

**STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION**

In the Matter of:

CITY OF DETROIT,
Public Employer,

Case No. R10 F-065

-and-

POLICE OFFICERS ASSOCIATION OF MICHIGAN,
Labor Organization-Incumbent,

-and-

DETROIT EMERGENCY MEDICAL SERVICES ASSOCIATION,
Labor Organization-Petitioner.

APPEARANCES:

Dwight Thomas, Labor Relations Specialist, City of Detroit for the Public Employer

Frank A. Guido, General Counsel, Police Officers Association of Michigan for the Incumbent Labor Organization

Klimist, McKnight, Sale, McClow & Canzano, P.C., by David R. Radtke, for the Petitioner-Labor Organization

DECISION AND DIRECTION OF ELECTION

Pursuant to Section 12 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212, this case was assigned to Doyle O'Connor, Administrative Law Judge (ALJ) of the State Office of Administrative Hearings and Rules (SOAHR), acting on behalf of the Michigan Employment Relations Commission. Pursuant to Sections 13 and 14 of PERA, and based upon the entire record, including briefs filed by the parties on or before September 9, 2010, and the transcript of oral argument on September 30, 2010, the Commission finds as follows:

The Petition:

In the Petition, filed on June 28, 2010, the Detroit Emergency Medical Services Association (DEMSA) seeks to be recognized as an independent labor organization and to replace the incumbent Police Officers Association of Michigan (POAM), to which DEMSA is presently

affiliated, as the exclusive representative of an existing bargaining unit of approximately 180 nonsupervisory emergency medical personnel employed by the City of Detroit (City or Employer). The POAM was first certified as the exclusive representative on June 1, 2009, and has not secured its first collective bargaining agreement with the City. The unit is described as consisting of “All Paramedics, Emergency Medical Technician Specialists, Emergency Medical Technicians and Emergency Medical Technician Trainees employed in the Detroit Fire Department.” 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 incumbent Union, POAM, seeks dismissal of the election petition based on the Commission’s Act 312 election bar policy, as discussed more fully below.

The practical impact of this dispute on the employees on whose behalf the petition was filed, as well as on the two labor organizations and the Employer, is of considerable significance. Under the express terms of the statute, a newly certified union is protected against rival union petitions for one year following the initial certification. Under the Commission’s 1978 Act 312 election bar policy, a rival union election petition, or a decertification petition by employees seeking to remove an unwanted union, may not be processed after an Act 312 interest arbitration petition has been filed. Such proceedings may last a year or more. The goal of Act 312 is to produce a binding collective bargaining agreement between the parties. If such a contract is reached, PERA further insulates the incumbent union for the duration of the contract, up to a maximum of three years. If the Act 312 election bar is enforced in this matter, it is entirely possible, perhaps likely, that the workforce will not have another opportunity to seek an election for four years or more.

The Proceedings and the Positions of the Parties:

Following the June 28, 2010 filing of the election petition, MERC Elections Officer Sidney McBride secured position statements from the Employer and from each of the two Unions. DEMSA sought an immediate election and dismissal of the pending Act 312 interest arbitration petition, as more fully set forth in its position statement of August 2, 2010. The incumbent POAM, in its submission of August 5, 2010, sought to bar the election petition entirely, premised on POAM’s filing of a petition for Act 312 interest arbitration on June 11, 2010, and premised on the Commission’s 1978 resolution which adopted a policy of barring the filing of election petitions during the pendency of Act 312 arbitration proceedings. The Employer has remained neutral throughout this matter, on questions related to the holding of an election and on the Act 312 bar issue.

The Commission considered the parties’ positions at its meeting of August 9, 2010. The Commission directed that its Election Officer process the election petition, seek concurrence of the parties to an election, and failing at that, to refer the matter for an expedited hearing before a SOAHR Administrative Law Judge (ALJ). On August 17, 2010, the matter was referred to ALJ Doyle O’Connor who, on August 24, 2010, sent a notice to the parties identifying legal issues that seemed relevant and potentially determinative, and directing the parties to brief the dispute by September 8, 2010. In the notice, the ALJ indicated that the prior position statements filed by the parties, identified no material disputes of fact and that, therefore, the matter could be addressed on oral argument. Timely briefs were filed on behalf of both the POAM and the DEMSA, with the City, in keeping with its neutrality posture, declining the opportunity to file a brief or take part in

oral argument. On August 25, 2010, the City requested that the Act 312 proceedings be held in abeyance pending resolution of the election petition dispute. Oral argument was heard on September 30, 2010. Each of the Unions concurred at oral argument that there were no material disputes of fact requiring an evidentiary hearing.

