

STATE OF MICHIGAN

MICHIGAN OFFICE OF ADMINISTRATIVE HEARING AND RULES

IN THE MATTER OF: Docket No. 21-008249-MERC

University of Michigan (Regents), Case No. 21-C-0630-RC
Employer

-and- Agency michigan Employment
Relations Commission

University of Michigan Professional Case Type: MERC
Nurse Council, Representation
Petitioner

-and-
Michigan Nurses Association,
Incumbent Union

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PRE-TRIAL CONFERENCE

Proceedings held, via Zoom, in the above-entitled
matters before David M. Peltz, Administrative Law Judge
with MOAHR, for MERC, Detroit, Michigan, on Thursday,
June 24, 2021, at 9:02 a.m.

APPEARANCES:

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20 REPORTED BY: Marie T. Schroeder, CSR-2183
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22 586-567-8015

1 Detroit, Michigan

2 Thursday, June 24, 2021

3 9:02 a.m.

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5 (Hearing commenced pursuant to due notice.)

6 JUDGE PELTZ: Good morning, everyone.

7 The time is 9:02. We are here for a prehearing
8 conference in the matter of University of Michigan, Case
9 No. 21-C-0630-RC. I will note for the record that it's
10 been docketed as RC everywhere on our end. I do note
11 that the letter that went out from the BER Director, I'm
12 just seeing it now, has it as RD. I don't believe that's
13 correct, and I can contact their office if necessary to
14 have that minor issue corrected.

15 Did we lose someone here? I just want to
16 make sure.

17 MR. FETTER: You just lost Andy.

18 JUDGE PELTZ: We lost Andy, O.K. Let's
19 stay on the record for a moment, since it's hard to
20 communicate with Marie, and we'll give it a minute to see
21 if Andy can rejoin us.

22 (Pause.)

23 JUDGE PELTZ: There you are, Andy.

24 MR. SMITH: Well, I did it.

25 JUDGE PELTZ: Congratulations. O.K.

1 We're still on the record. So we are here this morning
2 to sort of figure out where we are in the matter after
3 Director McBride's letter to the parties which went out
4 on June 21st, which I am assuming you all have copies of.

5 And I guess I'm going to put the question
6 to Mr. Nickelhoff and to Mr. Smith. As I see it, the
7 Director's letter means that, at least for purposes of
8 the petition for election, there is no issue which would
9 prevent an election based on either, a, the blocking
10 charges or, b, the issue of inconsistent names between
11 the petition and the showing. So the question now is
12 what issues, if any, do the parties believe need to be
13 heard in connection with the RC case? And again that's
14 the only case we're here talking about today.

15 MR. SMITH: I'll be happy to answer that
16 question. And you'll have to forgive me, I have a frog
17 in my throat today.

18 JUDGE PELTZ: No problem.

19 MR. SMITH: I think the -- there is a
20 number of issues for us that still remain. The most
21 important issue for us is the names of the parties on the
22 petition and potentially on the ballot. As they're set
23 up right now, obviously the incumbent union is the
24 Michigan Nurse Association and its University of Michigan
25 Professional Nurse Council. And we are set up to have an

1 election against an effigy with a nearly identical name,
2 which we believe has absolutely no precedence and is well
3 beyond the bounds of the Taylor School District, MERC
4 case. So in that regard we think there is a significant
5 issue of name confusion, which we think needs to be
6 resolved.

7 JUDGE PELTZ: All right. You did say you
8 had other issues?or was that it?

9 MR. SMITH: Oh, no. There's more.
10 Actually I just was pausing to see if you had anything
11 further or you just wanted me to keep going.

12 JUDGE PELTZ: Let's go through these and
13 then we'll talk about them one by one.

14 MR. SMITH: O.K. Second, I think the
15 parties need to resolve the type of election, whether
16 we're go to have a manual election or a mail ballot
17 election. Our preference here would be for a manual
18 election, but we're open to discuss that.

