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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY
LANSING

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Via Email Only

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Re: Regents of University of Michigan MERC Case No. 21-C-0630-RD

Dear Parties:

On Thursday, June 10, 2021, the Michigan Nurses Association (MNA) and University of Michigan Professional Nurse Council (collectively referred to as the MNA/UMPNC or Incumbent Union) filed an unfair labor practice charge alleging, in part, that the University of Michigan (Employer) had engaged in certain inappropriate activity that assisted a rival union organization, the University of Michigan Professional Nurse Council-Independent Union (Petitioner or UMPNC-Independent Union) in its efforts to become the successor representative for an established bargaining unit of professional nurse employees. Together with its two related filings in March 2021, the Incumbent Union contends, among other things, that the Employer's action has destroyed the "laboratory conditions" necessary for this agency to conduct a fair and impartial election in the above captioned representation case.

The Incumbent Union also alleges that inconsistencies between the entity named in the representation petition and that named in the show of interest, the show of interest has confused or misled unit members. The Incumbent Union requests dismissal of the representative petition, or alternately, that the petition be held in abeyance, or ballots impounded pending the disposition of the pending charges in Cases 21-F-1295-CE and 21-C-0781-CE. After careful review of the filings in the record and as explained below, I respectfully disagree and deny the requests of

the Incumbent Union. I also encourage ALJ Peltz to move expeditiously to address the representation petition filed under the name of the UMPNC- Independent Union.

Petition and Show of Interest:

The Incumbent Union asserts that certain unit members were likely confused, mis-informed, and/or possibly deceived as to the identity of the petitioning union when signing the show of interest documents used to support the petition. There was also concern expressed by the Incumbent Union that the entity named in the petition (University of Michigan Professional Nurse Council-Independent Union) is different than that listed on the show of interest documents (University of Michigan Professional Nurse Council), and, as such, that the show of interest is insufficient to support the petition.

A conflict between the entity listed on the petition versus the name on the supporting show of interest could, under certain circumstances, result in dismissal of the petition or other administrative action. However, here, the history of events precipitating the filing of the petition, particularly the extensive preliminary activity between late 2020 and the March 2021 filing date, provided unit members with an awareness of the subgroup's interest in breaking from the MNA to become independent. For this reason, I conclude that there is little likelihood that members of the bargaining unit who submitted a show of interest were confused about the nature of the question concerning representation which exists in this matter. Even if there was some confusion on the part of unit members, I am confident that designating the Petitioner as the University of Michigan Professional Nurse Council-Independent Union (UMPNC- Independent Union) on the ballot will eliminate any misunderstanding which may have existed. Therefore, I find that the representation petition filed by the entity named as the UMPNC- Independent Union is valid and adequately supported by an appropriate show of interest. The motion to dismiss the representation petition filed by the Incumbent Union is hereby denied.

Blocking Charge Requests

The Petitioner here seeks (through a MERC election) to serve as exclusive representative without connection to any parent group including the MNA. At issue is whether the Petitioner's alleged unfair access to, and use of, the workplace email system is adequate basis to either delay or block a vote by unit members on which entity should continue as bargaining representative.

The premise of any representation case is the reaffirmation that a fundamental function of PERA is to uphold the right of public employees to collectively designate an exclusive bargaining agent with whom their employer must deal. See *City of Detroit*, 23 MPER 94 (2010); MCL 423.209 & 423.211. As described by the Legislature, PERA is intended to "declare and protect the rights and privileges of

public employees,” with the fundamental right under Section 9 that allows employees to act through the “representatives of their own free choice.” *Ottawa Co v Jaklinski*, 423 Mich 1, 24 n10 (1985). The employees’ right of free choice is the chief consideration in reviewing the Incumbent Union’s requests in these matters.

Similar to the NLRB, this agency will proceed with an election on a representation petition if it is reasonably believed that employees can exercise their free choice in an election vote notwithstanding the pendency of an unfair labor practice charge. Even where fraud has been alleged pertaining to the attainment of authorization cards, the NLRB has exercised discretion and refused to deny or restrict the employees from moving forward with a representation election where the employees could reasonably exercise their right of “free choice”. (See *Babcock & Wilcox*, 116 NLRB 1542, fn 1 (1956); and *Tung-Sol Electric, Inc.*, 120 NLRB 1674, fn 1 (1958)).

Further, the NLRB has codified certain exceptions to its “blocking policy” involving a pending representation petition. The NLRB’s Handbookⁱ provides in pertinent part :

... although the general effect of the blocking charge policy is to hold the processing of representation petitions in abeyance, there are several exceptions to the policy, including:

(1) Failure to Request

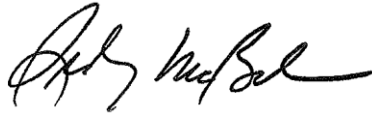
(2) Free Choice Possible Notwithstanding Charge. This exception is available where—even in the presence of a request to block—the regional director concludes that employees could, under the circumstances, exercise their free choice despite the unfair labor practices. (Emphasis added.)

The bargaining unit involved here is not newly created. The Incumbent Union has represented this same unit for over 45 years and unit members are fully aware of its existence and role as exclusive representative. Therefore, the intended purpose of the proposed election is not to determine whether exclusive representation should occur for the very first time, but instead decide which entity shall serve as bargaining agent going forward. Any advantage afforded the independent sub-group from using or having access to the Employer’s email system, if true, I view to be minimal in light of the years of continuous representation by the MNA. I also believe, even while the pending charges exist, that unit members can reasonably exercise their right of free choice and decide whether to stay with MNA (whom they have known for years) or switch to be represented by an independent entity.

I firmly believe that most, if not all, of the outstanding issuesⁱⁱ related to the matters involving these parties will be resolved or become “moot” once a representation outcome is reached. That outcome can only be determined through a representation election. Notwithstanding the allegations by the Incumbent Union in the charges and various other filings, bargaining unit members can still decide which entity should be their exclusive bargaining representative. I conclude the conduct alleged in the pending charges is insufficient to interfere with employees’ exercise of free choice in selecting that representative through a MERC conducted election. The requests by the Incumbent Union to block, delay, dismiss and/or impound ballots pertaining to the representation petition and election are denied. The representation petition should be promptly processed, and not delayed, pending the disposition of the unfair labor practice charges involving these same parties.

Feel free to contact me should you have any concerns.

Very truly yours,

A handwritten signature in black ink, appearing to read "Sidney McBride". The signature is fluid and cursive, with the first name "Sidney" written in a larger, more prominent script than the last name "McBride".

Sidney McBride, Director
Bureau of Employment Relations
mcbrides2@michigan.gov

ⁱ NLRB Outline of Law and Procedures in Representation Cases, Section 10-800

ⁱⁱ The issue regarding the Petitioner’s authority to use the UMPNC name or any variation is not mentioned or addressed as it is outside of the purview of this agency or the Commission.