

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

In the Matter of:

MACOMB COMMUNITY COLLEGE,
Public Employer,

Case No. R02 D-056

-and-

MICHIGAN EDUCATION ASSOCIATION,
Petitioner - Labor Organization.

APPEARANCES:

Brady, Hathaway, Brady & Bretz, P.C., by Paul W. Coughenour, Esq., for the Public Employer

Amberg, Firestone and Lee, P.C., by Michael K. Lee, Esq., for Petitioner - Labor Organization

DECISION AND DIRECTION OF ELECTION

Pursuant to Sections 12 and 13 of the Public Employment Relations Act (hereafter "PERA"), 1965 PA 379, as amended, MCL 423.212 and MCL 423.213, this case was heard at Detroit, Michigan on June 28, 2002, before Julia C. Stern, Administrative Law Judge ("ALJ"), acting as hearing officer for the Michigan Employment Relations Commission. Based on the record, including the transcript and briefs filed by the parties on or before November 1, 2002, the Commission finds as follows:

The Petition and Background Findings:

The Michigan Education Association ("Union", or "Petitioner") filed this petition on April 24, 2002, seeking to represent a residual unit of all of the adjunct faculty members employed by the Macomb Community College ("MCC" or "Employer"), but excluding all administrators. The Employer asserts that the adjunct faculty are not an appropriate unit as they are casual or temporary employees. The Employer further contends that the adjunct faculty members do not comprise a stable identifiable unit as they work greatly fluctuating hours and do not work every semester. The Petitioner argues that there are sufficient numbers of adjunct faculty members who have worked for enough time such that they have a functional expectation of re-employment and are neither casual nor temporary employees. Petitioner points to various indicators of continuing employment amongst the adjunct faculty, such as the four step salary scale and the awards given by MCC to adjuncts with ten or twenty years of service.

MCC offers classes to approximately 20,000 students for credit. To teach those classes, MCC employs full-time faculty, and part-time teachers who are adjunct faculty or staff members

whose principal occupations are not teaching. There are approximately 230 full-time faculty members, who are represented by the Macomb Community College Faculty Organization (MCCFO). The number of adjunct faculty members varies from semester to semester.

Adjunct faculty members are paid based on the number of “equated hours” worked. The workload of the full-time faculty members is also based on the number of equated hours. Equated hours are determined by the collective bargaining agreement between the Employer and the MCCFO and are generally equal to the number of credit hours for a course. In certain departments where the teacher is required to perform additional work outside of the classroom, equated hours may be more than credit hours. However, in other departments equated hours may be less than credit hours.

The full-time faculty members are permitted to choose the classes they want to teach as part of their regular assignment. The regular assignment, or “base load” for a full-time faculty member, is fourteen to sixteen equated hours per semester. Full-time faculty may also elect to teach additional classes as extra-contractual assignments. A full-time faculty member may elect to teach up to twenty-two equated hours annually, or ten equated hours per term, as an extra-contractual assignment.

According to the collective bargaining agreement between the Employer and the MCCFO, all extra-contractual teaching assignments must be offered to members of the full-time faculty before being offered to teachers who are not members of that unit. Thus, part-time teachers, i.e. staff members and adjunct faculty members, are only offered teaching assignments after the full-time faculty members have chosen the classes they want to teach.

Adjunct faculty members may teach up to twenty-two equated hours annually or ten equated hours per term, based on limitations included in the Employer’s collective bargaining agreement with the MCCFO. Adjunct faculty members are selected from a roster of persons recommended by the part-time faculty coordinator, who is a member of the full-time faculty. The administration may also recommend persons to be included in the roster if there are insufficient numbers of candidates on the list, or if the administration is aware of applicants with qualifications that are superior to those on the list. Before the end of the semester preceding the one for which the adjunct is to be hired, the roster is submitted to the Associate Dean to select the adjunct faculty.

The roster frequently does not change from semester to semester, though the full time faculty has the right to change it at any time. Once someone is added to the roster, the Associate Dean does not have the right to remove him or her from the roster unless he or she is given an unsatisfactory rating on a teaching assignment, or unless the individual asks to be removed from the list. The fact that someone is on the roster does not guarantee him or her a teaching position.

While tentative arrangements may sometimes be made as much as two to three months in advance, the Employer does not offer employment to the adjunct faculty members until twenty-four to seventy-two hours before the beginning of the term. Adjunct faculty are hired for a particular section of a course, for a particular semester, or part thereof. Adjunct faculty members

may refuse an offer of an assignment. An adjunct has no right to teach a particular class, even if he or she taught that class previously.