19 JUDGE PELTZ: O.K.

20 MR. SMITH: Three, we feel there needs to
21 be an evidentiary hearing on a number of issues. Among
22 them we feel, you know, there's a couple cases which cite
23 the representations made by the parties in petitioning
24 and sort of campaigning in regards to the name confusion
25 issue. So if you look at a case like the Greenville

1 Public Schools with MERC where the employer contested the
2 name of MEA, saying that it should actually be listed as
3 the local GEA, there was a record taken in the hearing
4 and the ALJ found it pertinent in the record that the
5 employees understood in the election that they were
6 actually going to be represented day to day by the GEA
7 even though the MEA was listed on the ballot, and
8 therefore the name issue was resolved.

9 There are other cases such as the Board
10 case of General Engineering. A record was taken in that
11 case. There was an objection by the employer to the
12 petitioner using the name AFL-CIO in their petitioning
13 name, and it was found in the record that the petitioning
14 union was actually expelled from the AFL-CIO. And so the
15 Board held that they could not use the name AFL-CIO.

16 I would say beneath that there is also an
17 issue for us, and it runs through a series of cases,
18 which deprive from a Board case called Pacific Southwest
19 Container, which states that it's a statutory right for
20 employees to understand the identity of the parties. And
21 in that case, during the election and after the petition
22 had been filed by the party, it had merged with wider
23 unions and only communicated that to, you know, roughly
24 three-quarters of the authorities. But because they had
25 not communicated it to all the employees and all the

1 employees did not understand the actual structure and
2 officers and sort of organizational identify, they found
3 that there could be no laboratory conditions for that
4 election to be upheld, and it was tossed out.

5 There is probably five or six cases that
6 were under that. One of them is Humane Society for
7 Seattle/King County. That case has really sort of very
8 analogous facts to this one in which there was a union
9 that went and misrepresented at a permission hearing,
10 just verbally, about what employees would be represented
11 by, whether they would be independent or whether they
12 would be part of a wider union. And they told employees
13 a status that was incorrect for the union, and the Board
14 found that because employees could not actually identify
15 to the organization that was on the ballot, even though
16 it had a proper name based off its representations, that
17 there could be no proper election, and again the election
18 was tossed aside. And so we believe those issues are
19 still prevalent here and that there needs to be some
20 evidentiary processing of representations that the
21 parties have made.

22 I would say a third issue is unique, I
23 think, to this case which everyone would have to admit,
24 which is, I think there is both an issue of law but an
25 issue of fact as to the identify of petitioner. When the

1 parties filed position statements following the petition,
2 the opening line of the petitioner's position statement
3 is, Petitioner is U of M PNC, and it has independent
4 affiliation resulting from a disaffiliation on January
5 2nd. That is restated probably 20 times in a 20-page
6 position statement.

7 What we took from an inference in the
8 Bureau Director's decision on Monday was that it is
9 moving the petitioner forward as a different
10 organization, as an organization that is not an incumbent
11 union but is a new outside union with just a strikingly
12 similar name that is challenging the incumbent MNA -- the
13 incumbent union UMPNC. But at some point those two sort
14 of disparate things happen to meet. And the petitioner
15 has been, I guess in my words, lead to water, but they
16 have to decide whether or not they're going to drink. So
17 they need to say: Yes, we are a new union, we are not
18 the incumbent union, or they have to reject that premise.
19 And if they reject that premise and say: We continue to
20 be the incumbent union, that's going to frame some new
21 issues, and some of those issues may be whether former
22 officers and former members can file a petition on behalf
23 of a local union two months after they've left that
24 union. So that issue has to be sort of fleshed out
25 factually and put on the record. And that's why I think

1 an evidentiary hearing is warranted.

2 JUDGE PELTZ: O.K. Before I -- Yes. Go
3 ahead. I thought you were finished.

4 MR. SMITH: Oh, no. I'm moving on to the
5 next issue.

6 JUDGE PELTZ: O.K.

7 MR. SMITH: So there is a little
8 discrepancy in the unit description. The petition for a
9 unit left out one classification, which is in Appendix B
10 of union representative. We think historically that has
11 been sort of the pay code of classification for officers
12 on full release. That may have been incidental but that
13 issue sort of needs to be resolved as to why that was
14 left off of the position description.

15 JUDGE PELTZ: O.K.

16 MR. SMITH: Next I would say the issue of
17 facility addresses needs to be resolved. So typically,
18 and I would argue the rules require it, that the
19 petitioner has to list the address of the facility that
20 they're attempting to organize. Here they have listed
21 the recognition clause but not the addresses of the
22 actual facilities where bargaining unit employees are
23 located in which it's seeking an election.

