

Via Facsimile and U.S. Mail

Patrick J. Rorai

Rodger Webb

Frank Guido

Leonard Waske

Re: R08 E-077

Gentlemen:

As you all are aware, the ballots in the above-referenced decertification election were scheduled to be sent out from the State of Michigan mail room today. On Friday afternoon, at 3:47pm, we received an unfair labor practice charge via facsimile asserting various PERA violations and requesting that the "election in Case No. R08 E-077 be held in abeyance until the unfair labor practices have been remedied." In essence, SEIU International is requesting that this charge "block" the election from moving forward.

MERC, in general, follows the NLRB in the Board's blocking charge policy. This includes the doctrine that a representation case will be held in abeyance where unfair labor practice charges have been filed by a party to the representation case based on conduct that is serious enough to have a tendency to interfere with employee's free choice in the election. There are, however, exceptions to the Board's blocking charge policy - situations in which the NLRB will continue to process the election petition notwithstanding the pending unfair labor practice charges. Those exceptions include when an election has been scheduled and the charges are filed too close to the election to permit a thorough investigation. In such case, the Board may proceed to hold the election and impound the ballots until the charges are resolved.

It is this course of action that we believe is the most appropriate course to follow in this case. First, we note that some of the alleged misconduct occurred on September 24; yet SEIU International waited more than one week (one business day before the ballots were scheduled to be mailed) to file a Charge. Moreover, the Charge was filed late in the day on a Friday afternoon. Second, even assuming that SEIU Local 502 was coerced into bargaining with the Employer, they could have easily contacted MERC officials at the time to advise of this allegedly untenable position in which they had been placed. Thirdly, in spite of filing this Charge with MERC late in the day and on the business day before the election ballots were to be mailed, none of the other parties were served with the Charge and had no opportunity to respond to it. Finally, we have contacted both the POAM as well as the Wayne County Deputies Association, and they both agree that the election should proceed as scheduled.

For these reasons, we will proceed with the election, and the ballots will be mailed out this afternoon. When the ballots are returned to our office, they may be impounded and the count may be held in abeyance. In the meantime, we have requested a response from the other parties as to the allegations in the Charge and will review those responses once received. This afternoon, we further received a second Unfair Labor Practice Charge from the SEIU International, which will be consolidated with the Charge filed on Friday and assigned to an ALJ in SOAHR for a prompt hearing. That Charge, too, was not served on all of the parties to this case, and we request that prompt service be made by SEIU International so that a response to the allegations may be filed.

Thank you for your consideration of this matter. Should you have questions, do not hesitate to contact me at (313) 456-3519.