

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

In the Matter of:

DETROIT BOARD OF EDUCATION,
Public Employer-Respondent

Case No. C01 E-100

-and-

SHELA LEVY-CHUNG,
An Individual – Charging Party

APPEARANCES:

Gordon Anderson, Esq., Department of Employee Relations, for the Respondent

Shela Levy-Chung, in pro per

DECISION AND ORDER

On April 30, 2002, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order in the above matter finding that Respondent has not engaged in and was not engaging in certain unfair labor practices, and recommending that the Commission dismiss the charges and complaint as being without merit.

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

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Dated: _____

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Gordon Anderson, Esq., Department of Employee Relations, for the Respondent

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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 and 423.216, this case was heard at Detroit, Michigan on October 22, 2001, before Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. Based upon the entire record, including the charge, answer, exhibits submitted by both parties at the hearing, and transcript of that hearing, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

Shela Levy-Chung filed this charge against her Employer, the Detroit Board of Education, on May 30, 2001. Levy-Chung alleged that on or about April 4, 2001, Respondent violated Sections 10(1)(a) & (c) of PERA by disciplining her in retaliation for her activities as a union building representative.

Facts:

Levy-Chung has been employed by Respondent as a guidance counselor since 1978. She is a

member of a bargaining unit represented by the Detroit Federation of Teachers (the Union). Levy-Chung transferred to a new school at the beginning of the 1999-2000 school year. Sometime during this school year, Levy-Chung was elected Union building representative. She retained this office until the school was closed at the end of the 2000-2001 school year.

Levy-Chung did not file any grievances during either the 1999-2000 or the 2000-2001 school year. However, on September 22, 2000, Levy-Chung sent a memo to her principal, Wesley Ganson, reminding him that he was supposed to meet with the union committee at least monthly, and asking him to set meeting dates. Ganson did not respond. Around this time Levy-Chung asked Ganson if he would meet with the union committee after a staff meeting. Ganson told her that she was having “too many union meetings.” Levy-Chung did not renew her request.

During the early part of the 2000-2001 school year, Levy-Chung, in her capacity as building representative, passed along to Ganson allegations of misconduct made by several teachers against a teacher (Teacher M) in her building. Levy-Chung also observed some of this conduct herself and reported it to Ganson.

In December 2000, Levy-Chung reported to Ganson that a teacher (Teacher X) had told her that he was going to hit the president of the school’s PTA. Levy-Chung also relayed the threat to the PTA president. Ganson told Levy-Chung that he wished she had not said anything to the PTA president.

On about January 9, 2001, Levy-Chung received a threatening message on her school voicemail. The caller identified herself as a child Levy-Chung had been counseling, but Levy-Chung suspected it might be the child’s mother. Levy-Chung reported this to the school security officer and her department head. She also let the PTA president and several teachers listen to the message. Ganson called Levy-Chung into his office and rebuked her for not informing him about the incident before speaking to anyone else.

On about January 17, a staff member put a picture of two monkeys into the school mailboxes of some of the school’s teachers. The picture had the caption, “Have a great day. Smile.” Several African-American teachers, including Levy-Chung, interpreted the document as racist. Levy-Chung asked Ganson to allow her, as union representative, to meet with the staff member. Ganson refused. He also told her not to say anything at a subsequent staff meeting. Levy-Chung pointed out to Ganson that two other teachers, including Teacher M, had gone directly to the individual to confront him. She accused Ganson of bias against her as a person of mixed race. At the staff meeting several individuals were allowed to comment on the incident. However, when Levy-Chung tried to speak Ganson told her to sit down and shut up.

In late January 2001, Levy-Chung reported to Ganson that a child had told her that Teacher M had deliberately smashed his fingers in a drawer. On January 24 she wrote a memo to Ganson reporting the conversations she had with Teacher M about the incident. She also complained to Ganson about his failure to act on the matter.

In early February, according to Levy-Chung’s testimony, Ganson told her that a parent had accused her of hitting a child and also of using profanity. Ganson, however, testified that the complaint was only that

she had used profanity in front of the child. Levy-Chung denied the allegations. Levy-Chung asked Ganson to tell her the name of the parent and to set up a meeting to discuss these claims, but Ganson said that it was “no big deal,” and refused to give her the parent’s name. When Levy-Chung had not heard anything further from Ganson three weeks later, she wrote to Ganson and the Union expressing concern at her lack of information about the complaint. Levy-Chung asked to have a union representative present at any meeting that was arranged with the parent. This letter was dated February 23, 2001. Shortly thereafter, Ganson brought the parent to Levy-Chung’s office without prior warning, and then left them together. No adverse action was taken against Levy-Chung as a result of the parent’s complaint.

In March 2001 Respondent and the Union reached an agreement to grant teachers additional professional days for the 2000-2001 school year. The agreement stated that the union committee and the administration at each school were to meet and jointly decide when these days would be scheduled. When Levy-Chung asked Ganson to meet with the union committee for this purpose, Ganson refused.

At a staff meeting held on about March 28, Teacher M stood up and complained that “a staff person” was starting rumors about him. Ganson made the comment, “this garbage keeps coming back to this one person,” and looked in Levy-Chung’s direction.

On April 2, Levy-Chung wrote a memo to Ganson complaining about Teacher M’s failure to supervise his students in the hallway.