24 Part of the reason that's relevant is
25 there are several sort of multi facilities, extremely

1 large unit, and the parties need to be on the same page
2 as to what the size is. And that's not always a clear
3 issue. University of Michigan owns minority stakes or
4 has partnerships in a number of health systems that
5 typically aren't considered part of the system but have
6 been contentious in the past. I would point out Lake
7 Michigan Health. They also have partnerships and sort of
8 ownership stakes within other hospitals, like Sparrow
9 Hospital. Those have other unions to them, they have a
10 variety of other issues that would have to be resolved.
11 And if the unit has been expanded or parties aren't on
12 the same page as to the actual size of the facilities in
13 the unit, it may also impact this. So typically we just
14 feel like there needs to be -- and I'm not suggesting the
15 petition is defective, but just to move forward we have
16 to, you know, resolve and understand and list all the
17 different facilities that are actually being included
18 here.

19 And I think the one other question I had,
20 and I think you answered at the top, but I would just ask
21 it for the sake of having it responded to very clearly
22 is, the caption for this hearing involved the multiple
23 unfair labor practice charges that were still out and
24 still remaining. So just an understanding of how those
25 will be heard, whether they will be heard with the

1 petition or whether they'll be heard separately, but just
2 sort of understanding that.

3 JUDGE PELTZ: O.K. And that's complete,
4 you've completed your issues?

5 MR. SMITH: Yes. I would say, you know,
6 we always reserve the right to raise a different argument
7 if we get in the hearing and there's something new. But
8 at this time, these are the issues we have identified.

9 JUDGE PELTZ: Thank you. Before I move
10 on to Mr. Fetter. Mr. Smith, I would ask that you, you
11 cited a number of cases throughout your presentation this
12 morning. I'm not going to keep everybody while we go
13 through those, but if you could send to myself and to
14 everyone else, including our court reporter, we'll make
15 sure at the end you get her information just so that she
16 has it and she can fill that in. But if you could send
17 the citations for all of those cases, please.

18 MR. SMITH: Sure, your Honor.
19 Absolutely.

20 JUDGE PELTZ: O.K. And Marie, if you
21 want to put an e-mail address that Mr. Smith could send
22 those to in the Chat when you have a chance, that would
23 be great.

24 Mr. Fetter, do you want to respond either
25 to those issues collectively or individually? And then

1 we'll see where we are here.

2 MR. FETTER: Yes. So the issue of the
3 same name goes to the internal union issue that's
4 involved here. Of course our, my client has asserted all
5 along that it is the original UMPNC, disaffiliated from
6 the MNA. That issue, as the Director had stated, is an
7 internal union issue that is not going to be worked out
8 here at MERC. So those issues, those sort of issues are
9 just not something that is going to be litigated at a
10 hearing.

11 Mr. Smith went back to the same issue
12 that the Director had already decided, which is whether
13 the nurses, you know, can't comprehend what is going on
14 here and are confused. And that issue has been decided.
15 The nurses understand what's going on here and what the
16 choice is on the ballot, which is an independent UMPNC or
17 continue to be represented by the MNA. If the MNA is
18 concerned about the confusion of having UMPNC on both
19 sides of the ballot, it can choose not to have UMPNC
20 along with it on its side of the ballot, have a choice
21 between an independent UMPNC and the MNA. So it is a --
22 If they're asserting that UMPNC is somehow on their side
23 of the ballot, that's a problem of their own creation.

24 These other issues, citing General
25 Engineering and Pacific Southwest, are just another

1 re-packaging of that same confusion argument, which has
2 been already decided.

3 The issue of working out whether the
4 disaffiliation was effective and whether it's the same
5 UMPNC or not, again it's an internal union issue which is
6 not within the province of MERC and, as the Director
7 stated, should not impede an election from occurring.

8 As to the unit description of a union
9 representative, my understanding is that all nurses, if
10 they're union representatives, maintain their original
11 title -- and this might be a better question for
12 Mr. Masson -- their original title of where they came
13 from, which would be eligible to vote. So the
14 eligibility doesn't change because you have a union
15 representative classification.

