

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

In the Matter of:

BRIGHTON AREA SCHOOLS,
Public Employer

Case No. R98 C-43
(Objections to Election)

-and-

**INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 547,**
Incumbent-Labor Organization

-and-

MICHIGAN EDUCATION ASSOCIATION,
Petitioner-Labor Organization

APPEARANCES:

For the Employer: Donald E. Thomas, Asst. Superintendent for Human Resources

For the Incumbent: J. Douglas Korney, Esq.

For the Petitioner: White, Przybylowicz, Schneider & Baird, P.C., by Jeffrey S. Donahue,
Esq.

DECISION AND ORDER

Pursuant to Section 12 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212, MSA 17.455(12), and Commission Rule 49, R 423.449, this case was heard at Detroit, Michigan on June 19, 1998, before Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. The subject of the hearing was written objections filed to the conduct of an election conducted by this Commission on May 14, 1998. The objections were filed on May 20, 1998, by the Incumbent Union International Association of Operating Engineers, Local 547. Based on the record made at the hearing and briefs filed by both unions on or before August 7, 1998, the Commission finds as follows:

The Election and Objections:

Petitioner Michigan Education Association filed the petition in this case on March 23, 1998. Petitioner sought an election to add all secretarial, clerical, and bookkeeping employees employed by the Brighton Area Schools to an existing unit of support employees represented by the Brighton Educational Support Personnel Association, an affiliate of Petitioner. The employees covered by the petition constituted a bargaining unit currently represented by the Incumbent. The election was conducted on the Employer's premises pursuant to an agreement for consent election. The ballots were counted immediately after the close of the voting period, and a written tally of ballots issued to the parties. This document indicates that 20 votes were cast for the Incumbent, 22 for the Petitioner, and one for neither labor organization. In addition, there was one challenged ballot which was not counted as it was not determinative of the results.

On May 20, the Incumbent filed timely objections to the conduct of the election. It withdrew three of its four objections at the beginning of the hearing. The one remaining objection is as follows:

Loni Gist, the representative for the MEA, was allowed into the polls as an observer at 1:00 p.m., two hours after the voting had started.

Facts:

In accord with the parties' agreement for consent election, the election was conducted on Thursday, May 14, 1998, between 11:00 a.m. and 2:00 p.m., in the main conference room of Brighton High School. Susan Marchak, an employee in the bargaining unit voting in the election, was designated by the Incumbent as its election observer. The Employer did not designate an observer. Marchak appeared at the polling place prior to 11:00 a.m., and the Commission's election officer instructed her on her duties. No other representative of any party was present at the polling area prior to the beginning of the election.

At approximately 1:00 p.m. Loni Gist arrived at the polling place. Gist is employed by the Brighton Area Schools as a custodian. She is a member of the bargaining unit currently represented by the Brighton Educational Support Personnel Association. Gist also holds the offices of association representative and representative delegate in that organization. Gist had been designated by the Petitioner as its election observer. Gist testified that she had thought that she was supposed to show up only for the count of ballots after the polls had closed. After she received a phone call from a Petitioner representative indicating that she should be in the polling area, she went there immediately. Gist acted as an election observer for the remainder of the polling period.

Discussion and Conclusions of Law:

At the hearing the Incumbent argued that Gist's presence in the polling area during the polling period was improper because she was not a member of the voting unit, and because she held an office

with Petitioner. However, it did not make these arguments in its brief. Instead the Incumbent argues that Gist's arrival while voting was taking place was "*per se* disruptive." It also argues that by permitting Gist to participate as an observer two hours after the election had commenced, the election officer created the impression of partiality toward the Petitioner.

Commission Rule 46(1), R 423.446 states:

The parties to the election may each designate a representative, but not a supervisor or full-time labor organization representative unless by mutual agreement of the parties, to observe that ballots are properly cast and votes properly counted. Observers are subject to such reasonable limitations as the election agent may prescribe.

Although the above rule gives a party the right to appoint an election observer, we have never held that party observers are necessary to ensure that laboratory conditions are properly maintained. As Petitioner points out, we have held that the validity of an election is not affected by the failure of one party to appoint an election observer, even though the other party or parties have observers. *Muskegon Convalescent Home*, 1970 MERC Lab Op 412, 414. We have also held that the temporary absence from the polling place of an observer or the observers does not interfere with the conduct of the election. *Grand Traverse Medical Care Facility*, 1987 MERC Lab Op 825.

As noted above, the Incumbent argues that Gist's late arrival was "*per se* disruptive." It is not clear what the Incumbent means. In any case, there is no evidence in this case that Gist's arrival prevented or discouraged any voter from voting.

The Incumbent's second argument is that by permitting Gist to act as an observer despite the fact that she arrived so late, the election officer interfered with the election by giving the appearance of partiality. As Petitioner points out, in *Fenton Area Public Schools*, 1985 MERC Lab Op 1139, a union sought to overturn an election based, in part, on the fact that the election officer refused to allow the union's observer to observe during part of the election because the election officer had not been informed of the observer's identity. The matter was straightened out, and the observer was permitted to observe the rest of the election. Despite the fact that the election officer sent the union's observer away, we concluded that the laboratory conditions for the election had not been disturbed. In this case, the Incumbent argues that the election officer showed partiality by admitting Gist to the room after the election had started and permitting her to act as the Petitioner's observer for the remainder of the election. This argument is baseless. Gist, Petitioner's designated observer, showed up very late. However, we fail to see how any voter could infer that the Commission's election officer was biased in favor of Petitioner from the fact that he permitted Gist to observe the rest of the election. In fact, had the election officer turned Gist away, Petitioner might have had grounds for filing objections.

We also find no merit in the Incumbent's original argument that Gist should not have been allowed to serve as an observer. Gist is an employee of the Employer, and not a supervisor. The fact

that she held a union office did not disqualify her from acting as Petitioner's observer.

ORDER

In accord with the discussion and conclusions of law set forth above, we find the objections filed by the Incumbent to the election conducted on May 14, 1998 to be without merit. We direct that a certification of representative be issued forthwith naming the Michigan Education Association as the bargaining agent for the following group of employees:

All secretarial, clerical and bookkeeping employees of the Brighton Area Public Schools; excluding supervisors, the secretary to the superintendent, and all other employees.

As set forth in the consent election agreement and the notices of election, these employees are to be accreted to the existing educational support personnel unit currently represented by this labor organization.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Dated: _____