STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

MACOMB COMMUNITY COLLEGE,
Public Employer-Respondent,

-and- Case No. C01 B-44

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW), and its affiliated local, MACOMB COLLEGE ASSOCIATION OF ADMINISTRATIVE PERSONNEL, LOCAL 2411 (UAW),
Labor Organizations-Charging Party.
_____/

APPEARANCES:

Brady, Hathaway, Brady & Bretz. P.C., by Thomas P. Brady, Esq., for the Respondent

Georgi-Ann Bargamian, Esq., Assistant General Counsel, for the Charging Party

DECISION AND ORDER

On January 25, 2002, Administrative Law Judge (ALJ) Julia C. Stern issued her Decision and Recommended Order in the above matter finding that Respondent Macomb Community College (College or Employer) violated its duty to bargain in good faith under Section 10(1)(e) of the Public Employment Relations Act (PERA), 1965 PA 379 as amended, MCL 423.10(1)(e), by refusing to recognize the UAW and its affiliated local, Macomb College Association of Administrative Personnel, Local 2411 (Union) as the exclusive collective bargaining agent for a unit of administrative personnel employed by the College. On February 19, 2002, Respondent filed timely exceptions to the ALJ's Decision and Recommended Order and a brief in support of the exceptions. At the same time, Respondent filed a motion to reopen the record to introduce certain documents. On March 1, 2002, Charging Party filed a response in opposition to Respondent's exceptions and motion to reopen the record, together with a brief in support of the ALJ's Decision and Recommended Order. On March 12, 2002,

Respondent filed a request for oral argument. Charging Party filed its response in opposition to the request for oral argument on March 19, 2002.

We have carefully reviewed the record in this case in consideration of Respondent's request for oral argument and are of the opinion that oral argument would not materially assist us in reaching a decision. Respondent's request for oral argument is denied.

Rule 166 of the Commission's General Rules limits reopening of the record to those cases in which there is a showing that: (1) the moving party could not with reasonable diligence have discovered and produced the evidence at the original hearing; (2) the evidence sought to be introduced and not merely its materiality, is newly discovered; and (3) the additional evidence, if adduced and credited, would require a different result. Even before the adoption of our current rules, such a showing was necessary before we would grant a motion to reopen the record. See *Salt and Pepper Nursery School and Kindergarten No. 2*, 1978 MERC Lab Op 130.

Respondent's motion to reopen the record seeks to introduce documents attached to an Affidavit of William J. MacQueen, Vice President of Human Resources for Macomb Community College. Respondent argues that the ALJ relied upon two documents in reaching the conclusion that Respondent refused to recognize the Union's name change. Respondent suggests that the documents, which they now wish to submit, were not introduced at the hearing because the College was never given notice that one of the issues was a failure to recognize the Union's name change.

The charge in this case alleged that Respondent refused to recognize the Charging Party as the exclusive bargaining agent for employees represented by the Macomb College Association of Administrative Personnel (MCAAP). The two documents introduced by Charging Party were offered as proof of that refusal. Thus, Respondent was on notice that evidence of such refusal would be considered by the ALJ in reaching her decision. If Respondent wished to refute the documents submitted by Charging Party in support of their defense that they did bargain in good faith with the Union, they should have done so at the hearing. MacQueen was present and testified at the hearing and a majority of the proposed documents now offered were available at the time of the hearing. Those documents that were prepared after the date of the hearing are merely cumulative. Consequently, the motion to reopen the record is denied.

Facts:

The facts as set forth in the Decision and Recommended Order of the ALJ are not materially in dispute and need not be repeated in detail. In 1974, Respondent recognized Macomb College Association of Administrative Personnel as the bargaining agent for certain administrative employees. MCAAP

was not then affiliated with any labor organization. In 1999, representatives of MCAAP began exploring the possibility of affiliating with a larger labor organization and early in 2000 contacted the International UAW. In April 2000, the question of affiliation with the UAW was discussed at a general membership meeting and a majority of the members present voted to authorize the board of directors to negotiate a tentative affiliation agreement with the UAW. In May 2000, the board reached a tentative affiliation agreement with the UAW and scheduled a membership meeting on May 24 to review the tentative agreement. A membership meeting was scheduled for the purpose of discussing the advantages and disadvantages of affiliation on June 8, 2000, and a vote was scheduled on the affiliation question on June 9, and June 13. After the polls closed on June 13, the executive board counted the ballots and determined the vote to be in favor of affiliation. Officials of MCAAP and the UAW executed the affiliation agreement in October or November of 2000.

