

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

In the Matter of:

WASHTENAW COMMUNITY COLLEGE,
Public Employer,

Case No. UC01 H-028

-and-

WASHTENAW COMMUNITY COLLEGE
OFFICE PROFESSIONAL TECHNICAL UNION,
Petitioner-Labor Organization.

APPEARANCES:

Dykema Gossett PLLC, by John A. Entenman, 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 at Detroit, Michigan on October 24, 2002, November 15, 2002 and December 18, 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 28, 2003, the Commission finds as follows:

The Petition and Positions of the Parties:

On August 21, 2001, Petitioner Washtenaw Community College Office Professional Technical Union (OP/T) filed this petition for unit clarification seeking to add to its bargaining unit the newly created position of scheduling and database analyst (SADA). Petitioner contends that the SADA shares a community of interest with the employees within its unit, and that the duties and responsibilities of the SADA are essentially the same as those which were previously performed by other bargaining unit positions.

Washtenaw Community College (WCC) argues that the petition for unit clarification should be dismissed because the SADA is a newly created position which does not share a community of interest with Petitioner's unit. According to the College, the SADA position is appropriately included within a residual unit of unrepresented professional/managerial employees.

Facts:

WCC is a public community college located in southeastern Michigan. Employees are organized into three collective bargaining units: a faculty unit, a custodial/maintenance unit and Petitioner's unit consisting of approximately 104 full-time and regular part-time office educational support personnel and child care employees. Petitioner has represented the OP/T unit since 1998. Prior to that time, the bargaining unit was referred to as the "clerical unit" and was represented by another labor organization.

A majority of positions within the OP/T unit remain clerical in nature, including switchboard operators, bookkeepers and secretaries. However, the unit also includes approximately thirty employees in classifications identified as technicians or specialists. Several positions within the unit require an associate's degree, and one OP/T position, information resource developer, requires a bachelor's degree. Unit members are paid hourly and are eligible for overtime under the Fair Labor Standards Act (FLSA). The parties' 1999-2002 collective bargaining agreement sets forth nine "grade levels" with progressively higher minimum/maximum wage rates for each level. The top two levels are reserved for secretaries to the presidents. Under the 2000-2002 wage schedule, wages for grade 41, the lowest grade level, range from \$10.71 to \$14.23 per hour. Wages for grade 50, the highest level, top out at \$20.35 per hour. The average OP/T member is a grade level 44 and earns approximately \$30,000 per year.

The College also has approximately 171 unrepresented employees who are classified into the following categories: an executive/administrative group comprised primarily of deans, vice presidents and associate vice presidents; a technical group which includes public safety officers and computer support specialists; and a professional/managerial group of 112 employees, including program coordinators, directors, analysts and managers. With the exception of certain technical positions classified at grades 103 and below, all of the unrepresented employees are salaried and FLSA exempt.

Scheduling and Database Analyst

A job description for the SADA, the position sought by Petitioner in the instant case, was created by the College in the fall of 2000 and placed within the unrepresented professional/managerial group. The initial annual salary range for the SADA was \$32,973-\$36,270. The position is FLSA exempt and requires a bachelor's degree, with at least eighteen credit hours of computer courses and five years related work experience.

Gregory Laycock was hired as SADA in February of 2001. Laycock has a bachelor of general science degree with a specialization in botany. He is certified as a computer technician and has worked in several supervisory positions, including a position as information technology manager for an environmental testing laboratory. His initial annual salary as SADA was \$36,270. At the time of the hearing in this matter, Laycock was earning \$38,410 a year, or approximately \$18.46 per hour.

The primary responsibility of the SADA is to analyze registration data in order to predict enrollment trends, improve efficiency in the scheduling of classes, and make the schedule more “student friendly.” Reports prepared by Laycock are used by the Employer to make scheduling decisions, including the number of courses to offer each semester, where to hold those courses, and what equipment will be needed. Laycock is also responsible for monitoring the master schedule for compliance with standardized start and stop times, and to make certain that there are no room conflicts or scheduling problems which would prevent students from enrolling in all of their required courses. When such a conflict is identified, Laycock brings the matter to the attention of the deans or department heads. Ultimately, however, it is the vice president of instruction who is charged with making final decisions concerning the master course schedule.

In addition to the above duties, Laycock is regularly assigned projects generally related to scheduling. For example, Laycock assisted in the creation of a master plan for the utilization and configuration of classrooms following the opening of the College’s new Gunder-Myran Building. He spent approximately three months analyzing data and drafting revisions of the plan, and had numerous meetings with the vice president of instruction and the deans. In connection with that assignment, Laycock attended a furniture trade show and made recommendations to management concerning furniture purchases. Other projects undertaken by Laycock included evaluating scheduling software and creating reports analyzing classroom utilization.

