

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

In the Matter of:

HASTINGS AREA SCHOOL DISTRICT,
Public Employer,

Case No. R02 E-066

-and-

HASTINGS EDUCATION ASSOCIATION - SOUTH
CENTRAL UNITED BARGAINING ASSOCIATION,
Petitioner - Labor Organization.

APPEARANCES:

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

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

DECISION AND DIRECTION OF ELECTION

Pursuant to Sections 12 and 13 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212 and MCL 423.213, this case was heard in Lansing, Michigan on December 11, 2002, and February 23, 2003, before D. Lynn Morison, Administrative Law Judge for the Michigan Employment Relations Commission. Based on the record, including the transcript and briefs filed by the parties on or before May 30, 2003, the Commission finds as follows:

The Petition and Positions of the Parties:

The Hastings Education Association - South Central United Bargaining Association (HEA) filed a representation petition in this matter on May 7, 2002. Petitioner represents a bargaining unit of all professionally certified teaching personnel in grades K-12, including department heads, counselors, librarians, school social workers, speech therapists, and instructional suspension room teachers employed by the Hastings Area School District. Petitioner seeks to accrete to this unit all full-time and part-time B-4 Michigan School Readiness Program teachers. The Employer contends that the petition inappropriately seeks to carve out the position of B-4 teacher from an appropriate residual unit of adult and community education teachers.

Facts:

The Hastings Area School District consists of five elementary schools with kindergarten through fifth grade, one middle school with grades six through eight, and a high school with grades nine through twelve. In addition, there is an Adult and Community Education Program, which includes leisure and enrichment classes, G.E.D. classes, summer school and evening classes for high school students who are behind in credits for graduation, Kids' Choir, the Perkins Tutoring Program, and the B-4 Preschool Program.

The District employs 212 teachers, librarians, and counselors in the K-12 program, all of whom are in the bargaining unit represented by Petitioner. The number of teaching staff employed in the Adult and Community Education Program fluctuates depending on the number of enrichment classes offered; there were forty teachers in that program at the time of the hearing.

Currently, only positions within the K-12 program are included in the bargaining unit. Before 1994, the recognition clause of the collective bargaining agreement between the Employer and Petitioner included the high school credit adult education teachers in the bargaining unit. When negotiating the 1994-1996 collective bargaining agreement, the parties agreed that the adult education teachers would be dropped from the recognition clause. Thus, the 1994-1996 contract and subsequent contracts do not refer to the adult education teachers.

Of the forty teachers in the Adult and Community Education Program, about thirty-five teach leisure and enrichment classes and are generally not required to have teaching certificates. The remaining five, including the B-4 teacher, teach classes for credit and must have teaching certificates. Although the teachers of the Adult and Community Education classes are not included in the bargaining unit represented by Petitioner in their capacity as Adult and Community Education instructors, three of them are also K-12 teachers and are included in the bargaining unit in that capacity.

Judy Johnson, an assistant principal at the Hastings High School, heads the Adult and Community Education Program. Her duties include oversight of the B-4 program with the assistance of two site supervisors, the principals of the elementary schools at which the program is held. The site supervisors are responsible for performing the evaluations of the B-4 teachers because they are certified in elementary education; Johnson is not. Johnson sits in on the classes of the leisure and enrichment instructors, but does not formally evaluate them.

The B-4 Preschool Program

The B-4 Preschool Program started in the 1994-95 school year and since its inception has been a part of the Adult and Community Education Program. The program is designed for four-year-old students determined to be at risk according to criteria set by the Michigan School Readiness Program (MSRP). The B-4 program is open only to four

year olds as a condition of the state grant on which it operates; five year olds are not eligible.