On the morning of April 4, Levy-Chung came to school with snacks that she had bought for a student sale. Ganson attempted to hand Levy-Chung a letter notifying her that her office had been moved from the second to the first floor, a move that Levy-Chung had requested. Because Levy-Chung was loaded down with bags, she told Ganson to wait a minute and proceeded upstairs to her office. She found that the lock to her office had been changed. Although Ganson and Levy-Chung had different versions of what happened next, they agree that soon thereafter Levy-Chung left the building. As she left she said she would “bring somebody back with her.” The school security officer, who overheard the remark, interpreted this as a threat. That same day, Ganson decided to draft a letter charging Levy-Chung with a number of work rule violations, none of which related to the alleged threat. The letter stated that Ganson “had received information that [Levy-Chung might] have violated Work Rule Numbers 1,6, 7, 10, 12, and 17,” and that she was suspended with pay pending the outcome of an investigation. The charges were as follows: (1) that Levy-Chung wasted time by talking to other adults, including noon aides, the PTA president, and parents of a child with problems, instead of confining herself to counseling children; (2) that she had deliberately failed to follow the appropriate procedure for scheduling field trips; (3) that she had caused division among the staff by overreacting to the monkey picture incident; (4) that she had failed to cooperate with the school social worker; (5) that she had inappropriately told parents that another teacher was a Muslim; (6) that she was of excessive absenteeism; (7) that she had left work on April 4 without permission. When Levy-Chung arrived at work on April 5 with a friend to help her move her belongings, she was told she could not enter the building.

A hearing was held on the charges set forth in Ganson’s letter before a representative from the Respondent’s Office of Discipline Administration on May 11, 2001. Levy-Chung was present with a union

representative and was allowed to speak in her defense. The hearing officer issued her decision by letter dated August 10, 2001. The hearing officer, relying primarily on Levy-Chung's attendance record, decided that Levy-Chung was guilty of excessive absenteeism. She also found that Levy-Chung had improperly left work without permission on April 4. The hearing officer found that there was insufficient evidence to support the other charges. In view of the fact that Levy-Chung had no other disciplinary actions in her personnel file, the hearing officer recommended in her August 10 letter a written reprimand be placed in Levy-Chung's file but that she receive no other discipline.

Levy-Chung's school was closed at the end of the 2000-2001 school year. After Levy-Chung received the hearing officer's decision in August 2001, she called Respondent to be reassigned. Up to this time Levy-Chung had been suspended with pay. Levy-Chung was reassigned to a new school effective September 9, 2001.

Levy-Chung received the written reprimand recommended by the hearing officer in October 2001. She filed a grievance regarding the reprimand. This grievance was still pending at the time of the hearing in this case.

Discussion and Conclusions of Law:

Sections 10(1)(a) and (c) of PERA prohibit an employer from disciplining or otherwise discriminating against an employee because he or she has engaged in union activity or other activity protected by Section 9 of the Act. The elements of a prima facie case of discrimination under Sections 10(1)(a) or (c) of PERA are: (1) employee union or other protected activity; (2) employer knowledge of that activity; (3) union animus on the part of the employer or hostility toward the employee's exercise of her protected rights; and (4) suspicious timing or other evidence to establish that the union or protected activity was a motivating factor in the decision to discipline the employee. *North Central Community Mental Health Services*, 1998 MERC Lab Op 427 Once a prima facie case is established, the burden shifts to the employer to produce evidence that the same action would have taken place even in the absence of the protected conduct, *MESPA v Ewart Public Schools*, 125 Mich App 71, 74 (1982).

Levy-Chung alleges that her suspension with pay was disciplinary and constituted an act of discrimination in violation of Section 10(1)(c) of PERA. The hearing officer in Respondent's Office of Discipline Administration made the effective decision to reprimand Levy-Chung, and there is no indication that the hearing officer was motivated by or even knew of Levy-Chung's union activities. However, if Ganson had not brought his charges against her, Levy-Chung would clearly not have been reprimanded. I conclude that I must consider Ganson's motivation in determining whether Respondent discriminated against Levy-Chung in violation of PERA.

I find that Levy-Chung engaged in activities protected by the Act, that Ganson knew of these activities, and that Ganson manifested hostility toward and/or contempt for Levy-Chung's modest efforts to fulfill her duties as Union building representative. The record indicates that Ganson ignored Levy-Chung's September 2000 request that he meet regularly with the union committee. It also indicates that he brushed off or refused her subsequent requests that he meet with this committee, including her March 2001 request

that he discuss the scheduling of additional professional days with this committee. I find, however, that the record indicates that Ganson disliked and resented Levy-Chung for reasons unrelated to her union activity. The evidence indicates that Ganson resented Levy-Chung's speaking to outsiders, including the PTA president, about what he perceived as internal school matters. The evidence also indicates that Ganson believed that Levy-Chung was guilty of creating internal conflict among teachers by complaining about other teachers and, in general, overreacting to what Ganson saw as minor problems. Since PERA does not prohibit all unfair acts by employers, whether Ganson's perceptions were correct or fair is not at issue here.

Based on the evidence as a whole, I conclude that Ganson was not motivated, in whole or in part, by Levy-Chung's union activities when he charged Levy-Chung with a variety of work rule violations on April 4, 2001. I conclude, therefore, that Levy-Chung failed to make a prima facie case that she was discriminated against because of her union activities.

In accord with the findings of fact, discussion, and conclusions of law set forth above, I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The charge is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Julia C. Stern
Administrative Law Judge

Dated: _____

