

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

In the Matter of:

JACKSON PUBLIC SCHOOLS,
Public Employer,

Case No. UC09 F-018

-and-

JACKSON EDUCATIONAL SECRETARIES
ASSOCIATION/MEA,
Labor Organization-Petitioner.

APPEARANCES:

Abbott, Thomson & Beer, P.L.C, by Robert M. Grover, for the Public Employer

White, Schneider, Young & Chiodini, by Dena Lampinen Lorenz, for the Petitioner

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

Pursuant to Section 13 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.213, this case was heard in Detroit, Michigan on February 8, 2010, by Julia C. Stern, Administrative Law Judge for the State Office of Administrative Hearings and Rules, acting on behalf of the Michigan Employment Relations Commission. Based on the entire record, including post-hearing briefs filed on or before March 29, 2010, the Commission finds as follows.

The Petition and Positions of the Parties:

Petitioner Jackson Educational Secretaries Association/MEA represents a bargaining unit consisting of nonsupervisory secretarial and clerical employees of the Jackson Public Schools (the Employer or School District). On June 22, 2009, it filed this unit clarification petition seeking to add to its unit a new position titled Federal programs/finance assistant (finance assistant). On July 1, 2009, the Employer gave the individual it hired to fill the finance assistant position a new title and job description. The position is now called fiscal coordinator for state programs, Federal programs, and finance (fiscal coordinator). The Employer has no immediate plans to fill the finance assistant position, and the parties stipulated that there is no current dispute regarding its unit placement. However, Petitioner seeks to include the fiscal coordinator in its unit.

The Employer argues that the petition for unit clarification is inappropriate because, although vacant for a period, the fiscal coordinator position has existed since at least 1982 and has been historically excluded from Petitioner's bargaining unit. It also maintains that the fiscal coordinator lacks a community of interest with Petitioner's unit. Petitioner asserts that the duties and responsibilities of the fiscal coordinator position underwent a substantial change when it was revived in 2009. It maintains that it never acquiesced to the exclusion of the position as it now exists. Petitioner also asserts that the qualifications and duties of the fiscal coordinator are similar to those of two unit positions, chief payroll account clerk and district bookkeeper, and that the fiscal coordinator shares a community of interest with its bargaining unit.

Findings of Fact:

Background

Petitioner's unit is described in its contract as all educational secretaries and all personnel engaged in secretarial and clerical work, but excluding the administrative assistants to the superintendent, executive director of human resources, and deputy superintendent for finance and operations. Classifications in the unit include administrative secretaries, building secretaries and clerks, account clerks, and bookkeepers. It includes employees who work fifty-two and forty-four weeks per year. Members of the unit work in a number of different locations, including the administration offices, the business office annex, and individual school buildings. Unit members report to a number of different supervisors.

The salary schedule in Petitioner's contract contains seven pay grades. Within each pay grade, there are seven wage steps. New employees usually start on the bottom step of their pay grade, but employees with experience sometimes begin at a higher step. During the 2009-2010 school year, unit employees were paid between \$11.14 and \$20.19 per hour. Full-time fifty-two week employees in the highest pay grade earned between \$31,324 and \$41,995 per year.

Two members of Petitioner's bargaining unit, the chief payroll account clerk and the district bookkeeper testified regarding their job qualifications and duties. The chief payroll account clerk oversees, establishes priorities, and coordinates work flow in the payroll office. The payroll office is responsible for maintaining the master payroll file, processing salary adjustments, processing time cards, and calculating gross wages for each payroll period. It prepares and sends periodic reports on employee earnings to the State Office of Retirement Services, the Social Security Administration, and state, local, and federal governments. It also issues W-2s, assists employees with retirement applications, and processes retirement papers. When a government agency or someone within the Employer has a question about a payroll issue, the chief payroll account clerk answers it. Outside auditors audit the payroll office two times per year. The chief payroll account clerk provides the auditors with figures and supporting documents and answers their questions.

The chief payroll clerk reports to the deputy superintendent for finance and operations. The position requires an associate's degree in business with a concentration in accounting and computer course work, plus considerable payroll accounting experience. The position is in the highest salary grade under the contract. The chief payroll account clerk also receives a \$500 per year bonus for having a degree.

The district bookkeeper reports to the director of business services. The district bookkeeper is responsible for processing and paying district bills in a timely manner after they are approved and given the proper accounting code. She processes, writes, and signs checks; enters items such as payroll invoices, purchase orders, and journal entries into the computer system; prepares monthly and yearly financial statements of building accounts; and assists the auditors during the District's yearly audit by providing supporting documentation.

