

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

In the Matter of:

MID-MICHIGAN COMMUNITY COLLEGE,

Respondent in Case No. C14 G-075; Docket No. 14-014431-MERC,

Public Employer in Case No. UC14 G-011; Docket No. 14-021886-MERC,

-and-

MID-MICHIGAN COMMUNITY COLLEGE FACULTY SENATE, INC., MEA/NEA,

Labor Organization-Charging Party in Case No. C14 G-075; Docket No. 14-014431-MERC,

Petitioner in Case No. UC14 G-011; Docket No. 14-021886-MERC.

APPEARANCES:

Thrun Law Firm, P.C. by Martha J. Marcero, for the Public Employer

White, Schneider, Young and Chiodini, PC, by Timothy J. Dlugos, for the Labor Organization

DECISION AND ORDER

On January 11, 2016, Administrative Law Judge Travis Calderwood issued his Decision and Recommended Order in the above-entitled matter, finding that Respondent has engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist and take certain affirmative action as set forth in the attached Decision and Recommended Order of the Administrative Law Judge.

The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of Act 336 of the Public Acts of 1947, as amended.

The parties have had an opportunity to review this Decision and Recommended Order for a period of at least 20 days from the date the decision was served on the parties, and no exceptions have been filed by any of the parties to this proceeding.

ORDER

Pursuant to Section 16 of the Act, the Commission adopts as its order the order recommended by the Administrative Law Judge.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: March 3, 2016

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION**

In the Matter of:

MID-MICHIGAN COMMUNITY COLLEGE,
Respondent in Case No. C14 G-075; Docket No. 14-014431-MERC,
Public Employer in Case No. UC14 G-011; Docket No. 14-021886-MERC,

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MID-MICHIGAN COMMUNITY COLLEGE FACULTY SENATE, INC., MEA/NEA,
Charging Party-Labor Organization in Case No. C14 G-075; Docket No. 14-014431-
MERC,
Petitioner in Case No. UC14 G-011; Docket No. 14-021886-MERC.

APPEARANCES:

Thrun Law Firm, P.C. by Martha J. Marcero, for the Public Employer

White, Schneider, Young and Chiodini, PC, by Timothy J. Dlugos, for the Labor Organization

**DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE ON CONSOLIDATED CASES**

Pursuant to the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.201 *et seq.*, these cases were assigned to Administrative Law Judge Travis Calderwood, of the Michigan Administrative Hearing System, acting on behalf of the Michigan Employment Relations Commission (Commission). The following findings are based upon the entire record, including exhibits and the transcript of the hearing held on September 8, 2014, as well as post-hearing briefs filed by the parties on or before October 28, 2014.

Unfair Labor Practice:

The Mid-Michigan Community College Faculty Senate, Inc., MEA/NEA (Charging Party or Union), filed the present unfair labor practice charge, dated June 27, 2014, and accepted by the Commission on July 1, 2014, against Mid-Michigan Community College (Respondent or College). The Union in its Charge alleges that the College failed to bargain in good faith by unilaterally removing two counselor positions from the bargaining unit, transferring bargaining unit work to positions outside the unit, and by engaging in direct dealing with two bargaining unit members regarding the elimination of their positions and offering them newly created positions outside of the bargaining unit. Charging Party, in its post-hearing brief filed on October 28, 2014, withdrew its claim of direct dealing.

The Unit Clarification Petition:

On July 1, 2014, the Union filed a Unit Clarification Petition seeking to clarify its bargaining unit to include two newly created positions, the Transfer and Outreach Coordinator and the Specialized Services Coordinator. The two new coordinator positions were filled by two former counselors whose positions were eliminated and which are the subject of the consolidated unfair labor practice charge.

Facts:

The Union is the authorized bargaining representative for all counselors and professional and instructional personnel employed by the College on a full-time contract basis.

The College and Union were parties to a collective bargaining agreement that expired on August 19, 2013. That contract's recognition clause stated in the relevant part:

The Board hereby recognizes the Faculty Senate as the sole and exclusive negotiating representative for all counselors and as the exclusive negotiating representatives for all College professional instructional personnel under contract on a full-time basis...

The Parties began negotiations for a successor agreement in December 2012.

On June 24, 2014, the College's Board of Trustees ratified a successor agreement which is set to expire in August of 2017. That contract's recognition clause remained unchanged from that contained in the previous contract.

As of 2013, the College employed only two individuals in counselor positions; Carol Santini and Linda Jensen. In the negotiations leading up to the June 2014 contract ratification, the College, on January 9, 2013, proposed in writing removing the last two counselor positions from the Union's bargaining unit. That proposal stated in the relevant part:

Over time the Counselor job description has changed significantly and is similar to other coordinative roles that are paid at a lower rate and work 2,080 hours per year. We would like to move these 2 positions to an administrative classification, based on the FLSA criteria for assigning job classifications.