The POAM asserts that the filing of a timely and proper petition for Act 312 arbitration should, under most circumstances, bar the filing or processing of an otherwise valid petition for a representation election. In this instance, the Act 312 arbitration petition was filed two weeks before the election petition; however, no arbitration proceedings have yet taken place. POAM relies upon the Commission's long-standing Act 312 election bar policy, first promulgated in 1978. The POAM notes that a fifteen day period existed in this case between expiration of the certification year bar and the date of the filing of the Act 312 arbitration petition. POAM argues that such a time period was a sufficient window for employees to file a petition to change their selected representative. The POAM asserts that the elimination of the Act 312 arbitration bar would destabilize labor relations, as it would be difficult for a union to justify the cost of initiating the often expensive and protracted Act 312 arbitration proceedings unless the union was certain it would remain the representative after conclusion of the Act 312 arbitration. POAM additionally posits that more closely examining the validity of a union's petition for Act 312 arbitration, in the face of an election petition, would result in significant delay and expense.

The DEMSA argues that the right of employees to freely select a representative is the primary value protected by PERA. It further argues that this right supersedes any interest of an incumbent union or an employer in the maintenance of an essentially false stability. DEMSA also argues that the Commission's 1978 resolution creating the Act 312 bar to election petitions was improper where the Legislature had already enacted several specific periods during which such petitions were barred, but had not similarly adopted a bar for periods during which an Act 312 proceeding was pending. It is asserted that for the Commission to adopt such a blanket bar is improper as it exceeds the parameters set by the Legislature and, therefore, the authority of the Commission. Further, DEMSA asserts that the Act 312 election bar, as adopted, is inconsistent with the handling of election petitions in all non-Act 312 covered bargaining units. In such units, an election petition can be filed and will be processed during bargaining and during the pendency of fact-finding proceedings. As DEMSA notes, Act 312 interest arbitration is just one part of the bargaining process, as is fact finding, and DEMSA argues that no rational basis supports the differing treatment. Finally, DEMSA argues that the Act 312 bar policy, even if it is maintained by the Commission, should not be applied to bar this election petition where the POAM had in essence not bargained with the Employer prior to its filing of the Act 312 petition as evidenced by the undisputed fact that the Act 312 interest arbitration petition was not supported by a last offer by the Union, precisely because the POAM had not yet made any bargaining proposals. DEMSA further asserts that the arbitration petition was, therefore, defective, as it was not in compliance with R 423.505(2)(f), which expressly requires that a petition to initiate interest arbitration shall include "a copy of the last offer made by each party to settle the agreement."

DEMSA asserted at oral argument that it was probable that POAM filed its Act 312 petition based on the knowledge of a likely imminent decertification petition filing. DEMSA noted that on June 1, 2010, three weeks before the filing of the election petition, the POAM instructed the City to cease transmittal of dues to its local affiliate DEMSA, suggesting the existence of significant

internal Union discord. POAM asserted, to the contrary, that it is reasonable, particularly in these difficult financial times and in a situation involving the City of Detroit, for a union to seek to avoid or delay the bargaining process; to file an Act 312 arbitration petition for essentially defensive purposes, to better preclude any possible adverse changes in conditions of employment pending resolution of those Act 312 arbitration proceedings. Both parties, through counsel, conceded that the factual dispute over the motivation for the Act 312 petition filing was not, ultimately, material to the legal disputes before us, and therefore did not require an evidentiary hearing.¹

The Origins of the Act 312 Election Bar Policy:

Section 14 of PERA, as adopted, provided that “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.” This Section was amended in 1976, as discussed further below, 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. A collective bargaining agreement shall not bar an election upon the petition of persons not parties thereto where more than 3 years have elapsed since the agreement’s execution or last timely renewal, whichever was later.