As a condition of the grant under which the B-4 program is funded, the B-4 teacher must be a certified teacher with a ZDA (early childhood) endorsement. The B-4 curriculum is set by the terms of the MSRP grant. The curriculum taught in the B-4 program is designed to make the students ready for any kindergarten class, but the B-4 curriculum is not formally integrated with the kindergarten curriculum. There has been a certain degree of coordination between the B-4 program and the K-12 program. As part of the grant, at the end of the school year, the B-4 teachers and kindergarten teachers discuss which students are ready for kindergarten and which should go to Developmental Kindergarten (DK). DK is part of the Employer's kindergarten program. The DK program is designed for five year olds who are developmentally behind other students. Those students spend a year in the DK program before proceeding to the standard kindergarten. The DK teachers, like the other kindergarten teachers, are required to be certified and are included in Petitioner's bargaining unit. Before the 2002-2003 school year, students completing the B-4 program progressed to either kindergarten or DK. Now, the MSRP grant requires students who have completed the B-4 program to proceed directly to kindergarten, bypassing DK.

Currently, the B-4 program is offered in the morning at the Employer's Pleasantview Elementary School and in the afternoon at the Employer's Central Elementary School. Mary Vliek, the principal at Pleasantview Elementary School, is responsible for overseeing the B-4 program on a daily basis. She currently evaluates the B-4 teachers, as well as the K-5 teachers at her school. Because the B-4 program is for four year olds, the program is required to meet certain licensing rules for childcare centers, which do not apply to the K-12 program. Amy Herrema has been teaching the B-4 program since August of 1999. Although the program has had two teachers at times in the past, Herrema is now the only B-4 teacher.

In the past, the B-4 teachers were not required to attend the staff meetings of the K-12 teachers, although they could do so if they chose. They were invited to attend the meetings of the kindergarten and DK teachers, but were not required to attend. However, Ms. Herrema was required to attend staff meetings and district in-services until recently. Ms. Herrema served on the math committee with three kindergarten and developmental kindergarten teachers to determine math outcomes for kindergarten and DK students. Ms. Herrema used the work of that committee as a partial basis for determining what her B-4 students should know upon entering kindergarten. She has participated in the grade level meetings for the kindergarten and DK teachers. She has also attended in-service and other staff meetings with K-12 teachers, including Central Elementary's staff meeting of K-5 teachers, which is held once every month. She attends the parent teacher organization's meetings and participates in their functions. She holds an open house for the B-4 students every fall and has parent teacher conferences in November and March, just like the K-12 teachers. She also prepares weekly lesson plans like the K-12 classroom teachers.

The school year starts and ends around the same time for both the K-12 teachers and the Adult and Community Education teachers. However, the B-4 classes do not begin until three or four weeks into the semester and end a couple of weeks earlier. The B-4 teacher uses the time that the students are not in school for planning and to conduct home visits. The hours of the school day are roughly the same for K-12 teachers and B-4 teachers. The B-4 teacher has student contact Monday through Thursday and uses Fridays to plan, attend trainings and make home visits. The K-12 teachers, on the other hand, are with students Monday through Friday. Because the B-4 program depends on grant funds that vary from year to year, the program administrator cannot guarantee B-4 teachers employment for the next school year. Consequently, in the past, the B-4 teachers have looked for other employment every spring and often have left the program after one or two years. However, Ms. Herrema has been with the program during the past four school years.

The B-4 teachers and the K-12 teachers have the assistance of paraprofessionals. The B-4 teachers are the only ones in the Adult and Community Education Program with paraprofessionals. The Employer will obtain a substitute if a B-4 teacher cannot come to class. If Ms. Herrema has a scheduled day of absence, she fills out the same paperwork that the K-12 teachers fill out, which is signed by the principal and Director of Educational Services Chris Cooley. If her absence is not prearranged, she calls the Employer's substitute line and they obtain a substitute for her. Ms. Herrema is allotted 10 sick days and 2 personal days off per year. Her wages and other terms and conditions of employment are set by an employment contract with the District. That contract provides for a salary and benefits package that is similar to that received by the K-12 teachers under the collective bargaining agreement.

