

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

FERRIS STATE UNIVERSITY,
Public Employer

- and -

Case Nos. UC00 E-19
R01 F-078

FERRIS FACULTY ASSOCIATION, MEA/NEA,
Petitioner

APPEARANCES:

Miller, Johnson, Snell & Cumiskey, P.L.C., by Brent Rector, Esq., Peter H. Peterson Esq., and Sarah K. Willey, Esq., and FSU Office of the General Counsel, by Scott Hill-Kennedy, Esq., for the Public Employer

White, Schneider, Baird, Young & Chiodini, P.C., by Jeffrey S. Donahue, Esq., for Petitioner

DECISION AND ORDER

Pursuant to Section 12 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212, this matter came on for hearing at Lansing, Michigan, on August 28, and 29, 2001, before Nora Lynch, Administrative Law Judge, for the Michigan Employment Relations Commission. Based upon the entire record, including briefs filed by the parties on or before October 29, 2001, the Commission finds as follows:

The Petitions:

On May 19, 2000, the Ferris Faculty Association (FFA or Petitioner) filed a unit clarification petition seeking to add the full-time faculty of Kendall College of Art and Design to its bargaining unit of full-time faculty at Ferris State University (FSU or Employer). The petition was filed in expectation of a planned merger of Kendall College with FSU. Kendall faculty members are currently represented by the Kendall Faculty Association, MEA/NEA (KFA); this bargaining unit includes both full-time and adjunct (part-time) faculty.¹ According to the FFA, the adjunct faculty would not be left unrepresented as a result of its petition, but would remain in the bargaining unit and continue to be represented by the MEA. As part of the unit clarification,

¹ No representative of the KFA appeared at the hearing.

FFA also seeks to represent the librarians, counselors, and admissions officers² at Kendall; these positions are not included in the existing Kendall bargaining unit.

The Employer opposes the petition on several grounds. The Employer maintains that since the bargaining unit at Kendall includes full-time and adjunct faculty, the clarification sought leaves out adjunct faculty and would inappropriately split the existing bargaining unit. The Employer also argues that to merge the units would fail to take into account the unique identity of Kendall. Finally, the Employer maintains that it is inappropriate to change the bargaining unit structure or to add the Kendall librarian and counselor positions to a unit without a vote of the faculty.

In response to the procedural objections by the Employer, on June 22, 2001, the FFA filed a representation petition in Case No. R01 F-078, seeking an election among the full-time faculty of Kendall, to be added to the faculty unit at FSU; this petition does not seek the librarian or counselor positions at Kendall. The Employer continued to object to splitting the existing unit, maintaining that the faculty at Kendall share a unique community of interest making the existing bargaining unit appropriate.

Facts:

The parties submitted a stipulation detailing the essential facts in this matter, along with joint exhibits. This factual stipulation was supplemented by testimony from several witnesses.

Ferris State University

Ferris State University is a state institution, governed by a Board of Trustees, and headed by a President. FSU's main campus is located in Big Rapids, Michigan. It also has a Grand Rapids campus, and satellite locations in Traverse City, Flint, Jackson, Dowagiac, Niles, Muskegon, and Macomb County. FSU currently enrolls over 9,800 students and offers programs in eight colleges. Some of the eight colleges have departments within that college. The admissions office at FSU handles recruiting and admissions for all colleges within the University. Similarly, the University registrar processes grades and transcripts for students from all of the colleges and the financial aid office provides services to all of the colleges.

There are seven bargaining units at FSU. Since approximately 1973, the FFA has represented the following bargaining unit comprised of 460 full-time faculty:

All full-time Board-appointed FSU teaching faculty (10 or 12 month); librarians; educational counselors; admissions counselors; personal counselors; program coordinators; coordinator of orientation; and Board-appointed part-time faculty who are employed for at least one-half of the average load for their department, excluding all other University personnel and supervisors.

² At hearing the parties stipulated that the proposed accretion of the admissions officer position would be held in abeyance until a pending dispute regarding the unit placement of FSU admissions officers was resolved.