On October 10, 2000, a letter signed by members of the MCAAP board and the UAW Region 1 Director was sent to Respondent informing them that a secret ballot election was conducted resulting in the affiliation with the UAW and that the name of the union was now Macomb College Association of Administrative Personnel, UAW Local 2411. Respondent and Charging Party exchanged communications regarding the affiliation vote and the information provided to the membership concerning the affiliation. In January 2001, the parties exchanged proposals regarding the contract's recognition clause. Respondent's proposal rejected the language of Charging Party to recognize the UAW and its Local 2411, also known as the MCAAP, as the exclusive bargaining agent. Respondent proposed to acknowledge the affiliation of the MCAAP with the UAW and to recognize the UAW as the servicing agent of MCAAP. On March 20, 2001, Respondent sent a letter to the UAW representative stating that it would not recognize the UAW as the exclusive bargaining representative for its administrators without a MERC supervised election. Moreover, the letter stated that Respondent had a good faith doubt whether MCAAP members were told prior to voting on the affiliation question that the UAW would become the exclusive bargaining agent for the MCAAP membership as a result of the affiliation vote.

Discussion and Conclusions of Law:

We note that Respondent specifically did not file exceptions to the ALJ's determination that the Respondent recognize the UAW, and MCAAP, UAW Local 2411 as the exclusive collective bargaining agent for the administrative employees of the bargaining unit. Respondent does take exception to the ALJ's conclusion that Respondent is guilty of an unfair labor practice where Respondent's refusal to recognize the UAW as the exclusive bargaining agent for Respondent's administrators was based on its good faith belief that MERC's decision in *L'Anse Creuse Pub Schs*, 1980 MERC Lab Op 607, required a MERC supervised election. Respondent does not cite any authority in support of the

defense that since their actions were based on a good faith belief as to the election requirements of MERC, they are not guilty of violating PERA. We can find no MERC precedent to support such a defense.

Charging Party cites an instructive Illinois labor board case, which addressed such a defense in *County of Kane and Kane County Sheriff, 7 PERI P2044 (1991),* wherein the hearing officer found: "Where it was determined that the employer's belief or position was incorrect as a matter of law, the employer has still been found to have breached its duty to bargain and to have committed an unfair labor practice for its failure to bargain in good faith."

L'Anse Creuse Pub Schs, does not stand for the proposition that MERC does not recognize valid affiliations without a MERC supervised election. In *L'Anse Creuse,* the Commission rejected an attempted affiliation and found that the employer did not fail to bargain in good faith when it would not recognize the affiliation on the grounds that there was substantial and convincing evidence that the new union was significantly different from the old union in a number of ways. MERC compared the circumstances present in *L'Anse Creuse* with a valid affiliation situation where the bargaining obligation is not disturbed so long as minimum due process regularities are observed in the affiliation vote and there is no genuine change in the structure and character of the labor organization. We are of the opinion that the ALJ correctly applied *L'Anse Creuse* to the facts in this case and properly concluded that the affiliation with the UAW was valid and did not change the identity of MCAAP and that the International Union, UAW, MCAAP Local 2411, is a continuation of MCAAP under a different name. We find Respondent's exception on this point to be without merit.

Respondent also asserts that the ALJ erred in relying on *Bridgeport-Spalding Community Schs*, 1978 MERC Lab Op 343. Respondent argues that in *Bridgeport-Spalding,* the employer refused to meet and negotiate with or recognize the union after an affiliation vote. Respondent claims that *Bridgeport-Spalding* does not apply because in this case they did acknowledge the affiliation and engaged in substantive bargaining. We disagree. While it is true that the charge in *Bridgeport-Spalding* claimed that the employer refused to "meet," there was no such finding by the ALJ or the Commission. In the instant case, Respondent refused to recognize the UAW, as the exclusive bargaining agent of the administrators because of their claim that a MERC supervised election was required.

Moreover, Respondent claims that MERC has expressly recognized that the actions of the Respondent are a legitimate method of addressing affiliation disputes, citing *Hurley Medical Center*, 1990 MERC Lab Op 131. The suggestion that MERC somehow sanctioned the actions of Respondent in *Hurley Medical Center*, is without merit. In that case, the Commission was addressing a dispute over a representation petition for an election by a rival labor organization. In 1982, an unfair labor practice charge had been filed alleging a violation of the

duty to bargain and a refusal to recognize the union after an affiliation vote. No decision was issued in that case as the parties settled the case. Nothing in *Hurley Medical Center* sanctioned or otherwise condoned the actions of Respondent in 1982 or in this or any other case. In this case, the parties did not settle their dispute; they litigated. We are of the opinion that the ALJ properly applied the case law in reaching her Decision and Recommended Order.