The Act 312 election bar policy, as adopted by the Commission on April 25, 1978, provided:

The commission will entertain representation petitions during the established filing period of 150-90 days prior to the expiration of a collective bargaining agreement even though Act 312 arbitration has been initiated or is pending but, if the collective bargaining agreement has expired and an Act 312 arbitration proceedings [sic] pending, the filing of a representation petition will be barred by the arbitration proceedings.²

¹ We would be remiss if we failed to note that, while it may be entirely rational for a union to file an Act 312 arbitration petition solely, or primarily, to maintain the status quo, such a filing may well be improper. As we noted in *Brownstown Twp (on Reconsideration)*, 20 MPER 2 (2007), many Act 312 arbitration petitions appear to have been filed for the purpose of insulating incumbent unions from challenge, and that such filings “impose a burden that is unrelated to this Commission’s statutory responsibilities.” We similarly opine that an Act 312 petition filed for the sole or primary purpose of artificially maintaining the status quo or protecting an incumbent union rather than for the actual purpose of resolving a legitimate bargaining dispute in good faith, appears to impose a burden unrelated to the statutory purpose and, therefore, may be subject to administrative dismissal. See, for example, the analysis in *Allen Park Firefighters v Allen Park*, unpublished opinion per curiam of the Court of Appeals, issued Nov. 20, 2007 (Docket No. 270713), wherein the Court of Appeals found in an analogous setting that it was proper to, in essence, ignore the filing of an Act 312 arbitration petition where the Court concluded that the petition was filed not for the legitimate purpose of resolving a bargaining dispute, but rather to gain a collateral tactical advantage.

² On June 16, 1983, the Commission amended this policy with this additional sentence: “For purposes of this policy, an Act 312 petition shall be considered as pending from the date said petition is filed with the commission.”

We recently stated our concern regarding the Act 312 election bar policy, in *Brownstown Twp*, 19 MPER 71 (2006)³, as follows:

[W]e have tried to evaluate the policy considerations that might have motivated the Commission's adoption of the Act 312 bar at its April 25, 1978 meeting. Unfortunately, no explanation or rationale was recorded in the minutes of that meeting. What we glean from the cases discussed is a concern for labor relations stability in police and firefighting units. While we consider that concern to be significant, we also recognize that promoting stable labor relations by insulating incumbent unions from challenge by rival unions infringes on the rights guaranteed to public employees to negotiate or bargain collectively "through representatives of their own free choice". . . Act 312 [arbitration] is an extension of the collective bargaining process, and the policy underlying the Act 312 bar to representation petitions contradicts the policy requiring employer neutrality in the face of a valid issue of representation. In an appropriate circumstance, the Commission may have to decide whether one of these conflicting policies must yield to the other.

As noted in *Brownstown*, the Act 312 election bar policy was adopted by resolution in 1978. That policy was an addition to the election year bar, which was a part of the original 1965 statute, and the contract bar, which was added by amendment in 1976, with both the election year and contract bars expressly created by the Legislature. The Act 312 election bar policy was not included during the later adoption of formal agency rules concerning Act 312, adopted pursuant to the Administrative Procedures Act in 1995 and the General Administrative Rules adopted in 2002. The dispute in the present case sharply presents the conflicting policy considerations and legal arguments in favor of, and against, the original adoption or continued enforcement of the Act 312 election bar policy.

Discussion and Conclusions of Law:

The starting premise of any decision on a representation case must be a reaffirmation 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 and to then compel their employer to deal with the workforce through the employees' collectively "designated or selected" representative, rather than individually. See 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 n.10 (1985). The statute, as adopted, did not codify rights of employers or of labor unions, other than as derivative of employee rights. Rather, the statute placed restrictions on the

³ The *Brownstown* dispute led to three Commission Decisions reported at: 19 MPER 35, 19 MPER 71, and 20 MPER 2. In *Brownstown Twp (on Reconsideration)*, 20 MPER 2 (2007), we remanded the matter for an evidentiary hearing which proved unnecessary when the incumbent union in that case abandoned the claimed Act 312 election bar and consented to an election.

conduct of employers and unions. The present dispute involves the effort to use the filing of an Act 312 petition as a bar to thwart the paramount statutory right of employees to freely select or reject an exclusive representative.

