

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

In the Matter of:

WESTERN SCHOOL DISTRICT,
Public Employer-Respondent in Case No. C04 C-069
Employer in Case No. UC04 F-023,

- and -

WESTERN EDUCATIONAL SUPPORT ASSOCIATION,
JCEA/MEA/NEA,
Labor Organization-Charging Party in Case No. C04 C-069
Petitioner in Case No. UC04 F-023.

APPEARANCES:

Rosenfeld, Grover & Frang, by Robert M. Grover, Esq., for the Employer-Respondent

White, Schneider, Young & Chiodini, P.C., by Timothy J. Dlugos, Esq. for the Petitioner-Charging Party

DECISION AND ORDER

On November 30, 2005, Administrative Law Judge (ALJ) Julia C. Stern issued her Decision and Recommended Order in the above matter finding that the Employer, Western School District, did not violate its duty to bargain in good faith and recommending that the charge be dismissed. The ALJ determined that there was no violation of Section 10(1)(e) of the Public Employment Relations Act (PERA), 1965 PA 379 as amended, MCL 423.210(1)(e), when the Employer eliminated the bargaining unit position of elementary library paraprofessional (LPP) and transferred that work to the non-bargaining unit position of technology resource coordinator (TRC). The ALJ also recommended that the bargaining unit represented by Charging Party, Western Educational Support Association, JCEA/MEA/NEA, (the Union) be clarified to include the TRC position. The Decision and Recommended Order of the ALJ was served upon the interested parties in accordance with Section 16 of PERA. On December 27, 2005, the Employer filed timely exceptions to the ALJ's Decision and Recommended Order regarding unit placement and a brief in support of the exceptions. On January 3, 2006, the Union filed a timely brief in support of the Decision and Recommended Order.

In its exceptions, the Employer contends that the ALJ erred when she found that the TRC position shares a community of interest with the Union's bargaining unit and may be appropriately included in the unit. Upon careful and thorough review of the record, we agree with the findings and conclusions of the ALJ.

Factual Summary:

The facts in this case were set forth fully in the Decision and Recommended Order and need not be repeated in detail here. Briefly, the Union represents a bargaining unit that includes clerical and paraprofessional employees of the Employer. Included in the bargaining unit is the library paraprofessional (LPP) position. The Employer has three elementary schools.

In January 2004, the LPP at Warner, one of the Employer's elementary schools, announced plans to retire. The Employer decided that rather than fill this position, it would spread the responsibilities of the LPP between parent and student volunteers and the instructional technology specialist (ITS) at Warner, Eric Grant. To compensate Grant for taking on added responsibilities, he was given a new title, technology resource coordinator (TRC), additional hours, and was made a salaried employee with full benefits. Grant continues to perform all of the duties he performed as an ITS, as well as maintenance of audiovisual equipment and library duties performed by LPPs in the Employer's other elementary schools. The LPP duties of overseeing the operation of the library, which include ordering books, preparing reports and memos, and conducting inventories, comprise about forty percent of his time.

On March 9, 2004, the Union filed a charge, alleging that the Employer violated its duty to bargain in good faith by unilaterally transferring unit work formerly performed by the LPP to a position outside the unit, the TRC. Upon discovery of Grant's new job title, the Union filed the petition for unit clarification on June 3, 2004.

Discussion and Conclusions of Law:

The Union has not filed exceptions to the ALJ's finding that the Employer did not have a duty to bargain over the transfer of unit work. Nor did the Union file exceptions to the ALJ's recommended decision to dismiss after oral argument, the allegations that the Employer's action constituted repudiation of the contract. We consider, therefore, only the Employer's exceptions to the ALJ's recommended order to clarify the bargaining unit to include the position of the TRC.¹

Unit clarification is appropriate to determine the bargaining unit status of a newly created position or a position that has recently undergone significant changes. *Lapeer Co*, 18 MPER 70 (2005); *Big Bay De Noc Sch Dist*, 17 MPER 81 (2004). We agree with the ALJ's finding that the TRC is a new position. At the very least, Grant's position has experienced a significant change in job responsibilities. Even by Grant's own admission, he spends forty percent of his time on library duties that are performed by LPPs working in other schools -- duties that he never performed in his previous position as an ITS.