Laycock is also responsible for updating the WCC Faculty Handbook, a resource manual for faculty members and instructors containing campus maps and summaries of principal offices and departments, along with important telephone numbers and web addresses. Laycock rewrote various sections of text and coordinated revisions drafted by other WCC employees. Laycock is also a member of the “software committee” established by the College’s vice president of instruction in the 2003. This committee examines and prioritizes software purchase requests made by the faculty and establishes guidelines regarding future software acquisition requests. Also serving on the software committee are various faculty members and at least one dean.

In preparing reports, Laycock organizes and extracts data from Banner, a computer system implemented by the College in 1999. Laycock is not a computer programmer or a certified database administrator, and the actual creation of databases is typically done by employees from the College’s Information Systems Department. Laycock is required to input certain information into the College’s computer system, but data entry does not constitute a major aspect of his job responsibilities.

Laycock is supervised by the director of educational services, Kathleen Stadtfeld who, in turn, reports to the vice president of instruction, Roger Palay. Laycock typically receives new assignments from Stadtfeld or Palay and then proceeds to work on those projects independently with limited supervision. His office is located on the second floor of the Student Center Building, next to Stadtfeld and across the hall from Palay. Laycock typically works a forty-hour week, but has reported early or stayed late when necessary to complete projects. He does not work directly with any OP/T members on the various projects to which he is assigned. However, Laycock does have regular contact with the deans’ secretaries who are part of Petitioner’s

bargaining unit, and his duties include teaching them how to use the reports which he has created.

Predecessor Positions

The SADA has its origins in three predecessor positions which are no longer in existence. The instructional service technician (IST) was created in May of 1989 as a nonunit position. The primary duties assigned to the IST were preparation and coordination of the College's class schedules and course catalogs, and data entry.

In 1997, the College created a new position, educational support specialist (ESS), to take over classroom scheduling responsibilities from the IST. The initial salary range for the ESS position was \$28,400 to \$31,240. A bachelor's degree was required, along with proficiency in the use of computers and knowledge of information systems. In August of 1999, the ESS position was added to Petitioner's unit at the behest of the College and placed at OP/T grade level 46.

According to the July 1997 job description, the ESS was responsible for the coordination and production of the master course time schedules, academic reports and publications, including the college catalog and faculty handbook, and instructional data projects. Other duties included the preparation of reports related to faculty teaching loads and class enrollments, resolving room conflicts, and assuring that classes were assigned to appropriate rooms.

Barbara Rose was hired as ESS in October of 1997 at an annual salary of \$28,400. She occupied the same office now used by the SADA and worked roughly the same number of hours per week. Rose was supervised by Stadtfeld, from whom she received general direction regarding assignments. Rose's primary duty as ESS involved entering course information into the computer system and resolving classroom scheduling conflicts. Rose was also responsible for monitoring the course descriptions submitted by instructors of non-credit courses to determine whether they matched prior classes offered by the College. Rose also entered employment information concerning non-credit and part-time instructors into the system, assisted in resolving payroll issues for those individuals, and helped to determine whether there were an appropriate number of sections offered for each course on the schedule.

In addition to her work on the schedule, Rose was responsible for updating and editing the faculty handbook and assisting the College's director of articulation and curriculum in creating the college catalog, a listing of all of the courses offered by WCC. Rose prepared approximately ten percent of the catalog herself and helped to edit and proofread the remaining sections. Rose was also assigned the task of conducting an inventory of furniture and equipment in preparation for the opening of a building addition, and she worked with the vice president of instruction on issues pertaining to the allocation of rooms within the new space.

The College terminated Rose in February of 2000. At that time, she was earning approximately \$30,000. Rather than filling the vacant ESS position, the College created a new position, educational services data specialist (ESDS), and placed it within the OP/T unit at grade level 47. An associate's degree was required, with a bachelor's degree preferred. The duties of

the ESDS were to include: coordination and production of the master course schedules; receipt and input of data into the Banner system; coordination of academic publications, including the faculty handbook, preparation of reports related to scheduling, faculty loads and other instructional data; and assisting in the analysis of prior course schedules for “efficiency and response to student needs.” The ESDS position was posted in August of 2000 but was never filled.

Other OP/T Unit Positions

Petitioner introduced evidence regarding numerous positions within the OP/T unit which it claims are similar to the SADA, including the following positions: information resources developer; media services specialist; web services technical assistant, and student records technician. The information resource developer (IRD) is responsible for the coordination of the continuing education office, including maintaining a computer based tracking system, updating websites, and developing and implementing assessment instruments using computerized systems. The IRD was originally unrepresented, but was moved to the OP/T unit in August of 1999 along with the ESS. The IRD position requires a bachelor’s degree and three years work experience in an educational setting, with one year of experience managing a computer database preferred. At the time of the hearing, the IRD position was vacant.

The media services assistant is responsible for receiving, assigning, tracking and inventorying all media equipment used on the WCC campus. She also creates amortization schedules for the equipment and makes recommendations regarding capital purchases and equipment disposal.

