STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

TAYLOR SCHOOL DISTRICT,
Public Employer,

MERC Case No. R16 I-094
Hearing Docket No. 16-029964

-and-

SEIU LOCAL 517M – MICHIGAN PUBLIC EMPLOYEES,
Incumbent - Labor Organization,

-and-

26M TAYLOR SCHOOLS SUPPORT STAFF ASSOCIATION,
Petitioner - Labor Organization.
_____/

APPEARANCES:

Collins and Blaha, P.C., by John C. Kava, for the Public Employer

Pilchak and Cohen, P.C., by Daniel G. Cohen, for the Petitioner - Labor Organization

Fraser, Trebilcock, Davis, and Dunlap P.C., by Brandon W. Zuk, for the Incumbent - Labor Organization

DECISION AND DIRECTION OF ELECTION

Pursuant to the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.201 - 423.217, this case was assigned to Administrative Law Judge Travis Calderwood of the Michigan Administrative Hearing System, acting on behalf of the Michigan Employment Relations Commission ("Commission"). Based upon the entire record, including the transcript of the evidentiary hearing held on December 15, 2016, together with the briefs filed by the parties on or before January 20, 2017, the Commission finds as follows:

The Petition:

The Petition for Representation Proceedings was filed on September 22, 2016, by a group calling itself the 26M Taylor Schools Support Staff Association ("Petitioner"), which sought to represent all support staff employed by the Taylor School District ("District" or "Employer"). Included with the Petition was a showing of interest made in compliance with Rule 145(1) of the Commission's General Rules, 2002 AACS; 2014 AACS, 423.145(1). At the time of the Petition's filing, the bargaining unit sought by Petitioner was represented by SEIU Local 517M –

Michigan Public Employees ("Incumbent"). Incumbent and the District are parties to a five-year collective bargaining agreement, effective July 1, 2012, through June 30, 2017.

The Commission's Elections Officer, having made the administrative determination as to the sufficiency of the 30% showing of interest, scheduled a conference call with Petitioner, Incumbent, and District representatives. During the conference call held on October 10, 2016, Incumbent made it clear that it would not consent to the election on several grounds. Position statements were filed by the parties on or before October 17, 2016.

The Incumbent made it clear in its position statement that its initial reasons for objecting to an election included the following:

> (1) The petition is simply the most recent manifestation of a dispute over the internal structure and affairs of a labor organization;
> (2) The Petitioner's use of the name "26M", has the effect, if not the intent, of confusing unit membership and warrants an evidentiary hearing if not outright dismissal of the petition; and
> (3) Despite the present contract covering the bargaining unit and the District being in its fourth year, Section 14(1) of PERA nonetheless bars the petition because Petitioner is a "party" to the collective bargaining agreement and, therefore, cannot petition for an election.

Background and Prior Proceedings:

Prior to 2001, the bargaining unit sought by Petitioner was represented by an entity named Local 26M of the Service Employees International Union, which acted as a stand-alone local affiliate within the Service Employees International Union (SEIU International) organizational structure. On March 12, 2001, Local 26M, along with several other local affiliates, filed unfair labor practice charges against the SEIU International claiming that the latter's intention of merging the local affiliates violated Section 10(3)(a)(i) of PERA. See *Service Employees International Union (Britten, et al)*, 2002 MERC Lab Op 104. At that time, Section 10(3)(a)(i) of PERA, which has since been amended, stated:

> (3) It shall be unlawful for a labor organization or its agents:
>
> > (a) to restrain or coerce: (i) public employees in the exercise of the rights guaranteed in Section 9: Provided that this subdivision shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership

In affirming the ALJ's recommended order of dismissal, we stated in *Service Employees International Union (Britten, et al)*:

> We have previously held, however, that the representative status of labor organizations to their units does not hinge upon the subtle technicalities that govern the structure and nature of the relationships between locals or affiliates and their parent bodies. See *Schoolcraft Community College*, 1996 MERC Lab

> Op 492, 496. Just as employees are free under PERA to choose their representative for collective bargaining purposes, the bargaining representative must also be free to select its own bargaining representative or agent. Id. See also *Romeo Community Schools*, 1973 MERC Lab Op 360. Whether the parent organization or its designated agent locals or affiliates is the certified or recognized bargaining agent is of no consequence under PERA. See *Schoolcraft* at 496; *Alpena Community College*, 1994 MERC Lab Op 955, 960-961 (employer's request to dismiss petition for election filed by parent certified bargaining representative because not filed by affiliate labor organization named in current contract denied).

