

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

In the Matter of:

WAYNE COUNTY COMMUNITY COLLEGE DISTRICT,
Public Employer,

Case No. R06 D-054

-and-

UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA, (UAW),
Labor Organization-Petitioner.

APPEARANCES:

Bellanca, Beattie & DeLisle, PC, by James C. Zeman, Esq., for the Employer

Christian Sweeney, for the Petitioner

DECISION AND DIRECTION OF ELECTION

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 September 1, 2006, before Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. Pursuant to Section 13 and 14 of PERA and based on the record, including briefs filed by the parties on or before October 12, 2006, the Commission finds as follows:

The Petition and Positions of the Parties:

On April 13, 2006, the United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) filed this petition for a representation election in a unit consisting of all full-time and regular part-time note takers employed by the Wayne County Community College District at all of its campuses. Petitioner maintains that the note takers are regular part-time employees and that they constitute an appropriate residual unit. The Employer's position is that this unit is not appropriate because all the note takers are either casual or temporary employees with no expectation of continued employment.

Findings of Fact:

Note takers provide services to disabled students that allow these students to attend regular college classes. The students served by the note takers are primarily those with mobility

impairments and those with learning disabilities. As their job title indicates, note takers attend classes with, and take notes for, students who are unable to write. Note takers may also help students take written tests, for example, by reading a test to a blind student. Between classes, note takers work in the Employer's ACCESS (Accessing Career and Technical Support Services) office retyping, copying, and filing notes or talking with their students' assigned tutors. One note taker, Arthur Smith, spends most of his time in the ACCESS office transcribing notes and course materials into Braille.

The note takers covered by the petition are all part-time, and currently work no more than twenty hours per week.¹ Counselors in the ACCESS program, called ACCESS coordinators, maintain a roster of note takers. At the end of each semester, the ACCESS coordinators determine which note takers will be returning for the next semester and what hours they are available to work. The ACCESS coordinators also calculate how many students will need note takers. The coordinators then design the work schedules of the note takers around the class schedules of their students and the note takers' own school or other commitments, if any. If more note takers are needed, the coordinator contacts someone from the roster. Note takers are free to decline an offered assignment. However, once they accept an assignment they are expected to work their assigned hours for the duration of the semester or until their assignment changes. Usually each note taker, with the exception of Smith, is assigned to a particular student for the semester. A student may be assigned more than one note taker if the schedule requires this. During a semester, a note taker's schedule may change and his or her hours fluctuate as students drop classes or outgrow their need for a note taker, and as new students apply for assistance. However, some students keep one note taker for the course of their college career.

The Employer classifies all note takers as temporary employees. When they are hired, note takers are given a letter stating that their employment is at-will and temporary. Some are also given expiration dates for their appointments or told that their appointments will last up to one year. Whether a note taker is told that his employment will end on a specific date seems to depend on who in the Employer's human resources department drafts the hire letter. However, note takers' appointments are regularly renewed. For example, according to the Employer's personnel records, Kyiesha White was hired on February 2, 2004 for an appointment to expire on June 30, 2004, but was still working for the Employer as a note taker on June 30, 2006. Smith testified without contradiction that the Employer had continuously employed him as a note taker/transcriber for nineteen years. He also testified that two other note takers had worked as note takers for at least fifteen years.²

The note takers are paid entirely from a federal grant known as the Perkins grant and matching funds provided by the State of Michigan. The Perkins grant provides monies to educational institutions, primarily community colleges, to provide services to students who are

1 Smith and the other note taker who testified at the hearing, Marcellous Thomas, work about five hours a day, Monday through Thursday.

2 The Employer introduced documents that purported to list the names of all note takers it employed during each of the fiscal years ending June 30, 2004, 2005 and 2006 and the amounts they earned by month and year. According to these lists, the College employed between five and eight note takers in each of these years, with four names appearing on all three lists. However, documents from employees' personnel files indicated that the Employer employed at least seven other note takers at some time during this period, including Marcellous Thomas. Thomas testified without contradiction that he had been employed as a note taker for over a year.

enrolled in career or technical programs, who are eligible to receive student financial aid under the need-based federal Pell grant program and who have demonstrated special academic needs. Each year, the Employer writes a grant application describing how it will use the funds. This application becomes part of the State's application to the U.S. Department of Education. The funds are disbursed to the State, which distributes them to eligible educational institutions along with the matching funds. In July of each year, the State notifies the Employer how much money it can expect to receive for the fiscal year ending the following June. The amount of money the State of Michigan receives from the Perkins grant varies from year to year. The money the Employer receives also depends on the number of eligible students enrolled at its institution during the prior fiscal year relative to those enrolled at other educational institutions within the State. Although the amount of the grant fluctuates, the Employer has received Perkins grant money every year since at least 1977 and expects to continue to do so.

Perkins grant funds can be used for a variety of purposes, including providing individual assistance to eligible students. The Employer's ACCESS office administers programs funded by the Perkins grant that provide this assistance. In addition to note taking, the Employer uses Perkins grant monies to fund tutoring, interpreter services for the hearing impaired, counseling and guidance, and the purchase of assistive equipment. There is an ACCESS director, and three ACCESS coordinators who are licensed counselors. One of the coordinators meets with every eligible student who applies for assistance and helps the student determine his or her needs and create a plan. The ACCESS coordinators also coordinate the work of note takers, tutors, and interpreters for the hearing impaired.

