

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

In the Matter of:

WAYNE COUNTY COMMUNITY COLLEGE
DISTRICT,
Public Employer,

Case Nos. UC04 A-003 & UC04 C-011

-and-

PROFESSIONAL AND ADMINISTRATIVE
ASS'N, MFT, AFT, AFL-CIO
Labor Organization – Petitioner.

APPEARANCES:

Floyd E. Allen & Associates, by Shaun Ayers, Esq., and Dwight R. Kirksey, Esq., for the Public Employer

Law Offices of Mark Cousens, by John Eaton, Esq., for the Labor Organization

**DECISION AND ORDER
ON PETITION FOR UNIT CLARIFICATION**

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 February 1, March 22, April 28, June 1, and July 19, 2005, before D. Lynn Morison, Administrative Law Judge for the Michigan Employment Relations Commission. Based upon the entire record, including the transcript of hearing and the briefs filed by the parties on or before October 17, 2005, the Commission finds as follows:

The Petition and Positions of the Parties:

Petitioner Professional & Administrative Association MFT, AFT, AFL-CIO (Petitioner or the P&AA) represents professional and administrative personnel employed by Wayne County Community College District (WCCC or the Employer). In Case No. UC04 A-003, the P&AA filed a petition on January 23, 2004, to clarify its bargaining unit to include the position of campus chief academic officer. On March 1, 2004, the P&AA filed a new petition, seeking to amend the earlier petition to clarify the bargaining unit placement of the associate dean classification. The March 1, 2004 petition was assigned case number UC04 C-011. The two

cases were consolidated and, at the hearing on February 1, 2005, the Union withdrew its petition in Case No. UC04 A-003 regarding the campus chief academic officer. Therefore, the only matter before the Commission is the petition to clarify the bargaining unit status of the associate dean classification in Case No. UC04 C-011.

The Employer contends that the unit clarification petition is inappropriate because the associate dean classification was created almost two years before the petition was filed and the classification has not substantially changed since it was created. Further, the Employer asserts that the current collective bargaining agreement expressly excludes the classification and moves to dismiss the petition on those grounds. The Employer also contends that Petitioner's bargaining unit is comprised of nonsupervisory administrators and professionals and that the classification's supervisory status renders it ineligible to be included in the unit. The Employer contends that none of the P&AA bargaining unit members have supervisory authority.

Petitioner disputes each of the Employer's contentions and argues that the bargaining unit is comprised of both supervisory and nonsupervisory employees. Petitioner asserts that only seven¹ of the eight positions classified as "associate dean" are at issue and that these seven positions share a community of interest with the supervisory and nonsupervisory administrators and professionals comprising its bargaining unit. Petitioner points out that it does not seek to include all positions titled "associate dean" in its bargaining unit and asserts that the positions titled "associate dean" have varying duties and responsibilities and each must be examined separately. According to Petitioner, the job title "associate dean" was originally used for positions with responsibilities that were substantially different from the responsibilities of the positions Petitioner seeks to include in its bargaining unit. Petitioner argues that the current collective bargaining agreement excluding associate deans from the bargaining unit does not exclude the positions at issue because those positions are not the same as the position it agreed to exclude. Petitioner contends that the petitioned-for positions share only a title with the associate dean job as it existed at the time the parties agreed to exclude that title from the bargaining unit.

Although the P&AA was advised of the change in the associate dean position in 2002, Petitioner contends that the job description described the revised position's duties so broadly that it was unable to determine that the Employer intended to have the position perform bargaining unit duties. Addressing the Employer's contention that the petition is untimely, Petitioner asserts that it filed its unit clarification petition as soon as it learned that the Employer was "misusing" the associate dean job title. Petitioner alleges that the Employer renamed bargaining unit positions as associate deans for the purpose of removing those positions from the bargaining unit. Moreover, Petitioner contends that the associate deans should not be excluded from the bargaining unit based on supervisory authority. Although Petitioner argues that the positions at issue lack supervisory authority, Petitioner concedes that the Commission could find some of the associate dean positions to be supervisory. In that event, Petitioner requests that the Commission

¹ There are eight associate deans: the Downriver Campus associate dean for career programs; the Downriver Campus associate dean of transfer programs and district manager for public safety programs; the Downriver Campus associate dean of public safety and homeland security and continuing education; the Downtown Campus associate dean for career programs; the Eastern Campus associate dean; the Western Campus associate dean; the associate dean of student services; and the associate dean for the center for instruction and learning. Petitioner contends that all of the aforementioned positions except the Downriver Campus associate dean for career programs, the position held by Ethel Cronk, should be included in its bargaining unit.

reconsider its policy of removing supervisors from units containing supervisory and nonsupervisory administrators and asserts that at the time the unit was certified, the Commission found that supervisors and administrators could share a community of interest and belong to the same bargaining unit.

Facts:

The College

Wayne County Community College was established in 1967 and provides post-secondary education and vocational training in Wayne County. The Employer's chief administrative officer is its chancellor. The current chancellor, Dr. Curtis Ivery has held the position since 1995. At that time, WCCC maintained a central office and four campuses that served approximately 10,000 students. In an effort to afford suburban communities located in Wayne County greater involvement in WCCC, the Employer instituted a reorganization plan based on national models called "site-based management." WCCC has grown exponentially since the implementation of the reorganization, adding a fifth campus, and a number of satellite centers. By the 2003-2004 school year, the College served 55,392 students.

WCCC operates with a budget of about \$85 million and approximately two thousand employees on five campuses: Downtown, Downriver, Eastern, Western, and Northwest. The number of "exempt" staff² at WCCC has also expanded. In 1995, WCCC employed 33 "exempt" employees, by 2005, the number of "exempt" employees totaled at least 143. During that same ten-year period, the number of P&AA bargaining unit members decreased from 208 to 154.

The chancellor is assisted in administering the college by members of the chancellor's cabinet, which meets weekly. The chancellor's cabinet includes approximately thirty upper-level staff members, such as the campus presidents, chief academic officers, some district directors, and vice chancellors. The chancellor's cabinet meets for policy discussions and strategy sessions regarding programs, accreditation, finances, labor relations, legal matters, community issues, legislative and lobbying issues and the overall welfare of the college and its constituents. The associate deans whose positions are at issue here are not members of the chancellor's cabinet.

