STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

SOUTHFIELD PUBLIC SCHOOLS,
Public Employer - Respondent,

Case No. C06 L-285

-and-

SOUTHFIELD MICHIGAN EDUCATIONAL SUPPORT ASSOCIATION (MESPA),
Labor Organization - Charging Party.
_____/

APPEARANCES:

Floyd Allen & Associates, by Daryl Adams, Esq., for Respondent

Law Offices of Lee & Correll, by Michael K. Lee, Esq., for Charging Party

DECISION AND ORDER

On January 30, 2008, Administrative Law Judge (ALJ) Julia C. Stern issued her Decision and Recommended Order in the above case finding that Respondent, Southfield Public Schools (Employer), did not violate Sections 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 a security specialist position from the Southfield Michigan Educational Support Association (MESPA) bargaining unit. The ALJ held that MESPA failed to meet its burden of demonstrating that Respondent's decision to eliminate the security specialist position was motivated by anti-union animus or hostility toward MESPA's exercise of protected union rights. The ALJ recommended that the charge be dismissed in its entirety. The Decision and Recommended Order was served on the interested parties in accordance with Section 16 of PERA. On February 22, 2008, MESPA filed exceptions to the ALJ's Decision and Recommended Order. On April 7, 2008, Respondent filed a brief in support of the ALJ's Decision and Recommended Order.

In its exceptions, MESPA alleges that the ALJ erred in concluding that Respondent's removal of the position, though motivated by the MESPA's insistence that the contract required that the position be full time, was made in the absence of anti-union animus or hostility toward MESPA's protected activity. In its brief in support of its exceptions, MESPA contends that it is

not necessary to prove that there was an outward demonstration of hostility to sustain its claim of retaliation. We have reviewed MESPA's exceptions and we find them to be without merit.

Factual Summary:

We adopt the ALJ's factual findings and repeat them only as necessary here. When Respondent determined that it had a projected operating deficit of between eight and ten million dollars for the 2006-2007 school year, it decided to eliminate a number of positions in Charging Party's bargaining unit and reduce other unit positions from full to half-time. When Respondent's School Board eliminated a full-time security specialist position and added a half-time position, the incumbent security specialist bid on and was awarded another unit position and the security specialist position became vacant.

Patricia Haynie, executive director for the Southfield Coordinating Council, MEA advised Respondent's director of human resources and labor relations, Gail Wilson, that Article XXXIX, paragraph D of the parties' contract had been violated. This provision reads:

> During the school year, all security specialists will work a five day, forty hour week including days when students are not in attendance except on days recognized as paid holidays by this Agreement.

Wilson responded that if the security specialist had to be full-time, she had no choice but to eliminate it entirely because the Board had already decided that it could not afford the full-time position. Wilson also wrote a letter to Charging Party's president Michael Graves stating that she had overlooked the contract language and advising: "As we have previously indicated, as a result of budgetary constraints we are unable to continue to staff this position as a 1.0 FT. However, to remain in compliance with the language of the collective bargaining agreement, rather than reduce the position to a .5 FTE, this position will be eliminated effective January 2, 2007."

Discussion and Conclusions of Law:

The elements of a prima facie case of discrimination are: (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. *Grandvue Medical Care Facility,* 1993 MERC Lab Op 686. See also, *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.

There is no question that Graves and Haynie were engaged in PERA-protected activity when they voiced an objection to Respondent's decision to reduce the hours of the security

specialist position. They argued that Article XXXIX of the parties' contract prohibited this action. However, we agree with the ALJ that even if protected activity was a motivating factor causing Respondent to alter its decision and to eliminate the position entirely, this does not establish anti-union animus or hostility to the exercise of protected rights. At best, it establishes that Respondent was not willing to violate the contract.

