STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

GROSSE POINTE PUBLIC LIBRARY,
Public Employer,

Case No. UC04 K-039

-and-

GROSSE POINTE PUBLIC LIBRARIAN ASSOCIATION MEA/NEA,
Petitioner-Labor Organization.
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APPEARANCES:

Steven H. Schwartz & Associates, P.L.C., by Steven H. Schwartz, Esq., for the Public Employer

Michigan Education Association, by Daniel J. Hoekenga, Esq., for the Labor Organization

DECISION AND ORDER DISMISSING UNIT CLARIFICATION PETITION

Pursuant to Section 12 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212, this case was heard in Detroit, Michigan on March 9, 2005, by Roy L. Roulhac, Administrative Law Judge for the Michigan Employment Relations Commission. Based on the record, including briefs filed by the parties on July 11, 2005, we find as follows:

The Petition and Position of the Parties:

The petition filed by the Grosse Pointe Public Librarian Association MEA/NEA (Union or Petitioner) on November 29, 2004, seeks to clarify its bargaining unit of all librarians by including substitutes. The Union, while acknowledging that substitutes are excluded from the bargaining unit, claims that substitutes are actually part-time employees who should be included in the unit. Grosse Pointe Public Library (Employer) argues that the unit clarification petition is inappropriate because substitutes are casual employees who have been historically excluded from the bargaining unit. Moreover, the Employer asserts that even if these individuals could be considered part-time employees, then, consistent with Commission precedent, they should be given the opportunity to vote in an election to decide if they wish to have union representation.

Facts:

The facts are essentially undisputed. On September 6, 1994, we certified Petitioner as the exclusive bargaining representative for "all librarians, excluding supervisors and all others." The recognition clauses in the three collective bargaining agreements entered into by the parties for the periods 1994 to 1998, 1998 to 2002, and 2002 to 2008, all describe the bargaining unit as including all professional librarians, excluding substitutes and other positions not pertinent to this proceeding. Part-time librarians who work twenty hours or more are considered part of the bargaining unit. The current contract provides that part-time employees who work at least twenty hours per week will receive pro-rated health insurance and pension benefits. Employees who work fewer than twenty hours per week are not eligible for these benefits.

There are currently nine individuals on the Employer's substitute roster, some of whom have been on the list for several years. Substitutes are defined in the three collective bargaining agreements entered into by the parties as persons employed on a per-hour basis. Substitutes are utilized to cover absences of regular staff caused by illness, vacation, or other leaves, and also work the four-hour Sunday schedule. The contracts all provide that the aggregate of substitutes' hours shall not exceed forty-five hours per week (excluding hours worked on Sundays). Substitutes are free to decline assignments, they are not guaranteed a certain number of hours, and they may work for other employers. Two of the substitutes are full-time librarians at other libraries and often work the Sunday schedule. If a substitute continues to decline assignments, they are removed from the roster. There has been no substantial change in the way substitutes are scheduled, or in their duties and hours, from previous years.

During negotiations for the current contract, which the parties executed on October 19, 2004, Petitioner first attempted to limit the Employer's use of substitutes and then to include them in the bargaining unit; these attempts were unsuccessful. The recognition clause in the new contract retained the exclusionary language regarding substitutes. However, attached to the collective bargaining agreement is a letter of understanding that reads in pertinent part:

> The Library agrees to use the MERC hearing currently scheduled for January 6, 2005, regarding a Petition by the Union concerning inclusion of substitutes into the bargaining unit. Neither this Letter of Understanding nor any provision of any collective bargaining agreement between the parties shall be construed to waive any legal theory or defense that may be raised in that hearing.[1]
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> In the event that a final order from the Michigan Employment Relations Commission includes substitutes into bargaining unit [sic], the Recognition Clause shall be amended to reflect that final order.

[1]There was no hearing in this matter scheduled for January 6, 2005. After a December 16, 2004, telephone conference, this case was set for a hearing on March 2, 2005.

Discussion and Conclusions of Law:

The Employer argues that the unit clarification petition is inappropriate because substitutes have been historically excluded from the bargaining unit. It also claims that substitutes are casual employees and not part-time employees as Petitioner alleges.

It is well established that a unit clarification petition is inappropriate to accrete positions historically excluded, either by express agreement or acquiescence, unless the employer has substantially altered the duties and responsibilities or hours of work of the positions in question. *Port Huron Area Sch Dist*, 1989 MERC Lab Op 763, 766; *City of St Clair Shores*, 1988 MERC Lab Op 485; *Portage Pub Schs*, 1979 MERC Lab Op 833, 835; *Genesee Co*, 1978 MERC Lab Op 552, 556. Such an accretion presents a question of representation and may be accomplished only through an election among the employees sought.

In this case, the classification sought in the unit clarification petition has been excluded from the bargaining unit since 1994, when the parties entered into their first collective bargaining agreement. Because the substitute classification has been historically excluded from the bargaining unit and no substantial change in hours, job duties, or responsibilities has been established, we find that the unit clarification petition is inappropriate and must be dismissed. As such, it is unnecessary to address the Employer's argument that the substitutes are casual employees who should be excluded from Petitioner's bargaining unit on that basis.

ORDER

It is hereby ordered that the unit clarification petition be dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Nora Lynch, Commission Chairman

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

Date: _____