We further agree that the TRC position is appropriately included in the Union's bargaining unit. Positions with information technology duties have been included in support units when, as here, the IT positions do not require specialized degrees, certifications, or experience. *Essexville-Hampton Pub Schs*, 2001 MERC Lab Op 316. When clarifying a unit to add a new or substantially changed position, there must be a determination that the position shares a community of interest with that unit. A number

¹ We allow exceptions to the unit determination in this case because the unit clarification (UC) petition is consolidated with an unfair labor practice charge.

of factors determine community of interest, including similarities in duties, skills, education, working conditions, wages and benefits, and common supervision. *Lapeer Co*, 18 MPER 70 (2005); *Covert Pub Schs*, 1997 MERC Lab Op 594, 601. For the reasons cited by the ALJ, we agree that the TRC shares a community of interest with the Union's unit. Significant to our determination is the fact that Grant spends nearly half of his time on duties performed by LPPs who are members of the bargaining unit. Also important are the ALJ's conclusions regarding similarity in working conditions, supervision, salary, wages and benefits.

The Employer argues that the TRC is not an entirely new position, but instead is a part of a residual unit of employees that historically has been unrepresented. As noted, we believe that the TRC is a new position. Further, the Commission's policy is to avoid leaving positions unrepresented whenever possible. *Glen Oaks Cmty College*, 16 MPER 72 (2003). A primary objective of the Commission is to create the largest unit which, in the circumstances of the particular case, is compatible with the purposes of the law, and which includes in a single bargaining unit all employees who share a community of interest. *Hotel Olds v State Labor Mediation Bd*, 333 Mich 382 (1952). Finally, even assuming that the TRC shares a community of interest with employees in the residual group, the Commission does not determine relative degrees of community of interest. *Washtenaw Cmty College*, 17 MPER 29 (2004).

We have considered all other arguments, and they do not change our decision in this case. For the reasons set forth above, we adopt the Administrative Law Judge's recommendation that the TRC is appropriately included in Charging Party's bargaining unit.

ORDER

The bargaining unit represented by the Western Educational Support Association, JCEA/MEA/NEA is hereby clarified to include the position of technology resource coordinator (TRC).

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Christine A. Derdarian, Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

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DECISION AND RECOMMENDED ORDER
OF
ADMINISTRATIVE LAW JUDGE

Pursuant to Sections 10, 13 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210, 423.213, and 423.216, this case was heard at Lansing, Michigan on March 2, 2005, before Administrative Law Judge Julia C. Stern for the Michigan Employment Relations Commission. Based upon the entire record, including post-hearing briefs filed by the parties on April 25, 2005, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge and Petition:

The Western Educational Support Association, JCEA/MEA/NEA (the Union) filed the charge in Case No. C04 C-069 against the Western School District (the Employer) on March 9, 2004. The Union represents a bargaining unit of clerical and paraprofessional employees of the Employer. The Union alleges that on or about March 1, 2004, the Employer violated its duty to bargain in good faith under Section 10(1) (e) of PERA by unilaterally transferring unit work formerly performed by an elementary

library paraprofessional (LPP) to a position outside the unit, technology resource coordinator (TRC).² On June 3, 2004, the Union filed the unit clarification petition in Case No. UC04 F-023 seeking to add the TRC to its bargaining unit.

Facts:

The Union's unit includes secretaries, library paraprofessionals, records clerks, teacher and principal paraprofessionals, health care paraprofessionals, and playground coordinators. Another union, the Western Educational Support Personnel Association, represents support employees in custodial/maintenance, food service and transportation classifications. Teachers and other professional employees are in another bargaining unit. The Employer has about fifty unrepresented supervisory and nonsupervisory employees, including the seven employees in the Employer's technology department.

The Employer has three elementary schools – Warner, Bean, and Parma. In 1996, the Employer added computer labs to all its school buildings. The labs were installed next to the libraries, with large windows and a door between the rooms. From 1996 to 2001, LPPs were in charge of both the libraries and the computer labs at Warner and Parma. At Bean, an LPP oversaw the library, while the elementary media specialist supervised the computer lab. The elementary media specialist is a professional librarian and a member of the teacher's unit and oversees the ordering of books and materials for all the elementary libraries. In 2001, the Employer created the instructional technology specialist (ITS) position. The ITS position was part of the technology department, was hourly-paid with no benefits, and was not represented by a union. One ITS was assigned to Warner, and two part-time ITS employees were assigned to Parma. The ITS took over the LPP's responsibilities for the computer lab and also maintained and did troubleshooting for the other computers in the building. At Bean, the elementary media specialist performed the duties of the ITS, while an LPP continued to supervise the library.

