STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CHARTER TOWNSHIP OF LANSING
Public Employer

-and- **Case No. R98 D-53**

TEAMSTERS LOCAL 580 (IBT),
Labor Organization - Petitioner.
_____/

APPEARANCES:

For the Public Employer: Thurn, Maatsch & Nordberg, P.C.
By C. George Johnson, Esq.

For the Labor Organization: Mike Parker, Business Representative

DECISION AND DIRECTION OF ELECTION

Pursuant to Section 12 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212, MSA 17.455(12), this case was heard in Lansing, Michigan, on August 10, 1998, by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission (MERC). Based on the record and post-hearing briefs filed by October 7, 1998, the Commission finds as follows:

The Petition and Issues Presented:

On February 24, 1997, Teamster Local 580 filed an RC petition for a representation election to accrete the parks and recreation and building maintenance serviceman into the current Teamster Local 214 bargaining unit. The Employer opposes the petition and contends that the parks and maintenance employee is a part-time employee and part-time employees have historically excluded from the bargaining unit pursuant to parties express agreement to exclude part-time and temporary employees.

Facts:

Teamster Local 580 (IBT) and the Charter Township of Lansing are parties to a collective bargaining agreement covering the period January 1, 1997 to December 31, 1999. The recognition provision describes the bargaining unit as follows:

> Section 1. The Employer recognizes and acknowledges that the Union is the exclusive representative in collective bargaining with the Employer of those classifications of employees covered by this Agreement and listed below:
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> ***
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> Unit B
> Payroll Clerk, Police Secretary, Water Department Secretary, Water Department Service Men and all other secretaries and clerks, excluding the Secretary of the Supervisor.
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> ***
>
> The unit shall not include part-time and temporary employees.

The exclusion for part-time and temporary employees has been included in collective bargaining agreements since at least 1984. There is no definition of "part-time employees" in the collective bargaining agreement. Township Supervisor John Daher testified that the term has always been understood to mean anyone working less than 40 hours per week and no disputes have arisen regarding the meaning of full and part-time employees. In the past the Township has employed part-time building inspectors and contract employees - custodial, parks, elections, parks and maintenance - who were not members of the bargaining unit.

The parks and maintenance position was created in 1984. The incumbent, Harold Roose was hired in May 1992. His primary duties are to maintain parks and grounds around Township Hall and perform general maintenance work. He is regularly scheduled to work 35 hours per week from November 1 to May 1 and 40 hours per week from May 1 to October 30. Although Roose was regularly scheduled to work between 70-80 hours every two weeks between January 11, 1996 and August 6, 1998, the actual hours he worked varied and was dependent upon whether he was injured, on vacation, or on personal leave. He worked a total of 1,709.25 and 1,816 hours in 1996 and 1997, respectively.

For six to eight weeks during the summer months, depending upon the availability of funds, the Michigan Youth Corps (MYC), or its successor, pay the salary for a high school student to assist in maintaining the Township's parks for four to eight hours per day . During the school year, the Township pays a high school student to work in parks maintenance two hours per week. Until September, 1997, the student who was paid by the MYC during the summer months had not been rehired by the Township during the school year.

Conclusions of Law:

The Employer contends that the parks and maintenance position is a part-time position and should be excluded from the bargaining unit because, historically, there has been no dispute regarding this position. It concedes that if Roose was a regularly scheduled full-time employee working forty (40) or more hours each week of the work year, he would be a full-time employee eligible for inclusion in the bargaining unit. The Employer claims that this matter is essentially a contract dispute

which should be resolved through the grievance procedure set forth in the contract.

We find no merit to the Employer's claims. We have consistently found that substitute, on-call employees and regularly scheduled, part-time employees have a substantial and continuing interest in their employment such that they should be included in a unit of regular, full-time employees. See *Chelsa School District,* 1994 MERC Lab Op 268, 274, and cases cited therein. In *Holland Public Schools (Food Service Program),* 1989 MERC Lab Op 584, 588, we cited with approval the following definition of regular part-time employees:

> Regular part-time employees have been defined as employees who "perform work within the unit on a regular basis for a sufficient period of time during each week or other appropriate calendar period to demonstrate that they have a substantial and continuing interest in the wages, hours and working conditions of the full-time employees in the unit." *Farmers Insurance Group,* 143 NLRB 240, 53 LRRM 1291 (1963).

There is no fixed number of hours which an employee must work in order to meet this test, although an employee who works a very small number of hours may, as a result, lack a substantial interest in his employment. *Holland, supra*.

Generally, however, our overriding policy is to include regular part-time employees in bargaining units of full time employees. This policy avoids fragmenting bargaining units and effectuates PERA's policy of allowing public employees to be represented for purposes of collective bargaining. In this case, the parks and maintenance employee is regularly scheduled to work thirty-five (35) or forty (40) hours per week throughout the calendar year. Because the employee's schedule so closely approximates that of other full-time employees in the bargain unit we conclude that the position should be included in the unit. As a regular part-time employee, the parks and maintenance employee has a substantial and continuing interest in the wages, hours and working conditions of full-time unit employees sufficient to have a community of interest with other employees in the unit.

Citing *Genesee County*, 1978 MERC Lab Op 552, the Employer claims that clarification is not appropriate to add positions which have been historically excluded by specific agreement or past practice. The Employer in this case, like the Employer in *Chelsa, supra,* misreads out policy set forth in *Genesee* which only bars accretion by *unit clarification procedures.* Here, as in *Chelsa,* the instant petition is for an election.

The Employer also contends that this case is distinguishable from the classic accretion election process because the petition does not also seek to add the part-time high school student to its unit. This assertion has not merit. We do not include in bargaining units employees who are temporary, casual, irregular part-time, on call, or substitute due to the lack of regularity in their employment. We find that the high school students employed two hours per day during the school year are temporary employees with no long-term expectation of continued employment. Only once has the Employer hired the same high school student during the regular school year who had been employed by the MYC during the summer.

All other arguments raised by the Employer have been carefully considered and do not warrant a change in the result.

Unit and Election Order

Based upon the above findings and discussion, we conclude that a question of representation exists under Section 12 of PERA. The Employer may accrete the parks and maintenance employee into Unit B of Teamsters Local 214's bargaining unit. If the Employer does not voluntarily accrete the position into the unit a mail ballot election will be ordered in the unit described above. If the employee votes to be represented by Petitioner, he will be added to Unit B of Petitioner's bargaining unit and the notice of election will so indicate.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Maris Stella Swift, Commission Chairperson

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Harry W. Bishop, Commission Member

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C. Barry Ott, Commission Member

Date:_____