The Other Programs Within the Adult and Community Education Program

The G.E.D. program is currently taught by a certified teacher who is not otherwise employed by the District. The same teacher has taught the G.E.D. classes since sometime in the 1980s. The program is federally funded and is free to students over twenty years old who have not completed high school. G.E.D. instructors must be certified teachers to comply with the guidelines of the federal G.E.D. program. The G.E.D. teacher has class once a week for four hours a night for a period of sixteen weeks. The G.E.D. instructors and summer school instructors are not required to attend staff meetings or grade level curriculum meetings with the K-12 teachers. However, the G.E.D. instructor has attended curriculum meetings. The G.E.D. and summer school instructors do not hold open houses or parent teacher conferences for those courses.

The high school completion program permits high school students who are behind in credits to take evening classes for a full academic year to earn credit toward graduation. The summer school program meets a similar need, but is taught during the day in the summer. It is offered only when there are enough students who need to make up credits. The Perkins Tutoring Program is a grant-funded program that provides tutors to students who are behind in their classes. The tutors work with the students as needed and have flexible schedules. The teachers in all three programs must have teaching certificates and

must be certified in the area that they are teaching, i.e. math, English, etc. All three programs are free to the students.

Kids' Choir is a program designed by two elementary school choir teachers to give students an opportunity to sing and tour as an elite choir. The students must apply and go through a try-out procedure to take the course. The students are charged a fee and may choose to take the course for one or two semesters. The teachers are certified teachers.

If an instructor in the G.E.D. program, the evening high school completion program, the summer school program, or Kids' Choir is also part of the Employer's regular K-12 teaching faculty, they are paid an hourly wage for those additional assignments based on .07 percent of their base pay under the HEA contract. The current G.E.D. instructor is not otherwise employed by the District and is paid \$23 per hour for teaching and for a certain amount of preparation time. These teachers do not receive insurance or any other benefits as compensation for these teaching assignments.

Leisure and enrichment classes are offered on assorted subjects, to a range of age groups, at a wide variety of times and for several different term lengths. The school year for the leisure and enrichment program is approximately the same as the one for the K-12 program. However, the instructors' hours of work are different since most of the leisure and enrichment classes are taught during the evenings. Some instructors teach only an hour per night, but others teach as many as four or five hours. The classes may meet only one time during the semester, weekly for several weeks, or every week for an entire semester. Some classes are taught by one instructor, and some by a pair of instructors. Some of the instructors who teach classes that last only the first half of the semester also teach the same class during the second half of the semester and, thereby, teach the entire semester.

The enrichment courses that are taught each year are determined by community demand and vary from year to year. It is not certain from year to year which enrichment classes will be offered or who will teach them. While some of the enrichment course instructors teach every year because their courses are well known in the community and are very popular, other instructors do not teach on a continuing basis. Students must pay for the enrichment courses; the fees vary with the course. The enrichment teachers develop the curriculum for their particular classes. They are generally not required to be certified teachers, but may have certification of some kind related to the subject they teach. The enrichment course instructors are not required to attend staff meetings with K-12 instructors, to hold open houses, or to have parent teacher conferences.

There are currently thirty-five leisure and enrichment instructors. Enrichment teachers are paid \$17 per hour or a percentage of the enrollment fees paid by their students. The enrichment instructors receive only monetary compensation and no insurance or other benefits. If an enrichment teacher is absent, the class generally will be cancelled and made up at a later date.

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). The Commission has specifically found that pre-kindergarten teachers share a community of interest with K-12 teachers. *Farmington Pub Schs*, 1982 MERC Lab Op 1519.

In this case, the B-4 teachers share working conditions and supervision with K-12 teachers. Like the K-5 teachers, they are supervised and evaluated by the principal of the elementary school at which they teach. They have similar working hours and have a similar school year to the K-12 teaching staff. Like the K-12 teachers, they must prepare lesson plans, they teach according to a predetermined curriculum, and they have open houses and parent teacher conferences. They have the assistance of paraprofessionals and must have teaching certificates. Clearly, the B-4 teachers share a community of interest with the teachers in the bargaining unit given the similarity in professional responsibilities and job skills.