Respondent argues that it cannot be guilty of bad faith bargaining over a permissive subject of bargaining, i.e., the recognition clause. In our view, we need not address that argument, because bargaining over the recognition clause is not the issue in this case[1]. The issue here is whether the Employer violated its duty to bargain in good faith by refusing to recognize the UAW as the exclusive bargaining agent of its employees. Respondent's proposal concerning the recognition clause demanded that the UAW accept service agent status and is evidence of Respondent's refusal to recognize the Union. Respondent's March 2, 2001 letter refusing to recognize the UAW as the exclusive bargaining agent without a MERC supervised election is further evidence of that refusal.

While the parties may bargain over the language of the recognition clause, they cannot bargain over the employer's obligation to recognize and bargain with the exclusive bargaining representative. The evidence establishes that the Union, that is, the UAW and its affiliated local, Macomb College Association of Administrative Personnel, Local 2411, is the exclusive representative of the bargaining unit. Accordingly, the employer had a duty to bargain with the Union as the exclusive bargaining representative. It was Respondent's insistence on treating the exclusive bargaining representative as a mere service agent that constituted a breach of the duty to bargain in good faith. Accordingly, we agree with the ALJ that such conduct violated Section 10(1)(e) of PERA.

We have carefully considered the remaining exceptions of Respondent and are of the opinion that they do not provide any basis for us to alter our opinion in this matter. Charging Party conducted a valid affiliation election with proper safeguards for due process and provided Respondent with adequate information concerning the election process.

For the reasons cited above we approve of the Decision and Recommended Order of the ALJ and find the exceptions of Respondent to be without merit.

[1] However, we note that the U.S. Supreme Court has indicated that where parties agree to bargain over a permissive subject, such bargaining must be done in good faith. See *First Nat'l Maintenance Corp* v *NLRB*, 452 U.S. 666, at 675, n13 (1981).

ORDER

Respondent Macomb Community College, its officers and agents, are hereby ordered to:

1. Cease and desist from refusing to bargain in good faith with the International Union, United Automobile, Aerospace And Agricultural Implement Workers of America, (UAW), and its affiliated local, Macomb College Association of Administrative Personnel, Local 2411 (UAW), by refusing to recognize this entity as the collective bargaining agent for a unit of administrative personnel employed by the College
2. Take the following affirmative action to effectuate the purposes of the Act:
    a. Upon request, bargain in good faith with the International Union, United Automobile, Aerospace And Agricultural Implement Workers of America, (UAW), and its affiliated local, Macomb College Association of Administrative Personnel, Local 2411 (UAW).
    b. Post copies of the attached notice to employees in conspicuous places on the College's premises, including all locations where notices to employees are customarily posted, for a period of 30 consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____
Maris Stella Swift, Commission Chair

_____
Harry W. Bishop, Commission Member

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C. Barry Ott, Commission Member

Dated: _____

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APPEARANCES:

Brady, Hathaway, Brady & Bretz, P.C., by Thomas P. Brady, Esq., for the Respondent

Georgi-Ann Bargamian, Esq., Assistant General Counsel, for the Charging Party

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE

Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, this case was heard at Detroit, Michigan on May 8, 2001, before Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. Based upon the entire record, including post-hearing briefs filed by the parties on June 29, 2001, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

This charge was filed against Macomb Community College on February 23, 2001, by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), and its affiliated local, Macomb College Association of Administrative Personnel, Local 2411 (UAW). The charge alleges that Respondent violated Section 10(1)(e) of PERA by refusing to recognize the Charging Party as the exclusive bargaining agent for employees represented by the Macomb College Association of Administrative Personnel (MCAAP) after members of this organization voted to affiliate with the International UAW in June 2000.

