asking employees to sign union authorization cards. He learned that she was on the organizing committee the following December during a MERC hearing on the representation case. Respondent met with Camerella some time during July of 2006; it warned her not to pass out union authorization cards or to talk to other employees about unionization during work time. Murphy and Kapchonick met with Camerella after they had received complaints that Camerella was urging employees, including an on-duty lifeguard, to sign union authorization cards while those employees were working. Camerella insisted that she did not discuss union issues with other employees while she or they were working.

Respondent maintains several surveillance cameras at the recreation center. Employees are aware of the cameras and Respondent uses the cameras, from time to time, to check on employees as they work. Because Murphy had received various reports that Camerella talked with other employees about union activity during work time, he observed Camerella directly and reviewed videotapes of her working to determine whether she was engaging in union activity on the Employer's time. However, he did not see Camerella engage in any union activity during working hours.

In August 2006, Murphy told Camerella that the full-time supervisors would benefit if the Union was elected by the employees, assuming continuance of the Employer's usual practice of giving administrative employees whatever benefits the Union bargains for its members. However, he later told Camerella that she should be careful about what she was asking for by trying to bring in the Union. Murphy testified that this comment was based on his experience at another facility where the employees had eventually voted out the union, but he did not tell Camerella about the basis for his comment.

Spahr, Camerella's initial supervisor at the recreation center, frequently referred to her as

a “union organizer” and made comments about “her union buddies.” This bothered Camerella and she complained to Murphy about it in May, 2007. There is no indication in the record that anyone other than Spahr made such comments about Camerella’s union activities or those of other employees assisting with the Union’s organizing campaign. Further, there is no evidence that Spahr participated in Respondent’s decision to discharge Camerella or in any of the prior discipline that was considered in her discharge.

Respondent’s Discipline of Camerella after Becoming Aware of Her Union Activity

In October of 2006, Murphy counseled Camerella about failing to punch in on two separate dates and not getting a supervisor to initial the time card. In addition, on October 12, 2006, Murphy gave her a disciplinary notice for carelessness after she left her master keys in a desk drawer over the weekend. She was warned that the keys were not to be left unattended and she should have taken them home over the weekend. Murphy added the notice to his counseling file instead of to Camerella’s personnel file.

On November 2, 2006, Camerella was suspended for one week for being forty-five minutes late in arriving for her 5:30 a.m. shift.

On February 27, 2007, the City decided to ban all sales on its premises including sales on behalf of nonprofit entities. Previously, it had only banned the sale of goods for profit. In an effort to make extra money, Camerella makes and sells candles. In February of 2007, she arranged for some of her customers to pick up the candles at the recreation center. Later that month, Murphy received a note from Erin Knieper, one of the full-time building supervisors, asserting that employees were complaining about Camerella selling her candles at the recreation center. On February 28, 2007, Murphy warned Camerella about selling items in the building, about making private phone calls while at work, and about allowing her boyfriend to go behind the front desk. During that meeting, Camerella observed the note from Knieper on Murphy's desk and asked to see it. Murphy refused to allow her to see the note. Subsequently, another employee accused Camerella of taking the note and covertly showing it to that employee. The employee also accused Camerella of suggesting that another employee should trip Knieper, who was pregnant, with a vacuum cleaner. As a result of those events, Camerella was required to meet with Kapchonick, Murphy, and Respondent's human resources director, Robert Biga. At that meeting, she denied the allegations of wrongdoing and was suspended without pay pending the Employer's investigation of the matter. On March 23, 2007, Camerella was allowed to return to work because the Employer's civil service division determined there was insufficient evidence to pursue termination. On March 26, 2007, Camerella received a letter from Biga explaining that the investigation took as long as it did because of conflicting information from various employees and changes in Camerella’s responses to questions. Biga’s letter reminded Camerella of the importance the Employer places on its ability to trust supervisory staff and warned her that any breach of trust or confidence would result in appropriate disciplinary action up to and including discharge.

In May 2007, Spahr told Camerella that because of her union activities he was instructed to watch her and to keep track of the time she took to go to the bank to obtain change for the cash registers, and that she could take no more than five minutes to run that errand. On May 21, 2007, Camerella reported the incident to Murphy, who responded that it was a supervisor's

responsibility to keep track of employees' whereabouts. Murphy asked Camerella if she wanted to file a formal harassment charge against Spahr for the comments about her union activity. Camerella declined to file harassment charges, but asked Murphy to have a talk with Spahr and have him stop talking about her union activity. When Murphy talked to Spahr, Spahr confirmed telling Camerella to go see her "union buddies." Spahr told Murphy that he and Camerella frequently joked around and that he was merely kidding her. Murphy informed Spahr that he was not to refer to the Union or union issues when talking to Camerella at any time. Murphy reported back to Camerella about his conversation with Spahr, informed her that Spahr would not be making any further comments to her about union activities and reminded her that she should not discuss any union issues with the staff on duty. Spahr never disciplined Camerella, but had previously complained to Murphy about her regarding cell phone use, smoke breaks, and miscellaneous issues of that nature -- things about which Murphy had spoken to Camerella.