16 On a related issue of whether it's a mail
17 ballot or a manual election and the variety of
18 facilities, those seem to run counter to each other. The
19 MNA asserts that there are multiple facilities spread all
20 over the State but that we should have a manual election.
21 I think the best system to promote free choice in this
22 situation, and given that we're still in the middle of a
23 pandemic, is a mail ballot election so that everybody has
24 a fair opportunity to vote. I think that the amount of
25 facilities that it would take, which are, you know

1 they're spread all over the state, would just be massive
2 and very difficult to do in a manual way.

3 The petition for a unit is the unit
4 that's recognized in the collective bargaining agreement,
5 the same exact recognition that is in the collective
6 bargaining agreement. It is not currently limited by any
7 addresses. So the unit that is currently recognized is
8 not limited to particular addresses. I don't think it's
9 appropriate to have a recognition that is limited to
10 certain addresses, and I think it's inappropriate to
11 limit it to particular addresses. It is a well known
12 established bargaining unit with an established
13 recognition clause, and the petition for a unit mirrors
14 the recognition clause that's in the contract. Everybody
15 knows what's covered and not covered. We're not
16 petitioning for anything more or anything different than
17 the existing collective bargaining unit, which is well
18 known to the parties.

19 JUDGE PELTZ: Does that conclude your
20 argument or your statement?

21 MR. SMITH: Yes.

22 JUDGE PELTZ: Not oral argument, your
23 statement. Mr. Masson, the forgotten man here.

24 MR. MASSON: I'm fine with that, Judge.
25 I have, I have nothing to add to this. This is between

1 MNA and UMPNC for the most part.

2 JUDGE PELTZ: Do you want to just address
3 the one issue that Mr. Fetter indicated you might be able
4 to shed some light on, which is --

5 MR. MASSON: Well --

6 JUDGE PELTZ: -- union members on release
7 time.

8 MR. MASSON: Sadly, I can't shed any
9 light on that issue.

10 I guess I do have one point that I do
11 want to raise on this issue of mail ballots or in-person
12 voting. We're still currently, although the State of
13 Michigan has, you know, waived all of its restrictions,
14 OSHA has restrictions on health care organizations.
15 We're still under visitor restrictions. I would be
16 concerned if we get to a point where we're having people
17 come in to our health care facilities who aren't working
18 at a particular time. We have -- we are still trying to
19 keep the foot traffic down. So that would be a concern
20 on the employer's side.

21 JUDGE PELTZ: All right. Let me just
22 address these. I don't want a back and forth. I think
23 it's just easier for me to address these now. And I'd
24 like to start with that last one, which is mail versus
25 in-people ballot.

1 That is an issue purely for a discussion
2 between the parties and Denise Hinneburg, MERC's Election
3 Director. It's not a hearing type issue. It's never
4 come before, as far as I know it's never come before an
5 ALJ for an evidentiary hearing on the manner of election.
6 And I believe, I could be wrong about this and I'll admit
7 I'm not an expert, but I believe that the policy at MERC
8 is that that's not an issue ultimately that's subject to
9 discussion, or that either party or all the parties can
10 make an ultimate determination on. My understanding is
11 that MERC is going to determine the manner of an election
12 with input from the parties. So I'm not going to belabor
13 this conference any more on that particular issue.

14 Similarly with respect to the unit
15 description as far as the title for any employee or any
16 member that's on release time and the issue of addresses,
17 those are issues which are typically resolved in the
18 conference between the parties and MERC's Election
19 Division. Those are not typically issues that are
20 litigated in a factual hearing.

21 And again as far as addresses, you know,
22 I'm going to add on to what Mr. Fetter has said. As far
23 as I can see this is not -- no one is proposing any
24 changes in the unit. This is a unit of a long history,
25 so I can't fathom how that would be an issue regardless,

1 but that again that is something that will have to be
2 discussed when Ms. Hinneburg meets with the parties and
3 meets with you all and specifically sets up how an
4 election will occur. O.K.