Findings of Fact:

As explained above, for some period of time, the support staff bargaining unit was represented by Local 26M, a stand-alone local affiliate of the SEIU International. In a letter dated March 22, 2005, SEIU International President (at the time) Andrew L. Stern decreed that as of March 1, 2005, Local 26M, along with two other SEIU Local Affiliates, Local 466M and 516M, would be "consolidated and merged with and into Local 517M." In that same letter, Stern revoked the charters for the three locals, thereby terminating their status as individual stand-alone entities within the SEIU International organization. In other words, Local 517M continued to exist as a stand-alone entity within the SEIU International structure as a local affiliate, the only change being the addition of the bargaining units previously represented by SEIU affiliates Local 26M, Local 466M and Local 516M.

While the March 22, 2005, letter from Stern represented the SEIU International's confirmation of the merger of Local 517M with Local 26M and other locals, the actual mechanics of the merger had been occurring for at least some time. On February 23, 2005, the group formerly known as Local 26M, executed a document entitled "MERGER/Partnership Agreement: SEIU Local 517M and SEIU Local 26M" ("Merger Agreement"). The Merger Agreement stated:

> THEREFORE, it is agreed that SEIU Local 26M, the exclusive representative of, and sole bargaining agent for the bargaining unit employees who are currently represented by SEIU Local 26M, and Michigan Public Employees, SEIU Local 517M, hereinafter referred to as Local 517M, hereby agree that Local 26M and its membership will join with, become part of, and function as full members of Local 517M with all the rights, privileges and obligations spelled out in the Local 517M Constitution and Bylaws…

According to testimony provided by Local 517M Executive Director Liza Estlund Olson and documentary evidence provided at the hearing, it is clear that while "Local 26M" continued to be used as the identifying title for the support staff bargaining unit at the District, that title was simply used out of convenience by Local 517M, i.e., was an internal designation.

As such, the most recent collective bargaining agreement, effective July 1, 2012, through June 30, 2017, covering this unit was entered into between "The Board of Education of Taylor School District" and "Local 26M – Division of SEIU Local 517."

On April 5, 2016, Local 26M's Executive Board, in a special meeting, voted unanimously to direct Local 26M President Kathie Fields to pursue dissolution of the 2005 merger between Local 26M and Local 517M.[1] Following that, Fields sent a letter to the Public Services Division Executive Director, Tom DeBruin, at the SEIU International, seeking to have the 2005 merger undone and Local 26M reestablished as a stand-alone entity within the International Union. Copied on the letter was SEIU International President Mary Kay Henry. This letter was sent on letterhead bearing the SEIU International logo along with "26M – Division of SEIU Local 517M" in the header.

On May 14, 2016, the Local 26M Executive Board sent another letter to President Henry claiming within the letter's body that no response had been received from the International Union on the previous letter. Attached to that letter were 18 pages of signatures which purportedly represent signatures of 365 of the bargaining unit's approximately 400 members. Each of the signature pages contains the following statement at the top:

> We the members of SEIU Local 26M Division of 517M agree our merger with 517M has not been productive but in fact detrimental for our membership. We are requesting a release from 517M and become once again SEIU Local 26M stand alone. Should there be any type of retaliation against our elected officers or any member of 26M as a result of this petition, our ***dues payments will stop immediately***. [Emphasis in original.]

This letter was sent on a different letterhead than the earlier letter from Fields, now bearing only "S.E.I.U. Local 26M." It is not clear what response, if any, Local 26M received from either the SEIU International or Local 517M regarding either of the two letters before it filed the instant petition.

On September 22, 2016, a "Petition for Representation Proceedings" was filed on behalf of "26M Taylor Schools Support Staff Association" and signed by Fields. Attached to the petition was the title page and recognition page from the contract between the District and "Local 26M – Division of SEIU Local 517M." Also included with the page was the requisite showing of interest in the form of signature pages. The signature pages stated the following at the top of each page:

> A majority of the support staff of the Taylor Public Schools wish to be represented for purposes of collective bargaining by the **26M Taylor Schools Support Staff Association**. [Emphasis in original.]

[1] The actual minutes of the April 5, 2016, meeting state as "New Business" the following, "Executive Board directed President Fields to pursue disillusion of merger between Local 26M and 517M." However, the record clearly indicates that the term "disillusion" is simply a mistake and that the Executive Board intended to direct Fields to pursue "dissolution".

