STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

LANSING ENTERTAINMENT & PUBLIC FACILITY AUTHORITY (LEPFA),
Public Employer,

Case No. R03 B-28

-and-

INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES, MOVING PICTURE TECHNICIANS, ARTISTS AND ALLIED CRAFT (IATSE), LOCAL 274,
Labor Organization - Petitioner.
_____/

APPEARANCES:

Foster, Swift, Collins and Smith, P.C., by Stephen O. Schultz, Esq., for the Employer

Pinsky, Smith, Fayette & Hulswit, LLP, by Michael L. Fayette, Esq., for the Petitioner

DECISION AND ORDER DISMISSING
PETITION FOR SELF-DETERMINATION ELECTION

Pursuant to Section 13 of the Public Employment Relations Act (PERA), 1965 PA 379 as amended, MCL 423.213, this case was heard at Lansing, Michigan on August 25, 2003, before Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. Based on the record, including briefs filed by the parties on or before October 7, 2003, the Commission finds as follows:

The Petition:

Petitioner International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Craft (IATSE), Local 274 filed this petition on February 7, 2003. Petitioner represents two separate bargaining units of employees of the Lansing Entertainment & Public Facilities Authority (the Employer or LEPFA). One of these units consists of all full-time and regular part-time audiovisual technicians (Unit I, or the technical services unit). The other unit is comprised of all employees referred to the Employer by the Petitioner from its hiring hall (Unit II, or the on-call stagehands unit). Petitioner seeks to have the Commission direct a self-determination election in which employees of both units may vote on whether to combine their units. The Employer's position is that the two units should not be combined because the employees do not share a community of interest, in part, because the employees in Unit II lack regularity of employment.

Facts:

The Employer is a public entity managing three facilities in the City of Lansing: the Lansing Center, a meeting, convention and exhibition hall; a baseball stadium; and the Lansing City Market. Employees represented by Petitioner perform some work at the baseball stadium, but most of their work is at the Lansing Center. The Employer rents space in the Lansing Center for shows, events and meetings. The Employer also provides its customers at the Lansing Center with services including audio setup and lighting for meetings, stage rigging, set preparation, equipment move-in and load-out, sound and lighting on cue during productions, and prop movement.

Unit I consists of four employees. All four are experienced stagehands with a variety of skills; the Employer describes them as "jacks of all trades." Two are full-time salaried employees. The other two are part-time employees referred to as "first on-calls." The schedule and the number of hours worked each week by the first on-calls varies with the Employer's needs, and depends on the number and type of events scheduled. The Employer provides the first on-calls with their work schedules at the beginning of each week. The first on-calls must work their assigned hours or receive permission from the Employer to be absent. All of the first on-calls, and most of the full-time audiovisual technicians, worked for the Employer originally as on-call stagehands.

Until shortly before this petition was filed, the first on-calls were part of Unit II. In the early 1990s, Petitioner agreed to allow the Employer to schedule one employee directly, without going through Petitioner's hiring hall. The parties agreed that the first on-call would work as many hours as the Employer needed him, and would not accept referrals that conflicted with his scheduled hours for the Employer. Petitioner later agreed to a second "first on-call." In the summer of 2002, Petitioner filed a petition with this Commission (Case No. R02 H-107) to add the first on-calls to Unit I on the grounds that they worked a sufficient number of hours and a sufficiently regular schedule to be considered regular part-time employees. The petition was withdrawn after the Employer agreed, in January 2003, to add the first on-calls to the technical services unit.

At the time of the hearing in this case, the parties were in the process of negotiating a new collective bargaining agreement for Unit I to cover the newly added first on-calls. Pending agreement on a contract covering their terms of employment, the first on-calls were being paid in accord with the terms of the Unit II contract. Unlike the full-time Unit I employees, the first on-calls are not currently receiving paid holidays, paid vacation, health insurance, retirement, or life insurance, but are paid the premium pay provided by the Unit II contract for certain highly skilled work and for work performed between 12 a.m. and 8 a.m. Although the members of the technical services unit may earn more because they work more hours for the Employer, they are paid roughly the same amount per hour worked as the on-call stagehands.

As noted above, Unit II consists of individuals referred to the Employer from Petitioner's hiring hall. Petitioner operates a hiring hall that provides stagehands to several employers, including Michigan State University in East Lansing, and employers in western Michigan and the northern lower Michigan. When the Employer has more work than can be done by the audiovisual technicians, it requests stagehands from the hiring hall. The Employer may request a particular individual, or may request individuals with particular skills, e.g. a rigger or an

electrician. Unlike the first on-call employees, stagehands referred from the hiring hall are free to decline a particular referral, and may work for other employers in other towns or cities.