In January 2004, the LPP at Warner announced her plans to retire. At that time, the ITS at Warner was Eric Grant. In early February, the Employer decided not to fill the LPP vacancy, but to divide the LPP's duties between Grant and a group of volunteers consisting of parents, upper elementary students, and students from a local college. Grant's workday was increased from seven to eight hours, and his work year expanded from about 180 to 232 days. To compensate Grant for his additional responsibilities, the Employer gave him a new job title, TRC, and made him a salaried employee with full benefits.

On February 18, 2004, the Employer sent the Union a letter stating that it would not be filling the LPP vacancy at Warner. The Employer said that it would be expanding the duties of the ITS to include general oversight of the library along with additional responsibilities within the technology department, and that parent and student volunteers would pick up some of the day-to-day tasks within the library. It told the Union that it might take similar action at the other elementary schools if LPP positions became vacant there.

² The charge also alleged that this same conduct amounted to an unlawful repudiation of the collective bargaining agreement. After oral argument on September 14, 2004, I granted the Employer's motion for summary disposition as to this allegation.

Following the February 18 announcement, the Union filed a grievance asserting that the Employer's action violated the recognition and vacancies and transfers clauses of the parties' collective bargaining agreement.³ The Union did not make a demand to bargain, but filed the instant unfair labor practice charge on March 9. The TRC took over responsibility for the library at Warner on March 1, 2004. After the Union discovered that Grant had a new title, it filed the unit clarification petition.

As noted above, elementary school LPPs oversee the elementary school libraries. They are supervised by the building principal. The LPPs also meet monthly with the elementary media specialist. Under her direction, they select and order new books, magazines, and audiovisual materials for the library. The LPPs prepare memos related to library operations, do monthly reports on library circulation and acquisitions, and inventory all materials at the end of the school year. They schedule classroom time in the library, conduct library orientation sessions for students, set up displays to promote reading, keep teachers advised of new materials and help them select materials for study units, and make up lists of overdue books to give to teachers. The school district has a computer program called the "accelerated reader" which allows students to take a test on books they have read; students are rewarded for passing the test. The LPPs write simple five-question tests for the program. They also are responsible for minor repairs and preventive maintenance on audiovisual equipment and sometimes videotape special events in a classroom. The majority of the LPPs' time is spent processing and cataloguing new books and materials; weeding out old materials; repairing books; checking books in and out; reshelving, straightening and keeping the library clean and organized; supervising students while they are in the library; helping students select books, and helping them use the computerized library catalog. Although the LPPs do not regularly supervise the computer lab, they are required to be able to start up and shut down the computers in the lab, have general knowledge of the software, assist students in using e-mail, and be able to recognize and solve simple computer problems. LPPs are required to have a high school degree. There are no training or experience requirements for the job.

The ITS reports to the Employer's director of technology. The ITS and the TRC are the only positions in the technology department whose responsibilities are confined to a particular school. The ITS oversees the elementary school computer lab and assists teachers in integrating technology into their lesson plans, including finding video clips and web sites and helping the teachers select and use software. The ITS spends about thirty to forty percent of its time performing simple "level one" maintenance and troubleshooting on computers both inside and outside the computer lab. Both the ITS and the TRC have been instructed to call another technology department employee if they cannot fix a problem within fifteen minutes. There are no educational requirements for the ITS position. According to its job description, the ITS is required to have knowledge of Respondent's software applications, be familiar with grading, be able to help students and staff conduct productive Internet searches, be knowledgeable about PC hardware, have computer troubleshooting skills, and have experience working on a network. When Grant was hired as an ITS, he was a certified teacher and an auto mechanic, but had never held an information technology job.