5 With respect to the other issues. I can
6 take these one by one, but I'll just say that I do agree
7 with Mr. Fetter. I think Mr. Fetter asserted that these
8 are all the same issues that were brought to
9 Mr. McBride's attention and merely repeated here.
10 Mr. McBride indicated in -- Director McBride indicated in
11 the letter, specifically I'm quoting, "Even if there was
12 some confusion on the part of unit members, I am
13 confident that designating the Petitioner as the
14 University of Michigan Professional Nurse
15 Council-Independent Union (UMPNC-Independent Union) on
16 the ballot will eliminate any misunderstanding which may
17 have existed. Therefore, I find the representation
18 petition filed by the entity named as the
19 UMPNC-Independent Union is valid and adequately supported
20 by an appropriate show of interest. The motion to
21 dismiss the representation petition filed by the
22 Incumbent Union is hereby denied."

23 I don't see any of these issues as being
24 still alive after that, after Mr. McBride's finding. And
25 I haven't heard any specific issue today. And I

1 understand and appreciate, Mr. Smith and Mr. Fetter, your
2 concerns on some of these other matters, and continuing
3 concerns on some of these matters. But as far as I'm
4 concerned, for purposes of an election moving forward,
5 those issues have been resolved.

6 Now it's possible that some of these
7 issues may come up again in other contexts. We have the
8 ULPs, which I'll address in a moment, but I see this as a
9 clear statement from BER that they believe an election
10 can move forward absent some other issue that hasn't been
11 brought up thus far. And I have heard nothing this
12 morning which would indicate as such.

13 So my intention is to, if the parties are
14 not going to consent to an election, I don't -- I haven't
15 heard any issue that would require holding an evidentiary
16 hearing on, so I would advise the Commission to issue,
17 promptly issue a decision and direction of election
18 indicating that there are no issues to be litigated.

19 MR. SMITH: Mr. Peltz, if I could perhaps
20 just ask for clarification.

21 JUDGE PELTZ: Judge Peltz, please. Thank
22 you.

23 MR. SMITH: I apologize. I guess one
24 thing I have some confusion on is, I think it's very
25 BER's jurisdiction was to clearly showing an interest and

1 to make a determination regarding the status of the
2 blocking charges. And I agree that's been done. But I
3 think it's very clear from a number of cases that the
4 name confusion issue and some of these other issues are
5 not within the jurisdiction of BER. And whether you
6 believe that, you know, our arguments are not correct on
7 them, I believe the jurisdiction is before you to make a
8 decision on the name confusion arguments and on some of
9 those things even if an evidentiary hearing is not
10 warranted.

11 I guess I would just also raise, you
12 know, Mr. Fetter's statement that they are continuing to
13 assert that they are the original UMPNC. I think it does
14 raise an issue now of authority. And I would agree with
15 Mr. Fetter that MERC does not have authority to resolve
16 that issue, but the Washtenaw County Circuit Court did.
17 And Mr. Fetter sought an injunction to return the, you
18 know, expelled or removed officers to their position.
19 And in that argument he even cited the on-going
20 proceedings with MERC and is concerned it would not have
21 authority. And Judge Conners denied --

22 MR. FETTER: I'm sorry, that's not true.

23 MR. SMITH: It is. I was there. Its.

24 There's a record of it. And MERC does not have
25 jurisdiction now to undo Judge Conners decision and grant

1 authority to officers who were out of the union for
2 nearly two months at the time they filed the petition.
3 So there are serious questions here now of authority, and
4 there are actual issues around that.

5 In Detroit Osteopathic, the parties got
6 into an agency issue. They looked at who had filed, what
7 counsel had filed the charge, what president and officer
8 had authorized it, and there are factual issues now
9 around who authorized Mr. Fetter to file the petition on
10 March 17th. And there are factual issues. Mr. Fetter
11 was explicitly terminated by UMPNC for his representation
12 on February 2nd. There's a letter to that effect.
13 There's a letter back from Mr. Fetter stating that he
14 would not recognize that. These are all factual
15 evidentiary issues that would have to be put into a
16 record, and there has to be a decision on these findings.

17 JUDGE PELTZ: Mr. Smith, regarding the
18 Detroit Osteopathic Hospital, that was the OP charge,
19 correct?

20 MR. SMITH: Correct.

21 JUDGE PELTZ: I think the issues are
22 wholly different when we are talking about who has the
23 authority to file a ULP on behalf of a bargaining unit
24 versus who had explicit authority to bring a petition.

