STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

SERVICE EMPLOYEES INTERNATIONAL UNION, and SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 517,
Respondents,

-and-

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 591, and JOHN BRITTEN, et al,
Charging Parties in Case Nos. CU01 C-12 & C-13,

-and-

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 466, and ANDERSON JOHNSON, et al,
Charging Parties in Case Nos. CU01 C-14 & C-15,

-and-

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 26M, and LARRY MITCHELL, et al,
Charging Parties in Case Nos. CU01 C-16 & C-17

-and-

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 516M, and BRUCE LUDINGTON, et al
Charging Parties in Case Nos. CU01 C-18 & C-19
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APPEARANCES:

Klimist, McKnight, Sale, McClow & Canzano, P.C., by Samuel C. McKnight, Esq., and William J. Karges, Esq., for the Respondents

Mark H. Cousens, Esq., for the Charging Parties

DECISION AND ORDER

On July 31, 2001, Administrative Law Judge (hereafter "ALJ") Julia C. Stern issued her Decision and Recommended Order on Motion to Dismiss in the above matter finding that Charging Parties Local 519, Local 466, Local 26M, and Local 516M of the Service Employees International Union (hereafter "Local Union Charging Parties") and the representative individuals included in the bargaining units represented by these locals (hereafter "Individual Charging Parties") failed to state a claim under Section 10 of the Public Employment Relations Act (hereafter "PERA"), 1965 PA 379, as amended, MCL 423.210, and recommending that the Commission dismiss the unfair labor practice charges and complaint.

The charges allege that Respondents Service Employees International Union (hereafter "International") and Service Employees International Union, Local 517 (hereafter "Local 517") intend to merge the Local Union Charging Parties into Local 517. Charging Parties allege further that the procedure is in violation of Section 10(3)(a)(i) of PERA since it allows the International to change the bargaining agent without the consent of the membership, which is contrary to employees' Section 9 rights. The charges also allege that because the International's merging procedure does not require the consent of the Local Union Charging Parties, it is inconsistent with the exclusive representation principle under Section 11 of PERA. On October 2, 2001, Charging Parties filed timely exceptions to the Decision and Recommended Order of the ALJ on Motion to Dismiss. Respondents filed a timely brief in support of the ALJ's decision on October 19, 2001.

The Local Union Charging Parties are affiliates of Respondent International and represent 34 separate bargaining units which in total have approximately 2000 members. The officers of the Local Union Charging Parties were informed in early 2001 that Respondent International planned to merge them into Respondent Local 517, which currently has approximately 2000 members. Upon objection by all officers of Local Union Charging Parties, the International issued a notice of hearing pursuant to its constitutional provision permitting the consolidation or merger of local unions. The aforementioned unfair labor practice charges were filed on March 12, 2001, and on April 30, 2001, a consolidation hearing was held before a hearing officer who was designated by the International Executive Board, as required by the parties' constitution. To our knowledge, no recommendation has been made by the hearing officer as of this date.

On May 2, 2001, Respondents filed a motion for summary dismissal alleging, in part, that because the issues involved in the unfair labor practice charges are internal union matters, the charges fail to state a claim under PERA. Following oral argument on the motion, the ALJ issued an order recommending dismissal of the charge.

Charging Parties' main argument on exception is that the merger of the four Local Union Charging Parties into one Respondent Local 517 would violate Section 10(3)(a)(i) of PERA by restraining members in the choice of their representative. We have previously held, however, that the representative status of labor organizations to their units does not hinge upon the subtle technicalities that govern the structure and nature of the relationships between locals or affiliates and

their parent bodies. See *Schoolcraft Community College*, 1996 MERC Lab Op 492, 496. Just as employees are free under PERA to choose their representative for collective bargaining purposes, the bargaining representative must also be free to select its own bargaining representative or agent. *Id*. See also *Romeo Community Schools*, 1973 MERC Lab Op 360. Whether the parent organization or its designated agent locals or affiliates is the certified or recognized bargaining agent is of no consequence under PERA. See *Schoolcraft* at 496; *Alpena Community College*, 1994 MERC Lab Op 955, 960-961 (employer's request to dismiss petition for election filed by parent certified bargaining representative because not filed by affiliate labor organization named in current contract denied).

