

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

In the Matter of:

GLEN OAKS COMMUNITY COLLEGE,  
Public Employer,

Case No. UC02 B-004

-and-

SOUTHWESTERN MICHIGAN EDUCATION  
ASSOCIATION, MEA/NEA,  
Petitioner-Labor Organization.

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**APPEARANCES:**

Bird, Svendsen, Brothers, Scheske & Pattison, P.C., by Roger A. Bird, Esq., for the Public Employer

White, Schneider, Young & Chiodini, P.C., by Alexandra S. Matish, Esq., for the Petitioner

**DECISION AND ORDER ON PETITION FOR UNIT CLARIFICATION**

Pursuant to Section 12 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212, this case was heard on October 17, 2002, 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 13, 2003, the Commission finds as follows:

**The Petition and Positions of the Parties:**

Petitioner Southwestern Michigan Education Association, Michigan Education Association/National Education Association, represents a bargaining unit of faculty employees of the Glen Oaks Community College (GOCC or the College). On February 4, 2002, the Union filed this petition for unit clarification seeking to add to its bargaining unit the position of director of the Tutoring and Testing Center (TTC).<sup>1</sup> Petitioner argues that the position shares a community of interest with the faculty teachers and faculty coordinators within its bargaining unit, and that the duties and responsibilities of the TTC director are

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<sup>1</sup> In the petition, the Union also sought to accrete to its unit the positions of e-learning coordinator and coordinator of the medical office assistants program. Prior to the hearing, however, the parties reached an agreement concerning the unit placement of those positions. A related unfair labor practice charge filed by the Union (Case No. C02 C-069) was also withdrawn prior to hearing.

essentially the same as those of the former director of the Academic Opportunities Center (AOC), which was a bargaining unit position.

The College opposes the petition on the ground that the TTC director is a non-faculty position that does not share a community of interest with Petitioner's bargaining unit of full-time teachers. GOCC argues that the TTC director is a different position than the director of the AOC, and that the services rendered to students by the TTC greatly exceed those formerly provided by the AOC. In addition, GOCC contends that the TTC director should be excluded from the bargaining unit as a supervisor because she has the authority to hire, discipline and direct the work of other employees working at the TTC.

Facts:

Glen Oaks is a public community college serving south-central Michigan. GOCC and Petitioner are parties to a collective bargaining agreement covering the period 2001 to 2004. The recognition clause of that contract identifies the bargaining unit as all full-time teaching faculty of the College. Under the contract, a full-time faculty member is any instructor employed and/or scheduled to teach more than 29 credit hours per academic year. At the time of the hearing in this matter, there were approximately 30 full-time faculty members employed at the College.<sup>2</sup> In addition, GOCC employs a number of adjunct and part-time instructors who teach less than 29 credit hours per academic year and are not represented for purposes of collective bargaining. The College's support staff employees are represented by the Glen Oaks Community College Support Staff Association.

Academic Opportunities Center

In 1985, the College established the Academic Opportunities Center (AOC) to provide testing and tutoring services to GOCC students. The AOC primarily administered three types of examinations: in-house testing, placement testing and distance learning. With respect to in-house testing, the director of the AOC and her staff proctored make-up examinations for students who were unable to take tests in class at the regularly scheduled times and dates. The director was responsible for ensuring that the makeup tests were properly administered and returned to the appropriate instructor.

The AOC director and her staff also administered the Asset test, a placement examination given primarily to new students before they enroll in classes at the College. The Asset test consisted of a standard placement examination, and a writing sample, which was evaluated by a group of faculty members. The AOC director selected the faculty members to perform the evaluations, compiled the data from the evaluations and submitted the information to the College's student services office.

The final component of the testing services administered by the AOC involved the College's distance learning program, which enabled GOCC students to take courses offered at

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<sup>2</sup> Several faculty members also serve as faculty coordinators. Faculty coordinators set academic class schedules, assign instructors to teach those classes, establish budgets, sign purchase orders, and recruit and interview part-time instructors.

other colleges and universities via videotape or the Internet. The AOC director and her staff contacted the institutions from which these courses originated, assisted GOCC students with enrollment matters, distributed course materials, proctored examinations, and processed paperwork relating to the program.

Tutoring at the AOC was conducted primarily by means of a peer tutoring system. Peer tutors were appointed by the dean of instruction and trained by the Office of Student Services. There were between five and fifteen peer tutors working at the AOC per semester. The director of the AOC was responsible for facilitating the scheduling of the peer tutors, signing their timesheets verifying that they worked the required hours, and answering questions from the peer tutors. On occasion, the College also employed a professional tutor to instruct learning disabled students at the AOC. At other times, the director of the AOC herself provided tutoring for learning disabled students.

