STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

MICHIGAN EDUCATION ASSOCIATION, its local affiliate INTERMEDIATE EDUCATION ASSOCIATION, and its agent MICHIGAN EDUCATION SPECIAL SERVICES ASSOCIATION,
Respondents,

Case No. CU98 H-44

-and-

ST. CLAIR COUNTY INTERMEDIATE SCHOOL DISTRICT,
Charging Party-Public Employer.

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APPEARANCES:

White, Przybylowicz, Schneider & Baird, P.C., by Arthur R. Przybylowicz, Esq., and Suzanne Krumholz Clark, Esq., for Respondents Intermediate Education Association and Michigan Education Association

Fraser Trebilcock Davis & Foster, P.C., by Iris K. Linder, Esq., and Brandon W. Zuk, Esq., for Respondent Michigan Education Special Services Association

Scott C. Moeller, Esq., Director of Legal Services, and Thrun, Maatsch & Nordberg, P.C., by Donald J. Bonato, Esq., for Charging Party

DECISION AND ORDER ON MOTIONS FOR RECONSIDERATION AND MOTION FOR STAY

On March 9, 2000, we issued our Decision and Order in the above entitled matter, finding that Respondents Michigan Education Association (hereafter "MEA"), its local affiliate Intermediate Education Association (hereafter "IEA") and its agent Michigan Education Special Services Association (hereafter "MESSA"), violated Section 10(3)(c) of the Public Employment Relations Act (hereafter "PERA"), 1965 PA 379, as amended, MCL 423.213(c); MSA 17.455(13)(c), by failing to provide Charging Party St. Clair Intermediate School District (ISD) with information relevant and necessary to the administration and enforcement of the collective bargaining agreement in effect

between the parties. We also remanded the case for further hearing to determine whether Respondents violated Section 10(a) of PERA by implementing a midterm modification of the contract. On March 29, 2000, Respondent IEA/MEA filed a timely motion for rehearing and a motion for stay of proceedings. Respondent MESSA filed its motion for rehearing/reconsideration on that same day. On April 20, 2000, Charging Party filed a timely response to the motions for rehearing/reconsideration and motion for stay.

Both the IEA/MEA and MESSA ask that we reconsider our order requiring them to provide the ISD with information. Respondents argue that our decision deprived them of their right to an evidentiary hearing. We disagree. In *Smith v Lansing School District*, 428 Mich 248 (1987), our Supreme Court held that summary disposition is appropriate in administrative proceedings and that the Administrative Procedures Act (hereafter "APA"), MCL 24.201 *et seq*.; MSA 3.560(101) *et seq*., does not mandate an evidentiary hearing. When there are no material facts at issue, Section 72 of the APA, MCL24.272(3); MSA 3.560(172)(30), merely requires that the parties be afforded the opportunity to argue both orally and in writing on issues of law and policy. *Smith*, *supra* at 259. See also *American Community Mutual Ins Co v Ins Comm*, 195 Mich App 351, 362-363 n 3 (1992). That is precisely what occurred here. Respondents addressed the ISD's information request in their answers to the unfair labor practice charge, and MESSA devoted almost 6 pages to a discussion of that issue in its brief in support of its motion to dismiss. The issue was also addressed by counsel for Respondents at the January 27, 1999, hearing on the motion. At the conclusion of that hearing, the ALJ indicated that he would he would delay issuing a decision so that the parties would have time to file additional pleadings. On March 1, 1999, Respondent IEA/MEA filed a post-hearing brief in which the information request issue was again addressed. In addition, all of the parties presented written arguments regarding the information request issue on exception. After carefully considering these arguments, as well as the numerous documents submitted by the parties, we determined that no disputed questions of fact existed concerning this issue and that the Employer was entitled to the requested information "[r]egardless of whether the ISD in fact delegated its responsibility to make coverage decisions." We fail to see how Respondents' right to be heard was in any way impeded by this process.

