

**STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION**

In the Matter of:

CHARLOTTE PUBLIC SCHOOLS,
Public Employer

Case No. UC98 D-18

- and -

INTERNATIONAL UNION OF OPERATING
ENGINEERS (IUOE), LOCAL 547,
Petitioner-Labor Organization

APPEARANCES:

Martha J. Marcero, Esq., Thrun, Maatsch & Nordberg, P.C., for the Employer

Jeffrey Keeton, Business Representative, IUOE, for the Petitioner

DECISION AND ORDER
ON
PETITION FOR UNIT CLARIFICATION

Pursuant to the provisions of Section 12 of the Public Employment Relations Act (PERA), 1947 PA 336, as amended by 1965 PA 379 and 1973 PA 25, MCL 423.12, MSA 17.455(12), this matter came on for hearing at Lansing, Michigan, on August 12, 1998, before Nora Lynch, Administrative Law Judge for the Michigan Employment Relations Commission. Based upon the entire record, including briefs filed by the parties on or before September 18, 1998, the Commission finds as follows:

The Petition:

In the unit clarification petition filed on April 8, 1998, IUOE, Local 547, seeks to clarify the status of the receptionist employed at the central office, asserting that this position should be included in the secretarial bargaining unit which it currently represents. The Employer opposes the inclusion of this position on the basis that central office employees have historically been excluded from the building secretaries bargaining unit.

Facts:

The International Union of Operation Engineers, Local 547, was certified as the representative of the following bargaining unit on October 7, 1996, following a consent election in Case No. R96 H-134:

All part-time (working five (5) or more hours per week), full-time and full-year secretaries and clerical employees; but excluding secretaries, bookkeepers and clerks who work in central office, substitute employees, temporary employees, supervisors and all other employees.

The consent election agreement and notices of election posted prior to that election contained the following language:

In the event the union is certified to represent the bargaining unit, the inclusion or exclusion of the position of part-time receptionist in the Central Office will be determined by the Michigan Employment Relations Commission upon a unit clarification petition filed by either party.

There are presently eight bargaining units at the District. In addition to the secretarial unit represented by IUOE Local 547, these include units of teachers; paraprofessionals; transportation employees; custodial employees; food service employees; and central office secretaries. The Central Office Secretaries Association has been in existence since at least 1977. This Association and the Employer entered into a collective bargaining agreement on December 9, 1996, covering the period July 1, 1996 to June 30, 1999. The recognition clause of that agreement indicates that the unit includes:

secretaries and bookkeepers working for the Board of Education Central Office and working for any future administrators, with the exception of the executive secretary to the superintendent, co-op students, accountant, and any part-time positions, substitutes, temporary employees, subcontracted personnel and all other employees.

The central office receptionist is not included in this unit.

The IUOE's initial bargaining proposal, dated January 10, 1997, included language which would add receptionists to the recognized bargaining unit. The Employer rejected this proposal, indicating its desire to exclude all central office employees from the unit. The parties eventually reached agreement on a collective bargaining contract covering the period July 1, 1996, to June 30, 2000, which was executed on February 9, 1998. The recognition clause of that agreement excludes secretaries, bookkeepers, and clerks who work in the central office.

The central office administrative staff consists of four administrators, including the superintendent, associate superintendent for operations, associate superintendent for instruction, and associate superintendent for business. There is also an accountant, the administrative assistant for personnel, the building and grounds supervisor, and a technology coordinator position. Secretarial positions include the secretary to the superintendent, secretary to the associate superintendent for business, operations office secretary and Board of Education secretary.

A formal job description prepared by the Employer in January of 1998 changed the name of the position in dispute, formerly designated receptionist, to central office clerk (hereinafter referred to as clerk/receptionist). The IUOE was unaware of this document prior to the hearing. The job description indicates that the position is a four and one half hour per day position and performs a variety of administrative support and clerical functions for the administrative offices. These include performing general clerical duties, answering the telephone, word processing and receptionist duties, posting and sorting mail, assisting with special projects throughout central office, assisting with mailings and distributions, including the processing of payroll checks, working with personnel files, and related duties. The clerk/receptionist sits behind a counter at the front of the central office and greets visitors to the building. The clerk/receptionist may fill in for other central office secretaries who are absent, and similarly they may substitute for her. In the past, individuals have served as receptionist while also substituting as a secretary in other buildings. Building secretaries have also filled in for the clerk/receptionist on a requested basis, although this is not the general practice. The clerk/receptionist has contact with the building secretaries primarily by telephone.

