

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

In the Matter of:

RIVER VALLEY SCHOOL DISTRICT,  
Public Employer,

Case No. R02 L-163

-and-

MICHIGAN EDUCATION ASSOCIATION,  
Petitioner - Labor Organization.

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APPEARANCES:

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

White, Schneider, Young, & Chiodini, P.C., by Alexandra S. Matish, Esq., and Timothy J. Dlugos, Esq., for the Labor Organization

**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 May 23, 2003, before D. Lynn Morison, Administrative Law Judge for the Michigan Employment Relations Commission. Based on the record, including the transcript and the briefs filed by the parties on or before August 25, 2003, the Commission finds as follows:

The Petition and Positions of the Parties:

The Michigan Education Association (Union or Petitioner) filed the petition in this matter on December 5, 2002, and filed an amended petition on January 15, 2003. In the petition as amended, Petitioner seeks to represent a unit of approximately thirty-nine employees, including all food service employees, office personnel, paraprofessionals, PBX operators, bookkeepers, and bus mechanics employed by the River Valley School District (Employer), but excluding the superintendent's secretary. The parties agree that the superintendent's secretary is a confidential employee, however the Employer asserts that the business manager's secretary, the switchboard (PBX) operator, and the bookkeeper should also be excluded from the bargaining unit as confidential employees. Additionally, the Employer contends that the bus mechanic does not share a community of interest with the other employees in the proposed unit and should be excluded on that basis.

Facts:

The Employer operates three elementary schools and a middle/high school with a staff of approximately 170 employees. There are two existing bargaining units: the faculty bargaining unit, which consists of about eighty-two teachers and is represented by the River Valley Education Association; and a support unit, which includes bus drivers, custodians and a maintenance worker, and is represented by the Service Employees International Union (SEIU). The unit sought in this case is made up of the remaining support employees. Working conditions for these employees are governed by a policy handbook that was developed after consultation with representatives from each of the groups affected.

Confidential Employees:

The parties have agreed that the superintendent's secretary, or administrative assistant, functions in a confidential capacity and should be excluded from the unit. She serves as the secretary to both the superintendent and the school board, attends all school board meetings and assists in the preparation, distribution, and maintenance of an official file of school board meeting minutes. The superintendent's secretary has primary responsibility for preparing and maintaining the current seniority lists and personnel files for the teaching and administrative staff. She is privy to information that is shared with the school board regarding the progress of collective bargaining and information about bargaining strategies or alternatives in the process of negotiations. Her job responsibilities include the preparation or compilation of documents communicating the superintendent's concerns regarding confidential negotiations information for distribution to the members of the board. Such information could include proposed wage or benefit provisions, summaries of proposal costs, cost projections, and projections of the financial impact that proposals would have on the School District. She is also responsible for transmitting information on non-economic contract proposals for the board's consideration.

The three employees claimed to be confidentials by the Employer work in the School District's business office, which is located in the middle/high school. The business office is an enclosed area of about twenty-five feet by fifty feet containing the offices of the superintendent, the superintendent's secretary, the business manager, and the bookkeeper. Also included in that space are the desks of the PBX operator and the business manager's secretary.

The business manager is responsible for developing and implementing the budget for the District and for supervising the areas of food service, transportation, and buildings and grounds. The business manager is also responsible for interpreting the collective bargaining agreements as they are implemented and serves as the second step in the grievance process for grievances filed under the SEIU contract. He has been on the negotiating team for the Employer throughout his tenure as business manager and has served as the team leader since the mid-nineties. As the leader of the negotiating team, the business manager is responsible for leading the negotiations at the bargaining table and taking charge in team meetings to determine the positions that the team will take.

Secretary to the Business Manager

The secretary to the business manager performs the duties of receptionist for the business office; prepares purchase orders for supplies and equipment; prepares the monthly accounts payable

report for the school board finance committee; maintains vacation records for custodial, maintenance, and secretarial staff; and performs a variety of other tasks. The business manager's secretary has no tasks related to labor contract negotiations. She has no responsibilities related to the preparation of bargaining proposals or other confidential labor relations materials. If the business manager needs copies of documents related to contract proposals, he makes them himself; he also does his own typing. The business manager personally prepares responses to grievances; the secretary to the business manager assists in any distribution or mailing of those responses and occasionally receives grievances from the union steward and forwards them to the business manager.

### Bookkeeper

The bookkeeper has the primary responsibility for maintaining the personnel files of the support staff. She also maintains the ledger of employees' sick leave, personal leave, and other leaves of absence. The bookkeeper is responsible for maintaining the payroll records and processing any time cards, contracts, and work agreements to be set up on the Employer's payroll system. The bookkeeper verifies biweekly, quarterly, and annual payroll reports. She also prepares checks and transfers of funds necessary for payroll deposits to banks and other agencies. The Employer's computer system is linked to the intermediate school district, which does its payroll processing. The bookkeeper and the business manager are the only staff members in the business office who have access to the payroll data on the computer system. However, all of the payroll information is subject to the Freedom of Information Act (FOIA).