Facts:

Respondent recognized MCAAP as the bargaining agent for Respondent's administrative employees in 1974. Prior to June 2000, MCAAP was not affiliated with any labor organization. MCAAP has bylaws that set out the structure of the organization. The bylaws provide for a seven member executive board. Board members serve overlapping terms, and new board members are elected by the general membership each May. The board annually selects a president, vice-president, secretary, treasurer, chief negotiator, grievance coordinator, and program chair from among current board members. Pursuant to the bylaws, the board is responsible for preparing an annual budget, and for expending necessary funds. General membership meetings are held quarterly, or, at the board's discretion, at least annually. The board can call special meetings. A quorum of 40% of the general membership is required to conduct ordinary business; all MCAAP members (i.e., members of the bargaining unit) may vote on contract ratification, while only members in good standing (i.e., dues-paying members) may vote on other issues. All dues and/or special assessments must be approved by a vote of the general membership. The bylaws may be amended by a procedure set forth in that document.

Although not contained in the bylaws, MCAAP's practice has been to hold a general membership meeting before commencing contract negotiations and to ask its members at this meeting to identify the issues they want addressed. The membership is also asked to rank these issues in order of priority. The executive board asks for volunteers to serve on the bargaining team, and selects the team from this list. In past negotiations, MCAAP employed an attorney who served as its chief negotiator.

The most recent contract between MCAAP and the Respondent expired in 1999. In late 1999, after negotiating a year's contract extension, MCAAP's executive board began investigating the possibility of affiliating with a larger labor organization. In February or March 2000, James Jacobs, then MCAAP's president, contacted the International UAW. Jacobs spoke with an international vice-president and with the assistant director of the Technical, Office and Professional Department (TOP). Jacobs was given a copy of the International UAW Constitution. Jacobs was told that if MCAAP affiliated with the UAW it would be part of the International UAW, but that it would have a separate local. He was told that MCAAP members would begin paying dues to the International after an affiliation agreement was signed. He was told that the International would provide MCAAP with legal and bargaining advice. Jacobs was also told that MCAAP would be subject to the International

UAW Constitution.[2]

[2] Respondent relies in its argument on the following provisions:

Article 19. Contracts and Negotiation

The MCAAP board decided to sound out its membership on the question of affiliating with the UAW at a general membership meeting held on April 6, 2000. On April 4, Jacobs sent an e-mail to each of MCAAP's 47 dues-paying members stating, "This is an extremely critical meeting because we need to make some important decisions which will impact the entire membership." Thirty-five or thirty-six members attended this meeting. After some general discussion, the members voted, 25-7, to authorize the board to negotiate a tentative affiliation agreement with the UAW.

The MCAAP board and the UAW reached agreement on a proposed affiliation agreement in early May 2000. On May 17, the MCAAP board sent an e-mail to its membership announcing

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Section 1. It shall be the established policy of the International Union to recognize the spirit, the intent and the terms of all contractual relations developed and existing between Local Unions and employers, concluded out of conferences between the Local Union and the employers, as binding upon them . . .

Section 3. No Local Union Officer, International Officer or International Representative shall have the authority to negotiate the terms of a contract or any supplement thereof with any employer without first obtaining the approval of the Local Union. After negotiations have been concluded with the employer, the proposed contract or supplement shall be submitted to the vote of the Local Union membership, or unit membership in the case of an Amalgamated Local Union, at a meeting called especially for such purpose, or through such other procedure, approved by the Regional Director, to encourage greater participation of members in voting on the proposed contract or supplement. Should the proposed contract or supplement be approved by a majority vote of the Local Union or unit members so participating, it shall be referred to the Regional Director for her/his recommendation to the International Executive Board for its approval or rejection. In case the Regional Board member recommends approval, the contract becomes operative until the final action is taken by the International Executive Board.

Article 50. Strikes

Section 1. (a) When a dispute exists between an employer and a Local Union concerning the negotiation of a collective bargaining agreement or any other strikeable issue the Local Union or the International Executive Board may issue a call for a strike vote. All members must be given due notice of the vote to be taken and it shall require a two-thirds (2/3) majority vote by secret ballot of those voting to request strike authorization from the International Executive Board. Only members in good standing shall be entitled to vote.

Article 31. Trials of Members

Section 1. A charge by a member or members in good standing that a member or members have violated this constitution or engaged in conduct unbecoming a member of the Union must be specifically set forth in writing and signed by the members making the charges . . .

Section 10. The Trial Committee, upon completion of the hearing on the evidence and arguments, shall to into closed session to determine the verdict and penalty . . .In case the accused is found guilty, the Trial Committee may:

(a) By a majority vote, reprimand the accused; or
(b) It may, by a two-thirds (2/3) vote, suspend or remove the accused from office or expel him/her from membership in the International Union.