On August 16, 2013, a second bargaining proposal was provided by the College, in which it proposed increasing the annual hour workload for the counselor positions and not replacing them if and when they became vacant. The Union, on October 11, 2013, made a proposal seeking to grandfather the two counselor positions until such time as Santini or Jensen left the College, at which time the positions would not be filled. The College countered by proposing to convert the two counselor positions to new full-time faculty positions.

The parties began participating in mediation sessions in early 2014. Shortly thereafter the College indicated that it no longer sought the elimination of the counselor positions from the

contract's recognition clause, but that the two positions would, nonetheless, be eliminated and that the incumbents would be offered two new, yet to be created, positions.

On February 17, 2014, Santini and Jensen, along with Union President Eric Chamberlin met with Kim Barnes, the College's Executive Dean of Student and Academic Support Services and the College's Executive of Human Resources, Gail Nunamaker, to discuss the creation of two new coordinator positions, the Advising and Outreach Coordinator and the Specialized Services Coordinator.¹ At that meeting Santini and Jensen were provided a memo which indicated that their two counselor positions were being eliminated and that the College would allow each of them to select one of the two newly created coordinator positions. The memo and attached job descriptions for the positions revealed that the positions would be classified as administrative professional positions scheduled to work 2,080 hours annually and would not be in the Union's bargaining unit.² When asked whether the College offered the new coordinator positions to Santini and Jensen because their then present counselor positions already performed many of the duties of the new coordinator positions, Nunamaker stated at the hearing that the College was primarily concerned with providing Santini and Jensen an opportunity to continue their employment with the College.

On March 3, 2014, Santini and Jensen received a second memo detailing certain aspects of the transition if either were to elect to assume one of the newly created coordinator positions. That memo indicated that their current faculty contracts would expire on August 9, 2014, and that beginning August 10, 2014, if they chose to move into the new positions, they would see an increase in both their daily hour requirements as well as the above mentioned annual workload because they would be working year-round. That memo also stated that the College would maintain their salary at the current annual amount even though their salaries exceeded the pay range for other administrative positions.³ Both Santini and Jensen were provided until March 28, 2014, in which to inform the College of whether they would elect to transition into the new positions.

In August 2014, Santini began serving in the position of Specialized Services Coordinator while Jensen began serving in the position of Transfer and Outreach Coordinator.

Counselor Positions:

Directly preceding the assumption of the Specialized Services Coordinator and the Transfer and Outreach Coordinator positions, respectively, both Santini and Jensen were the only two counselors employed as such by the College.

Sometime in 2011, Santini and Jensen were directed to stop providing counseling services because the College no longer carried insurance for such actions.

Santini's previous position was that of Special Needs Counselor, a position she held since 2011. Santini described her position duties to include working with the special needs students,

¹ The title of Advising Outreach Coordinator was later changed to Transfer and Outreach Coordinator.

² By comparison, the counselor positions held by Santini and Jensen at that time had an annual hour workload of 1,400 per the Union contract that expired in 2013.

³ It was confirmed by all parties at hearing that the salaries for both Jensen and Santini remained unchanged following their transition into the new coordinator positions.

including all those students who self-identified as having a physical, mental emotional or learning disability. Near the end of her time as the Special Needs Counselor, Santini was responsible for compliance with Title I of the American with Disabilities Act and other related federal regulations, as well as making budgetary recommendations for Perkins grant purchases.⁴ Santini would work with new students, upon their admittance to the College, to develop an educational development plan (EDP) for them to achieve their educational goals in a timely fashion. The job description applicable to Santini's counseling position immediately prior to her accepting the coordinator position listed some of her job functions as follows:

- Advises new and returning students with disability needs to determine eligibility for accommodations, and to assess the feasibility of their accommodation requests. Provides assistance to students with disabilities, as needed, and help students to develop strategies to appropriately request accommodations.
- Assists students to create or update their Educational Development Plan, (EDP) to include discussion of student's career goals. Refers students to Career Coordinator for appropriate follow-up.
- Coordinates and attends two Special Populations Advisory Board meetings each year.
- Prepare periodic summary and evaluative reports or documents, as required.
- Attends departmental meetings and various internal/external committee/task force meetings as assigned; performs related tasks as required.