As we have previously held, we must tread with extraordinary care in making any policy choice which tilts the balance in favor of incumbent unions to the detriment of employee free choice. In *Huntington Woods*, 1992 MERC Lab Op 389, a divided Commission held that a newly certified bargaining representative could not seek retroactive contractual benefits to a point in time preceding the certification date. We recently overturned *Huntington Woods* in *Wayne Co*, 22 MPER 36 (2009), holding that:

We further find the majority rationale in *Huntington Woods* unpersuasive, largely as the decision gives too little weight to the primary statutory protection of the right of employees to freely choose their exclusive representative. While the *Huntington Woods* majority went so far as to acknowledge that “we see the point of the Union’s argument that the ALJ’s decision penalizes the employees for changing their bargaining representative,” the majority opinion offers no compelling rationale, and no statutory basis whatsoever, for ignoring that penalty. It would be inappropriate for the Commission to fail to recognize, and to fail to rectify, the fact that when a petitioning union is competing with an incumbent union, particularly over a bargaining unit subject to Act 312, the *Huntington Woods* rule, denying retroactive wage increases unless the incumbent wins, has the Commission placing a heavy and inappropriate thumb on the scales. The *Huntington Woods* rule makes it not only predictable, but also entirely appropriate, for an incumbent union to campaign on the basis that a vote for the petitioner would be a vote to give up any possibility of a retroactive wage increase. Where PERA places a primary value upon employee free choice in selecting a bargaining representative, it would be inappropriate for the Commission to continue to enforce a rule that so unreasonably and irrationally favors incumbency, especially in the absence of any express statutory mandate. For that reason, and for the reasons discussed above, we decline to follow the decision in *Huntington Woods*, and hereby overturn that decision, finding instead that a newly certified union possesses the same right to negotiate over any otherwise bargainable subject, including retroactivity, as would have the incumbent union.

Similarly, a blanket rule or practice barring the processing of election petitions which seek to remove an incumbent union, just because an Act 312 interest arbitration petition has been filed, essentially results in the Commission coming to the aid of an incumbent union which is potentially no longer the choice of a majority of the workers it purports to represent. Doing so only exacerbates the tendency, which we identified and expressed concern about in *Brownstown Twp*, for unions to file Act 312 interest arbitration petitions for defensive or other tactical advantage, rather than for the sole legitimate purpose of resolving, in good faith, an otherwise unresolved bargaining dispute over substantive conditions of employment of the affected employees. See also, *Allen Park Firefighters v Allen Park* unpublished opinion per curiam of the Court of Appeals, issued Nov. 20, 2007 (Docket No. 270713).

As an administrative agency created by the Legislature for the purpose of administering and enforcing a specialized scheme of labor relations for public employees, we remain cognizant of the

limited scope of our authority. The *Report to Governor George Romney: Governor's Advisory Committee on Public Employee Relations*, (February, 1967), provided the genesis for Act 312 as well as for several PERA amendments. The Governor's Advisory Committee proposed a substantive change to PERA to create, by statutory amendment, the contract bar rule, which was subsequently added to the Act. The Advisory Committee proposal would have also granted the Commission authority to promulgate additional election bar regulations. See *Governor's Advisory Committee*, p.13. That part of the proposal was not adopted by the Legislature, which raises the obvious question of whether that authority should be deemed as having been expressly withheld from the Commission by the Legislature. The Michigan canon of statutory construction presumes that the specific inclusion of one thing, or one or more exceptions, implies the exclusion of the other or alternative outcome or exception. See *Dawe v Dr Reuven Bar-Levav*, 485 Mich 20, 31 (2010); *Detroit City Council v Mayor*, 283 Mich App 442, 456 (2009); *Wayne Co v Retirement System*, 267 Mich App 230, 248 (2005).

The adoption by the Legislature of some parts of the *Governor's Advisory Committee Report's* recommended statutory amendments, while not expressly granting the Commission authority to adopt additional election bar rules, can reasonably be interpreted as evidencing an intentional withholding of authority from the Commission to adopt additional categorical election bars. Regardless of the ultimate resolution of that question, we believe it was inappropriate to adopt such a categorical rule, by mere resolution, which deprives employees of the right to freely choose their representatives for a period easily stretching into multiple years. It is notable, and unexplained, that the 1978 resolution was not incorporated in the later 1995 Act 312 specific rules or the 2002 general rules properly adopted by the Commission pursuant to the Administrative Procedures Act (APA), MCL 24.201, *et seq.* Cf, *Michigan Ass'n of Public Employees v MERC*, 153 Mich App 536, 546 (1986), in which the Court earlier critiqued, but tolerated, MERC's failure to formally promulgate the Act 312 election bar policy as an APA rule. By creating such a categorical bar to employee free choice, on an unexplained basis, the 1978 resolution impermissibly elevated the administrative interest in labor relations stability and the interests of a potentially unwanted incumbent union, over the statutory right of employees to freely designate their own exclusive representative.