Section 12 . . .. In the case of a workplace where Union membership is a condition of employment, expulsion from membership shall require removal from the job. Application of this Section shall in all cases, however, be limited by applicable state or federal laws, and no provision of this Section shall be applied in any situation where the application would violate any controlling state or federal law.

a luncheon meeting on May 24 to review the proposed affiliation agreement. The e-mail stated, "Your attendance is imperative to get responses to any questions you may have on the affiliation before we move forward with an official membership vote."

Approximately 36 members attended the May 24 meeting. Jacobs made a presentation giving the reasons why the board believed MCAAP needed the UAW, the dues MCAAP members at various salary levels could expect to pay if MCAAP affiliated with the UAW, and options for the organization if the membership did not want to affiliate with the UAW. The president of a local union at another community college spoke about his union's experience after affiliating with the UAW. Copies of the affiliation agreement were then handed out to all members present. The agreement consisted of three single-spaced pages of text and a signature page. The document included these paragraphs:

> 2. The UAW will immediately charter the Association as a local union. It will be called Macomb College Association of Administrative Personnel, Local ____, UAW. Notice of this name change will immediately be communicated to the ASSOCIATION membership and Macomb Community College. The new name will be used in all subsequent correspondence.
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> 5. In future collective bargaining agreement, the exclusive bargaining agent will be designated as the International Union, UAW and its affiliated Macomb College Association of Administrative Personnel, Local _____, UAW.
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> 6. The Macomb College Association of Administrative Personnel Local _____, UAW, will submit Local Union bylaws to the UAW within six months of the effective date of this agreement, which will conform with the UAW Constitution. By _____, 2000, the Macomb College Association of Administrative Personnel, Local _____, UAW, will be governed in all respects by the UAW Constitution.

Members were given between 20 and 30 minutes to read through the proposed agreement and to ask questions. Testimony differed regarding whether the term "exclusive bargaining representative" was used during the discussion. After about 20 minutes, a straw vote was taken on whether to hold an affiliation election. No one asked for more time to look over the affiliation document. The majority of the members present voted to schedule an election if Respondent did not immediately agree to certain demands. After the vote, the board collected all copies of the proposed agreement.

The MCAAP board met with Respondent on May 31 and informed it of what had taken place on May 24. Respondent refused to agree to the union's demands. On June 2 and June 7 the board sent e-mails to the membership announcing a general membership meeting for June 8. At this meeting the board and the membership debated the pros and cons of affiliation for about an hour-and-a-half. At the end of the meeting the membership voted, 21-15, to schedule an affiliation vote.

Shortly thereafter, the board sent an e-mail announcing that an election would be held on June 13. Members were permitted to vote in person on June 13 at any of three specified locations on campus. Alternatively, they could pick up an absentee ballot at a designated location on June 9. Members unable to be on campus on either of these days were allowed to make special voting arrangements. After signing in, members received their ballots, placed them in sealed envelopes, and handed them to executive board members supervising the process. The ballots read "YES (Affiliate with the UAW)" or "NO (Do not affiliate with the UAW)." The executive board counted the ballots after the polls closed on June 13. The result was 25-16 in favor of affiliation.

The MCAAP board signed the proposed affiliation agreement and submitted it to the International UAW Executive Board. The agreement was approved in October or November 2000. The UAW determined that MCAAP's bylaws were consistent with the UAW Constitution, and that no changes needed to be made to the bylaws. The authority and composition of the executive board and its officers did not change, MCAAP finances continue to be handled as before the affiliation election, and executive board and general membership meetings are conducted in the same way.

On October 10, 2000, a letter was sent to Respondent on the International's stationary. The letter was signed by four members of the MCAAP board and by UAW Region 1 Director Kenneth Terry. The letter stated that MCAAP had held a secret ballot election and voted to affiliate with the International Union, UAW, and that the name of the union was now Macomb College Association of Administrative Personnel, UAW Local 2411. The letter stated that all officers remained the same, that the bargaining unit was unchanged, that the "the continuity of the association in the local union has been preserved completely", and that the union anticipated that its collective bargaining relationship with the Respondent would continue.

Bargaining for a new contract began in July 2000. The union's bargaining team consisted of the same individuals who had bargained the last contract extension, with the addition of a UAW representative. This representative eventually became the chief spokesman. Respondent did not object to the presence of the UAW representative at the bargaining table.