The union members involved in this case have already elected to be represented by Respondent International. How this labor organization chooses to service these members is not an issue into which we will delve, nor is it a basis for a PERA violation. We have consistently refused to become involved in the internal structure and affairs of labor organizations as beyond our statutory mandate. See *Schoolcraft* at 496; *Jackson County Med.Care Facility*, 1967 MERC Lab Op 455, 457; *Catholic Social Services*, 1967 MERC Lab Op 48, 51; *City of Pontiac*, 1966 MERC Lab Op 200, 203. Therefore, we hold that a merger of the Local Union Charging Parties and Respondent Local 517 would not rise to the level of a Section 10(3)(a)(i) violation under PERA.

We have carefully considered all other arguments raised by Charging Parties and find that they do not warrant a change in the result of this case.1

1 This includes Charging Parties' speculation as to the possible ramifications of this decision.

ORDER

For the reasons set forth above, we hereby adopt the recommended order of the ALJ as our order in this case.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____
Maris Stella Swift, Chair

_____
Harry W. Bishop, Member

_____
C. Barry Ott, Member

DATED:_____

STATE OF MICHIGAN
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APPEARANCES:

Klimist, McKnight, Sale, McClow & Canzano, P.C., by Samuel C. McKnight, Esq., and William J. Karges, Esq., for the Respondents

Mark H. Cousens, Esq., for the Charging Parties

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE ON MOTION TO DISMISS

On March 12, 2001, Local 519, Local 466, Local 26M, and Local 516M of the Service Employees International Union (hereinafter the Local Union Charging Parties), together with representative individuals included in bargaining units represented by these local unions (hereinafter

Individual Charging Parties), filed the above charges against the Service Employees International Union (hereinafter the International) and Service Employees International Union, Local 517 (hereinafter Local 517), alleging that the Respondents were violating the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212, MSA 17.455(12). On May 2, 2001, Respondents filed a motion for summary disposition. Respondents asserted that the matters addressed in the charges were purely internal union matters and that the charges failed to state a claim under PERA. Charging Parties filed a response to the motion on May 22. Oral argument was held on May 25, 2001. I granted the motion to dismiss at the close of argument on that date. Based on the facts as set forth in Charging Parties' pleadings, and the arguments set forth in the pleadings and at oral argument, I make the following conclusions of law and recommend that the Commission issue the following order.

The Unfair Labor Practice Charges and the Positions of the Parties:

The Local Union Charging Parties, affiliates of the Respondent International, are certified or recognized bargaining agents for units of public employees under PERA. Each Local Union Charging Party, together with Individual Charging Parties represented by it, filed a charge against the International and a separate charge against Local 517. Since all eight charges involve the same claims, they were consolidated for decision. The charges allege that the Respondent International intends to merge the Local Union Charging Parties into Local 517. Charging Parties assert that the International's procedure for merging locals violates Section 10(3)(a)(i) of PERA. According to Charging Parties, because this procedure allows the International to change the bargaining agent without the consent of the membership, this procedure violates the rights of employees under Section 9 of the Act. Charging Parties also assert that the International's procedure for merging locals is inconsistent with the principle of exclusive representation set out in Sections 11 of PERA, because it does not require the consent of the locals.2 Charging Parties ask the Commission to direct the Respondent International to refrain from merging or attempting to merge these locals, and to direct Respondent Local 517 to refrain from attempting to represent the Individual Charging Parties and other members of bargaining units represented by the Local Union Charging Parties.

Respondents argue that the dispute here is solely an internal union dispute. They maintain that Charging Parties have not alleged facts to support a finding that Respondents have committed an unfair labor practice under Section 10 of the Act.

Facts:

As indicated above, the Local Union Charging Parties are each the certified or recognized bargaining agent for one or more units of public employees in Michigan. Respondent Local 517 is also the certified or recognized representative for several units of public employees under PERA. The Local Union Charging Parties, as affiliates of the International or its predecessor the Building Service Employees International Union, are named as bargaining representatives on all available

2 The charges do not allege that Local 517 has committed or is committing any acts that violate PERA.

certifications or documents demonstrating recognition.

As affiliates of the Respondent International, the Local Union Charging Parties are subject to its Constitution. According to Sections 3 and 4, Article XIV, of the International Constitution, the International's Executive Board may consolidate or merge local unions when "in the opinion of the International Executive Board the interests and welfare of the International Union and the membership thereof will be better served by such action." The International Constitution provides that if the local unions do not consent to the merger or consolidation, a hearing shall be conducted before a hearing officer designated by the International Executive Board. The hearing officer makes a recommendation on the proposed merger, and the members of the Executive Board vote to accept or reject the recommendation. Individual members of the union or bargaining units involved are not given the right to vote on the merger.