Each campus is autonomous with independent leadership. Although every campus has a campus president who reports to the chancellor, the authority structure of each campus is configured somewhat differently. The model chain of supervision at the campuses is headed by

² The Employer divides its employees into two groups – "exempt" and "nonexempt." The two groups were originally classified based on the provisions of the Fair Labor Standards Act (FLSA), with the Employer finding all salaried employees to be exempt. Subsequently the title "exempt" was used to refer to employees who are not represented by a labor organization. The Employer considers administrative positions such as executive assistant chancellor, executive vice chancellor, associate vice chancellor, vice chancellor, special assistant to the chancellor, assistant to the chancellor, senior associate vice chancellor, chief academic officer, executive dean, executive director, and district director to be exempt from union representation. "Nonexempt" employees include faculty members represented by the American Federation of Teachers, clerical employees represented by the United Auto Workers, and administrators and professional staff represented by Petitioner.

the campus president, followed by the chief academic officer, then the associate dean, then the assistant dean. Associate deans and assistant deans are directly responsible for managing support staff, program directors, and instructors. On the Eastern and Western campuses, there are no chief academic officers. The Northwest Campus has no associate dean but has two assistant deans. The Downtown and Downriver campuses have no assistant deans. Some campuses have additional administrators, such as the assistant to the campus president at the Eastern campus, who may be left in charge of the campus in the absence of the campus president.

The P&AA Bargaining Unit

The bargaining unit represented by Petitioner was originally certified September 1, 1971, following an election conducted pursuant to a consent agreement in Case No. R71 G-297, and was described as including:

All Administrators and Supervisors including Department Chairmen; Project Directors; Coordinators; Administrative Assistants; Director of Institutional Statistics and Research; Director of Learning Resources; Director of Bookstore Operations; Director of Student Services and Activities; Director of Data Processing; Director Student Counseling; Research Assistants but excluding Executives and Confidential Employees which include the following: President; Vice Presidents; Academic Deans; Registrar; Dean of Students; Facility Coordination Supervisor; Director of Community Affairs and Information Services; Personnel Director; Director, Department of Gifts and Grants; Purchasing Director; Director of Facility Administration; Director, Department of Student Financial Aid; Accountant, Budgets and Special Projects; General Accounting Supervisor; Publicist; Director of Academic Recruitment; Director of Labor Relations; Administrative Assistant to the President; Accountants; and Secretaries.

Petitioner's bargaining unit was expanded to include part-time personnel pursuant to a consent election in 1988. A new certification of representative was issued in Case No. R88 C-93 on July 5, 1988, and accreted to Petitioner's unit "all regularly scheduled part-time personnel performing duties within the professional and administration community." In 1998, the Employer filed a unit clarification petition seeking a ruling that the bargaining unit did not include supervisory personnel and seeking to remove various positions considered by the Employer to be supervisory. The parties entered into a settlement agreement, effective December 16, 1999, which removed certain supervisory positions from the bargaining unit.

The P&AA continues to represent some positions that it considers supervisory because some P&AA represented employees have UAW staff who report to them and some P&AA members report to other P&AA members. However, none of the P&AA members have the authority to effectively recommend discipline, hiring, layoff, recall, promotion, transfer, or rewards. P&AA members perform a wide variety of administrative duties for which full-time salaries range from \$25,997 to \$78,292 plus two percent per year under the 2003 to 2008 collective bargaining agreement. All P&AA members are considered professionals and are not paid overtime.

The Associate Dean Position - Historically

There were no associate dean positions at WCCC before Dr. Ivery's arrival in 1995. In November 1996, as part of its "site-based management" reorganization plan, four associate dean positions were created with titles reflecting their areas of responsibility: associate dean for student services; associate dean for enrollment management; associate dean for career and technical education; and associate dean for arts and sciences. Petitioner grieved the creation of the associate dean for student services and the associate dean for enrollment management positions. Petitioner's contention that the positions were performing bargaining unit work was unsuccessful in arbitration.

The four associate dean positions created in 1996 were assigned to the Employer's central administration and had district-wide authority and responsibilities. All four associate deans were members of the chancellor's cabinet and reported to the dean for academic services. Each of their job descriptions required them to assist in developing proposals for negotiations with bargaining units. Two of them, the associate dean for career and technical education and the associate dean for arts and sciences, had responsibilities that included: coordinating the hiring of full-time instructors; ensuring the availability of a pool of part-time instructors; coordinating the selection of the classes by full-time and part-time faculty; and ensuring that all vocational education instructors meet state and college credential and experience requirements. Candidates for these two positions were also required to have four to five years of supervisory experience and some experience in interpretation of labor union contracts. Similarly, the associate dean for student services was expected to supervise and evaluate staff and recommend hiring and termination of staff. A candidate for this position was required to have demonstrated an ability to develop, interpret, and implement policies and administrative procedures in a multi-campus institution, as well as an understanding of labor relations functions.

In May of 2001, the parties entered into a collective bargaining agreement for the period of July 1, 1998 through June 30, 2003 containing a recognition clause that described the bargaining unit as "consisting of all full-time and part-time administrators and professional employees pursuant to Michigan Employment Certification R71-G297 and Michigan Employment Certification R88-C-93." That agreement further defined the bargaining unit as excluding "the senior administrative staff" and expressly included the position of associate dean in "the senior administrative staff." Other than listing certain positions included in "the senior administrative staff," the collective bargaining agreement does not define this term.

In 2002, the Employer began a structural realignment in furtherance of its site-based management reorganization plan to give each campus more autonomy. This included creating a new, single job description for the associate dean position, and placing associate deans on the various campuses. The 2002 job description states, in part:

The Associate Dean is an instructional operations leadership position. The Associate Dean works with the Dean, Assistant Deans, and faculty at his or her assigned campus. The position's primary areas of focus include the development of curricular offerings and instructional delivery strategies, recommending for

hire, and evaluation and supervision of instructional staff. The Associate Dean reports to the Campus Dean, Instruction. The Associate Dean also receives general guideline [sic] from the Chief Academic Officer regarding guidelines for College-wide academic processes and procedures.

The responsibilities noted in the job description include, but are not limited to: supervising the development of course schedules and the faculty course selection process; assisting with the resolution of faculty concerns; assisting with the planning, coordination, and implementation of faculty development programs and policies; recruiting, making recommendations for hire, and evaluating instructional staff; assisting the dean in reviewing, deciding and responding to labor relations matters; and supervising assistant deans and other instructional support staff.

In July of 2002, as part of the reorganization plan, the Employer notified the Union of the placement of the associate dean positions on the campuses. The Employer also informed Petitioner that it would be eliminating the P&AA bargaining unit position of campus assistant dean of instruction (CADI) and creating a new P&AA position of assistant dean³ that would report to the associate dean.⁴ Petitioner grieved the elimination of the CADI position and the grievance went to arbitration. Petitioner claimed that the newly created non-bargaining unit position of chief academic officer had been given the duties of the CADI position.⁵ However, the arbitrator concluded that the duties of the chief academic officer and the CADI were not substantially the same and that the Employer had not violated the collective bargaining agreement when it refused to place the chief academic officer in the bargaining unit.

During 2003 and 2004, the College hired eight associate deans, placing most of them at individual campuses. The 2002 associate dean job description requires the associate dean to report to the "campus dean instruction." However, most of them now report to the chief academic officer for his or her campus. Associate deans are salaried and considered exempt from the requirements of the FLSA. Their salaries range from \$65,000 to \$76,320.