Discussion and Conclusions of Law:

Among the many rights guaranteed to public employees by Section 9 of PERA, is the right to bargain collectively with their public employers through representatives of their own free choice. Accordingly, and as we so often state in representation cases, our starting premise of any decision in a representation proceeding must be the 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 through which their employer must deal with the workforce collectively, rather than individually. See *Three Rivers Community Schools*, 28 MPER 65 (2015); *City of Detroit*, 23 MPER 94 (2010); See also MCL 423.209 & 423.211. This Commission is "the state agency specially empowered to protect employees' rights." *Ottawa Co v Jaklinski*, 423 Mich 1, 24 n10 (1985). We acknowledge and accept that PERA, as adopted, did not codify rights of employers or of labor unions, other than as derivative of employee rights. Rather, the Act placed restrictions on the conduct of employers and unions in furtherance of the paramount statutory right of employees to collectively designate an exclusive bargaining agent. *Leelanau Co*, 24 MPER 18 (2011); *City of Detroit*, 23 MPER 94 (2010); *Oakland Co & Oakland Co Sheriff*, 20 MPER 63 (2007); *aff'd* 282 Mich App 266 (2009), *lv den* 483 Mich 1133 (2009).

Section 12 of PERA is the starting point by which this Commission works to resolve questions regarding representation of public employees. Under that Section, following the filing of a petition which alleges that 30% or more public employees within the unit claimed by the petitioner indicate that they wish to be represented for collective bargaining by the petitioner, we are to investigate the petition and, if need be, order an appropriate hearing be held. See also Rule 145 of our General Rules, 2002 AACS; 2014 AACS, R 423.145 (requirement that a petition for an election be supported by a 30% showing of interest).

The Incumbent argued prior to the hearing that the Petitioner's utilization of the name "26M Taylor Schools Support Staff Association" should cause us to question the validity of the showing of interest and to dismiss the petition on that basis. We have consistently held that the validity of the showing of interest is an administrative determination and, once established, is not subject to attack. See *Woodhaven-Brownstown School District*, 27 MPER 10 (2013); *Lakeville Cmty Sch*, 1988 MERC Lab Op 641. Accordingly, we refuse to question the validity of a showing of interest. We observe however, that even if there were truth to the Incumbent's claims that there was confusion with respect to the showing, Incumbent will nonetheless have time to address and correct any confusion during the campaign leading up to an election. It is also our opinion that the petition was correctly filed, as Petitioner is seeking to be certified as the authorized bargaining representative effectively replacing the Incumbent, as contrasted to seeking to remove the Incumbent from its representative status.

Moving next to the Incumbent's claim that we must recognize the present events as merely internal union activities, thereby outside of our jurisdiction, we disagree. While the present Petition is born out of internal frustration of bargaining unit members over the Incumbent's representation of them, such right to a change of bargaining agent by way of a

representation proceeding undoubtedly falls within the purpose of such proceedings - the right of public employees under Section 9 of PERA to be represented by a bargaining agent of their choice. Accepting the premise as proffered by Incumbent would undoubtedly put a stop to many, if not most, of the representation proceedings brought before the Commission by public employees who seek to exercise their Section 9 right to be represented by an agent of their own choosing.

Lastly, we are faced with an argument based on the express language of Section 14(1) of PERA and the meaning behind the term "persons not parties." The relevant portion of that statute states:

> ... An election shall not be directed in any bargaining unit or subdivision of any bargaining unit if there is in force and effect a valid collective bargaining agreement that was not prematurely extended and that is of fixed duration. A collective bargaining agreement does not bar an election upon the petition of *persons not parties* to the collective bargaining agreement if more than 3 years have elapsed since the agreement's execution or last timely renewal, whichever was later. (Italics added)

Incumbent concedes that under our recent decision in *17th Judicial Circuit Court*, 29 MPER 43 (2015), the statutory contract bar will not bar all petitions with respect to Local 517M and the District since they are in the fourth year of a five-year contract.[2] Incumbent's argument relies on the premise that, given the closeness in the relationship between the Local 26M executive board and those individuals signatory to the present Petition, and given the similarity in names of the Petitioner and Incumbent, Petitioner cannot be identified as "persons not parties to the collective bargaining agreement." Consequently, Incumbent argues that the instant petition is barred.

In support of its argument, Incumbent provides a very detailed exploration of the fundamental tenets of statutory interpretation/instruction in its post-hearing brief in order to assert that the term "persons not parties" must mean something and cannot be ignored.[3] Moving

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[2] Under *17th Judicial Circuit Court*, in situations where a contract exists that is more than three years in duration, the contract bar does not apply after the contract's third year anniversary date.