In our initial decision regarding the application of the Act 312 bar in the representation dispute in *Brownstown Twp*, 19 MPER 71 (2006), we opined that in an appropriate case we might have to decide whether the conflicting Act 312 bar policy must yield to the requirement that an employer maintain strict neutrality in the face of an issue regarding the continuing majority status of an incumbent union. This case squarely presents the issue. Here, the City of Detroit faces a demand by the POAM that it take part in an Act 312 arbitration proceeding to set for a period of years the wages, hours, and working conditions of the employees in question. During such arbitration proceedings, the parties are expected to continue in the good faith effort to narrow the issues in dispute, even to the point of reaching a voluntary agreement, in whole or in part, on a successor agreement. The parties to such an arbitration are expected to resolve some pending issues, leaving only those that they cannot in good faith resolve for the arbitrators to decide. At the same time, as a result of the pending election petition which asserts that the POAM is no longer the chosen representative of a majority of the employees, the City would ordinarily be barred from continuing to negotiate with the POAM. See *Paw Paw Pub Sch*, 1992 MERC Lab Op 375. Based on the seeming impossibility of meeting these conflicting obligations, the City has asked that the

Act 312 arbitration proceedings be held in abeyance pending resolution of the representation question. We find that those twin obligations are irreconcilable, and that, consistent with our case law on the duty to bargain, the Act 312 election bar must yield to the duty of an employer to maintain neutrality where the incumbent's majority status is legitimately in dispute.⁴

As we held in *Oakland Co & Oakland Co Sheriff*, 20 MPER 63 (2007); *aff'd* 282 Mich App 266 (2009), *lv den'd*, 483 Mich 1133 (2009), the adoption of Act 312 served a fundamental societal purpose of minimizing the risk of work stoppages among critical public safety employees. We adopted the reasoning of Justice Coleman in her concurring opinion in *Dearborn Firefighters Union v City of Dearborn*, 394 Mich 229, 247 (1975), that the urgent goal of the legislation was the avoidance of the sort of provocations which as a practical matter often sparked dangerous strikes, despite their illegality. Our prior decision recognized that employee reaction to forced circumstances, such as an employer's unilateral imposition of changes in working conditions, risked provoking the withholding of services. The goal of PERA and of Act 312 is to promote labor peace by avoiding such provocations. Forcing employees to tolerate continued representation by, and payment of dues or fees to, a potentially disfavored incumbent union by depriving the workers of their statutory right to freely choose a new representative is equally provocative and, we find, unwarranted, as it contravenes the plain language and purpose of both PERA and Act 312. Further, the existence of a policy that allows an incumbent union to utilize the mere filing of a perfunctory petition seeking Act 312 interest arbitration for the primary purpose of blocking bargaining unit employees from seeking to elect a new representative turns the principles of agency on their head, favoring the interests of the agent over the interests of the principal. The Act allows "the employees or the employer" to initiate interest arbitration proceedings. A union files such a petition only in its capacity as the designated representative of the employees and it would be an absurd outcome, as well as a potential violation of such a union's established duty to fairly represent its members in complete good faith, if the representative agent could use such a filing to intentionally thwart the will of the majority of its members.

For all of the above reasons, having thoroughly re-examined the matter, and finding that the 1978 policy deters rather than advances the interests protected by PERA as well as those protected by Act 312, we hereby revoke the 1978 resolution establishing a categorical bar to the processing of election petitions during the pendency of Act 312 arbitration proceedings.⁵ See *Oakland Co v Oakland Co Deputy Sheriffs Ass'n*, 282 Mich App 266 (2009), *lv den'd*, 483 Mich 1133 (2009); *Melvindale-North Allen Park Federation of Teachers v Melvindale-North Allen Park Sch (After Remand)*, 216 Mich App 31 (1996).

⁴ This same outcome would occur if the employer were not covered by Act 312 and were instead in a fact-finding proceeding. Upon the filing of a properly supported election petition, the parties would be obliged to cease bargaining, the fact-finding proceeding would stop as well, and an election would be conducted.

⁵ The revocation of the 1978 resolution does not preclude the Commission, or its agents, from acting administratively on a case by case basis to block an election, as it already does, because of unremedied unfair labor practices, because of destruction of the necessary laboratory conditions, or for a brief period because parties have negotiated a tentative agreement resolving a collective bargaining agreement which has not yet been submitted for ratification. Corollary situations could arise where Act 312 proceedings were so close to conclusion to be the equivalent of a tentative agreement, and it may be appropriate to give brief additional time to conclude those proceedings without the disruption inherent in a representation proceeding.