The duties of the eight associate deans vary considerably. Several associate deans share the responsibility of overseeing academic programs with other administrators on their respective campuses. Their duties include reviewing and improving instructional programs and services at

³ The CADI was one of the highest paid positions in the bargaining unit. According to the 2003-2008 collective bargaining agreement, at pay level B-5, the CADI pay range was from \$65,991 to \$73,674 in 2001. Assistant deans are paid at the lower B-1 salary, which in 2001 ranged from \$47,533 to \$55,219. (The collective bargaining agreement provides for yearly across the board percentage increases and does not indicate more current salary amounts.)

⁴ On July 15, 2002, the Petitioner requested that the Employer provide it with the most recent job descriptions of three positions: dean of instruction, evening dean, and associate dean. On July 24, 2002, in a memorandum to the Employer protesting the elimination of the CADI, Petitioner compared the duties of the CADI to those of the associate dean and campus dean, instruction. In that memo, Petitioner contended that many of the duties previously assigned to the CADI were being transferred to the associate dean position contrary to the terms of the parties' collective bargaining agreement.

⁵ Petitioner contended that the chief academic officer position should be included in the bargaining unit even though the unrepresented associate dean position reported to the chief academic officer and Petitioner stipulated that it was not seeking to add the associate dean position to the bargaining unit. An arbitrator heard the matter on September 28, 2003 and, in an opinion issued December 25, 2003, noted that the chief academic officer has substantially greater supervisory responsibilities than the CADI had.

their campus. They may also develop new services and pilot programs for their campus that may ultimately be utilized throughout the College. Some associate deans are responsible for meeting with legislators, business owners, and community advisory groups, who provide input into the process of determining the types of educational and vocational training that may be useful to employers in the community. Associate deans provide this information to various WCCC committees, which, in turn, help form future programs and courses offered by the College. Some associate deans are also responsible for such administrative tasks as assisting in the preparation of the budget for their campus, scheduling classes, and responding to student and faculty concerns.

Some, though not all, associate deans are responsible for overseeing faculty, other administrators and/or clerical staff. Some are responsible for signing time cards and approving leave time for subordinates. Those associate deans with subordinates are generally responsible for evaluating them. However, the evaluations are only used to guide subordinates and cannot be used for disciplinary purposes. Some associate deans may have the authority to give the Employer's response at the informal first step of a grievance procedure.⁶ Associate deans' disciplinary authority varies from campus to campus and depends, at least in part, on the hierarchy at their particular campus.

Some associate deans have the authority to issue oral and written reprimands to their subordinates, but others may only recommend discipline. Generally, associate deans may not suspend subordinates, but they may recommend such action to their superiors. Associate deans do not have the authority to discharge subordinates. That authority is vested solely with the chancellor pursuant to statute. If an associate dean makes a recommendation that a subordinate be discharged, that recommendation must go to the associate dean's supervisor and/or the human resources department for a determination of whether the chancellor should be advised to act on the recommendation.

Associate deans do not have the authority to hire. Only the chancellor has that authority. The Employer's hiring process for regular employees begins with a three or four-member screening committee that evaluates potential candidates to ensure that they meet the qualifications for the position. The screening committee sets up the interviews, conducts the interviews, rates the candidates, and then puts together recommendations to the chancellor for hire. Such committees may be comprised of administrators, including associate deans and assistant deans, as well as faculty or other exclusively represented personnel.

The July 1, 2003 to June 30, 2008 collective bargaining agreement

The 1998-2003 contract expired on June 30, 2003, and negotiations for a successor agreement began in July of 2003. During those negotiations, approximately 30 grievances arose. The Employer refused to arbitrate grievances that arose after the expiration of the contract, but was willing to try to settle the grievances. In addition, the parties discussed settling unfair labor practice charges and unit clarification issues based on Petitioner's contention that the Employer

⁶ According to P&AA President Mary Gill, the associate deans do not have the authority to respond to grievances filed by the P&AA. She contends that all of the Employer's responses to grievances come from the labor relations department.

had engaged in a continuing pattern of assigning bargaining unit work to unrepresented staff. On June 24, 2004, the parties signed a tentative agreement covering the period from July 1, 2003 to June 30, 2008. Following ratification by the union membership, on or about June 30, 2004, and by the Employer's board of trustees, on July 21, 2004, the parties executed the agreement on April 14 and 15 of 2005. During the negotiations, there was no discussion of whether the associate dean position should continue to be excluded from the bargaining unit, and the language of the previous collective bargaining agreement excluding the position from the unit was retained.

At the time that the parties entered into the 2003-2008 collective bargaining agreement, they were also negotiating a universal settlement to be included in a memorandum of understanding. Whatever was not contained in the universal settlement would proceed according to whatever process was then in place. On August 19, 2004 and September 10, 2004, the parties signed the memorandum containing the universal settlement.

Central Administration

The central office is broadly responsible for the administration of the entire College. Currently, the central office administrative positions are unrepresented and include: the chancellor, two executive assistant chancellors, one executive vice chancellor, special assistants to the chancellor, vice chancellors, associate vice chancellors, assistants to the chancellor, senior associate vice chancellors, a human resource manager, a chief academic officer, an executive dean, an executive director, and at least one district director. WCCC did not reduce the number of unrepresented staff at the central office as a result of the decentralization and creation of the associate dean positions. There is also an associate dean at the Employer's central administrative office.

Associate Dean of Student Services

Mary Jones has been the associate dean of student services since July 14, 2003 and currently works in the central office. The Employer has not claimed that this position is based on the 1996 associate dean job description despite its location at the central administrative office. Unlike the centrally based associate dean positions created in 1996, the associate dean of student services is not a member of the chancellor's cabinet and lacks the broad policy making authority of the discontinued position. Jones' immediate supervisor is John Bolden, the vice chancellor of enrollment management and student services and a member of the chancellor's cabinet. Prior to becoming associate dean, Mary Jones was the assistant registrar at the Downriver Campus, a P&AA position.

As associate dean for student services, Jones oversees the day-to-day operations of the adult education program, a responsibility formerly handled by the project director of adult education and the project coordinator of adult education, two P&AA represented positions. Jones also assists Bolden by investigating and responding to complaints from students from the various campuses. She is also responsible for coordinating and training student service advisors and working with student service ambassadors and the student service administrator. In addition, she coordinates WCCC's study abroad program, which was recently created upon Bolden's

request. Jones worked with a consultant, a director of public relations, and student service administrators, P&AA represented employees, to create the study abroad program. Jones develops the eligibility requirements for study abroad and selects students who meet those requirements to participate in the program. She also ensures that this campus-wide program comports with federal and state regulations, as well as WCCC Board guidelines.