The IUOE bargaining unit includes the high school receptionist. This is a full time position which involves meeting and greeting the public, parents, students, and business representatives coming to the high school. This individual also answers the phone and participates in mailings and special projects. The bargaining unit also includes the position of transportation secretary who works at the bus garage, located a distance away from other school buildings. The transportation secretary has contact with other secretaries by telephone.

Discussion and Conclusions:

Petitioner asserts that the position in dispute should be included in the bargaining unit because the clerk/receptionist performs duties similar to other secretaries in the unit and is not a confidential position. The Employer maintains that the current collective bargaining agreement specifically excludes central office personnel, and past practice and history have separated educational secretaries from central office personnel. The Employer also argues that since the position has not changed, unit

clarification is inappropriate.

The Employer's argument that the Union agreed to exclude the clerk/receptionist position in the current collective bargaining agreement is not supported by the record. At the time of the election in this unit, the parties agreed that the bargaining unit status of the position of part-time receptionist in the central office would be determined by the Commission upon the filing of a petition by either party. Negotiations failed to resolve the unit placement of the clerk/receptionist and the Union, having reserved the issue by the language in the consent agreement, filed the instant unit clarification petition. While it is true that a contract was agreed to in February of 1998, the exclusionary language was the same as that in the consent agreement. Although the Employer changed the name of the receptionist position to central office clerk in January of 1998, there is no indication in the record that this title change was communicated to the Union. Thus, we conclude that the existing contract does not resolve the issue and the Union did not acquiesce in the exclusion of this position. *Jackson Public Schools*, 1997 MERC Lab Op 290, 299.

The Employer also asserts that under *Genesee County*, 1978 MERC Lab Op 552, and subsequent cases, unit clarification is not the proper vehicle for resolution of this issue since the position has existed for several years and has not undergone substantial change. While under ordinary circumstances we would concur, in this case the parties in the consent election agreement agreed to resolve the unit placement of the position in this manner. The Employer cannot escape its earlier agreement simply by changing the name of the position, especially here where it asserts that the job itself did not change. Further, we have allowed the use of a unit clarification petition to determine the unit placement of existing positions in unusual circumstances. See *Muskegon County (Sheriff)*, 1986 MERC Lab Op 35; *City of Pontiac*, 1984 MERC Lab Op 1096; *Lakeview Public Schools*, 1982 MERC Lab Op 1654, 1657. In addition, we note that it is Commission policy, whenever possible, to avoid leaving positions unrepresented, especially isolated ones. *City of Muskegon*, 1996 MERC Lab Op 64, 70. Accordingly, we find the unit clarification petition to be appropriate under the circumstances of this case.

The clerk/receptionist performs secretarial and clerical duties which are similar to those performed by members of the bargaining unit represented by IUOE Local 547. The high school receptionist is included in the unit, as is the transportation secretary who, like the clerk/receptionist, works at a separate location. Although the Employer raises job location as a factor to be considered, we have never found a separate work location to constitute a barrier to finding a community of interest. *Kalamazoo County Probate Court*, 1994 MERC Lab Op 980, 984. The Employer also maintains that this position is more appropriately grouped with the central office employees. The clerk/receptionist, however, has never been a part of that unit, and the contract with the central office employees specifically excludes part-time employees. Based on the record, we find that the clerk/receptionist in the central office shares a community of interest with the secretarial employees in Petitioner's bargaining unit and, therefore, should be accreted to that unit. *Charlotte Public Schools*, 1996 MERC Lab Op 193, 205.

ORDER

It is hereby ordered that the collective bargaining unit represented by the International Union of Operating Engineers, Local 547, composed of all part-time, full-time and full-year secretaries and clerical employees of Charlotte Public Schools, be clarified to include the position of central office clerk (formerly receptionist).

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chair

Harry Bishop, Commissioner

C. Barry Ott, Commissioner

Dated: _____