Charging Party cites the timing of Respondent's decision to eliminate the security specialist position as evidence of anti-union animus. However, prior to the protected activity that is the basis of the Charge, Respondent had already concluded that it could no longer afford a full-time security specialist position. Having determined that it could not afford a full-time security specialist and faced with a valid challenge to its decision to reduce the position to part-time, Respondent's concluded that it would be required to eliminate the position entirely. In this circumstance, there was no reason for delay, and the timing does not warrant an inference of anti-union animus. A temporal relationship, standing alone, does not prove a causal relationship. There must be more than a coincidence in time between protected activity and adverse action for there to be a violation. See *West v Gen Motors Corp*., 469 Mich 177, 186; 665 NW2d 468 (2003).

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

ORDER

The unfair labor practice charge is dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Christine A. Derdarian, Commission Chair

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

Dated: _____

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APPEARANCES:

Floyd Allen & Associates, by Daryl Adams, Esq., for Respondent

Law Offices of Lee & Clark, by Michael K. Lee, 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 June 8, 2007 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 July 13, 2007, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

The Southfield Michigan Educational Support Association (MESPA) filed this charge against the Southfield Public Schools on December 5, 2006. Charging Party represents a bargaining unit of Respondent's employees that includes bus drivers, mechanics, custodians, food service employees, maintenance employees, paraprofessionals, community education child care givers, and other nonsupervisory, nonteaching employees, including security specialists. Charging Party alleges that on or about January 2, 2007, Respondent violated Sections 10(1)(a) and (c) of PERA by eliminating a security specialist position in retaliation for Charging Party's filing of a grievance over a reduction in the position's hours.

Findings of Fact:

Sometime in early 2006, Respondent learned from its budget director that it had a projected operating deficit of between eight and ten million dollars for the 2006-2007 school year. As part of its plan to eliminate this deficit, Respondent decided to eliminate a number of positions in Charging Party's bargaining unit and reduce other unit positions from full to half-time. One of the positions to be reduced from full to half-time was a security specialist position with district-wide responsibilities. On June 27, 2006, Respondent's School Board passed a resolution which eliminated a full-time security specialist position and added a half-time position effective November 1, 2006. After the individual holding the security specialist position bid on and was awarded another unit position, the position became vacant.

Charging Party's collective bargaining agreement requires Respondent to provide Charging Party with notice of changes to existing positions at least sixty days before they are to take effect. Respondent is also required to provide Charging Party with an opportunity to meet and discuss the changes. On June 28, 2006, Respondent's director of human resources and labor relations, Gail Wilson, sent a letter to Charging Party president Michael Graves listing positions in his unit that were to be consolidated, eliminated or otherwise altered. On September 6, 2006, Wilson met with Graves and Patricia Haynie, executive director for the Southfield Coordinating Council, MEA, to discuss the announced changes. Haynie argued at this meeting that Respondent was not required to make these cuts because it still had a substantial reserve fund. Graves and Haynie also raised specific objections to many of the changes. Graves and Haynie told Wilson that they believed Respondent's security would be adversely affected if the hours of the security specialist were cut. Graves and Haynie also said that they had heard rumors that Respondent intended to subcontract the other half of the position's duties. Wilson denied this, and the parties discussed how the work would be distributed after the hours were reduced. At this meeting, Haynie and Graves told Wilson that they believed that some of the cuts were not consistent with the collective bargaining agreement. However, they did not specifically mention the reduction in the security specialist's hours as falling into this category. There was no discussion at this meeting of eliminating the security specialist position entirely.

Wilson and Haynie had many telephone conversations after September 6 about the position changes announced in June. In one of these conversations, Haynie directed Wilson's attention to Article XXXIX, paragraph D of the contract. This provision reads:

> During the school year, all security specialists will work a five day, forty hour week including days when students are not in attendance except on days recognized as paid holidays by this Agreement.