On May 29, 2007, Murphy received a report from a parks and recreation department employee that Camerella's car was observed parked in the center's receiving area, around noon, the previous Sunday. Upon investigating, Murphy concluded that Camerella had parked in the area for her entire shift, from noon to approximately 5:15 p.m. Murphy informed Kapchonick of the results of his investigation and recommended to Kapchonick that Camerella be discharged for the parking violation and numerous other prior infractions. Respondent's written rules designating where employees are permitted to park had been provided to Camerella and Murphy had previously counseled her about where she was permitted to park.

Murphy and Kapchonick discussed the allegation that she had been parking in a prohibited area with Camerella during a meeting on June 20, 2007; they informed her that disciplinary action for the parking infraction could result in discharge. Camerella responded by explaining that she had obtained permission from Jason Sturos, another full-time supervisor, to park there because she wanted to load her truck with some boxes that one of the custodians had promised to give her. At that meeting, Camerella also contended that other employees had much worse attendance records than she did, but they were not disciplined. She brought up concerns regarding past discussions with Spahr and Murphy about her union activity, and claimed that the Employer was trying to get rid of her for that reason. As a result, Respondent elected not to discharge Camerella at that meeting and to investigate before proceeding further.

Kapchonick and Murphy investigated Camerella's allegations after the meeting. As part of her investigation, Kapchonick spoke with Sturos around June 23, 2007. Sturos did not confirm Camerella's claim that he had given her permission to park in the receiving area. While investigating, Kapchonick received a report from another full-time supervisor, Vern Waara, that on May 13 and May 20, Camerella was late for work and had asked Waara to initial her time card on those occasions. Kapchonick believed that Camerella made the request to avoid punching in late in order to conceal her tardiness and considered this an attempt by Camerella to falsify her time card.

Camerella was terminated effective June 27, 2007. She was given a termination letter stressing that she had previously been warned on March 26, 2007 by the human resources director "that a trust of a supervisor is extremely important and that any breach of trust or confidence will result in appropriate disciplinary up to and including discharge." The

termination notice explains that the violation of the parking rules in May of 2007, and arriving late for work and then asking a supervisor to initial her time cards instead of punching in was a breach of trust and confidence.

Discussion and Conclusions of Law:

Under Section 10(1)(c), of PERA, to establish a prima facie case of discrimination, Charging Party must establish: (1) union or other protected activity; (2) employer knowledge of that activity; (3) anti-union animus or hostility towards the protected rights; and (4) suspicious timing or other evidence that protected activity was a motivating cause of the alleged discriminatory actions. See *Waterford Sch Dist*, 19 MPER 60 (2006); *Northpointe Behavioral Healthcare Systems*, 1997 MERC Lab Op 530, 551-552. Only after a prima facie case is established does the burden shift to the employer to produce credible evidence of a legal motive and that the same action would have been taken even absent the protected conduct. *MESPA v Evart Pub Sch*, 125 Mich App 71, 74 (1983); *Wright Line, a Division of Wright Line, Inc*, 662 F2d 899 (CA 1, 1981); See also, *City of St Clair Shores*, 17 MPER 27 (2004); *North Central Cmty Mental Health Services*, 1998 MERC Lab Op 427, 436.

The facts establishing Camerella's union activity and the employer's knowledge of that activity are generally un rebutted. While there may be some discrepancy in the testimony about when Kapchonick learned of Camerella's union activity, it is clear that both she and Murphy were aware of that activity months before arriving at the decision to discharge her in June 2007. However, a key element needed for Charging Party to establish a prima facie case is missing – anti-union animus. We find the evidence in the record insufficient to establish that Respondent was motivated by anti-union animus or hostility towards Camerella's protected activity. As evidence of anti-union animus, Charging Party points to the taunts by Spahr in calling Camerella a union organizer and referring to Camerella's "union buddies." However, Spahr did not take part in the decision to discharge Camerella and did not issue any of the discipline that was considered in that decision. Charging Party also points to Murphy's comment that Camerella "had better be careful of what she asks for" in trying to bring in a union. However, it is apparent, as Murphy testified, that his comment was merely based on his observations of other workers' dissatisfaction with their union and did not indicate any hostility towards Charging Party, its supporters, or union activity in general. Employer statements do not automatically rise to the level of union animus merely because they criticize or express a negative view of unions. *City of St Clair Shores*, 17 MPER 27 (2004); *Swartz Creek Cmty Sch*, 1989 MERC Lab Op 264, 276; *City of Detroit*, 1989 MERC Lab Op 1127, 1130. Accordingly, we find that the statements by Spahr and Murphy to which Charging Party has pointed do not indicate that Respondent's actions were motivated by anti-union animus.

