

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

In the Matter of:

LANSING COMMUNITY COLLEGE,
Petitioner-Public Employer in Case No. UC99 D-13,

-and-

LANSING COMMUNITY COLLEGE ASSOCIATION
OF EDUCATIONAL SUPPORT PERSONNEL,
Petitioner-Labor Organization in Case No. UC98 D-21.

APPEARANCES:

Miller, Canfield, Paddock & Stone, P.L.C., by Sherry L. Katz-Crank, Esq., for the Public Employer

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

DECISION AND ORDER

Pursuant to Sections 12 and 13 of the Public Employment Relations Act (hereafter "PERA"), 1965 PA 379, as amended, MCLA 423.212 and 423.213; MSA 17.455(12) and MSA 17.455(13), this case was heard in Detroit, Michigan, on April 29, 1999, by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission. Based on the entire record, including briefs filed by August 2, 1999, we find as follows:

The Petitions and Issues Presented:

The Lansing Community College employs approximately 2,000 employees. The Lansing Community College Association of Educational Support Personnel represents approximately 110 employees in a bargaining unit described as "all regular full-time clerical, technical, and para-professionals." The Union's April 20, 1998, unit clarification petition, as amended on December 18, 1998, seeks to clarify its unit by adding a newly created secretarial position in the grants office. The Employer opposes adding the grants office secretary position to the Union's bargaining unit because it was created as the result of disciplinary action taken against the position's incumbent.

On April 27, 1999, the Employer filed a unit clarification petition to exclude three

secretarial/clerical positions -- one in the careers division and two in the liberal studies division -- from the Union's bargaining unit. The Employer asserts that the incumbents' duties and responsibilities are now confidential as a result of a reorganization of the human resources department. The Union claims that the positions are not confidential, that the Employer already has seven or eight confidential positions, and that the Employer has not met its burden of establishing the need for additional exclusions.

Facts and Conclusions -- the Union's Petition:

The Employer and the Union are parties to a collective bargaining agreement which expires on June 30, 2000. Article VII, D, 4 of the contract provides for a mediator to serve as chairperson of a three person panel to resolve disputes arising under level four of the grievance procedure. In an undated decision issued early in 1998, the mediator affirmed the Employer's step three decision to discipline an employee by transferring her to a position "outside the bargaining unit in lieu of being discharged." The aggrieved employee was assigned to a newly-created secretarial position in the Employer's grants office. The secretary, like other employees within the bargaining unit, performs clerical and secretarial work. She works 40 hours per week and receives many of the benefits -- paid vacation time, sick leave, bereavement time, group life insurance, etc. -- received by other bargaining unit employees. The position previously held by the secretary remains in the bargaining unit.

The Union does not allege that the Employer illegally punished bargaining unit members by removing them from the unit. Therefore, the only issue presented in this case is whether the secretarial position in the grants office should be included in the Union's bargaining unit. The Employer acknowledges our exclusive jurisdiction over unit determination issues, but asserts that where exigent circumstances exist, it is appropriate for us to defer to the determination of a mediator or arbitrator. The Employer claims that deferral is appropriate in the instant case because the parties' agreement establishes a binding grievance procedure and the mediator affirmed the Employer's decision to transfer the aggrieved employee to a non-bargaining unit position. According to the Employer, the inclusion of the secretarial position in the unit would reward the Union for a member's misconduct and have a chilling effect on the College's willingness to implement creative solutions to disciplinary problems.

The Employer's arguments require little comment. The issue presented here is the appropriateness of including the secretarial position in the grants office in the Union's bargaining unit, not whether, as the Employer asserts, the person occupying that position should be included in the unit. The fact that the parties have agreed to a binding procedure to resolve grievances does not deprive this Commission of jurisdiction to resolve unit determination issues. *City of Lansing*, 1985 MERC Lab Op 93, 104. It is undisputed that the newly created secretarial position shares a community of interest with the Union's bargaining unit. Therefore, we grant the Union's petition to add the grants office secretarial position to the bargaining unit.

