

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

In the Matter of:

PORT HURON AREA SCHOOL DISTRICT,
Public Employer,

Case No. UC11 K-024

-and-

PORT HURON ASSOCIATION OF EDUCATIONAL
SECRETARIES, MEA/NEA,
Petitioner-Labor Organization.

APPEARANCES:

Fletcher Fealko Shoudy & Francis, P.C., by Todd J. Shoudy, for the Public Employer

White, Schneider, Young & Chiodini, P.C., by Erin M. Hopper, for the Petitioner-Labor Organization

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

Pursuant to the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.201–423.217, this case was assigned to Doyle O’Connor, Administrative Law Judge for the Michigan Administrative Hearing System, acting on behalf of the Employment Relations Commission. Based upon the entire record, including the transcript of an evidentiary hearing and briefs filed by both parties, the Commission finds as follows:

The Petition and the Proceedings:

The position in dispute is titled “technology services assistant.” It is undisputed that it was a single newly-created position when Port Huron Association of Educational Secretaries, MEA/NEA, (the Union) filed its unit clarification petition seeking inclusion in the existing support staff unit. A motion for summary disposition was filed by the Union shortly before the scheduled evidentiary hearing, which the Employer Port Huron Area School District (the Employer or District) opposed. Subsequently, the matter proceeded to trial.

Position of the Parties:

The Union asserts that this newly-created and otherwise unrepresented non-supervisory support position should be placed in its clerical technical support bargaining unit. The Employer asserts that the position lacks a community of interest with the unit, in that it is a skilled technology position, and

that the incumbent individually does not desire to be placed in the clerical support unit. Rather, the Employer asserts that the new position should remain in a residual group of unrepresented employees.

There is no claim that the position is supervisory or confidential. There are several other bargaining units in the District including a teachers' unit, cooks' unit, custodial unit, paraprofessional unit, and a building administrators' unit; however, there is no other represented unit that seeks to include the position.

Findings of Fact:

The Union's current unit includes: all executive secretaries; secretaries I and II; account clerks I and II; and print shop machine operators. Education requirements for current clerical technical unit positions are a high school diploma or the equivalent. The current unit positions work generally with technology and modern office equipment and software in performing their duties. Some unit positions order supplies for their own use or for others and some are involved in internet webpage creation and management. The salary schedule for the clerical technical unit ranges from \$10.11 to \$18.03 per hour, with work schedules that range from 10 to 12 months per year depending on the position.

Immediately following the posting of the new technology services assistant (TSA) position, the Union sought voluntary inclusion of the position in their unit. The Employer declined, and a timely petition was filed two months later.

The technology services assistant works twelve months per year and is assigned to the District's technology department. None of the pre-existing positions in the technology department are represented by a union. The required minimum education for the TSA is an associate's degree. The position description assigns predictable office tasks to the position with an emphasis on computer technology. Like other positions in the MEA unit, the position description requires problem solving skills; the ability to work effectively with staff and students; budget management; coordination of supplies for other employees; management of the District's webpage and recordkeeping. The pay rate for the position, on a twelve month full-time basis, works out to \$18.84 per hour.

The TSA is primarily responsible for maintenance of the District's web page, phone system, and copiers. The TSA also performs password re-sets for employees and addresses any difficulties the staff may have with using the 'SchoolDude' computer program. The individual in the TSA position both performs repairs and troubleshooting and assigns certain repairs to other employees. Such assignment of work is routine in nature, with the TSA essentially functioning as a route dispatcher, assigning particular problems to individual repair technology employees in a predictable and set fashion. As indicated by the testimony, in essence, each technology employee has a geographic or task area of assignment. If a problem arises in a particular employee's area of assignment or expertise, the project is assigned to that employee without the exercise of independent discretion by the TSA.

The Employer concedes that the TSA does not evaluate other employees and does not have the authority to discipline or discharge employees. The incumbent was involved in the hiring of two paid interns for the technology department, including sitting in on the initial interviews, although such interns would not be in the MEA unit. The incumbent testified that she has authority, in the absence of her immediate supervisor, to sign off on leave requests, following specific pre-existing guidelines.

