STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

HARTLAND CONSOLIDATED SCHOOLS,
Public Employer in Case No. R06 A-008,

-and-

MICHIGAN EDUCATION ASSOCIATION AND
MICHIGAN EDUCATION SPECIAL SERVICES ASSOCIATION,
Respondents in Case No. CU06 C-006,

-and-

HARTLAND TRANSPORTATION ASSOCIATION, MEA/NEA,
Incumbent Labor Organization in Case No. R06 A-008,

-and-

TEAMSTERS STATE, COUNTY AND MUNICIPAL WORKERS, LOCAL 214,
Labor Organization-Petitioner in Case No. R06 A-008
Charging Party in Case No. CU06 C-006.
_____/

APPEARANCES:

Scott Bacon, Assistant Superintendent, for the Public Employer

White, Schneider, Young and Chiodini, P.C., by Michael M. Shoudy, Esq., for the Michigan Education Association, Hartland Transportation Association, and Michigan Education Special Services Association

Rudell & O'Neill, by Wayne A. Rudell, Esq., for Teamsters Local 214

DECISION AND ORDER

On October 11, 2006, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order in the above matter finding that Respondents have not engaged in and were not engaging in certain unfair labor practices, and recommending that the Commission dismiss the charges and complaint as being without merit.

The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of the Act.

The parties have had an opportunity to review the Decision and Recommended Order for a period of at least 20 days from the date of service and no exceptions have been filed by any of the parties.

ORDER

Pursuant to Section 16 of the Act, the Commission adopts the recommended order of the Administrative Law Judge as its final order.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____
Christine A. Derdarian, Commission Chair

_____
Nino E. Green, Commission Member

_____
Eugene Lumberg, Commission Member

Dated: _____

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

HARTLAND CONSOLIDATED SCHOOLS,
Public Employer in Case No. R06 A-008,

-and-

MICHIGAN EDUCATION ASSOCIATION AND
MICHIGAN EDUCATION SPECIAL SERVICES ASSOCIATION,
Respondents in Case No. CU06 C-006,

-and-

HARTLAND TRANSPORTATION ASSOCIATION, MEA/NEA,
Incumbent Labor Organization in Case No. R06 A-008,

-and-

TEAMSTERS STATE, COUNTY AND MUNICIPAL WORKERS, LOCAL 214,
Labor Organization-Petitioner in Case No. R06 A-008
Charging Party in Case No. CU06 C-006.
_____/

APPEARANCES:

Scott Bacon, Assistant Superintendent, for the Public Employer

White, Schneider, Young and Chiodini, P.C., by Michael M. Shoudy, Esq., for the Michigan Education Association, Hartland Transportation Association, and Michigan Education Special Services Association

Rudell & O'Neill, by Wayne A. Rudell, Esq., for Teamsters Local 214

DECISION AND RECOMMENDED ORDER DIRECTING AN ELECTION

On January 11, 2006, Teamsters State, County and Municipal Workers Local 214 (the Teamsters) filed a petition for a representation election with the Michigan Employment Relations Commission (the Commission) pursuant to Section 12 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212. The Teamsters seek to represent a bargaining unit of employees, including drivers, dispatchers and trainers, employed by the Hartland Consolidated Schools (the Employer) in its transportation department. The Hartland Transportation

Association, MEA/NEA, an affiliate of the Michigan Education Association (MEA), currently represents this unit.

The parties to the representation case tentatively agreed to an election and selected an election date. On March 2, 2006, the Teamsters filed an unfair labor practice charge against the MEA and its agent, the Michigan Education Support Services Association (MESSA), alleging that they violated Sections 10(3)(a)(i) and (b) of PERA. The Teamsters requested that the processing of its representation petition be stayed pending a decision by the Commission on their charge and informed the Bureau of Employment Relations that for this reason it would not enter into a consent election agreement. On March 20, Bureau Director Ruthanne Okun ordered the two cases consolidated for hearing. The cases were assigned to Administrative Law Judge Julia C. Stern.

