STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

DECKERVILLE COMMUNITY SCHOOLS,
Public Employer,

-and- Case No. R00 B-19

MICHIGAN EDUCATION ASSOCIATION,
Labor Organization-Petitioner,

-and-

INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL 547, AFL-CIO,
Incumbent Labor Organization-Intervenor.
_____/

APPEARANCES:

Thrun, Maatsch & Nordberg, P.C., by Martha J. Marcero, Esq., for the Public Employer

White, Przybylowicz, Schneider & Baird, P.C., by Alexandra S. Matish, Esq., for Petitioner

Douglas Fogleman, Representative, for Incumbent Local 547

DECISION AND DIRECTION OF ELECTION

This information-type representation case was heard in Lansing, Michigan on May 22, 2000, before James P. Kurtz, Administrative Law Judge, acting as Hearing Officer for the Michigan Employment Relations Commission, pursuant to a notice of hearing dated February 22, 2000, issued under Sections 12 and 13 of the Public Employment Relations Act (hereafter APERA@), 1965 PA 379, as amended, MCL 423.212 and 423.213; MSA 17.455(12) and (13). Based upon the entire record, including the post-hearing briefs filed by the Employer and Petitioner by August 14, 2000, this Commission, in the exercise of its administrative expertise, finds as follows:

Petition and Issues:

This petition for a representation election was filed on February 17, 2000 by Petitioner Michigan Education Association (hereafter AMEA@), seeking to represent a bargaining unit of full-time and regular part-time support employees, composed of the custodial-maintenance, transportation, and food service employees of Deckerville Community Schools. This unit is currently

represented by the Intervenor, International Union of Operating Engineers, Local 547, AFL-CIO (hereafter AIUOE@). The most recent collective bargaining agreement between the IUOE and the school district expired on June 30, 2000. The parties disagree over the inclusion in the bargaining unit of a number of employees who were not covered by the Local 547 contract. Petitioner contends, contrary to the Employer, that six unrepresented employees may appropriately be added to the support unit; namely, a bus mechanic, who has been historically excluded, and five part-time cafeteria or food service employees. The Employer contends that the Commission should accept without change the recognized or historical unit of Local 547, and that the cafeteria employees are either casual or substitute employees.

Unrepresented Unit Employees:

This Commission has always reserved the right in litigated representation cases, other than decertification cases, to revise the bargaining unit and add any unrepresented employees who should be in that unit, provided that the petitioning labor organization has a sufficient showing of interest to cover any added employees. *City of Southfield*, 1989 MERC Lab Op 684, 691 (two years of bargaining history does not justify the exclusion of regular part-time employees); *City of Lansing*, 1985 MERC Lab Op 93, 104 (exclusion in consent agreement does not preclude Commission determination of eligibility of challenged voter); *Henry Ford Hosp*, 1971 MERC Lab Op 636, 639-640 (Commission not bound by consent agreement in prior case). See also *Washtenaw C C*, 1993 MERC Lab Op 781, 787 (Commission discretion in unit clarification case is not fettered by agreements of the parties). The addition of excluded employees to an existing unit by means of a representation election can take place in three situations: first, by way of a redefinition of the existing unit where, as in this case, the exclusions are put in issue; second, where the incumbent union petitions for an election to add a historically unrepresented residuum, as in *Lansing Twp*, 1998 MERC Lab Op 655, 658; and third, where a separate labor organization organizes and petitions for a freestanding residual unit composed of the unrepresented employees, as in *Marquette County, Acocks Med Fac*, 1982 MERC Lab Op 1508, 1511-1512. Since any litigated unit, residual or otherwise, must include all unrepresented employees with a community of interest, a labor organization may have to accept a unit broader than petitioned for, as in *Livonia P S*, 1988 MERC Lab Op 1068, 1085-1087.

The underlying principle governing the above situations is that unrepresented employees must be allowed to become part of any existing unit with which they have a community of interest, and if that is not possible, they may form their own residual unit, rather than being left without collective bargaining representation under PERA. *Chelsea Sch Dist*, 1994 MERC Lab Op 268, 276. We discussed the exclusion of regularly scheduled employees from bargaining units, by contract or otherwise, in *Muskegon County*, 1992 MERC Lab Op 356, 363:

> Such artificial or arbitrary exclusions of positions engaged in unit work are fraught with difficulties. The person excluded arbitrarily from representation she or he is entitled to under PERA might well seek representation by another organization. We would be required, despite our reluctance to fragmentize a bargaining unit, to allow such fragmentation. It was this evil among others that motivated the Supreme Court

> in *Hotel Olds v Labor Mediation Bd*, 333 Mich 382, 30 LRRM 2156 (1952), to direct this Commission--then the Labor Board--to find the largest unit possible. At the end of the contract, the Petitioner should refuse to include an exclusion of any regular part-time employees, as the unit placement of such employees is a nonmandatory subject of bargaining. *Detroit Fire Fighters*, 96 Mich App 543.