The web services technical assistant (WSTA) has created and maintained databases pertaining to curriculum, budget, media services, meeting services and hazardous materials safety on campus. When creating new databases, the WSTA consults with faculty members, deans and other individuals within the administration. She then uses independent judgment to complete these projects without direct supervision. The position is not involved in web site design, nor does the WSTA recommend the purchase of software or equipment. The incumbent WSTA was scheduled to resign effective January 3, 2003, and, at the time of hearing, the College had no plans to fill the position.

There are three individuals currently employed in the position of student records technician (SRT). According to the job descriptions, the SRT is “an expert in extracting, manipulating, reporting, and evaluating student data in order to audit program completion.” Each of the SRTs have been trained in the processing of credit transfer applications, which entails evaluating transcripts from other colleges and universities and contacting those schools directly when necessary to determine credit transferability. Other duties include coordinating graduation activities and auditing credit hours to ensure compliance with graduation requirements. One of the current SRTs previously served on various committees and was recently asked by the WCC president to work on a new committee charged with reviewing the course catalog. The SRT position requires an associate’s degree, including some computer coursework, along with five years work experience.

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 supervision. See e.g. *Covert Pub Schs*, 1997 MERC Lab Op 594, 601. 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.

We disagree with the Employer's contention that the SADA is a completely new position. Laycock is supervised by the director of educational services, who previously directed the work of the ESS. Rose had roughly the same hours as Laycock, and both individuals worked out of the same office on the second floor of the Student Center Building. The ESS and SADA have similar educational requirements, with both positions requiring a bachelor's degree. The wages for the SADA and ESS positions are also comparable. When Rose was terminated in February of 2000, she was earning around \$30,000 per year. Laycock's starting salary approximately one year later was \$36,270. Like Rose, Laycock is mainly responsible for classroom scheduling, including duties relating to the assignment of classrooms, resolving scheduling conflicts and determining whether there are an appropriate number of sections scheduled for a given course. In addition, Laycock and Rose were both responsible for working on various campus publications, including updating the faculty handbook. The duties and responsibilities of the SADA also appear to be quite similar to those previously assigned to the ESDS, a position which, although never filled, was to have been part of the OP/T unit.

It is true that the duties of the position have evolved over time. Unlike its predecessor positions, the SADA is now required to analyze scheduling data and prepare reports, and Laycock works more closely with the vice president of instruction and the deans. The College contends that the addition of these responsibilities destroys its community of interest with the OP/T unit. We rejected a similar argument in *Saginaw Valley State College*, 1988 MERC Lab Op 533. In that case, the college promoted an employee from her position as administrative secretary to what it claimed was a new "administrative and professional" position outside of the petitioner's unit. In addition to performing some of the duties which had been previously assigned to her as administrative secretary, the employee was given new responsibilities which required a certain amount of discretion, including making recommendations to the dean that additional courses be added to the schedule based upon student demand. Despite the addition of these duties and change in job title, we held that the position continued to share a community of interest with the petitioner's clerical unit and that accretion was more appropriate than permitting the employee to remain in a residual group of unrepresented employees. In so holding, we noted that PERA does not recognize a distinct and separate category for "administrative" employees,

and that the parties had no recognized standard by which employees were excluded on that basis. See also *Comstock Park Pub Schs*, 1986 MERC Lab Op 639.

Similarly, there is nothing in the record here to suggest the existence of any agreed upon definition of “administrative” or “professional/managerial” under which the SADA would be excluded from the OP/T unit. Moreover, as in *Saginaw Valley State College*, the duties, hours, wages and benefits of the SADA are not so dissimilar to other OP/T classifications so as to preclude a finding of community of interest with that unit. Although the SADA may also arguably share a community of interest with employees in the unrepresented group, this Commission does not determine relative degrees of community of interest. See e.g. *Swartz Creek Community Schs*, 2001 MERC Lab Op 372. Given that there is no other unit seeking to represent the position, and because denying the petition would leave the position unrepresented, it is in accordance with our well-established policy to include the SADA in Petitioner’s unit. See e.g. *Charlotte Pub Schs*, 1999 MERC Lab Op 68, 73; *City of Muskegon*, 1996 MERC Lab Op 64, 70.

Finally, we reject the College’s suggestion that we defer to the results of its internal compensation and benefits studies. Although we give consideration to the administrative structure of the employer, unit placement is within the exclusive province of this Commission. See e.g. *Michigan State Univ*, 1992 MERC Lab Op 120. We have carefully considered all other arguments raised by the Employer and conclude that they do not warrant a change in the result.

ORDER CLARIFYING UNIT

Based upon the above findings and conclusions, the petition filed by the Washtenaw Community College Office Professional Technical Union, is hereby granted and the bargaining unit is clarified to include the position of scheduling and database analyst.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Nora Lynch, Commission Chairman

Harry W. Bishop, Commission Member

Maris Stella Swift, Commission Member

Dated: _____