

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

In the Matter of:

MICHIGAN STATE UNIVERSITY,
Respondent-Public Employer,

Case No. C98 J-211

-and-

INTERNATIONAL ALLIANCE OF THE THEATRICAL
STATE EMPLOYEES AND MOVING PICTURES
MACHINE OPERATORS, LOCAL 274,
Charging Party-Labor Organization.

APPEARANCES:

Samuel A. Baker, Director of Human Resources, for Respondent

Finkel, Whitefield, Selik, Raymond, Ferrara & Feldman, P.C., by Jeff Wilson, Esq., for Charging Party

DECISION AND ORDER

On November 23, 1999, Administrative Law Judge Nora Lynch issued her Decision and Recommended Order in the above-entitled matter, finding that Respondent has engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist and take certain affirmative action as set forth in the attached Decision and Recommended Order of the Administrative Law Judge.

The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of Act 336 of the Public Acts of 1947, as amended.

The parties have had an opportunity to review this Decision and Recommended Order for a period of at least 20 days from the date the decision was served on the parties, and no exceptions have been filed by any of the parties to this proceeding.

ORDER

Pursuant to Section 16 of the Act, the Commission adopts as its order the order recommended by the Administrative Law Judge.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Date: _____

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

MICHIGAN STATE UNIVERSITY
Respondent-Public Employer

-and-

Case No. C98 J-211

INTERNATIONAL ALLIANCE OF THE THEATRICAL
STAGE EMPLOYEES AND MOVING PICTURES
MACHINE OPERATORS, LOCAL 274
Charging Party-Labor Organization

APPEARANCES:

Samuel A. Baker, Director of Human Resources, for the Public Employer

Jeff Wilson, Atty., Finkel, Whitefield, Selik, Raymond, Ferrara & Feldman, P.C., for the Charging Party

DECISION AND RECOMMENDED ORDER
OF
ADMINISTRATIVE LAW JUDGE

Pursuant to the provisions of Section 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210, MSA 17.455(10), this matter came on for hearing at Lansing, Michigan, on February 10, 1999, before Nora Lynch, Administrative Law Judge for the Michigan Employment Relations Commission. The proceedings were based upon unfair labor practice charges filed by the International Alliance of the Theatrical Stage Employees and Moving Pictures Machine Operators, Local 274, on October 14, 1998, alleging that Michigan State University had violated Section 10 of PERA. Based upon the record and briefs filed on or before April 27, 1999, the undersigned makes the following findings of fact and conclusions of law, and issues the following recommended order pursuant to Section 16(b) of PERA:

The Charge:

The charge alleges that:

On or about October 7, 1998, Respondent unilaterally removed from Charging Party's bargaining unit the classification designated as "stage manager." This action was taken without reference to community of interest factors, in spite of the classification's historical inclusion in

Charging Party's bargaining unit, and under the pretext that the classification is "supervisory."

The Employer's unilateral action resulted in six employees being removed from the Charging Party's bargaining unit and transferred to another collective bargaining agent's bargaining unit.

At the opening of the hearing the Employer indicated that it had determined not to effectuate removal of the employees from the bargaining unit until the matter had been considered by the Commission.

Facts:

IATSE Local 274 represents a bargaining unit of stage managers and on-call stagehands performing work in MSU's theatre department and has had a contractual relationship with the University since the early 1970's. Stage managers are the only full-time employees in the bargaining unit. At the time of hearing Local 274 and the Employer were parties to a collective bargaining agreement which covered the period September 1, 1996 to August 31, 1999. That contract provides the following with respect to regular full-time employees:

Regular full-time employees who are satisfactory to the University, shall be employed in the same manner as other employees situated in the Administrative-Professional Association bargaining unit, except that their rate of pay shall be adjusted by a three (3) percent in the base adjustment effective September 1, 1996; a three (3) percent in the base adjustment effective September 1, 1997, a three (3) percent in the base adjustment effective September 1, 1998 to be in charge of and utilized in the operation of the mechanical systems or attendant equipment and such other stage work in designated buildings on campus which shall be assigned to them by the Directors or other designated University official(s). Such full-time employees shall be employed in the same manner and subject to the existing rules, regulations and benefits of the University relating to its employment of Administrative-Professional Association Personnel except as such benefits are improved herein. Employees classified as regular full-time and part-time will be eligible for special merit pay consideration.