The Employer classifies each part-time employee as a “new hire”, a “present employee”, or a “rehire”. A “new hire” is an adjunct who has not previously taught for MCC. The Employer defines someone as a “present employee” if he or she has taught within the last two years. Each summer, the Employer reviews its files of adjunct faculty to determine which have become inactive. If an employee has not taught for the past four semesters, not including the summer semester, that person’s file is moved to the terminated employees’ file and the person is no longer considered an employee. The Employer removes the files of approximately 120 adjunct faculty members each year due to inactivity. However, the removal of an adjunct’s file for inactivity does not necessarily mean that their name will be removed from the roster of those eligible for a teaching assignment. If an adjunct were chosen for an assignment after their file has been removed, the employer would recreate the file for them.

The adjunct faculty members are paid based on a four step salary schedule. Adjuncts progress one step by teaching twenty-four equated hours, or after teaching four terms. Adjuncts may progress up to Step 3 on the salary scale based on teaching experience gained before they were hired at MCC. The majority of the adjuncts are at Step 4¹. The record does not reveal how many of those individuals, if any, were hired at Step 3. However, even if all of the adjuncts at Step 4 were hired at Step 3, they had to have worked for the Employer twenty-four equated hours or taught four terms prior to the 2001-2002 academic year to get to Step 4 of the salary scale. Since adjuncts are limited to teaching twenty-two equated hours per year, each of those individuals at Step 4 on the salary scale must have taught for the Employer for more than a single academic year.

The Employer rewards longevity in its adjunct faculty with service awards at ten and at twenty years of service. The award criteria provide that working one day in a semester qualifies as working a semester and the employee must work two semesters in a year to qualify for an award. There are 251 adjunct faculty members who received these awards between 1994 and 2001.

The regular school year consists of two sixteen week semesters. The fall semester begins in late August and lasts until mid or late December. The spring semester runs from January through mid-May. The Employer also has a summer semester. Classes in the applied technology area are taught on a shorter trimester. The evidence in the record does not distinguish between those adjuncts that teach the regular length term and those that teach the shorter trimester.

Between the fall semester of 1998 and the spring semester of 2002, between 426 and 491 adjunct faculty were employed each semester, excluding the summer semester. Of those, the employer’s records indicate that there were between forty-six and ninety-seven new hires each semester and that between sixty-three and one hundred twenty adjunct faculty left each semester.

¹ In its brief, Petitioner asserts that at least 91.2 percent of the adjunct faculty are at Step 2 or higher on the salary scale. However, the record does not reveal the number of those currently at Step 2 or higher who were hired above Step 1 based on their past teaching experience. Therefore, the numbers of adjuncts at Steps 2 or 3 does not support Petitioner’s assertion of employee longevity.

Discussion and Conclusions of Law:

In support of its contention that the petition for election should be denied, the Employer relies on our decision in *Eastern Michigan University, 1997 MERC Lab Op 312 (EMU I)*. There, the proposed bargaining unit was to include those lecturers who taught five or more credit hours for three or more consecutive semesters, not including the brief spring and summer semesters. The evidence in that case indicated that the small number of lecturers who maintained regular employment with the university was insufficient to constitute a stable and identifiable unit with which a bargaining relationship could reasonably be maintained and administered. We found the temporary and casual nature of their employment precluded the formation of a stable bargaining group.

There are many similarities between the facts in *EMU I* and the case before us. There, as here, the employer's regular teaching faculty are members of a separate bargaining unit.² In both cases, the employees in question supplement the employer's regular faculty workforce. These employees teach courses that cannot be taught by regular faculty due to unanticipated shifts in enrollment, faculty sabbaticals, leaves of absence, and other similar reasons. In both cases, the employees' appointments are for a fixed duration, typically one semester, and carry no institutional obligation, express or implied, beyond the terms of the appointment. Notice of non-reappointment is not required. In both cases, the employees may refuse any appointment or course assignment without restriction. They may also maintain other employment as neither employer requires exclusivity.

