STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

WARREN CONSOLIDATED SCHOOLS,
Public Employer - Respondent,

Case No. C01 G-136

-and-

WARREN EDUCATION ASSOCIATION
and JAMES R. FOUTS,
Labor Organization and an Individual - Charging Parties.
____/

APPEARANCES:

Butzel Long, P.C., by John P. Hancock, Jr., Esq., and Robert A. Boonin, Esq., for Respondent

Zausmer, Kaufman, August & Caldwell, P.C., by Harvey I. Wax, Esq., for Charging Parties

DECISION AND ORDER

On August 9, 2004, Administrative Law Judge (ALJ) Roy L. Roulhac issued his Decision and Recommended Order in the above matter finding that Respondent, Warren Consolidated Schools (Employer), violated Section 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 reprimanding Charging Party James R. Fouts because he engaged in protected activity and by interfering with rights protected by PERA. The ALJ's Decision and Recommended Order was served upon the interested parties in accordance with Section 16 of PERA. On October 19, 2004, Respondent filed timely exceptions to the ALJ's Decision and Recommended Order after requesting and receiving two extensions of time. Charging Parties requested and were granted two extensions of time to file their response to the exceptions, which was timely filed on December 13, 2004.

In its exceptions, Respondent argues that the ALJ erred in finding that Respondent's reprimand of Fouts was motivated by anti-union animus and was in retaliation against Fouts because he filed a grievance. Respondent asserts that Fouts was reprimanded due to his conduct during the events relating to the substance of his grievance, but not because he was engaging in protected activity. Upon reviewing the record carefully and thoroughly, we find that Respondent's exceptions have merit and the charge should be dismissed.

Facts:

The facts of the case have been set forth in the ALJ's Decision and Recommended Order and will only be summarized as necessary here, supplemented by additional facts reflected in the record which are material to our decision in this matter. Fouts is employed by Respondent to teach classes on American government at Sterling Heights High School. Fouts is a member of the bargaining unit represented by Charging Party Warren Education Association (Union).

This case involves a conflict between Fouts and Jon Green, the school board president. Fouts is a member of the Warren City Council and politically opposed to City Mayor Steenbergh. Because Green apparently had political ties with the Mayor, Fouts viewed Green as a political rival. The dispute began when Fouts required some of his students to attend a February 7, 2001 school board meeting as part of a homework assignment. After the meeting, Fouts received reports that Green had made unflattering comments about him and had been inconsiderate to the students. Fouts then contacted Dr. James Clor, Respondent's superintendent, told him what he had heard about the board meeting, and asked to see the videotape of the meeting.

On February 9, Fouts was summoned to Respondent's administration building to view the videotape of the February 7, 2001 school board meeting, along with Superintendent Clor and David Walsh, the assistant superintendent. The school administrators indicated that they thought Green was joking and that Fouts shouldn't take it seriously. After viewing a portion of the videotape, Fouts asked to take it home so that he could look at the entire tape; he then prepared to leave. Clor asked Fouts to wait because Green was on his way to meet with the three of them. Fouts expressed concerns about being in the same room with Green. While waiting for Green to arrive, Fouts told Clor and Walsh that he had heard from a friend that Green might be on steroids or cocaine. Soon thereafter, Green arrived and, before any other discussion occurred, directed expletives at Fouts. During the discussion that followed, Fouts commented to Green that he was acting like he "might be on steroids or something." Green then picked up the videotape, threw it at Fouts, and stormed out of the meeting. Shortly thereafter, Fouts reported the incident to the Union president, Judith Locher. Locher suggested that they attempt to resolve the matter informally, but told Fouts that he would have the option of filing a grievance. A meeting was subsequently scheduled with the superintendent, which Clor later cancelled, suggesting that the two individuals work it out.

Both individuals then made written complaints regarding the other's conduct. On February 12, Green sent Fouts a letter claiming that Fouts' statements alleging Green's "involvement in criminal activity were false and defamatory, clearly uttered with malice and reckless disregard for the truth." Green demanded a written apology and retraction of the statement. Fouts did not respond to the letter.