Approximately 100 part-time faculty are excluded from the unit, with the exception of three board-appointed part-time faculty who have historically been included. The current collective bargaining agreement is effective through June 30, 2002. The Board of Trustees sets bargaining parameters and delegates negotiation responsibilities, with the President of FSU having only a consulting role in negotiations.

FSU faculty in the bargaining unit report, directly or indirectly, to a dean, who reports to the Vice President for Academic Affairs, who in turn reports to the President of FSU. Within the colleges, there are department heads or chairs, and within the departments there are programs which are coordinated by a program coordinator.

FSU has an Academic Senate, which operates pursuant to the Official Charter of the FSU Academic Senate. The Senate is composed of representatives from each college. The Senate reviews and makes recommendations on academic matters such as new programs, new courses, attendance policies and the like. Matters such as tenure, workload, seniority, sabbatical leaves, promotions and merit increases are governed by the collective bargaining agreement between FSU and the FFA. The contract contains a broad outline regarding these matters; the colleges may vary with respect to matters such as academic credentials, or tenure requirements. Seniority is generally based on a discipline within a department. The authority for compensation for newly hired FSU faculty in the bargaining unit resides with FSU's Vice-President for Academic Affairs and is generally market-driven.

With respect to the budget, each college prepares a yearly list of expenditures which it submits to the Vice-President for Academic Affairs. The Vice President for Academic Affairs makes a budget proposal to the President who in turn seeks approval from the Board of Trustees.

Kendall College of Art and Design Prior to the Merger

The Kendall College of Art and Design opened in Grand Rapids, Michigan in 1928 as a private, non-profit institution, governed by a Board of Trustees. The Board appointed a President who was responsible for the operation of the College. Kendall was originally a technical school with programs in furniture design, interior design, and advertising. In 1981, Kendall was accredited by the North Central Association of Colleges and Schools, and subsequently became accredited by the National Association of Schools of Art and Design. Kendall enrolled approximately 750 students, offering BFA programs in six majors as well as a BS degree in art history and a BFA degree in the visual arts. Kendall had its own admissions office, registrar, and financial aid office.

Oliver H. Evans has served as President of Kendall since 1996 and all staff reported to Evans either directly or indirectly. With respect to academic matters, Kendall has been organized into three departments: 1) Foundation/Fine Arts; 2) Design Studies; and 3) Art History/Liberal Arts and Sciences. Each department was headed by a department chairperson elected by the faculty and approved by Evans. Evans served as Dean of Faculty and in that capacity was supported by the Dean's Council, which consisted of department chairpersons and others. The operation of Kendall on academic and non-academic matters was directed in large part by the Kendall Senate as a recommendation body. The Kendall Senate consisted of both faculty and

staff, in order to facilitate communication among all employees of the institution. As President, Evans had responsibility for formulating Kendall's budget, subject to Board approval. Evans delegated this authority to Sandra Davison-Wilson, Vice-President for Business and Financial Affairs. She received budget requests from individual departments and incorporated them into an overall budget proposal for Kendall.

The Kendall faculty consisted of approximately 30 full-time faculty employees and approximately 60 adjunct (teaching six credit hours or less per semester) faculty employees. These employees have been in a bargaining unit of teaching faculty represented by the KFA since 1974; in early 1980, the KFA became affiliated with the Michigan Education Association. There were also approximately 30 full-time non-union employees, including one counselor, two librarians, and four admissions officers. All of the Kendall teaching faculty had an expectation of outside creative work. In the design faculty, many were professional designers who designed products for companies; members of the fine arts faculty usually had studios and engaged in art exhibitions.

Kendall and the KFA have been parties to a series of collective bargaining agreements. Davison-Wilson represented Kendall at the bargaining table, under Evans's direction. The collective bargaining agreements set forth working conditions for the faculty, including matters such as workload, personnel policies, sabbaticals, layoffs, and the like. Certain minimum appointment salaries were established by contract, with Evans having ultimate authority to determine salaries based on the market for schools of art and design.

