

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

In the Matter of:

CITY OF LIVONIA,
Public Employer,

Case No. R06 G-075

-and-

MICHIGAN AFSCME COUNCIL 25,
Labor Organization-Petitioner.

APPEARANCES:

Roumell, Lange and Cholack, PLC, by Gregory T. Schultz, Esq., and Kelly A. Walters, Esq., for the Public Employer

Miller Cohen, PLC, by Eric Frankie, Esq., and Bruce Miller, Esq., 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 at Detroit, Michigan on November 13, December 21, and December 22, 2006, and January 19, 2007, before Administrative Law Judge Julia C. Stern 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 April 30, 2007, the Commission finds as follows:

The Petition and Positions of the Parties:

On July 10, 2006, AFSCME Council 25 filed this petition seeking a representation election in a residual unit of part-time and seasonal employees in the City of Livonia's (the City or the Employer) parks and recreation department, excluding casual employees, supervisors and all other employees. Between July 2005 and July 2006, the City employed approximately 300 individuals in positions covered by the petition. Petitioner proposes a voting eligibility formula that would exclude all employees who worked fewer than 200 hours during the calendar year

immediately preceding the payroll period for eligibility.¹ Approximately 200 employees would be eligible to vote under Petitioner's formula.

The City maintains that all of the employees in the positions covered by the petition are casual or irregular part-time employees with no continuing interest in the conditions of their employment. It asserts that because the employees: (1) have a limited expectancy of continued employment; (2) work intermittently; and (3) have a high turnover rate, the proposed unit would be highly unstable. The City also argues that employees in the proposed unit do not share a community of interest because of the variety of jobs they perform and their differing work schedules. It contends the petition should be dismissed because the unit sought by Petitioner is not an appropriate unit for collective bargaining. The City objects to Petitioner's proposed eligibility formula, arguing it would grant the right to vote to employees who work, sporadically, less than half the year, while disenfranchising other employees who work a small number of hours consistently each week.

Findings of Fact:

Introduction

The City of Livonia Parks and Recreation Department ("Department") offers approximately 350 classes, programs, and special activities throughout the year. The Department operates a multi-story community recreation center, which is open year-round.

The City designates all of its positions as either permanent full-time, permanent part-time, temporary full-time or temporary part-time. The petition in this case covers more than thirty-five separate positions in the Department, which have been designated by the City as temporary part-time.² Many employees work in more than one temporary part-time position within the Department.³ Some positions are filled only during the summer. The Department also more than doubles the number of lifeguards and pool supervisors it employs during the summer, when its three outdoor pools are open. However, many employees who work in these positions in the summer also work in other temporary part-time parks and recreation positions during the rest of the year.

Michigan AFSCME Council 25 represents a bargaining unit of regular full-time and part-time non-supervisory employees of the City. Temporary part-time and seasonal employees are excluded from this unit. The Department has employed temporary part-time employees in seasonal positions at City parks since at least 1965. However, the number of temporary part-time parks and recreation employees increased substantially after the City opened its recreation center in April 2003. The recreation center is staffed primarily with temporary part-time employees. Most of the employees within the proposed bargaining unit work, at least some of the time, at the recreation center.

¹ In a Commission-directed election, the payroll period for eligibility is the last full payroll period preceding the date the decision directing an election is issued.

² In its brief, the Employer contends that there are fifty-one separate assignments.

³ For convenience, in this decision, we refer to these positions as temporary part-time.

All temporary part-time positions in the Department are within one of nine job classifications. In ascending order by pay rate, they are: (1) recreation aide; (2) assistant recreation leader; (3) recreation leader; (4) recreation specialist; (5) program specialist; (6) junior instructor; (7) program instructor; (8) senior program instructor; and (9) program coordinator. There are two pay rates for each classification. When an employee is first hired, he or she is paid at the first step rate for that classification. After the employee's one-year anniversary date in that classification, regardless of how many hours he or she has worked, the employee is paid at the step two rate. An employee who works in more than one classification is paid the applicable rate for the hours worked in each classification.

Employees may move into higher paid classifications as they gain more experience and take on more responsibilities. For example, an aquatic instructor may progress from aquatic supervisor (junior instructor) to aquatic supervisor II (program instructor) to aquatic supervisor III (senior program instructor) as he or she gains more experience and is assigned to teach classes that are more advanced. In 2006, pay for the Department's temporary part-time employees ranged from \$6.95 per hour, for the beginning recreation aide classification, to \$18.25 per hour, for the program coordinator classification at the second step.

About forty-seven of the temporary part-time employees who worked for the Department between July 2005 and July 2006 were high school students. Many high school students work for the Department in the summer and during the school year, scheduling their work around school and extracurricular commitments. The Department does not keep records on the number of college students it employs. However, at least half of the Department's temporary part-time employees are individuals of typical college age; i.e. between about eighteen and twenty-five. The large percentage of college and high school students contributes to a high turnover rate, as students leave to pursue their education or to take full-time jobs.⁴

Except for employees who work only as substitutes, all temporary part-time employees in the Department work scheduled hours. Supervisors prepare work schedules covering periods from two weeks to three months, depending on the position and time of year. Before preparing the work schedules, supervisors ask their employees when they can or cannot work. Employees are never scheduled to work except when they have indicated that they are available. Therefore, an employee who generally works Saturdays, but knows that he cannot work on a specific Saturday, will indicate this on his request for hours and will not be scheduled to work that day. As a result of these scheduling practices, the number of hours many employees work fluctuates widely from week to week. This fluctuation in work hours is characteristic, even of employees who work year-round. Supervisors give some preference in assigning hours to employees who are willing to work consistently, particularly employees who work mornings or other times when many employees are not available. Conversely, supervisors also try to spread available hours among as many employees as possible. All other things being equal, a supervisor will not schedule an employee to work twenty-five hours per week, even if he wishes to work that many

⁴ In its brief, the Employer calculated the turnover rate from employee payroll records admitted into the record. Of the 110 employees hired between July 2004 and July 2005, seventy-eight remained employed in July 2006. Of the ninety-one employees hired during the previous year, fifty-seven were still employed in July 2006.

hours, if it means that other employees who want to work receive no hours at all. An employee who does not submit a request for hours will not be put on the work schedule.

Hours Worked by Temporary Part-time Employees in 2005-2006

The City's records indicate that more than 300 individuals worked as temporary part-time employees in the Parks and Recreation Department between July 1, 2005 and July 1, 2006. Approximately 200 worked at least 200 hours during that year. A little over half of the 200 worked between 200 and 500 hours; approximately sixty-five worked between 500 and 1,000 hours; approximately twenty-five worked between 1,000 and 2,000 hours, and three worked more than 2,000 hours. About 115 of the 200 had hire dates before July 1, 2004. Eleven of the twenty-five who worked more than 1,000 hours between July 1, 2005 and July 1, 2006 also worked more than 1,000 hours between July 1, 2004 and July 1, 2005. Of the forty-seven high school students employed between July 1, 2005 and July 1, 2006, twenty-seven worked more than 200 hours during that year. This group includes high school students who worked during the school year in addition to working during the summer.

Other Facts Common to All Temporary Part-time Positions

Hiring and Filling of Positions

Applicants for temporary part-time employment are given job descriptions listing the qualifications for each position and fill out an application, checking all positions in which they are interested. Applicants not hired within six months are purged from the applicant list.

At the time of initial hire, the City requires temporary part-time employees to sign a document acknowledging that they are at-will employees. They are also told that they have no guaranteed number of hours or term of employment, and, as part-time employees, they cannot work more than a total of thirty-five hours per week.

After an applicant is hired to fill a temporary part-time position, his or her name is entered into the City's database. As long as an employee's name appears in the database, he or she can be hired to work in any other temporary part-time position in the Department without filling out a new application. If a temporary part-time employee is fired or quits, the employee's name is removed from the database. However, employees' names often remain in the database when they are not actually working, in the expectation that they may come back to work at another time. The City periodically purges the names of employees who have not worked at all for a period of time.

It is routine for temporary part-time employees, including those in positions not considered seasonal, to return after not working for the Department for a period of time. It is also common for employees to work in more than one temporary part-time position at the same time in order to get more hours, or to move back and forth between positions. As an example, in 2006, one temporary part-time employee worked twenty-five hours per week as a playground assistant in the summer, then worked as a scorekeeper in the men's basketball league for four hours per week for seven weeks in the fall, and averaged ten hours per week the rest of the year as a facility attendant.

Substitutes

Temporary part-time employees are generally required to find their own substitutes. As long as they find substitutes, they are not penalized for poor attendance. At any given time, many of the employees working are doing so as substitutes. Most are employees with scheduled hours seeking additional work or trading hours with another employee. There are approximately twenty substitute lifeguards and pool attendants on a substitute-only list who do not work scheduled hours. Some do this by choice, while others do not have scheduled hours because the Employer does not have hours to give them. There was no mention in the testimony of substitute-only lists for other positions, although there are scattered references in the record to employees in other positions who, at the time of the hearing, were working only as substitutes.

Benefits

Temporary part-time employees at the recreation center punch a time clock. Employees working in more than one position are required to keep track of the hours they work in each position. Frequently, employees are paid at more than one pay rate within the same pay period because they have performed work in more than one classification.

Temporary part-time employees of the Parks and Recreation Department receive no fringe benefits and no paid leave. However, the Department has a program, known as “crazy cash,” to encourage employees to work more hours. Under this program, employees receive one crazy cash point, worth about one dollar, for every ten hours they work. Crazy cash points can be used for memberships, classes, and day passes at the recreation center. Parks and Recreation Department employees also receive discounts on recreation center classes.

Discipline and Termination

Temporary part-time employees receive “write-ups” for various infractions without being terminated. The Department’s policy provides for four steps of progressive discipline prior to termination, but this is not always followed. Except for lifeguards, temporary part-time employees are rarely formally terminated, but an unsatisfactory employee may not be offered hours or the opportunity to work in other temporary part-time positions. Except for employees in the aquatic division, temporary part-time employees do not receive formal written evaluations.

Positions within the Proposed Bargaining Unit

Positions Outside the Community Recreation Center

The Parks and Recreation Department is divided into six divisions: (1) golf; (2) parks; (3) athletics; (4) community recreation center; (5) aquatics; and (6) leisure services. The athletics, community recreation center, aquatics, and leisure services divisions employ temporary part-time employees.

Lyle Trudell, a full-time employee, heads the athletic division. This division encompasses athletic activities at locations other than the recreation center, and employs fifteen to twenty seasonal temporary part-time employees. These include field supervisors and scorekeepers for the adult and youth baseball and softball leagues sponsored by the City during

the summer and park attendants who oversee activities at City parks during busy periods, coordinate picnic pavilion rentals, and make sure the comfort stations are serviced. These positions fall within the classification titles program specialist, recreation specialist, and recreation aide. The athletic division also employs figure skating instructors who work at the City's ice arenas in all seasons of the year except summer.

Community Recreation Center Division Positions

The community recreation center offers a wide variety of fitness and recreational classes, sports instruction and leagues, and special activities and events including a summer day camp, Camp Swoosh. It has an indoor leisure pool with a water slide and a "lazy river" area with water currents, an Olympic-size indoor lap pool, and an outdoor pool. It offers swimming and diving instruction, competitive swimming, and water exercise classes. The recreation center has two gyms, a specialized aerobics room, a gymnastic area, an indoor running track, and a fitness center, called the "fit hub." It has a billiard room for senior citizens, several lounges, multiple multi-purpose rooms and a concession area. There is a multi-story children's play area with a tree fort, and a drop-in child care center for parents using the facility called Kid Quarters. Outside the recreation center there is an in-line skating rink and a skateboard park, as well as a jogging path and volleyball fields. Classes at the recreation center are scheduled throughout the year in sessions of six or seven weeks in length. Four times a year, the Department publishes a brochure covering two class sessions and listing the classes and activities taking place during that quarter.

Tom Murphy is the facility manager for the recreation center and is the supervisor of all recreation center staff. About forty temporary part-time employees at the recreation center report directly to Murphy. These include building supervisors (program specialist classification). Building supervisors are present during all hours when the recreation center is open. They open and close the building, check to make sure that all part-time staff have arrived on time and are working at their stations, and find a substitute if an employee has failed to do so. Most employees selected to be recreation center building supervisors have worked for the department as temporary part-time employees for several years. At the time of the hearing, there were seven building supervisors. Three consistently worked between twenty and thirty hours per week all year long, one consistently worked about fifteen hours per week, and the other three averaged ten to fifteen hours per week over the year, but worked widely varying hours from month to month.

Murphy also supervises approximately eight temporary part-time concessions employees (recreation aide classification) and approximately twenty-four to twenty-six front desk attendants (assistant recreation leader and recreation leader classifications). The recreation center's concession stand operates from 3:00 pm to 9:00 pm on weekdays. Concessions employees sell food items, operate the cash register, and do light cleaning inside the stand and in the adjacent eating area. Concessions employees average fifteen to eighteen hours per week and are typically high school students. In 2006, four of the eight concessions employees had worked for the Employer for over one year. Front desk attendants answer the recreation center's phones, respond to customer inquiries, sell memberships, register members for classes, and collect money for fees and services. Front desk attendants typically average from eight to twenty-five hours per week and are typically a mix of high school students, college students, and adults. In 2006, sixteen of the front desk attendants had worked for the Employer for over one year.

Murphy schedules all building supervisors, concessions employees, and front desk attendants by asking employees to submit monthly calendars three weeks before the month begins. If an employee does not turn in a calendar, he or she is not put on the work schedule for that month. Murphy gives preference to employees who work consistently throughout the year. However, Murphy testified that there is so much turnover and fluctuation in requests for hours among concessions employees and front desk attendants that employees who have not turned in a calendar for one month can usually get back on the schedule the next month, although they may not get as many hours.

Jason Sturos, the recreation center's full-time marketing coordinator, is in charge of birthday parties and other facility rental events. He has four temporary part-time employees reporting directly to him. One is a coordinator who handles party bookings and arrangements and works year-round from ten to thirty-five hours per week, depending on the demand for her services. The other three temporary part-time employees work during parties, primarily children's birthday parties, from four to twelve hours per week, depending on demand. Sturos did not testify at the hearing, and the record does not indicate how Sturos schedules these positions.

Assistant recreation facility manager Barb Gamber, a full-time employee, is the direct supervisor of twenty to forty temporary part-time employees, depending on the season. Ten of these employees have worked consistently in programs under Gamber's supervision for at least three years.

Gamber supervises approximately twelve temporary part-time employees who staff the Kid Quarters, the center's drop-in child care center. They include the child care coordinator who works an average of ten to twenty hours per week and is responsible for supervising the program and scheduling the other employees. Other Kid Quarters employees generally average from six to over twenty hours per week, although many also work in other positions at the recreation center. In 2006, five of the twelve Kid Quarters employees had worked there for at least three years. The Kid Quarters operates year-round. The record does not indicate how scheduling for the Kid Quarters is handled.

Gamber also supervises approximately sixteen to twenty temporary part-time Camp Swoosh staff members. Camp Swoosh runs all day for a ten-week period in the summer. Approximately sixteen to twenty temporary part-time employees work at Camp Swoosh each summer. Since attendance at the camp fluctuates, not all Camp Swoosh employees work every week. During the weeks they work, Camp Swoosh employees work a regular schedule of thirty to thirty five hours per week. In the spring, Gamber sends letters or otherwise makes contact with the employees who worked at Camp Swoosh the previous summer. If Gamber was dissatisfied with an employee's performance, she would not send that employee a letter. Other employees are given the opportunity to return if they wish. Usually, about half the Camp Swoosh staff returns each year, although the average Camp Swoosh employee works only two summers. Camp Swoosh's director, Candace Tartarian, is also a temporary part-time employee. Tartarian, a teacher during the school year, works for the City only in the summer. Except for Tartarian, all the temporary part-time employees who worked at Camp Swoosh during the summer of 2006 worked at the recreation center in some other capacity during the previous nine months.

At any given time, Gamber supervises four to ten temporary part-time employees working in sports programs at the recreation center, including: adult volleyball leagues in the winter and summer; a youth inline hockey league in the winter and fall; adult and youth basketball leagues all year long; a variety of youth sports instructional classes held throughout the school year; and sports clinics lasting one or two days held throughout the year. Temporary part-time employees work as coordinators for individual sports programs, officiate for the sports leagues, and teach classes. Sports instructional classes and leagues, like other recreation center classes, are scheduled for seasons of twelve to fourteen weeks in length, divided into two sessions. Recreation center members can register for one or both sessions, but instructors and officials commit to work and are scheduled for the full twelve to fourteen week season. Some sports instructional classes are held during only one season of the year, while others run all year except the summer. An instructor's class will be cancelled if enrollment is not sufficient. However, an instructor hired to teach a particular class will usually continue to teach that class from year to year as long as members enroll. Some temporary part-time employees work in more than one sports program, while others do not.

Gamber also supervises from three to ten temporary part-time employees who work in leisure classes and programs. These include preschool exercise classes, ballet lessons, and creative drawing. Like other classes at the recreation center, leisure classes are scheduled for quarters, or seasons, of twelve to fourteen weeks in length, and instructors commit to teach for the length of the season. Most of the leisure classes and programs run all year long, although some are not held in the summer. Leisure program employees include employees who teach classes, as well as one temporary part-time employee who works approximately thirty hours per week all year long supervising a children's play area. Several employees who work in leisure programs also work in the Kid Quarters.

Fitness and Wellness Positions

Scott Spahr, the fitness and wellness coordinator, oversees adult and teen fitness activities at the recreation center. These include the fitness center, or "fit hub," the rock-climbing wall, group exercise classes, and the services of certified personal trainers and registered dietitians. The City pays the trainers and dietitians a percentage of the fee charged by the recreation center rather than an hourly rate and considers them independent contractors.

Excluding individuals who work only as personal trainers and dietitians, Spahr supervises about thirty-five temporary part-time employees, including fit hub attendants, climbing wall employees, and fitness instructors. Fit hub attendants supervise the fit hub, show residents how to use the equipment, conduct fitness assessments, and do simple cleaning. The fit hub is open from 5:00 am to 11:00 pm on weekdays, 5:00 am to 6:00 pm on Saturday, and 7:00 am to 5:00 pm on Sundays. Most fit hub attendants work the same hours every week. For example, one works every weekday morning from 7:30 am to 10:00 am, while another works Sundays from 7:00 am to 5:00 pm. The number of hours per week that fit hub attendants work varies, but all work at least four hours per week. Spahr prefers to hire fit hub attendants who are certified personal trainers, and most fit hub attendants also work as personal trainers at the center. According to the Employer's payroll records, in 2006, all the fit hub attendants had some other temporary part-time employment in the recreation center.

The recreation center offers instruction in rock climbing at the climbing wall and “open climbing” for members who have passed a climbing test and paid a fee. Climbing wall attendants (program specialist classification) perform services similar to fit hub attendants at the climbing wall. They are not certified, but are required to demonstrate climbing skills to be hired. More experienced climbers become climbing wall instructors (junior instruction classification). Employees may work as both climbing wall attendants and climbing wall instructors within the same pay period. The climbing wall coordinator, who does scheduling and is the most advanced climber, is also a temporary part-time employee (classification program instructor). Often, climbing wall attendants and instructors also substitute in the fit hub.

Like other classes at the recreation center, fitness classes are scheduled in increments of twelve to fourteen weeks, and fitness instructors commit to teach for that period. Most fitness classes are offered all year long. At any one time, the recreation center offers approximately ninety fitness classes taught by about twenty-five different instructors. On average, fitness instructors teach from one to six hours per week; about half teach four classes or more. All fitness class instructors are required to be certified aerobics instructors and are classified as program coordinators, the highest paid classification for temporary part-time employees in the department. Most fitness instructors do not work for the Department in any capacity other than fitness instructor; and, unlike many other positions, fitness instructors are usually hired as new employees through the Civil Service Department. A fitness instructor will usually continue to teach the classes she has taught before as long as she wishes to do so. Like other recreation center classes, a fitness class may be cancelled for low enrollment, and fifteen to twenty percent of fitness classes are cancelled. However, instructors whose classes are cancelled are usually given the opportunity to take over the classes of instructors who leave during the class term.

Aquatic Division Positions

Jamie Freese heads the aquatic division, which consists of employees working at three outdoor pools located in City parks and two indoor pools located in the recreation center. Under Freese’s supervision are temporary part-time pool supervisors, lifeguards, pool attendants, and swim instructors. A pool supervisor (junior instructor or program instructor classification) must be present whenever a swimming pool is open. In addition to supervising the lifeguards and handling emergencies, pool supervisors oversee the pool’s pump room and monitor its chemistry. Pool supervisors are generally, but not always, former lifeguards with experience working for the Department, and they usually stay in the position two or three years. In the summer of 2006, the Department employed fourteen pool supervisors, eight of whom continued to work after the summer ended. Most of the eight pool supervisors who worked outside of the summer months had some scheduled hours almost every week all year long. Pool supervisors have a work schedule that covers thirty days. At the beginning of each month they are asked to indicate the hours they are available to work during that period.

The Parks and Recreation Department employs forty to fifty Red Cross certified, temporary part-time lifeguards (recreation specialist or program specialist) to work at the indoor pools at the recreation center throughout the year. In the summer, when the three outdoor pools are also open, the Department employs over one hundred Red Cross certified lifeguards. During the summer, lifeguards average fifteen to twenty hours per week. The record does not indicate the average number of hours worked by lifeguards the rest of the year. Pool attendants (recreation aide classification) check people in and out of the pool area and operate the water

slide. The Department employs between five to ten pool attendants, depending on the season. Some lifeguards also pick up additional hours by working as pool attendants.

A significant percentage of lifeguards are high school students, as the peak pool hours are after school and on weekends. Work schedules are made up for lifeguards and pool attendants that cover periods from two to sixteen weeks. Freese asks employees to turn in a form indicating the hours they are available to work during the period covered by the schedule. The work schedule, put together by a pool supervisor, takes into account employees' availability and gives preference to more senior employees if employees request the same hours. To accommodate the schedules of high school students, the length of a shift during peak hours may vary from day to day during the week and from week to week. That is, lifeguards may be scheduled to work between 3:00 pm and 6:00 pm on a particular Tuesday and between 4:00 and 6:00 pm the following day, while the next week the lengths of the shifts will be different. Freese maintains a list of twenty employees who work only as substitute lifeguards and pool attendants. Some are on the substitute list because there are currently no hours available for them to work. Other employees choose to work only as substitutes.

Freese also supervises about twenty to thirty temporary part-time swim instructors. Swim instruction takes place at the recreation center pools throughout the year and at the outdoor pools during the summer. Swim instructors must go through the Parks and Recreation Department's training program, which includes classroom work. Beginning instructors are paid as recreation specialists. Instructors advance to program specialist or junior instructor depending on their abilities and experience. Swim instructors are the only temporary part-time employees who receive written performance evaluations. The purpose of the evaluation is to place the instructor in a class commensurate with his or her abilities. The Department schedules swim classes like other classes at the recreation center. Instructors are assigned to a specific class at a specific time for a period of about fourteen weeks. Like other classes at the recreation center, a class is not held if enrollment is too low. However, demand for swim classes regularly exceeds the pools' capacity. If an instructor's scheduled class is cancelled, he or she will almost certainly be assigned another class. A majority of swim instructors are college students or college-age individuals.

Water fitness classes are also held at the recreation center's pool. Most of these classes are conducted by employees of an outside contractor, although Freese recently hired a long-time temporary part-time employee who also works as a fit hub attendant and personal trainer to teach a water fitness class.

Freese usually hires between 20 and 40 new employees from lists provided by the civil service department at the beginning of each summer, with the employees returning from previous summers making up the difference. In April 2006, Freese hired about twenty-five new employees. Of the other seventy-five or so lifeguards, pool supervisors, and pool attendants employed by the Department during the summer of 2006, about fifteen had worked for the Department in the summer of 2005, but not at other times. The remainder worked at the recreation center pools at some time during the rest of the year. Freese does not tell lifeguards that their employment will terminate at the end of the summer because he knows that he will have openings at the recreation center pool in the fall when high school girls stop working for the duration of the high school swim season. Because lifeguard and pool supervisor positions require specific skills, Freese does not usually hire temporary part-time employees working

elsewhere in the recreation center to fill his positions, although some employees hired as lifeguards also work as facility or front desk attendants or in special programs.

Leisure Services Division

Erin Knieper heads the leisure services division. Knieper supervises temporary part-time employees who staff the playground program held at two school sites for seven weeks during the summer, Monday through Friday from 9:30 am to 1:30 pm. Approximately twenty temporary part-time employees work a regular schedule of twenty-five to thirty hours per week for the seven weeks. However, if the number of children drops below a certain level on a particular day, employees are sent home. Like other supervisors of seasonal positions, each spring, Knieper writes letters to or otherwise contacts the playground employees who worked the previous summer to ask if they want to work again. Knieper does not contact former employees whose work she considered unsatisfactory. Playground employees whose performance was satisfactory are given the opportunity to work the next summer. In the summer of 2006, eight of the twenty playground program staffers were returning employees, and twelve were new hires. When Knieper hires new employees for the playground program, she tells them that they are only being hired for that program. However, some playground program employees become facility attendants or take other positions at the recreation center after the playground program ends, and some employees hired to work at the recreation center go on to work in the playground program.

Knieper also supervises approximately thirty temporary part-time facility attendants (classified as recreation aide or assistant recreation leader), about two-thirds of whom are high school students. The facility attendants staff the equipment desk, supervise the gyms, check locker rooms, and perform general tasks in the recreation center throughout the year. They also supervise the skate park outside the recreation center between April and October. Some facility attendants work year-round, while some, primarily college students, work only during the summer and school holiday periods. Knieper schedules facility attendants in five or six overlapping shifts of between four and six hours each, depending on the time of year. Employees who work year-round may work as little as four or as many as eighteen hours per week as facility attendants. About half the facility attendants leave and are replaced each year. Five of the current facility attendants have worked for the Department for over a year.

Knieper's third area of responsibility is special events. These include one time events such as daddy-daughter dances, breakfasts with Santa, and other holiday-themed events. Temporary part-time employees, primarily facility attendants, with other jobs at the recreation center sign up to work at these events.

Discussion and Conclusions of Law:

Petitioner seeks to represent a unit that includes all positions within the Parks and Recreation Department classified by the Employer as temporary part-time. Petitioner claims that there are employees holding these positions who consistently work a substantial number of hours per week, and that these employees should not be deprived of their rights under Section 9 of PERA to participate in collective bargaining. Petitioner agrees, and the record establishes, that some individuals in positions covered by the petition work sporadically and have no real continuing interest in the terms and conditions of employment offered by the Employer.

Petitioner proposes to exclude these casual employees by means of a formula limiting voting eligibility to employees who have worked at least 200 hours in the last year.

We agree with the Employer that there are significant differences between the temporary part-time positions in the proposed unit and positions classified by the Employer as full-time or permanent part-time. However, because Petitioner is not seeking to add the temporary part-time positions in the Parks and Recreation Department to its existing unit of full-time and permanent part-time City employees, the question of whether these positions share a community of interest with this unit is not an issue. Rather, this petition presents three issues: (1) whether employees in the proposed unit are, in fact, regular part-time employees despite their designation by the Employer as temporary part-time; (2) if so, whether these employees constitute a coherent and reasonably stable group sharing a community of interest such that they would constitute an appropriate unit for collective bargaining; and (3) if so, whether Petitioner's proposed eligibility formula protects the Section 9 rights of employees in this group to free choice in the selection of a collective bargaining representative, while excluding individuals with no real continuing interest in the terms and conditions of employment of the unit. The differences between the employees designated as temporary part-time in this case and other City employees are not relevant to any of these issues.

First and significantly, we note that there are two groups of employees that we would not include in any bargaining unit: (1) those employees who have no scheduled work hours and work only as on-call substitutes; and (2) those employees who work for the Employer only for the duration of one season or less.

The National Labor Relations Board (NLRB) uses an eligibility formula to distinguish between on-call employees who work substantial hours on a regular basis and those who work only infrequently. See *Davison-Paxon Co*, 185 NLRB 21, 23-24 (1970); *Trump Taj Mahal Associates*, 306 NLRB 294 (1992) (an on-call employee is found to have a sufficient regularity of employment to demonstrate a community of interest with unit employees if the employee regularly averages four or more hours of work per week for the last quarter prior to the payroll eligibility date). We, however, generally find on-call substitutes to be casual employees when their assignments are of irregular duration, they make no commitment to work from one day to the next, and they are free to decline assignments. *Coldwater Cmty Schs*, 1998 MERC Lab Op 471, citing *Mt Morris Consol Schs*, 1993 MERC Lab Op 24 and *Lansing Pub Schs*, 1993 MERC Lab Op 18. The only employees identified in the record as working only as on-call substitutes are lifeguards and pool attendants on the aquatic division's substitute list, but the record suggests that there may be other such employees in the department. Consistent with our previous decisions, we find that employees without regularly scheduled hours who work only as on-call substitutes and have the right to decline substitute assignments are casual employees who should not be included in any unit.

We have defined "regular" seasonal employees as employees hired for only one season who have a reasonable expectation of reemployment from year to year. Factors relevant to this determination are whether substantial numbers of seasonal employees return from season to season, whether former employees are given preference in rehiring and recall, and whether employees are given assurances of future employment. *Schoolcraft Cmty College*, 1993 MERC Lab Op 911, 917; *City of Tecumseh*, 1984 MERC Lab Op 1175, 1179; *Van Buren Pub Schs*, 1973 MERC Lab Op 941. The record indicates that for all seasonal temporary part-time

positions, employees who work one season and whose employment is satisfactory are given the opportunity to work during that season the following year. However, the Employer's past experience shows that many individuals, including high school students, who work for the Employer for one season are unlikely to work for the Employer ever again. We find that employees who work for the Employer only one season have no continuing interest in their terms and conditions of employment and that including them in a bargaining unit would not be appropriate.

In its brief, the Employer lists factors common to the employment of all temporary part-time-employees in the Parks and Recreation Department that it believes makes them temporary and/or casual employees. The Employer maintains that employees are informed from the time they fill out an employment application that their employment is temporary. We do not agree. Clearly, employees understand that they are being hired for positions designated by the Employer as temporary part-time, and that they do not have the protections the City grants to employees it considers permanent. However, the record also indicates that the only employees who are specifically told that they are being hired for a fixed term are the summer playground program employees hired under Knieper's supervision. Even playground program employees often go on to work in other temporary part-time positions after the summer is over. The fact that the employees here are not given a "guarantee" of permanent employment does not preclude a finding that their tenure is indefinite. 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. *Wayne Co Cmty College*, 20 MPER 4 (2007); *Deckerville Cmty Schs*, 2000 MERC Lab Op 390, 395. Employees in temporary assignments are not temporary employees if they have a reasonable expectation, based on the employer's practices, that they will receive another assignment. *Chelsea Sch Dist*, 1994 MERC Lab Op 268, 275.

The Employer also argues that the casual nature of temporary part-time employees' employment is indicated by the way their work is scheduled. We agree that the Employer's scheduling practices are not typical for regular part-time employment and that the Employer's flexible work schedules attract many employees who want only temporary or sporadic employment. As noted above, there is no dispute that many employees who work in temporary part-time positions in the Department are casual employees. However, we do not believe that the Employer's flexible scheduling arrangements mean that all of its employees should be considered casual. We conclude that part-time employees who consistently work for the Employer, one work schedule after another, are not casual employees, even if their hours vary widely from week to week. We also conclude that the fact that an employee may decide to take time off for personal reasons does not mean that this employee lacks a continuing interest in the terms and conditions of employment of his or her job. We note that although employees are not scheduled to work except when they say they are available, they do commit to working the hours they are scheduled or finding a substitute.

The Employer maintains that in considering whether the employees at issue are regular or casual employees, we should also take account of the fact that few of its temporary part-time employees depend on their City employment for their livelihood. It asserts that most of the temporary part-time employees have family, school, work, or other commitments that limit their ability to work for the Employer, or, like the retirees it employs, simply do not wish to work more hours. However, the fact that employees are working part-time to supplement their income

or have other demands on their time does not mean that they lack a substantial and continuing interest in the conditions of their part-time employment.⁵

The record establishes that some temporary part-time employees of the Department work year-round and that some work a substantial number of hours per year, including twenty-eight employees who worked over 1,000 hours between July 2005 and July 2006. While employees in some positions, including the positions of building supervisor and pool supervisor, tend to work more hours on a more regular basis than employees in other positions, there are employees in many different positions who work regularly. We conclude that the proposed unit includes employees who are properly classified as regular part-time employees.

The Employer also maintains that the proposed unit is not viable because it lacks stability. As the Employer has pointed out in its brief, the rate of employee turnover overall can be as high as thirty percent per year. However, this figure includes employees who work substantially fewer than 200 hours per year. Contrary to the Employer's claim, we find the Department's need for temporary part-time employees to be reasonably stable. Unlike the adjunct faculty in *Eastern Michigan Univ*, 1997 MERC Lab Op 312 (EMU I), cited by the Employer, temporary part-time employees in the Parks and Recreation Department do not supplement the Employer's full-time workforce. Rather, they provide the bulk of the services that the Department offers. Although the Employer will not continue to offer a class or a program if there is insufficient interest in it, the Employer provides the same services and offers the same or similar programs and classes year after year with approximately the same number of employees. The relatively stable demand for employees, coupled with the fact that individual employees can and do work in more than one position in the Department, allows employees to continue to work for the Employer in temporary part-time positions if they wish to do so.

The Employer also asserts that the employees at issue here do not share a community of interest as we have defined that term. The factors used to determine community of interest are well established. As we explained in *Covert Pub Schs*, 1997 MERC Lab Op 594, 601-602:

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; and integration of work functions. *Grand Rapids Pub Schs*, 1997 MERC Lab Op 98, 106; *City of Warren*, 1966 MERC Lab Op 25, 28. . . . The existence of different job duties or functions does not necessarily mean that

⁵ For example, the NLRB traditionally includes part-time students in units of full-time and regular part-time employees when the students have a continuing interest in the conditions of their employment and a community of interest with other unit employees. In determining whether students have the requisite community of interest with other unit employees, the Board conducts an analysis along the same lines that it normally employs when determining "regular part-time" status. Under this analysis, the Board takes into consideration such things as: (1) regularity and continuity of employment; (2) tenure of employment; (3) similarity of work duties; and (4) similarity of wages, benefits, and other working conditions. See *Lake City Home for the Aged d/b/a/ Shady Oaks*, 229 NLRB 54 (1977).

employees lack a community of interest within the meaning of Section 12 of PERA.

In this case, some of the temporary part-time positions require certification. However, the record does not indicate that any of the positions at issue require either a degree or professional experience. The employees are all engaged in providing the public with recreational opportunities, and there is substantial interchange of employees between positions. We find that the temporary part-time positions share similarities in duties and skills. Most of these employees work, at least part of the time, in the recreation center building. The employees are all paid on an hourly basis, and receive between approximately \$7.00 and approximately \$19.00 per hour, with no fringe benefits. They are all employees of one city department and are supervised, either directly or indirectly, by Tom Murphy or one of the other division heads. We conclude that those temporary part-time employees of the Parks and Recreation Department who qualify as regular part-time employees constitute a reasonably stable group of employees sharing a community of interest such that they would constitute an appropriate unit for collective bargaining.

The final question before us is whether Petitioner's proposed eligibility formula protects the Section 9 rights of regular part-time employees and excludes individuals with no real continuing interest in the terms and conditions of employment of the unit.

Eligibility to vote in an election is normally restricted to employees who are both in the appropriate unit during the payroll period immediately prior to the direction of election and who are employed on the date of the election. As noted above, when there are substantial numbers of employees who work only on-call, the NLRB uses the so-called *Davison-Paxon* formula to distinguish those employees without regularly scheduled hours who work with sufficient continuity and regularity from on-call employees. Under this formula, an on-call employee is eligible to vote if the employee averages four or more hours per week during the last quarter prior to the payroll eligibility date. The NLRB uses other eligibility formulas tailored to fit particular industries with particular patterns of intermittent employment. For example, in *The Cajun Co.*, 349 NLRB No. 96 (2007), the NLRB applied its construction industry eligibility formula to employees who were repeatedly hired, terminated, and rehired for separate projects as is common in the construction industry. In that case, eligibility to vote was limited to unit employees employed by the employer for a total of thirty working days or more within the period of twelve months prior to the date of the direction of election, or employees with some employment in that period who had been employed forty-five working days or more within the period of twenty-four months immediately preceding the date of the decision, and who had not been terminated for cause or quit voluntarily prior to completion of the last job for which they were hired.

We do not generally use eligibility formulas other than the standard one, although in *Macomb Cmty College* 16 MPER 35 (2003) and *Holland Pub Schs.*, 1989 MERC Lab Op 584, we tailored eligibility formulas to fit the unique circumstances of those cases. Petitioner has proposed an eligibility formula under which only employees who worked 200 or more hours during the calendar year immediately preceding the direction of election would be eligible to vote. The formula proposed by Petitioner has no history in our case law and Petitioner has not identified its source. An employee who averages four hours per week for fifty weeks of the year will work about 200 hours during that year. However, Petitioner's eligibility formula does not

factor in the regularity of the employee's employment, and enfranchises individuals whose names remain in the Employer's temporary part-time database but have not worked for many months and may never work for the Employer again. Included in this category are employees, including high school students, who worked more than twenty hours per week during the previous summer but have not worked since.

In this case, the proposed unit includes regular part-time employees whose hours fluctuate widely from week to week, month to month, and quarter to quarter. It also includes some seasonal-only employees who regularly return from year to year. However, there are also employees holding the same positions who work only a very small number of hours or whose employment is very irregular. The object of an eligibility formula is to permit optimum employee enfranchisement and free choice, without giving the right to vote to individuals with no real continuing interest in the terms and conditions of employment offered by the employer. *Trump Taj Mahal Associates*, 306 NLRB at 296. The standard eligibility formula is not appropriate here because it would enfranchise employees who work only intermittently, but who happen to be working both during the payroll period for eligibility and on the date of the election. We conclude that the unusual patterns of employment in this case require an eligibility formula that takes account of these patterns. Taking the NLRB's *Davison-Paxon* formula as our starting point, we find that the following employees should be eligible to vote in this case: (1) employees who averaged eight or more hours per two-week pay period in two of the three quarters immediately preceding the date of this Direction of Election; (2) employees hired within the quarter immediately preceding the date of this Direction of Election who averaged eight or more hours per two-week pay period worked; and (3) employees who averaged eight or more hours per two-week pay period between June 15 and Labor Day in each of the two years immediately preceding the date of this Decision and Direction of Election. Any individual terminated for cause and not rehired before the payroll period immediately preceding this direction of election should be excluded from voting.

We emphasize that this formula, like the general rule limiting the right to vote to employees employed both on the day of the election and the payroll period for eligibility, is a voting eligibility formula and not a definition of the unit. We find that the appropriate unit consists of all regular part-time employees of the City of Livonia Parks and Recreation Department in positions designated by the City as temporary part-time, excluding supervisors and casual employees. If Petitioner is selected by a majority of voters as their collective bargaining representative, Petitioner and Respondent may agree to a definition of an excluded employee that differs from the voting eligibility formula.

ORDER DIRECTING ELECTION

Based on the findings of facts 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 regular part-time employees of the City of Livonia Parks and Recreation Department; including seasonal part-time employees, but excluding supervisors and casual employees. The term casual employees includes employees employed only as on-call substitutes.

Eligible to vote in this matter are: (1) all unit employees who averaged eight or more hours per two-week pay period during two of the three quarters immediately preceding the date of this Decision and Direction of Election; (2) unit employees hired within the quarter immediately preceding the date of this Direction of Election who averaged eight or more hours per two-week pay period worked; and (3) unit employees who averaged eight or more hours per two-week pay period between June 15 and Labor Day in each of the two years immediately preceding the date of this Decision and Direction of Election. Ineligible to vote are all individuals terminated for cause and not rehired before the payroll period immediately preceding this direction of election.

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 Michigan AFSCME Council 25.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Christine A. Dardarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____