STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

ST. CLAIR COUNTY INTERMEDIATE SCHOOL DISTRICT
and THE ACADEMY FOR PLASTICS MANUFACTURING TECHNOLOGY,
Respondents-Public Employers,

-and-

ST. CLAIR COUNTY EDUCATION ASSOCIATION, MEA,
Charging Party-Labor Organization in Case No. C97 H-184
Petitioner in Case No. UC97 H-41.
_____/

APPEARANCES:

Scott C. Moeller, Esq., for Respondent St. Clair County Intermediate School District

Fletcher DeGrow, P.C., by Gary A. Fletcher, Esq., for Respondent Academy for Plastics Manufacturing Technology

Amberg, McNenly, Zuschlag, Firestone & Lee, P.C., by Joseph H. Firestone, Esq., for Charging Party-Petitioner St. Clair County Education Association, MEA

DECISION AND ORDER

On September 29, 1998, Administrative Law Judge Julia C. Stern issued her Decision and Order in the above captioned cases finding that Respondent St. Clair County Intermediate School District (ISD) violated Section 10(1)(a) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210(1)(a); MSA 17.455(10)(1)(a), when it told an employee that she would be laid off if she continued to seek to be included in the bargaining unit represented by the St. Clair County Education Association, MEA. In addition, the ALJ also concluded that the Academy for Plastics Manufacturing Technology was not the alter ego of the ISD or a joint employer with the ISD of Academy employees and that neither the school district nor the Academy was required to bargain with the Union over the position of metal machining instructor. Based upon these findings, the ALJ also recommended dismissal of the Union's petition for unit clarification.

On October 21, 1998, the ISD filed exceptions to the ALJ's conclusion that it threatened an employee in violation of Section 9 of PERA. The Union filed a brief in support of the ALJ's decision with respect to that issue on October 30, 1998. On November 5, 1998, the Union filed exceptions

to the findings of the ALJ regarding the joint employer status of the ISD and the Academy. On that same day, the Union filed a motion to reopen the record. Respondents filed briefs in response to the Union's exceptions and in opposition to the motion to reopen the record on November 20, 1998.

Discussion and Conclusions of Law:

Respondent ISD contends that the ALJ erred in finding that the school district made an unlawful threat against Jane Johnson, a nurse employed at the Woodlands Developmental Center. The statement at issue was made by Janice Frederick, the school district's Director of Special Education. Frederick admits to having told Johnson that "if she thought union membership would bring her teacher's pay this was a misperception and that her pay would be out of line with what other nurses make in the county and we couldn't justify that sort of position for that pay and may need to terminate the position and contract it out." The ISD asserts that this remark was a non-coercive expression of opinion on an economic issue. After carefully reviewing the record as a whole, we find that the totality of the evidence supports the ALJ's conclusion that the statement constituted a threat in violation of Section 10(1)(a) of PERA. The clear import of the statement is that Johnson's position would likely be eliminated if she continued her efforts to become a member of the Union and seek the Union's assistance in obtaining a salary increase. As noted by the ALJ, there is no evidence in the record to suggest that the Employer would be forced to terminate Johnson if she were to receive the same salary as a teacher, or that circumstances outside the ISD's control might cause the Employer to eliminate Johnson if her position was in fact included in the unit. See *NLRB v River Togs, Inc*. 382 F2d 198 (CA2, 1967).

We also agree with the ALJ's determination that the ISD and the Academy are not joint employers for purposes of PERA. The Union contends that the ALJ's finding on this issue turned on her erroneous conclusion that the Legislature, through the adoption of Section 502(3)(i) of the Revised School Code, MCL 380.501 *et seq*.; MSA 15.4501 *et seq*., intended to preclude a public school academy authorized by an intermediate school district from recognizing a collective bargaining agreement which applies to employees of the school district in similar classifications. This argument is based on a misreading of the ALJ's decision. The ALJ neither stated nor implied that Section 502 of the Revised School Code prohibits an academy from recognizing an existing bargaining unit. Rather, she merely noted that this statutory provision obligates only K-12 school districts to bargain collectively with the employees of public school academies of which they are the authorizing body. This observation was both sound and appropriate. The section at issue pertains to "a public school academy authorized by a *school district*." MCL 380.502(3)(i); MSA 15.4502(3)(i) (emphasis supplied). We are convinced that the term "school district," used by itself, does not include an intermediate school district. See e.g. MCL 380.4(4), 380.6(1), 380.501(2), 380.601; MSA 5.4004(4), 15.4006(1), 15.401(2), 15.4601. The omission of the phrase "intermediate school district" from Section 502(3)(i) clearly evinces a legislative intent to provide this protection only to employees of a K-12 school district. Although this result may appear impolitic or unwise, that is a matter for the Legislature. See *City of Lansing v Lansing Twp*, 356 Mich 641, 648 (1959); *Walker-Bey v Dep't of Corrections*, 222 Mich App 605, 610 (1997).

In any event, the ALJ's decision did not, in fact, turn solely on the language of Section 502 of the Revised School Code. Rather, the ALJ's conclusion that the ISD and the Academy are separate employers was based primarily on her finding that the school district did not have sufficient independent control over the employment relationship so that it should be represented at the bargaining table when an agreement is made with regard to the wages, hours and working conditions of the Academy employees. In so holding, the ALJ properly applied the definition of "employer" under PERA as set forth in *Wayne Co Civil Service Comm'n v Wayne Co Bd of Supervisors*, 22 Mich App 287 (1970), rev'd in part on other grounds 384 Mich 363 (1971). In that case, the Court held that under PERA, the term "employer" means an entity that has the power and responsibility to (1) select and engage the employee, (2) pay the wages, (3) dismiss an employee, and (4) control the employee's conduct, including the method by which the employee carries out his or her work. *Id.* at 294. See also *St. Clair Co Prosecutor v AFSCME*, 425 Mich 204, 228 (1986); *City of Grand Rapids*, 1997 MERC Lab Op 358, 364. We agree with the ALJ that the oversight responsibilities of the ISD do not constitute sufficient independent control over the terms of the employment relationship between the Academy and its employees to support a finding that Respondents are joint employers under the Act. In so holding, we deny the Union's motion to reopen the record to introduce evidence that the ISD transferred its Electromechanics/Hydraulic program to the Academy in August of 1998, after the hearing in this matter had concluded. Such evidence, standing alone, is insufficient to establish the existence of a joint employer relationship under the test set forth above.

For the reasons set forth above, we incorporate and adopt the Decision and Recommended Order of the ALJ.

ORDER

Pursuant to Section 16 of PERA, we hereby adopt the recommended order of the ALJ as our order in this case.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Maris Stella Swift, Commission Chair

_____

Harry W. Bishop, Commission Member

_____

C. Barry Ott, Commission Member

Dated:_____