The Kendall faculty played a role in personnel matters through elected department representatives on the employer-faculty Personnel Committee defined in the collective bargaining agreement. The Personnel Committee made recommendations to Evans on evaluations, promotion and sabbatical issues. The recruitment and hiring process for Kendall faculty involved development of a position description by faculty in the department, subject to review and approval by Evans. Candidates were interviewed by faculty and by Evans. Department faculty would make a recommendation to Evans, who made the final decision. The termination process for faculty varied depending on whether the employee was permanent or probationary. The contractual probationary period was six years, with a series of one-year contracts. For probationary faculty, Evans had authority to terminate for just cause at any time or not approve reappointment at the end of the one-year contract. For permanent faculty under continuing contracts, Evans had authority to terminate for just cause or reductions in staff. There was no tenure system for faculty.

Kendall librarians performed the usual librarian functions, such as book selection and purchase, and providing reference assistance to students. The library collection focused on art, design, and architecture. Kendall librarians had limited contact with FSU librarians. Similarly, the Kendall counselor had little or no contact with FSU counselors. The counselor at Kendall assisted and advised students with educational and personal matters, with limited participation in tutoring or testing.

Proposed Merger

In 1994, the Kendall Board of Trustees identified significant challenges to Kendall's ability to provide the quality art and design education for which it is known and to which it is committed. These included the fact that in order to compete successfully for students, Kendall needed to implement more technological enhancements than its budget allowed. The Board sought ways for Kendall to experience growth but continue to remain as an institution in Grand Rapids with its own identity and character. It began exploring several options, including seeking a partnership with another institution, specifically FSU. A merger offered advantages to both institutions. For FSU, these included increased presence and visibility in the Grand Rapids area and expansion of its program offerings in art and design. For Kendall, FSU would be able to free up capital for Kendall by purchasing Kendall's assets and leasing them back to Kendall. As reflected in an FSU 2000-2001 self-study report, one of the goals of the merger was to sustain the mission and identity of Kendall College of Art and Design.

In May of 1996 the two institutions signed a Memorandum of Understanding providing for a pre-merger affiliation period beginning August 30, 1996, and ending with a merger to be effective on August 31, 2000. At the same time that the Memorandum was signed, FSU purchased from Kendall its land, buildings, improvements, furniture, fixtures, and equipment and leased the assets back to Kendall at fair market value. Pursuant to the Memorandum of Understanding, a portion of the proceeds from the sale were used by Kendall to make improvements to the assets and to acquire new technology.

In May of 1998, a Merger Task Force was created by the direction of FSU President William Sederberg. FSU and Kendall representatives engaged in planning how the merger would be implemented and how the two institutions would function following the merger. One of their decisions was to delay the merger until December 31, 2000.

During the period that the FSU/Kendall merger was being formalized, an attempt was made to merge the Visual Communications programs at the two institutions. Kendall had a four-year program in this area; FSU offered a two-year associate degree, which qualified the student to move on to a bachelor's degree. Under this experimental program, FSU students moved on to Kendall after completing two years of study. Two FSU faculty members moved from the Big Rapids campus to Grand Rapids in order to participate in the program. Faculty members from both institutions discussed matters such as curriculum, workloads, salaries, and credentials. Ultimately, it was decided to discontinue this academic merger due to differences in philosophy and teaching methods; the approach of the Kendall faculty was freer and self-directed, while the FSU faculty took a more traditional, structured approach.

Kendall Operations After the Merger

Kendall is no longer a private, non-profit organization but is now part of FSU, and is called Kendall College of Art and Design of Ferris State University, Grand Rapids campus. FSU-Grand Rapids also includes the College of Professional and Technological Studies, a new college created at the same time that the merger of Kendall and FSU was culminating. The Kendall

Board of Trustees has been dissolved; Kendall is now governed by the FSU Board of Trustees, pursuant to the state constitution and applicable state statutes. Evans continues to serve as President of Kendall, with the additional title of Vice-Chancellor of FSU-GR. Evans retains substantially the same authority as he had prior to the merger, but provides reports to the chancellor of FSU-Grand Rapids with respect to the day-to-day operation of the college. The administrative structure remains the same, with Kendall faculty continuing to report to Evans. The academic governance structure has also been preserved, with the control of academic programs remaining with the Kendall faculty. There is little or no interchange of faculty between FSU and Kendall, other than the temporary Visual Communications program.