On March 13, the Union filed a grievance on Fouts' behalf directed to Jon Green and the superintendent alleging "verbal and physical assault, intimidation, and making defamatory comments to grievant's students." The grievance demanded that Green cease and desist from any verbal or physical assault and intimidation towards Fouts; that Green provide a public oral apology to Fouts and the students

who attended the school board meeting and a written apology to Fouts; and that Fouts be guaranteed in writing that his job would not be jeopardized because of the incidents.

The Union's grievance was on the agenda for the March 21, 2001 school board meeting. Just prior to the beginning of the board meeting, Green mentioned to assistant superintendent Walsh that the February 9 incident was not the first time that Fouts had made statements accusing him of steroid or cocaine use. According to Walsh, although he had concerns regarding Fouts' previous comments, it was when he heard the allegation that Fouts had made such comments on other occasions that he became especially concerned because of the potential violation of board policy. Board Policy 3310 provides that employees are not to make abusive or personally defamatory comments about co-workers, administrators, or District officials and are to refrain from making public expressions known to be false or made without regard to truth or accuracy. Walsh then asked Personnel Director Daniel Jouppi to find out if there was any evidence to explain why Fouts would be making these statements.

The Step 2 meeting on Fouts' grievance regarding Green was held on May 3, 2001. The meeting had been delayed due to scheduling conflicts and spring break. It was a common practice for the parties to extend time limits on grievance responses and meetings because of the difficulties involved in getting all involved parties together. Fouts, Locher, Jouppi, and Respondent's attorney John Hancock were in attendance at the Step 2 meeting. Hancock questioned Fouts about his allegations that Green used drugs. Fouts admitted that he had no personal knowledge of Green using steroids or cocaine, stating that he had only repeated something he had heard from someone else. After Jouppi reported Fouts' responses to Walsh, Walsh prepared a letter of reprimand for Fouts. Although Walsh prepared the letter prior to the third step grievance meeting, he decided it would be more convenient to wait until that meeting to give it to Fouts because Fouts and Locher would both be present.

The Step 3 grievance meeting took place on June 4, 2001. Before the meeting started, Walsh informed Locher that he was going to give Fouts a letter of reprimand. Locher objected to the timing of the reprimand. After the grievance meeting ended, Walsh gave Fouts the letter of reprimand. The reprimand stated that Fouts was being disciplined for the allegation Fouts made about Green's actions at the school board meeting on February 7, 2001, the "defamatory" statements Fouts made to Clor and Walsh on February 9, 2001 in Clor's office, and the statements made after Green arrived at Clor's office. The reprimand concluded that Fouts' statements violated Board Policy 3310. Fouts filed a grievance challenging the reprimand, which was subsequently withdrawn. The earlier March 13 grievance proceeded to arbitration and was ultimately denied. The arbitrator found no violation of the collective bargaining agreement.[1]

There are a number of other groups of represented employees at the District. The Respondent regularly receives and processes a sizeable number of grievances, estimated at between four and ten a month.

Discussion and Conclusions of Law:

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1 The arbitrator concluded that the matter was a personal and political dispute between the two individuals which long anteceded the February events.

Respondent asserts that the ALJ's findings of anti-union animus and retaliation are not supported by the evidence. After a careful review of the record, we agree.

To establish a *prima facie* case of discrimination under Section 10(1)(c), the charging party must show: (1) employee union activity; (2) the employer's knowledge of that activity; (3) the employer's 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 employer's actions. *Macomb Twp (Fire Dep't)*, 2002 MERC Lab Op 64; *Rochester Sch Dist*, 2000 MERC Lab Op 38, 42. The record must contain sufficient evidence to support an inference of discriminatory motivation. *Saginaw Bay Human Services, Inc*, 1995 MERC Lab Op 131, 136-137. The timing of the adverse action in relation to the protected activity is evidence to be considered in determining motive, but it is not enough, by itself, to establish discriminatory intent. *City of Detroit (Water & Sewerage Dep't)*, 1985 MERC Lab Op 777, 780. If the charging party establishes a *prima facie* case of discrimination, the burden shifts to the respondent to demonstrate that the same action would have taken place even in the absence of protected conduct. If the respondent, by credible evidence, balances the charging party's *prima facie* case, the respondent's burden of production is met. It is then up to the charging party to show that the reason given by the respondent for the adverse action is a pretext. *MESPA v Evart Pub Schs*, 125 Mich App 71, 74 (1983). See also *United Auto Workers v Sterling Heights*, 176 Mich App 123, 129 (1989).