A further indication of anti-union animus, Charging Party contends, is the Employer's use of video surveillance to discern whether Camerella was soliciting other employees' signatures on union authorization cards during work time. It is not unlawful for an employer to restrict employees from passing out authorization cards while they are on duty or while the employees to whom they are giving the cards are on duty. See *Harper Hospital*, 1970 MERC Lab Op 527 (no exceptions). It is evident from the record that the Employer had the video surveillance in place before the Union's organizing campaign began and used it in the ordinary

course of business. The fact that Murphy checked the recordings to determine whether Camerella was doing union business when she was supposed to be working is not a violation of Section 10(1)(a) nor is it an indication of anti-union animus. *Wackenhut Corp*, 348 NLRB 1290, 1299 (2006). See also *City of Livonia*, 22 MPER 40 (2009).

Further, it is not evident that protected activity was a motivating cause of Respondent's decision to discharge Camerella. Camerella's direct supervisor, Murphy, knew of her union activity for almost a year before she was discharged. His supervisor, Kapchonick, knew of Camerella's activity several months before her discharge. We do not believe, as Charging Party contends, that Camerella's complaint to Murphy about Spahr had any bearing on Respondent's decision to discharge Camerella. Further, the Commission finds that Respondent demonstrated with credible evidence that it would have discharged Camerella even in the absence of the protected conduct. Camerella had a long history of discipline both before and after she became involved with the Union. She had received repeated warnings and reprimands. She was given a week long disciplinary suspension for tardiness in November 2006 and a two week suspension in March of 2007. The tardiness and parking issues were matters that she had been counseled about in the past. It is evident that the Employer had reached a point where it could no longer trust her to fulfill her responsibilities as a building supervisor in the way Respondent needed. Accordingly, we conclude that the reason for her termination was because of her work related misconduct and not because of her union activities. Therefore, we find that Respondent did not violate Section 10(1)(a)(c) or (d) of PERA when it terminated Camerella.

We have considered all other arguments presented by the parties and conclude that they would not change the results in this case.

ORDER

IT IS HEREBY ORDERED, that the Order recommended by the Administrative Law Judge is hereby reversed and the charge is dismissed.

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**

In the Matter of:

CITY OF LIVONIA,
Public Employer-Respondent,

Case No. C07 G-156

-and-

MICHIGAN AFSCME COUNCIL 25,
Labor Organization-Charging Party.

APPEARANCES:

Roumell, Lange & Cholak, PLC, by Gregory T. Schultz, Esq., and Elizabeth A. Young, Esq., for Respondent

Miller Cohen, PLC, by Eric I. Frankie, 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, this case was heard at Detroit, Michigan on November 2, 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 January 7, 2008, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

Michigan AFSCME Council 25 filed this charge against the City of Livonia on July 2, 2007. The charge alleges that Respondent violated Sections 10(1)(a),(c) & (d) of PERA when, on or about June 27, 2007, it terminated Ann Maria Camerella because of her role in Charging Party's campaign to organize Respondent's employees and because she testified in support of Charging Party's position at a representation hearing before the Commission held on January 17, 2007.

Findings of Fact:

Camerella's Employment and Union Activities

Respondent operates a large recreation center for its residents as part of its parks and recreation department. Six full-time supervisory employees, including recreation center facility manager Tom Murphy, are assigned to the center. With the exception of custodians and maintenance employees, the rest of the center's staff is part-time. Camerella was hired to work as a part-time equipment desk attendant on August 19, 2003, shortly after the recreation center opened. On about March 15, 2004, Camerella applied for and was promoted to building supervisor, another part-time position but one with more responsibility. As a building supervisor, Camerella opened up the building in the morning and locked it up at night. She collected and verified the count of the money from the cash registers after the center closed. She conducted regular inspections of locker rooms and other areas of the facility during her shift. She also oversaw the work of employees manning the front desk, equipment desk, and concession stands and staffing the gym and fitness center. As a building supervisor, Camerella was required to be familiar with the center's employee handbook in order to ensure that employees were adhering to its policies. Her other responsibilities included monitoring the behavior of children and teens using the facility without adult supervision and responding to and resolving complaints from the center's customers.

Camerella worked between twenty and twenty-five hours per week, most often between five and eleven p.m. Building supervisors formally report to Murphy. However, the six full-time supervisors take turns supervising the building outside of normal business hours, and the building supervisors take direction from whoever is in charge during their shifts.

Charging Party represents a bargaining unit of department of public works employees and other full-time and regular part-time employees of Respondent, including full-time custodians and maintenance employees assigned to the center. In May or June of 2006, Charging Party initiated a campaign to organize unrepresented employees in Respondent's parks and recreation department employees, most of whom were employed at the recreation center. Several members of Charging Party's existing unit, including Roger Ponder, a custodian assigned to the recreation center, were involved in this campaign. Camerella was the first chairperson of the organizing committee, and she arranged several organizing meetings at local restaurants. She told employees at the center that if they had questions about the union they should bring them to her, and she relayed their questions to Charging Party's staff representative. Camerella also solicited employees to sign union authorization cards.

