

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

In the Matter of:

JACKSON COMMUNITY COLLEGE,  
Public Employer,

Case No. UC99 H-35

-and-

JACKSON COMMUNITY COLLEGE  
FACULTY ASSOCIATION,  
Labor Organization-Petitioner.

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APPEARANCES:

Marcoux, Allen, Abbott, Schomer & Bower, P.C., by William M. Abbott, Esq., and Richard C. Lindsay, Jr., Esq., for the Public Employer

White, Schneider, Baird, Young & Chiodini, P.C., by Jeffrey S. Donahue, Esq., and Michael M. Shoudy, Esq., for the Petitioner

**DECISION AND ORDER ON UNIT CLARIFICATION**

This case was heard at Lansing, Michigan on May 4, July 12, and July 13, 2000, before Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. Pursuant to Section 13 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.213, MSA 17.455(13), and based upon the record, including briefs filed by the parties on September 25, 2000, the Commission finds as follows:

The Petition, Issues, and Positions of the Parties:

The Jackson Community College Faculty Association filed this petition on August 25, 1999. Petitioner represents a bargaining unit of teaching faculty and librarians employed by Jackson Community College. Petitioner seeks to add to its bargaining unit all “academic advisors” employed by the College. Five positions are in dispute: freshman student services coordinator, nontraditional student services coordinator, career development coordinator/career preparation coordinator<sup>1</sup>, academic advisor, and customer service coordinator. All five positions

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<sup>1</sup>At the time of the hearing in this matter, the part-time position of career development coordinator had recently become vacant. The College indicated that it was considering adding

do some academic advising and will hereafter be referred to collectively as “advisors.” All of the advisors are currently included in a bargaining unit represented by the Jackson Educational Support Personnel Association (ESPA).<sup>2</sup> The ESPA unit consists of classified and technical employees, including computer technicians.

Three of the advisor positions - freshman student services coordinator, non-traditional student services coordinator, and career development coordinator - have existed since 1996. In September of 1999, the College began phasing out the faculty counselor position in Petitioner’s bargaining unit. According to Petitioner, the job duties of the advisors substantially changed after the College transferred to them work previously performed by the faculty counselors. It asserts that all the advisors now share a community of interest with the faculty unit based upon their common status as professionals and similarities in the work they perform.

The College argues that the current collective bargaining agreement between the parties bars this petition. In addition, the College asserts that the petition should be dismissed because Petitioner is attempting to disturb the parties’ agreement regarding unit placement. The College denies that the duties of the advisors changed significantly after the faculty counselor positions were eliminated. The College also maintains that the advisors lack a community of interest with the teaching faculty in Petitioner’s unit.

Facts:

The Five Advisor Positions

In December of 1996, the College posted three new positions in the ESPA unit: freshman student services coordinator, non-traditional student services coordinator, and career development coordinator. The positions were filled in early 1997. In June of 1999, the College created the academic advisor position. The customer service position was created after the petition was filed in May of 2000. Petitioner did not demand that any of these positions be included in its bargaining unit before filing the instant petition in August of 1999.

The five advisors all report to the Dean of Student Development. Like other members of the ESPA unit, the advisors work 52 weeks per year. Except for the part-time career development coordinator, the advisors all work 40 hours per week; this is the standard workweek for members of the ESPA unit. Like other ESPA unit positions, the advisors are considered nonexempt under the federal Fair Labor Standards Act and receive overtime. All positions in the ESPA unit, including the advisors, are filled the same way. The College advertises the vacancy in three local newspapers and mails out a job posting to agencies working with unemployed people. After the applications are screened, applicants are interviewed by a committee consisting of the administrative supervisor and an individual or individuals from the department in which the position will be working. This committee makes the decision regarding whom to

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duties to the position, making it full-time, and changing its title to career preparation coordinator. Neither party suggests that these changes should affect the appropriate unit placement of the position.

<sup>2</sup> ESPA has not opposed the petition.

hire.

The minimum requirements for the freshman student services coordinator and the non-traditional student services coordinator are a bachelor's degree and some experience in an educational setting. The minimum requirement for the career development coordinator position is a bachelor's degree, or one to two years' related experience or training, or an equivalent combination of education and experience. There are no educational requirements for the academic advisor position, although a bachelor's degree or equivalent combination of experience and training is preferred. The position of customer service coordinator requires a bachelor's degree in education or a related field. The individuals filling these positions at the time of the hearing all possessed at least a master's degree.

There is no promotional ladder or regular interchange between the ESPA unit and the faculty unit. Any member of the ESPA unit who possesses the qualifications for a faculty position has to compete with outside applicants on an equal basis.

