

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

In the Matter of:

SOUTH LYON COMMUNITY SCHOOLS,
Public Employer,

Case No. R04 K-167

-and-

SOUTH LYON MESPA/NEA,
Petitioner-Labor Organization.

APPEARANCES:

Michigan Association of School Boards, by David W. Hershey, Labor Relations Consultant, for the Public Employer

The Firestone Law Firm, P.C., by Joseph H. Firestone, Esq., for the Petitioner

DECISION AND DIRECTION OF ELECTION

Pursuant to Section 12 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212, this case was heard on May 31, 2005, 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 hearing and briefs filed by the parties on or before August 12, 2005, the Commission finds as follows:

The Petition and Position of the Parties:

In the petition, filed on November 18, 2004, and amended on February 18, 2005 and April 5, 2005, the South Lyon Michigan Educational Support Personnel Association/National Education Association (hereafter "MESPA") seeks to accrete to its bargaining unit of nonsupervisory clerical, paraprofessional, and other support employees of the South Lyon Community Schools "all tutors, computer facilitators, hall monitors, career facilitators, parking lot attendants and the band assistant/secretary." The Employer opposes the inclusion of the band assistant, hall monitor, and parking lot attendant positions. The Employer asserts that the petition is inappropriate because the band assistant/secretary is already part of a different bargaining unit and because the hall monitors and parking lot attendant lack a community of interest with Petitioner's unit. The Employer further contends that the petition should be dismissed because MESPA failed to include the playground/lunchroom supervisor position, which is currently unrepresented for purposes of collective bargaining, thereby fragmenting the proposed unit.

Findings of Fact:

MESPA Bargaining Unit

Petitioner MESPA and the Employer, South Lyon Community Schools, are parties to a collective bargaining agreement covering the period July 1, 2002 to June 30, 2007. The recognition clause of that agreement describes the bargaining unit as follows:

[A]ll employees engaged in work related to secretarial and clerical duties, including bookkeepers, all full and regularly scheduled part-time paraeducators, and day-care center caregivers and site leaders but excluding noon hour/playground paraeducators, high school students when employed in the day care center, the secretary to the Superintendent and the Administrative Services Secretary to the Assistant Superintendent for Administrative Services.

Secretaries and data processors employed by the school district are responsible for answering telephone calls, computer data entry, typing, taking messages, and giving out medications to students. Clerks perform general office work, typically answering telephone calls, taking messages, and some light typing. Bookkeepers are primarily responsible for maintaining accounts payables and receivables. Classroom paraeducators work as teacher aides, primarily helping special education students assimilate the lesson plans prepared by the teachers. Transportation paraeducators supervise children, particularly those with special needs, on school buses. Caregivers work for the "Kids' Club," a self-funded program which provides childcare before and after school. They are responsible for planning events, administering recreational activities, and monitoring homework time. Site leaders, who are also part of the MESPA bargaining unit, oversee caregivers.

The hourly wage rate for positions within Petitioner's bargaining unit ranges from \$8.14 to \$20.55 per hour. Work schedules for bargaining unit members vary by position. Office personnel, including bookkeepers, secretaries, data processors, and clerks, generally work eight or more hours per day, forty weeks a year. Caregivers work approximately one hour each morning and from approximately 2:30 p.m. to 6:00 p.m., including summers. Transportation paraeducators work only during the morning and afternoon school bus runs, while the classroom paraeducators work approximately six hours a day while school is in session.

Other Bargaining Units

In addition to the MESPA unit, there are two other bargaining units of employees of the South Lyon Community Schools. The South Lyon Educational Support Personnel Association (SLESPA) represents all bus drivers and custodians employed by the school district, while the South Lyon Education Association (SLEA) represents a bargaining unit comprised primarily of the Employer's teachers. The SLEA and the school district are parties to a collective bargaining agreement covering the period September 1, 2004 through August 31, 2008. The recognition clause of that agreement describes the unit as consisting of "all certified teaching personnel under contract" and specifically excludes clerical employees.

The collective bargaining agreement between the Employer and the SLEA provides that, in addition to their normal teaching schedule, teachers may consent to the assignment of

extracurricular duties. Section 7.4(A) of the contract states, “The basic salaries of teachers involved in extra-curricular duties covered by this Agreement are in set forth in Appendix C.” Appendix C contains a list of the positions involved with extra-curricular activities and sets out the compensation for which each position is eligible, based upon a percentage of a base salary set forth in the agreement. Individuals who are not otherwise employed in SLEA classifications, including teachers from other school districts, hold some of the Appendix C positions. Such employees have not been required to pay dues or fees to the SLEA.

Band Assistant

The position of band assistant has been included in Appendix C of the SLEA contract since 1999, when the South Lyon High School Marching Band was first established.¹ The band assistant position, which was previously referred to as “band secretary,” has been held by Audrey Klug since its inception. Initially, Klug, who does not hold any other position with the school district, was hired to work with the marching band one hour per week. As the band began to participate in more events, Klug’s workload increased and her schedule was changed to ten hours per week, or 400 hours per year. However, Klug estimates that she actually works an additional 400 hours per year on an unpaid basis.

As band assistant, Klug’s duties include maintaining office and student records; handling accounts receivables, including money collected via fundraising and band fees; assisting the band director with purchasing supplies and equipment; maintaining computer data files, including student medical and emergency information and band equipment inventory; recruiting parents to help with band activities; communicating with students, parents, and local businesses concerning upcoming performances and events; and managing band uniforms, including fittings, distribution, and cleaning.