The TRC reports to the director of technology, but is also supervised by the building principal and the elementary media specialist. As TRC, Grant performs all the duties he performed as an ITS,

³ On February 11, 2005, arbitrator Barry Brown issued an award denying the grievance.

including general oversight of the computer lab. About sixty percent of his time is spent doing the work he performed as an ITS, along with maintaining and repairing audiovisual equipment. The rest of his time is spent doing library duties. The TRC is responsible for the Warner library. He selects and orders new books. He attends the monthly meetings of the LPPs and the elementary media specialist. He has the same responsibilities as the LPP for the accelerated reader program. He prepares overdue book lists, schedules classroom time in the library and lab, conducts library orientation sessions for kindergarten students, and prepares reports on library and computer lab usage. The TRC recruits and trains library volunteers and coordinates their schedules. Volunteers now catalog and process new materials, repair books, reshelv and straighten books and audiovisual materials, and keep the library organized. They also assist students in selecting books, teach them about the Dewey decimal system, help them check materials in and out, and teach them to use the catalog. When the TRC has the time, he supervises the lab and library and does anything that needs to be done in either place, including reading to students.

The ITS is paid between \$16.00 and \$20.00 per hour and, as noted above, receives no benefits. The ITS works seven hours per day, and its work year corresponds to that of the school year. The TRC works eight hours per day, and his work year is about four weeks longer than the school year. He is a salaried employee. Effective October 1, 2004, his salary was \$37,000 per year with full benefits. All members of the Union's unit are paid on an hourly basis and receive benefits. The LPPs work a seven-hour day and their work year corresponds to the school year. However, there are secretarial positions in the Union's bargaining unit who work eight hours per day and 12 months per year. For the 2004-2005 school year, the LPPs' hourly rate ranged from \$9.94 to \$ 14.55 per hour. The highest paid classification in the unit, secretary, had an hourly rate between \$11.83 and \$17.22 per hour.

In addition to the TRC and the ITS, the technology department consists of the technology director, assistant technology director, PC technician, and technology specialist. The assistant technology director is responsible for operation of the district's network, the PC technician maintains the district's computers, while the technology specialist handles the phone system, troubleshoots software problems, and maintains and creates user accounts in the network. All these positions are salaried. In 2004-2005 their salaries ranged from \$63,000 to \$34,000 per year. The director, assistant director and PC technician are full-year positions, while the technology specialist works only during the school year. These four positions all have district-wide responsibilities, and all work from the department's office in the middle school. None of these positions require a degree, but all require different types and levels of experience.

Discussion and Conclusions of Law:

An employer has no duty under PERA to bargain over a decision to eliminate unit positions and transfer work from the bargaining unit pursuant to a legitimate reorganization, although it must bargain over the impact of that decision. *Local 128, AFSCME v Ishpeming*, 155 Mich App 501 (1986), revs'g in part 1985 MERC Lab Op 687; *United Teachers of Flint v Flint Schs*, 158 Mich App 138 (1986), aff'g on other grounds 1985 MERC Lab Op 1071. The Court did not explain in either of these decisions what it meant by a "legitimate reorganization." Subsequently, in *City of Detroit (Water and Sewerage Dep't)*, 1990 MERC Lab Op 34, the Commission held that a public employer has a duty to bargain over the transfer of unit work for reasons of efficiency or cost savings only if several conditions are met. These include a significant adverse impact on unit employees resulting from the transfer. The

Commission held that while layoffs or loss of overtime opportunities may constitute a significant adverse impact, a mere showing that positions were lost, or speculation regarding the loss of promotional opportunities, does not. *Detroit*, at 40-41; *Kent Co and Kent Co Sheriff*, 1996 MERC Lab Op 294, 303.

In the instant case, the Employer eliminated the LPP position at Warner and transferred work performed by this to position to the TRC after the LPP retired. While the unit was reduced by one position, there was no evidence that the transfer had any significant adverse impact on unit employees as the Commission defines it. I find, therefore, that the Employer had no duty to bargain over the transfer of unit work in this case.

The Employer also asserts that the Union's petition to clarify the unit should be dismissed. Unit clarification is not appropriate to upset an existing agreement between the parties concerning the unit placement of a position or positions, whether that agreement is explicit or can be implied from historical practice. Unit clarification is appropriate to determine the bargaining unit status of a newly created position or a position that has recently undergone significant changes. *Lapeer Co*, 18 MPER ____ (November 2, 2005); *Big Bay De Noc Sch Dist*, 17 MPER 81 (2004). The Employer asserts that the TRC is not an "entirely new" position since the TRC continues to spend the majority of his time performing the same work he performed as an ITS. It maintains that the TRC is part of a larger group of technology department employees that have historically been unrepresented. According to the Employer, if the Union desires to represent the TRC it must file a petition for representation election among this group.