The ALJ based his finding of anti-union animus primarily on the timing of Respondent's actions in relation to the filing of the grievance and grievance meetings. However, the record indicates that the timing of these events was for the most part dictated by the convenience and schedules of the parties. Although the ALJ inferred animus from the delay in investigating and issuing the reprimand, Respondent gave a reasonable explanation for the delay. Walsh explained that it was not until the day of the school board meeting regarding Fouts' grievance that Walsh learned from Green that these might not have been isolated remarks, which made it a more serious matter. The Employer's investigation was conducted in order to determine whether Fouts had any basis for his comments. By questioning Fouts at the Step 2 grievance meeting, Respondent intertwined its underlying investigation with the grievance. While this may have been administratively convenient, it was clearly not the most prudent course of action. However, we conclude that this coincidence in timing is insufficient evidence upon which to base a finding of illegal motivation in the absence of any other indication of anti-union animus. There is no direct evidence of any hostility towards Fouts or other employees based on their use of the grievance procedure. *Ingham Co Bd of Comm*, 2000 MERC Lab Op 50. Establishing a violation of PERA requires more than mere suspicion; substantial evidence of anti-union animus must be shown. *Michigan Employment Relations Comm v Detroit Symphony Orchestra*, 393 Mich 116, 126 (1974); *Rochester Sch Dist*, 2000 MERC Lab Op 38, 42.

We have carefully considered each of the arguments set forth by Charging Parties and find that they do not warrant a change in the result. We find that Charging Parties have not met their burden of establishing that Respondent violated Section 10(1)(a) or (c) of PERA, and the charge must be dismissed.

ORDER

The charge in this case is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Nora Lynch, Commission Chairman

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Nino E. Green, Commission Member

Dated: ____________

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APPEARANCES:

Butzel Long, P. C., by John P. Hancock, Jr., Esq., for Respondent

Zausmer, Kaufman, August & Caldwell, P.C., by Harvey I. Wax, Esq., for Charging Parties

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, Administrative Law Judge Roy L. Roulhac heard this case for the Michigan Employment Relations Commission (MERC) in Detroit, Michigan on May 13, 2002, and February 11, 2004. Based upon the record and post-hearing briefs filed by April 30, 2004, I make the following findings of fact, conclusions of law and recommended order.

The Unfair Labor Practice Charge:

On July 9, 2001, Charging Parties Warren Education Association and James R. Fouts filed an unfair labor practice charge alleging that Respondent Warren Consolidated Schools violated PERA by issuing Fouts a formal written reprimand because he filed and processed a grievance against the president of Respondent's Board of Education.

Findings of Fact:

Charging Party Warren Education Association (WEA) and Respondent Warren Consolidated Schools are parties to a collective bargaining agreement that covers the period August 25, 1998 to August

24, 2003. The agreement contains a four-step grievance procedure that ends in binding arbitration. Charging Party James R. Fouts, a member of the WEA, has taught American Government in the Warren School District for almost thirty years. Fouts is also president of the Warren City Council.

On the evening of February 7, 2001, as part of a class assignment, several of Fouts' students attended the Warren School District's Board of Education meeting. Later, according to Fouts, he received phone calls from a resident, who wished to remain anonymous, and a Warren city councilman who told him that during the board meeting that they had watched on television, Board President Jon Green treated his students in a demeaning way and it appeared to them that Green was attempting to embarrass Fouts through his students.[2] The next day, Fouts testified, his students reported to him that Green approached them, asked whose class they were from and said that he would not hold it against them because they were in Fouts' class. Thereafter, Fouts phoned Dr. James Clor, the Warren Superintendent of Schools, and asked to review a copy of the videotape of the meeting.

