STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

LENAWEE INTERMEDIATE SCHOOL DISTRICT,
Public Employer,

Case No. R09 E-058

-and-

TEAMSTERS LOCAL 214,
Labor Organization-Petitioner.
_____/

APPEARANCES:

Thrun Law Firm, P.C., by Donald J. Bonato, for the Public Employer

Michael Landsiedel, Business Representative, for the Labor Organization-Petitioner

DECISION AND DIRECTION OF ELECTION

Pursuant to § 12 of the Public Employment Relations Act (PERA or Act), 1965 PA 379, as amended, MCL 423.212, this case was assigned to Doyle O'Connor, Administrative Law Judge of the State Office of Administrative Hearings and Rules, acting on behalf of the Michigan Employment Relations Commission. Pursuant to §§ 13 and 14 of PERA, and based upon the entire record, including the transcript of testimony, oral closing arguments, and a post-hearing brief filed by the Employer, the Commission finds as follows:

The Petition:

Teamsters Local 214 (Teamsters or Union) seeks to accrete a group of approximately nineteen nonsupervisory transportation assistant employees, also referred to as bus aides, to an existing unit of bus drivers employed by the Lenawee Intermediate School District (Lenawee or Employer). The requisite administrative determination was made that the petition was supported by a sufficient showing of interest in the form of individually signed cards. The Teamsters already represent a unit of approximately twenty Lenawee school bus drivers.

The Employer seeks dismissal of the election petition based on the assertion that the transportation assistants should remain in an unrepresented residual unit along with teaching

aides, custodial/maintenance employees, and clericals, as discussed more fully below.

In the absence of consent to an election, an evidentiary hearing was held. The Union and the Employer agreed that there was essentially no relevant dispute of fact, offered limited testimony, and provided oral closing arguments on the record at the conclusion of the hearing. By mutual agreement, the Employer filed a post-hearing brief which provided additional case law and argument.

Positions of the Parties and Findings of Fact:

The Teamsters filed a properly supported petition seeking an election to become the exclusive bargaining agent for a group of approximately twenty employees with the job title transportation assistants. These school bus aides, as they are also called, provide essentially one-on-one services, including attending to medical needs, for special education students while they are transported on the school buses. The Teamsters already represent a unit of approximately twenty school bus drivers. The bus drivers and bus aides work out of the same transportation building and on the same buses. The aides and drivers work essentially the same schedules of twenty-five to forty hours per week and under the same supervision.

The Employer seeks dismissal of the election petition based on the failure of the Teamsters to seek to represent a broader and currently unrepresented residual unit which the Employer argues should include the bus aides, along with a group of approximately twenty different job classifications, which include teaching aides, GED proctors, interpreters for the deaf, child care providers, thirteen custodial/maintenance employees, and fifty-one clerical positions.[1] This broader unit would be comprised of approximately one hundred individuals, including the bus aides, compared to the nineteen which the Teamsters seek to add to their existing unit of twenty drivers.

The Teamsters are not interested in seeking to represent the broader unit proposed by the Employer, but would be interested in representing the bus aides as a separate unit or in having them accreted to the existing unit of school bus drivers already represented by the Teamsters.

With the exception of the bus aides, and unlike the bus drivers, the presently unrepresented support personnel work standard forty hour weeks. One sub-group of the presently unrepresented support personnel, the teachers aides, previously sought representation by the MEA; however, their election petition was dismissed in *Lenawee Intermediate Sch Dist*, 16 MPER 48 (2003), as they sought accretion to a teachers unit with whom they lacked a community of interest.

Discussion and Conclusions of Law:

The starting premise of any decision in a representation case must be the reaffirmation

[1] The only other nonsupervisory Lenawee employees are teachers represented in two separate units by the Michigan Education Association (MEA).

that the fundamental function of the adoption of PERA in 1965 was to recognize and codify the right of public employees to collectively designate an exclusive bargaining agent through whom their employer must deal with the workforce collectively, rather than individually. See *City of Detroit*, 23 MPER 94 (2010); MCL 423.209 & 423.211. PERA was enacted at the specific command of the people of Michigan, acting through their Constitutional Convention to adopt Const 1963, art 4, § 48. The statute was described by the Legislature as intended to "declare and protect the rights and privileges of public employees," with the fundamental Section 9 right being the right of employees to act through "representatives of their own free choice." MERC is "the state agency specially empowered to protect employees' rights." *Ottawa Co v Jaklinski*, 423 Mich 1, 24 n10 (1985). The statute, as adopted, did not codify rights of employers or of labor unions, other than as derivative of employee rights. Rather, PERA placed restrictions on the conduct of employers and unions in furtherance of the paramount statutory right of employees to collectively designate an exclusive bargaining agent. *Leelanau Co*, 24 MPER__ (UC09 D-011, issued March 14, 2011); *City of Detroit*, 23 MPER 94 (2010); *Oakland Co & Oakland Co Sheriff*, 20 MPER 63 (2007); aff'd 282 Mich App 266 (2009), lv den 483 Mich 1133 (2009).