25 The petition, the Director has already

1 determined that the petition is filed in the name of the
2 independent union. I think it's clear we have a
3 disagreement over who the UMPNC is. I believe it'll be
4 resolved elsewhere. The Director has made a
5 determination that that petition can go forward. And
6 it's specifically indicated that he wants this to be done
7 post haste and this election, this petition as you note,
8 election petitions are always handled expeditiously by
9 the Commission because of the nature of the issues
10 involved. This has been pending for some time. And I
11 see this as the same issues again. I don't see how
12 necessarily the authority of who filed the petition in
13 the end is going to make a difference in terms of a free
14 and fair choice for the people voting.

15 MR. SMITH: Judge Peltz, I would say we
16 have case law, explicit case law, where a unit has been
17 put into trusteeship, where a petition that was filed by
18 officers preceding the trusteeship has been withdrawn by
19 the trustees.

20 This is a significantly more disparate
21 case than that, and there are cases on this issue. It
22 is -- there is precedent on this issue whether someone
23 has authority as a removed former officer to file, not
24 only a ULP but a petition on behalf of an organization.

25 And if Mr. Fetter is asserting that they

1 are the original UMPNC, and the Bureau or the Commission
2 is moving this ahead under the auspice that they aren't,
3 but that they are being, you know, sort of this new union
4 formed under that name, we then take an issue that there
5 is no actual labor organization there. I mean they have
6 to say that they want to be that union and that there are
7 basic employees and officers desiring to be that new
8 outside union. And I don't see that here.

9 JUDGE PELTZ: Well, hold on. Why is it
10 inappropriate for a party to take an alternative position
11 depending on the way -- that happens in all sorts of
12 cases.

13 MR. SMITH: I'm waiting for the
14 alternative position to be taken.

15 JUDGE PELTZ: Well, with all due respect,
16 Mr. Smith, the petition says UMPNC/Independent Union. So
17 for voting purposes, I don't see how anything else
18 matters. There may be other issues involved, ULP issues,
19 and who has authority to all sorts of things on those.

20 The question here is whether employees
21 can choose between one of two labor organizations. And
22 for purposes of the petition, this body has been
23 identified as slash independent. So I don't know -- I'm
24 not following, I guess, your argument here then as to how
25 that would affect the election.

1 MR. SMITH: I guess why I disagree, Judge
2 Peltz, is that the petition identifies the existing
3 incumbent UMPNC. It states a demand in which they made a
4 demand for recognition. The date was January 2nd, which
5 is the date the disaffiliation request went to the
6 University. The date of the rejection for the demand for
7 recognition is that January 3rd, the date the University
8 rejected the proposed disaffiliation of UMPNC. And in
9 the 20-page position statement that followed the filing
10 of the petition, the only position that the petitioner
11 has taken is that it is the incumbent U of M/PNC. And so
12 we continue to raise questions of authority which we
13 believe are pertinent here.

14 JUDGE PELTZ: Mr. Fetter, do you want to
15 touch on that point?

16 MR. FETTER: Yes. So the -- we have
17 asserted all along that UMPNC properly disaffiliated,
18 because they did. And you know, that argument is part of
19 the unfair labor practice charges. But at this point
20 what Mr. Smith is requesting is that MERC resolve this
21 internal union issue as to the trusteeship, as to the
22 disaffiliate, which is an internal union matter. The
23 Board precedent in this matter is similarly hands off
24 when there is a disaffiliation and a trusteeship, that
25 they process the petition and leave that issue properly

1 for the other courts.

2 The issue that is before MERC I think is
3 what you had stated, Judge Peltz, is that there is a
4 petition that's been filed, supported with the adequate
5 showing of interest, and the employees are going to have
6 an opportunity to choose. And many of these issues get
7 resolved through that operation of democracy and free
8 choice. And MERC is just not going to -- doesn't have
9 the jurisdiction to resolve these internal union issues
10 of authority, who has authority, didn't have authority,
11 because you can't decide those without deciding the
12 propriety of the disaffiliation and the propriety of the
13 trusteeship.