On March 15, 2006, the MEA and MESSA (Respondents) filed a motion for summary dismissal asserting that the charge failed to state a claim upon which relief could be granted. Respondents argue that this case is controlled by the Commission's decision dismissing similar charges in *Michigan Ed Ass'n & MESSA (Mackinaw City Pub Schs)*, 18 MPER 64 (2005). On April 5, the Teamsters filed an amended charge and "objections to conduct prior to election." On April 17, it filed a response in opposition to Respondents' motion for summary disposition. On April 21, Respondents filed a second motion for summary dismissal of the amended charge. The Teamsters filed its response on May 24. I held oral argument on both motions on July 6, 2006.

Based on the facts as alleged by the Teamsters and the arguments of the parties presented in their pleadings and at oral argument, I recommend that the Commission find as follows and that it take the following action.

The Unfair Labor Practice Charge:

The charge, as amended, alleges that Respondents violated Sections 10(3)(a)(i) and 10(3)(b) of PERA by threatening employees with the immediate loss of the health insurance benefits provided to them through MESSA if they selected the Teamsters as their bargaining representative. The Teamsters assert that by this conduct Respondents unlawfully restrained and coerced employees in the exercise of rights guaranteed by Section 9 of PERA, violated the MEA's duty of fair representation, and threatened to cause the Employer to unlawfully discriminate against employees in violation of Section 10(1)(c) of the Act.

Facts:

The facts as alleged by Charging Party are as follows. MESSA, an agent and constituent part of the MEA, provides health and other insurance programs and services. At all times relevant here, the Employer and the MEA were parties to a collective bargaining agreement covering the employees in the petitioned-for bargaining unit. This contract obligated the Employer to provide employees with MESSA insurance coverage known as "Super Care I." The MEA also represents other employees of the Employer and, pursuant to the terms of their collective bargaining agreement(s), these employees also receive various types of insurance coverage through MESSA.

MESSA also contracts with other employers who have collective bargaining relationships with the MEA to provide insurance coverage for their employees. MESSA provides insurance coverage both for employees in bargaining units represented by the MEA and for certain other represented and unrepresented employees of employers who have collective bargaining agreements with the MEA. These include employees who: (1) are members of and/or represented by labor organizations other than the MEA; (2) have voted in the past not to be represented by the MEA; (3) before becoming members of their current bargaining unit, held positions in bargaining units that had voted to decertify the MEA. One of the MEA and MESSA's stated purposes in offering MESSA insurance coverage to employees not represented by the MEA is to encourage these employees to become members of the MEA. MESSA will not provide insurance coverage for employees in a bargaining unit previously represented by the MEA after the unit has voted to decertify or disaffiliate from that labor organization.

On January 11, 2006, after learning that employees in the petitioned-for unit were seeking representation from the Teamsters, the MEA sent a letter to all members of the unit. This letter stated, "It is important to understand that MESSA insurance is linked with MEA membership." It also stated, "Current MEA members would be ineligible for MESSA insurance should the unit choose to disaffiliate from MEA." Finally, the letter stated, "MESSA insurance coverage would be terminated if the bargaining unit left MEA." On March 8, 2006, the MEA sent another letter to unit employees containing similar statements.

Beginning in January 2006, the MEA held a series of meetings with bargaining unit members at which MEA representatives, including its Uniserv representative, spoke to employees about MESSA insurance coverage. In these meetings, MEA representatives emphasized the critical importance to employees of insurance benefits and coverage and told unit employees that "the insurance benefits and coverage of bargaining unit employees would be terminated by [MESSA] if bargaining unit employees voted to decertify or disaffiliate from the MEA even if this occurred while the collective bargaining agreement remained in effect and this [termination of benefits] would occur for no other reason."

Discussion and Conclusions of Law:

In *Mackinaw City Pub Schs*, an employee filed a petition for an election to decertify the MEA as the collective bargaining agent for a unit of support employees of the Mackinaw City Public Schools. Unit employees received MESSA insurance pursuant to the terms of a collective bargaining agreement between the school district and the MEA. At the time the petition was filed, the collective bargaining agreement had expired. Shortly before the election on the petition, the employer filed an unfair labor practice charge based on a MESSA representative's statement to employees during the pre-election period that if they voted to decertify the MEA, MESSA would discontinue their MESSA health insurance. After the MEA succeeded in winning the majority support of the unit in the election, the employer filed objections to the election which were identical to its charge.