Community of Interest

The initial issue is whether the bus aides share a community of interest with the bus drivers. Community of interest is determined on a case-by-case basis. We traditionally look at a number of factors, including: similarity of duties, skills, and working conditions; job classifications; employee benefits; the amount of interchange or transfer of employees; the integration of the employer's physical operations; the centralization of administrative and managerial functions; and the degree of central control of operations, including labor relations, promotional ladders used by employees, supervisory hierarchy, and common supervision. See e.g. *Covert Pub Sch*, 1997 MERC Lab Op 594, 601; *Howell Pub Sch*, 1995 MERC Lab Op 680, 685; *City of Warren*, 1966 MERC Lab Op 25. As we held in *Wayne Co Cmty Coll Dist*, 19 MPER 72 (2006), it is Commission policy, whenever possible, to avoid leaving positions unrepresented, especially isolated ones. *Charlotte Pub Sch*, 1999 MERC Lab Op 68; *City of Muskegon*, 1996 MERC Lab Op 64, 70. Therefore, when a position shares a community of interest with a unit that seeks to include it, we will accrete the position to the existing unit rather than leave it with a residual group of unrepresented employees. *Lake Superior State Univ*, 17 MPER 9 (2004); *Saginaw Valley State Coll*, 1988 MERC Lab Op 533, 538.

Here the bus aides provide essentially one-on-one services, including attending to medical needs, for special education students while they are transported on the school buses. The Teamsters already represent the unit of the approximately twenty school bus drivers. While en route, the drivers are responsible for the buses, and the aides are responsible for the students. The bus drivers and bus aides work out of the same transportation building and on the same buses. They work essentially the same schedules of twenty-five to forty hours per week. The drivers and the bus aides work under the same supervision. There has been no showing of interchange amongst the bus aides and drivers with the other classifications of unrepresented employees, with the exception of nominal interaction with the clerical employees in the transportation building. There was no evidence that the employees in any of

the other classifications substituted for bus aides or were given preferential status for hiring or transfer to bus aide positions.

We have found it appropriate to have employees performing closely related work placed in the same unit, even if another hypothetical unit formulation would also have been reasonable. In *Univ of Michigan*, 18 MPER 82 (2005), we found that the diverse technical support classifications required similar levels of skill and education, like the support staff classifications herein, but had little interchange amongst different classifications and that the type of work they performed varied significantly, as is true among the several support staff classifications herein. In *Univ of Michigan*, the skilled trades group generally required a long apprenticeship that was not required of the facility systems technicians. Despite the significant differences in required skill and training, it was ultimately of greater significance in the community of interest determination in *Univ of Michigan* that the facility systems technicians worked on the same equipment as the skilled trades, reported to the same locations, and worked under the same supervision as the skilled trades employees.

There was no indication in the record of when the bus aide classification was first created; however, had all other support personnel been in a represented unit when the bus aides classification was created, the aide classification could have properly gone to either the bus driver unit or the separate support personnel unit. If the Teamsters had filed a unit clarification petition seeking inclusion of the bus aides when the job was first created, it would have been appropriate, indeed unremarkable, to place the classification in the Teamsters unit, based on the close relationship of the work. Also, if rival existing Lenawee employee unions had claimed the bus aides at the point the classification was first created, we would not have attempted to determine the "optimum" placement, but would have deferred to the employer's reasonable choice between the two units if both shared a community of interest with the bus aides. *City of Bay City*, 16 MPER 31 (2003); *Schwartz Creek Cmty Sch*, 2001 MERC Lab Op 372, 375.

Fragmentation of Units Issue

Here, the dispute is over the proposed addition of a group of approximately twenty employees to an existing unit, while leaving additional classifications unrepresented. The Employer relies on our body of case law rejecting the fragmenting of units and asserts, in essence, that if employees are to be added to the Teamsters unit, then the entire residual group of support employees must be included in the election petition. The Teamsters have indicated that they are not interested in representing the other groups of employees and that those employees are not interested in being represented by the Teamsters. The practical impact of granting the Employer's request would be to deny the bus aides the opportunity to select the Teamsters as their bargaining agent, without advancing the interests of other groups of employees.

