

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

In the Matter of:

GROSSE POINTE PUBLIC LIBRARY,
Respondent-Public Employer in Case No. C98 A-6,

-and-

GROSSE POINTE PUBLIC LIBRARIANS
ASSOCIATION, MEA/NEA,
Charging Party-Labor Organization in Case No. C98 A-6,
Petitioner in Case No. UC98 A-2.

APPEARANCES:

Steven H. Schwartz, Esq., for the Employer

Amberg, McNenly, Firestone, and Lee, P.C., by Joseph H. Firestone, Esq., and Teresa A. Killeen, Esq., for the Labor Organization

DECISION AND ORDER

On December 22, 1998, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order in the above captioned cases, finding in Case No. UC98 A-2 that the position of computer/network specialist had not been historically excluded from the Union's bargaining unit, and that the addition of an education/experience requirement was a significant change giving rise to a real doubt as to whether the position should continue to be excluded from the bargaining unit.¹ The ALJ also concluded that the computer/network specialist shared a community of interest with the bargaining unit based on general similarities in education and skills, and due to the fact that the computer/network specialist's work is closely integrated with that of the librarians. Based upon these findings, the ALJ recommended that a unit clarification order be issued to include the position of computer and network specialist. Since the alleged refusal to bargain was based on a unit placement issue which has been resolved, the ALJ recommended the dismissal of the charge in Case No. C98 A-6.

On January 14, 1999, Respondent filed exceptions to the Decision and Recommended Order

¹ The Decision and Recommended Order erroneously identifies this case as MERC Case No. UC98 A-8.

of the ALJ, and a motion to reopen the record to consider new evidence relating to changes in the educational and experience requirements for the computer/network specialist position. On January 27, 1999, Charging Party filed “provisional” cross exceptions and a brief in response to Respondent’s exceptions, together with a response to Respondent’s motion to reopen the record. Respondent filed a response to Charging Party’s cross exceptions on February 8, 1999.

Discussion and Conclusions of Law:

As set forth more fully in the Decision and Recommended Order, this case involves the Employer’s decision to exclude the position of computer and network specialist from a bargaining unit consisting of nonsupervisory librarians employed by the Grosse Pointe Public Library. On exception, Respondent contends that the unit clarification petition filed by the Union is barred by the collective bargaining agreement in effect between the parties. It is well-established that unit clarification is not appropriate for disturbing an existing agreement between the parties regarding unit placement, even if the agreement is based upon a mistake or the position has been historically excluded from the unit by acquiescence and not express consent. *Jackson Public Schools*, 1997 MERC Lab Op 290, 298-299; *Centerville Public Schools*, 1993 MERC Lab Op 799, 801. This is true even if the excluded position shares a community of interest with an existing unit. *Charter Township of Blackman*, 1988 MERC Lab Op 419, 422-423. The excluded position becomes part of the residual unit and can be accreted to the bargaining unit only upon the filing of a proper petition for representation election. *Jackson*, *supra* at 299. See also *City of St. Clair Shores*, 1990 MERC Lab Op 99, 103. The Commission adopted this policy, in part, to foster labor relations stability during the bargained for contract term. *Centerville*, *supra*. However, we have held that the unit clarification procedure is appropriate to resolve ambiguities in unit placement of individuals, or to clarify new or substantially changed positions. *Id.*; *Genesee County*, 1978 MERC Lab Op 552, 556.

Respondent argues that the ALJ erred in finding that the computer and network specialist position has not been historically excluded from the unit. According to the Employer, the duties of the position have not changed since it was first posted in December of 1995, except for the addition of the “preference.” Respondent contends that since the Union did not seek to include the computer and network specialist in the bargaining unit in 1995, it acquiesced to the exclusion of the position. We disagree. Article I of the applicable contract recognizes the Union as the bargaining representative for “all professional librarians, excluding the Director, the Supervisor of Reference and Public Service, and substitutes.” Although Kenneth Ritchie, the computer and network specialist hired in December of 1995, assumed many of the duties and responsibilities assigned to the coordinator of automated services, a bargaining unit position previously held by a professional librarian, the Union did not seek to include Ritchie in the bargaining unit because he had no degree or library experience. When the Employer changed the qualifications and hired the current computer and network specialist, the Union promptly demanded that the position be included in its unit. We do not view the Union’s prior decision as any acquiescence to the exclusion of the current position for which an MLS degree is preferred. A union has not acquiesced in the exclusion of positions where the union has continued to demand their inclusion, and the parties have had a continuing controversy over the status of these positions. *Jackson*, *supra*; *City of Detroit*, 1997 MERC Lab Op

561, 571-572.

