

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

In the Matter of:

SOUTH LYON COMMUNITY SCHOOLS,  
Public Employer,

Case No. UC05 D-015

-and-

SOUTH LYON MESPA-NEA,  
Labor Organization-Petitioner.

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APPEARANCES:

David W. Hershey, for the Public Employer

The Firestone Law Firm, P.C., by Joseph H. Firestone, Esq., for the Petitioner

**DECISION AND ORDER**

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 December 15, 2005, by Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. Based on the record, including briefs filed by the parties on or before February 23, 2006, we find as follows:

The Petition and Positions of the Parties:

South Lyon MESPA-NEA filed this unit clarification petition on April 5, 2005. Petitioner represents a bargaining unit of secretarial and clerical employees, full and regular part-time paraeducators, and day care center caregivers and site leaders employed by the South Lyon Community Schools (the Employer), excluding noon hour/playground paraeducators, high school students when employed in the day care center, and the secretaries to the superintendent and assistant superintendent for administrative services. On October 6, 2004, the Employer posted a vacancy notice for a new position, restorative practices district trainer/coordinator (hereinafter restorative practices coordinator.) Petitioner seeks to add this position to its unit.

Petitioner asserts that the responsibilities of the restorative practices coordinator are essentially the same as those of a position in its bargaining unit, options room/in-school suspension paraeducator (hereinafter OR/ISS paraeducator). It maintains that even if the restorative practices coordinator is considered a new position, it shares a community of interest with employees in Petitioner's unit. The Employer disputes Petitioner's claim that the restorative practices coordinator performs the same duties as the OR/ISS paraeducator. It also maintains that the restorative

practices coordinator requires skills and training beyond those of paraprofessional employees and that the position does not share a community of interest with Petitioner's unit.

Facts:

Until October 2004, the Employer employed OR/ISS paraeducators at both its Centennial and Millennium Middle Schools. In October 2004, the Employer abolished this title at Centennial and posted the restorative practices coordinator position as a new position outside of any bargaining unit. Debbie Little, the former OR/ISS paraeducator at Centennial, was awarded the new position. The Employer continues to employ an OR/ISS paraeducator at Millennium.

At Millennium, as at Centennial before the fall of 2004, students with behavioral problems are sent to an "options room". The OR/ISS paraeducator is in charge of the options room. Some of the students sent to the options room are serving in-school suspensions. These students are assigned to the room by the principal, and arrive at the options room with a referral indicating the length of their suspension. When a suspended student first arrives at the options room at Millennium, the OR/ISS paraeducator helps him fill out a written "behavior plan" that includes a series of questions about the student's misconduct and how it affected him and others. The behavior plan requires the student to list ideas and strategies for avoiding repetition of the misconduct. The OR/ISS paraeducator gives the assistant principal a copy of the behavior plan for the student's file and sends a copy home with a letter to the student's parents asking for their support in changing the behavior. When Little was the OR/ISS paraeducator at Centennial, she sometimes talked with students in the options room about what they had done. However, she was not required to help students prepare behavior plans.

Students work on school assignments while serving in-school suspensions in the options room. Teachers send assignments to the options room and the OR/ISS paraeducator distributes them. She supervises and monitors the students while they work. She keeps order, makes sure that students keep to themselves and work independently, and gives them permission to take breaks and leave for lunch. She may also answer questions or help students with their work. At Millennium, the OR/ISS paraeducator is also responsible for ensuring that students complete their assignments in the options room and for returning assignments to teachers. If a student does not have an assignment in a particular class – if, for example, the class is watching a video that day - the OR/ISS paraeducator at Millennium may have to generate an assignment or encourage the student to catch up on missing assignments to ensure that the student stays busy.

At Millennium, teachers also send disruptive students to the options room directly from the classroom for the duration of a class period. When a student arrives at the options room at Millennium from a classroom, the OR/ISS paraeducator listens to the student's version of events and helps the student prepare a written "plan of success." If a student is a repeat visitor, the OR/ISS paraeducator and the student discuss the student's behavioral history and why the student is continuing to have problems. After a student is sent to the options room from the same teacher for a third time, the OR/ISS paraeducator sets up a meeting with the student, the teacher, the assistant principal and the student's counselor. The OR/ISS paraeducator may or may not attend this meeting, but is responsible for making sure that the participants have the student's file and all pertinent information.

The most recent posting lists the following qualifications for the OR/ISS position: (1) high school diploma (paraeducator training preferred); (2) experience working with children or two years' college training; and (3) computer experience (preferred). According to the posting, the job requires the ability to: (1) provide an environment conducive to quiet reflection and self-directed study; (2) maintain accurate records; (3) remain non-judgmental; and (4) work well in a team situation.

The current OR/ISS paraeducator at Millennium, Marsha Barnett, has received peer mediation training. Part of Barnett's regular assignment each semester is to train a group of student leaders in conflict resolution. She also occasionally does peer mediation with groups of students at the request of a counselor. Barnett is part of the school's "at-risk" committee. This committee, which also includes administrators, counselors and alternative education teachers, meets regularly to discuss specific student problems and general issues pertaining to students who are at risk for school failure.