Wilson testified that until that telephone call, she had not thought about this provision. According to Wilson, on November 2 she had another telephone conversation with Haynie in which Wilson said that if this provision meant that the security specialist had to be a full-time position, Wilson would have no choice but to eliminate it entirely. Wilson testified that she told Haynie that the Board had already indicated that Respondent could not afford the full-time position. Later that same day, Wilson wrote a letter to Graves stating that she had overlooked the

contract language providing that security specialist would work a five day, forty hour week. Wilson said, "As we have previously indicated, as a result of budgetary constraints we are unable to continue to staff this position as a 1.0 FT. However, to remain in compliance with the language of the collective bargaining agreement, rather than reduce the position to a .5 FTE, this position will be eliminated effective January 2, 2007." Wilson testified that she may have had a meeting with Haynie and Graves on November 2, 2007, but that if there was such a meeting the parties did not discuss the security specialist position.

Haynie testified that she and Graves met with Wilson on November 2, after she had brought Article XXXIX, paragraph D to Wilson's attention. According to Haynie, Wilson said at this meeting that she had talked to the appropriate people about the security specialist position. Haynie testified that Wilson said "that they were staying with their position to cut the position and, since we had raised the contractual issues, they were now going to cut it completely rather than to a .5." Haynie testified that she and Graves told Wilson that they believed that the motive for this cut was not financial but was directed at the individual holding the position, because the cost savings were minimal. Haynie also testified that she told Wilson that she believed that the elimination of the position was "an absolute retaliation" for the union raising the contractual issue.

After November 2, Wilson posted the security specialist position as a full-time vacancy, adding a proviso to the notice that the position would be eliminated effective January 2, 2007. It is not clear from the record whether the position was filled between November and January, but it was eliminated on January 2 as announced.

Discussion and Conclusions of Law:

In order to establish a prima facie case of unlawful discrimination under Section 10(1) (c) of PERA, Charging Party must establish: (1) that the employee engaged in union or other protected concerted activity; (2) the employer had knowledge of that activity; (3) union animus or hostility towards the employee's protected activity; and (4) suspicious timing or other evidence that the protected activity was a motivating cause of the alleged discriminatory action. *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. That is, Charging Party has the burden of producing evidence that will support a finding that union animus was at least a motivating factor in Respondent's decision to take the adverse action. *City of St Clair Shores*, 17 MPER 27 (2004); *North Central Cmty Mental Health Services*, 1998 MERC Lab Op 427, 437.

Charging Party representatives Graves and Haynie were engaged in activity protected by PERA when they objected to Respondent's decision to reduce the hours of the security specialist position and when they argued that Article XXXIX of the parties' contract prohibited this action. Wilson's knowledge of these protected activities is not at issue. Respondent had no plans to eliminate the security specialist position until Charging Party brought Article XXXIX to its attention. Clearly, Charging Party's assertion that the contract did not allow Respondent to reduce the position's hours was a motivating factor in Respondent's decision to eliminate the position entirely. This does not mean, however, that Charging Party has established a prima facie case. Unlawful discrimination under Section 10(1) (c) of PERA must be motivated by union

animus or hostility toward Charging Party or its assertion of its protected rights. Even if Haynie's testimony is credited, I find no evidence in this record to support such a finding. On November 2, according to Haynie, Wilson told Haynie and Graves that Respondent was "staying with [its] position to cut the position and, since [Charging Party] had raised the contractual issues, [Respondent was] now going to cut it completely." Haynie's testimony does not indicate that Wilson was guilty of anti-union animus or was angry at Charging Party for raising this contractual argument. According to the testimony, Wilson said nothing on November 2 to suggest that Respondent now intended to eliminate the position even if Charging Party agreed to allow it to be half-time. I conclude that Charging Party failed to meet its initial burden of demonstrating that Respondent's decision to eliminate the security specialist position was motivated, even in part, by union animus or hostility toward Charging Party's exercise of its protected rights. I recommend, therefore, that the Commission issue the following order.

RECOMMENDED ORDER

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern
Administrative Law Judge

Dated: _____