#### Academic Advising Duties Performed by the Advisors

All five advisors work as "customer service representatives" in the College's student center, providing academic advice to students on a walk-in basis. Advisors see students by appointment only upon the request of the student. Prior to September of 1999, advisors were required to work with newly enrolled students, undeclared students, academically under-prepared students, students withdrawing from a class, and other special populations of students only if faculty counselors were not available. However, the record indicates that newly enrolled students who were not considered "at-risk" did not usually see counselors. "At-risk" students who met with advisors because counselors were not immediately available were advised to make an appointment to see a counselor at a later time. However, they were not required to do so, and many never met with a counselor.

In September of 1999 the College began assigning every new student to a faculty instructor, administrator, or ESPA member for purposes of academic advising. Students are encouraged, although not required, to see their designated advisor. Where possible, the College assigns academically prepared students with declared majors to faculty instructors. Some students with declared majors have been assigned to technicians in the ESPA unit who are not regular advisors but who work in the student's area of study. Other students are assigned to administrators. Many students, however, have been assigned to the advisors. This includes students who are undeclared and/or academically under-prepared. The freshman student services coordinator is the only advisor who has been specifically assigned to advise a group of students who were formerly advised by counselors. She is the assigned advisor for all international students. The freshman student services coordinator estimates that she sees all newly enrolled international students at least once. She provides the students with a packet of information addressing issues specific to international students, explains the information and answers student questions. The College does not have many international students, and international students comprise only a very small percentage of the students the freshman student services coordinator meets with for academic advising.

The number of hours that the individual advisors spend doing academic advising depends

upon their other responsibilities and student demand. The academic advisor and customer service coordinator spend almost all of their time doing academic advising in the student center. The freshman student services coordinator spends between 25% and 50% of her time on this part of her job. The career development coordinator spends the great majority of his time in the career resources room. Students may request appointments with specific advisors. However, of the five positions, only the non-traditional student services coordinator has a significant number of appointments.

The College has provided the advisors with a great deal of written material. There are written handouts setting out the course requirements and course sequences for most of the College's programs. The College also has handouts explaining how College credits will transfer to about 20 specific colleges and universities, and the course sequences needed to move from the College into some of the more popular programs at certain state universities. The College has written materials providing general information about the school, including registration procedures. Written financial aid information is available in the student center offices. Following guidelines established by the faculty, the advisors can determine whether a new student needs to enroll in preparatory classes based upon his or her ACT, SAT, or course preparation test scores. The advisors have also been provided with guidelines for determining whether a new student can be exempted from taking course placement tests based upon his or her previous academic experience.

The advisor's first task is to quickly assess the needs of the student by asking questions. The advisors hand out the written materials and explain them. The amount of assistance that a student needs putting together a schedule after receiving the appropriate course materials depends upon the individual student. The advisors may direct students to faculty advisors, administrators or other individuals at the College to obtain more information about specific programs or courses. They refer undeclared students to the career development coordinator for a career assessment. Learning-disabled students are referred to the administrator in charge of programs for these students. If the student has transfer questions that are not covered by the written materials, the advisor may phone the other institution to obtain the necessary information. Advisors help students decipher the College's financial aid information. When advising an academically under-prepared student, the advisor must make sure that the student enrolls in the appropriate preparatory courses, emphasize that the student must not drop these courses, and provide information on the College's tutoring services and clinics. The amount of time an advisor spends with an individual student depends upon a number of factors, including the student's needs, the advisor's personal style, and the number of students waiting to meet with that advisor.

### Other Responsibilities of the Advisors

In addition to performing academic advising duties, the freshman student services coordinator is responsible for organizing programs for new students, including orientation activities, conducting surveys of freshmen, and keeping data on retention rates of new students. Since September of 1999, the freshman student services coordinator has been responsible for keeping track of advisor assignments and notifying new students by mail of their advisor's name. In addition to advising enrolled international students, the freshman student services coordinator also answers all inquiries - by letter, phone or Internet - from prospective international students.

In addition to her responsibilities as an academic advisor, the non-traditional student services coordinator is responsible for organizing programs to assist non-traditional students and for preparing reports on the retention rate of these students. "Non-traditional students" are older students who have come back to college after working or having a family. The non-traditional student services coordinator also administers the GED test on a regular basis. At the time of her testimony in this proceeding, the non-traditional student services coordinator was spending approximately 40% of her time on a pilot project to decrease the attrition rate of business and education majors.