On July 10, 2006, Charging Party filed a petition for a representation election among the parks and recreation department employees. Respondent contested the appropriateness of the unit, claiming that the employees covered by the petition were casual or irregular. Hearings were held on this petition on November 13, December 20 and December 21, 2006 and January 19, 2007. Camerella was subpoenaed by Charging Party for all four days of hearing. Camerella and two other recreation center employees testified on Charging Party's behalf at the January 19

hearing. The Commission issued a Decision and Direction of Election on November 7, 2007, and an election was conducted in April 2008 which Charging Party lost.

Respondent's Reaction to the Organizing Campaign

Only three witnesses testified at the hearing - Camerella, recreation center facility manager Tom Murphy, and parks and recreation department superintendent Karen Kapchonick.

In July 2006, Charging Party sponsored an organizational picnic for employees at the recreation center. Both Camerella and Murphy testified that sometime during that month, Respondent met with Camerella on an individual basis to warn her not to pass out cards or talk to employees about the union during work time. According to Camerella, Kapchonick told her that an employee Camerella's son was dating had told Kapchonick that Camerella was organizing a union. According to Murphy, he and Kapchonick met with Camerella after they had received complaints about Camerella bothering employees while they were working and pressuring high school age employees to sign cards.

Murphy testified that after Respondent learned of the union activity, the center's supervisors were told that no one was to discuss the union while they were "on the clock" and were warned to watch out for this type of activity. Murphy also testified that the supervisors were told that Respondent "didn't want to see any green [union] cards in the building." However, Respondent did not tell Camerella or any other employee that he or she could not distribute cards in the building, and Camerella testified that she understood that she could solicit signatures when both she and the other employee were on break.

Murphy testified:

I guess I had my eye out for [Camerella], looking to see if she's going to be talking to people on company time, again taking employees away from their jobs.

The recreation center has a number of surveillance cameras inside and outside the building. Each camera records activity in a portion of the center, such as a lobby, hallway, or parking lot. Employees know that the cameras are there. Murphy has always used the cameras to check on employees as they work. Murphy admitted that he watched Camerella on the camera to see if she was performing her duties.

In August 2006, Murphy told Camerella that that "she had better be careful of what she asked for in trying to bring the union in." According to Murphy, he was referring to his experience at another recreation facility where the employees eventually voted the union out because rules under the union contract were too strict. However, he did not explain what he meant and Camerella did not ask. Around the same time, Murphy also told Camerella that he thought the full-time supervisors would receive better benefits if the center employees became unionized.

Camerella testified that, throughout the organizing campaign, full-time supervisor Scott Spahr made frequent references to her union activity, including calling her the "union starter,"

and referring to custodian Roger Ponder as “her union buddy.” Although Spahr did not testify at the hearing, Murphy testified that Spahr admitted making these comments after Camerella complained about them in May 2007. Camerella also testified, without contradiction, that sometime in May 2007, she walked into Spahr’s office and told him that she needed to leave the building to get change. According to Camerella, Spahr said to her, “Because you are trying to get the union started, I was told to watch everything that you do.” Spahr said that he was timing Camerella going to the bank, and that she had five minutes to get there and back. When Camerella protested, Spahr pointed to his watch.

Camerella’s Work History

Respondent has a written code of conduct for the part-time employees working at the center. However, it has no rules specifying levels of discipline for various types of offenses and no system of progressive discipline. Respondent uses the same disciplinary notice form for oral warnings, written reprimands, notices of suspension, and notices of termination. Notice forms are given to Murphy, who reviews the facts and takes responsibility for issuing the notice. However, Respondent introduced a sampling of the disciplinary notices it issued to employees other than Camerella for tardiness between March 2005 and June 2007, and it appears from these notices that individual supervisors have considerable discretion over when to issue a notice and what kind of a penalty to assess. If a supervisor recommends that an employee be terminated, Murphy consults with Kapchonick who makes the final decision. For discipline short of termination, Murphy discusses the notice with the employee and, if he decides it should be issued, has the employee sign it. Murphy sometimes puts oral or written reprimands in a separate counseling file instead of the employee’s personnel file.

As noted above, Camerella was hired by Respondent in August 2003 and became a building supervisor in March 2004. On August 9, 2004, Camerella received her first disciplinary notice. Camerella was cited for carelessness for failing to lock the outside doors at the end of a day and failing to return cash bags to the counting room. Murphy did not indicate on the form what the discipline was and he put the notice in his counseling file, not in Camerella’s personnel file.