At the hearing, Petitioner asserted that the B-4 position shares a community of interest and, therefore, should be included in the bargaining unit with the K-12 teachers, in part because the B-4 teacher is required to be certified. The Employer contends that the petition is inappropriate because it selects one position out of a residual unit of adult and community education teachers. Any litigated residual unit must include all unrepresented employees with a community of interest. *Livonia Pub Schs*, 1989 MERC Lab Op 190, 192-193. See also *Deckerville Community Schs*, 2000 MERC Lab Op 390, 392; *Clarkston Community Schs*, 1990 MERC Lab Op 264. The Commission has consistently included teachers in the same unit whether they have teaching certificates or not. *Lansing Pub Schs*, 1989 MERC Lab Op 14, 18; *Livonia Pub Schs*, 1988 MERC Lab Op 1068. Accordingly, the certification of the B-4 teacher is not a valid basis for removing her from the residual group of teachers in the Adult and Community Education Program. *Ferndale Bd of Ed*, 1987 MERC Lab Op 919, 921.

Therefore, the question here is whether the other teachers in the Adult and Community Education Program share a community of interest with the B-4 teacher and the members of the bargaining unit represented by Petitioner. The Commission has long held that the presumptively appropriate unit in a public school district includes all teachers, certified and non-certified, K-12 and adult education. *Saginaw Twp Community Schs*, 1998 MERC Lab Op 479, 486; *Alma Pub Schs*, 1996 MERC Lab Op 72, 74; *Hesperia Community Schs*, 1994 MERC Lab Op 972, 976. We have specifically found that teachers of leisure and enrichment classes have a community of interest with K-12 teachers and should be included in a residual unit of employees that are to vote whether they wish to accrete to the K-12 bargaining unit. *Ferndale Bd of Ed*, 1987 MERC Lab Op 919.

Petitioner contends that most of the teachers in the Adult and Community Education Program do not share a community of interest with the K-12 teachers because

their positions are casual and without a reasonable expectation of continued employment. All of the teachers in the Adult and Community Education Program, with the exception of the B-4 teacher, are employed in those positions on a part-time basis. The fact that the adult education positions are part time and, consequently, have different hours of work than the full-time K-12 teachers has been held to be insufficient to rebut the presumption that these teachers share a community of interest with the K-12 teachers' unit. *Saginaw Twp Community Schs*, 1998 MERC Lab Op 479; *Schwartz Creek Community Schs*, 1986 MERC Lab Op 358, 361.

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. 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 full-time and regular part-time employees. See *Deckerville Community Schs*, 2000 MERC Lab Op 390. An employee who works a very small number of hours may, as a result, lack a substantial interest in his employment. *Holland Pub Schs (Food Service Program)*, 1989 MERC Lab Op 584, 588. See also, *Macomb Community College*, 2003 MERC Lab Op ____ (Case No. R02 D-056, issued June 27, 2003).

In *Swartz Creek Community Schs*, 1986 MERC Lab Op 358, the Commission specifically reviewed the number of hours worked by the positions in question and found that adult education teachers who worked four hours per week were to be considered regular part-time employees entitled to representation. The teachers there taught four or more hours every week throughout the semester or term. *Id.* at 361. In this case, the same is true of the instructor in the G.E.D. program and may be true of others.¹ We find four hours to be the minimum number of hours per week that a teaching position must work in order to be included in a bargaining unit of full-time and regular part-time teachers.

In *Swartz Creek Community Schs*, a key fact in determining that the part-time teachers should be included in the bargaining unit with full-time teachers was the fact that the part-time teachers taught week after week in ongoing programs that were staffed on a semester basis. Several positions in the Adult and Community Education Program lack that regularity. The tutors in the Perkins Grant Program teach sporadically, only when the students need their help. While a few of the leisure and enrichment instructors teach three to five hours a week for each week of the semester, several of them teach as little as a single three-hour block on one occasion during a semester. Some teach only a few hours for a few weeks in the semester. Accordingly, we find that unless a class is offered for four or more hours per week on a continuing weekly basis throughout the semester, the teacher of the class cannot be said to have a substantial interest in continued employment.

