STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of WAYNE COUNTY.

UNPUBLISHED
April 11, 1997

WAYNE COUNTY,

Respondent/Appellee,

and

LOCAL 1659, COUNCIL 25, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL WORKERS, AFL-CIO,

Petitioner/Appellee/Cross-Appellee,

and

MICHIGAN AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL WORKERS COUNCIL 25, AND ITS LOCALS 25 AND 409, AFL-CIO,

Intervenors-Respondents/
Appellees/Cross-Appellants,

and

MICHIGAN AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL WORKERS COUNCIL 25, LOCAL 101, AFL-CIO,

Intervenor-Respondent/
Appellant.

No. 190660
MERC No. UC94 D-20

Before: Gribbs, P.J., and Holbrook, Jr. and J. L. Martlew,* JJ.

PER CURIAM.

Local 101, American Federation of State, County and Municipal Employees, AFL-CIO ("Local 101"), appeals as of right from an Order on Motion for Reconsideration by the Michigan Employment Relations Commission ("MERC"). On appeal, Local 101 argues that the MERC erred in issuing an order on the petition for unit clarification without conducting an evidentiary hearing and in naming Local 1659, AFSCME, AFL-CIO ("Local 1659") as the collective bargaining agency for nonsupervisory employees of Wayne County, the successor-employer of the former Wayne County Road Commission. On cross-appeal, Local 25, AFSCME, AFL-CIO ("Local 25"), Local 409, AFSCME, AFL-CIO ("Local 409"), and Michigan AFSCME Council 25, AFL-CIO ("Council 25"), collectively argue that the MERC erred by accreting Local 101 into Local 1659 in its Order on Motion for Reconsideration.

The MERC's power to order a remedy is a broad, discretionary one subject to limited appellate review. This Court will not disturb a remedy imposed by the MERC unless the order is a "patent attempt to achieve ends other than those which can fairly be said to effectuate the policies" of the Public Employment Relations Act ("PERA"), MCL 423.201 *et seq*.; MSA 17.455(1) *et seq*. *Clerical-Technical Union of Michigan State Univ v Michigan State Univ Board of Trustees*, 214 Mich App 42, 46-47; 542 NW2d 303 (1995).

Local 101 first argues that the unit clarification petition was the MERC's sole basis for jurisdiction in this matter, that the MERC found the unit clarification petition to be inappropriate and consequently was without jurisdiction to make a finding regarding representation of the road commission bargaining unit. We disagree. A public employer must engage in collective bargaining. MCL 423.215; MSA 17.455(15); *City of Detroit v Detroit Fire Fighters Ass'n, Local 344, IAFFF*, 204 Mich App 541, 553; 517 NW2d 240 (1994). The PERA states that the MERC shall determine the composition of appropriate bargaining units, MCL 423.213; MSA 17.455(13), pursuant to MCL 423.9e; MSA 17.454(10.4), which requires that the MERC determine the bargaining unit which "will best secure to the employees their right of collective bargaining." *Michigan Fraternal Order of Police v Emmett Twp*, 182 Mich App 516, 518; 452 NW2d 851 (1990). Therefore, the MERC acted within its statutory authority in finding that the road commission bargaining unit failed to exist as a separate bargaining unit.

Local 101 next argues that the MERC's Decision and Order on Unit Clarification and Order on Motion for Reconsideration were contradictory and the Order on Motion for Reconsideration made assumptions of fact not presented to the MERC. Upon review of the MERC's record and the relevant orders, we disagree and therefore find no error.

Local 101, along with Cross-Appellants Michigan AFSCME Council 25, and its Locals 25 and 409, next argue that the MERC erred in issuing its Decision and Order on Unit Clarification without first conducting an evidentiary hearing. We disagree.

Section 12 of the PERA, MCL 423.212(b); MSA 17.455(12), gives the MERC discretion to determine whether to hold a hearing regarding a representation question. *Sault Ste Marie Area Public Schools v Michigan Ed Ass'n*, 213 Mich App 176, 182; 539 NW2d 565 (1995). The MERC's decision not to hold an evidentiary hearing precedent to issuing a finding on a representation issue is not an abuse of discretion in the absence of a factual dispute. *Sault Ste Marie Area Public Schools, supra* at 182. Because we conclude that the parties did not dispute the facts underlying the MERC proceeding, the MERC did not abuse its discretion in failing to order an evidentiary hearing.

Conjunctively, Local 101 further argues that MERC advised the parties that the November 10, 1994, hearing would be limited to the issues raised by pending motions to dismiss and that the presiding administrative law judge advised the parties at the hearing that the reorganization of bargaining units was not to be argued at that time; the MERC then issued a decision on the merits of the unit clarification petition. Consequently, Local 101 argues that the MERC erred in failing to provide the parties with notice of the matters addressed at the hearing pursuant to the Administrative Procedures Act ("APA"), MCL 24.201 *et seq*.; MSA 3.560(101) *et seq*. We disagree.