On April 18, 2005, Camerella received a written reprimand in her personnel file for being one and one-half hours tardy on one day, an hour tardy on another day, and failing to punch in or have her time card signed on a third day. Four days later, Murphy put a notice in his counseling file reprimanding Camerella for failing to prepare an accurate report of an incident where children were punished for misbehaving at the center. About six weeks later, on June 8, 2005, an oral reprimand was placed in Camerella’s personnel file when she left a bag of money at a cash register at the close of the day instead of taking it to the accounting room and failed to complete an incident report on her mistake. When Murphy gave Camerella this reprimand, they also discussed Camerella’s parking in the building’s rear lot by the loading dock. The employee handbook clearly states that employees are allowed to park only in the main lot, further away from the building. As a result of their discussion, Murphy wrote on the reprimand that Camerella was allowed to move her car to the rear lot after 8:30 pm when closing the building and could park there when opening the building as long as she moved her car to the main lot by 7 am. On

September 19, 2005, Camerella received her third formal reprimand - a written reprimand for being tardy twice within the same week.

In February 2006, Murphy called Camerella to his office after an employee she supervised, Lauren Panetta, reported to him that Camerella had spent time at work in the evening doing research on one of the computers in the office, had given Panetta an improper assignment, and had told another employee to leave the building and get Camerella cigarettes. Murphy testified that he generally does not give much weight to complaints from employees about their supervisors' conduct. However, during this same conversation, Murphy also reminded Camerella about the dress code and talked to her again about the parking rules. Murphy called Camerella in to speak to her again after he received an anonymous written complaint that Camerella was writing employees up for taking breaks that were too long while taking too many breaks herself. Camerella did not receive disciplinary notices as a result of either of these conversations.

On May 4, 2006, Camerella received a written reprimand in her personnel file for failing to properly verify two cash register reports. At the same time, Camerella was orally warned that taking multiple smoking breaks of less than fifteen minutes was against policy. Shortly after this, Murphy spoke to Camerella again after he received another employee complaint that Camerella was spending too much time talking on her cell phone, but did not reprimand her.

In October 2006, Murphy spoke to Camerella about failing to punch in or out on two separate dates without getting a supervisor to initial the times. On October 12, Murphy put a disciplinary notice in his counseling file when Camerella left her set of master keys in a desk drawer over the weekend instead of taking them home as was the policy.

On November 2, 2006, Camerella received a week's suspension for being 45 minutes late for her shift. Camerella testified that she had agreed to fill in for the building supervisor scheduled to open the building in the morning but that she overslept.

Events Leading to Camerella's Termination

Camerella sells candles as a way of making extra money. Sometime in late February 2007, Camerella arranged to have some of her customers pick up their candles from her at the recreation center. Some employees who saw the candles placed orders. On February 27, however, Kapchonick had announced at a supervisory staff meeting that the City's mayor had decided to ban all sales, including sales of nonprofit items like Girl Scout cookies, on City premises.¹ On February 28, 2007, Knieper wrote Murphy the following note:

¹ Respondent's previous policy on selling by employees was set out in the buildings supervisors' handbook. It stated:

Staff selling raffle tickets, cosmetics, school fundraisers, etc. should limit activity to meal and rest breaks or leave informational material in break room for staff to read. Under no circumstances is a staff member to be pressured to purchase anything. Staff is not to approach the public using the [center] with requests to buy items or to support fundraisers.

I'm getting complaints on Ann C. selling her candles. She brought them in last night. Something has to be done. Everyone is complaining about her and I'm getting tired of it.

After Murphy received the note from Knieper, he called Camerella into his office, told her that the mayor had recently announced that there was to be no more selling of items in the building, and told her not to bring the candles to work. During this same meeting, he also told her that she was not to allow her boyfriend to come behind the front desk and reminded her that employees were not allowed to make personal phone calls. Murphy had Knieper's note in front of him on his desk while they were speaking, and Camerella asked to see it. Murphy told Camerella that it had nothing to do with the mayor's policy and that she could not look at it.

The following morning, the employee who had complained about Camerella the previous year, Lauren Panetta, came to Murphy's office. Panetta told Murphy that the previous evening, Camerella had shown her a copy of a note from Knieper, told her to keep it away from the camera, and asked her how "she would take it" if it had been written about her. Panetta also told Murphy that about a week previously, Camerella had suggested to another employee, in Panetta's presence, that he trip Knieper with a vacuum cleaner and do harm to her baby. Knieper was pregnant at the time.

Camerella was called into a meeting with Murphy, Kapchonick, and Respondent human resources director Robert Biga and accused of taking a copy of Knieper's note from Murphy's office.² Camerella was suspended without pay pending an investigation. Respondent interviewed Camerella twice, both times in the presence of Charging Party's legal counsel. Camerella denied taking the note from Murphy's desk. She told Murphy that on the day following her meeting with Murphy, she found a note to Murphy from Knieper on her desk, showed it to Panetta, and asked if she knew where it came from. Camerella said that when Panetta denied knowing anything about it, she threw the note away. Camerella also denied making the remark about Knieper. Camerella also told Respondent that she and Panetta had an ongoing dispute about whether Panetta was doing her job properly, and that she believed that Panetta was trying to get her in trouble. Camerella said, in addition, that she believed that the incident was connected in some way to her union activity.

