

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

In the Matter of:

JOHANNESBURG-LEWISTON AREA SCHOOLS,
Public Employer,

Case No. UC98 J-42

-and-

NORTHERN MICHIGAN EDUCATION ASSOCIATION,
MICHIGAN EDUCATION ASSOCIATION/NATIONAL
EDUCATION ASSOCIATION,
Petitioner-Labor Organization.

APPEARANCES:

Thrun, Maatsch and Nordberg, P.C., by G. Michael White, Esq., for the Public Employer

White, Przybylowicz, Schneider & Baird, P.C., by Douglas V. Wilcox, Esq., for the Labor Organization

DECISION AND ORDER ON UNIT CLARIFICATION

Pursuant to the provisions of Sections 12 and 13 of the Public Employment Relations Act (hereafter "PERA"), 1965 PA 379, as amended, MCL 423.212 and 423.213; MSA 17.455(12) and (13), and a notice of hearing dated January 22, 1999, this information-type representation case was heard at Lansing, Michigan on June 9, 1999, before James P. Kurtz, Administrative Law Judge (hereafter "ALJ"), acting as Hearing Officer for the Michigan Employment Relations Commission. Based on the record, including the transcript of the hearing, exhibits, and briefs filed by the parties on August 30, 1999, this Commission, in the exercise of its administrative expertise, finds as follows:

Petition and Issue:

This petition for unit clarification was filed on October 30, 1998, by the Petitioner-Union, the Northern Michigan Education Association, Michigan Education Association/National Education Association, seeking to add the newly-created position of media services director/curriculum coordinator to the classroom teaching unit it represents at the Johannesburg-Lewiston Area Schools. The bargaining unit consists of 52 certified teaching employees, including a counselor; excluding the superintendent, principals, supervisory and executive personnel, substitute teachers, and all nonprofessional employees. The Employer opposed the petition on the ground that the classification

at issue is a hybrid supervisory/executive position. The Union contends that the new position does not possess sufficient authority to remove it from the bargaining unit, and that the work in question has always been performed by members of its professional teaching unit.

Background Facts:

The Employer is a small school district, located in rural Otsego and Montmorency counties, with two schools 16 miles apart, a K-8 building in Lewiston, and a K-12 building in Johannesburg. Each of the buildings has a library/media center, with the Johannesburg library split between the high school and the elementary school. Due to the small size of the District, administrative duties and functions are often shared by employees; for example, one of the three principals is also responsible for special education functions of the District. Prior to changes made at the beginning of the 1998-1999 school year, curriculum, library, and media services duties were shared by classroom teachers, usually on a part-time basis, with other District employees. The person whose position is at issue herein is Linda Arbogast. Prior to the 1996-97 school year, Arbogast was an English and history teacher. She also performed library/media services, along with curriculum duties, on a part-time basis at the Lewiston school. In the fall of 1996, Arbogast became principal at Lewiston, but she continued to perform library, media, and curriculum functions, though most of her library duties were taken over by a paraprofessional.

The position at issue in this case arises out of the Employer's perceived need for another administrative-level position in the District, due in part to recent increased State mandates relative to curriculum and achievement in public school districts throughout the State, which are coupled with substantial monetary penalties for noncompliance. See e.g. MCL 388.1619; MSA 15.1919(919) of the State School Aid Act, and the references therein to the Revised School Code. In addition, new technology advances affecting the traditional use and operation of the library/media centers, such as the existence of TV's with VCR's, and computers with CD-ROM's, in each classroom, prompted the Employer to modify its past practices and staffing of the library/media centers. The elimination of the legal requirement that the District employ a certified teacher as a librarian also played a role in the Employer's decision-making process.

The actual occasion for the changes came in June of 1998 with the retirement of the teacher who had performed full-time librarian duties for many years at the Johannesburg building. At that time, the Employer decided that the full-time librarian position would be eliminated, and that this would be an opportunity to realign the responsibilities for various school functions. The School District decided to appoint a new administrative employee on the principal level who would report directly to the superintendent. To further this end, two new job descriptions were prepared, and the new administrative-level position was posted in May of 1998 for the combined positions of director of media services/curriculum coordinator, herein referred to as the director position. Qualifications for the new position include a degree in library science, media technology or curriculum, with experience preferred in these areas. The two job descriptions were adopted by the District in June of 1998; namely, that of director of library, media, and technology services and director of curriculum and professional staff development.

The New Director Position:

Arbogast was appointed to the new director position and became responsible for the libraries/media centers at both the Johannesburg and Lewiston buildings. She transferred from her position as principal of the Lewiston school to an office at the Johannesburg building at the beginning of the 1998-1999 school year. In the new position, she makes slightly more than the highest paid classroom teacher, but slightly less than building principals. Her fringe benefits are the same as the building principals, which in turn are similar to those of the classroom teachers. She works ten more days per year than do the classroom teachers. Arbogast reports directly to the superintendent, and she and the employees assigned to her are no longer subject to the supervision and direction of the building principals. Arbogast is evaluated directly by the superintendent, and she is responsible, in turn, for supervising, disciplining, and evaluating those employees under her jurisdiction. As director, she attends all administrative and board of education meetings. She also provides release time for teachers during their planning periods by working with elementary students every day for fifteen to thirty minutes in the media center.

