

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

In the Matter of:

LANSING SCHOOL DISTRICT,
Public Employer,

-and-

AFSCME COUNCIL 25,
Petitioner-Labor Organization in Case No. UC07 H-024,

-and-

LANSING EDUCATION ASSISTANTS ASSOCIATION, MEA/NEA,
Petitioner-Labor Organization in Case No. UC08 D-014.

APPEARANCES:

Hardy, Lewis & Page, P.C., by Robert Nyovich, Esq., for the Public Employer

Kenneth J. Bailey, Esq., Staff Attorney, for Petitioner AFSCME Council 25

White, Schneider, Young & Chiodini, P.C., by James T. Feeny, Esq., and Jeffrey S. Donahue, Esq., for Petitioner Lansing Education Assistants Association, MEA/NEA

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

Pursuant to Section 12 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212, oral argument was held in Detroit, Michigan on June 16, 2009, before David M. Peltz, Administrative Law Judge for the State Office of Administrative Hearings and Rules, acting on behalf of the Michigan Employment Relations Commission. Pursuant to Sections 13 and 14 of PERA, and based upon the petitions and the transcript of the oral argument, the Commission finds as follows:

The Petitions:

Petitioners AFSCME Council 25 (AFSCME) and its Local 1390 and the Lansing Education Assistants Association, MEA/NEA (LEA) each represent broad support units of employees of the Lansing School District (Employer or school district). Both units have historically included positions with cafeteria-related duties. With respect to AFSCME, those duties have primarily involved food preparation, including heating and proportioning food. Specific positions within the AFSCME bargaining unit include: custodians, cooks, cafeteria general helpers, carpenters, painters, ground maintenance employees, plumbers, and warehouse clerks. The cafeteria related functions performed by members of the LEA unit have traditionally involved cashier-type duties, including handling money and checking student meal accounts. LEA unit positions include: cashiers, elementary head cashiers, media assistants, paraprofessionals and instructional assistants, clericals, noninstructional support assistants, clinic assistants, work-study assistants, interpreters, and early childhood behavior management assistants.

On September 27, 2007, AFSCME Council 25 filed the petition in Case No. UC07 H-024 seeking to add cafeteria assistants and elementary head cashiers to its support unit. AFSCME asserts that the position of cafeteria assistant is a newly created position which the Employer improperly placed within the LEA unit. While conceding that the cafeteria assistants share a community of interest with both the AFSCME and the LEA support units, AFSCME contends that the position properly belongs in its bargaining unit because the duties and responsibilities of the cafeteria assistant position are more closely related to those of the AFSCME-represented cafeteria general helper position than to any of the positions within the LEA bargaining unit.

With respect to the elementary head cashier position, AFSCME contends that the position has undergone a change sufficient to justify removing it from the LEA unit in which the position has historically been included. AFSCME asserts that prior to the change, the elementary head cashiers were assigned mostly cashier and accounting duties, and that food preparation represented only a small portion of their daily workload. AFSCME contends that a change occurred pursuant to which the elementary head cashiers now spend most of their time preparing and proportioning food, work which AFSCME asserts is of the type typically performed by members of its support unit. AFSCME concedes, however, that the elementary head cashiers continue to handle money, check student meal accounts and perform other cashier-type duties unrelated to food preparation.

The unit clarification petition in Case No. UC08 D-014 was filed by the LEA on April 29, 2008, and concerns the cafeteria general helper, a position which has been included in the AFSCME bargaining unit for more than twenty years. The LEA seeks to have the cafeteria general helper position moved to its support unit on the ground that the some of the individuals who currently hold that job title are required by the school district to handle money and perform other cashier-type duties, in addition to their responsibilities preparing and proportioning food. The LEA contends that the cafeteria general helpers to whom such work has been assigned are functioning in a capacity similar to that of the cashiers who have

always been included in the LEA support unit, and that cashier responsibilities of this nature are exclusive to the LEA unit.

The ALJ assigned to the case determined that neither ASFCME nor the LEA had set forth any factually supported allegations that would warrant holding an evidentiary hearing in this matter. However, the parties were given the opportunity to establish why the petitions should not be dismissed during the June 16, 2009 oral argument before the ALJ.

Discussion and Conclusions of Law:

A primary objective of the Commission is to constitute the largest unit which, in the circumstances of the particular case, is most compatible with the effectuation of the purposes of the law, 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). 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. See e.g. *Covert Pub Sch*, 1997 MERC Lab Op 594, 601.

