

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

In the Matter of:

GARDEN CITY PUBLIC SCHOOLS,
Public Employer,

-and-

Case No. UC99 C-10

MICHIGAN EDUCATION ASSOCIATION,
Petitioner-Labor Organization.

APPEARANCES:

George D. Mesritz, Esq., Miller, Canfield, Paddock & Stone, for the Employer

Douglas V. Wilcox, Esq., White, Przybylowicz, Schneider & Baird, P.C., for Petitioner

DECISION AND ORDER ON UNIT CLARIFICATION

Pursuant to the provisions of Section 12 of the Public Employment Relations Act (hereafter "PERA"), 1947 PA 336, as amended by 1965 PA 379 and 1973 PA 25, MCL 423.212; MSA 17.455(12), this matter came on for hearing at Detroit, Michigan on November 9, 1999, 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 January 31, 2000, the Commission finds as follows:

The Petition:

In the petition filed on March 25, 1999, Petitioner Michigan Education Association (hereafter "MEA") seeks to include the position of technology support supervisor in its bargaining unit of certificated and professional personnel of the Garden City Public Schools. The Employer opposes the inclusion of the position in this bargaining unit, alleging that the technology support supervisor is supervisory and confidential, and that it does not share a community of interest with the rest of the unit.

Facts:

The Garden City Education Association, MEA/NEA, represents a bargaining unit of certificated and professional employees of the Garden City School District. As described in the recognition clause, the unit includes teachers counselors, psychologists, social workers, coordinators,

librarians, consultants, and others. The Employer and the Association are parties to a collective bargaining agreement covering the period 1999-2003. There are three other bargaining units in the District which include the following categories of employees: (1) administrators; (2) secretaries; and (3) custodial, maintenance, transportation and food service employees. Certain positions are not included in any bargaining unit; these include the accounting supervisor and the building and grounds supervisor. There are also four employees excluded from any of the District's four bargaining units as confidentials: the superintendent's secretary and three personnel secretaries.

Garden City School District operates one high school, one junior high, five elementary schools, an adult and community education program, and a special education program. Reporting to the superintendent are three executive administrators: Steven Kelly, who has responsibilities for labor relations, contract administration and negotiations; Gary Marchal, who is responsible for personnel/labor relations as well as operation and maintenance issues; and Richard Witkowski, who manages the business and technology departments. There are also a number of directors who report to the superintendent with responsibilities for curriculum, special education, and student services.

In the past, Witkowski's responsibilities included supervising two employees in the technology area: Joyce Colliau, the data processing coordinator, and Jeff Puhlman, the individual in charge of technical support hardware. Approximately three years ago, a determination was made to network the entire school District. At that time, Witkowski recommended that an additional position be added to the technology department to supervise and manage all of the tasks involved in adding file servers to the central office and connecting the various administrative tasks throughout the District. This recommendation was approved by the superintendent, and the position of technical support supervisor was created.

On September 28, 1998, the District posted a vacancy for the position of technical support supervisor. Qualifications reflected in the posting included knowledge of computers and computer networks, technology experience in a public education setting, and post-secondary education consistent with job requirements. The salary was listed as \$55,000 per year with a work year of 48 weeks. In December of 1998, Timothy Klan was hired for the position.

Klan's responsibilities as technology support supervisor include administering and supervising the technology department, including the phone, public address and fire alarm systems, network wiring and maintenance, and troubleshooting when necessary. Klan oversees, organizes, and coordinates the daily activities of Colliau and Puhlman. Klan is also responsible for formulating policies with respect to the computer systems and for creating an acceptable use policy and a code of conduct policy.

Klan has an office on the second floor of the central administration building, in the same location as directors and assistant directors. The work stations for employees Colliau and Puhlman are in the same area. Klan gives them assignments based on work orders, which are requests for repairs, improvements, and system maintenance from building administrators throughout the District. In general, Colliau works in the office, administering the network, performing data entry and removal,

and doing general maintenance on the system on a regular basis. Puhlman is a part-time contract employee who is primarily responsible for the hardware for various systems within the District, including the computer systems, as well as the wiring, public address and phone systems. Klan also recommended the hiring of a student worker over the summer months. He supervised the student's work and approved his time sheets. Klan has authority to recommend discipline for technology department employees. He is responsible for performing a written evaluation of Colliau. He also approves her vacation time as well as sick and leave time before submission to Witkowski.

Klan works Monday through Friday, from 7:30 a.m. to 4:30 p.m. Klan does not work with students on a regular basis. He has only occasional contact with teachers; for example, he assists teachers when they have a computer problem which Puhlman is unable to resolve. Klan often performs system maintenance duties when teachers are absent, such as during the Christmas holiday and summer vacation. He does not have a teaching certificate or other state licensing. Klan receives the same fringe benefits as those specified in the collective bargaining agreement applicable to administrators.

