

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

In the Matter of:

17th JUDICIAL CIRCUIT COURT,
Public Employer,

-and-

Case No. R15 I-081
Docket No. 15-055672-MERC

TECHNICAL, PROFESSIONAL AND OFFICEWORKERS
ASSOCIATION OF MICHIGAN (TPOAM),
Labor Organization-Petitioner,

-and

UNITED AUTO WORKERS (UAW) LOCAL 2600,
Incumbent Union,

-and-

KENT COUNTY,
Interested Party,

-and-

63rd DISTRICT COURT,
Interested Party,

-and-

KENT COUNTY PROBATE COURT,
Interested Party.

APPEARANCES:

Robert J. Chovanec, Labor Relations Attorney, Kent County Human Resources Department, appearing for the 17th Judicial Circuit Court, Kent County, 63rd District Court, and Kent County Probate Court

Douglas Gutscher, appearing for Petitioner TPOAM

Pinsky, Smith, Fayette and Kennedy, by Michael L. Fayette, appearing for the Incumbent UAW Local 2600

DECISION AND ORDER ON PETITION FOR ELECTION

On September 18, 2015, the Technical, Professional and Officeworkers Association of Michigan (TPOAM or Petitioner) filed a petition for representation election with the Michigan Employment Relations Commission pursuant to §12 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212. The matter was assigned for hearing to Julia C. Stern, Administrative Law Judge with the Michigan Administrative Hearing System, and was heard on November 10, 2015. Pursuant to §§13 and 14 of PERA, and based upon the entire record, including position statements filed by the parties prior to the hearing, the transcript of the hearing and exhibits admitted at this hearing, the Commission finds as follows:

The Petition and Positions of the Parties:

The petition seeks a bargaining unit consisting of all full-time and regular part-time employees employed by and under the direction of the 17th Judicial Circuit Court, including its Family Division, and including Hall of Justice Clerks. These employees are currently represented by the United Auto Workers Local 2600 (the UAW, the Local or the Incumbent) and are covered by a collective bargaining agreement between the UAW and Kent County (the County), the 17th Judicial Circuit Court (the Employer), the Kent County Probate Court, and the 63rd Judicial District Court.¹ According to the document, the agreement became effective on November 29, 2012, and continues in effect through December 31, 2015.

The UAW asserts that the petition should be dismissed as untimely. As noted above, the employees covered by the petition are covered by a collective bargaining agreement that does not expire until January 1, 2016. The TPOAM maintains that its petition was filed within the appropriate window period under Rule 141(3)(b) of the Commission's General Rules, 2014 AACS R 141(3)(b), or between ninety and 150 days before the agreement's expiration date. The UAW asserts that because the agreement is longer than three years, the window period for filing a petition under this rule was between ninety and 150 days prior to the three year anniversary of the effective date of the agreement. In other words, according to the UAW, the TPOAM's petition was filed too late. The TPOAM points out that Rule 141(3)(b) clearly states that a petition "shall not be filed sooner than 150 days and not later than ninety days before the expiration date of the collective bargaining agreement." The Employer, the County, and the other Courts appearing as interested parties in this case do not take a position on the timeliness of the petition.

However, the 17th Judicial Circuit Court, the County, the District Court, and the Probate Court all take the position that while the UAW was initially certified to represent employees of each of the three courts in separate units, the units have now been merged into one. The Employer and the interested parties assert, therefore, that TPOAM should not be permitted to sever employees of the 17th Judicial Circuit Court from their established bargaining unit and represent them separately. The TPOAM disagrees that the units have merged, and points to language in the collective bargaining agreement that allegedly demonstrates the parties' intent to

¹ Kent County is the funding unit for these Courts. The record indicates that the Courts have authorized the County to act as their agent for most labor relations and human resources functions, and that the County has been a separate signatory to previous collective bargaining agreements between the three Courts and the UAW. However, each Court in this case is, by law, the sole employer of its employees under PERA. *Judicial Attorneys Ass'n v Michigan*, 459 Mich 291 (1998).

preserve their status as separate units. However, the TPOAM states that it would be willing to represent a broader unit of employees of all three courts if the Commission finds the petitioned-for unit to be inappropriate.

Findings of Fact:

Timeliness of Petition

As noted above, UAW Local 2600, the 17th Judicial Circuit Court, the Kent County Probate Court, the 63rd District Court, and Kent County are signatories to a collective bargaining agreement effective November 29, 2012, and remaining in effect through December 31, 2015. The agreement was signed by representatives of all five of the signatories. According to testimony at the hearing and the position statements of the parties, members of the UAW voted to ratify the contract on November 5, 2012, and the Kent County Board of Commissioners approved the contract by a vote conducted on November 29, 2012. The signatures on the agreement are not dated and there is no indication in the record as to when the signatures were affixed to the document.

