

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

In the Matter of:

DEARBORN PUBLIC SCHOOLS,
Public Employer,

Case No. R01 J-133

-and-

DEARBORN FEDERATION OF SCHOOL
EMPLOYEES, LOCAL 4750,
Petitioner-Labor Organization.

APPEARANCES:

Karl Stuef, Director of Human Resources (on brief) and Thomas Rafferty, Human Resources Supervisor, for the Public Employer

John Schlosser, Jr., Field Representative, for the Petitioner

DECISION AND DIRECTION OF ELECTION

Pursuant to Section 12 of the Public Employment Relations Act (PERA), 1947 PA 336, as amended, MCL 423.212, this case was heard on December 3, 2001 before David M. Peltz, Administrative Law Judge for the Michigan Employment Relations Commission. Pursuant to Sections 13 and 14 of PERA, and based upon the entire record, including the transcript of hearing and briefs filed by the parties on or before January 28, 2002, the Commission finds as follows:

The Petition and Positions of the Parties:

In the petition for representation election filed on October 18, 2001, the Dearborn Federation of School Employees (DFSE) seeks to accrete to its bargaining unit of noninstructional support personnel an existing position entitled Cable Television Supervisor Assistant. The Employer, Dearborn Public Schools, opposes the petition on the ground that the Cable Television Supervisor Assistant does not have a sufficient community of interest with the employees in the support unit. The Employer asserts that accretion is not appropriate because the Cable Television Supervisor Assistant is a professional position requiring creative and intellectual skills, as well as the routine exercise of discretion and judgment. In addition, the Employer contends that it would be inappropriate to include the Cable T.V. Supervisor Assistant in Petitioner's unit because the work is intellectual in nature and involves the supervision of students.

Findings of Fact:

Petitioner represents a bargaining unit consisting of noninstructional, nonsupervisory employees of the Dearborn Public Schools and Henry Ford Community College. At the time of the hearing in this matter, the bargaining unit numbered approximately 1,100 employees. The unit is comprised of approximately 22 major job classifications, including clerical, food service, skilled trades, technical, paraprofessional and bus driver. The largest classification is paraprofessional, which is made up of approximately 300 employees. Petitioner contends that the Cable Television Supervisor Assistant position belongs within the bargaining unit's technical classification.

The Cable Television Supervisor Assistant position came into existence in 1998. The position is responsible for promoting the use of instructional and educational utilization in the classroom and supporting communication efforts for public dissemination. The job duties of the Cable Television Supervisor Assistant include working with the Cable Television Supervisor in planning and scheduling video programming at the P-12 level; producing/cataloging educational programming to be displayed on the local educational access channel; serving as a resource person to teachers and students who are designing and producing video programming; producing a video schedule which is disseminated throughout the local community reflecting P-12 district programming; and serving as a resource person in the selection of appropriate video hardware. With respect to the creation of programming, the Cable Television Supervisor Assistant is responsible for carrying and setting up equipment, scheduling and conducting interviews, and editing footage. She also takes audio-visual equipment in for repair and is authorized to purchase incidentals in connection with her job. The position requires both creative skills and technical knowledge.

The Cable Television Supervisor Assistant position is required to have a minimum of one year of video production experience, as well as possess organizational, leadership and other skills related to carrying out the above duties. In addition, a bachelor's degree is preferred. The current Cable Television Supervisor Assistant has a bachelor's degree in English and Telecommunications.

The Cable Television Supervisor Assistant is supervised by the Cable Television Supervisor who, in turn, reports to Dennis Briar, the school district's Coordinator for Media Technology and Foreign Languages. Briar also supervises several bargaining unit positions, including Graphics Technician, Computer Technician Specialist, Audiovisual Trucker and various clerical employees. The Cable Television Supervisor Assistant herself does not supervise any employees. She does, however, occasionally work directly with students by showing them how to operate audio-visual equipment. This primarily occurs during the bi-monthly school board meetings which are videotaped by the students at her direction.

The Cable Television Supervisor Assistant is based out of the Employer's Administrative Service Center. Her office is immediately adjacent to a lab assigned to one of the Graphics Specialists, and she works with that individual in preparing biweekly video production guides. Other positions within the bargaining unit who work out of the Administrative Service Center include Instructional Technician, Computer Technician and Audio-Visual Trucker. The Cable

Television Supervisor Assistant also has occasional contact with unit members while working in the field.

The Cable Television Supervisor Assistant is a salaried position, earning approximately \$30,000 per year. Medical insurance, vacation and holiday pay, and other benefits received by the Cable Television Supervision Assistant are comparable to the fringe benefits available to the classifications within Petitioner's bargaining unit. However, she receives more personal days than the unit members.

The Cable Television Supervisor Assistant is required to work a flexible time schedule. For example, she may arrive early or stay late in order to complete projects or to videotape various school events. In addition, she is occasionally required to work more than 40 hours per week. This occurs most often during the holiday season, when she has a greater number of projects to complete. Unlike members of the bargaining unit, the Cable Television Supervisor Assistant is not eligible for overtime pay. In the past, she was given compensatory time off for the overtime hours worked. However, this practice was recently discontinued.