The bookkeeper has no direct involvement in collective bargaining. On one occasion, when the teachers were switching from a regular health insurance plan to a more comprehensive package plan, she and the MESSA insurance representative were brought into a negotiating session to answer questions from both negotiating teams about the new plan and its anticipated effects. When the business manager is involved in or preparing for negotiations, he has the bookkeeper provide him with information related to the wages or fringe benefits of various employee groups. He sometimes asks for information relating to different options under consideration and, particularly with regard to insurance benefits, he asks her to provide a list of costs for different options or combinations of options. However, the business manager does not usually disclose to the bookkeeper the proposals that the Employer is contemplating.

### PBX Operator

The PBX operator answers all incoming calls to the District's main switchboard and directs the calls to the appropriate personnel. She performs a variety of other clerical tasks, none of which involves labor negotiations.

### Community of Interest - Bus Mechanic

The position of bus mechanic, or head mechanic, is currently held by David York. The job description for the head mechanic includes the responsibilities of the separate bus mechanic job description. However, the Employer has never employed both a head mechanic and a bus mechanic

at the same time.<sup>1</sup> The bus mechanic's primary responsibility is to maintain the buses and vans that transport students. He orders and stocks repair parts and supplies for the transportation fleet, and performs any preventative maintenance or other repairs needed on the vehicles. He maintains records of vehicle servicing and fuel usage.

The bus mechanic works in the bus garage, which is located in a building that is behind the middle/high school. The bus mechanic has an office area in the bus garage adjacent to the repair area. He answers the bus radio and the phone when the transportation supervisor is not available. He may also perform building or grounds maintenance duties on occasion. The bus mechanic is supervised by the transportation supervisor, who also supervises the bus drivers. As indicated above, the SEIU represents the bus drivers, the custodians and the maintenance worker. When the SEIU unit was initially formed, the District did not employ a bus mechanic; outside contractors performed bus mechanic services. The bus mechanic has never been included in the bargaining unit represented by the SEIU. During collective bargaining, neither the SEIU nor the Employer has ever proposed including the bus mechanic position in that bargaining unit.

#### Discussion and Conclusions of Law:

In the matter before us, with the exception of the bus mechanic, the Employer does not contest the presence of a community of interest among the members of the proposed unit. The Employer initially grouped together all of these positions, including the bus mechanic, because they are the only non-faculty nonsupervisory unrepresented positions that the School District employs, thus constituting a residual unit. See *Henry Ford Community College*, 1986 MERC Lab Op 667, 670; *State Judicial Council*, 1983 MERC Lab Op 264, 271, 275; *City of Marysville, Fire Dept*, 1980 MERC Lab Op 90, 94. Their common purpose is to provide support to the teaching and/or administrative staff, and their wages and benefits are jointly determined by the same policy handbook. As the Michigan Supreme Court pointed out in affirming our decision in *Alpena Community College*, 1994 MERC Lab Op 955, 967, "Gathering up remaining employees into a residual unit will nearly always involve joining employees with diverse job descriptions." *Michigan Educ Ass'n v Alpena Community College*, 457 Mich 300, 308 (1998). See also *City of Zeeland*, 1995 MERC Lab Op 652.

In the light of the fact that the bus mechanic occasionally assists with building or grounds maintenance, and has the same supervisor and works out of the same building as the bus drivers, the Employer contends that the bus mechanic has a greater community of interest with the bargaining unit represented by the SEIU. However, we have often stated that we are not required to determine the "most" appropriate unit, but simply "an" appropriate unit. See *Dearborn Public Schools*, 2002 MERC Lab Op 287, 293; *City of Zeeland*, at 655. Further, the SEIU has never sought accretion of the bus mechanic to its bargaining unit. Exclusion of the bus mechanic from the proposed unit would leave that position as the only unrepresented support position employed by the school district. It is Commission policy, whenever possible, to avoid leaving positions unrepresented, especially isolated ones. *Riverview Community Schs*, 2003 MERC Lab Op\_\_\_\_\_, (Case No. UC99 J-038, decided October 8, 2003); *Glen Oaks Community College*, 2003 MERC Lab Op\_\_\_\_\_, (Case No. UC02 B-004, decided December 15, 2003); *Charlotte Pub Schs*, 1999 MERC Lab Op 68, 73; *City of Muskegon*, 1996 MERC Lab Op 64, 70. Moreover, we have always included bus mechanics

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<sup>1</sup> Although the position occupied by York is the head mechanic, it is evident that throughout these proceedings both parties have been referring to his position as the bus mechanic.

in broad support units such as the one sought by Petitioner. See e.g., *Deckerville Community Schs*, 2000 MERC Lab Op 390, 393. Accordingly, the bus mechanic position is properly included in the proposed bargaining unit.

