

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

In the Matter of:

BERRIEN SPRINGS PUBLIC SCHOOLS,
Public Employer-Respondent,

MERC Case No. 21-E-1217-CE

-and-

SARAH ELIZABETH PARKER,
An Individual Charging Party.

APPEARANCES:

Thrun Law Firm, P.C., by Raymond Davis and Ryan Murray, for Respondent

Sarah Elizabeth Parker, appearing on her own behalf

DECISION AND ORDER

On October 27, 2021, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order¹ in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act, 1965 PA 379, as amended, and recommending that the Commission dismiss the charges and complaint.

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 either of the parties.

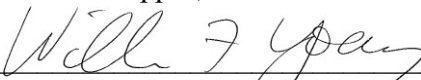
ORDER

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



Tinamarie Pappas, Commission Chair



William F. Young, Commission Member

Issued: January 11, 2022

¹ MOAHR Hearing Docket No. 21-011219

**STATE OF MICHIGAN
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
EMPLOYMENT RELATIONS COMMISSION**

In the Matter of:

BERRIEN SPRINGS PUBLIC SCHOOLS,
Respondent-Public Employer,

Case No. 21-E-1217-CE
Docket No. 21-011219-MERC

-and-

SARAH ELIZABETH PARKER,
An Individual Charging Party.

APPEARANCES:

Thrun Law Firm, P.C., by Raymond Davis and Ryan Murray, for Respondent

Sarah Elizabeth Parker, appearing on her own behalf

**DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE**

This case arises from an unfair labor practice charge filed by Sarah Elizabeth Parker against Berrien Springs Public Schools. Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, the charge was assigned to David M. Peltz, Administrative Law Judge (ALJ) for the Michigan Office of Administrative Hearings & Rules (MOAHR), acting on behalf of the Michigan Employment Relations Commission (the Commission).

The charge, which was filed on May 27, 2021, alleges that Respondent refused to hire Parker for a position as Dean of Students because of the protected activities she engaged in during her prior employment with the school district. An evidentiary hearing was held by *Zoom* video conference on August 3, 2021. Based upon the entire record, including the transcript of the hearing, exhibits and a post-hearing brief filed by Respondent on August 23, 2021, I make the following findings of fact, conclusions of law and recommended order.¹

Findings of Fact:

From 2013 to 2018, Sarah Elizabeth Parker was employed by Respondent as a fifth-grade teacher at Sylvester Elementary School and was a member of a bargaining unit represented by the Berrien Springs Education Association (BSEA). In 2016, Parker became a BSEA building representative at the elementary school. One of her first duties as building representative was to

¹ Charging Party did not file a post hearing brief.

assist another employee who submitted a hostile work environment complaint against the elementary school president. Parker testified that it was a “very tough” situation for her personally because the principal was someone she respected. Parker worked with David Eichberg, Superintendent of Berrien Springs Public Schools, to bring about a resolution of the issue which entailed removing the principal from the school.

In 2017, Parker was elected president of the BSEA. Parker testified that during her tenure as Union president, there were “some pretty contentious issues” including contract negotiations and “a lot of grievance issues.” Nevertheless, Parker did not believe there were any problems between herself and Superintendent Eichberg. At hearing, Parker admitted that she and Eichberg had a good working relationship and that the Superintendent never expressed any animus towards her because of her role as Union president. Similarly, Eichberg characterized his relationship with Parker as “very good” and effective. Eichberg testified that he and Parker were able to work collaboratively through some challenging situations and that he found Parker’s “leadership and collaborative and creative approach to solving problems to be very helpful” to both himself and the school district. Eichberg denied that any grievances were filed by the BSEA while Parker was president. In fact, Eichberg testified that the Union has not filed a formal grievance since he became Superintendent in 2015.

On May 10, 2018, Parker resigned her teaching position effective June 30, 2018, for reasons not explained in the record. That same month, she applied for a position with Berrien Springs Public Schools as Curriculum Coach. The Curriculum Coach position is based in Respondent’s central office and serves the entire school district. At the time, Amy Flavin-Williams was Curriculum Director and responsible for filling the Curriculum Coach position. Flavin-Williams decided not to interview Parker for the position because of issues with the fifth-grade team during Parker’s time as teacher. At hearing, Flavin-Williams explained, “I don’t know what the specifics of what the problems were between the fifth-grade team, but I do know that it was quite polarizing.” Accordingly to Flavin-Williams, the problems were interpersonal in nature and essentially “split the team apart.” Flavin testified that due to those issues, she had concerns with putting Parker in a leadership position. Flavin-Williams denied that she was even aware at the time about Parker’s activities as Union president. Charging Party did not file an unfair labor practice charge or take any other action to challenge Flavin-Williams’ decision not to grant her an interview for the Curriculum Coach position.