On October 18, 2000, Respondent requested that the Union provide it with certain information about the affiliation. The Union responded on November 13, 2000. On December 6, 2000 Respondent asked for further information: "an explanation of what your members were told about the affiliation and whether they were told that MCAAP would become a local of the UAW," a copy of the new local's charter, and any amendments to MCAAP's bylaws. Charging Party responded that MCAAP members were told that MCAAP would become a UAW local, that there was as yet no charter, and that there were no changes to MCAAP's bylaws.

In January 2001 the Union proposed the following language for the contract's recognition clause:

> The Employer recognizes the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and its Local 2411, also known as the Macomb College Association of Administrative Personnel

> (MCCAP), as the exclusive bargaining representative with respect to rates of pay, wages, hours of employment, and other conditions of employment for all full-time and part-time employees as described in Appendix B of this agreement.

Respondent rejected this language. It proposed that the following be added to the recognition clause contained in the prior contract:

> The Board acknowledges that MCAAP is affiliated with the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and recognizes the UAW as the servicing agent of MCAAP.

On March 2, 2001, Respondent wrote to the UAW representative stating that it would not recognize the International Union, UAW, as the exclusive bargaining representative for its administrators without a MERC-supervised election. It stated that it had a good faith doubt whether MCAAP members were told prior to voting on the affiliation question that the UAW would become the exclusive bargaining agent for the MCAAP membership as a result of the affiliation vote.

Discussion and Conclusions of Law:

In *Oakland Comm College*, 1971 MERC Lab Op 1153, the Commission held that a change in a union's affiliation, by itself, does not affect an employer's duty to bargain with a recognized or certified bargaining representative. In assessing a union's status after affiliation, the Commission has followed the lead of the National Labor Relations Board (NLRB or the Board). The first issue is whether the union after affiliation is a substantially different labor organization, rather than merely a continuation of the old union under a new name. *Mt Clemens CS*, 1981 MERC Lab Op 424, 432; *L'Anse Creuse CS*, 1980 MERC Lab Op 607; *Bridgeport-Spaulding CS*, 1978 MERC Lab Op 343. As the NLRB has put it, the issue is whether the certified union has been the subject of dramatic change so as to raise a question concerning representation – whether the changes are so great that a new organization has come into being. See *Deposit Telephone Co, Inc*, 2001 NLRB Lexis 166; *Western Commercial Transport*, 288 NLRB 214 (1988).

Respondent argues that the affiliation resulted in the formation of an organization distinctly different from MCAAP. Respondent points out that in *L'Anse Creuse*, *supra*, the Commission held that there was a material change in the bargaining entity because the local association was required to conform to a new constitution and bylaws which gave the new union effective control over the local association. Respondent notes that in the instant case the affiliation agreement makes all members subject to the UAW Constitution. It argues that the three sections of the UAW Constitution cited in footnote 1, *supra*, significantly alter MCAAP's control over its own affairs by: (1) requiring the international executive board to approve all collective bargaining agreements; (2) requiring the international executive board to authorize all

strikes; (3) giving the international the authority to try and to expel members for violations of union rules other than the non-payment of dues.

In assessing continuity questions the Board eschews the use of a strict checklist, but instead considers the totality of the circumstances. *Sullivan Bros Printers*, 317 NLRB 561 (1995), *enf'd* 99 F3d 1217 (1st Cir, 1996). The Board's approach was approved by the Supreme Court in *NLRB v Financial Institution Employees, Seattle-First National* Bank, 475 US 192 (1986), where the Court commended the Board for recognizing that a union should be allowed to make organizational changes in order to provide better representation for its membership and that a union may seek to affiliate with a larger organization for many reasons, including bargaining expertise, financial support, or lack of leadership within the local organization.

The NLRB has rejected arguments similar to those made by the Respondent in this case. In *CPS Chemical Co, Inc.*, 324 NLRB 1018 (1997), the Board reaffirmed that differences in size, strength and resources between the local organization and the labor organization with which it has affiliated do not establish discontinuity of representation. The NLRB rejected the Employer's argument that the local union's identity was altered after it affiliated with the International Oil, Chemical, and Atomic Workers Union (OCAW) because the local union became bound by certain provisions in OCAW's constitution. One of these provisions gave the international the right to nullify local contracts. The Board noted, first, that the contract would continue to be negotiated by a local committee, although with the assistance of an OCAW international representative. It also noted that, under the OCAW constitution, no contract could become effective without the approval of the members of the unit. Therefore, the NLRB concluded, employees would not have a contract imposed upon them against their will. The Board also noted that there was no evidence that approval of the contract by the international representative was anything other than routine. The NLRB also held that a provision in the OCAW constitution giving the international the authority to withhold its approval of strikes did not alter the local union's identity. There was no evidence, the NLRB noted, that that the international could do anything about a strike of which it disapproved except withhold strike benefits.

