

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

In the Matter of:

BRIMLEY AREA SCHOOLS,  
Public Employer,

Case Nos. UC99 F-20 and UC99 G-21

-and-

MICHIGAN EDUCATION ASSOCIATION (MEA),  
NORTHERN MICHIGAN EDUCATION SUPPORT  
PERSONNEL ASSOCIATION/BRIMLEY EDUCATION  
SUPPORT PERSONNEL ASSOCIATION,  
Petitioner-Labor Organization.

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APPEARANCES:

Scott Dunsmore, Superintendent of Schools, for the Public Employer

Amberg, McNenly, Firestone and Lee, P.C., by Theresa A. Killeen, Esq., for the Petitioner

**DECISION AND ORDER ON UNIT CLARIFICATION**

Pursuant to the provisions of Sections 12 and 13 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212 and 423.213; MSA 17.455(12) and (13), and notices of hearing dated July 13, 1999, these cases were heard at Detroit, Michigan on August 24, 1999, before James P. Kurtz, Administrative Law Judge, acting as Hearing Officer for the Michigan Employment Relations Commission. Based upon the record, which was closed on November 1, 1999, including a post-hearing brief filed by Petitioner on October 18, 1999, the Commission finds as follows:

Petitions and Background Matters:

The first petition for unit clarification was filed by the Michigan Education Association (hereafter "MEA") on June 22, 1999, and assigned Case No. UC99 F-20. The MEA sought to add the position of technology coordinator to the nonsupervisory support unit it represents at the Brimley Public Schools. The MEA, through its affiliates Northern Michigan Education Association (hereafter "NMEA") and the Brimley Education Support Personnel Association (hereafter "BESPA"), represents a broad unit of the support staff of the Employer School District, including aides, office clerical, custodial-maintenance, food service, transportation employees and nurse, excluding the superintendent, bookkeeper/office manager, teachers, and substitutes. At the time of the hearing, there was a collective bargaining agreement in effect covering this unit for the period from September 1, 1997, through August 31, 2000.

The second petition for unit clarification was filed by the MEA on July 2, 1999, and involved the same bargaining unit. This petition, which was assigned Case No. UC99 G-21, sought to include in the support unit the position of central office bookkeeper, which the Employer had posted on June 8, 1999, as a full-time (12 months) “non-union” position. In both cases, the School District contends that the positions at issue are confidential or “administrative.” As a convenience to the parties, and in the interest of administrative economy, the ALJ scheduled both cases hearing on the same date. Since both cases have common issues of law and fact, and the decision in one case is dependent on the other, this Commission has consolidated these matters for decisional purposes.

The Employer is a rural school district in the eastern upper peninsula with two schools on one campus: a middle-high school, and an elementary school. The School District employs about 41 teaching employees, and the 31 support staff that make up the NMEA-BESPA bargaining unit. On a supervisory level, there are the superintendent, two school principals, and the bookkeeper/office manager, who also acts as food service director. The latter position has always been excluded from the support unit as both a supervisory employee and a confidential employee. Prior to the events that inspired these proceedings, the office manager performed such duties as the typing of bargaining proposals and responding to grievances. The superintendent and the office manager are located in the central office of the district, along with a central office secretary and an aide who handles food service matters. The latter two positions are in the support unit.

#### Factual Findings -- Technology Coordinator:

At the time of the hearing, the Employer had hired under individual ten-month contracts its third technology coordinator, the first having been hired in 1996. The Employer considered the position to be “professional” or “administrative,” since the position requires at least an associate degree in computer studies or the equivalent experience. The District did not follow the usual procedure of posting the position, nor did it at any time notify the Union of the existence of the position or that it was considered to be non-union. According to the superintendent, all of the clerical work of the District will eventually be done on the computer system. The technology coordinator, therefore, will have access to all bargaining information. However, the record is not clear when this will take place. The technology coordinator works in the central office and must carry a pager, since the position is always on-call. In addition to being responsible for the installation and maintenance of the Employer’s entire computer system, the technology coordinator provides technical support for the staff, including the teachers and the learning lab, and provides in-service training. The technology coordinator works alone and has no supervisory responsibilities.