Evans and Davison-Wilson continue to formulate Kendall's annual budget, which is submitted as part of the overall FSU budget to the FSU Board of Trustees for approval. Following the merger, Kendall is expected to maintain its status as an essentially self-sustaining fiscal operation with generated revenues supporting operational expenses.

On December 27, 2000, the general counsel for FSU sent a letter to the President of the KFA indicating that FSU recognized the KFA as the exclusive bargaining representative of all employees in the existing bargaining unit and that Sandra Davison-Wilson would remain the representative of Kendall at the bargaining table under the direction of President Evans. Davison-Wilson now consults with the FSU general counsel concerning negotiations strategy. The FSU Board authorized the continuation of negotiations but provided no other direction with respect to the bargaining. At the time of hearing, a 2000-2001 tentative agreement had been reached and ratified by the KFA.³ Working conditions, including matters such as faculty workload, sabbaticals, evaluations, and layoffs, are defined and administered pursuant to the collective bargaining agreement as in the past.

Kendall's facilities are housed in three buildings; it shares some classroom space with the College of Professional and Technological Studies. Kendall is now aligned with FSU in matters such as an e-mail system, payroll, the academic calendar, and student registration procedures. Kendall students register for classes at a special section of the FSU website. Kendall courses are open to non-Kendall students if they meet Kendall's unique admissions requirements or are granted special permission. Kendall maintains its own attendance and grading policies, and continues to operate its own admissions office, registrar, and financial aid office.

Discussion and Conclusions:

The FFA contends that when two employers merge, it is appropriate to merge existing bargaining units which share a community of interest. The Union maintains that since a community of interest of Kendall and FSU faculty has been demonstrated, it is appropriate to merge the Kendall full-time faculty with the FSU unit, through either a unit clarification petition or a representation election. According to the Employer, the FFA petitions would inappropriately fragment the historical KFA unit and create a residual unit of adjunct faculty. The Employer

³ The Board subsequently ratified this agreement. The parties agreed pursuant to a Letter of Understanding dated July 27, 2001, that any contract reached would not act as a bar to the representation proceedings, with the issue of proper unit placement of the Kendall faculty specifically reserved for Commission determination. See *City of Flint Bd of Ed*, 1982 MERC Lab Op 1320.

argues that the administration and employees of Kendall have experienced no substantial change in duties or responsibilities as a result of the merger, and the existing unit is an appropriate one under Commission standards. The Employer asserts that Kendall continues to operate as an autonomous institution; it has not been subsumed by FSU and does not operate as simply another college within FSU.

Restructuring or administrative reorganization of an employer may impact bargaining unit configuration and representation rights, creating unique issues which this Commission must resolve. *Wayne County*, 2001 MERC Lab Op ___, (Case No. C99 E-94, issued 11/15/01). In *SEMTA*, 1985 MERC Lab Op 278, 288, we reviewed our policy with respect to unit determinations in such cases. We concluded that after a merger or reorganization, accretion without an election is only appropriate where the unit to which the employees are accreted is the *only* appropriate unit. See, for example, *Flint Osteopathic Hosp*, 1974 MERC Lab Op 117; *City of Ann Arbor*, 1977 MERC Lab Op 1026; *Calhoun County*, 1979 MERC Lab Op 124. We contrasted cases in which after a merger two alternative units were found appropriate. See, *Bay Medical Center*, 1972 MERC Lab Op 977, *State Judicial Council*, 1983 MERC Lab Op 264. In those cases, we directed an election, concluding that the right of employees to a voice in the selection of their bargaining representative should be preserved. Neither of the situations described in *SEMTA* is present in the instant case.