However, there are also significant differences between the two cases. In the case before us, it appears that there is a considerably larger percentage of employees with greater teaching continuity than represented by the facts of *EMU I*. In this case, there are at least 250 adjunct faculty members who have taught consecutive semesters for at least ten years. Although the parties have not provided evidence showing the correlation between the adjuncts who received ten and twenty-year service awards and the number of that group continuing to work consecutive semesters, the longevity of that group indicates a greater likelihood for more continuity and stability than was evident in *EMU I*.

We must also consider the fact that between the fall semester of 1998 and the spring semester of 2002, the Employer employed between 426 and 491 adjunct faculty each semester³, less than twice the number of employees who have received service awards. Therefore, if all of the adjuncts who received ten or twenty-year service awards continued to work for the Employer after receiving the awards and did so through the 2002 academic year, it would appear that more

² In *EMU I*, the lecturers were not included in the bargaining unit with the regular teaching faculty as the result of the Court of Appeals decision, *Eastern Michigan University Regents v Eastern Michigan University Professors*, 46 Mich App 534 (1973), which reviewed MERC's initial representation decision with respect to Eastern Michigan University faculty, *Eastern Michigan University, 1972 MERC Lab Op 118*. The Court of Appeals found the lecturers were casual or temporary employees. This finding was contrary to the finding of the Commission that they were regular part-time employees and were to be included in the unit if they taught six hours or more for two or more consecutive semesters. It is to be noted that in the earlier case, the university's regulations limited the lecturers' employment to a maximum of three years in succession. See 1972 MERC Lab Op 118, 125-126, and 137.

³ These figures do not include the summer semester.

than half of the adjunct faculty members in any given semester have been with the Employer for over ten years. The record does not reveal how many of the ten and twenty-year award recipients continue to teach for the employer. However, the number of those who have received service awards clearly indicates a sizeable group of employees with an interest in continued employment.

Another indication that the group in this case has greater stability than that of the group in the *EMU I* is fact that the majority of the adjuncts are at Step 4 of the salary scale. Since each of those individuals had to complete at least a year of work with the Employer to advance to Step 4 of the salary scale, it follows that the majority of the adjuncts have worked for MCC for at least a year. Presumably, the recipients of the ten or twenty-year service awards are in this group. However, it is probable that there are employees with less than ten years, but more than one year of employment who are also in this group.

The third factor distinguishing this case from *EMU I* is the fact that the adjunct faculty are selected from a list prepared by full-time faculty. Names are not removed from the list unless the adjunct faculty member requests removal or receives an unsatisfactory rating on a teaching assignment. The list often remains unchanged from semester to semester. There is no indication in the decision in *EMU I* that the lecturers were appointed from a list of select individuals which could be re-used semester after semester, like the roster prepared for the Associate Dean in this case. The fact that the list is often unchanged makes it more likely that the Employer will continue to call on the same individuals when there is a vacancy.

Another factor in *EMU I* not present in the one before us was the fact that the contract for the regular faculty placed a cumulative cap on lecturers' appointments of 400% of a full-time teaching load.⁴ That may explain some of the fluctuation in the group of lecturers under consideration in *EMU I*. There, we found that of the 1022 lecturers employed during the four-year period from 1992-1996, only 150 to 175 would qualify for inclusion in the proposed unit. Moreover, a large majority of those who qualified worked only the three consecutive semesters required to be included in the unit, and thereafter would have been excluded from the unit for lack of teaching hours. At the same time, a few others might be qualifying for inclusion. Accordingly, we found that such fluctuation would make the negotiation and administration of contract benefits difficult. While there is a limitation on the amount of equated hours per semester and per year that an adjunct may teach in the case before us, there is no cumulative limit. Thus, there is one less impediment to longevity and to a stable bargaining unit in this case.

We re-examined the question of whether the lecturers at Eastern Michigan University could form a stable bargaining unit two years later in *Eastern Michigan University, 1999 MERC Lab Op 550, (EMU II)*. The circumstances of the lecturers' appointments in 1999 had not changed from those present in *EMU I*. However, the proposed unit was defined differently in the later case. In *EMU II*, inclusion in the unit was based on a full-time appointment, as the evidence

⁴ The cumulative cap was not discussed in detail in *EMU I*. However, when a second petition for representation of the lecturers was considered in 1999, the record indicated that the facts had not changed and the cumulative cap had been present at the time of the 1997 case. See *Eastern Michigan University, 1999 MERC Lab Op 550 (EMU II)*. While *EMU II* indicates that the cap was not enforced, it does not indicate that the employer disregarded or violated the cap.