The second technology coordinator was contracted for by the District for the 1997-1998 school year, while the third person to accept that position began work in late October of 1998. The MEA staff representatives, or uniserve directors, who serviced the two contracts with the School District for the teaching and support units in the years prior to October of 1998, received no notice of the new technology coordinator position, nor was the matter raised during negotiations. The superintendent handles negotiations for the Employer, along with a hired negotiator and a member of the Board of Education. On October 1, 1998, a new president of the support staff unit took office. In late October of that year, he noticed a new face in the office and was informed about the recently-hired technology coordinator. He contacted the uniserve director to find out whether the position

was in the unit. After checking the contract, the Union president was told that the unit was wall-to-wall and that all employees were included unless they fell among the enumerated exclusions. The Union president approached the superintendent in early November of 1998 and requested that the technology coordinator be placed in the support unit. This request was refused. The uniserve director then told the Union president to collect information on the position. The Union filed a written request for information on April 13, 1999, and the Employer responded on April 19. This information was then forwarded to the uniserve director. The unit clarification proceeding in Case No. UC99 F-20 was filed by the MEA on June 22, 1999.

#### Factual Findings -- Central Office Secretary/Bookkeeper:

Sometime prior to June of 1999, the Employer decided that the position of office manager should be upgraded to that of business manager. Many of the office manager's bookkeeping duties were already being performed by the central office secretary. The Employer decided that it needed a clerical employee, other than the office manager/business manager, to perform confidential duties. These duties were characterized by the Employer as including the typing of personnel and disciplinary matters, as well as typing collective bargaining proposals. To address this need, the Employer decided to abolish the central office secretary position and to post a new non-union position of "central office bookkeeper." This posting took place on June 8, 1999, and utilized the same job description of the former central office secretary with the new bookkeeper title. The former central office secretary transferred to a bargaining unit position in the high school, and a new employee was hired for the central office bookkeeper position.

The Union filed a grievance on June 28, 1999, over the removal of the central office secretarial position from its bargaining unit. The business manager denied the grievance on the ground that it was a new position working with information related to collective bargaining. The superintendent denied the grievance for the same reason on July 7, 1999. In the meantime, the Union had filed the unit clarification petition in Case No. UC99 G-21. The bookkeeper job description was amended by the Employer in August of 1999 to add the responsibility for "all documentation for collective bargaining for the superintendent and business manager" and assisting them in collective bargaining preparations. The record does not indicate any change in the actual duties of this position from those performed by the central office secretary.

#### Discussion and Conclusions of Law:

In addition to the contention that the two positions at issue in these cases are excluded from the protections of PERA by reason of their confidential status, the Employer claims that the technology coordinator is also excluded because the position is "administrative" or "professional." The Commission does not recognize an administrative or professional exclusion from bargaining units. See *Ferris State Univ*, 1996 MERC Lab Op 16, 21. Data processing personnel are considered to be technical employees by this Commission and are appropriately included in support or office clerical bargaining units. See *Saginaw Int Sch Dist*, 1992 MERC Lab Op 3, 5 (concluding that lead systems analysts were not confidential employees). For this reason, and due to the limited definition of the term "professional" in unit determinations, the technology coordinator is not a professional employee. *Traverse City Ed Ass'n v Traverse City Public Sch*, 178 Mich App 205 (1989); *Grand*

*Rapids Pub Schools*, 1997 MERC Lab Op 98, 106-107; *Beecher Comm Schools*, 1994 MERC Lab Op 593, 596. Thus, unless excluded by reason of supervisory or confidential status, the technology coordinator position is appropriately included in the Union's support unit.