Even if we were not setting aside the Act 312 election bar policy, we would not apply it to bar an election in the present circumstances. Rules or practices rewarding race-to-the-courthouse conduct should not be encouraged by the Commission, where a statutory goal is the promotion of voluntary good faith resolution of disputes by the parties, rather than gamesmanship designed to secure tactical advantage. See *Allen Park Firefighters v Allen Park* unpublished opinion per curiam of the Court of Appeals, issued Nov. 20, 2007 (Docket No. 270713).; *Kentwood Pub Sch*, 17 MPER 67 (2004), involving a race-to-the-courthouse filing of a fact-finding petition; *City of Pontiac*, 20 MPER 30 (2007), involving a similar race-to-the-courthouse Act 312 petition filing; *Ingham Co*, 18 MPER 68 (2005), involving an Act 312 petition filed by an incumbent union on the day before its certification year expired, and in the face of a decertification effort, where ALJ Julia C. Stern refused to treat the Act 312 petition as a bar to the decertification petition.

The incumbent POAM raises the 1995 Consent Agreement entered in *POAM v MERC*, (Wayne Circuit Court No 94-30923) as a rationale for the application of the Act 312 election bar to the present facts. To the contrary, that Consent Agreement merely addresses the right of either party to file an Act 312 arbitration petition within 30 days of requesting mediation—presumably to avoid the sort of delay which exacerbates disputes. Nothing in the Consent Agreement permits or countenances the filing, or requires the processing, of an otherwise defective petition—as here—where no last offer was attached to the filing precisely because none exists as a consequence of no substantive bargaining actually having taken place. Act 312 arbitration is a continuation of the bargaining process to be used by both sides in a good faith effort to resolve disputes which the parties have been otherwise unable to resolve. Moreover, nothing in the Consent Agreement requires the maintenance of the Act 312 election bar, or its application in any particular circumstance.

The incumbent POAM seeks maintenance of the Act 312 election bar, and relies on our prior decisions in *Atlas Twp*, 16 MPER 62 (2003) and *Ingham Co*, 18 MPER 68 (2005). In *Atlas*, we enforced the Act 312 election bar where no contract had been reached during the initial certification year and eventually a petition for Act 312 arbitration was filed, following which an election petition was filed by a rival organization. The Commission found the Act 312 election bar still viable and applicable where the employees in the unit had some eight months in which to file a decertification petition, and that the balance between employee free choice and labor relations stability had thereby been satisfied.⁶ In *Ingham Co*, the Act 312 arbitration petition was filed one day prior to the expiration of the initial certification year bar, meaning that employees had no open period during which a petition to select a new representative could have been filed. The POAM posits that some reasonable time frame of greater than no opportunity, as in *Ingham*, and up to eight months, as in *Atlas*, must be held to be a reasonable opportunity for employees to petition for a new representative. In the corollary situation, where an incumbent union has a valid contract in place which would otherwise bar the filing of an election petition, the employees, or a rival union, are given a sixty day window period prior to the expiration of the contract in which to file a petition. See R 423.141(3)(b). Here, the employees had a mere two weeks, with no notice that the two week period would be their sole opportunity to select a new representative. The employees did file a petition to select a new representative within less than a month of the expiration of the statutory one

⁶ We are dubious of the propriety of the balancing test applied in *Atlas*, where the Commission 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.

year initial certification bar. Even if we allowed this policy to stand, we would not find that an undisclosed two week window period for the filing of an election petition was a reasonable opportunity for employees to exercise their Section 9 rights.

The paramount function of a representation election is to provide an opportunity for employees to 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 selecting their own 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 regarding an undisputedly appropriate bargaining unit.

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 Paramedics, Emergency Medical Technician Specialists, Emergency Medical Technicians and Emergency Medical Technician Trainees employed in the Detroit Fire Department, and excluding supervisors, administrators, and all other employees.

The individuals actively employed in the above classifications as of the date of this Order may vote pursuant to the attached Direction of Election whether they wish to be represented for purposes of collective bargaining by the POAM, by DEMSA, or by neither union.

We further direct that all proceedings related to the previously filed petition for Act 312 arbitration be held in abeyance, as requested by the City, pending resolution of the question concerning representation. Upon certification of the election results, the exclusive representative, if any, and the City are to meet, bargain in good faith, and determine whether or not to proceed with the interest arbitration.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Christine Derdarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____