STATE OF MICHIGAN

COURT OF APPEALS

LAWRENCE J. VANWASSHENOVA,

Plaintiff–Appellant,

v

COUNTY OF MONROE and MONROE COUNTY PROSECUTOR,

Defendants–Appellees.

UNPUBLISHED
July 26, 1996

No. 183361
MERC No. C93 A-1

Before: Neff, P.J., and Fitzgerald and C. A. Nelson,* JJ.

PER CURIAM.

Plaintiff appeals by right from the decision and order of the Michigan Employment Relations Commission [MERC] dismissing his claim that defendants violated the Public Employment Relations Act [PERA], MCL 423.210; MSA 17.455(10), by discharging him from his position as an assistant prosecutor with the Monroe County prosecutor's office for engaging in union organizing activity. We affirm.

Appellate review of a MERC decision is limited. A decision authorized by law will be affirmed if MERC's factual findings are supported by competent, material and substantial evidence on the whole record. MCL 423.216(e); MSA 17.455(16)(e); *Genesee Co Union v Genesee Co*, 199 Mich App 717, 721; 502 NW2d 701 (1993). Substantial evidence is "the amount of evidence that a reasonable mind would accept as sufficient to support a conclusion. While it consists of more than a scintilla of evidence, it may be substantially less than a preponderance." *In re Payne*, 444 Mich 679, 692; 514 NW2d 121 (1994).

Plaintiff first claims that the hearing referee erred in finding that plaintiff had not presented a prima facie case. An anti-union animus is one element of a prima facie case under § 10(1)(c) of PERA. The evidence established that Monroe County Prosecutor Swinkey made public statements in support

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* Circuit judge, sitting on the Court of Appeals by assignment.

of unionization and was endorsed by the UAW in the general election. Swinkey also hired an assistant prosecutor who had an extensive background in union-related activity, and who told Swinkey prior to being hired that he intended to organize the assistant prosecutors into a bargaining unit. Finally, Swinkey voluntarily consented to the organization of a bargaining unit consisting of assistant prosecutors under the auspices of the UAW. Thus, plaintiff's allegations of an anti-union animus are totally unsupported by the record.

In any event, even if plaintiff had succeeded in presenting a prima facie case, defendants met their burden of proving that the discharge would have occurred even in the absence of protected activity. *UAW v Sterling Heights*, 176 Mich App 123, 128; 439 NW2d 310 (1989).

Plaintiff next claims that the hearing referee erred by refusing to allow plaintiff to inquire into the qualifications of subsequently hired attorneys. Plaintiff's reliance on *NLRB v Sandy Hill Iron & Brass Works*, 165 F2d 660 (CA 2, 1947), is misplaced, as its facts are in no way similar to the facts of the case at hand. Unlike the defendants in *Sandy Hill*, defendants in this case have specifically been found not to have engaged in any unfair labor practices. Accordingly, we reject plaintiff's argument on this issue.

Affirmed.

/s/ Janet T. Neff
/s/ E. Thomas Fitzgerald
/s/ Charles A. Nelson