STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

ST. CLAIR COUNTY INTERMEDIATE
SCHOOL DISTRICT,
Public Employer,

Case No. R00 K-145

-and-

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 516M,
Petitioner-Labor Organization.
_____/

APPEARANCES:

Scott C. Moeller, Esq., Director of Legal Services, for the Employer

Albers & Associates, by Dennis D. Albers, Esq., for Petitioner

DECISION AND DIRECTION OF SELF-DETERMINATION ELECTION

Pursuant to Section 13 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.213; MSA 17.455(13), this case was heard at Detroit, Michigan on February 8, 2001, before Julia C. Stern, Administrative Law Judge, acting as hearing officer for the Michigan Employment Relations Commission. Based upon the record, including briefs filed by the parties on or before March 21, 2001, the Commission finds as follows:

Service Employees International Union (SEIU), Local 516M filed this petition for a self-determination election on November 22, 2000. Petitioner represents a bargaining unit of teacher aides employed by the St. Clair Intermediate School District. It also represents a separate bargaining unit of program assistants employed by the same Employer. The current collective bargaining agreement between Petitioner and the Employer covering the teacher aide unit expires on June 30, 2002. Petitioner was certified as the bargaining agent for the unit of program assistants in February of 1999, and the parties began negotiating a contract in July of that year. At the time of the hearing in this matter, however, a collective bargaining agreement for this unit had not yet been reached.

Petitioner seeks a self-determination election to merge the teacher aide and program assistant units. The Employer does not dispute that the two units share a community of interest. The Employer argues, however, that the existing collective bargaining agreement covering the teacher aide unit should bar the petition. The contract bar rule is derived from Section 14 of PERA, which states, in pertinent part:

> An election shall not be directed in any bargaining unit or subdivision within which, in the preceding 12-month period, a valid election was held . . . . An election shall not be directed in any bargaining unit or subdivision thereof where there is in force and effect a valid collective bargaining agreement which was not prematurely extended and which is of fixed duration. A collective bargaining agreement shall not bar an election upon the petition of persons not parties thereto where more than three years have elapsed since the agreement's execution or last timely renewal, whichever was later.

The Employer complains that in our previous decisions, we have failed to adequately explain why we refuse to apply the contract bar rule to self-determination elections. The Employer points out language in the above provision stating that "an election shall not be directed." The Employer argues that nothing in the statute restricts application of that language to situations in which a union's representative status is at issue.

The seminal case on self-determination elections is *Lansing School District,* 1978 MERC Lab Op 403. In that case, a union which represented separate units of custodial and cafeteria employees of the same employer filed a petition seeking an election to merge these units. At the time the petition was filed, a valid collective bargaining agreement was in effect covering the cafeteria employees. This agreement expired while the petition was pending. The custodial employee unit had no contract at the time the petition was filed, although the union and the employer entered into a new agreement while the petition was pending. The employer argued that the cafeteria employees' agreement barred the election under Section 14. We held that the contract did not serve to bar the election because the contract bar rule applied only where there was a question concerning representation. The Employer then filed a motion for reconsideration. In denying the motion, we explained that directing a self-determination election was an exercise of our authority under Section 13 of PERA to determine the appropriate unit. We also elaborated upon our reasons for refusing to apply the contract bar rule to self-determination elections:

> The policy underpinning of PERA is the exercise of free choice by public employees in their selection of their bargaining representatives. *Flint Osteopathic Hosp v Hosp Ees Div Local 29, SEIU*, 390 Mich 635 (1973). This policy is implicated further in the contract bar rule, which precludes the filing of a representation election petition during the term of a valid contract . . . . Stability of labor relations balanced against employee freedom of choice comprise the policy framework in which to determine the application of the contract bar rule.
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> We hold that the policies of contract bar, *i.e.* contractual stability, and the opportunity to choose employee bargaining representatives at reasonable intervals, would not be served by the application of that rule to this case. Given that employee freedom of choice on the subject of a bargaining representative is a permanent concern, the facts here reveal that the expiration dates of the two contracts will never permit timely filing of a representation election petition. Moreover, a representation

> petition would be inapposite [sic] because there is no question concerning representation. The majority status of the Petitioner in each of the two units is undisputed. An election among employees in both units to determine employee preference for an overall unit for purpose of future bargaining is an appropriate mechanism by which to implement the policies contract bar and PERA purport to serve.

Lansing School District, 1978 MERC Lab Op 1013 at 1017 (footnote omitted).

On appeal in *Lansing School District*, the Court remanded for our determination of whether a unit of both cafeteria and custodial employees would be appropriate. *Lansing School District v MERC*, 94 Mich App 200 (1979). However, the Court explicitly rejected the employer's contention that Section 14 of PERA prohibited a self-determination election under these circumstances. The Court held that the "clear import of that provision relates to representation elections. It is irrelevant to the facts at issue here." *Id.* at 208. The Court's opinion erroneously quoted the first sentence of Section 14, which bars the holding of an election within 12 months of a previous election, instead of the contract bar language of that section. Since the election bar was not an issue in that case, however, the Court's clearly intended to affirm our finding that the contract bar language of Section 14 does not apply to elections where there is no question concerning representation; i.e., self-determination elections. On remand, we held that employees in the two units shared a community of interest, and the Court of Appeals subsequently affirmed our direction of election. *Lansing School District v MERC*, 117 Mich App 486 (1982).

In addition to the reasons set forth in *Lansing School District*, other considerations support our refusal to apply the contract bar rule to self-determination elections. For example, Section 12 of PERA explicitly requires us to direct an election upon the filing of a proper petition and a finding that a question concerning representation exists. Self-determination elections, however, are not required by statute. Both self-determination elections and unit clarification proceedings constitute the exercise of the general authority conferred upon us by Section 13 of PERA to determine, in each case, the unit appropriate for collective bargaining. It should also be noted that application of the contract bar rule to self-determination elections could prevent a union from ever having the opportunity to seek such an election, since it is conceivable, if not in fact likely, that contracts covering multiple bargaining units will have different expiration dates.

Alternatively, the Employer argues that if the petition is not dismissed, we should "defer the consolidation" of the two units until after expiration of the contract covering the teacher aides. It is not clear whether the Employer is asking us to stay the election, impound the ballots, or count the ballots but refrain from issuing a certification. In any event, any decision by employees in the two units here to merge into one unit would not affect the validity or stability of the existing

teacher aide contract. This is due to the fact the purpose of a self-determination election is to determine, when more than one unit would be appropriate, the unit preferences of the employees for *future* bargaining. We see no reason why an election should not be directed and the appropriate certification issued in the usual manner.

In accordance with the findings of fact and conclusions of law set forth above, we direct an election as follows:

ORDER DIRECTING ELECTION

We hereby direct a self-determination election in the following units:

(1) All full-time and regular part-time program assistants, excluding supervisors and all other employees.

(2) All regularly employed full and part-time special education teacher aides, excluding cooks, cook-drivers, program assistants, drivers, driver aides, curriculum aides, and part-time aides employed less than 15 hours per week.

Pursuant to the attached direction of election, both of the above units shall vote separately to determine whether they wish to become part of a merged unit represented by Petitioner SEIU, Local 516M. If a majority of voters in both units vote for merger, the units shall be combined into a single bargaining unit, and a certificate of representation shall issue defining the new bargaining unit. If a majority of voters in either unit fail to vote for merger, the units will remain separate units represented by Petitioner

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Maris Stella Swift, Commission Chair

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Harry Bishop, Commission Member

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C. Barry Ott, Commission Member

Dated: _____