These unit findings are designed to maintain the comprehensiveness of bargaining units in conformity with *Hotel Olds*, thereby avoiding, wherever possible, leaving employees who should be in the unit unrepresented. To do so causes the "balkanization" or fragmentation of units which, in turn, leads to the formation of residual units. See also *22nd Dist Ct (City of Inkster)*, 2000 MERC Lab Op ___, issued April 26, 2000 (Case No. R00 A-7); *Lansing C*, 1971 MERC Lab Op 1062, 1070 (part-time faculty added to unit of full-time faculty and may not vote on a separate unit). Therefore, we will consider below the six employees whom Petitioner seeks to add to the unit.

Factual Findings-Background:

The school district, located in Michigan's thumb area, has approximately 900 students and 120 employees, including 47 teaching employees represented by the MEA in a separate unit. The unit represented by Local 547 for at least 24 years includes 10 bus drivers, five full-time custodial-maintenance employees, and three full-time and one part-time 4.5 hour per day employee in food service. Under the Local 547 contract, and by past practice, anyone working two hours or less per day was not included in the bargaining unit. The District employs about 16 aides in various categories, who are unrepresented employees. The Employer treats each of its classifications of aides, such as teacher aides, as a group, and meets informally with them before setting their compensation and benefits. The Employer has a wage/benefit policy which is applicable to all unrepresented employees.

Bus Mechanic:

The school district employs a full-time, year around, bus mechanic to service and maintain the vehicles used by its transportation department. He works a normal day shift under the supervision of the transportation and building and grounds supervisor. He is assisted on occasion by a custodial-maintenance employee from the bargaining unit. The present mechanic has been employed by the school district for 10 years, and each year he is given an individual contract which sets forth his compensation and benefits. The mechanic position has never been in the Local 547 unit.

The argument of the Employer that the mechanic position has no community of interest with the support staff bargaining unit is misplaced. The broad unit sought by the MEA in this case is the presumptively appropriate unit of support employees of a school district, and we have always included bus mechanics in such units. See *Farwell Area Schools*, 1986 MERC Lab Op 671, 672-673; *Northville P S*, 1968 MERC Lab Op 279, 283. We have specifically ruled that a school bus mechanic has a community of interest with the unit of bus drivers, *Columbia School Dist*, 1975 MERC Lab Op 410, 413-414, and also with a custodial-maintenance unit where the classification has been excluded from a bus drivers' unit, *Forest Hills P S*, 1983 MERC Lab Op 820, 828. Accordingly, we find that

the bus mechanic has a community of interest with the unit sought by Petitioner, and we will include him in that unit.

Food Service Employees:

There are five cafeteria employees who admittedly perform bargaining unit work, but who are excluded from the Local 547 unit due to the number of hours they work per week, or their tenure of employment. The Employer contends that all five employees who work for the cafeteria supervisor should continue to be excluded and/or be ineligible to vote in any election ordered herein because they are either irregular part-time (casual), substitute (on-call), or temporary employees. See generally *Perry Police Dep=t*, 1992 MERC Lab Op 733, 735; and 596, 599; *Village of Centreville*, 1992 MERC Lab Op 71, 74. In the case of three of these employees who work only two hours per day, the Employer contends that this Commission should recognize the past practice of excluding them as casual employees, and that their hours are inadequate to justify their inclusion in the unit. Two of these three employees are also classified as Aaides@ and, according to the Employer, should be included in an aides unit, if there were one. The last two cafeteria employees at issue are considered by the school district to be Asubstitutes,@ in addition to their being casual or temporary employees.

The two cafeteria employees whom the Employer classifies as Aaides@ work two hours per day and five days per week during the midday lunch periods. They supervise children in the cafeteria, help distribute food, and assist in cleaning the food service area. Like the bus mechanic above, they sign individual agreements setting forth their wages, hours and working conditions. These agreements are presented to all of the Employer=s aides, such as library, playground, and preschool aides. The third unrepresented two-hour per day employee acts as a cashier in the cafeteria, and assists in cleaning the kitchen. She was hired in October of 1999 to replace another nonunit part-time employee. The last two cafeteria employees in issue were hired as Asubstitutes@ at the beginning of the 1999-2000 school year to replace a four-hour per day unit employee who took a leave for maternity and child care purposes. This latter employee has not indicated when or if she will be returning to her job. One of her replacements regularly works two hours per day, three days per week. The second replacement works a two-hour per day, five days per week schedule. They perform various duties in the cafeteria during the lunch period, such as operating the deep fryer, cleaning, or running one of the cash registers.

