

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

In the Matter of:

CLARKSTON COMMUNITY SCHOOLS,  
Public Employer-Respondent,

Case No. C04 E-122

-and-

STEPHEN PARTLO and DIANA WEBB,  
Individuals-Charging Parties.

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**APPEARANCES:**

Dickinson Wright, by James B. Perry, Esq., for the Respondent

McCall & Trainor, by Shawn C. Cabot, Esq., for Charging Parties Stephen Partlo and Diana Webb

**DECISION AND ORDER**

On July 7, 2006, 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

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Nora Lynch, Commission Chairman

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

Dated: \_\_\_\_\_

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DECISION AND RECOMMENDED ORDER  
OF ADMINISTRATIVE LAW JUDGE  
ON MOTION TO DISMISS

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 December 19, 2005, before Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. At the close of the Charging Parties' testimony, Respondent made a motion to dismiss the charge. Based upon exhibits submitted jointly by the parties, evidence presented by Charging Parties at the December 19, 2005 hearing, and post-hearing briefs filed by Respondent and by Charging Parties on or before February 23, 2006, I make the following findings of fact and conclusions of law, and recommend that the Commission adopt the following order.

The Unfair Labor Practice Charge and History of the Proceeding:

On May 11, 2004, the Clarkston Association of Support Personnel, MEA/NEA (CLASP) filed this charge against the Clarkston Community Schools. The charge alleged that on or about March 9, 2004, Respondent discharged custodians Diana Webb and Stephen Partlo because of their union activities. At the time the charge was filed, CLASP represented a bargaining unit of custodians, paraprofessionals, office clerical employees, and bus drivers employed by Respondent. CLASP filed two other charges, one against the Clarkston Community Schools and one against the Michigan Education Association (MEA), and the three charges were consolidated for hearing on January 7, 2005. Between the filing of the charge and the January 7, 2005 hearing, CLASP's bargaining unit was dissolved. Respondent's paraprofessionals, office clerical employees, and bus

drivers each formed their own separate units represented by labor organizations affiliated with the MEA. The organization representing the custodians was reorganized as the Clarkston Custodians Association, MEA/NEA and recognized by Respondent as the new bargaining agent for these employees. At the hearing on January 7, 2005, Respondent maintained that CLASP lacked standing to pursue its charges, while the former officers of CLASP asserted that CLASP had standing because it continued to be the custodians' bargaining representative until its contract expired on June 30, 2005. 1

On January 7, 2005, Partlo's and Webb's discharges had already been arbitrated. At the hearing on that date, Respondent and CLASP agreed to hold the charge in Case No. C04 E-122 in abeyance until the arbitrators issued their awards. On May 25, 2005, Partlo wrote to Respondent and to me stating that the arbitration award had been issued in his case and that he wished to proceed with the charge. Webb subsequently joined in his request. I notified the parties that since CLASP was or about to become defunct, I would allow Partlo and Webb to substitute for CLASP as Charging Parties in Case No. C04 E-122.

Facts:

As noted above, CLASP filed grievances over Partlo's and Webb's discharges. The grievances were heard by different arbitrators. Both arbitrators heard extensive testimony regarding the events on March 1, 2004 that preceded Charging Parties' discharges. In lieu of presenting testimony regarding these events on that date, the parties agreed to supplement the record made on December 19, 2005 with the transcripts of these arbitration hearings.<sup>2</sup>

Charging Parties' Union Activities and Alleged Disparate Treatment

Partlo was hired by Respondent as a custodian in 1986. He transferred to Respondent's high school in 1987. Webb was hired as a custodian at the high school in 1999. Between 1999 and 2004, Partlo and Webb worked the second shift at the high school from 3:30 pm to 12:00 am. By their own choice, they worked together as a team to clean both of their assigned areas.

In 1998, Respondent opened a new, larger high school building and hired a number of new custodians. Around the same time, it hired a private contractor to manage its custodial services. After about a year, Respondent terminated the contract. Testimony from several witnesses indicated that there were custodial problems at the new building from the start. Custodians, particularly the second shift, complained that the high school was understaffed and that work was unevenly distributed among the shifts. The second shift had no supervisor on the premises and this also created difficulties. In 2001 or 2002, Respondent hired Kevin Kling to supervise the second shift. Kling upset some of his subordinates by changing their long-standing work assignments and criticizing how they did their jobs. Kling's rough manner also made some custodians angry. Several

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1 Case No. CU04 C-017, filed by CLASP against the Michigan Education Association, was withdrawn at the hearing on January 7, 2005. Case No.C04 C-066 was adjourned without date at CLASP's request after one day of hearing and remains in that status.