In addition to Camerella and Panetta, Respondent interviewed a number of other employees. It found no witnesses who could support either employee's story. On March 22, Biga decided that there was insufficient evidence to substantiate action against Camerella and allowed her to return to work. On March 26, 2007, Camerella received a letter from Biga which stated:

As indicated in our conversations, trust of a supervisor is extremely important. The Department must be certain that all supervisors who have control over operations at the Recreation Center are completely trustworthy in their actions. The concerns discussed with you regarding conduct that you confirmed is not acceptable in the future.³ Further, we discussed that just as you are concerned

² The original of the note was left on Murphy's desk.

³ The record does not indicate what this conduct was.

about retaliation, so are subordinate employees in the Recreation Center concerned about potential retaliation from you. Please be advised that any breach of trust or confidence will result in appropriate disciplinary action up to and including discharge. It is anticipated that such actions will not be necessary.

About a month later, Kapchonick called Camerella to her office to discuss the fact that Camerella had slept overnight in the recreation center when it was closed. Kapchonick testified that she did not discipline Camerella because the center had no formal policy against sleeping in the center and Camerella could have interpreted her conversation with Murphy as permission to do this.

On Sunday, May 27, 2007, Camerella had an auto accident on the way to work. Because Camerella was concerned about being tardy, she parked in the rear of the building when she arrived at noon. After punching in, Camerella left the building again to get some change from the bank at the suggestion of the building supervisor working the previous shift, Vern Waara. On her way out, a custodian told Camerella that he had some empty boxes he could give her for her upcoming move. He told her that if she parked in the rear of the building near the loading dock he would put them in her car when she returned. Camerella testified that she asked the manager in charge of the recreation center, Jason Sturos, if she could park in the rear to get the boxes and Sturos said that she could. She asked Sturos to remind her to move her car later. When Camerella returned from the bank, she parked by the loading dock. Camerella testified that when she noticed later in her shift that the boxes had not been put in her car, she mentioned to Sturos that her car was still in the back. According to Camerella, Sturos told her that it “was no big deal.”

On May 29, Murphy’s assistant, Ann Cox, told him that Camerella had been parked in the rear of the building when Cox left at about 12:30 pm on May 27. Murphy looked at the building’s surveillance records and saw Camerella’s car in the lot between noon and about 5 pm. Murphy did not ask Camerella about the incident. Later that day, Murphy sent Kapchonick a memo recommending that Camerella be terminated.

On June 20, Kapchonick prepared a notice terminating Camerella. The notice stated:

After being verbally told the procedure for parking by receiving, Ann parked there during her shift on Sunday, May 27 from noon-5:30 pm. This is in violation of a previous warning Ann received on June 9, 2005.

Although the termination notice did not mention other conduct, Kapchonick testified that the termination was for Camerella’s “conduct over time.” Kapchonick called Camerella to a meeting and told her that she was going to be terminated. She asked Camerella whether she had parked in the back on May 27. Camerella said that she had, but that Sturos had given her permission to park there so that she could pick up some boxes. She also told Kapchonick that she thought Murphy “had it in for her.” Camerella mentioned several recent incidents involving other employees where she felt Murphy should have issued discipline, but did not. She also told Kapchonick about Scott Spahr’s references to her union activities. Kapchonick told Camerella that she would investigate these allegations and get back to her by the end of the week.

Kapchonick testified that when she asked Sturos if he gave Camerella permission to park in the back on May 27, he said, "No, maybe, and I didn't give her permission." He said that he would not have given her permission to park there for her entire shift. When she asked him if Camerella asked him to remind her to move her car, Sturos told Kapchonick that she may have asked, but that this was not his responsibility. Kapchonick also testified that she asked Waara if he had given Camerella permission to park in the back on May 27, or if he knew whether Sturos had. According to Kapchonick, Waara knew nothing about this, but mentioned to Kapchonick that on several occasions, including one Sunday that May, Camerella had asked him to initial her time card so that she would not be tardy; he refused. Kapchonick checked Camerella's time cards and saw that she had been a few minutes late punching in on several occasions that month.

On the afternoon of June 26, according to Kapchonick, Camerella called the building supervisor on duty, Mike Wolf, to tell him that she had forgotten that she was scheduled to work and would be arriving late. Kapchonick testified that Wolf later told Respondent that Camerella asked him to say that they had previously agreed he would cover for her so that she would not appear to be tardy, but that he refused. When Camerella arrived fifteen minutes late for the start of her shift, Barbara Gamber, the supervisor in charge of the building at that time, prepared a disciplinary notice. The following day, she gave the notice to Kapchonick, along with a note from Wolf relating what he had told her. According to Kapchonick, she had already decided to terminate Camerella when Gamber gave her the notice. On June 27, Kapchonick gave Camerella a termination letter. The letter read as follows:

On March 26, 2007, Robert F. Biga, Human Resources Director, sent you a letter ending your unpaid administrative leave, and reminding you that "trust of a supervisor is extremely important." The letter further warned you that "any breach of trust or confidence will result in appropriate disciplinary action up to and including discharge." Since then it has come to my attention that you violated staff parking rules in May, 2007 and punched in late for work and/or asked Vern Waara to initial your timecards instead of punching in (presumably in order to conceal your tardiness). These are precisely the sorts of breaches of trust and confidence you were warned against.