indicated that employees who had gone from part-time to full-time were more likely to be repeatedly reappointed. The record revealed that of the 104 lecturers who had received full-time appointments during the spring 1998 semester, 94 had also worked full-time during the preceding semester, 63 had been employed for three consecutive semesters and 59 had worked at least six consecutive semesters. Also, the record in *EMU II* indicated that some members of the proposed bargaining unit had taught for the employer between ten and twenty years. There, we concluded:

A full-time appointment as a lecturer will serve as the basis for eligibility in a residual instructional unit of lecturers, and will move the lecturer out of the larger group of casual and temporary lecturers. Similar to normal bargaining units, inclusion in the unit would continue until the employment relationship is terminated by either the University or the employee, whether or not future appointments are full or part-time. Using this formula as the basis for unit inclusion, we do not find the unit to be unstable as contended by the University. The fact that lecturers are subject to non-reappointment whenever their current appointment ends merely puts them in the same position as all at will employees.

1999 MERC Lab Op 550, 559.

Clearly, evidence that employees have been working on a full-time basis for several semesters indicates that those employees have a reasonable expectation of continued employment from year to year. However, in the case before us, the adjuncts all work on a part-time basis. They are limited to working ten equated hours per semester or twenty-two per year. Moreover, there is no evidence in this record showing a correlation between the number of hours worked and the likelihood of repeated appointments. Thus, this case is clearly distinguishable from *EMU II* as well.

We have found bargaining units of part-time employees in the past, and have included part-time employees in units with full-time employees. See *Chesterfield Twp* 1999 MERC Lab Op 115. Thus, the fact that there are employees working only part-time does not prevent them from having a reasonable expectation of continued employment. We have consistently found that regularly scheduled, part-time employees have a substantial and continuing interest in their employment such that they should be included in a unit of regular, full-time employees. *Charter Twp of Lansing*, 1998 MERC Lab Op 655, 658.

In this case, of course, we need not compare the interest of part-time employees with that of full-time employees as there are no full-time employees in the proposed bargaining unit. Nevertheless, to avoid exclusion from the unit as casual employees, there must be evidence that employees have a substantial and continuing interest in their employment to be included in a unit of regular part-time employees. See *Deckerville Community Schs* 2000 MERC Lab Op 390.

In *Holland Public Schools (Food Service Program)*, 1989 MERC Lab Op 584, we pointed out that there is no fixed number of hours that an employee must work in order to be considered a regular part-time employee. However, an employee who works a very small

number of hours may, as a result, lack a substantial interest in his employment. *Holland Public Schools* at 588.

In this case, the Employer would restrict any possible bargaining unit formed here to those employees who work at least five or six equated hours per semester. The Employer contends that the group is not sufficiently stable to form a bargaining unit based on the number of adjuncts who teach five or more equated hours per semester. However (other than referring to the EMU cases, in which a brief mention of the minimum of five or six hours was made) the employer has offered no substantial rationale for setting this minimum at five hours instead or four, or less. It is evident from the record that there are numerous adjunct faculty members who teach less than five hours per semester, but teach consecutive semesters. While we affirm our prior statement that an employee who works a very small number of hours may lack a sufficient interest in his or her employment to be afforded membership in the bargaining unit, we would stress that the determination of what constitutes a “small number of hours” must be based upon the totality of the circumstances.

Petitioner argues that “equated” hours are a fiction created by MCC for the purpose of determining faculty wages and should not be considered in determining unit eligibility. However, the record lacks evidence of the actual amount of time the various adjuncts work, and it would be extraordinarily burdensome to require the parties to determine actual hours worked by each of the adjuncts. Moreover, Petitioner has not proposed any alternate means for determining which of the adjuncts work more than a “small number of hours.” We find it necessary, in this case, to have a somewhat standardized way of comparing the amount of work done by each of the adjuncts and the full-time faculty. Since the Employer uses equated hours to determine teaching loads as well as salary, we find it appropriate in this case to use “equated hours” to determine which of the adjuncts work more than a “small number of hours.”

We have not defined “small number of hours” and have taken a case -by- case approach in reaching our conclusions relative to this issue. See *Marquette Pub Schs*, 1981 MERC Lab Op 896, *Village of Chelsea*, 1979 MERC Lab Op 826. See also *Lansing Community College*, 1971 MERC Lab Op 1062, 1068, where we included in the bargaining unit the regular part-time faculty members who taught one-fourth of the credit hours taught by the average full time members of the department.