In *Mike Basil Chevrolet, Inc.*, 331 NLRB No. 137, (2000), the NLRB concluded that a small independent labor organization that affiliated with a large amalgamated UAW local did not lose its identity, even though the employees lost some autonomy. The NLRB relied on the following: (1) the local unit-shop committee continued to be involved in grievance handling in much as the same manner as before, and decisions of the international business representative regarding arbitration of grievances could be overruled by a vote of the bargaining unit members; (2) although the business representative was authorized to negotiate collective bargaining agreements, all agreements had to be ratified by bargaining unit members before being approved by the international union's executive board; (3) while the international union's executive board was required to authorize a strike, a two-thirds vote of the unit was also required; (4) although the affiliation agreement placed the local unit under the formal institutional structure of both the amalgamated local and the international, the UAW's constitution recognized the "spirit and intent" of local control of contractual relations, and both the constitution and the bylaws of the amalgamated local recognized the unit as the "highest authority" for the handling of local matters. The Board concluded that the unit employees maintained a significant voice in labor relations affecting their own unit, and would continue to be in a strong position to influence the

positions taken by their representative in dealing with their employer. It held that the affiliation did not so significantly alter the identity of the small independent union that an entirely different labor organization had been substituted.

In *L'Anse Creuse, supra,* a local association representing the school district's teachers voted to affiliate with Local 1, MEA/NEA, a conglomerate of 13 local MEA affiliates, and thereby became subject to Local 1's bylaws. Local 1 had its own officers, elected by its own general membership, and its own office. After the affiliation vote, the president of the local association notified the Employer that henceforth the bargaining agent for all purposes was Local 1. The local association continued to elect its own officers and to process grievances in the same manner as before the affiliation vote. It also continued to maintain a separate local treasury. However, the affiliation changed the local association's bargaining and contract ratification procedures, as well as the way in which decisions to withhold services were made. Local 1's bylaws created a Local 1 bargaining committee made up of representatives from each constituent district. Local 1's president, not the local association, selected the association's representative from a list of three nominees. Local 1's bargaining committee set general bargaining goals and established minimum acceptable standards for contract settlement for all constituent districts. The local association was prohibited, by Local 1's bylaws, from entering into a tentative contract agreement with its school district without the approval of the Local 1 bargaining committee. The local association also could not hold a strike vote without the bargaining committee's approval. The administrative law judge found that actual control of contract negotiations and strikes had passed to Local 1. She concluded that these changes were so significant as to destroy the continuity of the labor organization and release the Employer from its obligation to bargain. Affirming her findings, the Commission held that the new union was significantly different in the structure of its bargaining team, in its bargaining procedures, in its contract ratification mechanism, and in its general governance.

The MCAAP unit continues to set its bargaining goals and priorities. The local bargaining committee has the authority to enter into tentative agreements. These tentative agreements must be ratified by the local membership before they are submitted to the UAW's Regional Director or International Executive Board. Moreover, nothing in the record indicates that their approval is anything other than routine. In *L'Anse,* the Commission found that Local 1 exercised effective control over collective bargaining. I conclude that in this case the MCAAP unit has retained effective control over bargaining.

In *L'Anse,* the Commission and the administrative law judge also relied on the fact that local strike votes could not be held without Local 1's approval. I believe that this fact was not essential to their holding. In any case, I find that the provisions for strike approval contained in the UAW constitution do not constitute a significant transfer of control from the local unit to the international. Under the UAW constitution, either the international executive board or the local union may call a strike vote. However, as the Board pointed out in *Mike Basil, supra,* the fact that members of the local unit must authorize any strike action means that the local unit retains control over the decision to strike. In this case, members of the MCAAP unit are forbidden to strike under PERA. The UAW constitution clearly does not allow the International to force the bargaining unit to go on strike against its will.

