

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

In the Matter of:

LANSING SCHOOL DISTRICT,
Public Employer,

Case No. UC05 K-040

-and-

LANSING EDUCATIONAL ASSISTANTS, MEA/NEA,
Labor Organization-Petitioner.

APPEARANCES:

Peter L. Trezise, Esq., Labor Relations Specialist, for the Public Employer

James R. Boerma, Uniserv Director, for the Petitioner

**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 at Lansing, Michigan on August 14, 2006, before David M. Peltz, Administrative Law Judge for the Michigan Employment Relations Commission. Pursuant to Sections 13 and 14 of PERA, and based upon the entire record, including the transcript of the hearing, exhibits, and post-hearing briefs filed by the parties on or before September 25, 2006, the Commission finds as follows:

The Petition and Background:

The Lansing Educational Assistants (LEA or Union) represents a bargaining unit of nonsupervisory paraprofessional employees of the Lansing School District (Employer or School District). On November 22, 2005, the LEA filed this petition seeking to add to its support unit the position of program manager of the Beekman Therapeutic Riding Program (BTRP), which it contends has a community of interest with the positions in the LEA represented bargaining unit. The Employer contends that the petition is inappropriate because the program manager is an existing position that has been historically excluded from the LEA bargaining unit. In addition, the Employer asserts that the petition should be dismissed because the program manager does not share a community of interest with any of the positions within the LEA bargaining unit, but rather is appropriately included within a residual unit of unrepresented employees in the “meet

and confer” group. Lastly, the Employer argues that the position sought by the Union is supervisory and, as such, is inappropriate for inclusion in the LEA unit.

The LEA did not call any witnesses to testify on its behalf at the hearing in this matter, nor did the Union respond in its post-hearing brief to the Employer’s assertion that the unit clarification petition is inappropriate because the program manager position has been historically excluded from the bargaining unit.

Facts:

The BTRP offers horseback riding therapy for students with physical, emotional, and learning disabilities, as well as instruction and riding opportunities for the public during after school hours and on weekends. Since its inception in the late 1970’s, the BTRP has operated on land owned by the Employer and situated near the grounds of the Beekman Center. The Beekman Center provides educational services for impaired students of all grade levels throughout the School District. The staff of the Beekman Center includes approximately sixty members of Petitioner’s bargaining unit, as well as about thirty-five certified teachers.

For about the first ten years of its existence, the BTRP was staffed by volunteers from the 4-H program and funded by donations from the community. Sometime around 1999 or 2000, the Lansing School District took over the management and funding of the BTRP. In 2005, the School District decided to terminate the program because of budget issues. Rather than allow the BTRP to cease operations altogether, parents, staff, and members of the community joined together to form the Therapeutic Riding Program Board (TRPB), which assumed oversight and control of the BTRP.

Although the BTRP continues to operate at the Beekman Center, the program is once again funded entirely by donations from the community. The BTRP staff conducts fundraisers and other benefits throughout the year to cover the program’s expenses. The BTRP’s finances are managed by the Lansing Education Advancement Foundation (LEAF), a private, non-profit foundation. Although BTRP employees receive paychecks from the School District and are covered under the Employer’s insurance plans, the School District is reimbursed by LEAF for employee-related costs. The program’s budget during the 2005 school year was approximately \$111,000.

The program manager position has existed since the inception of the BTRP. Initially, the program manager position was filled by a 4-H volunteer. After the Lansing School District took over the operation of the BTRP in 1999 or 2000, the program manager became a paid hourly position.

In 2003 or 2004, the name of the position was changed to program director to reflect the addition of certain duties relating to the program’s budget, including accounting and financial reporting for all special events and fundraising projects. At that time, the position became salaried, rather than hourly. When the TRPB took over the program in 2005, the name was changed back to program manager, the accounting duties were removed, and the position was once again paid on an hourly basis.

The current program manager of the BTRP is Janet Gross. Gross was hired for the position by the TRPB in 2005. The duties and responsibilities of the program manager position today are essentially no different than they were when the BTRP opened in the late 1970's. As program manager, Gross is responsible for managing the day-to-day operations of the BTRP. She oversees the budget on a daily basis and approves the payment of bills. She orders food and other supplies for the horses and is responsible for all aspects of their care, including veterinarian referrals. She supervises four employees, none of whom are members of the LEA bargaining unit, and has the authority to hire, fire, evaluate, and discipline BTRP staff members. She is in charge of coordinating the program's fundraising efforts, including scheduling events and soliciting volunteers. She plays an active role in maintaining the facilities utilized by the program and is responsible for contacting the school district when large-scale repairs are needed. She also answers e-mails and other correspondence, orders supplies, and performs other administrative tasks.

Discussion and Conclusions of Law:

Unit clarification is a proceeding for resolving disputes concerning the unit placement of newly-created positions and existing classifications that have undergone recent, substantial changes in their duties and responsibilities so as to create a real doubt as to whether the individuals in the classifications continue to fall within the category that they occupied in the past. Unit clarification is not appropriate for upsetting an agreement, whether contractual or not, or an established practice regarding unit placement. See e.g. *Wayne Co Risk Mgt Div*, 1996 MERC Lab Op 243; *Lansing Sch Dist*, 1994 MERC Lab Op 128; *Genesee Co*, 1978 MERC Lab Op 552, 556. This Commission has consistently held that where an employee or group of employees has been historically excluded from an established bargaining unit, a question of representation is raised that can be resolved only through the filing of a proper petition for a representation election accompanied by a prior showing of interest. See e.g. *Blackman Twp*, 1988 MERC Lab Op 419, and cases cited therein.

The Employer argues that the instant petition should be dismissed because the position of program manager of the BTRP position has been historically excluded from the LEA bargaining unit. We agree. The record overwhelmingly establishes that the BTRP program manager is not a new position, nor has the position undergone any recent substantial or material change in duties and responsibilities that would justify altering its unit placement. Throughout the long history of the position, it has always been excluded from the LEA bargaining unit. Although the name of the position was changed for a brief period several years ago and the job was given some added responsibilities, the essential duties of the BTRP program manager position have remained consistent since the inception of the program in the late 1970's. Under such circumstances, a petition for unit clarification is inappropriate. Given this finding, it is not necessary that we address the remaining arguments of the parties, including the school district's contention that the BTRP program manager position should be excluded from the unit as a supervisor.

ORDER

Based upon the above findings of fact and conclusions of law, the petition for unit clarification is hereby dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Christine A. Derdarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____