It is significant for the analysis of this aspect of the dispute that the Legislature anticipated in drafting, and in later amending, PERA that there would be circumstances in which it would be appropriate to consider the fragmenting of an existing unit. Section 14 of

PERA, as adopted, provided "An election shall not be directed in any bargaining unit *or subdivision* within which, in the preceding 12-month period, a valid election was held." (Emphasis added). This Section was amended in 1976, with the addition of the following proviso: "An election shall not be directed in any bargaining unit *or subdivision thereof* where there is in full force and effect a valid collective bargaining agreement which was not prematurely extended and which is of fixed duration." (Emphasis added). See also *MESPA v Southfield Pub Sch*, 148 Mich App 714 (1985). It remains the responsibility of the Commission to determine when a particular bargaining unit structure will likely advance, or deter, the policies of the Act. Determinations of bargaining unit composition are fact-dependent and are appropriately left to our application of specialized expertise which takes into account the likely practical impact on the exercise of statutory rights and on the bargaining process. *MEA v Alpena Cmty College*, 457 Mich 300 (1998).

Commission policy seeks to avoid leaving isolated positions unrepresented, where possible. *Riverview Cmty Sch*, 16 MPER 51 (2003); *Charlotte Pub Sch*, 1999 MERC Lab Op 68, 73; *City of Muskegon*, 1996 MERC Lab Op 64, 70. Where a classification of employees shares a community of interest with an existing organized bargaining unit, it is appropriate to accrete that group to an existing unit that has petitioned for them, rather than to permit them to remain with a residual group of unrepresented employees. See, in a unit clarification setting, *Lake Superior State Univ*, 17 MPER 9 (2004); *Saginaw Valley State Coll*, 1988 MERC Lab Op 533, 538. The resulting unit need only be an appropriate unit and need not be the "most appropriate unit." *Dearborn Pub Sch*, 2002 MERC Lab Op 287. While MERC's goal generally is to avoid fragmentation of units, and the presumption regarding the appropriateness of the typical all-inclusive unit of school support personnel remains valid, we will not require that all units at all workplaces look the same.

Dismissing the Teamsters' petition, as the Employer requests, would have no direct impact on the asserted proliferation of units.[2] Granting the present petition, as an accretion to the existing Teamsters unit, would not increase the fragmentation of units at Lenawee, and denying it would not reduce the current level of fragmentation. If the petition were dismissed, Lenawee would have two organized units of teachers, one unionized group of transportation staff, and a residual unit of other non-unionized support staff. If the petition is allowed to proceed, and if the bus aides choose to become part of the existing unit represented by the Teamsters, the situation will be functionally unchanged--Lenawee would have two organized units of teachers represented by the MEA, one unionized group of transportation staff represented by the Teamsters, and a still large residual unit of unrepresented support staff.

The fact that we would not ordinarily direct the creation of a bargaining unit that includes only some, but not all, classifications of school support employees, does not preclude our approval of a proposed expansion of an already existing fragmentary unit. In *Northern Michigan Univ*, 1989 MERC Lab Op 139, we affirmed Judge Bixler in his finding, at 154-

[2] The Employer asserts a concern with the possible future proliferation of units if this petition is allowed. The assertion that there may someday be another petition by a third intervening labor organization that seeks the creation of a fourth stand-alone unit is hypothetical; such a concern cannot determine the outcome in this matter but, rather, should be addressed when and if that event occurs.

155, that:

> The Commission has determined many times when considering bargaining units that it is often put in the position of finding a unit appropriate for collective bargaining that the Commission would not itself have found to be appropriate, if it had not been for previous recognitional activity, election or otherwise, of public employers and labor organizations. The Commission has found, because of this, that it has been necessary to accept a unit that would not necessarily be appropriate . . . [where] public employees would otherwise be left unrepresented or without a voice on representation.

It is unclear how, or when, the Teamsters and Lenawee Schools found themselves with the existing unit structure that includes only a segment of the possible support personnel positions. As in *Northern Michigan Univ*, we accept the fact that unusual, and even undesirable, unit structures exist through prior actions of the parties, and we will determine future unit composition questions with a practical recognition of the existing realities. Compare, *City of Dearborn Heights*, 1984 MERC Lab Op 1079 and *Oakland Co & Oakland Co Sheriff*, 20 MPER 63 (2007); aff'd 282 Mich App 266 (2009), lv den 483 Mich 1133 (2009).