We also agree with the ALJ's determination that the computer and network specialist position underwent a recent, substantial change which gave rise to a real doubt as to whether the position should continue to be excluded. Contrary to Respondent's assertion, the 1997 job posting did not merely state a preference for candidates with a degree or experience. Rather, the posting explicitly required that candidates possess either an MLS degree or library automation training and experience in order to be considered for the position. In contrast, the 1995 posting required that applicants possess only technical and communication skills and gave no indication that library knowledge and experience would be necessary. Although this Commission has often focused on the duties and responsibilities of the disputed position in determining whether a unit clarification petition is appropriate, the Employer did not cite, and we have not found, any case standing for the proposition that a change in qualifications alone is never sufficient to raise a question as to the propriety of the exclusion. The cases relied upon by Respondent in support of such a proposition are distinguishable on their facts.

For example, in *Henry Ford Community College*, 1996 MERC Lab Op 374, 379, a case cited by Respondent in its brief, we found that the employer had not created a completely new position merely by changing the job title and requiring "more technical education, experience, and skills." However, that case involved a petition to remove a position from its established bargaining unit, and our decision to dismiss the petition was based on the fact that the union had failed to demonstrate that a community of interest no longer existed between that position and the unit. The instant case involves a previously unrepresented position, the fundamental nature of which the Employer altered by requiring a library degree or experience, where previously only computer and communication skills were desired. Similarly, we believe that Respondent's reliance on *Lansing Public Schools*, 1994 MERC Lab Op 128, 135, is misplaced. In *Lansing*, we held that certification requirements imposed by state law or the Department of Education did not change the fundamental nature and essential duties and responsibilities of the disputed position. In so holding, we noted that "our analysis of the substantially changed position must focus on the position itself, not the persons occupying that position." *Id.* at 136. In that case, however, state law did not insist on certified teachers, and applicants for the position were not required to possess the certification requirements. *Id.* at 135. As noted, the 1997 posting for the computer and network specialist position explicitly required either a degree or library experience. We believe that experience/educational qualifications are an inherent part of the position, and that any modification of these requirements which alters the fundamental nature of the position constitutes a substantial change sufficient to defeat the contract bar.

In any event, we find that the change in qualifications which occurred here was, in fact, reflected in the duties and responsibilities of the position. The evidence establishes that the new computer and network specialist was immediately assigned to the reference desk and required to perform bargaining unit work. Although Respondent presented testimony that this assignment was temporary and for training purposes only, we do not find this explanation convincing. The evidence establishes that the new computer and network specialist was removed from the reference desk assignment only after the Union demanded that the position be included in the unit, and that her

predecessor, who had no degree or prior library experience, was never given such an assignment. It should also be noted that the coordinator of automated services, predecessor to the computer and network specialist position and a member of the bargaining unit represented by Charging Party, worked 12-15 hours per week at the library's reference desk. Accordingly, we conclude that the addition of the experience/education requirement reflected a significant change in duties and responsibilities which creates a real doubt as to whether the position should continue to be excluded from the unit. For this reason, the Employer's reliance on the contract bar doctrine is without merit.

Finally, Respondent argues that the ALJ erred in recommending clarification of the bargaining unit to include the computer and network specialist because the decision to accrete the position of computer and network specialist into the bargaining unit was based solely on the fact that the Employer added the education/experience "preference." We disagree. In concluding that the computer and network specialist shares a community of interest with the unit represented by Charging Party, the ALJ also relied on the fact that computers are now integral to basic library functions such as cataloging, locating books for patrons, keeping track of circulation, and helping patrons find information. In addition, the ALJ determined that the computer and network specialist works closely with the librarians and uses knowledge gained from her formal training in the profession, as well as her technical skills, to assist librarians in performing these functions. The ALJ also correctly recognized that there is no other unit or group of unorganized employees with which the computer and network specialist shares a community of interest, and that to leave such a position unrepresented would be contrary to PERA's intent to allow public employees to obtain representation for collective bargaining purposes. See e.g. *Charter Twp of Lansing*, 1998 MERC Lab Op 655, 658; *City of Zealand*, 1995 MERC Lab Op 655, 655. The record overwhelmingly supports the ALJ's findings and, based on this evidence, we agree that Charging Party's bargaining unit should be clarified to include the disputed position.

We have reviewed Respondent's motion to reopen the record and find it to be without merit. Since we have determined that the ALJ was correct in determining that the computer and network specialist shares a community of interest with Charging Party's unit, and because this finding was based, in part, on the fact that the computer and network specialist's work is closely integrated with that of the librarians, the Employer's decision to delete the education/experience requirement is irrelevant.

In view of our findings stated above, it is not necessary for us to address the issue of Charging Party's provisional exceptions or the timeliness issue raised by Respondent.

For the reasons set forth above, we incorporate and adopt the Decision and Recommended Order of the ALJ.

ORDER

Pursuant to Section 13 of PERA, we hereby adopt the recommended order of the ALJ as our order in this case.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Dated: _____