The director of library, media, and technology services is responsible for developing, implementing, and evaluating the goals, policies, and programs for these services on behalf of the entire District. At the time of the hearing, a paraprofessional worked in the Johannesburg media center, and a part-time paraprofessional, a media technician, and a classroom teacher in the bargaining unit staffed the Lewiston media center. The teaching employee works about two hours per day in the media center, and about three hours per day as a classroom teacher. The director has evaluated this teaching employee on two occasions relative to her work in the media center: once in December of 1998 and again in April of 1999. The principal continues to be responsible for evaluating her classroom teaching. The job description for the director position also includes such duties as assuming fiscal and administrative responsibility for all media services; assisting in selecting and placing media and technology personnel, either bargaining unit teachers or aides, and recommending to the superintendent which candidates should be hired; and assisting in procuring media services funding from federal, state, and local sources. The director submits a media center budget and requisitions to the superintendent for approval, and sets the media centers' hours. In the technology area, the director makes recommendations and enforces policies, such as the use of the Internet, for staff and students, utilizing the technology committee which she heads. The committee is composed of administrators, media center personnel, and classroom teachers.

The job description for the director of curriculum and professional staff development states that her duties include providing for the development of an aligned and integrated program of instruction for the entire District; planning and administering educational in-service programs for instructional personnel and support staff; working with principals, department heads, and subject matter specialists to develop the general philosophy and goals of the total school curriculum; reviewing and evaluating district-wide testing instruments; assisting in recruiting, screening, hiring, training, and assigning of instructional personnel; and writing District grant requests for national, state and local funding and support. The new director planned and implemented one in-service training program during 1999, introducing the curriculum to the staff, and examining the district's progress and goals with respect to the curriculum. The director also makes sure that teachers' textbook

recommendations meet the curriculum needs and standards, and she works with teachers to bring uniformity to the curriculum and to examine instruction, assessment, and course offerings.

Discussion and Conclusions:

The Union argues that bargaining unit members historically performed the duties of the new director position, that the position is neither supervisory nor executive, and that the position shares a sufficient community of interest with the bargaining unit of classroom teachers to be included in the unit. The Employer contends that the current duties of the position are different in form and function, and that it is both supervisory and executive in nature, even though some of the director's former duties as a part-time librarian, teacher, and curriculum coordinator followed her into the new position.

While we agree that the director position does not reach the level of an executive exclusion, the record establishes that the new position has been given additional responsibilities as part of the Employer's reorganization of its administration, and that the director has been delegated real supervisory authority over the employees assigned to the media centers. Therefore, we find that the new position is supervisory and it cannot appropriately be included in the bargaining unit of classroom teachers. See *Wyandotte Public Schools*, 1990 MERC Lab Op 425, 428 (curriculum director found to be a supervisor, but not an executive), *aff'd Wyandotte Public Schools v Wyandotte Administrative Assn*, unpublished opinion of the Court of Appeals, issued December 2, 1992 (Docket No. 130022). See also *Garden City Bd of Ed*, 1989 MERC Lab Op 1045, 1047 (headstart program supervisor held to be supervisory in a labor relations sense); *Gibraltar School Dist*, 1988 MERC Lab Op 229, 230 (gifted/talented coordinator found to be a supervisor); *Bay City Pub Schools*, 1986 MERC Lab Op 38, 41, 48-49 (gifted/talented coordinator held supervisory, even though authority not yet exercised due to newness of program), *aff'd Bay City Education Assn, MEA/NEA v Bay City Public Schools*, unpublished Opinion of the Court of Appeals, issued December 19, 1986 (Docket No. 90685). *Accord East Detroit School Dist*, 1966 MERC Lab Op 60, 64.

The fact that the director still performs some of the duties she previously performed as a bargaining unit member does not preclude a finding that new and real authority has been delegated to the new position, which did not exist in the prior unit position. The performance of such multiple duties is typical and often cannot be avoided in a small school district, such as the Employer in this case. The duties relative to curriculum, staff development, technology, and library/media centers are not exclusive bargaining unit work of the teachers' unit, since such work has been shared with other employees and supervisors in the past. See *Muskegon County Sheriff*, 2000 MERC Lab Op ___, issued March 29, 2000 (Docket No. C99 C-56); *Flint Sch Dist*, 1999 MERC Lab Op 438. Nor does the Union's argument that the collective bargaining agreement requires that teaching personnel be evaluated by their building principal have any bearing on the Employer's delegation to the new director position of actual supervisory authority over teachers and other employees assigned to the library/media centers.

In the new position, the director is responsible for recruiting, screening, recommending hire, training, evaluating, disciplining, and assigning work to personnel under her jurisdiction, including

the part-time classroom teacher assigned to the Lewiston media center. She has equal authority with, and acts independently of, the building principals with regard to the employees assigned to her designated areas of authority. In fact, the record establishes that authority over the media centers, technology, curriculum, text book purchasing, and similar responsibilities for the District has been shifted from the principals to the new position in order to centralize and consolidate the responsibility for these functions under one administrator. The new director must exercise independent, autonomous judgment regarding the running of the media centers and the development and implementation of District-wide curriculum and technology, and must exercise supervisory authority over the employees assigned to work in these areas. We conclude, therefore, that the new director position has been delegated real, as distinguished from routine, supervisory authority and, therefore, cannot be placed within the unit represented by Petitioner in this case. *Mich Ed Ass'n v Clare-Gladwin Int Sch Dist*, 153 Mich App 792, 797-798 (1986), *aff'g* 1985 MERC Lab Op 915, 918-919.

ORDER DISMISSING PETITION

For the reasons set forth above, and in accord with the findings and conclusions herein, the Union's request to clarify the bargaining unit of classroom teachers by adding to it the newly-created combined position of director of library, media and technology services/director of curriculum and professional staff development, also known as the director of media services/curriculum coordinator, is hereby denied.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

DATED: _____