TPOAM's petition was filed on September 18, 2015, 48 days before the third year anniversary of the date the UAW's membership ratified the contract, 72 days before the third year anniversary of the date the contract was approved by the Kent County Board of Commissioners, and 104 days before the contract's expiration date.

Discussion and Conclusions of Law:

Section 14 (1) of PERA 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.

Rule 141(3) permits petitions for representation elections to be filed within the appropriate window period prior to the expiration of the contract. For petitions covering public employees who are not employees of a public school district or public educational institution, the window period, pursuant to Rule 141(3)(b), is "not sooner than 150 days and not later than 90 days before the expiration date of the collective bargaining agreement."

When the collective bargaining agreement is three years or less in length, the application of Rule 141(3)(b) is clear; a person not party to the agreement, whether outside union or decertification petitioner, can file a petition for representation election either after the contract expires or between ninety and 150 days before the contract's stated expiration date. When the collective bargaining agreement is longer than three years, however, the meaning of the term "expiration date" is not as clear.

In *Washtenaw Co and Washtenaw Co Sheriff*, 19 MPER 14 (2006), a petition for representation election was filed on April 21, 2005. The employees covered by the petition were covered by a collective bargaining agreement that, by its terms, was effective January 1, 2002, through December 31, 2006. The employers and the incumbent union asserted that the petition was barred by their collective bargaining agreement. The record established that the agreement was not finalized until December 4, 2002, when the Washtenaw County Board of Commissioners ratified it, and that the agreement was made retroactive to the January 1, 2002 date. The written agreement in its final form was then signed by the incumbent union on May 23, 2003, and by the employer representatives on June 4, 2003. The incumbent union and the employers argued that the contract's "execution" date under §14(1) of PERA was May 23, 2003, the date that the incumbent union signed it. According to these parties, the earliest date that a petition could be timely filed was 150 days prior to May 23, 2006. The petitioner, however, argued that the date of the contract's "execution" was its effective date, or January 1, 2002, and that its petition was timely because it was filed more than three years after that date.

We rejected both these arguments. Instead, relying on established case law holding that a collective bargaining agreement is considered binding once it is reduced to writing and ratified by the necessary parties, we held that the period for determining the three year contract bar began on December 4, 2002, the date the agreement was ratified by the last necessary party and became final and binding. We also held that the petition in *Washtenaw Co* was untimely because it was filed "more than 150 days prior to the expiration of the third year of the five-year agreement."

The significance of *Washtenaw Co* to the case here lies in our recognition in *Washtenaw* that for contracts of more than three years duration, the "expiration date" of the contract for purposes of computing the window period under §14(1) and Rule 141(3) is the third year anniversary of the date the agreement became binding. There is no dispute that when the duration of collective bargaining agreement is three years or less, employees and rival unions have two opportunities to file representation petitions. That is, employees can file during the appropriate window period before the contract expires or after the expiration date of the contract. We note that were we to adopt the TPOAM's argument here, many employees covered by agreements longer than three years would have no window period, i.e., no opportunity to file a representation petition before the third year anniversary date of their agreement. For example, in *Washtenaw Co*, employees or rival unions could not have filed their petition until after December 4, 2005, the third year anniversary of the date the contract became effective; if calculated from the contract's stated expiration date, the window for filing a petition would not have opened until much later, in August 2006. We find that allowing employees covered by contracts longer than three years to file their petitions in a window period between ninety and 150 days prior to the third year anniversary date of their contracts provides them with the same opportunities the window period rule offers to employees covered by shorter contracts. It also, we conclude, strikes the appropriate balance between protecting employees' statutory right to select a bargaining representative and promoting stable bargaining relationships.

In this case, TPOAM filed its petition less than ninety days prior to the third year anniversary date of the contract between the Employer and the UAW and outside the appropriate window period as set out above. By statute, the contract cannot serve to bar the TPOAM from

refiling its petition after its third year anniversary date, which in this case has already passed.² If we dismiss this petition, therefore, the TPOAM can immediately refile. It is important, however, that we apply our rules in a fair and consistent manner. We conclude that an election should not be directed on the TPOAM's untimely petition, and that the petition should be dismissed. We therefore issue the following order.

ORDER DISMISSING PETITION

The petition for representation election is dismissed as untimely.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____/s/
Edward D. Callaghan, Commission Chair

_____/s/
Robert S. LaBrant, Commission Member

_____/s/
Natalie P. Yaw, Commission Member

Dated: December 11, 2015

² Under *Washtenaw Co*, the third year anniversary date is the anniversary of the date that the contract was ratified by the last necessary party and, therefore, became binding. If the County was not a necessary party, the contract in this case became binding when the UAW membership ratified the agreement on November 5, 2012. However, whether the third year anniversary date of the contract was November 5, 2015 or November 29, 2015 is irrelevant since the TPOAM's petition was not filed within the window period for either of these dates.