STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

BRANCH INTERMEDIATE SCHOOL DISTRICT,
Public Employer,

-and-

MICHIGAN EDUCATION ASSOCIATION,
Incumbent Labor Organization,

Case No. R98 J-128
Objections to Election

-and-

ROBERT P. HUNTER,
Decertification Petitioner.
_____/

APPEARANCES:

Douglas V. Wilcox, Esq., White, Przybylowicz, Schneider & Baird, P.C., for the Labor Organization

Robert P. Hunter, Esq., In Pro Per

DECISION AND ORDER ON OBJECTIONS

On December 15, 1998, Robert P. Hunter filed objections to the conduct of the Michigan Education Association as improperly affecting a representation election held by the Michigan Employment Relations Commission in the above entitled matter on December 8, 1998, in Case No. R98 J-128. Petitioner filed the objections on an unfair labor practice charge form, alleging that the same conduct also constituted an unfair labor practice.[1] On April 22, 1999, this matter came on for hearing in Lansing, Michigan, before Nora Lynch, Administrative Law Judge for the Commission. Based upon the entire record in this matter, including briefs filed by the MEA and Petitioner on or before June 23, 1999, the Commission finds as follows:

The Objections/Charge:

Petitioner Hunter alleges the following:

> That on December 7, 1998, David Crim and Sue Burt, agents and employees of the Michigan Education Association (MEA), restrained

> and coerced and interfered with the concerted activities of Branch ISD employees by spying on and/or surveilling them attending or attempting to attend an employee meeting held at the Quality Inn of Coldwater, Michigan.
>
> That on October 13, 1998, Sue Burt, an agent and employee of the Michigan Education Association, restrained, coerced, and interfered with the concerted protected activities of Branch ISD employees by spying on and/or surveilling them attending an employee meeting held in Coldwater, Michigan.
>
> By these and other acts the MEA through its employees and agents has engaged in unfair labor practices and additionally engaged in conduct which improperly affected the results of the employee election held on December 8, 1998 in MERC Representation Case No. R98 J-128 within the meaning of Section R423.449 of the Commission's General Rules and Regulations.

Preliminary Matters:

On December 29, 1998, Respondent MEA filed a Motion to Dismiss the unfair labor practice charge and/or objections on the basis that Hunter lacked standing to file because he is an individual attempting to enforce the alleged rights of another party. On January 6, 1999, Hunter filed a response, requesting that the motion be denied on the grounds that Respondent has waived any rights to claim his disqualification by failing to raise any issues regarding his status as the petitioning employees' representative during the pre-election and election proceedings. Further, Hunter argues that he has been and continues to act as the duly authorized agent of petitioning employees in Branch County within the meaning of MERC Rules 423.401(4) and 423.405(3). Respondent's motion was denied by the ALJ in a letter dated January 13, 1999, on the ground that Section 12 of PERA authorizes the filing of a petition by an individual acting on behalf of a group of public employees. See *Demetra Karvounis, d/b/a/ Campus Restaurant*, 1984 MERC Lab Op 788, 791-792.

On February 19, 1999, Hunter filed a motion to amend the unfair labor practice charges and/or objections to election. The motion to amend the objections was denied by the ALJ on the basis that Rule 49(1), R423.449, requires specific, timely objections which are not subject to subsequent amendment. *Iosco County Medical Care Facility*, 1999 MERC Lab Op ___ (Issued 8/6/99); *City of Holland*, 1966 MERC Lab Op 563, 565; *Lansing General Hospital*, 1972 MERC Lab Op 257, 262. The motion to amend the unfair labor practice charges was granted; as indicated above, those charges will be considered in a separate decision.

A final procedural matter concerns the conduct complained of which occurred at a meeting held on October 13, 1998. It is Commission policy that to form the basis for setting aside a consent election, objections must be based on conduct occurring between the date of the consent election

agreement and the election. The activities of a party prior to entering into a consent election agreement do not constitute the basis for objections to conduct affecting the election. *Belleville Community Schools*, 1987 MERC Lab Op 535; *St Clair County Community College*, 1980 MERC Lab Op 721; *University of Michigan*, 1980 MERC Lab Op 903; *Newago Medical Care Facility*, 1977 MERC Lab Op 589; *North Detroit General Hospital*, 1973 MERC Lab Op 564. Our records reflect that the last signed consent form was received by the Commission on November 13, 1998. Since the conduct cited as the basis for these objections occurred prior to the time the consent election was signed, and even before the decertification petition was filed, the objections relating to conduct which occurred on October 13, 1998, must be dismissed.

Facts:

The Michigan Education Association (MEA) was certified in May of 1994 as the representative of the following bargaining unit of Branch Intermediate School District employees:

> All pre-school and head start teachers, teacher assistants (aide/paraprofessionals), bus monitors, custodial/maintenance, housekeepers, secretarial/clerical, bus drivers, food service, health coordinator/school nurse, parent involvement/social services coordinator.

The MEA and the Employer subsequently negotiated a collective bargaining agreement for this unit which covered the period July 1, 1994, to June 30, 1998.