The primary job of the career development coordinator is to help undeclared students and prospective students perform a "career assessment." The career assessment helps students choose a career or program of study. The career development coordinator assists students in using software programs which provide the students with a list of suggested career choices and help them to build a career plan. After the students have completed the computerized assessment, the career development coordinator follows up by providing them with information about choices that interest them. He also talks to students about how to build and maintain a career plan and about setting and changing career goals. If a student is not interested in any of the options provided by the software, the career development coordinator helps the student use other materials in the career resources room, including a master list of occupations. Although the career development coordinator is assigned to do academic advising in the student center, he spends most of his time in the career resources room where the software and other materials are located.

The academic advisor spends the majority of her time working with students in the student center. She is also responsible for assisting in the early intervention program. The early intervention program is currently the responsibility of a committee made up mostly of faculty. The academic advisor assists the committee by determining whether students who have not been coming to class have dropped the course. If the advisor determines that the student is still enrolled in the class, she calls that student to discuss the situation.

In addition to academic advising, the customer service coordinator manages the academic advising office in the student center. He determines the staffing needs of the center based upon student demand throughout the year. The customer service coordinator ensures that the advisors have all of the necessary written materials, and that the center looks good and is easily accessible. He periodically monitors student satisfaction with the services provided by the center. The customer service coordinator also does presentations during new-student orientation. This includes providing academic advice and information about the College to large and small

groups in various settings.

### Petitioner's Bargaining Unit and the Duties of the Faculty Counselors

All of the members of Petitioner's unit are salaried employees classified as exempt from overtime under the federal Fair Labor Standards Act. All members of Petitioner's unit regularly work 35 hours per week, 181 days per year. When hiring a member of Petitioner's unit, the College advertises the vacancy in academic publications. After an initial screening of applicants, interviews are conducted and the hiring decision is made by a committee of administrators and faculty members which includes the Dean of Faculty and the Vice-President of Instruction.

Counselors were part of Petitioner's unit for more than 30 years. The counselors generally saw students by appointment only. Four of the five counselors employed by the College in September of 1999 were licensed personal counselors. However, the counselors did not conduct long-term counseling of students with personal or emotional problems. The faculty counselors spent almost all of their time doing academic advising. Academic advising, as performed by the counselors, encompassed a range of tasks from simply handing out preprinted information to helping students analyze their life goals. The counselors often counseled students with personal issues in the course of providing career or academic advice. In addition to advising academically under-prepared, learning disabled and other "at-risk" students, the counselors' duties included: helping undeclared students chose a field of study by reviewing the results of their career assessment tests; helping academically under-prepared and learning disabled students select courses and providing information about the College's tutoring resources; giving advice on course selection to students planning to transfer to another institution; helping international students adjust to the College and providing them with information specific to their situation; meeting with withdrawing students to discuss the reasons for their decision; analyzing student transcripts from other institutions to determine how credits should transfer; determining whether students should be exempted from taking the College's course placement tests based upon their prior college experiences or other factors; and providing students with a variety of financial aid and general information about the College. The counselors also ran an early intervention program. This involved contacting students who had not been attending classes and attempting to rectify the situation.

### Discussion and Conclusions of Law:

The Employer first argues that the unit clarification petition filed by the Union is barred by the collective bargaining agreement in effect between the parties. It is well-established that unit clarification is not appropriate for disturbing an existing agreement regarding unit placement, even if the agreement is based upon a mistake or the position has been historically excluded from the unit by acquiescence and not express consent. See e.g. *Grosse Pointe Public Library*, 1999 MERC Lab Op 151, 153-154; *Jackson Public Schools*, 1997 MERC Lab Op 290, 298-299; *Centerville Public Schools*, 1993 MERC Lab Op 799, 801. We adopted this policy, in part, to foster labor relations stability during the bargained for contract term. *Centerville, supra*. However, we have held that the unit clarification procedure is appropriate where, as here, it is alleged that recent substantial changes in job duties and responsibilities have created real doubts as to the appropriate placement of the position or positions in dispute. See e.g. *Genesee County*, 1978 MERC Lab Op 552; *Portage PS*, 1979 MERC Lab Op 833, 836.

Petitioner contends that the advisor positions are professional positions which share a community of interest with the instructors and librarians in its bargaining unit based upon similarities in duties performed and skills required. The College maintains that there is little or no similarity between the instructional responsibilities of the teaching faculty and the work performed by the advisors. We have found teaching faculty and other nonteaching academic staff employed by universities and community colleges to constitute an appropriate bargaining unit based on the integration of their functions and their “synergistic efforts aimed at the education of university students.” *Wayne State University*, 1972 MERC Lab Op 140,144-46. See also *Grand Rapids CC*, 1992 MERC Lab Op 548; *Henry Ford CC*, 1977 MERC Lab Op 51; *Eastern Michigan University*, 1972 MERC Lab Op 118. However, three of the positions in dispute in this case have been included in the support unit, with Petitioner’s acquiescence, since 1996. We do not move positions from established bargaining units unless it is demonstrated that a community of interest between those positions and their bargaining units no longer exists. *City of Kalamazoo*, 1983 MERC Lab Op 249. Therefore, to justify moving the freshman student services coordinator, non-traditional student services coordinator, and career development coordinator from the ESPA unit, the record must establish that the duties of the positions have changed so substantially that they no longer share a community of interest with this unit. For the reasons set forth below, we find that they have not.