According to its job description, the district bookkeeper position requires an associate's degree in accounting as well as experience. However, the current incumbent has no degree. Like the chief payroll account clerk, the district bookkeeper position is in the highest salary grade under the contract.

History of the Fiscal Coordinator Position

In 1982, and possibly before, the Employer had a position titled accountant-Federal programs which assisted with the administration of the financial affairs of the Employer's Title I and other federal and state grant-funded programs. The duties of the position, according to its 1982 job description, included examining the accounts for these programs on a regular basis; making journal entries to keep the accounts updated; cooperating with auditors and providing them with needed information; submitting annual preliminary budget estimates to the director of financial services; preparing financial and budget reports for these accounts; and monitoring the accounts to ensure that they did not go over budget. The position required post-secondary training in accounting at a community college or accredited business school, but no degree.

Gloria Moshier, who held a bachelor's degree, performed these job duties from about 1983 until she retired in September 2005. Moshier's position was never included in a bargaining unit. When she retired, her salary was a little over \$53,000 per year. Her job duties evolved over time with the expansion of federal and state funding and heightened reporting requirements for this funding. In February 2004, Moshier's job description was updated and her title changed to fiscal coordinator - state and federal programs. The 2004 job description stated that the position required an associate's degree with a major in accounting and two years bookkeeping/accounting experience. According to the 2004 job description, the position's duties at that time were as follows:

1. Works with the Deputy Superintendent and the Assistant Superintendent for Student Achievement in the financial administration of all Federal and State grant funding.
2. Examines and audits all accounts, purchase orders, and other expenditures charged against State and Federal grant programs.
3. Obtains annual budget requirements for all State and Federal Programs and submits the preliminary budget estimates to the Deputy Superintendent.

4. Prepares all financial and budget reports at regular intervals for all State and Federal grant programs.
5. Works closely with the auditors and prepares the Schedule of Expenditures of Federal Awards. Maintains extensive records on all grants and provides documentation on all aspects of grants as required by auditors.
6. Prepares, enters and records all needed journal entries to keep accounts updated.
7. Monitors and provides advance warning of potential over-expenditure of budgeted funds.
8. Provides other accounting services essential to the administration, supervision and control of the budget.
9. Works with Principals and Project/Coordinators in budgetary items pertaining to State and Federal grants.

Moshier also prepared the District's annual consolidated application form for federal grants. This form is used to apply each year for the renewal of the District's Title I and other federal funding, and is submitted to the Michigan Department of Education.

In 1996, when the Employer abolished the administrative position director of federal programs, Moshier was assigned to the finance department where she reported directly to the deputy superintendent for finance and operations. William Hannon, the deputy superintendent, testified that Moshier performed her duties so independently that after she retired in 2005, he found that he did not know what her job entailed. After Moshier retired, Hannon assumed her responsibilities on an interim basis and divided them between himself and his administrative assistant, Lori Miles. Hannon began educating himself regarding the intricacies of accounting for federal funding by attending conferences and seminars sponsored by the Michigan Department of Education and the Michigan Association of State and Federal Program Administrators. Hannon also arranged for Miles to attend training on federal grant reporting requirements. In May 2006, the Employer hired someone to fill the fiscal coordinator position. However, when that individual left after one week, the Employer decided to leave the position vacant.

In January 2009, the Employer hired a new director of federal programs. The new director, Willye Piggott, has an educational background, not a background in finance. At this time, Miles was working substantial overtime trying to keep up with her responsibilities for federal programs and her other duties in the finance office. The Employer decided to create a new position, finance assistant, to assist Miles with some of the lower level tasks associated with the financial management of the grants and her other work.

The Employer posted the finance assistant position in February 2009. According to the posting, the candidate was required to be a high school graduate with a minimum of three years

relevant accounting experience. The essential duties of the position, according to the job description, included handling travel arrangements for federal program staff members; assisting with the preparation of time logs and certifications for employees funded by federal dollars; assisting with the preparation of various reports; gathering data on students and staff; making journal entries; and assisting auditors by preparing correspondence, schedules and other data. The starting salary was listed in the posting as \$33,961 to \$37,929, depending on experience.

After the position was posted, Petitioner told the Employer that the finance assistant position resembled several positions in its unit and should be included in the unit. Petitioner filed a grievance and, after it was denied, filed this unit clarification petition

The Employer received many applications for the finance assistant position, and was able to narrow its search down to applicants who possessed both college degrees and backgrounds in accounting. On May 12, 2009, the Employer hired Matt Farhat to fill the finance assistant position. Farhat has a bachelor's degree in finance and worked previously in a firm of certified public accountants. On July 1, 2009, the Employer gave Farhat the title of fiscal coordinator, issued him a new job description, and raised his salary to \$44,177 per year. Hannon testified that this decision was based on the fact that Farhat had demonstrated that he was capable of doing higher level work. Hannon also admitted that the decision was partly precipitated by Petitioner's efforts to add the finance assistant position to its unit.