Mary Jones currently has one P&AA subordinate, a student service specialist. Prior to May 2005, seven tutors also reported to Jones, but the College laid them off. These tutors, who were in the P&AA bargaining unit, worked with students in the GED program. Jones also oversees two UAW-represented secretaries, one working in the adult education program and one working for the district office. Seventeen non-unionized temporary part-time adult education instructors also report to her.

As associate dean, just as she did when she was assistant registrar, Jones signs time cards, performs evaluations, and grants time off for her UAW and P&AA subordinates. She has never denied any requests for time off, and does not have the authority to deny vacation requests. Jones cannot authorize employees to work overtime. If she believes overtime is necessary, she forwards the request to Bolden, who signs it, and then sends it to Homer Harvey, the district reviewer.

Mary Jones does not have the authority to discipline employees, but she may make recommendations to Bolden. However, she has never had to make a recommendation that Bolden discipline or terminate an employee and does not know if Bolden would investigate or act on her recommendation. If an employee files a grievance, she may answer that grievance at the first step. However, she has not had the occasion to answer a grievance while working as an associate dean. Jones has recommended the hiring of three unrepresented part-time instructors for the Adult Basic Education program under the Workforce and Development Department. She reviewed the credentials and experience of the candidates and invited another staff person and an instructor to join her in interviewing the candidates. Since hiring instructors for the Adult Basic Education program is not subject to the Employer's usual credential certification procedure, in each instance, after Jones selected the person whom she wished to hire, she gave the information to the personnel department and the individual was hired.

Downriver Campus

Two hundred and eight employees currently work at the Downriver Campus. The chief administrator at the campus is the campus president. The campus also employs several other unrepresented administrators: a chief academic officer, who is on medical leave; a campus president intern; an assistant to the campus president; an administrative specialist; and a district director for trades programs. There are three associate deans, more than at any other campus: the associate dean for career programs; the associate dean of transfer programs and district manager for public safety programs; and the associate dean of public safety and homeland security and continuing education. These three associate deans were preceded at the Downriver Campus by Dr. Irah Charles. Dr. Charles was a campus assistant dean, a P&AA bargaining unit position, at central administration until the Employer reclassified her position and moved her to the position

of associate dean at the Downriver Campus in September 2002. Dr. Charles subsequently retired. There are no assistant deans at the Downriver Campus.

Except for the fact that the chief academic officer is currently on leave, that position would be considered the chief deputy to the campus president. While the chief academic officer is on leave, if the campus president is away from the campus, one of the three associate deans is in charge. The three associate deans rotate the responsibility for overseeing the campus during the evenings. The associate dean for career programs is the highest-ranking associate dean at the campus, followed by the associate dean of transfer programs and district manager for public safety programs and the associate dean of public safety and homeland security and continuing education, respectively. If the campus president and chief academic officer are not present at the Downriver Campus, the associate dean for career programs is the highest-ranking administrator there and is frequently left as the chief administrator at the campus.

Downriver Campus Associate Dean for Career Programs

The position of associate dean for career programs at the Downriver Campus, currently held by Ethel Cronk, is the only one of the eight positions titled “associate dean” that Petitioner does not claim should be included in its bargaining unit. Cronk has been employed by WCCC for over twenty years and was given the title “associate dean” around March of 2004. Cronk previously worked as the executive director for work force development and continuing education, a position that was initially in the P&AA, but was later removed from the bargaining unit in a unit clarification proceeding. That position required her to develop customized training with community industries and businesses for WCCC’s non-credit programs. The position of executive director for work force development and continuing education was eliminated when Cronk’s title was changed to associate dean.

As associate dean, Cronk currently works primarily in career programs.⁷ She oversees all credit and non-credit programs at the Downriver Campus. She also has input into the public safety programs at the campus along with the two other Downriver Campus associate deans.

Cronk’s administrative responsibilities include preparation of the campus budget. This entails generating budget recommendations by determining the consumable supply needs and the instructional equipment requirements for a given program during the year. Typically, faculty and staff bring budgetary recommendations to her, which she either approves or returns to them for modification. Although the campus president and chief academic officer are kept informed of the budgetary requests, Cronk prioritizes the requests before she sends the final budget to the central administration.

Cronk and the two other associate deans oversee the work of approximately 153 employees belonging to AFT, UAW, and P&AA bargaining units. She has two P&AA subordinates, one of whom is a program director and the other is an education associate. Cronk

⁷ Career programs are the academic programs leading to an associate’s degree required for a particular career. Career programs can be distinguished from transfer programs, which include those courses a student must complete to receive an associate’s degree and be eligible to transfer to a university.

is responsible for performing evaluations of all of her subordinates on an annual basis. The evaluations are performed for professional development purposes and are not used for discipline.

Cronk is responsible for assigning and directing the work of her subordinates, ensuring that they complete their assignments, selecting their working hours, and maintaining time records for P&AA and UAW members. She may also grant time off and approve personal and vacation days without consulting the human resources department. However, when she receives requests for time off that may involve the Family and Medical Leave Act, she discusses them with the human resources director. Cronk's subordinates generally work fixed hours per week, but if UAW members are needed for additional hours, she signs the overtime request. If one of her subordinates files a grievance, Cronk responds to it at the first step.

Cronk has given verbal reprimands to members of the UAW and the P&AA regarding dress code violations. She has authority to issue a written reprimand or suspend an employee without consulting with the human resources and labor relations departments and did so in her previous unrepresented position, though she has not done so as an associate dean. Cronk participated in two meetings of associate deans and other "exempt" administrators that were held to discuss elements of the P&AA and AFT contracts and suggestions for potential changes in language.

*Downriver Campus Associate Dean of Transfer Programs
and District Manager for Public Safety Programs*

The position of associate dean of transfer programs and district manager for public safety programs at the Downriver Campus has been held by Mark Steeby since November 2003. His previous position, public safety education administrator, was located at the Downriver Campus as well and was included in the P&AA bargaining unit. That position was eliminated when Steeby became the Downriver Campus associate dean for transfer programs. In his current position, Steeby continues to perform many of the same duties he had when he was the public safety education administrator, but he has additional duties as well.

Steeby oversees the work of three employees represented by the P&AA, a training coordinator for the fire protection program, an emergency medical technology clinical coordinator, and a learning resource center coordinator, as well as a number of faculty members, and two UAW-represented employees. His administrative responsibilities include signing time cards, and approving requests for personal, sick, and vacation days as he did in his previous position. Steeby is required to obtain the approval of Homer Harvey, the district reviewer before he may offer overtime to employees. He had his secretary alter her working hours to correspond to his hours instead of attempting to get approval to have her work overtime. Steeby holds weekly meetings with the P&AA members who report to him to discuss the new facility that is being built on the Downriver Campus. While they need very little direction, he occasionally gives them additional assignments or makes changes to their work priorities. Steeby has not had a grievance filed against him, but would respond to such grievances at the first step.