The parties in *Mackinaw City* submitted stipulated facts in lieu of a hearing, including a copy of MESSA's "disaffiliation policy," as set out in its bylaws:

> MESSA benefits will be terminated at the end of the last month benefits are provided under the contract between the employer and the local MEA collective bargaining unit for all employees of the collective bargaining unit, upon the election of a bargaining unit to disaffiliate or decertify from MEA or a local unit thereof.

The Commission held that the MEA and MESSA did not violate Sections 10(3)(a)(i) or 10(3)(b) of PERA by maintaining this policy. It also held that it did not violate these sections of the Act by informing employees of the policy and its effects in a non-coercive way. The Commission found that under the disaffiliation policy, a decertification vote would result in employees losing a valuable benefit, i.e. their MESSA coverage. It noted, however, that employees could lose that benefit in other ways, including negotiating other health insurance with the employer. The Commission drew an analogy between MESSA insurance and other services and benefits offered by unions to their members, stating, "Although the potential loss of MESSA benefits may encourage employees to continue as members of the MEA . . . it is not impermissible encouragement, but an indirect side effect of offering such a valuable benefit." The Commission also stated:

> We have long held that we have no jurisdiction to regulate the internal affairs of labor organizations or to monitor the quality of the services they render, absent some direct impact upon the employment relationship or evidence of a denial of rights under Section 9 of PERA. *Schoolcraft Cmty College*, 1996 MERC Lab Op 492; *Detroit Ass'n of Educational Office Employees*, 1984 MERC Lab Op 947; *MESPA (Alma Pub Sch Union)*, 1981 MERC Lab Op 149. The availability of particular health insurance coverage is not fundamental to the employment relationship. We find that the effect of MESSA's disaffiliation policy is indirect at best; it does not cause the loss of employment or interfere with the employment relationship or Section 9 rights. The fact that MESSA chooses not to extend a particular benefit to certain employees simply means that these employees have one less option available for health insurance and must look elsewhere for coverage. An employer does not unlawfully discriminate because it does not negotiate identical benefits for all bargaining units or employees.

The parties stipulated in *Mackinaw* that MESSA and MEA representatives described MESSA's disaffiliation policy to employees before the election. The primary focus of the Commission's analysis was, therefore, the lawfulness of the policy. However, the Commission clearly held in *Mackinaw* that the MEA and MESSA do not unlawfully coerce employees in the exercise of their Section 9 rights by refusing to provide MESSA insurance benefits to employees after, and solely because, they vote to decertify or disaffiliate from the MEA, or by informing employees of their intent in a non-coercive way during the course of an election campaign. The Commission's decision is binding precedent and I am required to follow it.

The Teamsters assert that this case differs from *Mackinaw* in that here, MEA representatives did not refer to any policy, but simply told the employees that they would lose their MESSA insurance immediately upon voting to disaffiliate from the MEA. However, this is effectively what the MEA and MESSA representatives told the employees in *Mackinaw.* In that case, the collective bargaining agreement had expired before the petition was filed, and the employees' MESSA coverage was to terminate "upon the election . . . to decertify."

The Teamsters also argue this case differs from *Mackinaw* because Respondents' termination of the employees' MESSA insurance might leave the employees without any health insurance for an indefinite time. They point out that if the Teamsters were selected as the employees' new bargaining agent, the Employer would have to bargain with them over health insurance benefits. They suggest that the Employer might refuse to buy interim coverage for employees while bargaining with the Teamsters over a new health carrier and benefits.1 The Teamsters have attached to their brief a copy of the stipulation of facts in *Mackinaw*, and they point to a statement made by the employer's superintendent during the election campaign that the employer had contacted another insurer about purchasing health coverage for the unit in the event they voted to decertify the MEA. The Commission, however, did not include the superintendent's remark in its summary of the facts, and nothing in its decision suggests that it based its finding that MESSA and the MEA did not unlawfully coerce employees on the premise that the employees would continue to receive health coverage from their employer if they decertified.