You were suspended for one week without pay in October 2006 for violation of Department Rules. In May of 2006, you were issued a written reprimand for incorrectly or not verifying two cashier closeout cash reports and violating break time policy.

A supervisor has to be trusted to conduct himself or herself with honesty and integrity, and to obey the rules he/she enforces against subordinate staff members. Since you have shown that you cannot do this, I am notifying you that you are terminated from employment with the City of Livonia effective June 27, 2007.

When Camerella was given the termination letter, she denied asking Waara to initial her timecards.

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 that the employer took adverse action against the employee and: (1) the employee engaged in union or other protected concerted activity; (2) the employer had knowledge of that activity; (3) the employer's 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. *Eaton Co Transportation Authority*, 21 MPER 35 (2008); *Utica Cmty Schs*, 20 MPER 104 (2007). If the charging party establishes a prima facie case of unlawful 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. *Michigan Educational Support Personnel Ass'n v Evart Public Schools*, 125 Mich App 71, 74 (1983).

Camerella was an active union supporter and involved in soliciting support for Charging Party in the early days of its organizing campaign in 2006. By the end of July 2006, when Charging Party filed its petition for a representation election, Respondent was aware that Camerella was distributing union authorization cards. In fact, both Murphy and Camerella testified that Respondent met with her individually in July 2006 to warn her not to distribute these cards or talk about the union on work time. By the time Camerella was terminated, in June 2007, she had further identified herself with the union campaign by testifying in support of Charging Party's position in the Commission's hearing on Charging Party's representation petition. When Camerella was terminated, Respondent and Charging Party were awaiting a decision by the Commission as to whether an election would be directed on the Union's petition.

Respondent denies, however, that it had animosity toward the union or that there was any causal relationship between Camerella's union activity and Respondent's decision to discharge her. Although Respondent did not call Spahr to testify, it asserts that his references to Camerella as "the union organizer," and his comments about Ponder being her "union buddy," were not evidence of anti-union animus as they did not contain any express or implied threat of retaliation, citing *City of St Clair Shores*, 17 MPER 76 (2004). Moreover, Respondent argues that even if Spahr had a negative opinion of unions, his opinion was irrelevant as there is no evidence that he played any role in Respondent's decision to terminate Camerella.

Respondent's citation to *City of St Clair Shores* is inapt, since the issue in that case was whether statements by an employer criticizing union officers constituted unlawful coercion or interference with employee rights in violation of Section 10(1) (a) of PERA. The Commission noted in that case that expressions of opinion by management representatives, even if critical of unions or union officers, do not violate Section 10(1)(a) unless there is an express or implicit threat of retaliatory action. Spahr's remarks are not alleged in this case to constitute unlawful interference or coercion in violation of Section 10(1) (a). Rather, Charging Party simply argues that they show Respondent's state of mind toward Charging Party's organizing efforts.

Employer statements that criticize or express a negative view of unions are not automatically proof of union animus. *City of St Clair Shores*, 17 MPER 27 (2004). If Murphy had explained to Camerella, as he did at the hearing, that he had himself had had a negative

experience with a union, this would have been an expression of opinion. However, Murphy's actual statement to Camerella, that "she had better be careful what she wished for" in seeking a union, had a sinister ring. I also disagree with Respondent that Spahr's remarks were simply expressions of his negative opinion of unions. In its brief, Charging Party refers to Spahr's remarks as taunts. In the absence of any explanation by Spahr of the context in which his remarks were made, this seems to me to be a fair characterization. I find that Spahr's repeated references to his subordinate as "the union organizer," and his use of the term "buddies" to refer to the employees involved in the organization effort, conveyed not just opposition, but hostility, to the union effort.

I also find that during the period immediately before her discharge, Respondent was keeping Camerella under surveillance. According to Camerella's un rebutted testimony, in May 2007, she told Spahr that she was going to get change, which was one of her regular job duties, and Spahr responded that because she was organizing a union, he had been told to watch everything she did. Spahr could not have been concerned that Camerella was about to engage in union solicitation on working time, since Camerella had just told him that she was about to leave the building. Rather, his remark indicates that he was watching her either for purposes of harassment or to catch her in some misconduct. Since Spahr was not Camerella's direct supervisor, his statement suggests that the other supervisors might also have been instructed to watch Camerella. In fact, in the late spring and early summer of 2007, several supervisors were inexplicably and suspiciously anxious to display Camerella in a bad light. On February 27, Knieper wrote in a note to Murphy that "something had to be done" because "everyone" was complaining about Camerella. Sturos, peculiarly, refused to tell Kapchonick whether he had told Camerella that she could park in the back lot on May 27, 2007. After Respondent had decided to terminate Camerella for her violation of the parking rules, even building supervisors Waara, according to Respondent, volunteered additional information about Camerella's misconduct.