Given the similarity between the language of Sections 9 and 10(1)(a) of PERA and Sections 7 and 8(a)(1) of the National Labor Relations Act (NLRA), the Commission is often guided by Federal cases interpreting the NLRA. *MERC v Reeths-Puffer Sch Dist*, 391 Mich 253, 260; 215 NW2d 672 (1974), *Detroit Police Officers Ass'n v Detroit*, 391 Mich 44; 214 NW2d 803 (1974) and *U of M Regents v MERC*, 95 Mich App 482, 489 (1980). The National Labor Relations Board (NLRB or Board) has found adjunct faculty members at various institutions to be “regular part-time” and not “casual” if their workload was 25% of the workload of a full-time faculty member. See *Catholic Univ of America*, 201 NLRB 929 (1973), *rev'd on other grounds* 205 NLRB 130 (1973); and *Univ of Detroit*, 193 NLRB 566 (1971). It is to be noted that in these two cases, the Board found that the adjunct faculty had a community of interest with the full-time faculty and could be included in the same bargaining unit. Subsequently, the Board reconsidered that position. See *Kendall College v NLRB*, 570 F2d 216 (1978), where the Board

found that pro-rated part-time faculty shared a community of interest with full-time faculty but per-course part-timers did not.

Since the issue before us is a determination of whether these employees have sufficient interest in continued employment to form a stable bargaining unit and not whether they have a community of interest with full-time employees, we find the NLRB's 25% guideline to be persuasive. Someone working 25% of the workload of a full-time faculty member undoubtedly invests a significant portion of their time in that employment. Accordingly, we hold that an adjunct faculty member whose teaching load equals or exceeds 25% of the teaching load of the regular faculty shall be considered to work more than a "small number of hours." In this case, a full teaching load for the regular faculty is 14-16 equated hours. Therefore, applying the NLRB's 25% guideline, we find that an adjunct faculty member with a minimum teaching load of 3.5 equated hours per semester has a sufficient interest in his or her employment to be afforded membership in the bargaining unit.

The next issue to be addressed is whether the adjunct faculty must teach consecutive semesters and the number of semesters to show sufficient continuity. The most important semesters from the standpoint of regular employment are the fall and spring, which make up the normal or regular school year for most students and faculty. It also appears that the Employer relies on adjuncts to a much greater extent during the fall and spring semesters than during the summer semester. Thus, employment considered for purposes of inclusion in the bargaining unit and voting eligibility must be based on employment during the fall and spring semesters.

While it appears that a substantial percentage of the faculty teach consecutive semesters, they do not always teach more than 3.5 equated hours. The number of hours taught per semester tends to vary for most of the adjuncts, with some teaching only a few equated hours one semester, but teaching several more the next. The fact that an adjunct teaches only a small number of hours one semester should not prevent membership in the bargaining unit if there is evidence of continuing employment and if, in other semesters, the adjunct does work enough to earn a significant portion of his or her income from teaching at MCC. Therefore, where that adjunct has continuing employment, we would not require that adjunct to teach 3.5 equated hours every semester in order to establish a substantial interest in employment. Accordingly, we find that an adjunct who teaches a minimum of 3.5 equated hours per semester in any two semesters in the past two years is eligible for inclusion in the bargaining unit.⁵

ORDER DIRECTING ELECTION

We find that a question of representation exists within the meaning of Section 12 of PERA and that the following employees constitute a residual instructional unit appropriate for the purposes of collective bargaining under Section 13 of PERA:

All adjunct faculty employed by Macomb Community College who have been employed to teach 3.5 or more equated hours per semester in any two semesters during the last two years, excluding administrators and all other employees. For

⁵ For these purposes, when we refer to "semesters" we are referring only to the fall or spring semesters.

these purposes, "semesters" shall include the fall or spring semesters, but shall not include the summer semester.

Eligible to vote in the election will be those adjunct faculty members who were employed to teach 3.5 or more equated hours per semester beginning with the spring 2002 semester, which was the semester closest to the date of the filing of this petition, following the usual policy of the Commission for determining eligibility to vote, or adjuncts receiving such appointments in the subsequent fall 2002, or spring 2003 semesters. Pursuant to the attached direction of election, the aforesaid employees will vote on whether or not they wish to be represented for purposes of collective bargaining by the Michigan Education Association.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Dated: _____