#### Director of the AOC

Daryl Herrmann, a GOCC faculty member included in Petitioner's bargaining unit, served as director of the AOC from its inception in 1985 until she resigned from the position in the spring of 2001. As director, Herrmann created the annual budget for the AOC, signed purchase orders and bought supplies. She also oversaw three part-time paraprofessional employees who were members of the support staff unit. Herrmann directed the search to fill the paraprofessional positions and conducted interviews with the candidates. She then recommended to the dean of the business office which candidates to hire. Herrmann was also responsible for training the paraprofessionals and monitoring the quality of their work.

Herrmann was actively involved with marketing the AOC to the GOCC faculty and disseminating information regarding the services offered by the AOC to the community. She wrote articles about the AOC for the College and local newspapers, posted fliers, and regularly communicated with the GOCC administration and faculty via e-mails, memos and notes. Herrmann also routinely sought recommendations from faculty members regarding students who might be qualified to serve as peer tutors at the AOC, and she regularly interacted with the faculty in order to determine what was being taught in each course or program. This information enabled Herrmann to ascertain the needs of the students who utilized the AOC, and to establish what services it should be offering.

During her tenure as director of the AOC, Herrmann continued to teach a full academic load and periodically served as a faculty coordinator. As compensation for these additional duties, Herrmann was given release time from her academic teaching requirements and/or provided with monetary compensation. The College reduced Herrmann's teaching load by four to five credit hours in exchange for the performance of her AOC duties. This equated to eight to ten hours of actual time per week that she was expected to be working at the Center. However, Herrmann was responsible for the AOC whenever it was open, and her actual time spent performing duties related to the AOC was between 10 and 30 hours per week. Herrmann reported to the dean of the College in connection with her work as AOC director.

In the spring of 2001, around the time that Herrmann tendered her resignation as AOC director, the College began considering a proposal to provide more intensive training to its peer tutors. Following discussions with Herrmann, the dean of the College developed a plan to rename the AOC and expand the tutoring services that it offered. Under this plan, the director of the new center was to be a full-time administrative position excluded from Petitioner's bargaining unit.

### Tutoring and Testing Center

The new Tutoring and Testing Center (TTC) opened at the beginning of the 2001-2002 academic year in the same location as the former AOC, and Rebecca Burch was hired as director. Like the AOC, the new facility provides tutoring to GOCC students via the use of peer tutors. However, the peer tutors are no longer trained by the Office of Student Services. Instead, the TTC director teaches a one-credit tutor certification course that meets for two hours per week for five weeks and covers subjects such as communication skills and learning styles. Upon completion of the course, the tutors receive certification from the College Reading and Learning Association (CRLA). At the time of hearing, five of the fifteen peer tutors employed at the TTC had obtained CRLA certification. Burch manages and evaluates the work of the peer tutors, and she is responsible for their hiring, firing and discipline. Burch recruits peer tutors via faculty recommendations and by monitoring grade point averages in classes for which tutoring services are in high demand.

The TTC also provides testing services for GOCC students. Like the AOC, the TTC primarily administers three types of tests: in-house testing, placement testing and distance learning examinations. In-house and distance learning testing are essentially identical to the testing services offered at the AOC. However, instead of the Asset test, the TTC now utilizes the Accuplacer examination to evaluate incoming students for class placement purposes. Because Accuplacer is computer-based, it requires less intensive proctoring than the Asset test. The writing sample portion of the placement test, which was developed by Herrmann, remains in use by the TTC and continues to be evaluated by a group of faculty members selected by the director.

Tests offered by the TTC are proctored by the director and three "proctors/lab assistants," two of whom previously worked as "paraprofessionals" at the AOC.<sup>3</sup> Although they are primarily responsible for administering examinations, one of the proctors/lab assistants does perform some tutoring functions. The director of the TTC is responsible for interviewing, hiring, firing and disciplining the proctors/lab assistants, as well as directing and evaluating their work. The three proctors/lab assistants are members of the College's support staff unit.

The TTC also employs a "learning specialist," a professional tutor who is responsible for assisting GOCC students with learning disabilities. The learning specialist works at the TTC approximately 20 hours per week and spends most of her time testing students for

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<sup>3</sup> The College initially retained the third AOC paraprofessional employee; however, that individual announced her resignation on the day that Burch took over as director.

learning disabilities. It is the duty of the TTC director to monitor and evaluate the work of the learning specialist.

