STATE OF MICHIGAN

COURT OF APPEALS

SOUTHFIELD MICHIGAN EDUCATION SUPPORT PERSONNEL ASSOCIATION (MESPA),	UNPUBLISHED July 8, 2010
Charging Party-Appellant,	
v	No. 290898 MERC
SOUTHFIELD PUBLIC SCHOOLS,	LC No. 06-000285
Respondent-Appellee.	

Before: SHAPIRO, P.J., and JANSEN and DONOFRIO, JJ.

PER CURIAM.

The charging party appeals as of right an order issued by the state of Michigan Employment Relations Commission ("MERC"), finding that respondent did not engage in unfair labor practices in violation of the Public Employment Relations Act ("PERA"), MCL 423.210(1)(a) and (c). We affirm.

Defendant argues on appeal that MERC erred in finding that respondent did not act with anti-union animus or hostility. We disagree. The factual findings of MERC "are conclusive 'if supported by competent, material, and substantial evidence on the record considered as a whole.'" *Quinn v Police Officers Labor Council*, 456 Mich 478, 481; 572 NW2d 641 (1998) (citation omitted); MCL 423.216(e). Substantial evidence is that which "a reasonable mind would accept as sufficient to support a conclusion. While it consists of more than a scintilla of evidence, it may be substantially less than a preponderance of evidence." *City of Lansing v Carl Schlegel, Inc*, 257 Mich App 627, 630; 669 NW2d 315 (2003) (internal quotations and citations omitted). "Reviewing courts should not invade the exclusive fact-finding province of administrative agencies by displacing an agency's choice between two reasonably differing views of the evidence." *St Clair Intermediate Sch Dist v Intermediate Ed Ass'n*, 458 Mich 540, 553; 581 NW2d 707 (1998).

Under Section 9 of PERA, an employee may engage in lawful activities "for the purpose of collective negotiation or bargaining or other mutual aid and protection . . . ." MCL 423.209; *Ingham Co v Capitol City Lodge No 141*, 275 Mich App 133, 141; 739 NW2d 95 (2007). Under Section 10 of PERA, it is unlawful for a public employer or an officer or agent of a public employer:

> (a) to interfere with, restrain or coerce public employees in the exercise of [certain] rights; . . . (c) to discriminate in regard to hire, terms or other conditions of employment in order to encourage or discourage membership in a labor organization . . . . [MCL 423.210(1).]

To make a claim of unfair labor practice under Section 9 and Sections 10(1)(a) and (c) of PERA, the charging party must first state a prima facie case demonstrating sufficient evidence "to support the inference that union or protected activity was a 'motivating or substantial factor' in the employer's decision to take action adverse to an employee, despite the existence of other factors supporting the employer's actions." *City of St Clair Shores v AFSCME*, 17 MPER 27 (2004). Once the charging party has stated a prima facie case, "the burden of going forward then shifts to the employer to demonstrate that the alleged discriminatory action would have occurred even in the absence of protected activity." *Id.* However, ultimately, the burden is on the charging party to demonstrate that the protected activity is a but-for cause of the adverse action. *Id.*

To state a prima facie case for a violation of MCL 423.210(1), the charging party must prove: "(1) an employee's union or other protected concerted activity; (2) employer knowledge of that activity; (3) anti-union animus or hostility to the employee's protected rights; and (4) suspicious timing or other evidence that the protected activity was a motivating cause of the allegedly discriminatory action." *Waterford Sch Dist v Waterford Federation of Support Personnel*, 19 MPER 60 (2006). "Anti-union animus can be established either by direct evidence or circumstantial evidence, including evidence of suspicious timing or pretext that fairly support the inference that the employer's motive was unlawful." *City of Royal Oak v Haudek*, 22 MPER 67 (2009).

Here, the only issue is whether respondent acted with anti-union animus or hostility. Viewing the whole record, MERC's finding that respondent did not act with anti-union animus or hostility was supported by competent, material and substantial evidence. Evidence in the record demonstrates that respondent's economic concerns were a substantial factor in its decision to eliminate the security specialist position. Respondent faced a multi-million dollar budget deficit and needed to reduce the hours of some positions to address its budget shortfall. In September 2006, it notified the charging party that it intended to reduce the hours of the security specialist position in order to continue to address the deficit. Once the charging party informed respondent that reducing the hours of the position from full-time to part-time would put respondent in violation of the contract, respondent decided to eliminate the security-specialist position entirely to be both in compliance with its contract with the charging party and to address budgetary constraints. Gail Wilson, executive director of Human Resources and Labor for respondent, wrote in her November 2, 2006, letter to Michael Graves, the president of the charging party, that respondent would eliminate the security specialist position "as a result of budgetary constraints" and "to remain in compliance with the language of the [contract]."

The charging party argues that respondent was retaliating against the charging party in eliminating the security-specialist position because the charging party invoked the contract. In particular, the charging party points to a statement made by Wilson to Patricia Haynie, executive director of the Southfield Coordinating Council of the charging party, that Wilson was eliminating the position, "since [Haynie] brought up the contract." The charging party also

points to Haynie's testimony that she and Graves believed the economic benefits of eliminating the position would be minimal and the position was eliminated on the basis of anti-union animus or hostility. Finally, the charging party argues that the irregular manner of eliminating the position shows retaliation. However, Wilson's statement, Haynie's beliefs, and the procedure followed do not demonstrate that respondent acted with anti-union animus or hostility. Wilson's statement alone indicates that the charging party had a valid point regarding the requirements of the contract, not that Wilson acted with animus or hostility. Moreover, Haynie's beliefs about respondent are not evidence of respondent's motivation and are not supported by any corroborating evidence. Finally, by the time respondent decided to eliminate the security specialist position, respondent had already been discussing reducing the position with the charging party for months. The fact that Wilson failed to communicate with others is not evidence that respondent was acting with anti-union animus or hostility. To the contrary, as discussed above, the evidence in the record provides support for MERC's decision that respondent acted because of budget concerns and not with anti-union animus or hostility.

The charging party argues that the timing of respondent's decision to eliminate the security specialist position—immediately after Haynie informed Wilson about the contract—demonstrates anti-union animus or hostility. However, something more than a temporal connection between protected conduct and an adverse employment action is required to show causation where discrimination-based retaliation is claimed. *West v GMC*, 469 Mich 177, 186; 665 NW2d 468 (2003). In this case, the charging party provided no other evidence that respondent acted with anti-union animus or hostility other than the timing. Therefore, MERC correctly found that the charging party had not met its burden of proving anti-union animus or hostility.

Affirmed.

/s/ Douglas B. Shapiro
/s/ Kathleen Jansen
/s/ Pat M. Donofrio