Prior to the creation of the Cable Television Supervisor Assistant position, there existed a bargaining unit position within Henry Ford Community College entitled Audio-Visual Technician Specialist – Television Services. The duties of this position, as set forth in the job description, included working closely with the Director of Cable Television in matters of program development, production, post-production and playback; directing producing, editing and assisting in video productions designed to publicize the college and to recruit students for mass communication; providing audio visual support (including film projection, audio & video recording) for cultural activities lectures; establishing and maintaining close cooperation with members of the college faculty and staff in fostering video production creation; and providing audio-visual support at general faculty meetings as needed. The position was also responsible for producing television advertising for the college. The Audio-Visual Technician Specialist – Television Services position was eliminated by the Employer in 1996.

The Cable Television Supervisor Assistant is one of several unrepresented or "unclassified" positions. Other unclassified positions include Network Administrator, ESL (English as a Second Language) Assistant Supervisor, Safe Schools Facilitator, Community Liaison, Community Liaison for Career Awareness, Student Services Liaison, Safety/Security/Regulatory Compliance Specialist, and Communications Coordinator. Individuals holding positions within the bargaining unit are often promoted to these unclassified positions.

As noted, Petitioner contends that the Cable Television Supervisor Assistant position belongs within the bargaining unit's technical classification. The technical classification is made up of approximately 14 positions, including Media Services Administrative Assistant, Graphics Specialist and Media Technician Specialist. The Media Services Administrative Assistant position works in the graphics center at Henry Ford Community College. She is responsible for assigning graphics projects to the designers, scheduling print jobs, maintaining a list of ongoing projects, ordering supplies and bidding on outside printing work. She is also involved in

graphics and web design projects. The work of the Media Service Administrator Assistant is creative and intellectual in nature and requires technical knowledge.

The job description for the Graphics Specialist at the Dearborn Public Schools lists thirteen duties, including directing the operation of the graphics lab, assisting in the planning for graphic services to the teaching staff and administration, assisting in the design, development, production and implementation of media materials; assisting in the design, planning and implementation of in-service programs for teachers and administrators on the services available in the graphics lab; and producing in-service activities for teachers, students, parents and administrators. The job description also specifies that the position is responsible for supervising co-op students on an “as assigned” basis. An associate’s degree is required for the position.

The job description for the Graphics Specialist at Henry Ford Community College includes the following summary of duties: responsible for the art direction, design, and desktop publishing of various types of college publications, displays, presentations, and other instructional materials; responsible for the design and desktop publishing of the college catalog and class schedules for outside printing; assist college divisions in the design of brochures, flyers, forms, and presentations; assist college divisions in the preparation of title slides and overheads; maintain production tracking database for all departmental work; maintain database for copier card tracking system; responsible for routine maintenance and repair of equipment, including service calls when necessary; work with the Media Services Coordinator and outside vendors in the preparation of outside printing specifications; assist the Media Services Coordinator in the operations responsibilities of the graphics center and the preparation and maintenance of its budget; work with other members of the graphics center staff in pre-production planning of projects; and assist in the preparation and distribution of the Board reports. The position requires an associate’s degree in graphic design or an equivalent field and two years of experience in desktop publishing.

Another unit position within the technical classification is Media Technician Specialist. The Media Technician Specialist is responsible for assisting faculty in integrating technology. This includes training staff members in the use of distance education software and other computer applications and helping to remedy software problems. The current Media Technician Specialist has a master’s degree in instructional technology, a bachelor’s degree in communications and an associate’s degree in video production.

The collective bargaining agreement between Petitioner and the Employer covers the period January 1, 2000 to December 31, 2003. The contract specifies that the hourly wage rate for bargaining unit positions ranges from \$7.73 to \$21.79 per hour for the first year of the contract, \$7.96 to \$22.44 for the second year, and \$8.20 to \$23.11 for the period 2002 to 2003. In addition, the contract requires the Employer to pay unit members time and one-half for all overtime hours worked. Overtime is defined generally as “all hours over forty (40) hours in any one week and all hours over eight (8) in one day.” With respect to shift hours, Article XV, Section 15E of the contract provides that the starting time for each employee “will not be changed during the regular school year unless the change in starting time is for at least a month’s duration.” However, the Employer and the labor organization have negotiated exceptions to this provision.

Job descriptions presented by the Union indicate that various members of the bargaining unit work with, and in some cases, assist in instructing, students as part of their regular responsibilities. For example, the Media Aide/Secretary II is required to “[t]rain and direct media training and co-op students,” while the Graphic Specialist is responsible for supervising co-op students.

Discussion and Conclusions of Law:

A primary objective of the Commission is to constitute the largest unit which, in the circumstances of the particular case, is most compatible with the effectuation of the purposes of the law, and which includes within a single unit all employees sharing a community of interest. *Hotel Olds v State Labor Mediation Bd*, 333 Mich 382 (1952). Community of interest is determined by examining a number of factors, including similarities in 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. With regard to public school districts, however, we have long held that a unit consisting of all nonteaching personnel is presumptively appropriate. *Covert Public Schools*, 1997 MERC Lab Op 594, 601; *Alpena Community College*, 1994 MERC Lab Op 955; *Waverly Community Schools*, 1989 MERC Lab Op 819.