The Fiscal Coordinator Position in 2009

The 2009 job description for the fiscal coordinator lists the following as essential job duties:

1. Works with the deputy superintendent and director of federal programs in the financial administration of all federal, state, and general funding in the District's financial operations.
2. Maintains appropriate accounting records in accordance with the Michigan Public School Accounting Manual.
3. Assists in preparing application budgets and final cost reports as required by the various grant agencies, MEGS, and MEIS.
4. Monitors district budgets for all federal, state, and local grants.
5. Examines and audits all accounts, purchase orders, and expenditures charged against federal and state grant programs.
6. Obtains annual budget requirements for all federal and state programs and submits the preliminary budget estimates to the deputy superintendent.
7. Processes stipend pay requests, invoices, and other charges to federal and state programs for payment.

8. Assists in facilitating the District's Title II Part A professional development.
9. Processes requests for absences for school business forms.
10. Provides assistance for requesting drawdowns and/or reimbursements for applicable federal and state funds.
11. Works closely with the independent auditors during the annual audit and prepares the Schedule of Expenditures for Federal Awards. Maintains records on all grants and provides documentation on all aspects as required by auditors.
12. Prepares, enters, and records all journal entries needed to keep accounts updated in accordance with the auditors' policies and procedures for the handling and processing of journal entries.
13. Assists in monitoring accounts: making sure that expenditures are charged to the appropriate accounts and are within the amounts budgeted.
14. Provides other accounting services essential to the administration, supervision, and control of the budget in addition to assisting with the internal auditing controls for fund accounting.
15. Works with principals and project coordinators in budgetary items pertaining to federal and state grants.
16. Prepares financial and budget reports at regular intervals for state and federal grant programs.
17. Assists in the ongoing accounting policies and procedures [sic] to ensure compliance with federal and state laws and generally accepted accounting principles.
18. Assists with other financial related activities such as preparing specific accounting reports when requested.
19. Performs other duties as assigned by the deputy superintendent, director of federal programs or designee.
20. Attends ongoing training for Title I funds, as required by the U.S. Department of Education.

When the fiscal coordinator job title was revived in 2009, the fiscal coordinator position was placed on the Employer's non-represented employee salary schedule at a maximum annual salary of \$51,634. According to the 2009 job description, the position now requires a minimum

of a bachelor's degree in a related field, with course work in accounting, or a MSBO (Michigan School Business Officials) certification.

As discussed above, after Moshier's retirement the deputy superintendent for finance and operations took over some of her job responsibilities, while some were assigned to his administrative assistant. The administrative assistant to the deputy superintendent for finance and operations position currently requires a minimum five years experience performing accounting functions and previous school district and/or grant accounting experience; an associate's degree in business administration with a major in accounting is preferred.

Duties formerly performed by Moshier continue to constitute a significant part of the administrative assistant's job in 2009. Her job description includes the following as essential duties:

Works with the Director for Federal Programs in the financial administration of all federal programs.

Assists the Director of Federal Programs in the preparation of application budgets, final cost, and other reports.

Monitors grant budget and activities to ensure that federal funds are used to supplement and not to supplant local fund in compliance with federal regulations.

Assists building principals with issues pertaining to their Title I programs and budgets.

Reviews the allocation of payroll costs, purchases, and professional development charges to federal programs for allowability.

Reviews federal program costs for consistency with the federal program budget approved by the state.

Attends training programs regularly to ensure that he/she maintains the knowledge and skills necessary to determine the allowable activities and allowable costs for federal programs.

Participates and assists in professional development for administrators and federal program staff as appropriate.

Manages the preparation and monitoring of time logs and certifications for employees funded by federal dollars.

Both the fiscal coordinator and the administrative assistant receive ongoing training in federal regulations pertaining to the spending of federal grant funds and provide the deputy superintendent with technical advice on how grant funds can be used. Both assist the deputy superintendent in preparing the annual combined application for federal and state grant-funded programs, as well as other required grant applications, and in preparing the budgets for these

programs. The deputy superintendent is responsible for deciding what salary expenses can be funded with federal dollars and which funds can be charged, but the fiscal coordinator and the administrative assistant both advise him on these decisions. The deputy superintendent, the fiscal coordinator, the administrative assistant, and the director of federal programs meet annually with all the principals of buildings eligible for Title I funding to review the sources of funding available, make decisions on how the funds can and should be spent, and gather data for the combined application.