In the fall of 1998, a group of employees who were dissatisfied with MEA representation formed the Committee Against the MEA and began to explore decertification. Sheryl Loss was the leader of this group. She made phone calls, sent out flyers, and contacted attorney Robert P. Hunter for assistance. On October 15, 1998, a decertification petition was filed by Hunter on behalf of certain bargaining unit members. Pursuant to an agreement for consent election signed on or before November 13, 1998, the Commission conducted an election in the above bargaining unit on December 8, 1998.

The tabulation of results of that election reflected that there were a total of 46 votes cast, with 30 votes against decertification, 16 votes in favor of decertification, and no challenged ballots. On December 15, 1998, objections to the election were filed by decertification Petitioner Hunter alleging that MEA representatives interfered with the election by spying on and surveilling employees at a meeting held on December 7, 1998, at Coldwater, Michigan.

The meeting which occurred on December 7, 1998, was scheduled by Loss to give employees the opportunity to meet Hunter and ask questions about the issues. Employees were notified by flyers and phone calls that the meeting would be held from 4:30 to 7:30 p.m. at the Quality Inn in Coldwater.

On the Friday before the meeting, Sue Burt telephoned Loss to ask if she and fellow MEA representative David Crim could attend and give employees an opportunity to hear an open debate between both sides. Loss told her that she would check with others and get back to her. Loss called Burt back to tell her that employees did not want them there. Burt then asked if they could sit in the back to observe but not ask questions. Loss told her that she would do some checking and that Burt should call her back at ll:30 a.m. on Monday. When Burt did not call her at the appointed time, Loss called her back about 3:00 p.m. but was unable to reach her. Loss left a message that it was a closed meeting and that Burt was not to attend.

LaRae Munk, an attorney working with Hunter in connection with the decertification effort, arranged for the meeting room on December 7 at the Quality Inn. The Quality Inn has two buildings; the main hotel building and a smaller annex which has meeting rooms as well as guest rooms. A sign was posted on the marquee next to the front desk indicating "Branch County Intermediate School District–Branch County ISD Head Start Meeting - Mackinac Center Meeting," listing the Hawthorne Room as the location. Hunter and another attorney, Mark Fischer, arrived at the Quality Inn about 3:45 p.m. Munk and Hunter walked over to the annex to check out the Hawthorne Room. They decided that it was too small and arranged with the hotel to move the meeting to the Rockwell Room. Munk stayed at the main hotel building in order to direct employees over to the annex.

Burt arrived at the Quality Inn around 4:00 p.m. As she walked in, Munk came up to her and introduced herself. Burt told her that she was from the MEA and that she was there for the meeting. Munk told Burt that it was a closed meeting and that she could not stay. When Burt responded that she was the MEA representative and wanted to be there to answer employee questions, Munk requested that Hunter speak to Burt. Hunter told Burt that it was illegal for her to be there and that if she did not leave, they would file an unfair labor practice charge. Burt responded that perhaps she should speak with MEA attorneys and left.

After Burt left the area she met Crim in the parking lot. They decided to get a room themselves so that they would be available for employee questions. Burt testified that they asked for a room in the annex where the meeting rooms were located. The room was a suite with a sitting area to enable them to meet with members. At their request, the office posted a sign at the entrance of the annex, indicating that the MEA was meeting in Room 345. Room 345 is located approximately 40 feet to the right of the entrance to the annex; the Rockwell Room is directly opposite the entrance, across the lobby area. Crim testified that he had indicated to the membership at an earlier meeting that the MEA intended to schedule a meeting the night before the election to answer any last minute questions. According to Crim, they decided to hold the meeting at the same hotel as the Hunter meeting to make it convenient for employees to hear both sides at one place. Crim stayed at the Quality Inn from 4:15 until 6:30 p.m. He testified that not one of the 55 bargaining unit members came to the MEA meeting. Crim left the room on two occasions, once to retrieve something from his car, and once to make a phone call. Both times he observed Fischer in the lobby. Burt also left the room, once to go to her car and once to get a soft drink. On the second occasion, she observed Fischer in the lobby with a camera and he took her picture.

Four employees came to the meeting in the Rockwell Room that evening including Loss. Of those employees, only Loss testified to having seen Burt and Crim on the premises.

Discussion and Conclusions:

Petitioner alleges that Respondent engaged in a course of conduct designed to destroy or disrupt employee attendance at, or participation in, the employee-only meeting. According to Petitioner, this conduct was of an extremely serious nature, occurring less than a day before the employee election, creating an atmosphere of uncertainty or mistrust which restrained and coerced employees and created an unfair setting for a labor relations election. Petitioner requests that Respondent be held accountable to the same extent as an offending employer would be held under the same or similar circumstances.