2 The parties also agreed to submit the briefs submitted to the arbitrators by Respondent and by CLASP. The exhibits from these arbitrations were not made part of this record.

witnesses testified to a general atmosphere of hostility and suspicion between the custodians at the high school and all of their superiors. In November 2003, Kling was promoted to facilities manager with supervisory authority over all Respondent's custodians. Steve Weiner was hired to fill Kling's former job as second shift supervisor at the high school.

In late 1999 or early 2000, Partlo became one of the two stewards for the custodians in the CLASP unit. Between 2000 and 2004, Partlo filed at least ten or twelve grievances. Many of these grievances involved the discipline of custodians at the high school. In September 2001, Partlo grieved a reprimand issued to him, Webb, and high school custodian Lisa Valance for failing to complete the work of an absent employee. In 2002, Partlo filed a grievance for Valance when she received a reprimand for not completing her work assignment. In March 2002, Partlo grieved the discharge of high school custodian Brent Hansard for allegedly writing a threatening note. In early 2003, Partlo and Webb filed a grievance asserting that Respondent violated their seniority rights when it changed their work assignments and reassigned the cleaning of the gym from the second to the third shift. The grievance over Hansard's discharge was settled in the fall of 2003 and he was returned to work. After Hansard's return, Partlo filed several grievances on Hansard's behalf. These included a grievance challenging Hansard's poor evaluation and a grievance over an incident where Hansard was asked in the presence of students and teachers to take a breathalyzer test. Partlo also filed two grievances over disciplinary actions issued to high school custodian Shawn Dyer in September and December 2003. In January 2004, Partlo filed a grievance on behalf of Webb asserting that Respondent violated the contract in filling a new position.

Nikki Roy, former CLASP president and a second shift custodian at one of Respondent's elementary schools, received numerous complaints about supervisors from custodial staff at the high school between 2001 and 2004. Roy testified that Partlo "viewed the [union] contract as a bible." She testified that Respondent saw Partlo as a particularly active union steward and that she believed that the supervisors of the custodians at the high school were hostile to Partlo because of his union activities. As evidence of Respondent's union animus, Roy testified that sometime between 2001 and 2004, Wes Goodman, Respondent's supervisor of building and grounds, told her that Partlo and the custodians who associated with him were "outta here." Roy understood this as a threat to discharge Partlo and the second shift custodians who were Partlo's friends because of Partlo's union activities. Roy also testified to an incident involving Kling at a grievance meeting in March 2003. According to Roy, both she and Partlo were at the meeting and after the meeting she tried to speak privately with him. Kling became enraged, ordered her out of the building and threatened to call the police if she did not leave immediately. In July 2003, Respondent's superintendent lost his temper and shouted at Partlo and the MEA Uniserv representative when they attempted to hand him additional grievances pertaining to Hansard's March 2003 discharge. Shortly thereafter, the Uniserv representative sent an e-mail to Respondent expressing concern that custodians were becoming afraid to speak to their union representatives. In early 2004, MEA's new Uniserv representative told Partlo and Webb that he feared they would be discharged if they kept filing grievances.

Prior to 2000, Partlo was disciplined only once, in 1992, for arguing with his supervisor. This discipline was removed from his file after he grieved it. Partlo's written evaluations between 1986 and 2000 were always satisfactory. In the fall of 2000, Respondent told him that a teacher at the high school had accused him of being rude. It said that if he did not accept a voluntary transfer to an elementary school they would make things very difficult for him at the high school. Partlo

refused the transfer. Between 2000 and 2004, Partlo received five or six written reprimands or suspensions. In the summer of 2003, Partlo was disciplined for insubordination. Partlo testified that Goodman said to him in a grievance meeting, “Well, Steve, if you don’t like your job why don’t you go find another one?” According to Partlo, an argument arose after Partlo suggested that Goodman find a new job instead. Partlo was also disciplined in late 2003 or early 2004 after an argument with the day shift custodial supervisor at the high school, Karl Blehm. According to Partlo, he was doing Webb’s work in her absence when Blehm approached him and said, “What the hell do you think you are doing?” According to Partlo, he replied, “What the hell do you think I’m doing? I’m working.” In addition to his written reprimands and suspensions, Partlo was called in and reprimanded orally on four or five other occasions between 2000 and 2004. Partlo also received poor written evaluations.