Both the administrative assistant and the fiscal coordinator review spending requests submitted to the finance department to determine whether grant funds can appropriately be used for the purposes requested. At the time of the hearing, the fiscal coordinator was receiving all requests to spend Title I funds for professional development, reviewing them in light of the grant application to determine their appropriateness and to assign the appropriate accounting code, giving them to the deputy superintendent or the director of federal programs to sign, and then submitting them to the business office for processing. He also checked to make sure that the training actually took place and that proper documentation was kept on who attended. As part of its accounting for grant funds, the Employer requires all employees whose salaries are funded partially by grants to keep daily logs of their activities for four or five weeks per semester. In 2009, the fiscal coordinator assumed responsibility for these logs. He sent logs to building principals for distribution to the appropriate employees. He also reviewed the completed logs to determine whether the activities reported by the employees were properly funded and whether the distribution of their salaries, among the various budgeted funds, was correct.

The Employer receives federal funds to run an educational program at the Jackson County Juvenile Detention Center. The Employer also receives federal funds that it is required to share with parochial schools within the District. In 2009, the fiscal coordinator was responsible for advising the detention center and the parochial schools regarding whether particular items could be paid for with federal funds. During that school year, one of the parochial schools was trying to set up a learning laboratory. The fiscal coordinator answered questions about purchases, offered suggestions based on the Employer's purchasing history, and even purchased items using accounting codes that he knew were correct.

The administrative assistant also monitored compliance with grants and gave advice on purchases in 2009. For example, the administrative assistant was responsible for ensuring that all schools receiving Title I funds had parenting programs in place as required by the grants and for advising the principals on what they could purchase for these programs with federal funds.

At the time of the hearing, the fiscal coordinator had not yet done any financial reports for the Employer's general fund. However, he had assumed responsibility for accounting for the federal stimulus funds received by the District to even out its budget under the federal Emergency Economic Stabilization Act of 2008. As part of this responsibility, the fiscal coordinator created a spreadsheet to show the Employer's auditors how the federal monies had been accounted for and, when the auditors arrived, provided them with the appropriate certifications and documentation. The fiscal coordinator also submitted quarterly reports to the federal government on the number of jobs saved by this funding.

Both the administrative assistant and the fiscal coordinator prepare journal entries. The administrative assistant's non-federal program job responsibilities include preparing the Employer's monthly health insurance bills for payment, processing additions, deletions, and changes in health insurance coverage for employees, and acting as a liaison between the Employer and health insurance providers. At the time of the hearing, the fiscal coordinator was assisting the administrative assistant by doing the journal entries for the Employer's health insurance payments. The responsibilities of the fiscal coordinator and the administrative assistant overlapped in other ways. For example, the state accounting manual requires the Employer to maintain a system of account codes, and a code must be assigned to every payment. Account code numbers are approximately 26 digits long and reflect different types of information about the expense, including but not limited to, whether it can be paid from federal dollars. Both the administrative assistant and the fiscal coordinator were assigning account codes to items and creating new codes when necessary.

Discussion and Conclusions of Law:

The principles applying to clarification petitions are well established and were recently restated in *Washtenaw Co*, 22 MPER 24 (2009), quoting *Jackson Pub Sch*, 1997 MERC Lab Op 290, 299:

Unit clarification, as the term itself implies, is appropriate for resolving ambiguities concerning the unit placement of individuals who, for example, come within a newly established classification of disputed unit placement or within an existing classification which has undergone recent, substantial changes in the duties and responsibilities of the employees in it so as to create a real doubt as to whether the individuals in such classification continue to fall within the category – excluded or included – that they occupied in the past. Clarification is not appropriate, however, for upsetting an agreement of a union and employer or an established practice of such parties concerning the unit placement of various individuals even if the agreement was entered into by one of the parties for what it claims to be mistaken reasons or the practice has become established by acquiescence and not by express consent.

We have consistently held that where a position has been historically excluded from the 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 representation election. *City of St Clair Shores*, 1990 MERC Lab Op 99; *Lake Orion Cmty Sch*, 1988 MERC Lab Op 296.