At its convention in 2000, the Respondent International adopted a nation-wide plan to put more of its resources toward organizing by merging all locals within a particular industry and logical geographical area. In early 2001, the officers of the Local Union Charging Parties were notified that the International wanted to merge them into Local 517. When the officers of all the Local Union Charging Parties objected, the International issued a notice of hearing pursuant to the constitutional provision above. This hearing was conducted on April 30, 2001. As of May 25, 2001, the hearing officer had not yet issued a decision.

Local 517 currently has about 2000 members. The Local Union Charging Parties represent 34 separate bargaining units with a combined total of about 2000 members. If the International decides to merge the locals, the Local Union Charging Parties will be completely absorbed into Local 517 and will cease to exist as separate entities. The assets of the Local Union Charging Parties will be transferred to Local 517. Local 517 will also attempt to assume the obligations and assert the bargaining rights of the Local Union Charging Parties. The proposed merger will not affect the structure or composition of the bargaining units represented by Local 517 or the Local Union Charging Parties.

Discussion and Conclusions of Law:

Respondents point out, correctly, that Section 10(3)(a)(i) of PERA prohibits only the restraint or coercion of employees, not unions. Under Section 16 of PERA, the Commission may find unfair labor practices based on violations of Section 10 of the Act. The Commission has no authority under to remedy violations of other sections of the statute. The Local Union Charging Parties, therefore, have no unfair labor practice claims of their own under the statute. The only issue in this case is whether the Respondents are violating Section 10(3)(a)(i) of the Act by unlawfully coercing or restraining individual employees in the exercise of their Section 9 rights.

Charging Parties argue that the International's merger process interferes with the rights of employees to bargain collectively through representatives of their own free choice. That is, they assert that the procedure in the International Constitution is unlawful because it permits the Local Union Charging Parties to be abolished and replaced as bargaining representatives without a vote of

the employees. Respondents maintain that its merger procedure is an internal union matter which does not affect the relationship between the employees and their employer.

The Commission has held that Section 10(3)(a)(i) does not embrace matters involving strictly internal union affairs. *Service Employees International Union*, *Local 586*, 1986 MERC Lab Op 149, 151; *Wayne Co Comm College Federation of Teachers,* 1976 MERC Lab Op 347, 352. See also the ALJ decisions in *AFSCME Local 1918,* 1999 MERC Lab Op 11; *Private Industry Council,* 1993 MERC Lab Op 907; *MESPA (Alma Public Schools Unit),* 1981 MERC Lab Op 149,154. The Commission has stated that it has no authority to regulate a labor union's internal structure. *Detroit Assoc of Educational Office Employees*, 1984 MERC Lab Op 947. While Respondents assert that this charge involves solely internal matters of union structure and jurisdiction, Charging Parties maintain that the merger will have a direct impact on the employees' relationship with their employer because they will be denied the opportunity to select their own bargaining agent.

I find that a decision by an international union to abolish a local affiliate is a decision concerning the union's structure, and as such is a strictly internal decision outside the Commission's statutory jurisdiction. Section 9 of PERA gives employees the right to bargain with their employers through representatives of their own free choice. However, this right presumes that the representative "of their choosing" exists and agrees to act as their representative. Section 10(3)(a)(i) has never been interpreted to give employees the right to compel a labor organization to represent them. I conclude that the Individual Charging Parties have no more right under Section 9 to prevent the International from abolishing their local unions than they would have to prevent their unions from disclaiming interest in representing their bargaining units.

If the International Executive Board approves the proposed merger, Local 517 will attempt to assert the bargaining and contract rights of the Local Union Charging Parties. The Commission has held that an employer has no obligation to bargain under Section 10(1)(e) of PERA if the former bargaining agent has undergone a substantial change in identity, unless and until a representation petition is filed and the Commission certifies the new entity as the bargaining representative. *Mt Clemens CS*, 1981 MERC Lab Op 424, *L'Anse Creuse PS*, 1980 MERC Lab Op 607. However, the instant charges do not allege a violation of Section 10(1)(e). The question of whether the employers of employees now represented by the Local Union Charging Parties will have an obligation to bargain with Local 517 if the merger is approved is not before me here.

For reasons set out above, I conclude that no violation of Section 10(3)(a)(i) can be found on these facts. In accord with the discussion and conclusions of law above, I find that the Respondents' motion for summary disposition should be granted. I recommend, therefore, that the Commission issue the following order.

RECOMMENDED ORDER

The charges herein are hereby dismissed in their entireties.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern
Administrative Law Judge

Dated: _____

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