The Employer contends that the technology coordinator must also be excluded by "past practice," because the Union did not demand inclusion of the position in its support unit until October of 1998, when the third individual to be contracted for the position began work, some two years or more after it first filled the job. The difficulty with this historical exclusion defense is that the School District never gave any notice to the Union of the creation and claimed non-union status of the technical coordinator. The fact that a new contractual employee appears in the central office does not relieve the Employer from notifying the Union that it is creating a new nonsupervisory employee position which it does not intend to place in its existing comprehensive bargaining unit of support employees. Where such an all-encompassing unit exists, it is presumed that any new position will be automatically added to that unit. See the ALJ's discussion concerning the creation of so-called "non-union" positions in *Muskegon County Sheriff (Deputies Unit)*, 2000 MERC Lab Op \_\_\_ (3-29-00). See also *Covert Pub Schools*, 1997 MERC Lab Op 594, 602, in which a new classification was included in the support unit despite the existence of a residual group of excluded employees. The burden of giving notice to the bargaining representative of the creation of any newly-adopted exclusion from a bargaining unit is on the employer who initiated the position in the first place. Cf. *Meridian Township*, 1986 MERC Lab Op 915, 920 (creation of new position without notice to union would violate bargaining obligation). In the instant case, the Union took prompt action with respect to both positions at issue when it learned that its representation rights were being denied. Accordingly, we conclude that the Union has not waived its right to contest the Employer's unilateral exclusion of the technology coordinator classification from its support unit.

The Commission has always allowed public employers to designate one nonsupervisory employee, clerical or otherwise, as a confidential employee, who may be excluded from an existing nonsupervisory bargaining unit where no other unrepresented employees are available. See e.g. *Lapeer County & 40<sup>th</sup> Circuit Court*, 1999 MERC Lab Op 146, 149. Essentially, this exclusion was granted so that an employer would have available, when necessary, an employee who could be privy to labor relations data and policy and who could type up bargaining proposals in advance of their presentation to a bargaining agent. We note, however, that with advancing computerization, the necessity for such an excluded position diminishes as employer negotiators and governing board members are increasingly able to communicate directly and privately among themselves without access by other employees or outsiders. The handling of personnel and disciplinary matters, which the Employer wants the new bookkeeper position to assume, are not confidential labor relations duties as defined by this Commission, and cannot be the basis for an exclusion based on confidential status. See *Lapeer Co & 40<sup>th</sup> Circuit Court*, 1998 MERC Lab Op 611, 620-621; *City of Saginaw*, 1994 MERC Lab Op 988, 991.

In this case, the parties previously agreed that any confidential labor relations matters would be taken care of by the contractually excluded position of bookkeeper/office manager. The Employer now wants to upgrade the office manager position to that of business manager, and to transfer any confidential labor relations matters to the unit position of central office secretary. The latter position is renamed bookkeeper and has been unilaterally taken out of the Union's unit by the Employer as

a confidential employee. The record establishes that the office manager position is and has been a supervisory employee, which means that the Employer does not have a nonsupervisory confidential exclusion. We conclude, therefore, that the Employer is entitled to exclude as a confidential one of the two employees at issue herein. See *Williamston Schools*, 1994 MERC Lab Op 1062, 1064-1065.

The record indicates that the new bookkeeper position performs the same duties as the former central office secretary, and there is no showing of a need to exclude the bookkeeper as a confidential. *City of Mt. Clemens*, 1997 MERC Lab Op 625, 630. In view of these circumstances, and the Employer's position at the hearing that the increasing computerization of the District requires the exclusion of the technology coordinator, we will assume that the Employer's designated nonsupervisory exclusion from the support unit as a confidential employee is the position of technology coordinator. The position of bookkeeper/central office secretary will remain in the support unit represented by the Union.

**ORDER CLARIFYING UNIT**

Based upon the above findings and conclusions, the collective bargaining unit represented by Northern Michigan Education Support Personnel Association/Brimley Education Support Personnel Association, MEA-NEA, comprised of all nonsupervisory support employees of the Brimley Area Public Schools, is hereby clarified to include the position of bookkeeper in the central office, but to exclude as a confidential employee the position of technology coordinator.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Maris Stella Swift, Commission Chair

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Harry W. Bishop, Commission Member

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C. Barry Ott, Commission Member

Dated: \_\_\_\_\_