Respondent's third argument is based on the fact that under the UAW constitution members may be disciplined or expelled from membership by the international for reasons other than the non-payment of dues. A member of the MCAAP unit, therefore, might be expelled from the union by action of the international. However, under PERA, a member of the bargaining unit cannot be discharged for failure to be a member of the union. I cannot conclude from the possibility that member of the unit could lose his or her union membership that the local unit has given up essential control over its own affairs so as to destroy its former identity.

Based the above, I conclude that MCAAP's affiliation with the UAW did not change its identity and that the International Union, UAW, MCAAP Local 2411, is a continuation of MCAAP under a different name.

If the union's identity has not changed, the Board and the Commission review the conduct of the affiliation election to determine if due process standards were met. See *L'Anse Creuse, supra,* at 618; *Bridgeport-Spaulding, supra,* at 349. Respondent has only one objection to the conduct of the election in this case. It asserts that MCAAP members were not given accurate information regarding the consequences of voting to affiliate with the UAW. Respondent asserts that the UAW or MCAAP should have made it clear to MCAAP members that voting for affiliation meant more than that the UAW would assist MCAAP at the bargaining table and that "the UAW/MCAAP" would become the exclusive bargaining representative. Respondent also asserts that MCAAP members should have been told that voting for affiliation would make them subject to the UAW Constitution.

I find no evidence that UAW or MCAAP representatives misrepresented the effects of the affiliation vote. The proposed affiliation agreement between MCAAP and the UAW explicitly and clearly stated that MCAAP would become a local union of the UAW, that its name would be changed to reflect this status, and that future collective bargaining agreements would designate the exclusive bargaining agent as the UAW and its affiliated local. The proposed agreement also explicitly stated that MCAAP members would become subject to the UAW Constitution. Copies of the proposed affiliation agreement were distributed to all 36 MCAAP members present at the May 24 meeting, and the membership was given 20 minutes to review this short document. The record indicates that as the move to affiliate was prompted by the determination of MCAAP's officers that their organization needed more resources, much of the pre-vote discussion naturally focused on the assistance that the UAW could provide. Witnesses disagree about whether a MCAAP or UAW representative ever stated orally that the UAW would become the exclusive bargaining representative. However, there is no evidence that any MCAAP or UAW representative told the membership anything that contradicted the written agreement.

Finally, Respondent argues that this charge should be dismissed because it has done nothing, which violates its duty to bargain in good faith. Respondent points out that, at the time of the hearing, the parties were actively bargaining. Respondent asserts that it did not violate PERA by refusing to agree to Charging Party's proposed recognition language.

In *Bridgeport-Spaulding CS, supra,* the certified bargaining agent, a local association, voted to affiliate with the United Steelworkers of America. As in the instant case, the union

notified the employer after the affiliation election that it was changing its name, and that it would henceforth be known as the United Steelworkers of America, Local 8583. As in the instant case, the employer did not refuse to meet, but declined either to recognize the change in name or to execute a proposed memorandum of understanding acknowledging the name change. The union filed an unfair labor practice charge alleging a violation of the duty to bargain. The Commission found that the charging party was a continuation of the old union under a new name, and that due process safeguards had been followed in the election. The Commission also held that the employer had violated its duty to bargain under PERA by refusing to acknowledge the union's change in name, and it ordered the employer to recognize the union under its new name. In this case Respondent refused to acknowledge the union's name change by its letter dated March 2, 2001 and when it presented the Charging Party with its proposed recognition language. I conclude that by these acts Respondent violated its duty to bargain in good faith under Section 10(1)(e) of PERA. Based on the findings of fact and conclusions of law set forth above, I recommend that the Commission issue the following order.

RECOMMENDED ORDER

Respondent Macomb County Community College, its officers and agents, are hereby ordered to:

1. Cease and desist from refusing to bargain in good faith with the International Union, United Automobile, Aerospace And Agricultural Implement Workers of America, (UAW), and its affiliated local, Macomb College Association Of Administrative Personnel, Local 2411 (UAW), by refusing to recognize this entity as the collective bargaining agent for a unit of administrative personnel employed by the College.

2. Take the following affirmative action to effectuate the purposes of the Act:

    a. Upon request, bargain in good faith with the International Union, United Automobile, Aerospace And Agricultural Implement Workers of America, (UAW), and its affiliated local, Macomb College Association Of Administrative Personnel, Local 2411 (UAW).

    b. Post copies of the attached notice to employees in conspicuous places on the College's premises, including all locations where notices to employees are customarily posted, for a period of 30 consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Julia C. Stern
Administrative Law Judge

Dated: _____