One of ACCESS's goals is to make the student as independent as possible when he or she enters the work force. In line with that goal, the coordinator usually encourages a student with difficulty writing to try a tape recorder before assigning him or her a note taker. Sometimes a professor will agree to provide a student with notes, and the ACCESS coordinator sometimes arranges with another student in the class to provide the notes. The record indicates, however, that despite these alternatives, the demand for note taking services has remained steady or has increased during the last few years, and the Employer spent more on note taking services in the fiscal year ending 2006 than it did during the previous year

Discussion and Conclusions of Law:

Temporary employees are not included in collective bargaining units under Section 13 of PERA because they lack a continuing interest in the terms and conditions of their employment. A temporary employee, as we define that term, is an employee hired for a specific period or specific project who has no reasonable expectation of further employment. *City of Sterling Heights*, 1993 MERC Lab Op 230; *City of New Buffalo*, 1989 MERC Lab Op 590; *State Judicial Council*, 1984 MERC Lab Op 545. An employee whose tenure has no projected end date is not temporary, even if the employer does not consider his or her position to be permanent. *Big Bay de Noc Sch Dist*, 17 MPER 81 (2004); *Deckerville Cmty Schs*, 2000 MERC Lab Op 390; *Chelsea Sch Dist*, 1994 MERC Lab Op 268.

We also exclude from bargaining units irregular part-time and casual employees whose employment is minimal, sporadic, or temporary. The determination of casual status is made on a

case-by-case basis. *Southfield Pub Schs*, 1984 MERC Lab Op 162. However, we generally find regularly scheduled part-time employees to have a substantial and continuing interest in their employment. *Lansing Twp*, 18 MPER 12 (2005); *Deckerville Cmty Schs*, at 394. Regularly scheduled employees who work a very small number of hours per week are considered irregular part-time employees. For example, in *Holland Pub Schs (Food Service Program)*, 1989 MERC Lab Op 584, 588, we held that regularly scheduled cafeteria employees who worked less than one hour per day, or five hours per week, did not have a sufficiently substantial interest in their employment to justify their inclusion in a bargaining unit. Compare, *L'Anse Creuse Pub Schs*, 1996 MERC Lab Op 613, 616, where we held that regularly scheduled employees who worked from one to two hours per day, or five to ten hours per week, were regular part-time employees. By contrast, part-time employees who generally work only on call, particularly as substitutes, are found to be casual employees when: (1) their assignments are short and of irregular duration; (2) they do not commit to work beyond the duration of one assignment, and are free to decline work; and (3) they are available to work for other employers in the same week, month, or semester. See *Coldwater Cmty Schs*, 1998 MERC Lab Op 65 (substitute bus drivers); *Chelsea Sch Dist*, 1994 MERC Lab Op 268; and *Lansing Pub Schs*, 1993 MERC Lab Op 18 (substitute teachers).

We find that the note takers are not temporary employees as we define that term. As stated above, we do not exclude employees whose tenure is actually indefinite from collective bargaining units merely because their employer classifies their positions as temporary, rather than permanent. Here, the record indicates that note takers can work from semester to semester as long as they desire to do so. Even note takers who are told when they are hired that their employment is for a specific term can expect their term to be renewed and their employment to continue. Although the note takers are paid with funds from a federal grant that varies in amount from year to year, the Employer has received money from this grant for over twenty years and expects to continue to do so. While the Employer could elect to spend all the grant money on something other than note taking, there is no reasonable likelihood that it will do so. We conclude that the note takers are not temporary employees since they have a reasonable expectation of continued employment.

As discussed above, part-time employees who work regularly scheduled hours and are not seasonal employees are usually found to have a substantial and continuing interest in their employment and are included in units with full-time employees. The Employer argues that the note takers are similar to on call substitutes in that they are not obligated to accept assignments, can turn down assignments without penalty, and are free to work for other employers at the same time. Unlike the on call substitutes in the cases discussed above, however, the note takers' assignments are generally for an entire college semester. In this respect, they are similar to the part-time student workers whom we held to be regular employees in *Michigan State Univ*, 1976 MERC Lab Op 73, and the long-term substitute teachers, employed for an entire semester, whom we have always found to be regular employees. See *Lansing Pub Schs*, n 2. While the note takers, like other regularly scheduled part-time employees, may hold other jobs, they must ensure that their work schedules do not conflict. We conclude that the note takers are not casual employees but regular part-time employees with a substantial and continuing interest in their employment. Accordingly, we will direct an election as follows.

ORDER DIRECTING ELECTION

Based on the findings of fact and conclusions of law above, we find that a question concerning representation exists under Section 12 of PERA. We direct an election in the following unit, which we find appropriate under Section 13 of PERA:

All full-time and regular part-time note takers employed by the Wayne County Community College District at any of its campuses, excluding supervisors and all other employees.

Pursuant to the attached Direction of Election, the aforesaid employees will vote on whether they wish to be represented for purposes of collective bargaining by Petitioner United Automobile, Aerospace and Agricultural Implement Workers of America (UAW).

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Christine A. Derdarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____