Based on his interactions with his represented subordinates, Steeby believes that he has the authority to discipline them. He has not disciplined P&AA or UAW bargaining unit

members, but has disciplined faculty. After receiving numerous student complaints about a faculty member, he discussed the complaints with the teacher and devised a plan of instruction techniques. After first getting its content approved to ensure that it did not exceed his authority, Steeby sent a letter to the teacher that required the teacher to submit a plan of work to him.

Steeby has made recommendations to human resources that instructors be hired for the fire protection and EMS programs. The Employer has hired some of the persons whom Steeby recommended.

Associate Dean of Public Safety and Homeland Security and Continuing Education

In September of 2004, the Employer moved Edward Blackburn from the unrepresented position of district director of public safety to the position of associate dean of public safety and homeland security and continuing education. As district director of public safety, Blackburn was responsible for opening and closing the buildings; administering the fire system, parking enforcement, and emergency response system; and ordering uniforms and supplies. In that position, he also developed guidelines for discipline of the Employer's public safety officers.

In his current position, Blackburn deals more with curriculum development and program design. He is also responsible for ensuring that the non-credit continuing education program has the requisite qualified faculty. He directs faculty and one clerical employee, but has no P&AA subordinates. Blackburn has disciplinary authority over faculty, but has not had to discipline faculty in his current position. By the time of the hearing, Blackburn had not granted any time off for his subordinates, although the campus president previously informed him that he has the authority to do so.

Downtown Campus

The Downtown Campus is led by Dr. Jacqueline Hodges, the campus president. There are six unrepresented positions at the Downtown Campus, including the campus president, the campus president intern, the assistant to the campus president, the chief academic officer, the associate dean, and the administrative specialist. Ralph Hardin, the chief academic officer, supervises the associate dean, Shawna Forbes. Every Monday, Forbes is left in charge of the campus when Hodges and Hardin are not available. Dr. Patrick Pieh, the assistant to the campus president, has also been left in charge of the campus in the absence of the campus president and chief academic officer. Before Forbes became the associate dean, the evening dean was in charge of the campus when the campus president and chief academic officer were absent from the campus on Mondays. There is currently no evening dean at the campus. There was no associate dean at the Downtown Campus before Forbes was appointed to the position. There is currently no assistant dean at the Downtown Campus.

Downtown Campus Associate Dean for Career Programs

Shawna Forbes, the associate dean for career programs at the Downtown Campus, has been employed by WCCC for over eleven years. Before becoming an associate dean in February 2004, Forbes worked as an assistant dean, a position represented by the P&AA. When Forbes

was an assistant dean, she did not have any subordinates. As associate dean, several staff members report to her. These include P&AA positions: the learning resource center coordinator, a program specialist, a clinical coordinator of emergency medical technology, and a director of the occupational therapy program. Three UAW positions also report to Forbes, a word processor, an administrative secretary, and a science lab assistant. Besides P&AA and UAW members, the Downtown Campus employs approximately 200 faculty members, 70 of whom are placed in an academic area known as career faculty. Forbes is the primary supervisor for the Downtown Campus career faculty members.

Forbes' daily responsibilities include overseeing ten career programs, four of which have accreditation standards with which she must ensure the programs comply. Additionally, four of these programs have program directors who report to her: the occupational therapy program, the pharmacy program, the surgical technology program, and the emergency medical technology program. (The director of the emergency medical technology program is Mark Steeby, an associate dean at the Downriver Campus.) Forbes is solely responsible for the other six career programs. Before Forbes became associate dean, the chief academic officer was responsible for oversight of these programs. Forbes also provides input into marketing strategies, makes budget requests to the campus president, and meets with outside organizations that are involved in events held on campus. She has several duties relating to course scheduling, including managing the academic schedule for credit courses and the work force schedule for non-credit courses to ensure that courses are scheduled in the appropriate sequence. She is also responsible for providing adequate facilities and equipment for the offered courses, ensuring that instructors are assigned to the courses and securing substitute instructors with the appropriate credentials when needed.

Overseeing P&AA, UAW, and AFT positions requires Forbes to perform a number of managerial functions. She assigns work and schedules employees under her. Forbes has the authority to discipline subordinates. She can issue a written reprimand or suspend an employee without consulting anyone. Although she has never disciplined a P&AA member, she has the authority to do so. Forbes has disciplined a UAW member for excessive absenteeism. She is authorized to grant requests for time off, except those that fall under the Family and Medical Leave Act, and she signs time cards for UAW and P&AA personnel.

As an associate dean, Forbes is involved in the first step of the grievance procedure, which, for a P&AA member, is an oral discussion with his or her supervisor. On one occasion, a P&AA member filed a grievance requesting to teach classes. Forbes denied this grievance.

Sometime after February of 2004, when the human resource and labor relations department was in the process of negotiating contracts with the P&AA and the UAW, Forbes attended a meeting to review the P&AA and UAW contracts and give recommendations. Approximately fifteen people were present, including chief academic officers and other associate deans. None of those in attendance were bargaining unit members.

Eastern Campus

Between eleven and twelve thousand students attend classes at the Eastern Campus each semester. The Campus operates from 8:00 a.m. to 10:00 p.m. and is open seven days a week. There are 271 employees including 182 AFT represented faculty members, 22 UAW represented positions and 22 P&AA represented positions, as well as 39 work-study employees.

The Eastern Campus' chain of supervision begins with the campus president, George Swan, followed by the associate dean, Brian Singleton, and the assistant to the campus president, Donell Mason. Singleton acts as chief administrator for the entire campus when Swan is not present. This occurs about three or four times a week. Although the position of chief academic officer for the campus was eliminated in early 2005, there are two additional unrepresented administrative positions at the campus, a campus president intern and an administrative specialist. The campus also employs a P&AA represented assistant dean, Raquel Garcia-Anderson. While there are significant differences between the duties of the associate dean and the assistant dean at the Eastern Campus, they share several responsibilities. Both the associate dean and assistant dean plan the schedule of classes and conduct classroom observations of faculty members. Also, both positions respond to student complaints.

Eastern Campus Associate Dean

Singleton worked as an assistant dean at the Downtown Campus before becoming an associate dean at the Eastern Campus in January 2004. Singleton's former position as assistant dean at the Downtown Campus has remained vacant since his promotion. Before Singleton arrived at the Eastern Campus, there was no associate dean for the Eastern Campus, but there were two assistant deans: Raquel Garcia-Anderson, who was responsible for career programs, and Donell Mason, who was responsible for transfer programs. Mason was promoted to assistant to the president at about the time of Singleton's arrival at the campus, but Garcia-Anderson remains as the assistant dean for career programs. Mason's former position is still vacant.

When Singleton arrived at the Eastern Campus, he and Swan reviewed the 2002 version of the associate dean job description and the corresponding responsibilities. As associate dean, Singleton is responsible for overseeing all instruction at his campus. He builds and maintains the course schedule, a task formerly performed by the chief academic officer. He monitors expenditures for materials that relate to instruction, and reviews budget requests from instructional programs. It is his responsibility to determine whether the budget requests should be approved and sent to the Employer's central administration.