Jensen's previous position was that of Transfer Counselor. She held that position since 2000. In that position, Jensen worked with new students, returning students and dual enrollment students, helping them to select courses that would transfer to the College and apply toward their desired degrees.⁵ Jensen also helped in the development of transfer courses and related policies and procedures. In February or March of 2013, Jensen began taking a more active and involved role in the College's dual enrollment program, i.e., high school students enrolled in courses at the College.

Immediately prior to accepting the coordinator position, Jensen's job description as counselor listed the following as some of her job functions:

- Advises new and returning students to create or update their Educational Development Plan (EDP), to include discussion of students' career goals. Refers them to the Career Coordinator for appropriate follow-up.
- Develops and updates articulation agreements between transfer institutions and MMCC, to include working with faculty and administrators on course equivalencies, identifying program changes needed to ensure successful transfer agreements, assisting with reverse transfer initiatives, providing transfer updates, and record keeping duties.
- Prepare periodic summary and evaluative reports or documents, as required.

⁴ As an example of Perkins grant funding activities, deaf students using interpreters would be covered by said federal funding.

⁵ As an extension of these duties, Jensen also worked with other educational institutions in the creation of Articulation agreements which would specify what courses would transfer between the educational institutions.

- Attends departmental meetings and various internal committee/task force meetings as assigned; performs related tasks as required.

Both counselor positions required that the incumbent be a licensed professional counselor. This requirement remained in place even after the counselors were told to stop providing counseling services.

Coordinator Positions:

The position of Specialized Services Coordinator was assumed by Santini effective August 10, 2014; Jensen assumed the position of Transfer and Outreach Coordinator that same day.

The February 17, 2014, memorandum included job descriptions for both coordinator positions. In August of 2014, both Santini and Jensen were provided revised job descriptions for their respective positions.

The job description for the Specialized Services Coordinator, given to Santini in August of 2014, listed the following as some of the position's essential job functions:

- Advises new and returning students, veterans, and students with accommodation needs to ensure an Education Development Plan (EDP) is developed. Assists with career advising for special needs students
- Supervises and evaluates the Advising Secretary who will provide support to the Specialized Services Coordinator, Academic Advisors on the Harrison Campus, and back-up for enrollment services.
- Serves as an advocate and liaison for students with accommodation needs and requests to foster their success. Maintains records on accommodation requests.
- Meets with new and returning veteran students every semester to inform them of the required paperwork needed to secure veteran educational benefits and/or financial aid. Assists students who are veterans in this application process as needed or requested.
- Determines eligibility and feasibility of accommodation requirements from new and returning students. Provides assistance to students with disabilities as needed.
- Coordinates and attends Special Populations Advisory Board meetings each year.
- Attends administrative meetings and various internal and external committee/task force meetings as required.
- Reviews adaptive equipment inventory and purchases and makes budgetary recommendations for new Perkins grant purchases or enhancements.
- Manages budget including requesting funds for any new initiatives during yearly budgeting processes.

Sometime after assuming the position of Specialized Services Coordinator, Santini was provided a Memorandum of Understanding, dated August 21, 2014, that further outlined her accountabilities in the new position.

The August 2014 job description for the Transfer and Outreach Coordinator position, given to Jensen, listed the following as some of that position's essential job functions:

- Supervises and evaluates assigned part-time academic advisor.
- Advises new and returning college and dual enrollment students to ensure an Educational Development Plan (EDP) is created.
- Work closely with high school counselors to establish protocols for student advising for dual enrollment students.
- Develops and updates articulation agreements between K-12, transfer institutions, and MMCC, to include working with faculty and administrators on course equivalencies, identifying program changes needed to ensure successful transfer agreements, providing transfer updates, and record keeping duties.
- Represent the College at statewide credit/articulation agreement meetings. Act as a liaison between MMCC's Academic Dean and the Clare-Gladwin CTE articulation representative.
- Assesses and recommends dual enrollment outreach initiatives. Make budgetary recommendations for outreach initiatives the college elects to sponsor or host.
- Organize the transfer institutions on-campus visits and presentations to advising staff.
- Oversees MiCUP grant initiatives, to include the end of the year report and budgeting. Attends periodic meetings and serves as the college representative to the MiCUP Committee.

Jensen also was provided a Memorandum of Understanding, dated August 21, 2014, further outlining her accountabilities in her position shortly after assuming the Transfer and Outreach Coordinator position.

Both Jensen and Santini testified that, from their point of view, the duties expected from them in their new coordinator positions were very similar to those expected of them as counselors. Santini testified that in her new coordinator position, she worked with the same people and in the same location as she had before the position change; Jensen made the same claims. Both also claimed that in their previous positions they were in charge of a budget in some fashion but that neither had seen what exactly their budgetary responsibilities would be, respectively, in their new positions. Jensen went so far as to claim at the hearing that none of her previous counseling duties were taken away with the job change; rather additional duties were assigned. Barnes, while being questioned on the new coordinator position's duties and job functions during the hearing, agreed that the duties performed by the counselor positions, with the exception of actual "counseling", had been transferred to the coordinator positions.