In Case No. UC07 H-024, AFSCME contends that cafeteria assistant is a newly created position which the Employer should have placed within its bargaining unit rather than in the support unit represented by the LEA. When a union files a unit clarification petition seeking to add a new position to its unit, no other union claims the position, and there is no assertion by the employer that the new position is executive, confidential or supervisory, the only issue is generally whether the position shares a community of interest with the petitioner's existing unit. See e.g. *City of Bay City*, 16 MPER 31 (2003); *Lansing Cmty Coll*, 2000 MERC Lab Op 99. However, we do not determine relative degrees of community of interest or attempt to find the "optimum" or "most" appropriate unit. *City of Lansing, Bd of Water & Light*, 2001 MERC Lab Op 13, 16; *Henry Ford Cmty Coll*, 1996 MERC Lab Op 372, 379-380; *Saginaw Valley State Coll*, 1988 MERC Lab Op 533. When two unions claim a position, we will defer to an employer's reasonable decision to place the position in one of the units, provided that the position shares a community with that unit so that the unit is appropriate for collective bargaining. *Swartz Creek Cmty Sch*, 2001 MERC Lab Op 372, 374-375.

In the instant case, it is undisputed that the cafeteria assistant position shares a community of interest with both the AFSCME and the LEA bargaining units. Under these circumstances, we will not disturb the Employer's reasonable decision to place the cafeteria assistants in the LEA's support unit. See e.g. *Royal Oak Pub Sch*, 1984 MERC Lab Op 922, in which we deferred to the employer's reasonable decision to place a new position which handled money in school lunchrooms in the unit that represented food service employees rather than in the petitioner's clerical unit, since the position arguably shared a community of interest with both units.

We also find no merit to AFSCME's request that we disturb the longstanding placement of the elementary head cashier position by removing it from the LEA bargaining unit. With respect to support employees of a K-12 school district, we have always preferred broad units consisting of all noninstructional personnel and, in fact, have found such units to be presumptively appropriate for purposes of collective bargaining. See e.g. *Alpena Cmty Coll*, 1994 MERC Lab Op 955; *Waverly Cmty Sch*, 1989 MERC Lab Op 819; *Livonia Pub Sch*, 1967 MERC Lab Op 780. At the same time, this Commission has a "strong and often overriding policy prohibiting the fragmentation of existing bargaining units absent some extreme divergence in the interest of the employees making up the historical unit." *Northville Pub Sch*, 2001 MERC Lab Op 380, 382, quoting *Dearborn Pub Sch*, 1990 MERC Lab Op 513, 517. See also *Kent Co (Kent Cmty Hosp)*, 1989 MERC Lab Op 1105, 1109-110. Thus, we do not move positions from established bargaining units unless it is demonstrated that a community of interest between those positions and their bargaining units no longer exists. See *City of Kalamazoo*, 1983 MERC Lab Op 249. This policy is designed to encourage the stability of established bargaining relationships and established bargaining units. *Dearborn Pub Sch*, 1990 MERC Lab Op 513, 517; *Lathrup Pub Sch*, 1972 MERC Lab Op 543, 548.

We find that AFSCME has not set forth any facts that would justify fragmentation of the longstanding LEA unit. There are two broad units of support employees of Lansing School District. To justify the removal of the elementary head cashier from the LEA bargaining unit in which the position has historically been included, AFSCME must show that there is no longer a community of interest between that position and the LEA support unit. AFSCME contends that the elimination of accounting duties warrants the removal of the elementary head cashier position from the LEA unit. As noted, however, the parties have stipulated that employees in both the AFSCME and LEA bargaining units perform cafeteria-related work. It is also undisputed that food preparation has always been a function of the elementary head cashier position, and that the elementary head cashiers continue to handle money, check student meal accounts and perform other cashier-type duties unrelated to food preparation. Under such circumstances, we conclude that a community of interest continues to exist between the elementary head cashiers and the LEA bargaining unit. Therefore, the petition for unit clarification filed by AFSCME in Case No. UC07 H-024 must be dismissed.

In Case No. UC08 D-014, the LEA seeks to have the cafeteria general helper position removed from the AFSCME bargaining unit in which it has historically been included and instead placed within the LEA support unit. The LEA contends that a change in unit placement is appropriate here, because the cafeteria general helpers are now required by the school district to perform cashier-related duties in addition to the food service tasks they have always performed. We disagree. Even if the duties of the cafeteria general helper position have undergone some modification, the LEA has not set forth any factually supported assertion which would establish that the change was sufficient to destroy the community of interest between the cafeteria general helpers and the AFSCME unit. To the contrary, it is undisputed that cafeteria general helpers continue to perform food preparation work, as they had prior to the alleged change. This work is the same as, or similar to, the work performed by positions within the AFSCME unit. For these reasons, we conclude that a community of interest continues to exist between the cafeteria general helpers and the AFSCME bargaining unit. Accordingly, the LEA's petition for unit clarification must be dismissed.

ORDER

Based upon the above findings of fact and conclusions of law, the petitions for unit clarification filed by AFSCME in Case No. UC07 H-024 and by LEA in Case No. UC08 D-014 are hereby dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Christine A. Dardarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____