The next day, Friday February 9, Fouts was summoned to the superintendent's office where he was met by Dr. Clor and David Walsh, Assistant Superintendent for Secondary Education. After reviewing the last few minutes of the tape, Fouts was given permission to take the tape home. As Fouts prepared to leave, Dr. Clor received a call from Green who indicated that he was interested in joining the meeting and was en route. Fouts, when was asked by Dr. Clor to stay until Green arrived, responded that he did not think it was a good idea to be in the same room with Green but, according to Fouts, since Dr. Clor and Walsh were his superiors, he did not leave. According to Walsh, Fouts was troubled and visibly upset that Green was coming over, but he [Walsh] thought that it was appropriate to have Fouts stay and get the matter resolved face-to-face because he did not see that there was an issue. While waiting for Green to arrive, Fouts told Walsh and Dr. Clor that a lady he once dated told him that Green's "wife had been having trouble with him [Green] and that she said it could be because he was either on steroids or cocaine."

Approximately fifteen minutes later, Green arrived and angrily and belligerently said to Fouts, "What's your beef Fouts? Fouts I don't like you and you're nothing but a piece of shit." Fouts asked Green if he had told his students that he [Green] would not hold it against them because Fouts was their teacher. Green told Fouts that if he did not like it, he should not send students to school board meetings and that Fouts could sue him. According to Fouts, as Green was screaming, yelling and waving his fist at him, Fouts told Green that he appeared to be out of control and was acting "like he might be on steroids or something." Green then picked up the videotape, threw it at Fouts, hitting him in the chest, and stormed out. Walsh testified that he never said anything to Green although he absolutely did not think that Green's conduct was appropriate for the Board President.

Within the next day or two, Fouts called Judith Locher, the WEA's president, and told her of the incident in Dr. Clor's office and of his concern about possible retaliation. Locher told Fouts that of the two options that he had - resolving the matter informally or filing a grievance - she thought they should try the informal route. The following Monday, Locher called Dr. Clor who agreed to meet with Locher and Fouts on Wednesday, February 14. The meeting, however, was never held. On Tuesday evening, Dr. Clor called

[2] Green is also a teacher in the Hazel Park School system, and according to Fouts is his political rival.

Locher and cancelled the meeting. According to Locher, Dr. Clor told her that "he felt he'd be damned if he did, damned if he didn't, [and] wasn't confident about what he could say in front of Jim Fouts." When told by Locher that he needed to figure out some way to resolve the matter, Dr. Clor responded "Well, you know, just drop it, why don't – you know, you drop it, I'll drop it and just let the two of them [Fouts and Green] battle it out." Locher testified that she told Dr. Clor that while he was free to do that, she was "under a law called the duty of fair representation, and if Jim Fouts asks me to file a grievance, I'm probably going to have to do it."

On February 12, Green sent Fouts a letter claiming that Fouts' statements on February 9, 2001, in the presence of Dr. Clor and Walsh professing his "involvement in criminal activity were false and defamatory, clearly uttered with malice and reckless disregard for the truth." Green claimed that Fouts' statements had affected his reputation in the school district community and injured his professional position. Green demanded a written apology and retraction by 5:00 p.m., February 16, and demanded that a copy of the apology be sent to Dr. Clor and Walsh.

Fouts did not respond to the letter. Rather, on March 13, 2001, the WEA filed a grievance on his behalf claiming that Green's conduct on February 9, and his February 12 letter demanding a retraction constituted intimidation and a threat to Fouts' job. As a remedy, the Union requested that Green cease and desist from verbally assaulting and intimidating Fouts, demanded a public and written apology from Green to Fouts and his students and a written guarantee that Fouts' future employment would not be jeopardized by the incident in the superintendent's office.

