

STATE OF MICHIGAN
COURT OF APPEALS

STAGE MANAGER GROUP,

Petitioner-Appellant,

v

MICHIGAN EMPLOYMENT RELATIONS
COMMISSION, IATSE LOCAL 274, and
MICHIGAN STATE UNIVERSITY,

Respondents-Appellees.

UNPUBLISHED

July 2, 2002

No. 229608

MERC

LC No. 00-000038

Before: Fitzgerald, P.J., and Holbrook, Jr., and Doctoroff, JJ.

PER CURIAM.

Petitioner appeals as of right the decision of respondent Michigan Employment Relations Commission (MERC) affirming the dismissal of its petition for a representation election. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Petitioner, a group of six full-time stage managers employed by respondent Michigan State University (MSU) and represented by respondent International Alliance of Theatrical Stage Employees (IATSE) Local 274, filed a petition for election. The petition sought to have the bargaining unit redefined to include only the six full-time stage managers and to exclude the 250 part-time on-call employees. The administrative law judge (ALJ) dismissed the petition without a hearing, concluding that the issue raised in the petition had been addressed in a previous case involving MSU and IATSE Local 274¹ in which it was concluded that the stage managers held non-supervisory positions and were properly included in the bargaining unit with the part-time on-call employees. MERC affirmed the dismissal.

MERC is not required to hold an evidentiary hearing in every case regarding a representation question. The decision to hold a hearing is within the discretion of MERC. *Sault Ste Marie Area Public Schools v Michigan Education Ass'n*, 213 Mich App 176, 182; 539 NW2d 565 (1995). MERC's factual findings are conclusive if they are supported by competent, material, and substantial evidence on the whole record. A legal ruling of MERC will be set aside if it violates the constitution or a statute, or is affected by a substantial and material error of law.

¹ *In re Michigan State University and IATSE Local 274*, MERC Case No. C98 J-211.

Gogebic Community College Michigan Educational Support Personnel Ass'n v Gogebic Community College, 246 Mich App 342, 348-349; 632 NW2d 517 (2001).

Petitioner argues that MERC abused its discretion by refusing to grant a hearing on its petition for election. Petitioner contends that MERC's decision to deny it a hearing on its petition precluded it from presenting evidence that would have established that its members, the six full-time stage managers, did not have a community of interest with the part-time employees. We disagree and affirm. In its appeal to MERC, petitioner indicated that the dispute concerned an attempt to decertify IATSE Local 274. In its decision, MERC found that petitioner did not show the requisite thirty percent interest among the current membership to decertify IATSE Local 274. This finding, which petitioner does not contest, is a sufficient basis on which to affirm MERC's decision. 1979 AC, R 423.443(1). In addition, MERC found that even if petitioner had demonstrated the requisite level of interest for decertification, petitioner failed to show the necessary extreme divergence of community of interest needed to disturb a well-established bargaining unit. Contrary to petitioner's assertion, MERC did not err by relying on the decision in the former case as support for this conclusion. In the former case, the ALJ found that the full-time stage managers and the part-time employees had a community of interest based on common endeavors, similar required experience, and similar skills. Petitioner has not shown that this finding was not supported by competent, material, and substantial evidence on the whole record. *Gogebic Community College, supra*. MERC's decision to affirm the dismissal of petitioner's petition did not constitute an abuse of discretion under the circumstances. *Sault Ste Marie Area Public Schools, supra*.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Donald E. Holbrook, Jr.
/s/ Martin M. Doctoroff