STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

ESSEXVILLE-HAMPTON PUBLIC SCHOOLS,
Public Employer,

Case No. UC00 C-12

-and-

CLERICAL ASSOCIATION OF THE ESSEXVILLE-HAMPTON PUBLIC SCHOOLS,
Petitioner.
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APPEARANCES:

Thrun, Maatsch, and Nordberg, P.C., by C. George Johnson, Esq., for the Public Employer

White, Schneider, Baird, Young & Chiodini, P.C., by Michael M. Shoudy, Esq., and William F. Young, Esq., for the Petitioner

DECISION AND ORDER ON MOTION FOR RECONSIDERATION

On October 25, 2001, we issued our Decision and Order in the above case, pursuant to Section 12 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212, concerning a petition filed on March 23, 2000, by the Clerical Association of the Essexville-Hampton Public Schools. We granted Petitioner's request to add the newly created technology department support position to its existing unit consisting of secretaries, instructional and non-instructional aides, library clerks, paraprofessionals, study hall monitors, and bookkeepers, but excluding supervisory personnel.

In granting Petitioner's request, we rejected the Employer's argument that the position cannot be added to Petitioner's bargaining unit because the position is within an existing residual unit of unrepresented technology support personnel. We pointed out that nonsupervisory technology and data processing personnel are technical employees who are appropriately included in support or office clerical bargaining units. Noting the similarities in job requirements and the overlap of certain job duties with those of the computer aides, we held that there is a community of interest between the technology support position and the other instructional support employees in the Association's bargaining unit sufficient to include the position in that unit.

We then explained that we do not find a community of interest between this position and other technology personnel, who not only work at a professional level, but also are supervisory and administrative positions with equivalent remuneration from the Employer. The fact that the technology support position is involved with the functioning of the computer network in the district is not sufficient to establish a community of interest with the other technology personnel, given the significant differences in education, experience, and responsibilities. We further held that even if a community of interest with the other technology personnel could be shown, Commission policy dictates that we will add new positions to established bargaining units with which there is a community of interest rather than leave the positions unrepresented to form or be added to a residual group.

On November 15, 2001, the Employer filed a timely motion for reconsideration of our Decision and Order. On December 17, 2001, Petitioner filed a timely response to the motion for reconsideration. The Employer filed a reply to Petitioner's response to the Employer's motion on January 18, 2002. On January 25, 2002, Petitioner filed a motion to strike Respondent's reply to Petitioner's response to the motion for reconsideration. The Employer filed its response to Petitioner's motion to strike on January 31, 2002.

At the time the Employer filed its motion for reconsideration, the Commission's General Rules and Regulations, 1968 AACS, R 423.401 – R 423.484 were in effect.[1] While those rules do not specifically provide for the filing of a motion for reconsideration, we have routinely decided such motions in representation and unit clarification cases.[2] See, e.g. *Wayne County*, 1995 MERC Lab Op 616; *Lapeer Community Schools*, 1991 MERC Lab Op 610; and *Petoskey Public Schools*, 1988 MERC Lab Op 142.

Motions for reconsideration are treated like other motions; responses to such motions are due within ten days. For a party to file a response after the expiration of the ten-day period, that party must request an extension, as Petitioner did in this case.[3] Normally, replies to the responses are not permitted.[4] If a reply to a response is filed without first obtaining leave from the Commission, the Commission generally will not consider it. This is particularly true when the reply has been filed as much as a month afterwards, as it was in this case. Accordingly, Petitioner's motion to strike is granted. Respondent's reply to Petitioner's response to Respondent's motion for reconsideration is hereby stricken.

In the motion for reconsideration, the Employer contends that we should reverse our October 25, 2001 Decision and Order in this matter and dismiss Petitioner's Unit Clarification Petition as improper. The Employer argues that we erred in finding that the technology support position has a community of interest with the instructional support employees in the Association's bargaining unit but not with the other technology personnel. In our Decision and Order, we rejected similar arguments made by the Employer in its post-hearing brief.

The Employer also challenges the Commission's policy of adding new positions to established bargaining units with which there is a community of interest rather than leaving the positions unrepresented. The Employer contends that such policy is contrary to the purposes of PERA. We have considered the merits of this policy on several prior occasions and have

[1] The Commission's new rules, 2002 MR 1, R 423.101 – R 423.194, went into effect February 1, 2002. The Commission's new rules were adopted to codify current Commission practices that were not included in the old rules.
[2] The new rules provide for the filing of a motion for reconsideration in Rule 167.
[3] Rule 161 provides for a ten-day response period to motions filed under the new rules and permits that period to be extended upon leave of the Commission or an Administrative Law Judge.
[4] As with the old rules, there is no provision for replies to responses under the new rules.

consistently held that when newly created positions share a community of interest with the unit which seeks to include them, it is appropriate to accrete them to the existing unit rather than permit them to remain with a residual group of excluded employees. *Charlotte School Dist*, 1996 MERC Lab Op 193, 205; *Kalamazoo County Probate Court*, 1994 MERC Lab Op 980, 984; *Saginaw Valley State College*, 1988 MERC Lab Op 533.

We have carefully reviewed the Employer's motion for reconsideration and conclude that the Employer has offered no new evidence and raised no new issues of law that would cause us to reconsider our decision in this matter. Accordingly, the Employer's motion for reconsideration is hereby denied.

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:_____