Walsh testified that on March 21, prior to the board meeting that included a discussion of whether to defend the recently-filed grievance, Green approached him and Dr. Hinde Socol, the Assistant Superintendent for Human Resources, and said that February 8 was not the first time Fouts had made allegations that he [Green] used steroids or cocaine and that Fouts had also made comments about his wife and brother. According to Walsh, because this was new information to him, he became immediately concerned about whether he had an employee who was making false statements about a board member. Walsh testified that he asked Personnel Director Daniel Jouppi, who was responsible for holding second step grievance meetings, to conduct an investigation to determine whether Fouts had any personal knowledge to support his allegations about Green. Jouppi, however, testified that he did not conduct an investigation.

A second step grievance hearing, attended by Fouts, Locher, Jouppi and Respondent's attorney John Hancock, was held on May 3. The presence of Respondent's attorney was unusual. According to Locher, in her twenty-four years of attending grievance hearings, Respondent's attorney has only been present three or four times. About five minutes after the meeting began, Hancock repeatedly asked Fouts if he had "any evidence, any person, any statement or any basis" for the statements he made on February 9 about Green's alleged use of steroids or cocaine. Fouts indicated that he had no personal knowledge, but that he had repeated a statement that a lady he once dated shared with him. The grievance hearing continued after Locher reminded Hancock that the purpose of the meeting was to hold a Step II hearing on Fouts' grievance, not to investigate him.

Walsh, when asked to explain the lag time between March 21 and the May 3 questioning of Fouts, testified as follows:

> Well, first of all, the – when the concern was brought forth to me, of course, we had a matter of time of when we could actually get a meeting together with Mr. Fouts and the – the appropriate parties could sit down and address the matter. And at that particular time it was – it became appropriate that there was this step grievance meeting planned, and that seemed to be the appropriate time to ask those questions, so I was comfortable enough to wait because I knew the prudent thing to do would be to have the investigation, and so I waited until that investigation occurred.

Locher testified that prior to the May 3 meeting, she received no information that the Step II hearing would involve an investigation of Fouts and that Respondent did not follow its practice of verbally notifying teachers of pending investigations or informing them of their right to union representation.

The Union advanced the grievance to Step III. It was held on June 4 at Sterling Heights High School. When Locher arrived, Dr. Socol, Walsh, Jouppi, Hancock and Mr. Chute, the school principal, were present. Locher testified that when she entered the principal's office, she asked whether something else was going to happen other than the grievance meeting. According to Locher, Walsh looked at her, shook his head, and said that Fouts was going to be given a letter of reprimand about the statement he made in Dr. Clor's office on February 9. Locher testified that when she asked when that was to occur, Walsh told her, "before the grievance hearing starts, as soon as he gets down here." Locher then responded, "Are you crazy? Number one, you're giving him a letter of reprimand on something he said four months ago; and number two, you're going to do it before we start the grievance? Do you understand that's an unfair -- I think it's a blatant unfair labor practice."

At Locher's insistence, the Step III grievance hearing was held first. As Fouts prepared to leave, Walsh told him that there was other business that he wanted to take care of. Then, Hancock and Jouppi left the meeting. Walsh testified that Hancock and Jouppi excused themselves because they were "there for the purpose of a grievance, so they did not have any reason to be at the second meeting." Thereafter, Walsh issued Fouts a letter of reprimand for making defamatory statements about Green on February 9, 2001. Fouts was informed that his statements about Green violated Board Policy 3310 on Freedom of Speech in Non-instructional Setting. The policy provides that employees are not to make threats or abusive or personally defamatory comments about co-workers, administrators or District officials and are to refrain from making public expressions that they know to be false or are made without regard to truth or accuracy.

Fouts filed a grievance, which he subsequently withdrew, challenging the reprimand. The letter of reprimand was the first discipline that Fouts had received during his almost thirty years of employment by Respondent.