The duties, responsibilities and skills required of the Cable Television Supervisor Assistant are comparable to positions currently within the bargaining unit, and similar to those previously assigned to the former Audio-Visual Technician Specialist – Television Services. Although the Cable Television Supervisor Assistant has some interaction with students, her involvement is limited to providing occasional instruction in the use of audio-visual equipment. Moreover, the job descriptions provided by the parties indicate that various members of the bargaining unit are also required to supervise or assist in educating students on a regular basis. Like certain bargaining unit members, the Cable Television Supervisor Assistant works in the Administrative Service Center under the supervision of the Coordinator for Media Technology and Foreign Languages. Although she is paid on a salaried, as opposed to hourly, basis, her salary is approximately the same as what some bargaining unit positions, including several positions within the technical classification, are paid. The fringe benefits received by the Cable Television Supervisor Assistant are also comparable to those available to bargaining unit members. Given these facts, we conclude that it is appropriate to include the Cable Television Supervisor Assistant in the bargaining unit represented by Petitioner.

Neither at the hearing nor in its brief has the Employer set forth any factors which would support a finding that the Cable Television Supervisor Assistant has a separate community of interest from the employees in Petitioner's unit. Rather, the Employer argues that accretion is improper because the position has been in existence for several years prior to execution of the current collective bargaining agreement. We disagree. Although it is well-established that the unit clarification procedure is not appropriate for adding positions which have been historically excluded by specific agreement or past practice, *Genesee County*, 1978 MERC Lab Op 552, that rule does not apply where, as here, the petition is for an accretion *election*. See e.g. *Charter*

Township of Lansing, 1998 MERC Lab Op 655, 658; *Chelsea School District*, 1994 MERC Lab Op 268, 276.

We also reject the Employer's contention that the specific language of the current contract warrants dismissal of the petition. The Employer asserts that the Cable Television Supervisor Assistant position "requires flexibility that is not permissible under the current contract." Specifically, the Employer argues that Article 15E of the collective bargaining agreement does not allow the Employer to vary the starting time of unit employees for less than a 30-day period without paying overtime to the affected employees. Since the work schedule of the Cable Television Supervisor Assistant varies from one day to the next, the Employer contends that it would be improper to accrete the position to Petitioner's unit. However, it is well-established that the terms of an existing collective bargaining agreement do not automatically apply to a newly accreted position, *Howell Educational Secretaries Association v Howell Public Schools*, 130 Mich App 546 (1983); *City of Detroit (Department of Health)*, 1988 MERC Lab Op 149, and the existence of a dispute concerning the employer's contractual obligations to such a position is of no relevance to the underlying issue of community of interest. See e.g. *Port Huron Area School District*, 1996 MERC Lab Op 396. In any event, the record indicates that the parties have previously negotiated exceptions to the contractual provision relied upon by the Employer.

Finally, the Employer asserts the petition should be dismissed because the Cable Television Supervisor Assistant position is "more closely related in professional status" to other unrepresented positions. However, beyond the conclusory allegation that the Cable Television Supervisor Assistant is similar to these unrepresented positions, the Employer has not identified any specific factors establishing a community of interest between the Cable Television Supervisor Assistant and the residual unit. At most, the job descriptions presented by the parties suggest that the Cable Television Supervisor Assistant shares a commonality of interest with both the bargaining unit members as well as the unrepresented employees. We are not required to find the "optimum" or "most" appropriate unit, but rather only a unit appropriate for collective bargaining based upon the facts of each case. *City of Lansing, Bd of Water and Light*, 2001 MERC Lab Op 13; *City of Zeeland*, 1995 MERC Lab Op 652. Given our conclusion that the unit petitioned for in this case is presumptively appropriate, and finding nothing in the record which would destroy this presumption, we hereby grant the petition and direct an election as specified below.

ORDER

Based upon the above findings, we conclude that a question of representation exists herein under Section 12 of PERA and that it is appropriate to include the Cable Television Supervisor Assistant in the unit currently represented by Petitioner Dearborn Federation of School Employees. Therefore, we will direct an election in the voting group described in the petition as "Cable Television Supervisor Assistant." The aforesaid employee shall vote pursuant to the attached direction of election whether she wishes to be represented for purposes of collective bargaining by the Dearborn Federation of School Employees. A vote for this labor organization shall indicate a desire to be included in the existing unit of noninstructional support employees represented by the DFSE. In view of the fact that there is presently only one employee in the voting unit, and this employee has signed an authorization card, withdrawal of

the petition will be permitted should the Employer voluntarily recognize the Union as the collective bargaining representative for this position. See *City of Grand Rapids (Police Department)* , 2001 MERC Lab Op ___ (Case Nos. R00 J-121 & R00 J-129, issued 7/5/01); *Village of New Haven*, 1988 MERC Lab Op 601; *Portage Public Schools*, 1983 MERC Lab Op 698.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Dated: _____