The fact that the hearing which was held in this case concerned a motion to dismiss filed by Respondent MESSA did not, as argued by Respondents, deprive this Commission of the procedural authority to rule in favor of the ISD on exception. The General Rules and Regulations of the Employment Relations Commission give us broad powers to dispose of an unfair labor practice charge. For example, Rule 68, R423.468, states that we may "reopen a record in any case and receive further evidence, may close the case upon compliance with the administrative law judge's recommended order, or *make other disposition of the case*." (Emphasis supplied.) In addition, Rule 70, 423.470, provides that, "[u]pon the filing of exceptions . . ., the commission may adopt, modify *or reverse* the administrative law judge's recommended order." (Emphasis supplied.) As noted, the material facts required for a decision concerning the information request were already part of the record. Under such circumstances, it would have been futile to remand to the ALJ for additional hearing on this issue. See *American Community Mutual Ins Co, supra* at 363. Cf. MCR 2.116(I)(2) (authorizing the trial court to render summary disposition in favor of the nonmoving party if it

appears that the nonmoving party is entitled to judgment as a matter of law.)

MESSA also disagrees with our finding that Respondents waived their right to raise a claim that the information request was premature. MESSA argues that our reliance on two decisions of the National Labor Relations Board, *Scott Brothers Dairy*, 1999 NLRB LEXIS 430, and *Providence Hospital*, 320 NLRB 790; 152 LRRM 1085 (1996), was misplaced. According to MESSA, those cases are distinguishable because they involved information requests which essentially fell on deaf ears, whereas the IEA/MEA and MESSA repeatedly replied to the ISD's requests and attempted to explain why the requested information was not relevant. However, the issue here is not whether Respondents replied to the information requests, but whether those responses set forth a defense that the requests were premature. In the instant case, it is undisputed that Respondents did not assert this defense prior to the filing of the unfair labor practice charge. In fact, the claim was first raised not by the parties, but by the ALJ in his Decision and Recommended Order. Accordingly, we see no reason to reconsider our prior decision on this issue.

Next, Respondent MESSA contends that we should defer any decision in this case until after the Insurance Bureau has had the opportunity to determine whether LASIK is a medically necessary procedure. This argument has already been considered and rejected. In our prior Decision and Order, we held that this Commission alone has jurisdiction to remedy unfair labor practices, and that MESSA's decision to cover LASIK may indeed raise an unfair labor practice issue. A motion for reconsideration which merely presents the same issues as previously ruled upon by the Commission will not be granted. See *Michigan Council 25, AFSCME*, 1994 MERC Lab Op 429; *Central Michigan District Health Dep't*, 1990 MERC Lab Op 480.

Finally, MESSA argues that we should we reconsider our decision to assign this case to a different judge on remand. In support of this contention, MESSA relies on *Garden City/Dearborn Adult Education Consortium*, 1990 MERC Lab Op 724, a case in which we denied a motion to disqualify the ALJ on the ground that the moving party had failed to establish an actual showing of prejudice. MESSA contends that our decision in this case is contrary to *Garden City* because there is no evidence in the record establishing personal bias or prejudice by the ALJ. However, *Garden City* is easily distinguishable. In that case, the issue of disqualification was raised by one of the parties, and it was presented to the Commission before the ALJ had issued a recommended order in the matter. Here, we made the decision to reassign the case sua sponte, and we did so after the issuance of the recommended order. The APA does not require that the same hearing officer preside where a rehearing is ordered. *Battiste v Dep't of Social Services*, 154 Mich App 486, 496-497 (1986). In *Battiste* the Court held that the ALJ's jurisdiction"substantially ends upon rendition of his decision following the hearing over which he presided." *Id.* at 496. Therefore, the APA allows for the reassignment of a case even absent any showing of bias. *Id.* See also Rule 61, R423.461, of the General Rules and Regulations of the Employment Relations Commission. In the instant case, the ALJ repeatedly questioned the substantive merits of the charge and, at times, made comments which were inordinately critical. For example, the ALJ referred to this case in his recommended order as a "dreary dispute" which the Employer "continued to promote," and he openly questioned the ISD's motives in bringing the charge. Given these remarks, and in light of the overall tone in which the

hearing was conducted, we believe that our decision to reassign this case was entirely justified.

We have considered all of the other arguments asserted by Respondents in their motions and find them to be without merit. Accordingly, the motions for reconsideration are hereby denied.

ORDER

For the reasons set forth above, the motions for reconsideration filed by Respondents IEA/MEA and MESSA are hereby denied. The motion for stay filed by Respondent IEA/MEA is also denied.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Maris Stella Swift, Commission Chair

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Harry W. Bishop, Commission Member

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C. Barry Ott, Commission Member

Dated:_____