In October of 1998, after an increase in Union dues was announced, the six stage managers wrote the following memo to Samuel Baker, the Director of the Office of Employee Relations:

This memo is to inform you that we, the undersigned, do not oppose or object to being separated from our present bargaining unit IATSE

Local #274, because of the inappropriateness of being in the same bargaining unit that we supervise.

We therefore request to change our Michigan State University bargaining unit to the Administrative Professional Supervisors Association at the earliest opportunity.

Baker responded by memo of October 7, 1998, addressed to Local President Dirk Spillemaekers, that the University had determined that the position of stage manager was supervisory and that effective November 1, 1998, the six employees in that classification would be placed in the bargaining unit represented by the Administrative Professional Supervisors Association. The Local subsequently filed the instant charge.

The theatre department primarily operates out of two facilities: The Wharton Center for Performing Arts, and the Breslin Center. Each facility has a technical facilities manager; Richard French is the facilities manager at the Wharton Center, Gavin Smith manages the Breslin Center. The responsibilities of the facilities manager include overseeing the entire backstage operation of the facility, preparing budgets, making recommendations for purchasing equipment, and supervising the work of the stage managers. There are currently six stage managers; four work at the Wharton Center, two at the Breslin Center. Stage managers are full-time employees although their hours may vary depending on performances or events. Part-time employees who perform work in the theatre department include on-call stagehands and student employees.

According to French, a former stage manager and currently technical facilities manager at Wharton, a stage manager is assigned the responsibility for a particular production, show, or project by the technical facilities manager. The stage manager keeps financial track of a show, including its labor and equipment costs, and oversees the work of the on-call stagehands and student employees. At the end of each production, the stage manager submits a report to the technical facilities manager which evaluates the event, listing problems or concerns. Because he has what is termed an authorized signature with the University, the technical facilities manager signs all employment forms; he has authorized stage managers to sign such documents when he is not present, such as late in the evening. Stage managers perform manual labor 15 to 20% of the time. They are hourly employees and receive overtime pay for hours worked over 40. Stage managers receive a complete benefit package, similar to administrative professional employees.

Brian Archer, a stage manager for 15 years, testified regarding his duties at Wharton. Stage managers are given a weekly schedule by French; usually it is for five days in one week, but it could be for six or seven. According to Archer, after given an assignment he will go to the Center, pull the folder for the particular event, see how many on-call stagehands are assigned, and make out a pay sheet covering the stagehands. French will normally send a call-sheet to the Union's business agent who will fill the call. If it is a local event and the stage manager knows the individual stagehands involved he will make assignments; if not, he will wait until they come in and sign them up for their various duties. The stage manager is involved in active hands-on direction of the on-calls in local shows. Archer testified that the stage manager will "call cues" for the show; for example, direct that lighting be changed when a slide projector is used, or which microphone to bring up when there are

multiple microphones on stage. The stage manager keeps track of everyone's hours, makes out a pay sheet, handles the billings, and turns in the paperwork to French and Accounting.

In contrast to local shows, there may also be a "yellow card" production. With this type of production the international alliance in New York decides how many individuals in each discipline are required to run the show. They indicate this information on yellow cards, stating how many carpenters, electricians, wardrobe people, and the like are needed. These cards are sent to the various venues where the show will be performed. A large show, such as *Beauty and the Beast*, will bring in its own foremen in charge of each different category on stage. They also travel with their own stage managers who are familiar with the show and take charge of calling cues. According to Archer, with that type of production the stage manager operates more as an accountant than stage manager, keeping track of everyone's time and similar matters.

French testified that stage managers have authority to end an on-call employee's duty and send them home. In the past, stage managers have relieved individuals of certain functions, either because of incompetence or fatigue; they have also sent stagehands home for being late. On occasion stage managers have submitted written documentation substantiating misconduct of stagehands, such as being late or improper use of the telephone, to the technical facilities manager. They may also request that a particular stagehand not be called. Stage managers may decide which on-call employee is best suited to a particular assignment, however they perform no formal evaluation of stagehands' job performance. Gavin Smith, technical facilities manager at the Breslin Center, confirmed French's testimony and indicated that the responsibilities and duties of the two stage managers at Breslin were similar to those at the Wharton Center.