Neither coordinator position requires the incumbent to be a licensed professional counselor or possess greater than a bachelor's degree, although a master's degree is preferred.

At the hearing, the Employer introduced evidence and testimony with respect to the College's advisor position, a position it claimed was almost identical to actual work performed by both Santini and Jensen in their previous counselor positions. Barnes provided testimony outlining the several similarities between work done by advisors and the prior counselor positions, i.e., individual orientation with students to plan the appropriate educational approach, work with veteran students and students seeking to transfer to four-year institutions. Additionally, some advisors were assigned to work with veteran students alongside Santini.

Discussion and Conclusions of Law:

Unfair Labor Practice Charge – Case No. C14 G-075

The Employer urges the undersigned to dismiss the unfair labor practice charge on the grounds that the work performed by Jensen and Santini in their prior counselor positions was not work exclusive to the Union's bargaining unit and because the Union failed to demand bargaining over the positions' reconfiguration.

With respect to the exclusivity argument offered by the Employer, the Commission employs a three factor test to find whether there exists a duty to bargain over the removal of work. First, a charging party must establish that the work at issue was exclusively performed by members of its bargaining unit. *City of Southfield*, 433 Mich 168, 185 (1989), *aff'g* 1985 MERC Lab Op 1025; *Kent County Sheriff*, 1996 MERC Lab Op 294. Once exclusivity is established, the Commission will not impute a duty to bargain absent a showing that the transfer of work resulted in a significant adverse impact on unit employees and that resolution of the transfer dispute is amenable through collective bargaining. *City of Detroit Water & Sewage*, 1990 MERC Lab Op 34. However, the above factors are irrelevant where a public employer moves an existing bargaining unit position to another unit or deems it unrepresented without changing said position's duties or responsibilities. *City of Grand Rapids*, 19 MPER 69 (2006). The present dispute is not over the removal of individual duties or responsibilities from the unit, but rather is over the removal of two positions and, as the Commission has consistently held, an employer may not alter bargaining unit placement unilaterally or after bargaining to impasse, but must either obtain the Union's agreement to changes in bargaining unit composition or obtain an order from the Commission by filing an unfair labor practice charge, or if appropriate a unit clarification petition. *City of Grand Rapids*; *Livonia Pub Schs*, 1996 MERC Lab Op 479; *Michigan State University*, 1993 MERC Lab Op 345.

The Employer asserts, in response to the unit clarification petition, that because of the supervisory duties new to the Coordinator positions and the switch to a year-round schedule, these positions share a greater community of interest with either the advisor positions contained within another bargaining unit or other coordinator positions, the majority of which are unrepresented. Nonetheless, Commission law is clear that when a public employer seeks to remove an existing position from an established bargaining unit, the question is not whether the position now has a closer community of interest with another bargaining unit or group, but rather, whether because of the changes in duties has the position lost its community of interest

with the established unit. *Grand Rapids; Ingham Co*, 1993 MERC Lab Op 808, 812-813; *Northern Michigan Univ*, 1989 MERC Lab Op 139. To that point, the Commission has indicated its reluctance to move positions from one unit to another, or to unrepresented status, without a significant change in the nature of the position. *Saginaw Valley State College*, 1988 MERC Lab Op 533.

It is clear to the undersigned that, based upon the record, the changes to the counselor positions, in so far as they include a switch to a year-round schedule, the addition of some responsibilities, including the supervision of support staff, and the official removal of “counseling” duties, do not destroy its community of interest with the Union’s bargaining unit⁶. As such, I find that Respondent does have an obligation to bargain with Charging Party over the terms and conditions of employment of the coordinator positions and that Respondent’s unilateral removal of Santini’s and Jensen’s positions from Charging Part’s unit without the Union’s agreement or an order of the Commission is a breach of the bargaining obligation in violation of Section 10(1)(e) of PERA.

Addressing last the Employer’s claim that the Union never demanded bargaining, because the Employer unilaterally removed the positions from the bargaining unit without any meaningful changes in job duties or responsibilities in violation of Section 10(1)(e) of PERA, no bargaining demand was required.

Unit Clarification Petition - Case No. UC14 G-011

In finding above that the Employer’s reclassification and subtle reorganization of the counselor positions into the coordinator positions did not result in a significant change in the nature of the position and that the positions at issue should not have been unilaterally removed from the bargaining unit, no matter their present titles, disposition of the Union’s unit clarification petition is unwarranted, because any relief sought therein is provided though my finding that the Employer committed an unfair labor practice. Accordingly, it is my conclusion that the Union’s petition for unit clarification be dismissed as being moot.