Sometime before her resignation became effective, Parker attended a school field day during which she was approached by Eichberg. The Superintendent thanked Parker for her service with the district. When Parker offered to shake Eichberg’s hand, the Superintendent asked if he could give her a hug instead.

After leaving employment with Berrien Springs Public Schools, Parker went to work for Benton Harbor Area Schools. She was employed there as an Instructional Facilitator and Data Coach from August of 2018 through March of 2019.

On May 10, 2021, Respondent posted for a new Dean of Students position at Sylvester Elementary School. At that time, Flavin-Williams was working as Principal of the elementary school and was responsible for filling the position, with input from Respondent's Director of Human Resources. The Dean of Students position involved working with students with behavioral challenges. Flavin-Williams testified that due to the nature of the position, she was looking for someone with strong interpersonal skills and demonstrated competencies in conflict relations. Flavin-Williams explained that it was important to her that the candidate selected for the position have the ability to develop a meaningful relationship with staff and parents and be able to avoid "drama" with the students.

Parker was one of six people who applied for the Dean of Students position. She did so by submitting a resume through the school district's online application system. At the same time, she emailed Eichberg and Flavin-Williams about her interest in the position. Eichberg testified that he was busy travelling to various virtual learning locations operated by the school district throughout the State and that he did not read the email at that time. Eichberg asserted that he only realized he had received a copy of the message after the instant charge was filed.

At some point after the Dean of Students position was posted, some of Parker's former colleagues at the school district contacted Flavin-Williams to suggest that Parker be considered for the position, while others related to Flavin-Williams that they did not endorse her as a candidate.

Sometime in early May, Flavin-Williams and Eichberg passed each other on the way out of an administrative staff meeting and had a brief conversation during which Flavin-Williams mentioned that Parker had applied for the Dean of Students position. According to Flavin-Williams, Eichberg expressed surprise that Parker was interested in returning to the school district because it was his impression that she was unhappy when she resigned her teaching position in 2018. Flavin-Williams testified that this conversation had no impact on the hiring process because she had already decided not to grant Parker an interview and that Eichberg played no role whatsoever in that decision.

In explaining why she decided not to interview Parker, Flavin-Williams once again referenced staff problems when Parker was teaching at the elementary school. Flavin-Williams testified that she was apprehensive about bringing in someone who had been part of the fifth-grade staff "turmoil" and that she did not want to jeopardize the progress that had been made since that time in returning the culture at the elementary school to a "good place." Flavin-Williams also expressed concern regarding Parker's resume which showed that she left her position at Benton Harbor Area Schools after only approximately six months on the job. Based upon that fact, as well as her understanding that Parker had resigned abruptly from Berrien Springs Public Schools in 2018, Flavin-Williams was worried that Parker would walk away from the Dean of Students position if any hardship were to arise. Flavin-Williams was adamant that Parker's prior role as Union president was not a factor in the hiring process:

I had very little knowledge of Ms. Parker's role in the union. My only knowledge came from her address, her annual address to the staff as part of our opening day; other than that, as curriculum director, that was my only knowledge of her in the

union capacity and I was not a building principal when Ms. Parker served in that role.

Flavin-Williams testified that she made the decision regarding which candidates to interview on or around May 15, 2021. Two days later, Flavin-Williams called Parker and informed her that she was not being considered for the Dean of Students position. According to Parker, Flavin-Williams told her that Eichberg felt that she was not a good candidate for the position because she had left the school district on a “sour note” and that she had “irreparably damaged” the working relationship between the parties. Parker testified that she thanked Flavin-Williams for being candid with her and letting her know that there was an issue between herself and Eichberg. Thereafter, Parker and Flavin-Williams exchanged a few text messages in which Parker apologized to Flavin-Williams for putting her in the middle of the situation and expressed hope that they could work together again at some point in the future.