### Director of the TTC

The TTC director position is supervised by the dean of the College. As director, Burch is responsible for the day-to-day management of the TTC. She prepares the annual budget, signs purchase orders and buys supplies. In addition, she regularly meets with the GOCC faculty, including the adjunct and part-time instructors, in order to market the services offered by the TTC. Other marketing efforts undertaken by Burch include putting flyers in faculty mailboxes, posting notices around the campus and making classroom presentations and other speeches. Burch is responsible for recruiting faculty members to serve as readers for the writing sample portion of the placement test, and she seeks referrals from instructors for qualified students to work as peer tutors. She also serves on at least one committee with various GOCC faculty members and administrators.

In addition to teaching the tutor certification course referred to above, Burch was scheduled to teach an introductory education course in the spring/summer of 2002 and again during the fall 2002 term; however, both of those classes were canceled due to insufficient enrollment. Burch is also responsible for coordinating the America Reads program for nearby school districts. America Reads is a federally funded tutoring program for elementary school students. Burch initially conducts a two-hour training program for the GOCC students who volunteer to participate as tutors in the program; thereafter, she meets with the student tutors each month to discuss their progress.

Burch has a Bachelor of Arts degree and is currently working on her master's degree in higher education student services. Prior to being hired by the College, Burch taught at the high school level and worked as a trainer at a treatment facility for adjudicated youths. Burch is a member of the CRLA, as well as the National Association for Developmental Education (NADE), a professional organization for individuals who work in the field of developmental education.

### Discussion and Conclusions of Law:

The Employer contends that the director of the TTC is a newly created, non-teaching position which does not share a community of interest with the faculty instructors. It is true that the TTC director is a full-time position with some different duties and responsibilities than the former Director of the AOC. For example, Burch is responsible for hiring and firing the peer tutors, and she has more authority than Herrmann with respect to directing and evaluating their work. The record establishes, however, that the underlying nature of the position has not changed appreciably as a result of the creation of the TTC. Although Burch is not a full-time instructor, she has a background in education and is responsible for teaching a tutor certification course. In addition, Burch has twice been scheduled to teach an introductory education course. Moreover, the duties that Burch performs on a daily basis in connection with the Center are essentially identical to those previously performed by the AOC Director. We conclude that these duties constitute bargaining unit work and that the position

should remain within Petitioner's unit. This Commission does 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.

Even if viewed as an entirely new position, however, we find that the director of the TTC position should be included in Petitioner's faculty bargaining unit. 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). We have consistently found teaching faculty and other non-teaching 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 Univ*, 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 Univ*, 1972 MERC Lab Op 118.

The record in this case clearly establishes that the TTC director performs duties functionally integrated with the College's teaching faculty. The TTC supports the educational mission of the College by providing testing and tutoring services for GOCC students, and Burch is responsible for the day-to-day operation of the Center. As director, Burch routinely interacts with GOCC students and staff. She recruits, hires and trains the peer tutors, and she is responsible for directing and evaluating their work. Burch is also responsible for training students who volunteer to participate in the America Reads program. Burch is in constant communication with members of Petitioner's unit concerning matters such as peer tutor recruitment and placement testing, and she is actively involved in marketing the services offered by the TTC to the faculty. As noted, Burch has a background in education and has taught, or been scheduled to teach, several GOCC courses. Given these facts, we conclude that the position shares a community of interest with Petitioner's faculty unit and is appropriately included therein.

In so holding, we note that there is no other bargaining unit seeking to represent the TTC director. It is our policy, whenever possible, to avoid leaving positions unrepresented, especially isolated ones. *Charlotte Pub Schs*, 1999 MERC Lab Op 68, 73; *City of Muskegon*, 1996 MERC Lab Op 64, 70.

Lastly, we find no support in the record for the College's assertion that the director of the TTC should be excluded from Petitioner's bargaining unit as a supervisor. None of the employees who work under the direction of the TTC director are members of Petitioner's unit. The part-time learning specialist and the student peer tutor positions are unrepresented, while the proctors/lab assistants are members of the College's support staff unit. It is now well-established that the exercise of supervisory authority over nonunit employees does not require excluding a position from a nonsupervisory bargaining unit, especially where, as here, the nonunit employees are part-time, short-term, or student employees. See e.g. *City of Midland*

(*Police Dept*), 1993 MERC Lab Op 601, 607; *Alpena CC*, MERC Lab Op 955, 970. Accordingly, we hereby issue the following order:

**ORDER CLARIFYING UNIT**

Based upon the above findings and conclusions, the petition filed by the Southwestern Michigan Education Association, MEA/NEA, is hereby granted and the bargaining unit consisting of the faculty of Glen Oaks Community College is clarified to include the position of director of the Tutoring and Testing Center.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Nora Lynch, Commission Chairman

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Harry W. Bishop, Commission Member

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Maris Stella Swift, Commission Member

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