This is not a case where an existing position has been given a new title and minor additional responsibilities that do not change the underlying nature of its job. *Cf, Glen Oak Cmty College*, 16 MPER 72 (2003). Although the TRC continues to do the work of an ITS, he spends forty percent of his time on library duties that are performed in other schools by LPPs and have never been part of the ITS job. In my view, the TRC qualifies as a new position. In any case, it has clearly undergone recent significant changes in its job duties. I conclude that the parties do not have an existing agreement concerning the unit status of the TRC position and that the Union's petition to clarify the position's status is appropriate.

When deciding whether to clarify a unit to add a new or substantially changed position, the Commission determines whether the position shares a community of interest with this unit. *Lenawee Intermediate Sch Dist*, 16 MPER 48, at p 159 (2003); *Kalamazoo Co Probate Ct*, 1994 MERC Lab Op 980; *Port Huron Area Schs*, 1989 MERC Lab Op 763. In determining community of interest, the Commission looks at a number of factors, including similarities in duties, skills, education and working conditions, as well as similarities in wages and benefits and common supervision. *Lapeer Co*, 18 MPER ____ (November 2, 2005); *Covert Pub Schs*, 1997 MERC Lab Op 594, 601. In a K-12 school district, a broad unit of nonprofessional support employees is a presumptively appropriate unit. *Deckerville Cmty Schs*, 2000 MERC Lab 390, 393; *Livonia Pub Schs*, 1988 MERC Lab Op 1068.

The Commission has included positions with information technology duties in units of support staff or office clerical employees when these positions do not require specialized degrees, certifications, or experience. In *Essexville-Hampton Pub Schs*, 2001 MERC Lab Op 316, the Commission clarified a

bargaining unit consisting of secretaries, aides, library clerks, paraprofessionals, study hall monitors, and bookkeepers to include a position that installed computer software and performed troubleshooting on computers throughout the district under the supervision of the director of technology. In *Brimley Area Schs*, 2000 MERC Lab Op 159, the Commission included a technology coordinator responsible for providing technical support in the computer lab, installing software, and maintaining computers in a small rural district in a broad unit of the district's support employees.

I conclude that the TRC's duties and skills are similar to those of employees in the Union's bargaining unit. The TRC spends nearly half his time on duties performed by LPPs in the unit, including ordering books, and preparing reports, memos and inventories. Although volunteers at Warmer perform most of the work that occupies the time of the LPPs in the other libraries, the TRC is in charge of the library and is responsible for seeing that the work is done. The information technology duties that occupy the rest of the TRC's time are low-level support duties that do not require specialized education, training, certification, or work experience. For example, the elementary media specialist, a professional librarian, handles all these duties at Bean elementary. The LPPs at Bean and Parma are also required to be able to perform some information technology tasks. The TRC's general working conditions are also similar to those of the LPPs. Like the LPPs, he spends all his time in one school, and he interacts on a daily basis with students and teachers in the library and the computer lab. In addition, the TRC meets regularly with LPPs and the elementary media specialist. The TRC also shares common supervision with members of the Union's unit. While the technology director is the TRC's formal supervisor, the TRC, like the LPPs, also reports to the elementary media specialist and his building principal. While the TRC makes substantially more money than the LPPs, his salary is comparable to wages earned by full-time secretaries, the most skilled and highly paid employees in the bargaining unit. I find that the TRC shares a community of interest with the Union's unit based on similarities in duties, skills, working conditions, supervision, and wages and benefits. I conclude that as a nonprofessional support position, the TRC can be appropriately included in the Union's unit of clerical and paraprofessional employees. I, therefore, recommend that the Commission issue the following order.

RECOMMENDED ORDER

The bargaining unit represented by the Western Educational Support Association, JCEA/MEA/NEA is hereby clarified to include the technology resource coordinator (TRC) position. The unfair labor practice charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Julia C. Stern, Administrative Law Judge

Dated: _____