14 JUDGE PELTZ: Let me ask you, Mr. Fetter,
15 directly though, the ULP, the disaffiliation ULP is still
16 outstanding?

17 MR. FETTER: Mm-hmm.

18 JUDGE PELTZ: If the Commission finds or
19 if I find and am affirmed by the Commission that it was
20 not a proper disaffiliation, are you still moving forward
21 on the, what I phrase and maybe this is the wrong phrase,
22 but I'll let you address it, the alternative argument
23 that you are, that your client is an independent union,
24 essentially a new labor organization for purposes of the
25 petition?

1 MR. FETTER: Yes. In the alternative we
2 want an election. Whether it's an election -- we don't
3 think it matters, that this issue matters for the
4 purposes of representation petition. That either way
5 we're going to have an election for UMPNC independent
6 union, or MNA, given that choice. It'll be worked out
7 later as to whether -- the issues of the disaffiliation
8 and the trusteeship, which will largely be resolved
9 through an election as well.

10 JUDGE PELTZ: Mr. Smith, did you want to
11 add -- I wasn't sure if you indicated you wanted to add
12 anything.

13 MR. SMITH: No. I would just say, I mean
14 I do think that there are some issues with this,
15 depending on what the identity is of the petitioner.

16 But what I would also say before we
17 conclude, we do have -- I guess our understanding today
18 was that this is a prehearing conference. But I want to
19 be clear on the name issue, you know. We do have a
20 motion to amend our name on the petition for it to be
21 what our full name is, which is the Michigan Nurses
22 Association and its University of Michigan Professional
23 Nurse Council.

24 Likewise, we have a motion asking that
25 the petitioner's name be amended for the sake of clarity

1 and to remove confusion to just be Independent Union and
2 no longer be University of Michigan Professional Nurse
3 Council/Independent Union.

4 JUDGE PELTZ: O.K. Two things. I just
5 want to make sure. I want to assure you, I have not
6 received copies of those petitions. So I don't have
7 copies of those as of right now. They should have been
8 forwarded. Well, I'm not sure they should have been
9 forwarded to me in light of the letter, but we'll -- I
10 just wanted to make it clear. But I hear your argument
11 or characterization what those letters say. Go ahead.

12 MR. SMITH: And I guess I bring that up
13 now because my impression from prior cases, there's an
14 opportunity in a hearing to make motions. If we're not
15 going to have a hearing, you know, I guess we would like
16 the opportunity to submit those motions for a ruling.

17 The only thing I would add is that there
18 is a case which I think is pertinent here. I believe
19 it's called Yamhill County Employees Association. It's
20 an Oregon Public Sector case. But where there was a very
21 sort of similar but different case where there was a
22 local union, Yamhill County Association, which affiliated
23 with another union jointly, and that union decided to
24 petition separately to become the sole bargaining
25 representative. In that case they found that because

1 they were the actual union, and because they were the
2 ones actually filing the petition, that the name could
3 not be on both sides of the ballot, and therefore they
4 removed it from the union that was with the affiliation
5 because the actual entity had filed the petition.

6 JUDGE PELTZ: I'm going to stop -- I'm
7 going to stop you because again, I think that issue has
8 been resolved. The Director has indicated that the
9 UMPNC-Independent is sufficient. I'm not going to
10 entertain any further -- this is an elections matter
11 controlled by the Commission. I'm just here as their
12 officer to hear if there are any, if there are any
13 identifiable issues for litigation. That issue is off my
14 plate. The Director has indicated that for purposes of
15 BER, they are comfortable with UMPNC/Independent.

16 Now as far as the name, again I didn't
17 see any motion, so as far as the name of the incumbent,
18 that can be an issue that's discussed again before Denise
19 Hinneburg. It's my understanding that that was how the
20 parties were going to be identified on the ballot
21 anyways, the Michigan Nurses Association and -- exactly
22 as it is in the contract, the current contract, and its
23 affiliated local. If there is an issue that is raised --
24 that's an administrative issue that will have to be
25 resolved by Ms. Hinneburg and Director McBride. There's

1 no questions of fact that would need to be heard in a
2 MERC hearing on that issue. So let me move on.

