STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

PUBLIC SAFETY ACADEMY,
Public Employer,

Case No. R06 H-093

-and-

ST. CLAIR COUNTY INTERMEDIATE EDUCATION ASSOCIATION, MEA/NEA,
Labor Organization-Petitioner.
_____/

APPEARANCES:

Thrun Law Firm, PC, by Roy H. Henley, Esq., for the Employer

The Firestone Law Firm, PC, by Joseph H. Firestone, Esq., for the Petitioner

DECISION AND DIRECTION OF ELECTION

This case comes before the Michigan Employment Relations Commission pursuant to Sections 12 and 13 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212 and MCL 423.213. Based on the record, including the Employer motion's to dismiss the petition filed on January 8, 2007, Petitioner's response filed on January 23, 2007, and oral argument held before Administrative Law Judge Julia C. Stern on January 29, 2007, the Commission finds as follows:

The Petition and Background Matters:

The St. Clair County Intermediate Education Association, MEA/NEA, filed this petition for a representation election on August 23, 2006. Petitioner seeks to accrete teachers employed by the Public Safety Academy, a public school academy within the meaning of MCL 380.501, et seq., to an existing multi-employer bargaining unit consisting of instructors employed by four other public school academies[1] and the St. Clair County Regional Service Agency (the RESA). The RESA is the authorizing body, as described in MCL 380.502, for all the academies listed above, including the Public Safety Academy. Employees of the RESA and employees of the five academies provide technical and vocational education to students at the RESA's Technical Education Center (TEC) located at its Range Road campus. Other public school academies

[1] The other four public school academies included in the multi-employer bargaining unit are the Information Technology Academy of St. Clair County, the Industrial Technology Academy, the Hospitality Academy of St. Clair County, and the Health Careers Academy of St. Clair County.

authorized by the RESA, but housed at other locations, are not part of this unit, nor are they involved in this proceeding.

The RESA, formerly known as the St. Clair County Intermediate School District, has long offered a variety of vocational education programs at and through the TEC. At one time, instruction was provided primarily by employees of the RESA who were members of a bargaining unit represented by the Petitioner in this case. In 1996, RESA authorized the Academy for Plastics Manufacturing Technology (Plastics Academy), now known as the Industrial Technology Academy, to operate a program at the TEC. In 1997, Petitioner filed a unit clarification petition seeking to add to its unit all teaching personnel, instructors, and vocational education specialists employed at the Plastics Academy. It also filed an unfair labor practice charge alleging that the RESA unlawfully removed the position of metal machining instructor from Petitioner's bargaining unit after transferring it to the Plastics Academy. (Case Nos. C97 H-184 and UC97 H-41). Petitioner argued that the Plastics Academy and the RESA were joint employers of the Plastics Academy employees, or alternatively, that the Plastics Academy was merely an alter ego of the RESA. In *St Clair Co ISD*, 1999 MERC Lab Op 38, aff'd 245 Mich App 498 (2001), we rejected both arguments and concluded that the Plastics Academy was the sole employer of its employees. We held that neither the Plastics Academy nor the RESA could be ordered to bargain with Petitioner over the terms and conditions of employment of the metal machining instructor since that position was now employed by the Plastics Academy. The unit clarification petition was also dismissed.

After the above charge was filed, the RESA authorized the three other academies that are now part of the multi-employer unit. A number of positions that were formerly part of Petitioner's unit became positions at the academies. Petitioner filed another unfair labor practice charge (Case No. C99 I-168). This time, Petitioner alleged that the RESA had a duty to bargain before subcontracting unit work to the academies. In *St Clair Co ISD*, 17 MPER 77 (2004), we found that the RESA violated Section 10(1)(c) of PERA by failing to bargain in good faith over this subcontracting. We also found that the RESA transferred the work in order to avoid its bargaining obligation and for the purpose of depriving employees of their Section 9 rights, in violation of Sections 10(1)(a) and (c) of PERA. Our remedial order in that case required the RESA to rescind the subcontracts, offer employees whose positions were terminated as a result of the subcontracting reinstatement to their former or substantially equivalent positions, and make them whole for any loss of pay they might have suffered.

In July 2006, the parties entered into a written settlement agreement in Case No. C99 I-168. As part of the agreement, Petitioner agreed to provide the RESA, or a neutral third party, with membership cards or other documentation that would permit the Information Technology Academy of St. Clair County, the Industrial Technology Academy, the Hospitality Academy of St. Clair County and the Health Careers Academy of St. Clair County to voluntarily recognize Petitioner as the collective bargaining representative of their instructional employees. The agreement also provided that after receipt of this proof of representation, the four academies and the RESA would form a multi-employer bargaining unit comprised of the academies and the RESA for purposes of collective bargaining with Petitioner. The settlement agreement included a statement that the RESA and the academies were not to be deemed to have formed a co-

employer or alter-ego relationship as a result of the settlement agreement or the implementation of its terms.

The Public Safety Academy was authorized by the RESA after the charge in Case No. C99 I-168 was filed. The RESA did not provide the type of instruction the Public Safety Academy now offers, and the creation of the Public Safety Academy did not result in the transfer of any work from the RESA's employees.

Positions of the Parties:

Petitioner seeks to accrete the two instructors employed by the Public Safety Academy to the multi-employer unit created pursuant to the terms of the settlement agreement in Case No. C99 I-168. It asserts that all instructional employees at the TEC share a community of interest because they are under the same supervision; subject to the same work, building safety, recordkeeping and other rules and regulations; have substantially the same work hours and work year; and provide instructional services to the same student community. It notes that under *Hotel Olds v State Labor Mediation Bd*, 333 Mich 382 (1952), the Commission's mandate is to create the largest bargaining unit whose members share a community of interest.