Klan attends weekly cabinet meetings which are held at the central office for upper level administrators, including the accounting supervisor and the building and grounds supervisor. District policies are discussed at these meetings, and the administrators have the opportunity for input. For example, Klan made recommendations for the removal of obsolete and non-functioning computer equipment. Klan also attends the administrators' in-service at the beginning of the year, as well as the weekly elementary and secondary principals' meetings.

All individuals employed by the District, including those working in the administrative offices, utilize the computer system for the communication and storage of information. This information includes communications between the superintendent, various administrators, and the Board of Education on matters such as management policies, disciplinary action, financial information and collective bargaining data. The computer network which Klan oversees contains all of the files that are kept within the entire District. Different levels of access are available depending on the user. Authority to access files is controlled by Klan. As administrator of the network, Klan has access to the entire system – including physical access to each individual computer on the network. In fact, Klan has access to more information than even the Superintendent.

Several years ago, the District employed individuals as computer consultants to assist teachers on computer issues and give advice with respect to their instructional needs. Currently, one of the teachers, Keith Orloff, has part-time responsibilities as a computer consultant. Orloff is a certified teacher who teaches three courses in computer applications, providing students a general background in programs, spreadsheets, database, word processing and presentation. In addition, he is the administrator of the local area network in the high school. He oversees the computer lab and provides support to teachers with any computer related needs. Orloff reports to the building principal for both teaching and computer consulting duties. He has no responsibilities for the District-wide network. Orloff may seek advice from Klan if there is a computer problem at the high school which he cannot resolve, but he does not report to Klan in any capacity.

Discussion and Conclusions:

The Employer maintains that the technology support supervisor should be excluded from the MEA bargaining unit because the position is both confidential and supervisory, and because it shares no community of interest with that unit. Petitioner argues that Klan does not have sufficient authority to be considered a supervisor. According to the Union, his responsibilities concerning the policies and procedures relating to the District's technology systems are insufficient to establish supervisory status. Petitioner also maintains that the technology support supervisor has no duties related to confidential data or labor relations and, therefore, cannot be considered a confidential employee. In addition, Petitioner contends that since there are currently four confidential employees excluded from the District's four bargaining units, there is no need for an additional exclusion. Finally, Petitioner asserts that Klan's duties are similar to the computer consulting work which has been historically performed by bargaining unit members.

Under PERA, there is no definition of confidential employees, nor does the Act contain a statutory exclusion of such employees. It has been our policy to strictly limit the confidential exclusion so as to fulfill PERA's purpose of providing employees an opportunity to be represented and bargain collectively. See e.g. *City of Saginaw, City Attorney*, 1991 MERC Lab Op 253. To this end, we have long held that only those employees who are directly involved in collective bargaining, or their assistants, are to be excluded from bargaining units as confidential employees. *Pontiac School Dist*, 1997 MERC Lab Op 173, 180-181. However, we cannot ignore today's increasing use of computers and computer networks and the corresponding change in the way information is maintained, accessed and transmitted. See *Brimley Area Schools*, 2000 MERC Lab Op ____ (Case Nos. UC99F-20 & UC99 G-21, issued 5/24/00). In recognition of these technological developments, we believe that it is appropriate to include within our definition of confidential status an employee who has total access to, and control of, an employer's information network. In keeping with the policy expressed above, this exclusion is strictly limited to that individual who has ultimate authority over the employer's computer network. To the extent that more than one individual possesses such authority, the employer must determine which of its employees to select for the exclusion. See e.g. *51st District Court*, 1979 MERC Lab Op 119; *City of Romulus*, 1971 MERC Lab Op 206.

In the instant case, the role and job responsibilities of the technology support supervisor are far broader than that of a computer consultant. The record establishes that the technology support supervisor in this case has access to all files and information stored on the computer network, and that he controls who has the authority to access the system and at what level. All individuals employed by the District, including those working in the administrative offices, utilize the computer system. Information stored on the network includes communications between the superintendent, administrators, and the Board of Education on matters such as management policies, disciplinary action, financial and collective bargaining data. In addition to having access to the network itself, the technology support supervisor has unlimited access to every building within the District and to every computer housed within those buildings. It is undisputed that the technology support supervisor has greater access to information than even the Superintendent. Under such circumstances, we agree with the Employer that, as the information system gatekeeper, the technology support supervisor is

appropriately excluded from the unit as a confidential employee. *Oakland Community College, 2000 MERC Lab Op ___* (Case Nos. UC97 G-31 & UC98 L-49, issued 3/22/00).¹

Given the above finding, it is not necessary to reach the other issues raised with respect to this position. However, we note that we are in agreement with the Employer that the technology support supervisor does not share a community of interest with the teacher bargaining unit based on a number of factors, including educational requirements for the position, work schedule, and lack of contacts with students and teachers.

Based on the above discussion, we issue the following order:

ORDER

It is hereby ordered that the petition for unit clarification be dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Dated: _____

¹ We make no decision in this case as to the continued viability of the Employer's four clerical confidential exclusions.