Facts and Conclusions -- the Employer's Petition:

The three positions which the Employer seeks to exclude as confidential provide clerical support to four division directors of the College's human resources department. The primary job responsibility of these positions is to provide clerical assistance to two of the division directors.¹ As the result of a January 1999 reorganization, the division directors report to the department's executive director rather than to the deans of their respective divisions. The division directors' new duties include participating in collective bargaining and administering steps one and two of the grievance procedure. Their new collective bargaining responsibilities include "costing out" proposals, investigating salary information, attending meetings where collective bargaining issues may be discussed, receiving daily collective bargaining status reports, and making bargaining recommendations and proposals. It is estimated that 25% of the division directors' time will be devoted to bargaining issues.

The division directors, in consultation with the Employer's labor relations directors, are responsible for planning and conducting grievance hearings at steps one and two, and they assist the labor relations director with the remaining steps.² Specifically, the division directors are responsible for grievance intake, setting up meetings, preparing formal responses through consultation with the labor relations director, and meeting and discussing grievances with Union representatives. It is anticipated that the clerical staff will assist the directors in "costing out" proposals, providing salary information, typing proposals, attending staff meetings where bargaining issues will be discussed, and preparing and proofing documents related to grievances and bargaining. The support staff has daily contact with the directors and free access to the division directors' offices and files.

Currently, there are three confidential clerical employees in the human resources department and four or five in the executive office. Additionally, the collective bargaining agreement provides that clerical employees who report directly to members of the president's council -- the president, five deans, the vice president of finance, and the human resources executive director -- are excluded.

The Employer claims that if the three human resources department support staff employees were not excluded from the unit, it would be "extremely difficult" for their supervisors to perform their collective bargaining and grievance processing work, and that it would hinder the support staff's ability to perform their jobs effectively. We find no merit to these arguments. It is well-settled that a "confidential employee" is one who assists and acts in a confidential capacity to a person or persons who formulate, determine, and effectuate management policy with regard to labor relations. Under PERA, however, we limit the number of confidential exclusions to employees necessary to perform the required confidential duties. *Swartz Creek Community Schools*, 1988 MERC Lab Op 848. The employer bears the burden of justifying the need for confidentials beyond the one to which it is entitled. The employer's administrative convenience alone is not sufficient to meet this burden. *City of Saginaw, City Attorney*, 1991 MERC Lab Op 253.

In the instant case, the Employer offered no evidence to justify its need for three additional confidential employees beyond the seven or eight confidentials already in the unit and the eight excluded employees who report to the president's council. Furthermore, the Employer has not demonstrated that the extra positions sought to be excluded have actually performed confidential

labor relations work, or that the seven or eight other confidential employees are so overburdened that they could not perform work assigned to the division directors.

There also has been no showing that the work performed by the three secretarial/clerical employees is confidential. A secretary who merely types answers to grievances is not performing confidential work. *City of Saginaw*, 1991 MERC Lab Op 253. Moreover, mere access to budget or financial information is not sufficient to establish confidential status. *L'Anse Creuse Schools*, 1972 MERC Lab Op 868. *Saginaw County Road Commission*, 1993 MERC Lab Op 227. Additionally, compiling wage data does not suffice to show a critical nexus to labor relations negotiations. *City of Riverview*, 1986 MERC Lab Op 400.

Our policy of limiting executive and/or confidential exclusions fulfills PERA's purpose of providing employees an opportunity to be represented and to collectively bargain. *Lake County and Lake County Sheriff*, 1999 MERC Lab Op 107. Accordingly, we deny the Employer's petition.

ORDER

Petitioner Lansing Community College Association of Educational Personnel's request to clarify its bargaining unit to include the grants office secretary position is hereby granted. The Lansing Community College Board of Trustees's petition to clarify the Union's bargaining unit by excluding three additional employees as confidentials is hereby denied.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chairman

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

DATED: _____

¹ One of the clerical employees has been reassigned to a full-time temporary position implementing software and has not performed traditional clerical job duties since November 1998.

² Step 1 begins with a meeting between the employee's immediate supervisor and/or a department chairperson. If not resolved, the grievance is reduced to writing and a meeting is held with the division director.