The Employer hired Little as the OR/ISS paraeducator at Centennial when the school opened in the fall of 2002. Around that time, a consultant with expertise in a process called "restorative practices" volunteered to conduct sessions with students and staff at Centennial. Restorative practices focus on helping individuals recognize how their actions affect others, accept responsibility, and "right the wrongs" they have committed. One of its uses is resolving disputes and it can be used as an alternative to traditional discipline. Between the opening of the school and late 2003, the restorative practices consultant held sessions on a regular basis at Centennial. Many Centennial students who would have received in-school suspensions participated instead in these sessions. As a result of the consultant's presence, fewer students were assigned to the options room. Little initially attended a two-hour restorative practices training session with the consultant. Centennial's principal later assigned Little to observe the consultant and learn his techniques. Little watched the consultant off and on for two years and became his assistant. As part of her training, Little received "scripts" prepared by the International Institute for Restorative Practices to use in conducting restorative practices sessions. Little eventually held some restorative practices sessions at Centennial by herself. The Employer also assigned Little to conduct restorative practices sessions at an elementary school when conflict arose amongst building staff there.

In October 2004, the Employer eliminated Little's OR/ISS paraeducator position and posted the restorative practices coordinator position. The posting listed the following qualifications: (1) degree in counseling or twenty hours in counseling; (2) trained in restorative practices philosophy; (3) crisis intervention training (preferred). According to the posting, the restorative practices coordinator job requires the ability to: (1) train teachers in restorative practices model; (2) facilitate group and individual sessions with students, parents, and staff as needed; (3) communicate effectively with students, parents, and staff.

As noted above, Little was hired to fill the restorative practices coordinator position. On October 22, 2004, after Little had assumed her new position, Centennial's assistant principal informed the school's staff that he would no longer be giving students in-school suspensions. Students who were repeat offenders after participating in restorative practices sessions received out-of-school suspensions, and the options room at Centennial was closed. At the time of the hearing in December 2005, Little was spending about seventy percent of her time holding restorative practices sessions at Centennial and at two elementary schools with students who had committed offenses that would previously have warranted discipline. Little is often referred students who have been in

a fight at school. Little interviews each student individually and obtains his or her version of events. She then holds a restorative practices session with all the involved students. Little also holds sessions with individual students accused of other offenses, including plagiarism and bullying. Sometimes she invites parents or teachers to these sessions, and the assistant principal sometimes attends. During a session, the participants mutually formulate a resolution to the problem. The resolution may or may not include further discipline. Students may agree to apologize, or to clean or replace damaged property. The students sign a contract setting out the terms to which they have agreed. If the assistant principal has not participated in the session, she approves the contract terms. If students violate the contract, they are referred back to the assistant principal for disciplinary action.

The other thirty percent of Little's time is spent using restorative practices techniques for other purposes, including resolving disputes among school staff and settling conflicts among students before they escalate. Little regularly holds restorative practices sessions with students at Centennial and at two elementary schools. Between October 2004 and December 2005, Little was assigned to use restorative practices techniques to resolve conflicts among the members of an athletic team at the high school. After the administration at one school determined that ongoing conflicts among families in one neighborhood were spilling over into the school, Little conducted restorative practices sessions with these families. She also held sessions with members of a parent-teacher organization. In 2004, Little helped the Employer's consultant train all the staff at one elementary school in restorative practices techniques. Little holds training sessions in restorative practices for interested teachers and other staff throughout the district and has conducted training in other area school districts.

Both the OR/ISS paraprofessional and the restorative practices coordinator work during the regular school year. The work hours of both positions are Monday through Friday, 7:30 a.m. to 2:30 p.m., although the restorative practices coordinator sometimes works after school hours with the permission of her principal. Both positions are paid on an hourly basis and receive similar fringe benefits. The hourly rate of the restorative practices coordinator at the time the position was created was more than the hourly rate of the OR/ISS paraprofessional but less than that of other positions included in Petitioner's unit.

#### Discussion and Conclusions of Law:

In designating a unit as appropriate for collective bargaining under Section 13 of PERA, a primary objective is to constitute the largest unit that, in the circumstances of the particular case, is most compatible with the effectuation of the purposes of the law and that includes within a single unit all employees sharing a community of interest. *South Lyon Cmty Schs*, 19 MPER 33 (2006); *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. *Saginaw Valley State Univ*, 19 MPER 36 (2006); *Covert Pub Schs*, 1997 MERC Lab Op 594, 601; *Grand Rapids Pub Schs*, 1997 MERC Lab Op 98, 106. In a K-12 school district, a broad unit including all support employees is a presumptively appropriate unit. *Northville Pub Schs*, 2001 MERC Lab Op 380; *Deckerville Cmty Schs*, 2000 MERC Lab Op 390, 393.

The restorative practices coordinator here is not simply the OR/ISS paraeducator position with a new title. Unlike the OR/ISS paraeducator, the restorative practices coordinator is not responsible for supervising a classroom of students. The OR/ISS paraeducator at Millennium talks with students about their misconduct and plays a role in helping change student behaviors. However, this is a relatively small part of the OR/ISS paraeducator's job, while the restorative practices coordinator spends all of her time using restorative practices techniques to facilitate changes in the behavior of students, staff and other individuals. No paraeducator in Petitioner's unit currently performs the same function as the restorative practices coordinator. However, the unit includes a range of positions that, like the restorative practices coordinator, provide services that aid and support instruction. Like positions in Petitioner's unit, the restorative practices position does not require a college degree but does require specialized training and experience. The hourly rate of the restorative practices coordinator is equivalent to that paid to bookkeepers and some secretaries in the unit, and the benefits are also similar. Based on these factors, we conclude that the restorative practices coordinator shares a community of interest with the employees in Petitioner's unit.

**ORDER CLARIFYING UNIT**

The petition filed by South Lyon MESPA-NEA is granted. Its bargaining unit is clarified to include the position of restorative practices district trainer/coordinator.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Nora Lynch, Commission Chair

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

Dated: \_\_\_\_\_