The current incumbent in the TSA position has a greater educational background than the minimum required in the job posting. Instead of the required associate's degree, she has a master's

degree in science and management as well as bachelor's degrees in business and marketing. The incumbent was promoted to her current position from a position as an MEA bargaining unit secretary with the District, a position requiring only a high school diploma, for which she similarly exceeded the minimum educational qualifications.

The essential function of the TSA is to troubleshoot and repair, or see to the repairing of, the varied office equipment and software utilized by the secretaries and print shop machine operators in the MEA unit. If the phones are not working, the clerical employees report that to the TSA to secure assistance. If the copiers are not working, the clerical employees contact an outside repair person directly. The position is also involved in the implementation of new systems, such as the new telephone system which consumed much of the incumbent's time when first promoted to the position.

While MEA clerical technical unit positions are generally tied to one location, the TSA may travel throughout the District. The TSA is currently treated as a salaried employee, while all bargaining unit positions are treated as hourly. The TSA duties include monitoring the technology systems remotely, including from home on her off hours. The TSA and bargaining unit employees all report to mid-level management.

The unrepresented residual group includes the positions of: network/service manager (requiring an associate's degree in computer science); a station manager-television (requiring a bachelor's degree in instructional technology or similar field); a technology trainer (requiring an associate's degree in instructional technology); several technology technicians (requiring an associate's degree or equivalent experience); and a television assistant (requiring a high school diploma or GED). All of those positions report to the director of technology and media services.

The August job posting and description for technology services assistant was preceded by a July "report of vacancy" authored by the technology department director. In that document, the "qualifications required" were described as "same as for executive secretary," which is consistent with the later job description. The report of vacancy seemingly sought a higher minimum qualification, a bachelor's degree, than appears in the later job description, which only requires at minimum an associate's degree, with a bachelor's degree preferred.

Discussion and Conclusions of Law:

As we held in *City of Detroit*, 23 MPER 94 (2010):

The starting premise of any decision on a representation case must be a reaffirmation that the fundamental function of the adoption of PERA in 1965 was to recognize and codify the right of public employees to collectively designate an exclusive bargaining agent and to then compel their employer to deal with the workforce through the employees' collectively "designated or selected" representative, rather than individually. See MCL 423.209 & 423.211. PERA was enacted at the specific command of the people of Michigan, acting through their Constitutional Convention to adopt Const 1963, art 4, § 48. The statute was described by the Legislature as intended to "declare and protect the rights and privileges of public employees," with the fundamental Section 9 right being the right of employees to act through "representatives of their own free choice." MERC is "the state agency specially empowered to protect employees' rights." *Ottawa Co v Jaklinski*, 423 Mich 1, 24 n.10 (1985). The statute, as adopted, did not codify rights of employers or of labor unions, other than as derivative

of employee rights. Rather, the statute placed restrictions on the conduct of employers and unions.

While a representation matter is treated as a non-adversarial proceeding, to the extent that there is a burden of proof, it falls upon the party seeking to deny the right to be represented for purposes of collective bargaining to a public employee covered by PERA. Therefore, in this case, it is up to the Employer, to present proofs showing that inclusion of the position would be improper under the Act. *Lake Co & Lake Co Sheriff*, 1999 MERC Lab Op 107; *Antrim Kalkaska Cmty Mental Health*, 1998 MERC Lab Op 11, 15.

In designating a unit as appropriate for collective bargaining under § 13 of PERA, a primary objective is to constitute an appropriate unit that, in the circumstances of the particular case, is most compatible with the effectuation of the purposes of the law and that includes within a single unit all employees sharing a community of interest. *South Lyon Cmty Sch*, 19 MPER 33 (2006); *Hotel Olds v State Labor Mediation Bd*, 333 Mich 382 (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. *Saginaw Valley State Univ*, 19 MPER 36 (2006); *Covert Pub Sch*, 1997 MERC Lab Op 594, 601; *Grand Rapids Pub Sch*, 1997 MERC Lab Op 98, 106. Unit clarification is appropriate regarding a new position or where there has been a recent and significant change in duties assigned to an existing position. *Macomb Co Cmty Coll*, 2000 MERC Lab Op 165.