[3] Incumbent writes in its brief:

> The overriding goal guiding judicial interpretation of statutes is to discover and give effect to legislative intent. *Tryc v. Michigan Veterans' Facility*, 451 Mich 129, 135; 545 NW2d 642 (1996); *Williams*, supra at 570, 576 NW2d 390; *Knight v. Limbert*, 170 Mich App 410, 413; 427 NW2d 637 (1988). The starting place for the search for intent is the language used in the statute. *House Speaker v. State Administrative Bd*, 441 Mich 547, 567; 495 NW2d 539 (1993); *Williams*, supra at 570; 576 NW2d 390. "Unless defined in the statute, every word or phrase therein should be accorded its plain and ordinary meaning, taking into account the context in which the words are used." *People v. Hack*, 219 Mich App 299, 305; 556 NW2d 187 (1996). Accord *People v. Lee*, 447 Mich 552, 557-558; 526NW2d 882 (1994). The "plain meaning rule" of statutory interpretation is an objective standard of review, predicated on the assumption that there exists a cultural consensus about the meanings of a great number of words. As Justice Oliver Wendell Holmes, Jr., put it: "[W]e ask, not what this man meant, but what those words would mean in the mouth of a normal speaker of English .... [T]he normal speaker of English is merely a special variety ... of our old friend the

through Incumbent's black letter law demonstration, we find ourselves in the same place as Incumbent – whether Petitioner, 26M Taylor Schools Support Staff Association, is a party to the contract between Local 517M and the District. Petitioner claims they are "persons not parties" to the contract between Local 517M and the District for the seemingly obvious and self-evident reason that the contract at issue was entered into between the Taylor School District and Local 26M – Division of SEIU Local 517M.

Incumbent further argues that interpreting the term "persons not parties" such that it includes Petitioner would render that language absurd because "an incumbent union will not pursue a petition which would, in effect, decertify itself." Missing from the Incumbent's argument and analysis is the simple realization that Petitioner is not seeking its own decertification but rather is seeking to be recognized as the authorized representative of this bargaining unit absent any affiliation with a larger organization, SEIU or otherwise. Petitioner is not Incumbent's alter ego.[4] The contract at issue was entered into between Local 26M – Division of SEIU Local 517M and the Taylor School District. The record is clear that Local 26M – Division of SEIU Local 517M is in fact merely a segregated portion of Local 517M, which is recognized as a separate and distinct entity within the SEIU International. Petitioner however has no relationship with the SEIU other than the fact that the people it wishes to represent were historically represented by a local SEIU affiliate, in some fashion or another, and as such is not a party to the contract. Although some of the employees who signed the present petition were formerly Local 517M officials, these employees were not acting in their official capacity as union representatives when they signed the petition but were acting as individual employees. Previously, in *Service Employees International Union (Britten, et al)*, this bargaining group sought our assistance in changing its position in the organizational structure as it relates to Local 517M and the SEIU International. Accordingly, we dismissed the proceeding, finding that such internal structuring disagreements were of no consequence under PERA. Now however, we are left with a clear distinction between the situation as presented in *Service Employees International Union (Britten, et al)* and Petitioner's current attempt to represent this unit as a wholly separate entity with no affiliation to the SEIU International. It is because of this distinction that we conclude that Petitioner, 26M Taylor Schools Support Staff Association, is not the same organization as Local 26M – Division of SEIU Local 517M and, therefore, is not a "party" to the bargaining agreement.

We have considered all other arguments as set forth by the parties. We find no basis for concluding that a free and fair election should not be conducted in this case, and employees must be allowed to express their preference for a bargaining representative. We will, therefore, direct an election pursuant to the Petition.

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prudent man." Holmes, *The theory of legal interpretation*, 12 Harv. L. R. 417, 417-418 (1899). It is this belief in common consensus, in commonly accepted meanings, that in turn underlies judicial confidence in the dictionary as a source of meaning. *See, e.g., Popma v. Auto Club Ins. Ass'n*, 446 Mich 460, 470; 521 NW2d 831 (1994) ("Reference to a dictionary is appropriate to ascertain what the ordinary meaning of a word is.").

[4] An alter ego is a second self and not a separate and distinct entity. See *Local 595, International Association of Bridge, Structural and Ornamental Ironworkers, A. F. L., et al. (Bechtel Corporation), 112 NLRB 812 (1955).*

ORDER DIRECTING ELECTION

We hereby direct an election in the bargaining unit of employees to determine whether they wish to be represented by the SEIU Local 517M, by 26M Taylor Schools Support Staff Association, or by neither labor organization.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: May 11, 2017