The freshman student services coordinator, non-traditional student services coordinator and career development coordinator have always done academic advising. Petitioner asserts, however, that prior to September of 1999, the faculty counselors performed the more complex duties associated with that function. It maintains that these duties have since been assigned to the advisors. As Petitioner points out, advisors are now assigned to work with special populations of students, including academically under-prepared students, international students, and undeclared students. However, the facts indicate that due to a lack of faculty counselors, these students often saw only advisors prior to September of 1999. More importantly, the advisors are not expected to provide the “at risk” students assigned to them with the same degree of assistance formerly provided by the counselors. The College has provided the advisors with written guidelines which cover most areas in which students need assistance. The advisors’ responsibility is to find out what information students need, distribute the information, and explain it. We find that the advisors are expected to provide students in special populations with essentially the same type of assistance they provided prior to September of 1999, and that their duties have not changed significantly.

The advisors have acquired other duties performed by the faculty counselors prior to September of 1999. These include determining whether newly enrolled students can be exempted from taking course placement tests, analyzing transcripts to determine how credits from other institutions should transfer and, in the case of the career development coordinator, assuming more responsibility for helping students utilize the results of their career assessment tests. Prior to September of 1999, some of these tasks were performed by both advisors and counselors. In addition, the College has simplified other tasks by formulating written guidelines. We do not find that the addition of the above responsibilities has substantially changed the job duties of the advisor positions. Accordingly, we agree with the College that the job duties of the freshman student services coordinator, non-traditional student services coordinator, and career development coordinator did not change significantly after September of 1999. Petitioner made

no demand to represent these positions until it filed the instant petition and, therefore, acquiesced to their placement in the ESPA unit. Under such circumstances, we find no reason to disrupt the parties' agreement concerning their unit placement.

Two of the positions in dispute, the academic advisor and the customer service coordinator, are new positions. The parties disagree about whether these positions share a community of interest with Petitioner's unit. Community of interest is determined by examining a number of factors, including similarities in duties, skills and working conditions, similarities in wages and employee benefits, amount of interchange or transfer between groups of employees, centralization of the employer's administrative and managerial functions, degree of central control of labor relations, common promotion ladders and common supervision. See e.g. *Covert Public Schools*, 1997 MERC Lab Op 594, 601; *Grand Rapids Public Schools*, 1997 MERC Lab Op 98,106;*City of Warren*, 1966 MERC Lab Op 25, 28.

In the instant case, the record establishes that the academic advisor and the customer service coordinator have the same workweek and work year as the rest of the ESPA unit. There are no educational requirements for the academic advisor, and the customer service coordinator position requires only a bachelor's degree. The two positions are filled in the same way as other positions within the ESPA unit. There is no procedure in place by which the academic advisor and customer service coordinator may transfer or be promoted to a faculty position. Finally, there are substantial similarities between the work performed by the customer service coordinator and academic advisor and the other advisor positions in the ESPA unit. Based upon these facts, we conclude that the academic advisor and the customer service coordinator share a community of interest with the ESPA unit.

When an employer has made a reasonable, good faith decision to place a new position in one of several units with which it arguably shares a community of interest, we generally defer to the employer's decision. *Henry Ford CC*, 1996 MERC Lab 374; *CS Mott CC*, 1980 MERC Lab Op 400. We conclude that the College's decision to place the academic advisor and customer service coordinator positions in the ESPA unit was reasonable and made in good faith, and that the positions should remain in this unit.

Based upon the findings of fact, discussion, and conclusions of law above, we issue the following order:



**ORDER**

Petitioner's request to remove the freshman student services coordinator, non-traditional student services coordinator, career development/career preparation coordinator, academic advisor, and customer service coordinator from the unit of nonprofessional technical and support employees represented by the Jackson Educational Support Personnel Association, and to add these positions to Petitioner's unit of teaching faculty and librarians, is hereby denied.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Maris Stella Swift, Commission Chair

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Harry Bishop, Commission Member

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C. Barry Ott, Commission Member

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