3 I'll consider your arguments, Mr. Smith,
4 and appreciate you agreeing to send the case citations to
5 all the cases you mentioned today. I'll take a look at
6 those. But assuming that my view of this isn't changed,
7 again my intention would be to recommend that the
8 Commission issue a decision and direction -- a direction
9 of election and refer the matter back to Ms. Hinneburg
10 for sort of determining the administrative procedures for
11 the election.

12 With respect to the ULP cases, it's my
13 intention to at this point, given that neither of those
14 two charges are blocking charges, to move ahead on those.
15 And I feel it's in the best interests of sort of judicial
16 economy here and getting these matters resolved as quick
17 as possible, since there are no factual issues that
18 either party could identify from the last oral argument
19 on the propriety of the disaffiliation, that part of that
20 ULP, and that no hearing is necessary, you've already had
21 argument, I'm going to put that -- I'm going to bifurcate
22 the cases, put that in the decisional docket, and to
23 consolidate all other ULP issues into a second proceeding
24 and schedule a hearing on those. And it's really, I'm
25 going to set out a hearing date. If the parties decide

1 that they want to wait until after the election to have
2 those heard, whatever the parties want to do. It's not a
3 blocking charge at this point. Neither of them are
4 blocking charges at this point. So I think it makes
5 sense, given that a big chunk of those cases has no
6 factual issues for hearing, I think it's important, given
7 the on-going concerns raised by both parties as to the
8 disaffiliation issue, to get that resolved as quick as I
9 can. So my intention again is to bifurcate.

10 As to the first ULP charge which
11 contained both the disaffiliation issue and the others,
12 I'll be assigning an A and B designation to those cases.
13 And then the B case, which be the sort of split-off, the
14 part that's been split off, will be consolidated with the
15 other ULP or ULPs. I can't remember at this point.

16 To the extent that those ULPs appeared on
17 the caption for today, that was just simply an
18 administrative error. This, my support staff probably,
19 it's a bit of a confusing case. So my intent this
20 morning was to discuss only the elections issue this
21 morning.

22 Mr. Nickelhoff, I know you are co-counsel
23 with Mr. Smith. I didn't sort of open the floor to you.
24 Is there anything you want to add to anything before we
25 conclude?

1 MR. NICKELHOFF: No. I have many
2 asserting a remarkable level of self control and I
3 continue doing so.

4 JUDGE PELTZ: Thank you. I appreciate
5 it. That actually didn't come out right. That sounded
6 like, please continue.

7 MR. NICKELHOFF: I was very sympathetic.

8 JUDGE PELTZ: I appreciate your comment,
9 not that you are self-controlled. That's a matter for,
10 whether you need to talk or not is a matter always for
11 you to determine. You and your IT person I should say.

12 Anything else that anyone wants to add
13 for the record before I conclude?

14 MR. FETTER: No.

15 JUDGE PELTZ: Mr. Smith, you're muted.

16 MR. SMITH: Never done that before. I
17 would just ask, Ms. Schroeder has not put her e-mail in
18 the Chat. I just want to make sure I have it before we
19 conclude.

20 JUDGE PELTZ: O.K. We can -- I'll go off
21 the record in a moment, and then, Marie, you can discuss
22 on Chat with the parties both your e-mail and allow the
23 transcript information to be exchanged. I will add that
24 I will also submit a copy of the transcript from this
25 morning's conference with my recommendation to the

1 Commission as to what they need to do with this.
2 Obviously if I determine that there are questions of fact
3 that need an evidentiary hearing or questions of law that
4 require a broader decision, you know, I'll let you all
5 know. O.K. I'll give full consideration. I want to
6 take a look at the cases, Mr. Smith, that you have cited
7 and give everything the proper consideration.

8 O.K. So with that, let's go off the
9 record now, and everyone stay on the line.

10 (Off the record at 9:45 a.m.)

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C E R T I F I C A T E

I, Marie T. Schroeder, CSR-2183, do hereby certify that I reported in stenotype, via Zoom, the proceedings had in the within-entitled matter, that being Case No. 21-C-0630-RC, before David M. Peltz, Administrative Law Judge with MOAHR, for the Michigan Employment Relations Commission, Detroit, Michigan, on Thursday, June 24, 2021; and do further certify that the foregoing transcript, consisting of 32 pages, is a true and correct transcript of my stenotype notes.

Marie T. Schroeder, CSR-2183

Dated: June 25, 2021