The Employer argues that the bookkeeper, the PBX operator, and the business manager's secretary should be excluded from the proposed bargaining unit as confidential employees. PERA does not include a definition of a confidential employee. However, we have defined a "confidential employee" as one who formulates, determines, and effectuates management policy with regard to labor relations and collective bargaining, as well as an individual who assists and acts in a confidential capacity to such a person. *St Clair County Community College*, 2002 MERC Lab Op 406, 408. *Lapeer Co and 40th Judicial Circuit Court (Friend of the Court)*, 1998 MERC Lab Op 611, 620, *rev'd on other grounds* 1999 MERC Lab Op 146. Access to budget or financial information is not sufficient to establish confidential status. *Saginaw Co Road Comm*, 1993 MERC Lab Op 227, 228; *L'Anse Creuse Schs*, 1972 MERC Lab Op 868, 873. Additionally, compiling wage data does not suffice to show the critical nexus to labor relations negotiations required to establish confidential status. *City of Riverview*, 1983 MERC Lab Op 400, 402. See also *Lansing Community College*, 2000 MERC Lab Op 99, 102.

In considering confidential status, we must balance the employer's need for a confidential employee against the employee's right to representation. See *Lansing Community College; Lapeer Co and 40th Judicial Circuit Court (Friend of the Court)*, at 620-21. The confidential exclusion is applied cautiously so as not to deprive employees of their right to be represented, and the number of exclusions is limited to those employees necessary to perform required confidential duties. *Charter Twp of Shelby*, 2001 MERC Lab Op 84, 85; *Pontiac Sch Dist*, 1997 MERC Lab Op 173, 180. To allow public employers to have an employee available to directly assist in the preparation and handling of bargaining proposals during negotiations, this Commission has always permitted public employers to exclude one nonsupervisory employee from inclusion in collective bargaining units as a confidential employee. *Monroe Co Opportunity Program*, 2000 MERC Lab Op 289, 294. However, the employer bears the burden of showing justification for excluding additional employees as confidentials, and administrative convenience alone cannot justify their exclusion. *Charter Twp of Shelby*, at 85; *Williamston Schs*, 1994 MERC Lab Op 1062, 1064; *City of Riverview*, at 402. We find that the Employer in this case has not met this burden. The record does not support a finding that the extent of confidential work performed requires an additional exclusion, nor that the three challenged employees currently perform confidential labor relations duties.

The bookkeeper assists the business manager by obtaining wage and benefit information for use in negotiations. However, the bookkeeper's access to this information does not make her work confidential. *Saginaw County Road Comm; L'Anse Creuse Schs*. The unions have access to the same information through their respective collective bargaining agreements and through FOIA. The fact that the bookkeeper's duties involve compiling wage data that may assist the Employer in costing out proposals does not suffice to show that the bookkeeper is performing a function with a critical nexus to labor relations negotiations. *City of Riverview*, at 402; *Warren Woods Pub Schs*, 1971 MERC Lab Op 99, 102 (no exceptions). Moreover, the Commission has found that the performance of bookkeeping duties of the type performed by the position at issue here, does not justify exclusion from the bargaining unit. *South Lyons Community Schs*, 1979 MERC Lab Op 157, 159; *Warren Woods Pub Schs*, at 102; *Riverview Community Schs*, 1968 MERC Lab Op 419. Accordingly, we will not exclude the position of bookkeeper from the proposed bargaining unit.

We also decline to exclude the business manager's secretary from the bargaining unit, as she has no tasks related to labor negotiations. The mere fact that the business manager's secretary serves as the secretary to the head of the Employer's negotiating team is not sufficient to exclude her from the proposed bargaining unit as a confidential employee. *City of Riverview*, at 402. Similarly, her minimal involvement in the preparation of grievance responses is not sufficient to justify excluding her from the proposed bargaining unit. See *City of Saginaw (City Attorney)*, 1991 MERC Lab Op 253, 256.

Like the business manager's secretary, the PBX operator has no tasks related to labor negotiations. While the Employer argued at the hearing that the close quarters of the business office make it possible for any of the employees working there to have access to confidential information, such access is not a sufficient basis for exclusion. *Centerline Pub Schs*, 1980 MERC Lab Op 795, 797-98. See also *Lapeer Co and 40th Judicial Circuit Court (Friend of the Court)* at 620-21. Thus, there is no basis for excluding the PBX operator from the proposed bargaining unit.

For the foregoing reasons, we find that the bargaining unit proposed by the Petitioner is an appropriate unit and issue the following Order:

**ORDER DIRECTING ELECTION**

Based upon the above, we conclude that a question of representation exists herein under Section 12 of PERA, and that the following employees constitute a unit appropriate for collective bargaining under Section 13 of PERA:

All food service employees, office personnel, paraprofessionals, PBX operators, bookkeepers and bus mechanics employed by the River Valley School District; excluding the superintendent's secretary and all other employees.

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

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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: \_\_\_\_\_