The Public Safety Academy states that it does not oppose its employees' efforts to become represented by Petitioner. It states, however, that it is opposed to joining a multi-employer bargaining unit. According to the Public Safety Academy, under established Commission precedent, including *Common Pleas Court of the City of Detroit*, 1974 MERC Lab Op 83, and *Wayne Co Airport Authority*¸ 17 MPER 85 (2004), it cannot be forced to join such a unit against its will.

Petitioner asserts that nothing in PERA limits bargaining rights to bargaining with only a single employer, and notes that Section 9 of PERA gives public employees the right to "bargain collectively with their *public employers* through representatives of their own free choice." [Emphasis added]. Petitioner also maintains that the relationship between the RESA and the academies, including the Public Safety Academy, is unique because these employers share common facilities, clientele, business purpose, working conditions, and supervision, and because each separate academy employer has, in fact, ceded its authority to control wages, hours and conditions of work to the RESA.

Discussion and Conclusions of Law:

The National Labor Relations Board has long held that a single-employer unit is presumptively appropriate under the National Labor Relations Act (NLRA) 29 USC 150 et al. To defeat a claim for such a unit in favor of a broader unit, a controlling history of collective bargaining on the broader basis must exist. *United Fryer & Stillman, Inc*, 139 NLRB 704, 708 (1962). The NLRB will not create multiemployer bargaining units *ab initio*; a union organizing multiple employers cannot petition for an election in a unit consisting of a specified category of employees or more than one employer, and an employer cannot contend that a unit sought by a union is inappropriate because a larger unit consisting of similar categories of employers is the smallest appropriate unit. *Resort Nursing Home*, 340 NLRB 650, 654 (2003).

In *Greenhoot, Inc*, 205 NLRB 250 (1973), the NLRB stated, at 251:

> There is no legal basis for establishing a multiemployer unit absent a showing that the several employers have expressly conferred on a joint bargaining agent the power to bind them in negotiations or that they have by an established course of conduct unequivocally manifested a desire to be bound in future collective bargaining by group rather than individual action.

Whether or not the language of PERA compels this result, we have followed the lead of the NLRB in holding that a multi-employer bargaining unit must be based on consent, and that an employer must either expressly or by a course of conduct indicate its willingness to participate in a multi-employer arrangement. In *Common Pleas Court of the City of Detroit,* 1974 MERC Lab Op 83, we rejected Wayne County's suggestion that we create a multi-employer unit consisting of court supervisors employed by it and courts funded by it, including the Common Pleas Court. Each court was, by law, the sole employer of its employees for collective bargaining purposes. We noted that the County's suggestion had "practical merit." However, citing *Greenhoot*, we held that, absent agreement by the Common Pleas Court, we could not order it to participate in multi-employer bargaining.

In *Wayne Co Airport Authority*¸ 17 MPER 85 (2004), we again refused to order an employer to participate in multi-employer bargaining without evidence that it had consented to do so. We concluded that a newly created entity, the Wayne County Airport Authority (WCAA), had not consented to participate in a multi-employer bargaining unit with Wayne County and the Wayne County Sheriff, the former co-employers of WCAA's employees. We found that WCAA had agreed to multi-employer bargaining with respect to another group of its employees, but held that it could withdraw from this multi-employer relationship if its withdrawal was both timely and unequivocal, citing *Retail Assoc Inc*, 120 NLRB 388 (1958).

Petitioner argues that we should order the Public Safety Academy to participate in multi-employer bargaining despite its objection because it and the other academies have ceded their authority to determine terms and conditions of employment to the RESA. However, Petitioner does not dispute the Public Safety Academy's claim that it is the sole employer of its employees. In *Wayne Co Civil Service Comm v Wayne Co Bd of Supervisors*, 22 Mich App 287 (1970), the Court held that under PERA an "employer" means an entity that has the power and responsibility to: (1) select and engage the employee; (2) pay the wages; (3) dismiss the employee; and (4) control the employee's conduct. If, in fact, the RESA exercises independent control over some or all of the terms of employment of academy employees, it is their employer. Petitioner, however, apparently concedes that the RESA is not. We find that the Public Safety Academy has not consented to join the multi-employer unit consisting of the RESA and four of its academies, either explicitly or by participating in bargaining on this basis. We also conclude that as a separate employer it should not be compelled to do so.

For the reasons set forth above, we find that that the unit sought by Petitioner in this case is not an appropriate unit under Section 13. During oral argument, Petitioner's counsel indicated that he was not sure whether Petitioner was interested in representing the employees covered by

its petition in a separate unit. Petitioner shall notify the Commission within fourteen days of the date of this decision whether it wishes to proceed with the election as directed below.

ORDER DIRECTING ELECTION

We find that a question of representation exists under Section 12 of PERA in the following unit appropriate for purposes of collective bargaining under Section 13 of the Act:

> All full and regular part-time teachers employed by the Public Safety Academy; excluding supervisors and all other employees.

Pursuant to the attached Direction of Election, employees in the above unit shall vote whether they wish to be represented for collective bargaining purposes by the St. Clair County Intermediate Education Association, MEA/NEA.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Christine A. Derdarian, Commission Chair

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

Dated: _____