Each of the above five cafeteria employees are regularly employed by the school district from six to ten hours per week, exceeding the minimum five-hour per week standard for a school food service operation set by this Commission in *Holland P S (Food Service Program)*, 1989 MERC Lab Op 584, 588, in which we stated:

> We agree with the Union that employees in this case who work as food service employees for less than one hour per day or five hours per week do not have sufficiently substantial interest in this employment to justify their inclusion in a unit with full-time and regular part-time food service employees.

This rule was applied to include in a paraprofessional bargaining unit noon hour aides who worked

one to two hours per day, or five to ten hours per week. See *L'Anse Creuse P S*, 1996 MERC Lab Op 613, 616. Thus, we find that the five employees at issue meet the threshold number of hours set forth in *Holland* and are regular part-time food service employees who may be included in the bargaining unit, unless they are excludable for some other reason advanced by the Employer.

The contention of the Employer that those cafeteria employees that it classifies as aides should be included in an aides unit, rather than a unit of cafeteria employees might have some substance if there were such a unit in existence, or if another labor organization was seeking to represent such a unit. See e.g. *Alpena P S*, 1981 MERC Lab Op 173, 177, in which we included a residual group of cafeteria employees working three hours or less per day in a newly-sought unit of aides because the employer and the union representing cafeteria employees had previously agreed to exclude them despite their community of interest with the food service unit. Whatever community of interest the cafeteria employees sought in this case might have with an aides unit, no such unit exists or is sought at the school district. The employees at issue, whatever the Employer may call them, perform normal and usual cafeteria duties and clearly have a community of interest with the other represented employees in the Local 547 bargaining unit. The cases cited by the Employer, such as *Hazel Park Schools (Aides Unit)*, 1991 MERC Lab Op 96, 99, and *Schoolcraft C C*, 1990 MERC Lab Op 16, 20, illustrate what is known as "extent of organization," in which a labor organization petitions for a fragment or part of a larger, unrepresented appropriate bargaining unit. In the instant case, the MEA is seeking just the opposite; that is, it is attempting to include in an established appropriate unit unrepresented positions that should not have been excluded by the Employer and the Incumbent Union in the first place.

The Employer's further contention that the two cafeteria employees who replaced the unit employee on maternity leave are substitutes is misplaced. They are not intermittent or on-call employees who accept random and short assignments for absent regular workers, who are not guaranteed any particular amount of work, and who may reject an assignment and work elsewhere if they wish. Instead, the two employees at issue work a regularly scheduled number of hours on set days of the work week. Thus, the case law on substitute or on-call employees cited by the Employer, such as *Coldwater Comm Sch*, 1998 MERC Lab Op 471, 476-478, aff'd unpublished opinion of the Court of Appeals, issued November 16, 1999 (Docket No. 214020), and *Chelsea Sch Dist*, *supra* at 274-275, is not applicable to this case.

The employment of the two cafeteria employees in question is somewhat similar to the regular part-time bus monitors accreted to the bus driver unit in *Chelsea*, *supra* at 275. The fact that the employment of the monitors in that case was contingent on the continuation of special education runs, the duration of an assigned student's disability, or a possible change in enrollment did not make them temporary employees, "nor decrease their substantial and continued interest in their employment." In this case, the employment of the two cafeteria employees cannot be considered temporary, since its duration is not limited to a specific term with no expectancy of recall. *City of Sterling Heights*, 1993 MERC Lab Op 230, 232-233; *Homer Comm Sch Dist*, 1968 MERC Lab Op 221, 223-224. Their employment is indefinite, they have worked an entire school year, and the employee they are replacing has no definite date of return. See also *Charlotte Sch Dist*, 1996 MERC Lab Op 193, 204. We find that these two part-time employees have a substantial and continuing interest in their wages, hours

and working conditions. Therefore, they will be included in the unit and are eligible to vote in the election ordered herein.

Bargaining Unit and Election Order:

Based upon the above, we conclude that a question of representation exists herein under Section 12 of PERA, and that the following employees constitute a unit appropriate for the purposes of collective bargaining under Section 13 of PERA:

> All full-time and regular part-time custodial-maintenance, transportation, and food service employees employed by Deckerville Community Schools, including bus mechanic, and part-time cafeteria employees working more than five hours per week; excluding aides, supervisors, and all other employees.

Pursuant to the attached direction of election, the aforesaid employees will vote whether they wish to be represented for purposes of collective bargaining by Michigan Education Association, or by International Union of Operating Engineers, Local 547, AFL-CIO, or by neither of these organizations.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commissioner

C. Barry Ott, Commissioner

Dated: