

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

In the Matter of:

LAKE SUPERIOR STATE UNIVERSITY,
Public Employer,

Case No. UC02 E-016

-and-

LAKE SUPERIOR STATE UNIVERSITY
EDUCATIONAL SUPPORT PERSONNEL, MEA/NEA,
Petitioner-Labor Organization.

APPEARANCES:

Thomas Bugbee, Vice President for Student Affairs, for the Public Employer

White, Schneider, Young & Chiodini, P.C., by Michael Shoudy, 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 at Escanaba, Michigan on November 21, 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 February 3, 2003, the Commission finds as follows:

The Petition and Positions of the Parties:

Petitioner Lake Superior State University Educational Support Personnel, Michigan Education Association/National Education Association (ESP), represents a bargaining unit of non-supervisory support employees of Lake Superior State University. On May 16, 2002, the Union filed this petition for unit clarification seeking to add to its bargaining unit the newly created position of administrative assistant to the athletic department. Petitioner contends that the administrative assistant to the athletic department shares a community of interest with the support employees within the ESP unit, and that the duties and responsibilities of the administrative assistant are identical to those which were previously performed by the special clerk III to the athletic department, a bargaining unit position.

The University argues that the petition for unit clarification should be denied because the administrative assistant to the athletic department does not share a community of interest with the ESP unit. In addition, the University contends that the recognition clause in the parties' contract, which excludes "administrative" employees, prohibits the inclusion of the administrative assistant to the athletic department position within Petitioner's unit. Finally, the University asserts that the administrative assistant to the athletic department should be excluded from the unit as a supervisor because she has the authority to evaluate, discipline and direct the work of other employees working within the department.

For the reasons set forth below, we conclude that the administrative assistant to the athletic department, Carol LaMantia, has the same duties and responsibilities as she had when she was employed as a special clerk III, and that the duties added to the special clerk III position during the years preceding the filing of the instant petition do not justify its removal from Petitioner's unit. We also find that the record fails to establish that the administrative assistant has sufficient authority to warrant her exclusion from the unit as a supervisor. Accordingly, we grant the petition and clarify Petitioner's bargaining unit of support employees to include the position of administrative assistant to the athletic department.

Facts:

The University and the Union are parties to a collective bargaining agreement covering the period September 1, 2000 to August 31, 2003. The recognition clause of that contract identifies the ESP bargaining unit as follows:

[All] regular full-time office clerical employees; all building attendants, carpenters, electricians, equipment operators, general repairmen and landscapers, icemen/operators, painters, sports/utilitymen, steam plant operators, preventative maintenance mechanics, utility repairmen, security officer, bakers, cooks, dishroom/storage coordinators, and food service helpers; but excluding foremen and supervisory personnel, management personnel, administrative personnel, professional personnel, academic and teaching personnel, student employees, executive secretaries, part-time employees and temporary employees.

At the time of the hearing in this matter, the ESP bargaining unit was comprised of approximately 113 support employees. Members of the unit generally work from 8:00 a.m. to 5:00 p.m., Monday through Friday. All positions within the unit are non-exempt hourly employees eligible for overtime. Unit members hired prior to July 1, 1995, are compensated at an hourly rate ranging from \$12.31 to \$18.00 per hour. The rate of pay for unit members hired after July 1, 1995, ranges from \$9.84 to \$14.40. Members of the ESP unit receive medical, dental and vision benefits through Blue Cross/Blue Shield of Michigan and are eligible for longevity pay after five years of employment with the University. The University has a central administration governing all of its employees, including ESP members. The minimum educational qualification for positions within the unit is a high school degree. However, the educational background of individual ESP members varies: several members of the unit have associate's degrees and at least two possess master's degrees.

The Special Clerk III Position

There are currently five individuals employed by the University as special clerk IIIs. The primary function of the special clerk III position is to provide “clerical and organizational skills and personal assistance” to the department directors and other staff. The duties of the special clerk III, as set forth in the job description, include typing correspondence, reports and meeting minutes; handling mail and answering phones; ordering office supplies; auditing and verifying data; supervising cash transactions and performing accounting functions; assisting in the planning and promotion of departmental activities and events; training, scheduling and directing the work of student helpers and other employees; and acting as contact person for the department. Special clerk IIIs are also responsible for compiling data and assisting in the preparation and editing of reports for use by state and federal regulatory agencies.

Each special clerk III reports to the director of the department to whom he or she has been assigned. Although only a high school degree is required for the position, three of the five individuals currently employed as special clerk IIIs have bachelor’s degrees. Other qualifications for the special clerk III position, according to the job description, include typing proficiency and the ability to take dictation; knowledge of office procedures; knowledge of management principles and the ability to make decisions and assume responsibility; proficiency in grammar and arithmetic; and knowledge of the technical field required or five years of experience in a higher level clerical position. As of September of 2002, the pay rate for individuals employed as special clerk IIIs ranged from \$11.67 to \$14.61 per hour.

Carol LaMantia began working at the University in 1988 in the bargaining unit position of typist/clerk in the athletic department. LaMantia is a high school graduate who has taken some University courses, but has no advanced degree. Her duties as a typist/clerk included collecting data for use by the athletics director, supervising student employees, performing accounting functions and preparing payroll. In 1990, LaMantia was reclassified to the position of special clerk III to more accurately reflect the duties and responsibilities which she was performing. As a special clerk III, LaMantia was supervised by the athletics director. In 2002, during her final year as a special clerk III, LaMantia was earning \$14.61 per hour.

Changes Within the Athletics Department

In 1996, Associate Director of Athletics William Crawford was promoted to the position of athletics director. The associate director position was never filled and Crawford continued to perform many of the duties of his former position, including strategic planning, budget development and meeting with various leagues and constituents. However, because Crawford was the only administrative employee within the department, and because his duties as director required him to be away from the University a great deal of time, some of the duties of the former associate director position were assigned to LaMantia due to her experience in the department.

The duties which LaMantia assumed following Crawford’s promotion to athletic director included: maintaining payroll for the athletic department; monitoring and assisting in the preparation of the department’s budget; assisting the University in complying with state and

federal rules and regulations; maintaining records concerning student athlete eligibility and financial aid; preparing and monitoring the disbursement of all grant-in-aid for student athletes; completing and processing reports for state and federal agencies; acting as a contact person for the department; answering the phone and preparing correspondence. LaMantia also directed the work of student workers and part-time employees. During this time, LaMantia continued to work under the supervision of the athletic director, who at all times retained the ultimate responsibility for policy decisions affecting the department.

Creation of Administrative Assistant Position

Section 21 of the collective bargaining agreement between Petitioner and the University sets forth a procedure by which bargaining unit members may seek to have their position reevaluated. In December of 2000, LaMantia invoked her Section 21 rights and requested that her position be reclassified and removed from the ESP unit. The request was based upon LaMantia's assertion that the duties which she had been performing for some time exceeded those set forth in the special clerk III job description. The committee conducted an evaluation of LaMantia's duties and responsibilities and, in a memorandum dated January 19, 2001, denied her request. In reaching that decision, the committee noted that LaMantia's position appeared to perform "administrative-level responsibilities" for which the current classification rating system could not account.

In the spring of 2001, the University held a special conference to once again consider the matter of taking LaMantia's position out of the bargaining unit. After Petitioner objected to the removal of the special clerk III position, the matter was dropped.

On February 6, 2002, the University met with Petitioner in a special conference and announced that it was eliminating the position of special clerk III and creating the position of administrative assistant to the athletic department. Over Petitioner's objection, the University classified the position as an "administrative" position outside of the ESP unit. LaMantia was selected by the University to fill the administrative assistant position. A new job description, specific to the administrative assistant to the athletic department position, was created by Crawford and LaMantia.

In her position as administrative assistant, LaMantia earns \$15.65 per hour and once again works under the supervision of the athletic director. LaMantia works the same hours and in the same location as when she was a special clerk III and, with the exception of longevity pay, she is eligible for the same fringe benefits. The duties which LaMantia now performs as administrative assistant to the athletic department are essentially identical to those which she had been performing as a special clerk III since 1996. The only new duties are those that were assigned to LaMantia after the instant petition was filed and that relate to her responsibilities with respect to the University's ticket office.