Conclusions of Law:

Charging Party alleges that Respondent discriminated against Fouts in violation of PERA by issuing

him a letter of reprimand for engaging in protected activity. The elements of a prima facie case of discrimination are: (1) union or other protected activity; (2) employer knowledge of that activity; (3) union animus or hostility towards the employee's 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. Once a prima facie case is established, the burden shifts to the employer to produce credible evidence of a legal motive and to show that the same action would have taken place even in the absence of the protected conduct. The ultimate burden remains with the charging party. *Napoleon Community Schs*, 124 Mich App 398 (1983). In determining whether a violation has occurred, the record must contain sufficient evidence to support an inference of discriminatory motivation in the employer's conduct. *Passages Comm Svcs, Inc,* 1994 MERC Lab Op 1112; *Macomb Co Bd of Comm'n*, 1984 MERC Lab Op 961; *Sanilac Comm Mental Health Svcs Bd,* 1981 MERC Lab Op 1024.

The parties agree that Fouts engaged in protected activity by filing a grievance and Respondent was aware of that activity. Respondent contends, however, that the Charging Parties cannot establish a prima facie case of adverse action motivated by union animus because they cannot show that Respondent was hostile to Fouts' protected activity. I disagree.

I infer union animus from the suspicious timing of Respondent's alleged decision to investigate statements made by Fouts, the irregularity in the investigation, the four-month delay in disciplining Fouts and its timing. I find suspect Respondent's claim that on March 21, a week after the grievance was filed and only moments before the board's discussion of whether to defend the grievance, it suddenly decided to investigate a statement Fouts made six weeks earlier based on a hearsay statement by Green, the board president, whose conduct was the subject of the grievance. Moreover, Green, in his February 12 letter to Fouts demanding an apology and retraction makes no reference to any prior statements that Fouts allegedly made about him or his family before February 9.

I also infer union animus from Respondent's failure to follow its usual practice of verbally notifying teachers of pending investigations or informing them of their right to union representation.
Moreover, contrary to Walsh's testimony that it was "a matter of time" between March 21 and May 3 when the parties could actually get a meeting together to address the matter, the Union received no information that the Step II hearing would involve an investigation of Fouts. Jouppi, Respondent's own witness, even testified that he could not recall another case when a Step II hearing was used to investigate a grievant.

Finally, Respondent's choice of June 4, the date of Fouts' Step III grievance meeting, as the occasion to deliver a written reprimand to him is compelling and persuasive evidence of Respondent's hostility to Charging Parties' pursuit of a grievance on Fouts' behalf. Respondent would have this tribunal believe that the reprimand was issued close in time to the Step III grievance hearing as a matter of convenience and in consideration of the parties' schedules, not union animus, and that it was imposed at a wholly separate meeting with different individuals.

I find nothing on the record to show that the Union was placed on notice that Fouts would be

disciplined during the Step III hearing or that scheduling a time to discipline Fouts was ever an issue. Locher testified credibly that when she arrived at the hearing Walsh told her that Respondent was considering reprimanding Fouts before the grievance hearing started. But for Locher's insistence that Fouts be reprimanded after the grievance hearing, it is reasonable to believe that Respondent would have reprimanded Fouts, as Walsh told Locher, "before the grievance hearing starts," not at a separate meeting or by different individuals. Since Respondent's initial plan was to give Fouts a letter of reprimand as soon as he arrived, I discredit Walsh's testimony that Hancock and Jouppi, who were among those present when Locher arrived, were there only for the grievance meeting. This is especially true since Jouppi had been directed to investigate Fouts, and Hancock interrogated Fouts during the Step II hearing.

I find that Respondent's claim that Fouts was reprimanded for violating Board Policy 3310 on Freedom of Speech in Non-Instructional Setting after a complete and thorough investigation is a pretext designed to mask its improper motivation. It is noteworthy that on February 13, 2001, a few days after the incident in the superintendent's office, Respondent had deemed the matter unworthy of further attention. Dr. Clor rejected the Union's attempt to informally address the matter by telling Locher, "just drop it, why don't – you know, you drop it, I'll drop it and just let the two of them [Fouts and Green] battle it out." I have difficulty believing that it was not until March 21, a week after a grievance was filed, that Respondent suddenly realized that Fouts' statement on February 9 might have violated Board Policy 3310. Walsh acknowledged that Green's violent tirade and his use of profane language toward Fouts was inappropriate for the board president. However, Walsh never reminded Green of Board Policy 3310 that prohibits the use of abusive or personally defamatory comments. Although board members are not employees, it is reasonable to expect that the policy on free speech would also govern their conduct.