Discussion and Conclusions:

Charging Party maintains that stage managers are not supervisors under any recognized definition of that term; they do not hire, fire, evaluate, discipline, or otherwise effect status changes for any MSU employees. The Employer argues that stage managers have the entire responsibility for managing assigned productions and assuring proper performance by on-call stagehands. According to the Employer, stage managers have the authority to discipline on-call stagehands when necessary, even though this authority may be exercised infrequently. The Employer also asserts that even if it is determined that the stage managers are not supervisors, they have no community of interest with the on-call employees in the unit.

In *City of Detroit*, 1996 MERC Lab Op 282, 286, the Commission indicated that an employee who is in charge of a group of employees is generally not found to be a supervisor unless the employee has an effective role in discipline or recommending discipline. Responsibilities such as assigning and directing the work of subordinate employees, maintaining timecards, and granting time off, are insufficient to establish supervisory status. *Berrien County Sheriff*, 1999 MERC Lab Op _ _ (issued 5/17/99); *Saginaw Valley State College*, 1988 MERC Lab Op 533. Similarly, an individual in charge of a particular project or function, who determines how the work will be completed, which employees will do it, and ensures that it is completed properly, is not a supervisor unless the employee has an effective role in discipline and personnel matters. *Michigan Community Services, Inc.*, 1994

MERC Lab Op 1055, 1060; *Village of Port Austin*, 1991 MERC Lab Op 346.

In the instant case, stage managers assign job duties and direct the work of on-call stagehands on a routine basis. Although they have responsibility to oversee the entire stage production, their actual authority in personnel matters is limited. They do not choose which employees will work on a particular project; this is determined by the Union business agent upon the request of the technical services manager. As far as the record reveals, they have not disciplined or formally evaluated stagehands. While they have on occasion written up stagehands for minor infractions, no evidence was presented of any consequent disciplinary action. Stage managers work side by side with the stagehands; they call cues for a show or project and perform manual labor when necessary. In summary, I find that stage managers are experienced craft employees who function as team leaders, but do not have sufficient input into personnel matters to qualify as supervisors within the Commission definition. *Oakland County Employees Union*, 1986 MERC Lab OP 455, 458-9; *City of Lansing*, 1985 MERC Lab Op 93, 102; *Saginaw County Probate Court Juvenile Division*, 1983 MERC Lab Op 954, 959.

The Employer maintains in its post-hearing brief that even if it is determined that the stage managers are not supervisors, they have no community of interest with the on-call employees; the collective bargaining agreement expressly provides that stage managers are to be treated in the same manner as administrative employees. The record establishes that stage managers and stagehands are engaged in a common endeavor requiring similar experience and skills and thus clearly share a community of interest. Further, Local 274 and the Employer have a long bargaining history, indicating a workable labor relations environment. The Commission has indicated its reluctance to disturb such a unit, absent a showing of extreme divergence of community of interest which is not present here. *Saginaw County Probate Court, supra*, at 959; *Michigan State University*, 1984 MERC Lab Op 807, 811.

Based on the above discussion, the undersigned finds that the position of stage manager is a nonsupervisory position and is appropriately included in the bargaining unit represented by Charging Party IATSE Local 274. Respondent therefore has an obligation to bargain with the Charging Party over wages, hours, and working conditions of employees in this classification. Since this proceeding is essentially one which seeks to determine a unit question, and considering the nature of the violation, neither a cease and desist order nor a notice to employees is recommended. *Macomb County Road Commission*, 1978 MERC Lab Op 848, 853.

RECOMMENDED ORDER

It is recommended that the Commission issue an order that Respondent Michigan State University, its officers, agents, and representatives, recognize IATSE Local 274 as the exclusive representative of the classification of stage manager and bargain with Charging Party regarding this classification.

MICHIGAN EMPLOYMENT RELATION COMMISSION

Nora Lynch, Administrative Law Judge

DATED: _____