Moreover, whether a leisure and enrichment class is taught more than a single semester is entirely dependent on community demand. While some of the leisure and enrichment classes are taught semester after semester, others have insufficient community

¹ The record does not reveal the number of hours per week the teachers in the evening high school completion program, the summer school program, and Kids' Choir teach in these programs.

demand to be repeated. A teacher whose class has just been offered for the first time cannot be assured that the class will be offered the following semester or the following year; that teacher does not have a reasonable expectation of continued employment. There must be some indication that the class being taught is taught on a continuing basis. See *Macomb Community College*, 2003 MERC Lab Op ____ (Case No. R02 D-056, issued June 27, 2003).

The HEA petitioned to accrete only the B-4 teachers to its existing K-12 unit. We do not find a group limited to B-4 teachers to be an appropriate group for accretion to the HEA's K-12 unit because it excludes other teachers in the Adult and Community Education Program who share a community of interest with the K-12 teachers. However, Petitioner has indicated affirmatively in its brief that it would be interested in representing a broader unit if we determined that the broader unit was the only appropriate unit. We find the appropriate group for an accretion by election to Petitioner's existing unit to include all of the full-time and regular part-time teachers in the Adult and Community Education Program. Consistent with *Swartz Creek Community Schs*, and *Macomb Community College*, the "regular part-time" teachers are those who teach a class that is offered four or more hours per week on a continuing weekly basis throughout the semester and has been offered at least two semesters in the past two years.

We, therefore, direct an election among the full-time and regular part-time teachers in the Employer's Adult and Community Education Program, subject to the HEA's establishing a showing of interest among this group. Since the unit in which we are directing an election is larger than the unit set forth in the petition, the HEA shall be given a reasonable time to supply additional showing of interest sufficient to support its participation in an election in this unit. See *City of Southfield*, 1989 MERC Lab Op 684; *City of Wayne*, 1986 MERC Lab Op 200; *City of Holland (Board of Public Works)*, 1982 MERC Lab Op 1638. The Employer shall prepare a list of the teachers in the Adult and Community Education Program who teach a class that is offered four or more hours per week on a continuing weekly basis throughout the semester and has been offered at least two semesters in the past two years. The Employer shall provide the list to the Commission's election officer and to Petitioner within ten working days from the date of this decision. The HEA shall be given ten working days from the date they receive the list to supply additional showing of interest cards to support its participation in an election for an expanded unit. See *City of Wayne v Michigan Council 25, AFSCME, AFL-CIO, Local 290, Wayne Chapter*, 166 Mich App 207 (1987), aff'g *City of Wayne*, 1986 MERC Lab Op 674. If the HEA fails to establish an adequate showing of interest in this expanded unit, its petition shall be dismissed.

ORDER DIRECTING ELECTION

Based upon the above findings and conclusions, we conclude that a question concerning representation exists within the meaning of Section 13 of PERA. If the Hastings Education Association - South Central United Bargaining Association indicates that it is interested in representing the expanded unit and makes an adequate showing of

interest within ten working days of the date of receipt of the list of employees eligible for inclusion in the expanded unit, we will direct an election in the following unit:

All full-time and regular part-time teachers employed by the Hastings Area School District's Adult and Community Education Program. "Regular part-time" teachers include those teachers whose class is offered four or more hours per week on a continuing weekly basis throughout a semester and has been offered at least two semesters in the past two years.

Pursuant to the attached Direction of Election, the above employees shall vote to determine whether they wish to be represented by the Hastings Education Association - South Central United Bargaining Association. A vote for the Hastings Education Association - South Central United Bargaining Association shall indicate a desire to be included in its existing bargaining unit currently consisting of all professionally certified teaching personnel in grades K-12, including department heads, counselors, librarians, school social workers, speech therapists, and instructional suspension room teachers employed by the Hastings Area School District.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Nora Lynch, Commission Chairman

Harry W. Bishop, Commission Member

Nino E. Green, Commission Member

Dated: _____