At hearing, Flavin-Williams did not entirely dispute Parker’s characterization of the phone call, but testified that she lamented having referenced Eichberg during the conversation:

[G]oing through this process, I realize and very much regret even bringing Mr. Eichberg’s name into the conversation. It truly was my decision not to interview Ms. Parker. And going through this process, I’ve realized that my intended message was not the received message from Ms. Parker. And I know that I did not indicate at all that her union affiliation had anything to do with her hire, that’s not something that I would have said and that’s not something that I believe at all. And I also do not recall saying irreparable, it’s not a word that I would have said. So I, like I said, I very much regret bringing Mr. Eichberg’s name into the conversation. Like I said, part of my reason for choosing not to interview Ms. Parker was my concerns about the culture and the fifth grade team, and the reason for me having that conversation with her was so that we could, you know, have that frank conversation, and it all got pretty muddy, but my intent was to keep the culture of the fifth grade team intact and certainly not to make Ms. Parker believe that Mr. Eichberg had any ill will or ill feelings toward her.

On May 20, 2021, Parker sent an email to Eichberg in which she requested an opportunity to talk and “clear the air.” The following day, Eichberg asked Flavin-Williams to communicate with Parker on his behalf because he was out of town at the time and was too busy to respond personally. Eichberg told Flavin-Williams to convey to Parker that he did not believe there was any ill-will toward her but that it was his understanding that she was unhappy with the school district when she abruptly resigned three years earlier. Pursuant to Eichberg’s instructions, Flavin-Williams sent the following message to Parker in an email dated May 21, 2021:

Good morning Sarah,

I spoke with Mr. Eichberg this morning and he asked that I please connect back with you regarding the email you sent him. Unfortunately, as I am sure that you can appreciate, his schedule is quite busy nearing the end of the school year.

Mr. Eichberg shared from his recollection several people sharing with him that you were quite unhappy at Berrien Springs and that your own dissatisfaction with the district/school may have led to your less than positive attitude at the end of your time here with us.

The individual that we will hire for the Dean of Students at Sylvester must be able to maintain a positive attitude even when presented with challenges and barriers.

Thank you again for your interest in the position.

Eichberg testified that he played no role in the hiring process for the Dean of Students position. Eichberg asserted that as Superintendent of a school district with a \$65 million budget, it is not practical for him to be involved in such decisions. Eichberg testified that the only instances in which he has asserted himself in the hiring process have been with respect to positions which are “direct reports.” According to Eichberg all other hiring decisions are made by the building principals with assistance and oversight from the director of human relations. In such instances, his sole involvement is to sign the letter of intent and submit it to the board of education after the individual has been hired. Eichberg did admit, however, that before the Dean of Students position was ever even posted, he had a conversation with Flavin-Williams during which he recommended that she interview one of his former students who, at the time, worked for Grand Rapids Public Schools. Eichberg testified that he believed that the former student, who was a minority candidate, had the skills in his current job which would be of benefit to a “culturally diverse” district like Berrien Springs Public Schools.

Discussion and Conclusions of Law:

Charging Party contends that the school district’s refusal to interview her for the Dean of Students position constituted unlawful discrimination in violation of PERA. According to Parker, Superintendent Eichberg harbored animus towards her based upon her prior activities on behalf of the Union, including her tenure as president of the BSEA and, for that reason, directed Flavin-Williams not to grant her an interview.

The elements necessary to establish a prima facie case of unlawful discrimination under Section 10(1)(c) of the Act are, in addition to an unlawful employment action: (1) union or other protected activity; (2) employer knowledge of that activity; (3) anti-union animus or hostility toward the employee’s protected rights; and (4) suspicious timing or other evidence that protected activity was a motivating cause of the alleged discriminatory action. *Huron Valley Sch*, 26 MPER 16 (2012); *Univ of Michigan*, 2001 MERC Lab Op 40, 43; *Grandvue Medical Care Facility*, 1993 MERC Lab Op 686, 696. Although anti-union animus may be proven by indirect evidence, mere suspicion or surmise will not suffice. Rather, the charging party must present substantial evidence from which a reasonable inference of discrimination may be drawn. *Detroit Symphony Orchestra*, 393 Mich 116, 126 (1974); *City of Grand Rapids (Fire Dep’t)*, 1998 MERC Lab Op 703, 707. 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 Ewart Pub Sch*, 125 Mich App 71, 74 (1983). The ultimate burden, however, remains with the charging party. *City of Saginaw*, 1997 MERC Lab Op 414, 419.