Singleton oversees the work of a number of subordinates, including five or six P&AA members and five UAW represented clerical employees. He signs their time cards, grants time off, and authorizes overtime. He has no authority to grant leave requests that fall under the Family and Medical Leave Act. Unlike other associate deans, Singleton has authorized overtime for his subordinates without first obtaining approval from any other administrators. When the College scheduled an event involving the media and Swan left him as the chief administrator, Singleton arranged to have two UAW members work additional hours to ensure that the campus looked presentable.

Singleton evaluates the P&AA, AFT, and UAW-represented employees who report to him, a duty that was previously performed by the chief academic officer. The evaluations of faculty and P&AA employees are utilized for professional development and cannot be used for disciplinary purposes.

Singleton gives the Employer's response at the informal first step of the grievance procedure. However, he does not have the authority to adjust grievances regarding pay or suspension. Singleton has authority to discipline P&AA members and, although he has not done so, Singleton has the authority to suspend his P&AA subordinates without consulting with his campus president. He has orally reprimanded and altered the schedule of a P&AA member for arriving late to work, failing to sign in, and other related infractions. He subsequently reported the discipline to his campus president, but made no record of the fact that the discipline was administered. When confronted with information regarding infractions of a more serious nature, such as an alleged incident of sexual harassment, Singleton informed Swan, the campus president, Willie Acosta, the executive assistant to the chancellor, and Gail Arnold, the senior associate vice chancellor for human resources administration and staff development. Those individuals conducted an investigation of the matter.

Although Singleton has disciplined employees, he does not have the authority to discharge. Only the chancellor has such authority. When Singleton believes an employee should be discharged, he makes that recommendation to human resources, the vice chancellor, the associate vice chancellor, or his campus president. The Employer terminated one of the employees whom Singleton recommended for discharge, but declined to discharge others. None were P&AA bargaining unit members.

Western Campus

The Western Campus, located in Belleville, is one of the smaller campuses that the College operates. The campus is led by an interim campus president, Dr. Randall Miller. There are two positions titled "associate dean" that are assigned to the Western Campus: the associate dean assigned to administer the instructional programs at the Western Campus and the associate dean assigned to administer the center for instruction and learning, which is to be located on the Western Campus in the future. There is no chief academic officer and no assistant dean at that location, but there is an assistant to the campus president and an evening dean, both of whom are unrepresented.

Western Campus Associate Dean

Before becoming Western Campus associate dean in October of 2003, Frank Romba was program director for transportation technologies, a P&AA position that was eliminated. As associate dean, Romba is the lead academic officer for instruction at the Western Campus and oversees the campus' technology programs. At least two days a week, Romba is left in charge of the Western Campus when the campus president is absent.

Although Romba has no P&AA subordinates, there are a number of UAW-represented clerical and support staff who report to him. As their superior, Romba assigns them work, although they are generally aware of their allotted workload. He regularly signs their time sheets, a duty he also performed as a P&AA member. Romba may request that employees work overtime and may authorize the overtime, just as he did as program director for transportation technologies. Romba approves or denies requests for leave time in accordance with the applicable collective bargaining agreements.

Romba's principal role in the discipline of staff is to gather facts and make recommendations. However, the campus president gave Romba the express authority to discipline faculty and UAW members. On one occasion, an instructor arrived at the campus under the influence of alcohol, and Romba sent the instructor home. In another incident, Romba recommended that the College not employ an instructor who gave ninety-five percent of her class a failing grade. WCCC subsequently removed the instructor from its list of qualified instructors. There have been a number of other instances where Romba has counseled faculty or UAW staff members. Romba recommended that the College hire and accredit several adjunct Spanish and biology instructors⁸ after learning that the campus would not have enough instructors for classes that it offered. His recommendations were given to a team of people above him at the District office responsible for certifying the credentials of the recommended applicants.

Associate Dean for the Center for Instruction and Learning

The Employer hired Ronald Dowe to work as the associate dean for the center for instruction and learning on the Western Campus in February 2003. Like Romba, Dowe was a member of the P&AA prior to becoming an associate dean. Dowe formerly worked as a senior assessment analyst at the central administration building. That position was eliminated in February of 2003. At that time, the parties initiated the contractual process to determine whether Dowe would be able to retain employment by displacing a less senior bargaining unit member. That process ceased when Dowe accepted the position of associate dean for the center for instruction and learning. Dowe still works at the central office although he is assigned to the Western Campus because the Employer hired him to develop a faculty development center there.

Dowe's duties differ from those listed on the 2002 associate dean job description. He has drafted a proposed job description that is still being negotiated with the Employer. He does not have any subordinates. Instead of reporting to a campus president, his superiors are the associate vice chancellor for transfer programs, Janet Detloff, and the district provost, David Beaumont. Dowe's responsibilities revolve around faculty development. He is responsible for providing faculty orientation and professional development, identifying external resources and workshops for faculty development, and conducting training in instructional design.

Northwest Campus

Unlike most of the other campuses at WCCC, the Northwest Campus does not have an associate dean position. There are, however, two assistant deans at the campus, Brenda Jones,

⁸ Adjunct instructors are not represented by a union.

the assistant dean for transfer programs, and Diane Gonzales, the assistant dean of career and technological programs, both of whom are in the P&AA bargaining unit. Brenda Jones previously reported to the chief academic officer at the Northwest Campus, who has since passed away. She currently reports to Dr. Magalene Hester, the senior associate vice chancellor of instruction and accountability.

Brenda Jones is responsible for scheduling classes at the Northwest Campus. A task performed by associate deans on at least two of the other campuses. When originally hired as an assistant dean, Jones was responsible for ensuring that enough faculty members were available to teach the offered courses. In the event that the campus needed additional instructors, she contacted prospective candidates from a list that the Employer provided to her. However, that responsibility was transferred to the position of discipline facilitator in the spring of 2003. On other campuses, this task is performed by an associate dean. As with many of the other administrators, including the associate deans, Jones' other duties include participating in several campus wide and college wide committees.

Although the chancellor has ordered that only "exempt" staff be left in charge of a campus, Jones and Gonzales were left in charge of the Northwest Campus for several hours when the campus president, Dr. Hattie Johnson, was required to attend an off-campus meeting. There were no "exempt" staff available at the time, which occurred prior to the chancellor's edict that only "exempt" staff be left in charge of a campus. On a second occasion, which occurred after the chancellor's edict, Dr. Johnson asked Jones to take charge of the campus until 10:00 p.m., in the absence of the evening dean, Broadus Mayfield.