I have carefully considered all other arguments asserted by the parties in this matter and have determined that they do not warrant a change in the result. For the reasons set forth above, I recommend that the Commission issue the following order:

Recommended Order in Case No. C14 G-075

Respondent Mid-Michigan Community College, its officers and agents are hereby ordered to:

1. Cease and desist from refusing to bargain in good faith with Charging Party Mid-Michigan Community College Faculty Senate, Inc., MEA/NEA.

⁶ While the College claims these two positions are supervisory in nature, no evidence was presented that established either Jensen or Santini had the authority to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees. See *Bloomfield Hills School District*, 14 MPER 32009 (2000). In any event, the supervisory duties added to the new coordinator positions, to the extent they are truly supervisory in nature, are over support staff not contained within the Union’s bargaining unit from which the counselor positions were removed.

2. Refrain from removing positions from Charging Party's bargaining unit through reclassification or other means without Charging Party's agreement or an order from this Commission.
3. Restore the position previously titled Special Needs Counselor and now titled Specialized Services Coordinator to the bargaining unit represented by Charging Party, and upon demand, bargain with Charging Party over the terms and conditions of employment for said position.
4. Restore the position previously titled Transfer Counselor and now titled Transfer and Outreach Coordinator to the bargaining unit represented by Charging Party, and upon demand, bargain with Charging Party over the terms and conditions of employment for said position.
5. Make Charging Party whole for any loss suffered because of the removal of the above noted positions from the bargaining unit represented by Charging Party, from August 10, 2014, until such time as each position is returned to the bargaining unit.
6. Make Jensen and Santini whole for any loss suffered because of the removal of their positions from the bargaining unit represented by Charging Party, from August 10, 2014, until such time as each position is returned to the bargaining unit.
7. Post the attached notice to employees in conspicuous places on Respondent's premises, including all places where notices to employees in Charging Party's bargaining unit are normally posted, for a period of thirty (30) consecutive days.

Recommended Order in Case No. UC14 G-011

The Mid-Michigan Community College Faculty Senate, Inc., MEA/NEA's petition for unit clarification is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Travis Calderwood
Administrative Law Judge
Michigan Administrative Hearing System

Dated: January 11, 2016

NOTICE TO ALL EMPLOYEES

After a public hearing before the Michigan Employment Relations Commission, **MID-MICHIGAN COMMUNITY COLLEGE**, a public employer under the **PUBLIC EMPLOYMENT RELATIONS ACT**, has been found to have committed an unfair labor practice in violation of this Act. Pursuant to the terms of the Commission's order, we hereby notify our employees that:

WE WILL NOT refuse to bargain in good faith with Mid-Michigan Community College Faculty Senate, Inc., MEA/NEA.

WE WILL refrain from removing positions from the bargaining unit represented by Mid-Michigan Community College Faculty Senate, Inc., MEA/NEA whether through reclassification or other means without the Union's agreement or an order from this Commission.

WE WILL restore the position previously titled Special Services Counselor and now titled Specialized Services Coordinator to the bargaining unit represented by Mid-Michigan Community College Faculty Senate, Inc., MEA/NEA, and upon demand, bargain with the Union over the terms and conditions of employment for said position.

WE WILL restore the position previously titled Transfer Counselor and now titled Transfer and Outreach Coordinator to the bargaining unit represented by Mid-Michigan Community College Faculty Senate, Inc., MEA/NEA, and upon demand, bargain with the Union over the terms and conditions of employment for said position.

WE WILL make Linda Jensen and Carol Santini whole for any loss suffered because of the removal of their positions from the bargaining unit represented by Mid-Michigan Community College Faculty Senate, Inc., MEA/NEA, from August 10, 2014, until such time as each position is returned to the bargaining unit.

WE WILL make Mid-Michigan Community College Faculty Senate, Inc., MEA/NEA whole for any loss suffered because of the removal of the above noted positions from its bargaining unit, from the August 10, 2014, until such time as each position is returned to the bargaining unit.

MID-MICHIGAN COMMUNITY COLLEGE

By: _____

Title: _____

Date: _____

This notice must be posted for thirty (30) consecutive days and must not be altered, defaced or covered by any material. Any questions concerning this notice or compliance with its provisions may be directed to the office of the Michigan Employment Relations Commission, Cadillac Place Building, 3026 W. Grand Blvd, Suite 2-750, Detroit, MI 48202-2988. Telephone: (313) 456-3510.