In the instant case, there is no dispute that Parker engaged in protected concerted activities of which Respondent was aware. In 2016, Parker was a Union representative at Sylvester Elementary School. The following year, she became president of the Berrien Springs Education Association. In that capacity, she worked directly with Superintendent Eichberg on various matters, including contract negotiations. Nevertheless, Parker's claim against the school district fails on the basis that there is insufficient evidence to support a finding of anti-union animus or hostility on the part of the administration.

In support of her contention that she was denied an interview for the Dean of Students position due to anti-union animus on the part of Eichberg, Charging Party relies on the statements she claims were made to her by Flavin-Williams during their May 17, 2021, phone call. According to Parker, Flavin-Williams conveyed to her Eichberg's belief that she had left employment with the school district on a "sour note" and that she had "irreparably damaged" the working relationship between the parties. Although Flavin-Williams testified that she never used the phrase "irreparable" during the conversation, she did not deny having referenced the Superintendent by name in the course of explaining why Parker was not being considered for the position. However, even assuming that the substance of the phone call was exactly as described by Parker, the remarks attributed to Eichberg, standing alone, do not establish that the Superintendent harbored animus towards Charging Party based upon her protected concerted activities.

Although both Charging Party and Eichberg recalled that some challenging and contentious issues arose during Parker's tenure as president of the BSEA, there is nothing in the record to suggest that there was any acrimony between Parker and Eichberg or that relations between the administration and the Union were particularly strained. In fact, Parker admitted that she and Eichberg had a good working relationship and that the Superintendent never expressed any ill-will towards her because of her Union conduct. Likewise, Eichberg remembered Charging Party with apparent fondness. He testified that he had a "very good" and "effective" relationship with Parker and that he found her "collaborative and creative" approach to leadership helpful. The positive relationship between the parties is reflected in Parker's testimony concerning her interaction with Eichberg during a field day just before her resignation became effective. According to Parker, the Superintendent thanked her for her service with the district and asked if he could give her a hug. Given the lack of evidence of anti-union animus, it is more likely than not that the statements were simply related to Eichberg's belief that Charging Party was unhappy when she resigned her teaching position in 2018. Notably, there is no evidence linking Charging Party's resignation in 2018 to her activities on behalf of the BSEA or the district's response thereto. In fact, the record is devoid of any evidence whatsoever regarding the reasons for Parker's resignation. To find anti-union animus on the basis of the evidence presented in this matter would be to inappropriately engage in speculation and conjecture within the meaning of *Detroit Symphony Orchestra; City of Grand Rapids (Fire Dep't)*, 1998 MERC Lab Op 703, 707.

Given my conclusion that Charging Party failed to establish a prima facie case of unlawful discrimination in violation of Section 10(1)(c) of PERA, it is not necessary to determine whether Respondent produced evidence of a legal motive for the employment action. Nevertheless, it should be noted that Respondent did indeed provide a compelling explanation for not offering an interview to Parker. Although Eichberg had a brief conversation with Flavin-Williams regarding

Parker's application for the Dean of Students position, the record overwhelmingly establishes that the Superintendent played no meaningful role in the hiring process and that it was Flavin-Williams who made the decision not to interview Charging Party. Moreover, Flavin-Williams explained in some detail her rationale for refusing to interview Parker. Flavin-Williams testified that due to problems with the fifth-grade staff when Parker last taught at the school district, she was concerned that Charging Party lacked the strong interpersonal skills necessary for the Dean of Students position. Flavin-Williams also explained that she was uneasy about Charging Party's commitment to the job given her understanding that Parker had abruptly resigned her teaching position at Sylvester Elementary School in 2018 and the fact that she had left her prior position at Benton Harbor Area Schools after only about six months on the job. I found Flavin-Williams to be a highly credible witness and credit her testimony concerning the hiring process for the Dean of Students position.

Despite having been given a full and fair opportunity to do so, Charging Party has failed to meet her burden of proving that Respondent violated the Act. Accordingly, I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The unfair labor practice charge filed by Sarah Elizabeth Parker against Berrien Springs Public Schools in Case No. 21-E-1217-CE; Docket No. 21-011219-MERC is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink that reads "David M. Peltz". The signature is written in a cursive style and is positioned above a horizontal line.

David M. Peltz
Administrative Law Judge
Michigan Office of Administrative Hearings and Rules

Dated: October 27, 2021