Brenda Jones does not have the authority to discipline. Rather, she completes "background work" on complaints lodged against instructors and then provides that information to Hester or Johnson. Brenda Jones also attends disciplinary meetings in order to take notes and provide a written summary of the meeting. She does not have any P&AA or UAW subordinates, nor does she evaluate faculty members.

Discussion and Conclusions of Law:

Appropriateness of the Unit Clarification Petition

The Employer contends that the positions at issue were expressly excluded from the bargaining unit by the parties' current collective bargaining agreement. Petitioner argues that while the collective bargaining agreement continues the exclusion of the associate dean position, the position that is excluded by the contract is the centrally based position created in 1996 with district wide policy making responsibilities and is not the current campus based positions. We agree with Petitioner that the associate dean position excluded from the bargaining unit by the collective bargaining agreement covering the period of 1998-2003 was the position with district wide policy making authority that was created in 1996. The exclusion of that position was carried over into the 2003-2008 collective bargaining agreement without any further negotiations on the matter. The positions at issue are substantially different from the position that was excluded from the bargaining unit. The fact that the positions at issue have been given a historically excluded job title is not determinative of unit placement. See *Wayne Co Cmty*

College Dist, 19 MPER 72 (2006); *City of Detroit, Dep't of Pub Works*, 2001 MERC Lab Op 20, 23; *Port Huron Area Sch Dist*, 1989 MERC Lab Op 763, 766. Unit placement is determined by whether the positions at issue share a community of interest with the bargaining unit. *Western Sch Dist*, 20 MPER 29 (2007).

Although the petition was filed while the parties were in negotiations over the current collective bargaining agreement, the unit placement of the associate deans was not raised during the negotiations. Moreover, the parties agreed in the universal settlement that any matter in dispute that was not resolved by the contract or the universal settlement would be resolved in due course in the appropriate forum. Accordingly, we find that the 2003-2008 collective bargaining agreement is not a bar to the unit clarification petition.

The Employer contends that the associate dean position has not undergone substantial changes since the revised job description was provided to Petitioner in July 2002 and, because the unit clarification petition was filed almost two years later, the petition is untimely. A unit clarification petition is only appropriate when the petition is for a newly created position or there have been recent substantial changes in the position's duties and responsibilities. *Lapeer Co*, 1993 MERC Lab Op 649. Where a position has been historically excluded from the bargaining unit by the acquiescence of the union, accretion to the unit by unit clarification is not appropriate. The excluded position becomes part of the residual unit and can be accreted to the bargaining unit only upon the filing of a proper petition for a representation election. *Lake Orion Cmty Schs*, 1988 MERC Lab Op 296. We have dismissed unit clarification petitions involving positions created as little as a year to eighteen months before the filing of the petition based on our finding that such positions were historically excluded. See *Washtenaw Cmty College*, 1993 MERC Lab Op 781, 787-788. However, we have clarified the unit placement of positions that were in existence almost two years before the filing of a petition because the job description or position title was so misleading that it provided insufficient notice that the position shared a community of interest with the bargaining unit and there was an ongoing controversy as to the unit placement. See *Jackson Pub Schs*, 1997 MERC Lab Op 290, 300-301 (the petitioner demanded that a position be accreted to the bargaining unit fourteen months after the position was created and filed a unit clarification petition six months after the demand).

It is undisputed that the Employer began using the title "associate dean" to describe an administrative position in 1996. Nor is it disputed that the responsibilities assigned to that job title changed substantially in 2002, when the Employer determined that the associate dean position should be located on the individual campuses, instead of at the Employer's central administration, and issued a revised job description for the position. Petitioner contends that the Employer misused the job title "associate dean" when the title was applied to the positions at issue. Petitioner blames any delay in challenging the unit placement of these positions on the Employer's assignment of the "associate dean" title to these positions and the vague description of duties in the 2002 job description. Petitioner points out that the eight positions titled "associate dean" each have "remarkably different job duties." We agree that is borne out by the record.⁹ There are such significant discrepancies between the actual duties of several of the

⁹ Indeed, some of the employees classified as associate deans have duties that are significantly different from those in the 2002 job description. As Petitioner has asserted, some of the employees classified as associate deans are performing duties formerly performed by assistant deans or other P&AA positions. On the other hand, some current

positions at issue and the 2002 job description that application of the title “associate dean” to such positions is misleading.¹⁰ Given the substantial differences in duties and authority among the various positions with the title of associate dean, we find that Petitioner could not reasonably be expected to have known, at the time the positions were created, that these positions shared a community of interest with the positions in its bargaining unit.

Petitioner further contends that the P&AA filed the petition in this case promptly upon its discovery that the positions were performing bargaining unit work. We note that since the elimination of the CADI position and the creation of the positions at issue, Petitioner has been actively challenging the Employer’s assignment of duties formerly held by the CADI to “exempt” positions. It appears, however, that the duties Petitioner has sought to retrieve have been dispersed to a variety of positions with varying levels of authority. Petitioner initially attempted to challenge the transfer of such duties to the chief academic officers before determining that the positions at issue here were more likely to have a community of interest with its bargaining unit. Accordingly, since the unit clarification petition was filed promptly upon the Union’s realization that these positions were performing bargaining unit duties, we find that the petition is timely. See *Jackson Pub Schs*, at 300-301.

Supervisory Status of Bargaining Unit Positions

The positions at issue are administrative, like the P&AA bargaining unit positions. The Employer contends that the positions should be excluded from the bargaining unit because they are all supervisory and the bargaining unit is a nonsupervisory unit. Petitioner argues that its unit includes supervisors, and that a mixed unit of supervisors and nonsupervisory administrators is permissible. We addressed the question of whether this bargaining unit is a supervisory unit in *Wayne Co Cmty College Dist*, 19 MPER 72 (2006), where we found that the bargaining unit is nonsupervisory.

In analyzing the nature of the bargaining unit, we look at the criteria for supervisory status. It is well settled that a supervisor is one who possesses authority to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or to effectively recommend such action. *City of Grand Rapids*, 19 MPER 80 (2006); *Village of Paw Paw*, 2000 MERC Lab Op 370, 373. To qualify as a supervisor under PERA, an individual’s responsibility to exercise authority in the foregoing functions must involve the use of independent judgment, including effective authority in personnel matters, with the power to evaluate employees and recommend discipline. *Butman Twp*, 2000 MERC Lab Op 13, 16-17. Effective authority in personnel matters means that the employee’s superiors generally accept his or her recommendation without an independent investigation. *Id.* at 16. See also *Village of Paw Paw*. An individual whose authority is limited to the routine direction of the daily work of other employees and/or making work assignments of a routine nature is not a supervisor under PERA.

associate deans are performing duties formerly performed by chief academic officers. Some associate deans have P&AA bargaining unit subordinates; others have no subordinates at all.

