STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

NORTHVILLE PUBLIC SCHOOLS,
Public Employer,

Case No. R01 G-081

-and-

NORTHVILLE PUBLIC SCHOOLS
EMPLOYEES ASSOCIATION,
Petitioner-Labor Organization,

-and-

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 547,
Incumbent-Labor Organization.
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APPEARANCES:

Keller, Thoma, Schwarze, Schwarze, DuBay & Katz, P.C., by Frederic E. Champnella, II, Esq. for the Public Employer

Michael F. Ward, Esq., for the Petitioner

Bruce R. Lillie, Esq., for the Incumbent

DECISION AND DIRECTION OF ELECTION

On July 2, 2001, Northville Public Schools Employees Association (NPSEA) filed a petition for a representation election pursuant to Section 12 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212. By this petition, the NPSEA sought to represent a unit described as all "custodian-maintenance employees, cafeteria employees, bus employees and mechanics, hall monitors, parking lot attendants, custodian leaders, maintenance foremen [and] cafeteria coordinators" employed by the Northville Public Schools." These employees are currently part of a bargaining unit represented by the International Union of Operating Engineers (IUOE), Local 547. The most recent collective bargaining agreement between the IUOE and the Employer expired on June 30, 2001, two days before the petition for election was filed.

The case was noticed for hearing on September 11, 2001, before David M. Peltz, Administrative Law Judge (ALJ) for the Michigan Employment Relations Commission. Prior to

the scheduled hearing date, the ALJ informed the parties that the bargaining unit sought by Petitioner appeared to be appropriate based upon clearly settled Commission case law and, therefore, good cause did not exist to warrant the holding of an evidentiary hearing. See e.g. *Sault Ste. Marie Area Public Schools*, 1993 MERC Lab Op 895; *Harrington House, Inc*, 1993 MERC Lab Op 211. Although the ALJ initially indicated that representatives of each party would be afforded the opportunity to make an offer of proof and/or state their respective positions on the record concerning the appropriateness of the unit, the tragic events that transpired on September 11, 2001, prevented the making of a formal record. Rather than return to the Commission offices on a later date, the parties jointly requested that the decision in this matter be based on written briefs filed on or before September 25, 2001. Accordingly, the Commission hereby issues the following decision pursuant to Sections 12 and 13 of PERA.

Positions of the Parties:

Both the NPSEA and the Employer contend that the bargaining unit which is the subject of the instant petition has been in existence for many years and constitutes a presumptively appropriate unit of support-type employees. The Incumbent, however, argues that there exists a divergence of community of interest between the food service, custodial, transportation and maintenance employees, and that the existing unit should, therefore, be fragmented into four separate units. In support of this position, the Incumbent relies on various decisions arising under the National Labor Relations Act, 29 USC 150-169, in which separate maintenance units were found to be appropriate. See e.g. *Omni International Hotel of Detroit,* 283 NLRB 475; 124 LRRM 1370 (1987); *The Aerospace Corp*, 331 NLRB No. 74; 166 LRRM 1221 (2000); *Ore-Ida Foods, Inc. and United Food & Commercial Workers Union, Local 73A, AFL-CIO-CLC*, 313 NLRB 1016; 145 LRRM 1303 (1994).

Discussion:

A primary objective of the Commission is to constitute the largest unit which, in the circumstances of the particular case, is most compatible with the effectuation of the purposes of the law, and to include in a single unit all common interests. *Hotel Olds v State Labor Mediation Bd*, 333 Mich 382 (1952). With respect to support employees of a school district, we have always preferred broad units of all noninstructional personnel, and have found a community of interest among such employees unless prior bargaining history or agreements of the parties prevent such findings. See e.g. *Alpena Community College*, 1994 MERC Lab Op 955; *Waverly Community Schools,* 1989 MERC Lab Op 819. At the same time, this Commission has a "strong and often overriding policy prohibiting the fragmentation or fractionalization of existing bargaining units absent some extreme divergence in the interest of the employees making up the historical unit." *Dearborn Pub Schs*, 1990 MERC Lab Op 513, 517. See also *Kent County Community Hosp*, 1989 MERC Lab Op 1105; *Lansing Sch Dist, Paraprofessional Unit*, 1989 MERC Lab Op 160, 166-167. This policy is designed to encourage the stability of established bargaining relationships and established bargaining units. *Dearborn Pub Schs*, 1990 MERC Lab Op 513; *Lathrup Pub Schs*, 1972 MERC Lab Op 543, 548.

In the instant case, the wall-to-wall unit of nonsupervisory, noninstructional school employees has been in existence for at least 28 years, and the Incumbent has set forth no facts

justifying fragmentation of this historical unit. In its brief, the Incumbent identifies differences in hours, wages, duties, supervision, and occupational skills among the various employee classifications and departments. For example, the Incumbent contends that the maintenance employees are subject to different licensing requirements than other employees within the unit, and that unlike the transportation and food service workers, the maintenance employees work the entire calendar year. However, differences of this nature are common in MERC cases involving the appropriateness of broad, noninstructional support units, and the Incumbent's allegations concerning such factors, even if true, are not sufficient to establish an extreme divergence of community of interest or otherwise destroy the presumption of appropriateness here, particularly in light of the lengthy bargaining history involving this unit. See e.g. *Alpena Community College,* at 967; *Forest Hills Pub Schs,* 1989 MERC Lab Op 781, 785.

The federal decisions relied upon by the Incumbent are easily distinguishable in that none of these cases involved well-established, historical bargaining units and bargaining relationships. In fact, the National Labor Relations Board has explicitly recognized that its policy to find separate maintenance department units appropriate applies only "in the absence of a more comprehensive bargaining history." *Ore-Ida Foods,* at 1019, citing *American Cyanamid Co*, 131 NLRB 909; 48 LRRM 1152 (1961). See also *Franklin Mint Corp*, 254 NLRB 714, 716; 106 LRRM 1156 (1981). Even if the cases cited by the Incumbent were on point, they do not require a different result in this case. While federal precedent is to be given great weight in interpreting PERA, at least where PERA's language is identical to that of the NLRA, this Commission is not bound to follow its "every turn and twist**,**" *Northpointe Behavioral Healthcare Systems*, 1997 MERC Lab Op 530; *Marquette Co Health Dep't*, 1993 MERC Lab Op 901. We see no reason to deviate from our longstanding policy concerning the appropriateness of broad units of all noninstructional school personnel.

As we find that the Incumbent has failed to establish why an election should not be immediately directed in the petitioned-for bargaining unit, we issue the following order.

DIRECTION OF ELECTION

We find that a question of representation exists within the meaning of Section 12 of PERA. Accordingly, we hereby direct an election in the following unit, which we find appropriate for collective bargaining purposes within the meaning of Section 13 of PERA:

> All custodian-maintenance employees, cafeteria employees, bus employees and mechanics, hall monitors, parking lot attendants, custodian leaders, maintenance foremen and cafeteria coordinators employed by the Northville Public Schools.

The above employees may vote pursuant to the attached Direction of Election whether they wish to be represented for purposes of collective bargaining by the Northville Public Schools Employees Association, the International Union of Operating Engineers, Local 547, or by neither labor organization.

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: _____