In making a unit placement determination, the Commission is not required to find the “optimum” or “most” appropriate unit, but rather only a unit appropriate for collective bargaining based upon the facts of each case. *South Lyon Cmty Sch*, 19 MPER 33 (2006) ; *City of Lansing, Bd of Water & Light*, 2001 MERC Lab Op 13; *City of Zeeland*, 1995 MERC Lab Op 652. Here, it can readily be asserted that it would be entirely appropriate to place the TSA position in the non-supervisory clerical technical unit, as the duties are related, and that it would be equally appropriate to place the TSA in a technology unit if such a represented unit existed and either the unit or the Employer proposed its inclusion.

Further, it is Commission policy, whenever possible, to avoid leaving positions unrepresented, especially isolated ones. *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 the unit that seeks to include it, we will 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. Here, there is no other unit which seeks the position, nor does the Employer propose an alternative placement in a represented unit.

The promotion of the incumbent from secretary to TSA was incidental and not supportive of a finding of regular interchange between the represented clerical technical unit and the unrepresented group. The over-qualified status of the current incumbent is also irrelevant as she was similarly overqualified for her prior position as secretary within the bargaining unit. Similarly, her routine doling out of tasks to the repair technicians and her theoretical authority to approve routine leave requests for non-bargaining unit employees does not warrant excluding her from the bargaining unit. Further, the Employer does not assert supervisory status for this position and, regardless, an individual is not a supervisor under PERA if her authority is limited to the routine direction of the daily work of

other employees or making work assignments of a routine nature. See, *Bloomfield Hills Sch Dist*, 2000 MERC Lab Op 363 and *Kalkaska Co & Sheriff*, 1994 MERC Lab Op 693.

The TSA position is presently treated as salaried, while the other positions in the clerical technical unit are currently treated as hourly employees. That difference is somewhat illusory, where the actual rate of pay for the TSA position works out to \$18.84 per hour compared with the rate for executive secretary of \$18.03 per hour. Moreover, merely placing a new position within an existing bargaining unit does not determine all of the working conditions to be applied to that position, nor do incidental differences in modes of compensation preclude a finding of a community of interest. In *Delta Twp*, 24 MPER 4 (2011), we ordered the inclusion of a fire inspector in the unit even though that position worked a different schedule and had a different benefit package and earnings. Those differences are all mandatory bargaining subjects to be addressed by the parties.

In *Essexville-Hampton Pub Sch*, 2001 MERC Lab Op 316, the Commission addressed a similar question related to the appropriateness of placing a technology position in an existing clerical bargaining unit and we held:

We have found in the past that nonsupervisory technology and data processing personnel are technical employees who are appropriately included in support or office clerical bargaining units. *Brimley Area Schools*, 2000 MERC Lab Op 159, 163; *Saginaw Int Sch Dist*, 1992 MERC Lab Op 3, 5.

The fact that the technology support position is involved with the functioning of the computer network in the district is not sufficient to establish a community of interest with the other technology personnel, given the significant differences in education, experience, and responsibilities. See *Wayne-Westland Cmty Sch Dist*, 1976 MERC Lab Op 847, 853.

Here, like in *Essexville*, the position in question does not require an advanced degree in computer science; rather, the minimum requirement is an associate's degree. The job posting did not require any computer certifications, and in fact, required only that the person be "skilled in the use of computers and office equipment," a qualification similar to that required by the job description for the unit position of executive secretary. Of significance, in its unvarnished July 2011 request to create the position, which was written before the legal dispute over unit placement arose, the District's technology department head described the position qualifications for the proposed new position as "same as Executive Secretary." Likewise, as in *Essexville*, there is some direct overlap in duties with employees in the clerical unit sharing the responsibility with the TSA for maintaining the several internet webpages maintained by the District. Indeed all of the technology department positions, with the possible exception of the television station manager, were they at issue, would likely readily fit in the MEA office support unit. Similarly, the disputed position of TSA would readily fit in an organized unit including the rest of the technology department employees; however, such a unit does not exist and we are obliged to deal with the realities presented by each situation. See, *Lake Superior State Univ*, 17 MPER 9 (2004).

We find no statutory basis for excluding the newly-created position of technology services assistant from the only existing and appropriate bargaining unit.

ORDER CLARIFYING UNIT

The petition filed by the Port Huron Association of Educational Secretaries, MEA/NEA is granted. The bargaining unit is clarified to include the newly-created position of technology services assistant.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Edward D. Callaghan, Commission Chair

Robert S. LaBrant, Commission Member

Natalie P. Yaw, Commission Member

Dated: _____