In sum, I find that there is sufficient evidence on this record to support a finding that Respondent had animus toward Camerella because of her prominent role in the campaign to organize the recreation center's employees. I conclude that this evidence, coupled with the timing of Camerella's discharge, was sufficient to establish that Camerella's termination was caused, at least in part, by her union activities. As discussed above, this finding shifts the burden to Respondent to produce evidence that Camerella would have been discharged when she was in the absence of these activities.

Respondent argues that Camerella's discharge was justified by her extensive disciplinary history. It is true that Camerella does not appear to have been a model employee. However, Respondent appears to have tolerated Camerella's deficiencies before she became involved with Charging Party's organizing campaign. Despite mistakes, laxness in following the rules, and occasional tardiness, Camerella received only scattered written and oral reprimands before November 2006 and was never threatened with discharge. There was no indication that Camerella's overall conduct deteriorated in the period immediately prior to her termination. Nor do I believe that, in the absence of union activity, Respondent would have discharged Camerella as a result of the events that took place after February 27, 2007. Respondent investigated employee Lauren Panetta's allegations that Camerella had removed a note from Murphy's desk and suggested to another employees that he trip supervisor Erin Knieper with a vacuum cleaner.

However, it could not confirm that Panetta was telling the truth. Nevertheless, for reasons not explained in the record, on March 27 Respondent gave Camerella a letter warning her that further breaches of “trust or confidence” might lead to her termination. On June 20, Respondent was prepared to discharge Camerella for parking in a prohibited area on a single day. According to Respondent, after Camerella protested that a supervisor had given her permission to park there, and the supervisor did not deny it, another employee told Respondent that Camerella asked him to falsify her timecard. On June 27, 2007, without identifying when exactly this latter misconduct had occurred, Respondent sent Camerella a letter of termination. I conclude that the reasons given by Respondent in this letter were purely pretextual. I also conclude, for the reasons set forth in the paragraph above, that Respondent would not have discharged Camerella on June 27, 2007 but for her union activity. I find that Camerella’s discharge violated Sections 10(1) (a), (c) and (d) of PERA, and I recommend that the Commission issue the following order.

RECOMMENDED ORDER

Respondent City of Livonia, its officers and agents, are hereby ordered to:

1. Cease and desist from:

- a. Discharging or otherwise discriminate against employees because of their union or other activity protected by Section 9 of the Public Employment Relations Act.
- b. In any like manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed them by Section 9 of that Act.

2. Take the following affirmative action to effectuate the purposes of the Act:

- a. Within 14 days from the date of this order, offer Ann Maria Camerella unconditional reinstatement to the position she would have held in the absence of the unlawful discrimination, without prejudice to any rights or privileges she previously enjoyed.
- b. Make Camerella whole for any loss of pay she may have suffered as a result of her unlawful discharge by paying her the amount she would have earned from the date of her discharge, June 27, 2006, to the date of her reinstatement or rejection of Respondent's unconditional offer, less her interim earnings during this period, together with interest on the amount owed at the statutory rate of six percent (6%) per annum, computed quarterly.
- c. Post the attached notice on Respondent's premises, in a place or places where notices to employees are customarily posted including in its recreation center, for a period of thirty (30) consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Julia C. Stern
Administrative Law Judge

Dated: _____

NOTICE TO EMPLOYEES

After a public hearing before the Michigan Employment Relations Commission, the **City of Livonia** has been found to have committed an unfair labor practice in violation of the Michigan Public Employment Relations Act (PERA). Pursuant to the terms of the Commission's order,

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT discharge or otherwise discriminate against employees because of their union or other activity protected by Section 9 of the Public Employment Relations Act.

WE WILL NOT, in any like manner, interfere with, restrain or coerce employees in the exercise of the rights guaranteed them by Section 9 of that Act.

WE WILL Take the following affirmative action to effectuate the purposes of the Act:

1. Within 14 days from the date of this order, offer Ann Maria Camerella unconditional reinstatement to the position she would have held in the absence of the unlawful discrimination, without prejudice to any rights or privileges she previously enjoyed.

2. Make Camerella whole for any loss of pay she may have suffered as a result of her unlawful discharge by paying her the amount she would have earned from the date of her discharge, June 27, 2006, to the date of her reinstatement or rejection of Respondent's unconditional offer, less her interim earnings during this period, together with interest on the amount owed at the statutory rate of six percent (6%) per annum, computed quarterly.

We acknowledge that all of our employees are free to form, join or assist in labor organizations, to engage in lawful concerted activity through representatives of their own choice for the purpose of collective bargaining or other mutual aid and protection, and to testify in or institute proceedings under PERA.

CITY OF LIVONIA

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, 3026 W. Grand Blvd, Suite 2-750, P.O. Box 02988, Detroit, Michigan 48202. Telephone: (313) 456-3510. Case No. C07 G-156