Moreover, there is nothing on the record to show that Respondent conducted a complete and thorough investigation. Although Walsh claimed he asked Jouppi to conduct an investigation, Jouppi testified that he did not. The record only shows that Respondent's attorney questioned Fouts during the Step II grievance hearing about whether he had any evidence that Green used steroids and cocaine. The answer that he solicited was no different than what Dr. Clor and Walsh already knew – that Fouts was repeating a statement that was made to him by a third party. On the other hand, no investigation was conducted to ascertain the veracity of Green's alleged hearsay statement that Fouts made comments to other people in the organization about his [Green's] alleged drug use, or to determine whether Fouts' allegations about Green were true.

I find that the letter of discipline issued to Fouts on June 4 was motivated by union animus and was intended to have a chilling effect on Fouts' exercise of his right to file a grievance, and to retaliate against him. But for the grievance filed on March 13, 2001, I find it unlikely that the statements made by Fouts on February 9, would have warranted a written reprimand on June 4, 2001, four months later. I conclude that Respondent reprimanded Fouts because of his protected activity in violation of Section (10)(1)(a) and (c) of PERA. Based on the above findings of fact and conclusions of law, I recommend that the Commission issue the order set forth below:

RECOMMENDED ORDER

It is hereby ordered that the Warren Consolidated Schools, its officers, agents and representatives shall:

1. Cease interfering with, restraining and coercing James R. Fouts and other bargaining unit members represented by the Warren Education Association in the exercise of their right to file and pursue grievances or to engage in other conduct protected by PERA.

2. Cease discriminating against James R. Fouts and other bargaining unit members represented by the Warren Education Association for using the grievance procedure or for engaging in other conduct protected by PERA.

3. Remove the June 4, 2001 written reprimand and any reference to it from James R. Fouts' personnel file.

4. Post, for a period of thirty consecutive days, the attached Notice to Employees in conspicuous places on Respondent's premises, including places where notices to employees are customarily posted.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

____

Roy L. Roulhac
Administrative Law Judge

Dated: ______________

NOTICE TO EMPLOYEES

After a public hearing before an Administrative Law Judge of the MICHIGAN EMPLOYMENT RELATIONS COMMISSION, the WARREN CONSOLIDATED SCHOOLS was found to have committed unfair labor practices in violation of the MICHIGAN PUBLIC EMPLOYMENT RELATIONS ACT (PERA). Based upon an ORDER of the COMMISSION, WE HEREBY NOTIFY OUR EMPLOYEES that:

> WE WILL NOT interfere with, restrain or coerce James R. Fouts and other bargaining unit members represented by the Warren Education Association in the exercise of their right to file and pursue grievances or to engage in other conduct protected by PERA.
>
> WE WILL NOT discriminate against James R. Fouts and other bargaining unit members represented by the Warren Education Association for using the grievance procedure or for engaging in other conduct protected by PERA.
>
> WE WILL Remove the June 4, 2001, written reprimand and any reference to it from James R. Fouts' personnel file.

All of our employees are free to engage in lawful, concerted activity through representatives of their own choice for the purpose of collective bargaining or other mutual aid or protection as provided by Section 9 of the Public Employment Relations Act.

WARREN CONSOLIDATED SCHOOLS

By_______________________________

DATE: ___________ Title ______________________________

This notice must remain posted for a period of thirty days. Questions about this notice shall be directed to the Michigan Employment Relations Commission, 3026 W. Grand Blvd, Ste. 2-750, Box 02988, Detroit, MI 48202. Phone (313) 456-3510.