Individuals from Petitioner's "A" list are most often referred to work for the Employer. The "A" list consists of 15 to 20 stagehands who are regularly available for work, and who have skills in a number of different areas. When the Employer has a large show, however, it may request 30 to 40 stagehands from the hiring hall. In that case, Petitioner will send stagehands from its "B," "C," or "D" lists.

The audiovisual technicians and the on-call stagehands are supervised by the Employer's technical services manager. However, the technical services manager works only weekdays, and spends a great deal of his time meeting with customers and the Center's event coordinators to plan future events. In the absence of the technical services manager, the audiovisual technicians meet with the customer and the event coordinator, and the customer's production crew if it has one, for that day's event, The audiovisual technicians go over the work order prepared by the technical services manager, and may suggest changes. The audiovisual technicians carry out the work order and serve as work leaders for any on-call stagehands employed for the event. The audiovisual technicians check in the on-call stagehands; review their employment forms and documents to approve them for work; familiarize new stagehands with the facility and its equipment; assign and direct their work; and check them out for lunch and at the end of the day. Audiovisual technicians, including the first-on calls, have the authority to obtain additional employees from the hiring hall on the day of the production, and may send them home early if the audiovisual technicians conclude that they are not needed. An audiovisual technician can also send an on-call stagehand home if he concludes that the on-call stagehand does not have the skills needed for the particular job.

The audiovisual technicians have other responsibilities not performed by the on-call stagehands. They order equipment and supplies. They help collect money for utilities from exhibitors in a large show. They also have keys to the Lansing Center and its various rooms.

Discussion and Conclusions of Law:

Petitioner contends that the employees in Unit I and Unit II share a community of interest because their duties and skills are similar; they have a common supervisor; they work side by side in the same location and have regular contact; and employees from Unit II are regularly promoted to Unit I. According to Petitioner, the fact that Unit I employees have additional responsibilities, including responsibility for overseeing the work of the on-call stagehands, does not destroy the community of interest between the two units.

The Employer asserts that a combined unit of audiovisual technicians and on-call stagehands would not be appropriate because the members of Unit II are casual employees who work for numerous employers and by choice, have no commitment to the Lansing Center, and are free to decline an assignment at any time. The Employer also contends that the two units do not share a community of interest because their compensation and benefits are different; members of the technical services bargaining unit have additional duties connected to their responsibility to assure that the Center's customers receive quality service; and members of Unit II have no right to transfer to or be promoted to the technical services unit.

When a union representing two or more bargaining units of employees of the same employer files a petition to merge these units, we will direct a self-determination election if we find that the proposed combined unit would also constitute an appropriate unit under Section 13 of PERA. *St Clair County ISD,* 2001 MERC Lab Op 169; *Clarkston C S,* 1993 MERC Lab Op 29; *Bangor Twp S D,* 1993 MERC Lab Op 216. In this case, we agree with the Employer that the on-call employees in Unit II do not share a sufficient community of interest with employees in Unit I to combine the units.

Unit II consists of all stagehands referred to the Employer from Petitioner's hiring hall. All employees in Unit II work on-call, have the right to refuse assignments, and work for the Employer only intermittently. Moreover, on-call stagehands from Petitioner's "B," "C" and "D" lists, who are included in Unit II, work for the Employer only when it has a large show. These employees clearly do not have the same regularity or continuity of employment with the Employer as the Unit I employees. In addition, they do not share the range of duties performed by employees in Unit I, including matters such as scheduling, work assignments, the day-to-day direction of employees, and other responsibilities involving events, equipment, and customers. Inasmuch as the employees in Unit II have no oversight responsibilities, work only on-call, are free to decline an assignment at any time, and may work for other employers, we find that they do not share a community of interest with the employees in Unit I. We therefore conclude that a bargaining unit consisting of employees in Unit I and Unit II would not be an appropriate unit under Section 13 of PERA. We conclude that a self-determination election should not be directed in this case. We therefore issue the order set forth below:

ORDER

Based on the above findings of fact and conclusions of law, the petition for a self-determination election in this matter is hereby dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Nora Lynch, Commission Chairman

_____

Harry Bishop, Commission Member

_____

Maris Stella Swift, Commission Member

Dated: _____