Between 1983 and 2005, Gloria Moshier assisted the deputy superintendent for finance with the financial administration of the Employer's federal and state grants. Petitioner acquiesced to the exclusion from its unit of Moshier's position, which was eventually given the title of fiscal coordinator. Moshier clearly performed the duties set out in her job description without much supervision or assistance. After Moshier retired, her duties were divided between the deputy superintendent and his administrative assistant. In July 2009, the Employer decided

to revive Moshier's last job title and assign it to Farhat, whom it had hired to fill a different position. The new job description for the fiscal coordinator lists duties substantially similar, but not identical, to those contained in Moshier's last job description. However, it is clear from the testimony that Moshier's old job duties are now divided among the deputy superintendent, his administrative assistant, and the fiscal coordinator. We agree with Petitioner that the fiscal coordinator position in 2009 is not the same position that it implicitly agreed to exclude from its unit when filled by Moshier. Accordingly, we reject the Employer's argument that the petition is not appropriate because the fiscal coordinator position has been historically excluded from Petitioner's unit.

In making unit determinations, our primary objective is to put together the largest bargaining unit which, in the circumstances of the particular case, is most compatible with the effectuation of the purposes of PERA and which includes within a single unit all employees sharing a community of interest. *Hotel Olds v State Labor Mediation Bd*, 333 Mich 382, 387 (1952); *Macomb Co*, 17 MPER 35 (2004); *Univ of Michigan*, 2001 MERC Lab Op 6, 8. It is our policy to require, whenever possible, that units be comprehensive in order to avoid fragmentation and the eventual formation of residual units. *Muskegon Co Sheriff Dep't Deputies Unit*, 2000 MERC Lab Op 88, 92. See also *Michigan Ass'n of Pub Employees v AFSCME Council 125*, 172 Mich App 761, 765 (1988). It is also Commission policy, whenever possible, to avoid leaving positions unrepresented, especially isolated positions. *Charlotte Pub Sch*, 1999 MERC Lab Op 68; *City of Muskegon*, 1996 MERC Lab Op 64, 70. Therefore, when a newly created position shares a community of interest with a unit that seeks to include it, we accrete the position to the existing unit rather than leave it with a residual group of unrepresented employees. *Lake Superior State Univ*, 17 MPER 9 (2004); *Saginaw Valley State Coll*, 1988 MERC Lab Op 533, 538.

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. *Lenawee Intermediate Sch Dist*, 16 MPER 48 (2003); *Covert Pub Sch*, 1997 MERC Lab Op 594, 601; *Grand Rapids Pub Sch*, 1997 MERC Lab Op 98,106. However, the fact that employees have different job duties or functions does not necessarily mean that they lack a community of interest. *Michigan Ed Ass'n v Alpena Cmty Coll*, 457 Mich 300, 306 (1998); *Covert Pub Sch*; *Washtenaw Cmty Coll*, 1993 MERC Lab Op 781, 790-791. The touchstone is whether employees in the unit have a common interest in the terms and conditions of employment that warrants their inclusion in a single bargaining unit and the choosing of a bargaining agent. *Alpena Cmty Coll*, at 304-305.

In the instant case, members of Petitioner's unit work in different locations and report to different supervisors. However, all members of the unit are nonprofessional, nonsupervisory employees who perform services supporting the Employer's educational mission. The unit is described in the contract as a secretarial and clerical unit. Some unit positions, however, specifically the chief account clerk and district bookkeeper, perform jobs that require accounting skills, including associate's degrees in accounting or business. The fiscal coordinator position, like the administrative assistant position, requires somewhat more advanced accounting skills

than the chief account clerk and district bookkeeper positions. The fiscal coordinator's pay range is also above, although not significantly above, the pay ranges of these two positions. However, the fiscal coordinator position does not require a degree or major in accounting. Rather, the fiscal coordinator position, like the administrative assistant's position, requires some knowledge of accounting plus specialized knowledge of federal grant procedures. This specialized knowledge is attained by attending training in this subject. The fact that the fiscal coordinator position requires this type of expertise not possessed by positions in Petitioner's unit does not mean that it lacks a community of interest with this unit. For example, we have found technical employees, including nonprofessional technology support employees, to be appropriately included in units of school district support employees. *Essexville-Hampton Pub Sch*, 2001 MERC Lab Op 316. We conclude that the fiscal coordinator, a position with no supervisory responsibilities which provides nonprofessional support services, shares a community of interest with the employees in Petitioner's unit warranting its inclusion in this unit. Since no other labor organization seeks to represent this position, we will, therefore, grant Petitioner's request to add the fiscal coordinator position to its unit.

ORDER

Based upon the above findings of fact and conclusions of law, the petition filed by the Jackson Educational Secretaries Association is granted and its bargaining unit is clarified to include the position of fiscal coordinator for state programs, federal programs, and finance.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Christine A. Dardarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____