Roy testified that, in her opinion, Respondent’s supervisor unfairly criticized Partlo and Webb’s work because of Partlo’s union activities. As other examples of harassment of Partlo and Webb, Roy cited an incident in the summer of 2003 when the air conditioning was shut off in the area of the high school building where they normally cleaned. Partlo was on vacation at the time, but Kling did not respond to Webb’s complaints. Roy also testified that in July 2003, a custodian called Roy to report that Kling had asked him to make a complaint against Partlo for yelling at him.

As noted above, Webb and Partlo were both reprimanded in September 2001. There was no indication that Webb received other discipline or poor evaluations between 2000 and 2004. However, Webb felt that Kling and her other supervisors targeted her because of her association with Partlo. Shortly after Webb was hired in 1999, Goodman told her that she “was going to get into trouble for hanging around with certain people.” Webb believed Goodman was referring to Partlo. In January 2004, Webb noticed that the security camera in the high school parking lot, which should have moved from place to place, remained fixed on her car wherever she parked in the lot. Webb complained to both Kling and Weiner. When both denied responsibility, Kling told her to take her complaint to the union. Webb concluded that this was deliberate harassment.

#### Events on March 1, 2004

In March 2004, five custodians normally worked the second shift at the high school on Mondays. On Monday, March 1, 2004, one second shift custodian had been given the day off and another, Brent Hansard, called in sick. One custodian on the third shift had also been given the day off. Each custodian has a regularly assigned area to clean. When a custodian is absent, employees may be reassigned to do his or her work. The three custodians working the second shift on March 1, 2004, were Partlo, Webb and Dori Lund. When the three arrived at work that day, they saw a revised work schedule posted by the first shift supervisor that assigned them some of the work normally done by the two custodians who had been given the day off. The first and second shift supervisors were attending a meeting in another building at the beginning of the second shift and neither was aware that Hansard would not be available to do his assigned work.

On March 1, parent-teacher conferences were held in the cafeteria and performing arts center of the high school between 5:00 and 8:00 pm. At about 4:30, the principal of the high school, Jan Meagher, and assistant principal Shawn Ryan noticed that many tables necessary for the conferences were not set up and that there was trash in the main hallways. The main hallways were part of

Hansard's regular assignment. Meagher and Ryan hurried to pick up trash and complete the set up before the conferences began. Sometime before 5:00 pm, Weiner returned to the building, saw the work that needed to be done, and began to assist Meagher and Ryan. He also called his supervisor, Kling, who came over to the high school to help.

At Weiner's direction, a secretary from the office paged "all custodians." Lund responded to this page, and Weiner told her to clean the women's main bathroom and pick up around the main entrance. There may have been a second page. Webb and Partlo did not immediately respond to the first page they heard, but finished some work, stored supplies, and gathered some trash barrels to take downstairs. As they were waiting for the elevator with the barrels, they heard Kling page them by name in an angry voice. According to Respondent, the second or third page occurred sometime before 5:30 pm. According to Webb and Partlo, they were not paged until after 6:30 pm.

When Webb and Partlo arrived at the main office, they saw only Weiner. Weiner told Partlo to clean the men's main bathroom and told the two of them to pick up debris and sweep and spot mop in the main hall and in an upstairs hallway. Webb said to Weiner, "Why, because Kling want us to do it?" Weiner replied that he and Meagher wanted them to do the work. Partlo said something about it not being worth the bother, since conferences had already started or were almost over. Partlo also told Weiner that it was not a good idea to mop until people left the building, since they might slip on the wet floors. Weiner said, "I hadn't thought of that," and turned and left. Partlo testified that he interpreted this to mean that he was not to mop; he also testified that he thought Weiner agreed with him that it was too late to bother with the other cleaning. Webb and Partlo went to dump their trash barrels. As they were returning through the hall, Weiner saw them and asked if they would work overtime. They both said no. Partlo looked in the men's main bathroom and decided that it looked clean enough. He also checked the hallways Weiner had told him to clean and decided that they also looked clean enough. He and Webb started to return to Webb's regular area, but decided it was time for a break. Custodians have two breaks and a lunch period, and they normally decide themselves when to take their breaks.

Partlo and Webb went to the break room, got sodas, and went outside the building to smoke cigarettes. As they stood there, they saw Kling sitting in his car in the parking lot talking on his cell phone. The sight of Kling made Webb upset. Weiner came out of the building and asked what they were doing. An argument ensued. At some point, Webb threw up her hands and said, "F--- it, I'm punching out and going home." Weiner told them he still needed their help and turned to go back into the building. Partlo also said he was going home. He may have directed a profanity at Weiner. There was disagreement over whether Partlo and Webb told Weiner that they were sick or didn't feel well; Partlo testified that he told Weiner that the situation was "volatile." Weiner told them not to leave, but Partlo and Webb both punched out. They went directly from the high school to Roy's building, where they spent about thirty to forty-five minutes talking to her about the incident. Roy advised them to go to a medical clinic, which they did. They were seen by the same doctor, who diagnosed them with elevated blood pressure and anxiety and gave them slips indicating that they should be off work for three days.