The Employer asserts that our decision in *Troy Sch Dist*, 21 MPER 37 (2008) commands a different outcome. To the contrary, the dispute in *Troy Sch Dist* presented a significantly different issue. In that case, the MEA represented an existing broad unit of school support personnel. An intervening union, the Operating Engineers, sought to carve out one group of the already represented MEA classifications to create a new stand-alone bargaining unit. The most obvious distinction is that here the bus aides are presently unrepresented and, therefore, there is no existing unit structure that would be disrupted. Additionally, the bus aides would be added to an existing Lenawee unit, rather than placed in a new bargaining unit. As held in *Troy Sch Dist*, "we do not permit a group of employees to sever from an existing unit without a compelling reason." In *Troy Sch Dist*, we rejected an effort to break off a single classification from a long existing and otherwise appropriate bargaining unit, which we remain disinclined to do absent extraordinary circumstances, but which we expressly recognized we will and must do where necessary to effectuate the purposes of the Act, as we did in *Oakland Co*. Here, we are merely allowing employees, presently unrepresented, to vote on whether to be added to a closely related group of already represented employees.

Conclusion

The statutory command to the Commission in resolving the proper composition of a particular public sector bargaining unit, where the parties dispute the inclusion or exclusion of a group of employees, is to "insure public employees the full benefit of their right to self-organization, to collective bargaining and otherwise to effectuate the policies" of PERA. MCL 423.213. The test has often been stated as an effort 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 which includes within a single unit all employees sharing a community of interest, in reliance on *Hotel Olds v State Labor Mediation Bd*, 333 Mich 382 (1952).[3] However, in making a unit placement determination, we are not required to find the "optimum" or "most" appropriate bargaining unit, but rather only a unit appropriate for collective bargaining based upon the facts of each particular case. *City of Lansing, Bd of Water and Light*, 2001 MERC Lab Op 13; *City of Zeeland*, 1995 MERC Lab Op 652. In making unit placement decisions, while remaining mindful of the goal of forming the largest practical bargaining unit, we must give primary adherence to the statutory command that we "insure public employees the full benefit of their right to self-organization, to collective bargaining and otherwise to effectuate the policies" of PERA. MCL 423.213.

Here, the Employer argues that we should, in this case, follow our prior presumption that the appropriate bargaining unit for support service employees in a school setting is a single unit including all such employees. *South Redford Sch Dist*, 1966 MERC Lab Op 160; *Flushing Cmty Sch*, 1969 MERC Lab Op 401. The purpose of that policy is to attempt to minimize the fragmentation of bargaining units and to thereby promote stable and efficient labor relations and bargaining. *Lansing Sch*, 22 MPER 96 (2009).

As we have previously held, we must tread with extraordinary care when making any policy choice which tilts the balance in favor of administrative convenience to the detriment of employee free choice. *City of Detroit*, 23 MPER 94 (2010); *Wayne Co*, 22 MPER 36 (2009). In *City of Detroit*, we struck entirely a prior administrative policy choice, which we found deterred employees from freely voting to select an exclusive representative. Similarly, in *Wayne Co*, we overturned a long standing Commission policy finding that it gave "too little weight to the primary statutory protection of the right of employees to freely choose their exclusive representative."[4] As we noted in *City of Detroit*, we are dubious of the propriety of the "balancing test" applied in *Atlas Twp*, 16 MPER 62 (2003), which proposed the balancing of a statutory entitlement, that is the right of employees to freely choose their own exclusive representative, with an administrative preference for stability in the relationship between employers and incumbent unions.

In *Oakland Co & Oakland Co Sheriff*, 20 MPER 63 (2007); aff'd 282 Mich App 266 (2009), lv den 483 Mich 1133 (2009), we expressly recognized and reaffirmed our long standing and appropriate concern with maintaining stability in labor relations by declining to

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[3] Parties generally, and the Commission itself, have perhaps too easily continued to rely on the language in *Hotel Olds.* That decision, issued in 1952, relied on a decision by the Massachusetts Labor Relations Commission and was based on the wording of the Labor Mediation Act (LMA), which only applies to private sector disputes. The specific holding in *Hotel Olds* was essentially reversed by the later Legislative amendment of Sec 9e of the LMA which extended the Commission's discretion to alter pre-existing unit composition. Further, the focus of Section 13 of PERA, controlling in this instance and adopted long after *Hotel Olds*, is to "insure public employees the full benefit of their right to self-organization", without the former requirement from the LMA of mandatory deference to prior practice; therefore, simple reliance on *Hotel Olds* without express reference to that later-added statutory command is inappropriate.