There is no question that the unit of full-time and adjunct faculty at Kendall is an appropriate unit, even after the merger. The merger did effect some changes at Kendall. Kendall is now subject to the ultimate authority of the FSU Board of Trustees and its President. There has also been an alignment with FSU in routine administrative matters including academic calendar, e-mail, registration procedures, and shared classroom space. However, the operations of the two institutions have not been so integrated as to make separate bargaining units inappropriate. Kendall has remained substantially autonomous in many significant areas. These include academic governance, curriculum, budget, labor relations and employment policies. There is no interchange of Kendall faculty with FSU; the experiment in merging the Visual Communications programs of the two institutions failed due to differences in approach and teaching methods. Kendall faculty share working conditions and benefits, which, as reflected in the collective bargaining contract, differ from those of FSU faculty in many areas, including tenure, salaries, and benefit plans. Since Petitioner has failed to establish that the existing unit is no longer an appropriate unit, we find that automatic accretion or unit clarification would be improper. *SEMTA*.⁴

Petitioner has also failed to demonstrate that a representation election is appropriate under these circumstances. As discussed below, an election in the bargaining unit proposed by the FFA would violate longstanding Commission policies giving great weight to bargaining history and prohibiting the fragmentation of bargaining units. Petitioner correctly asserts that the Commission has consistently found units consisting of all instructors and professors to be appropriate. See, for example *Grand Rapids Community College*, 1996 MERC Lab Op 55, 59; *Michigan State Univ*, 1982 MERC Lab Op 610. We agree with Petitioner that as teaching

⁴ We note that the previously unrepresented Kendall librarian and counselor are not newly established or changed positions and could not be added to the unit through a unit clarification petition. See *Genesee County*, 1978 MERC Lab Op 552.

faculty, FSU and Kendall faculty do share a community of interest in many respects, and such a unit might have been found appropriate in an initial unit determination. However, the fact that Kendall faculty may have a community of interest with FSU faculty does not destroy the community of interest shared in the current unit. *City of Kalamazoo*, 1983 MERC Lab Op 349, 254-256. Since a bargaining history has been established, we must examine all of the circumstances as well as applicable Commission policies.

We attempt in unit determinations to find the largest unit which, under the circumstances of the particular case, includes all common interests and is most compatible with the effectuation of the purposes of PERA. *Hotel Olds v State Mediation Board*, 333 Mich 382 (1952). However, when there is an established bargaining history in a particular unit, we will generally defer to bargaining history even though we might have originally structured the unit differently. *C.S. Mott Community College*, 1980 MERC Lab Op 400, 412. The Commission is not obligated to find the optimum unit, but only *an* appropriate bargaining unit. *Lansing Sch Dist*, 1980 MERC Lab Op 832, 835. We have stated that there is a heavy burden on the party seeking to disturb an established bargaining relationship; only where the unit is *per se* inappropriate or an extreme divergence in community of interest is demonstrated will we break up an established unit. *Wayne County (Airport Police Dept)*, 2001 MERC Lab Op ____ (Case No. R00 H-102, issued 7/3/01). This is in accordance with our strong and overriding policy prohibiting the fragmentation of existing units. *Dearborn Pub Sch*, 1990 MERC Lab Op 513, 517; *City of Midland*, 1978 MERC Lab Op 333.

Petitioner has failed to meet this burden. The FFA has produced no evidence establishing that as a result of the merger the KFA classifications have changed or undergone an extreme divergence of interests making the existing unit inappropriate. Petitioner argues that allowing a separate bargaining unit to exist is contrary to the Commission's decision in *Univ of Mich*, 1993 MERC Lab Op 615, finding a campus-specific bargaining unit inappropriate. We find that the rationale expressed in that case, which concerned previously unorganized employees, does not apply to an existing unit which has a bargaining history of over 25 years. To direct an election under these circumstances would split the Kendall faculty into two bargaining units, in violation of our long established policy against fragmentizing existing units, and our policy of preserving the stability of bargaining relationships. Accordingly, we find that both petitions must be dismissed.

ORDER

Based upon the above findings of fact and conclusions of law, it is hereby ordered that the petitions in UC00 E-19 and R01 F-078 are dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSIONⁱ

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Dated: _____

ⁱ Commission Chair Swift did not participate in this decision.