¹⁰ The fact that the Employer classified the positions as associate deans would indicate to someone without knowledge of the positions’ actual duties that these positions have significantly greater administrative authority than that possessed by any of the positions in the bargaining unit. By titling these positions “associate dean,” the Employer indicated that these are positions that, under the collective bargaining agreement, are excluded from the unit as “senior administrative staff.”

See *Berrien Co Sheriff*, 1999 MERC Lab Op 177, 187. Where higher management makes the effective personnel decisions, the fact that an individual evaluates the performances of other employees is not sufficient to qualify that individual as a supervisor. *Grand Rapids (Police Dep't)*, 17 MPER 56 (2004); *Village of Ortonville*, 17 MPER 46 (2004); *Berrien Co Sheriff*. Responsibilities such as maintaining time cards and granting time off are insufficient to establish supervisory status. *Village of Ortonville*. The fact that an employee has input into or makes recommendations concerning personnel decisions does not mean that the employee has effective authority to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees and is insufficient to establish supervisory authority. *Saginaw Valley State College*, 1988 MERC Lab Op 533, 536.

While several of the members of the bargaining unit are responsible for maintaining time cards, assigning tasks, overseeing daily activities and evaluating other employees, those responsibilities are not sufficient to establish that they are supervisors. Since none of the P&AA represented employees have the authority to effectively recommend discipline, hire, layoff, recall, promotion, transfer, or reward, it is evident that they are not supervisors as that term is defined under PERA. See *Berrien Co Sheriff*, 1999 MERC Lab Op 177, 187. Therefore, in determining whether the seven positions at issue should be included in the bargaining unit, we must determine whether each position has a community of interest with positions in a nonsupervisory bargaining unit.

Community of Interest between Positions at Issue and Bargaining Unit

A number of factors determine community of interest, including similarities in duties, skills, education, working conditions, wages and benefits, and common supervision. *Western Sch Dist*, 20 MPER 29 (2007); *Lapeer Co*, 18 MPER 70 (2005); *Covert Pub Schs*, 1997 MERC Lab Op 594, 601. We have previously found broad units of all nonsupervisory, noninstructional personnel to be appropriate at colleges and universities. See *Saginaw Valley State Univ*, 19 MPER 53 (2006). Absent a showing of extreme divergence of community of interest between an existing unit and a residuum of unrepresented employees, our policy has been to allow accretion, rather than leave the unrepresented employees without collective bargaining representation. *Lansing Twp*, 18 MPER 12 (2005).

Petitioner seeks to add seven of the eight associate dean positions¹¹ to its bargaining unit: the Downriver Campus associate dean of transfer programs and district manager for public safety programs; the Downriver Campus associate dean of public safety and homeland security and continuing education; the Downtown Campus associate dean for career programs; the Eastern Campus associate dean; the Western Campus associate dean; the associate dean of student services; and the associate dean for the center for instruction and learning. These positions have much in common with P&AA bargaining unit positions. They perform many of the same duties, using the same skills, with similar training, under the same working conditions. Some associate deans, like some P&AA represented assistant deans, are responsible for scheduling classes, conducting classroom observations of faculty members, and responding to student complaints. Some of them continue to perform duties for which they were responsible when they were

¹¹ As mentioned above, Petitioner does not contend that the Downriver Campus associate dean for career programs should be included in the bargaining unit.

employed in positions included in the P&AA bargaining unit. Also, their salary range is within the range paid to P&AA positions. But for the issue of supervisory authority, we could find that all seven positions share a community of interest with the bargaining unit represented by Petitioner and end our analysis here.

Supervisory Status of the Positions at Issue

The Employer contends that each of the positions at issue is supervisory and cannot be included in the nonsupervisory bargaining unit. PERA prohibits supervisors from being included in the same bargaining unit with the employees they supervise. *Grand Rapids (Police Dep't)*, 17 MPER 56 (2004). However, the exercise of supervisory authority over non-unit employees does not require the exclusion of an employee from a nonsupervisory unit. *Lapeer Co.*, 18 MPER 70 (2005); *City of Midland (Police Dep't)*, 1993 MERC Lab Op 601; *C.S. Mott Cmty College*, 1980 MERC Lab Op 400, 413. While we agree that some of the positions at issue are supervisory, that is not true of all seven positions.

Dowe, the associate dean for the center for instruction and learning, has no subordinates and has no role in hiring, firing, or discipline of other employees. Accordingly, his position cannot be considered supervisory. See *Wayne Co.*, 1991 MERC Lab Op 219. For similar reasons, we will not exclude from the bargaining unit the positions held by Romba and Blackburn, respectively the Western Campus associate dean and the Downriver Campus associate dean of public safety and homeland security and continuing education. Although these two positions may have supervisory authority over employees who are not members of the P&AA bargaining unit, they have no such authority over members of the bargaining unit and cannot be excluded from the unit on the basis of supervisory status. See *Lapeer Co.*, 18 MPER 70 (2005).

The remaining four positions have subordinates within the P&AA unit. Of those four, Mary Jones, the associate dean of student services, lacks supervisory authority over members of the P&AA represented unit. Although Mary Jones has the authority to effectively recommend that unrepresented part-time adult education instructors be hired, neither she nor any of the other associate deans have such authority with respect to positions included in any of the three bargaining units. Moreover, the associate dean of student services has no disciplinary authority. While she may recommend discipline, it has not been established that the Employer would accept such recommendations without an independent investigation. Accordingly, we cannot find that she has authority to effectively recommend discipline. Indeed her authority over her one P&AA subordinate is similar to that possessed by her when she held the P&AA represented position of assistant registrar. She is limited to routine direction of daily work or making assignments of a routine nature. We, therefore, conclude that the associate dean of student services is not a supervisor, has a community of interest with the positions in the bargaining unit, and should be included therein. See *Village of Paw Paw*, 2000 MERC Lab Op 370, 373; *Butman Twp.*, 2000 MERC Lab Op 13, 16-17.

The positions of the Downriver Campus associate dean of transfer programs and district manager for public safety programs, the Downtown Campus associate dean for career programs, and the Eastern Campus associate dean have disciplinary authority over P&AA represented

subordinates. Each of these positions has the authority to give verbal and written reprimands to P&AA bargaining unit members without first consulting their superiors. The authority to discipline P&AA subordinates suffices to qualify these three positions as supervisors and makes them ineligible for inclusion in the bargaining unit.

ORDER

The bargaining unit represented by Petitioner is clarified to include the positions of associate dean for the center for instruction and learning, Western Campus associate dean, Downriver Campus associate dean of public safety and homeland security and continuing education, and associate dean of student services. The Petition in Case No. UC04 C-011 is dismissed as to the following positions, which are excluded from the bargaining unit as supervisors: the Downriver Campus associate dean of transfer programs and district manager for public safety programs; the Downtown Campus associate dean for career programs; and the Eastern Campus associate dean. The Petition to clarify the bargaining unit placement of the position of chief academic officer in Case No. UC04 A-003 is also dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Christine A. Derdarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____