[4] The *Wayne Co* decision overturned the rule enunciated in *Huntington Woods*, 1992 MERC Lab Op 389, where a divided Commission held that a newly certified bargaining representative, which displaced a competing union, could not seek retroactive contractual benefits to a point in time preceding the certification date.

lightly change existing or traditional bargaining unit structures. Nonetheless, in *Oakland Co & Oakland Co Sheriff*, we refused to mechanically follow that general policy and, at the employer's request and over the vociferous objections of the incumbent Union, we ordered the severing of an existing bargaining unit into two separate units, finding that the severance would leave two units large enough to be functional, and that doing so would aid, rather than deter, effectuation of the policies of the Act.[5]

In *Oakland Co & Oakland Co Sheriff*, the particular facts of that dispute persuaded us that our policy against disturbing existing mixed units of classifications covered by, and not covered by, Act 312 arbitration, although still valid, should not be inflexibly applied.[6] As then, we must always have foremost in mind our obligation to "decide in each case, to insure public employees the full benefit of their right to self-organization, to collective bargaining and to otherwise effectuate the purposes of this act, the unit appropriate for the purpose of collective bargaining" taking into account the need to define a unit which "will best secure to the employees their right of collective bargaining." MCL 423.213 and 423.9e. Here, we find that refusing to allow the bus aides to seek to be accreted to the existing Teamsters unit would not effectuate the purposes of the Act. To the contrary, refusing to allow the election to proceed in deference to our general preference for the broadest possible unit would, under these facts, wrongfully deprive these employees of their statutory rights. This finding, which may ultimately be limited to unusual circumstances such as these, is not intended to diminish our general policy that the presumptively appropriate bargaining unit for support service employees in a school setting would be a single unit including all such employees. *South Redford Sch Dist*, 1966 MERC Lab Op 160.

For all of the above reasons, and having thoroughly re-examined the matter, we find that the policy holding that a single unit of all support personnel in the school setting to be a presumptively appropriate unit, remains valid; but this policy must be carefully applied on a fact dependent case-by-case basis, where warranted by unusual facts. Here, the presumption serves no practical purpose and we find it appropriate to divert from that practice and allow the transportation assistants to vote on whether to select an exclusive representative. We conclude that the bus aides in dispute here share a community of interest with the Teamsters' pre-existing unit of bus drivers, as the bus aides work out of the same location, on the same vehicles, under the same supervision, providing services to the same students, and on the same schedules as the bus drivers. See *Oakland Co v Oakland Co Deputy Sheriffs Ass'n*, 282 Mich App 266 (2009), lv den 483 Mich 1133 (2009); *Melvindale-North Allen Park Federation of Teachers v Melvindale-North Allen Park Sch (After Remand)*, 216 Mich App 31 (1996).

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[5]In affirming our decision in *Oakland Co*, the Court of Appeals in *Oakland Co Sheriff* v *Oakland Co Deputy Sheriff's Ass'n*, 282 Mich App 266 (2009), lv den 483 Mich 1133 (2009), held that in fashioning the structure of bargaining units "MERC is permitted to re-examine prior decisions, depart from precedents, promulgate law through rulemaking, break from past decisions, or reconsider previously established rules. If the departure from precedent is explained, appellate review is limited to whether the rationale is so unreasonable as to be arbitrary and capricious." (Internal citations omitted).

[6] That policy was established in *City of Dearborn Heights*, 1984 MERC Lab Op 1079, and had been followed, without exception, until our 2007 decision in *Oakland Co & Oakland Co Sheriff*.

The paramount function of a representation election is to provide an opportunity for employees to freely select, or reject, a union to serve as their exclusive representative. Depriving employees of the right to pursue an election, for the purpose of freely deciding whether to have an exclusive representative, must be seen as an extraordinary, and therefore rare, outcome. Here, an election must be ordered, as the petition raises a question concerning representation. Consistent with the analysis above, and in recognition of the goal of minimizing the fragmentation of units, the bus aide employees will vote on whether or not they wish to be represented by the Teamsters in a single bargaining unit with the bus drivers.[7]

ORDER

We conclude that a question concerning 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 Transportation Assistants employed in the Lenawee Intermediate School District, and excluding supervisors, administrators, and all other employees, with such employees to be accreted to an existing unit of bus drivers if they choose to be represented by the Teamsters.

The individuals actively employed in the above classification as of the date of this Order may vote pursuant to the attached Direction of Election on whether they wish to be represented for purposes of collective bargaining by the Teamsters or by no union. A majority vote for the Teamsters will result in the inclusion of this group of employees in the existing Teamsters bargaining unit.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____
Christine Derdarian, Commission Chair

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

Dated: _____

[7] To avoid a proliferation of units, we reject the Teamsters alternative request to proceed to election for a new and separate unit comprised of only the bus aides.