An election may only be set aside if the laboratory conditions necessary for a free and untrammeled choice regarding union representation are destroyed. *Iosco County Medical Care Facility, supra; Huron County Medical Care Facility,* 1998 MERC Lab Op 670, 677. In *University of Michigan*, 1980 MERC Lab Op 903, 905, we quoted with approval the following statement of the National Labor Relations Board in *Sewell Mfg Co*, 138 NLRB 66, 70 (1962), summarizing the circumstances which could be found to interfere with laboratory conditions:

> Unsatisfactory conditions for holding elections may be created by promises of benefits, threats of economic reprisals, deliberate misrepresentations of material facts by an employer or union, deceptive campaign tactics by a union, or by a general atmosphere of fear and confusion caused by a participant or by members of the general public.

The laboratory conditions test holds the parties to a more demanding standard of conduct than the prohibitions set forth in Section 10(1) (a) and 10(3)(a). Thus, conduct which does not violate PERA may nonetheless destroy the required laboratory conditions and provide the basis for overturning an election. See *Detroit Assoc of Educational Office Employees*, 1980 MERC Lab Op 4,11. Conversely, conduct which may violate Section 10 of PERA may not always warrant overturning an election, such as coercive but isolated remarks or actions. See *Clark Equipment Co,* 278 NLRB 498; 121 LRRM 1258 (1986).

In general, the same standards of preelection conduct apply to both unions and employers. However, there are certain obvious exceptions to this rule. Because of the economic power of the employer, its promises to grant benefits to employees prior to an election may constitute interference and invalidate the election. In contrast, because a union usually does not have such power, its promises have generally been considered campaign propaganda which employees are able to evaluate. *Saginaw County Mental Health*, 1996 MERC Lab Op 488, 490-491; *Grandvue Medical Care Facility*, 1989 MERC Lab Op 104, 106. Similarly, statements or actions of competing unions in election campaigns are not monitored as closely as those of employers, because unions do not have

the same power to affect employment status as the employer. Unless threats of violence or of future reprisals are involved, the campaign efforts of rival unions fall into the category of election propaganda, which we do not evaluate. *City of Dearborn,* 1983 MERC Lab Op 121. Under a labor relations statute such as PERA, the concept of unlawful surveillance has no real meaning except in relation to the employer, or its agents, and its employees. This is due to the element of possible retaliation by an employer against its employees for their protected activities by affecting their working conditions and/or tenure of employment. No such possibility exists between a labor organization and the employees they are trying to attract.

Petitioner alleges that spying and surveillance by MEA representatives on December 7, 1998, interfered with a free and fair election. We find no merit to the objections for several reasons. Whether or not the meeting was previously announced as asserted by Crim, MEA representatives had a right to conduct their own preelection meeting. The fact that it was at the same location as the meeting scheduled by those involved in the decertification effort does not alter this conclusion, particularly when all of the circumstances are taken into account. As far as the record reveals, MEA representatives behaved in a professional manner. They set up their own meeting, posted a sign indicating its location, and for the most part stayed in that room for the evening. There is no evidence that they deliberately spied on employees or interfered in any way with employees attending the meeting scheduled by Loss and, even if they had, such conduct would not necessarily be objectionable. Except for Loss, no employee even saw them on the premises.

We are unable to conclude that the mere presence of MEA representatives at this location created an atmosphere of intimidation which would warrant overturning the election. The NLRB has refused to overturn an election even when the activity by union adherents is far more intrusive and extreme. For example, in *Overnite Transp Co,* 140 F3d 259; 157 LRRM 2931 (DC CA 1998), the Court of Appeals affirmed the finding of the Board that the actions of a union local's secretary in videotaping employees who attended a union hall meeting did not rise to the level of unlawful surveillance or misconduct sufficient to set the election aside, stating:

> Although the videotaping may have made some employees uncomfortable, the record does not support a finding that the incident created such an environment of tension and coercion as to have had a probable effect upon the employees' actions at the polls or have materially affected the results of the election.

Id. at 2939.

Similarly, in *American Wholesalers, Inc,* 218 NLRB 292; 89 LRRM 1352 (1975), inflammatory remarks made by union supporters preceding a representation election were found not to have affected the laboratory conditions because they were general, impersonal, and made in a climate of no violence whatsoever. The Board found that the statements could be recognized by employees as "overzealous partisanship" rather than meaningful threats. *Id.* at 1353.

We conclude that Petitioner has failed to demonstrate that the conduct complained of in the instant case had the purpose or effect of interfering with employee freedom of choice in the election. Accordingly, we issue the order set forth below:

ORDER

It is hereby ordered that the objections to conduct affecting the results of the election herein shall be, and hereby are, dismissed.

It is further ordered that an appropriate certification of representative be issued forthwith, certifying the Michigan Education Association as the collective bargaining agent of employees in the unit described above.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____
Maris Stella Swift, Commission Chair

_____
Harry Bishop, Commission Member

_____
C. Barry Ott, Commission Member

Dated: _____

[1.] We have previously accepted objections in this format. See *Quick Service Transp, Inc.,* 1982 MERC Lab Op 1328; *Harrison Comm Schools,* 1976 MERC Lab Op 602. The instant charge was docketed as Case No. CU98 L-64 and was combined for hearing with the representation matter. Because the charge was subsequently amended, and because a different standard is utilized in determining whether an unfair labor practice has been committed, the cases have been separated for purposes of decision.