The APA grants parties the opportunity for a duly noticed hearing precedent to an administrative agency rendering a decision in contested cases. MCL 24.271; MSA 522.9c. A contested case, for purposes of the APA, is a proceeding in which a determination of the legal rights, duties, or privilege of a named party is required by law to be made after *an opportunity for an evidentiary hearing*. MCL 24.203(3); MSA 3.560(103)(3). However, the MERC has discretion to grant an evidentiary hearing upon a petition for unit clarification and need not necessarily grant such a hearing in all cases. *Sault Ste Marie Area Public Schools, supra* at 182. Therefore, a petition for unit clarification is not a contested case for purposes of the APA and is not subject to the APA requirement that a decision be made only after the parties have been afforded an opportunity for an evidentiary hearing.

Moreover, while the PERA at Section 12, MCL 423.212(b); MSA 17.455(12), has been interpreted as giving the MERC discretion not to hold an evidentiary hearing precedent to issuing a finding on a representation issue, *Sault Ste Marie Area Public Schools, supra* at 182, the APA mandates the opportunity for a hearing precedent to an administrative agency decision on the merits of an issue. MCL 24.271(1); MSA 522.9c. When two statutes arguably conflict, and one is specific to the subject matter while the other is only generally applicable, the specific statute prevails. *Gebhardt v O'Rourke*, 444 Mich 535, 542-543; 510 NW2d 900 (1994); *Jenkins v Carney-Nadeau Public School*, 201 Mich App 142, 145; 505 NW2d 893 (1993). The specific statute is treated as an exception to the general one, even if enacted before the general statute. *Bauer v Dep't of Treasury*, 203 Mich App 97, 100; 512 NW2d 42 (1993). Therefore, the provisions of the PERA at Section 12, MCL 423.212(b); MSA 17.455(12), which specifically grants the MERC discretion to hold a hearing on a unit clarification petition should be regarded as an exception to the general requirement that administrative agencies generally hold a hearing prior to rendering a decision in a contested matter. MCL 24.271(1); MSA 522.9c.

Local 101 further argues that the MERC's failure to provide notice of the issues to be determined at the hearing of November 10, 1994, constitutes a denial of the right to due process of law. Const 1963, art 1, § 7. We disagree.

The MERC was not required to hold a hearing, *Sault Ste Marie Area Public Schools, supra* at 182, and it is axiomatic that the right to notice of a hearing is contingent upon the right to a hearing itself. Therefore, any defect in the notice of a hearing held does not constitute a denial of due process.

Lastly, Local 101 argues that the MERC may not alter a historical bargaining unit by adding or subtracting classifications that have been included or excluded for a lengthy period of time. We disagree.

In designating bargaining units, a primary objective of the MERC is to constitute the largest unit which, under the circumstances, is most compatible with the effectuation of the purposes of the PERA and to include in a single unit all members with a common interest in the terms and conditions of employment. *Hotel Olds v State Labor Mediation Board*, 333 Mich 382, 387; 53 NW2d 302 (1952); *Muskegon County Profession Command Ass'n v County of Muskegon*, 186 Mich App 365, 373; 464 NW2d 908 (1990). The policy of the MERC is to avoid fractionalization or multiplicity of bargaining units. *Muskegon County Profession Command Ass'n, supra,* at 373. The touchstone of an appropriate bargaining unit is a common interest of all its members in the terms and conditions of employment that warrants inclusion in a single bargaining unit and the choosing of a bargaining agent. *Id.*

A review of the MERC record fails to reveal any allegation or evidence indicating that the former road commission bargaining unit and the general complement of Wayne County employees do not share common interests in the terms and conditions of employment. *Id.* In light of the MERC's duty to determine the composition of appropriate bargaining units, MCL. 423.213; MSA 17.455(13), constituting the largest unit most compatible with the effectuation of the purposes of the PERA, *Hotel Olds, supra* at 387; *Muskegon County Profession Command Ass'n, supra* at 373, the MERC properly ordered that the separate road commission bargaining unit ceased to exist.

Moreover, as stated, we will not disturb a remedy imposed by the MERC unless the order constitutes a patent attempt to achieve ends other than those which can fairly be said to effectuate the policies of the PERA. *Clerical-Technical Union of Michigan State Univ, supra* at 46-47. The merging of bargaining units sharing a community of interest *is* the policy of the PERA as effectuated by the MERC and cannot be construed to be a patent attempt to achieve ends other than to effectuate the polices of the PERA, *Id.*

Affirmed. No taxable costs pursuant to MCR 7.219, a question of public policy involved.

/s/ Roman S. Gribbs
/s/ Donald E. Holbrook, Jr.
/s/ Jeffrey L. Martlew