The Teamsters also maintain that Respondents have breached, or have threatened to breach, the MEA's duty of fair representation. They argue that that the MEA owes a duty to employees, even after it is decertified, to enforce the terms of the collective bargaining agreement during its term. According to the Teamsters, even if it does not have that duty, it is obligated to refrain from taking affirmative action that would cause the employees to lose benefits or effect a change in the employees' terms and conditions of employment.

The Commission has consistently held that when a representation election is conducted during the term of an existing contract, that contract continues in effect until its expiration even if the incumbent representative is defeated. *Ionia Co Road Comm,* 1969 MERC Lab Op 82; *Garden City Pub Schs,* 1974 MERC Lab Op 364; *Jonesville Bd of Ed,* 1980 MERC Lab Op 891. An employer is obligated to comply with the terms of that contract, including provisions requiring it to deduct dues for the former incumbent from employees' paychecks. *West Bloomfield Pub Schs,* 1985 MERC Lab Op 24, citing *Fender Musical Instruments,* 175 NLRB 873, 874 (1969). The employer, however, has a duty to bargain with the new representative, even though the new representative is also bound by the terms of the contract during its term. *City of Romulus,* 1988 MERC Lab Op 504. In *Quinn v Police Officers Labor Council,* 456 Mich 478 (1998), the Supreme Court affirmed the Commission's ruling that a union that had been the collective bargaining agent for the bargaining unit during the term of the contract, and had filed and processed grievances under that contract before being replaced by another union, had a duty to process these grievances to their completion. Both the Court and the Commission cited various policy reasons for placing this obligation on the first union, and both recognized that this duty was limited to grievances that arose while the first union was still the bargaining representative. I am not aware of any decision under PERA, and the Teamsters have cited none, which holds that if a union is decertified before its contact expires, it owes its former members the duty to ensure that they continue to enjoy the benefits of that contract until it expires. Nor am I aware of any case law in support of the proposition that a union, after it is replaced by another, is bound to ensure that employees' terms and conditions of employment do not

1 The Teamsters do not address the question of whether a refusal by the Employer to continue to provide employees with some type of health coverage would violate its duty to maintain existing terms and conditions of employment during bargaining.

change. Moreover, I do not believe that this case presents an appropriate vehicle for expanding the scope of a union's duty of fair representation under PERA. Therefore, I conclude that the Teamsters have failed to state a claim for breach of the MEA's duty of fair representation under the Act.

For the reasons set forth above, I conclude that the Teamsters' allegation that Respondents unlawfully coerced employees of the Hartland Consolidated Schools in the exercise of their Section 9 rights, and its allegation that Respondents violated Section 10(3)(b) of PERA, must be dismissed under the authority of *Mackinaw City Pub Schs.* I also conclude that the Teamsters have failed to state a claim that Respondents violated the MEA's duty of fair representation under that Act. I recommend, therefore, that the Commission dismiss the unfair labor practice charge.

As noted above, the parties to the representation case had tentatively agreed to a consent election when the Teamsters requested that its representation petition be held in abeyance until the Commission ruled on its charge. None of the parties raise any issue with respect to the petition requiring hearing. Accordingly, I recommend that the Commission direct an election as follows.

RECOMMENDED ORDER IN CASE NO. CU06 C-006

The charge is hereby dismissed in its entirety.

RECOMMENDED ORDER DIRECTING ELECTION IN CASE NO. R06 A-008

Based upon the above findings of facts and conclusions of law, we conclude that a question concerning representation exists herein under Section 12 of PERA in the following appropriate unit:

> All regular school bus drivers, dispatchers and trainers employed by the Hartland Consolidated Schools, but excluding substitute bus drivers, supervisory and executive personnel and all other employees.

The above employees shall vote pursuant to the attached direction of election whether they wish to be represented for purposes of collective bargaining by Teamsters Local 214, by the Hartland Transportation Association, MEA/NEA, or by neither labor organization.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

____
Julia C. Stern
Administrative Law Judge

Dated: _______________