In October of 2002, approximately one month prior to the hearing in this matter, the University reorganized and transferred oversight and control of the Norris Center Ticket Office from the office of the facilities manager to the athletic department. Tracey MacQuarrie works in the ticket office as a data account II and is a member of Petitioner's bargaining unit. Prior to the

reorganization, she was supervised by the facilities manager. When the ticket office was transferred to the athletic department, MacQuarrie was instructed to report to LaMantia.¹

LaMantia is now responsible for assigning work to MacQuarrie and ensuring that she is fulfilling her duties. LaMantia has also been given the authority to take disciplinary action against MacQuarrie, but such decisions will be reviewed by Crawford if there is a question raised by MacQuarrie, or for other unspecified reasons. Under such circumstances, Crawford will give weight to LaMantia's judgment. Crawford will also review any evaluation of MacQuarrie's job performance conducted by LaMantia. With respect to hiring new employees in the ticket office, the University anticipates that LaMantia will head a selection committee, which will also include Crawford and other members of the University staff.

During the first month following the reorganization, MacQuarrie submitted six leave requests. One of the request forms was signed by Crawford under the heading "Supervisor." LaMantia signed the remaining leave forms as MacQuarrie's supervisor. However, those forms were also reviewed, signed and approved by Crawford. As director of the athletic department, Crawford has the authority to overturn decisions made by LaMantia concerning the approval of leave time.

In addition to LaMantia, there are approximately twelve other unrepresented employees working for the University as administrative assistants, all of whom report to either the director or vice president of their respective departments. The minimum qualifications and working conditions vary by department. For example, a bachelor's degree is required for the administrative assistant to the alumni relations office, while the remaining administrative assistant positions require only an associate's degree. Ten of the individuals currently employed as administrative assistants work full-time; however, the administrative assistant in engineering technology and the administrative assistant to the Great Lake Academy work less than 27 hours per week and are considered part-time employees. The administrative assistants earn between \$10.84 and \$18.61 per hour and are not eligible for longevity pay.

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 duties, skills and working conditions, similarities in wages and employee benefits, amount of interchange 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

¹ At the same time, LaMantia was also assigned the responsibility for directing the work of a part-time employee of the ticket office. It is unclear whether the University is asserting that LaMantia is a supervisor based upon her authority over this nonunit employee. In any event, we note 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 is part-time. See e.g. *Glen Oaks Community College*, 2003 MERC Lab Op ____ (Case No. UC02 B-004), issued December 15, 2003; *City of Midland (Police Dept)*, 1993 MERC Lab Op 601, 607.

supervision. See e.g. *Covert Pub Schs*, 1997 MERC Lab Op 594, 601; *Grand Rapids Pub Schs*, 1997 MERC Lab Op 98, 106. 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. *Saginaw Valley State College*, 1988 MERC Lab Op 533.

The University contends that the administrative assistant to the athletic department is a newly created, administrative position that does not share a community of interest with the support employees in Petitioner's bargaining unit. We disagree. With the exception of the allegedly supervisory responsibilities discussed below, the duties which LaMantia now performs as an administrative assistant are indistinguishable from those which she had been performing as a member of the ESP unit for approximately six years. Moreover, the terms and conditions of her employment with the University did not substantially change following her reclassification to the position of administrative assistant. LaMantia continues to work in the same office, under identical supervision, and for substantially similar wages and fringe benefits. An employer cannot change the composition of a bargaining unit during the term of the contract by contending that a new classification should be excluded from the unit "where that new classification includes the same functions performed by the eliminated classification." *Detroit Public Library Commission*, 1981 MERC Lab Op 982, 985, quoting *Muskegon Heights Schs*, 1977 MERC Lab Op 807, 816 (no exceptions).² See also *City of St Clair Shores*, 2000 MERC Lab Op 230, 234, in which we clarified the bargaining unit to include a position which the employer had simply renamed and removed from the unit without any corresponding change in job function.

More importantly, the duties and responsibilities, hours of work, wages and benefits of the administrative assistant to the athletic department position are not so dissimilar to other classifications within the ESP bargaining unit, including other special clerk IIIs, so as to preclude a finding of community of interest in this case. Given that there is no other bargaining unit seeking to represent the administrative assistant to the athletic director, and because denying the petition would leave the position unrepresented, it is in accordance with well-established Commission policy to include the administrative assistant in Petitioner's broad unit of support employees. See e.g. *Charlotte Pub Schs*, 1999 MERC Lab Op 68, 73; *City of Muskegon*, 1996 MERC Lab Op 64, 70.