Respondent charged Partlo and Webb with eighteen separate rule infractions, including smoking on school grounds, and multiple counts of insubordination. An investigatory meeting was held on March 8, and Webb and Partlo were asked to give their versions of the incident. During this

meeting, Webb exploded into profanity and accused Respondent of “trying to set me up like Brent.” On March 9, Respondent decided to terminate both Partlo and Webb. They received their discharge notices on March 12, 2004.

#### Discussion and Conclusions of Law:

To establish a prima facie case of discrimination under Section 10(1)(c) of PERA, the charging party must show: (1) employee union activity; (2) the employer's knowledge of that activity; (3) the employer's 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. *Warren Con Schs*, 18 MPER 63 (2005); *Macomb Twp (Fire Dep't)*, 2002 MERC Lab Op 64. 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. If the charging party establishes a prima facie case of discrimination, the respondent has the burden of demonstrating that the same action would have taken place even in the absence of protected conduct. As a practical matter, however, the decision usually turns on a weighing of the evidence as a whole. *MESPA v Evert Pub Schs*, 125 Mich App 71, 74 (1983). See also *United Auto Workers v Sterling Heights*, 176 Mich App 123, 128-129 (1989).

Partlo was a CLASP steward and filed many grievances between 2000 and his discharge in early 2004. There is no question that in pursuing these grievances Partlo was engaged in activity protected by PERA. While Webb was not a union officer, Partlo filed several grievances on her behalf, including one filed in early 2004. These grievances constituted protected activity by Webb. Respondent clearly had knowledge of Webb and Partlo's union activities. I find that Charging Party also met its burden of establishing union animus or hostility toward Partlo and Webb's protected rights. The number of disciplinary actions against Partlo increased dramatically after he became CLASP steward. The evidence showed Partlo to be a hot-tempered, quick-tongued individual who demonstrated these traits both while handling grievances and performing his job duties for Respondent. I find it unlikely, however, that Partlo kept these qualities hidden during his first fourteen years of employment. I conclude that these disciplinary actions, along with the incidents testified to by Roy in 2003 and 2004, indicate that Respondent had become hostile toward Partlo because of his union activities.

Despite this hostility, I conclude that Charging Parties failed to show that Partlo's union activities even contributed to, or constituted a motivating factor, in Respondent's decision to discharge either Partlo or Webb. I find that Partlo and Webb were guilty of insubordination on March 1, 2004 when they deliberately disregarded Weiner's orders to clean a men's bathroom and the main and upper two hundred hallways before the parent-teacher conferences concluded that evening. Partlo and Webb were called to the office in the middle of their shift so that they could be reassigned to work that had not been done on the night of the conference because an employee was absent. Weiner reassigned them. Partlo and Webb might have interpreted Weiner's statement that “he hadn't thought about that,” as an indication that he had changed his mind about his order to spot mop these areas. However, Partlo and Webb could not have understood Weiner to have changed his mind about the need for the bathroom and halls to be cleaned before the conferences ended. Partlo inspected the bathroom and halls and concluded that they were clean enough, but he and Webb did not report their conclusion to Weiner or ask if he had another assignment. Instead of finding Weiner, they decided to take their break before returning to their originally assigned areas. Webb and Partlo

were also guilty of insubordination when they left the school after Weiner ordered them back to work. Webb and Partlo were agitated and upset by their argument with Weiner. Rather than going directly home or to a medical clinic, however, they went to Roy's school and spent at least a half hour talking over the incident with her. I find that Partlo and Webb were not so ill that they were unable to work for the rest of their shift. In one evening, Partlo and Webb committed two serious acts of insubordination. There is no evidence that Respondent tolerated insubordination of this kind or degree. I conclude that Partlo and Webb were discharged for this misconduct on March 12, 2004, that their union activity was not a motivating factor in Respondent's decision to discharge them, and that their discharges, therefore, did not violate Sections 10(1)(a) or (c) of PERA.

In accord with the findings of fact and conclusions of law above, I recommend that the Commission grant Respondent's motion to dismiss the charge and that it issue the order below.

RECOMMENDED ORDER

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern  
Administrative Law Judge

Dated: \_\_\_\_\_