In asserting that the petition should be dismissed, the University argues that LaMantia's position is administrative and, therefore, excluded under the terms of the parties' contract. It is well-established that this Commission does not recognize an administrative exclusion under PERA. *Washtenaw Comm College*, 1993 MERC Lab Op 781, 791. Although we have permitted the exclusion of administrative positions in cases in which there was a prior agreement between the parties to keep such employees out of the unit, see e.g. *Ferris State Univ*, 1996 MERC Lab Op 16, the standards pursuant to which such a position is deemed "administrative" must be clear from the record. Our decision in *Saginaw Valley State College*, 1988 MERC Lab Op 533, is instructive on this issue. In *Saginaw Valley*, the college created what it claimed was a new position, administrative assistant to the dean of the business school, and classified it as an

² *Muskegon Heights Schools*, 1977 MERC Lab Op 807, involved a claim that the employer violated PERA by removing work from the bargaining unit. Prior to hearing, the parties agreed to have the case treated as a unit clarification matter.

unrepresented “administrative and professional” position outside of the nonsupervisory bargaining unit of clerical employees. Although the parties’ contract contained no explicit exclusion, employees designated as “administrative” had been excluded from the unit by past practice. We held that the addition of “administrative” duties to the position was not sufficient to justify its removal from the unit where the parties had no recognized definition of an “administrative” employee and, despite the change in job title, the underlying nature of the position had not changed. *Id.* at 537-538. Here, the recognition clause in the parties’ contract specifically excludes “administrative personnel.” However, the contract does not define that term and, as in *Saginaw Valley*, there is nothing in the record that would establish any explicit or implicit agreement of the parties under which the position of administrative assistant to the athletic department would be excluded as an “administrative” employee.

Finally, the University contends that the administrative assistant to the athletic department should be excluded from the Petitioner’s bargaining unit because she has supervisory responsibilities. We have defined supervisor as one who possesses authority to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or to effectively recommend such action, as long as this authority requires the use of independent judgment and is not merely routine. See *Village of Paw Paw*, 2000 MERC Lab Op 370; *City of Grand Rapids Police Dep’t*, 2000 MERC Lab Op 384. To “effectively recommend” means that the supervisor’s recommendations are generally accepted by his or her superiors without an independent investigation. *Kalkaska Co and Sheriff*, 1994 MERC Lab Op 693. An individual is not a supervisor under PERA if her authority is limited to merely directing the daily work of other employees and/or making work assignments of a routine nature. See *City of Lansing*, 2000 MERC Lab Op 380; *Whitmore Lake Pub Schs*, 1999 MERC Lab Op 117.

The reorganization that resulted in the delegation of additional duties to LaMantia occurred well after the Union filed the instant petition. In fact, at the time of hearing in this matter, the ticket office had been under the control of the athletic department for less than two months. In support of its assertion that the administrative assistant to the athletic department has been delegated supervisory authority, the University points to the various requests for approved absences which were submitted by MacQuarrie and signed by LaMantia. However, these forms were also reviewed, signed and approved by Crawford, and the record reveals that Crawford has retained the authority to overturn decisions made by LaMantia concerning the approval of absences. Moreover, responsibilities such as assigning the work of subordinate employees, maintaining time cards, and granting time off, are insufficient to establish supervisory status. *Michigan State Univ*, 1999 MERC Lab Op 542, 547-548 (no exceptions); *Berrien County Sheriff*, 1999 MERC Lab Op 177, 187.

The University also claims that supervisory status is established based upon LaMantia’s authority to discipline and evaluate MacQuarrie. The authority to discipline, or to effectively recommend discipline, is an important indicia of supervisory authority even if that authority is rarely exercised. See *Tuscola Intermediate School Dist*, 2000 MERC Lab Op 226; *City of Detroit Dept of Pub Works*, 1999 MERC Lab Op 283. See also *Eastern Mich Univ*, 1999 MERC Lab Op 550. In the instant case, however, the record does not establish that LaMantia’s disciplinary recommendations or job evaluations would be accepted by the University without independent investigation and review. While it is the delegation of supervisory authority, rather

than the exercise thereof, which is indicative of supervisory authority, see e.g. *Village of Lawrence*, 1997 MERC Lab Op 319, there is insufficient evidence of real and effective supervisory authority on the part of the administrative assistant to the athletic office to justify depriving her of her right to be represented under PERA.

ORDER CLARIFYING UNIT

Based upon the above findings and conclusions, the petition filed by the Lake Superior State University Educational Support Personnel, MEA/NEA, is hereby granted and the bargaining unit consisting of support employees of the University is clarified to include the position of administrative assistant to the athletic department.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Nora Lynch, Commission Chairman

Harry W. Bishop, Commission Member

Maris Stella Swift, Commission Member

Dated: _____