Klug is supervised by the band director. Her work schedule is somewhat erratic; she may work 12 hours one day and then be off the next day. There are approximately 35 to 40 major events involving the marching band during the year, plus rehearsals, and Klug’s schedule is generally based around those events. During the marching season, she typically works a full day at the high school. Klug also works from home and while traveling with the band. Most of Klug’s work hours are completed by November of each year, which is when the marching season concludes.

Over the years, Klug has signed numerous teacher supplementary assignment agreements and teacher supplementary compensation forms setting forth the salary she is to receive as band assistant. When Klug first began working in that position, she was compensated at a rate of one percent of the base salary set forth in Appendix C of the 1999-2002 contract, or \$386.50 per year. Although the current SLEA contract still lists the band assistant position as earning one percent of the base salary, Klug is now compensated at a rate of thirteen percent of the base salary, or approximately \$5,324.41 per year.

¹ At the start of the hearing in this matter, the SLEA indicated that it has no objection to the inclusion of the band assistant in the MESPA bargaining unit.

Hall Monitors

Hall monitors are responsible for supervising students within the school buildings and enforcing the student and building codes of conduct. The duties of the hall monitor position include: ensuring that students who are in the hallways have a pass; monitoring bathrooms for smoking or drug use; making sure that the school doors are locked; picking up attendance records from substitute teachers; delivering messages to students from parents; and supervising students during examinations and assemblies. Hall monitors carry radios and are in constant contact with other school personnel. Hall monitors do not discipline students directly; rather, they refer students to an administrator for that purpose.

Hall monitors report directly to the principals of the schools to which they are assigned. Their hours of work are from 7:30 a.m. to 2:30 p.m. For the 2004-2005 school year, the wage rate for the hall monitor position ranged from \$9.52 to \$11.53 per hour.

The hall monitor at South Lyon High School, Carol Nonis, was previously employed as a playground/lunchroom supervisor at one of the district's two middle schools. In addition, the hall monitor who is currently assigned to Millennium Middle School also works at that school in the capacity of playground/lunchroom supervisor.

High School Parking Lot Attendant

Robert Roth has worked as the parking lot attendant at South Lyon High School since May of 2005. Roth arrives at school each day at 7:30 a.m. and collects parking fees from students and assigns them parking spots. Thereafter, he is responsible for monitoring the high school grounds, including the school's four parking lots. Roth checks to make sure those students who are leaving the building have properly signed out and that suspended students do not attempt to enter the school. Roth is required to have a familiarity with the disciplinary rules set forth in the student handbook. If he discovers that a student has engaged in prohibited conduct, such as reckless driving, parking in an illegal space, or leaving school grounds without permission, he writes a disciplinary referral and submits it to the principal. In the event that an emergency lockdown of the high school is required, Roth is responsible for ensuring that no one enters or leaves the building.

As part of his duties as parking lot attendant, Roth is also required to supervise the in-school detention program four days a week, from 2:30 p.m. to 3:30 p.m. Students may be required to serve detention for a period of between ten minutes to one hour each session. Once a student has completed his or her detention period, Roth signs and stamps a verification slip and submits it to that student's teacher or to the principal, depending on who sent the student to detention. Roth also keeps records detailing the time each student has spent in the detention program throughout the school year.

To carry out his duties, Roth is assigned a radio, which he regularly uses to communicate with secretaries, hall monitors, attendance officers, and administrators. Roth also has occasional contact with the transportation paraeducators. He is supervised and evaluated by the high school principal and the assistant principal. For the 2004-2005 school year, Roth earned \$13.14 per hour.

Playground/Lunchroom Supervisors

The playground/lunchroom supervisor position is responsible for supervising the conduct of students within the school district's lunchrooms and on its playgrounds. The wage rate for the playground/lunchroom supervisor position during the 2004-2005 school year ranged from \$9.52 to \$11.53 per hour, the same wage rate applicable to the hall monitors. At least one of the playground/lunchroom supervisors within the school district carries a radio.

Discussion and Conclusions of Law:

The Employer argues that the band assistant position may not be accreted to Petitioner's bargaining unit because, as an Appendix C position, it is already a part of the SLEA instructional unit. We disagree. Section 7.4 (A) of the SLEA contract states that the basic salaries of *teachers* involved in extra-curricular activities are set forth in Appendix C. The recognition clause of the SLEA contract defines the bargaining unit as all certified *teaching* personnel and excludes clerical employees. Because the band assistant's duties are primarily clerical in nature, not instructional, the position falls within that exclusionary language. No other provisions of the contract, including the obligation to pay union dues and fees, have been applied to her. Further, the band assistant position has evolved over the years. The band assistant has significantly increased her hours, and although the SLEA contract lists the band assistant position as earning one percent of the base salary of teachers, she is now compensated at thirteen percent. Finally, the SLEA has no objection to the inclusion of the band assistant in the MESPA unit. Under these circumstances, we consider Appendix C to constitute a method of calculating pay for extra-curricular work rather than an indication of bargaining unit status. We find that the band assistant shares a community of interest with the unit petitioned for and is appropriately included in that unit.

With respect to the hall monitor and high school parking lot attendant positions, the Employer contends that the petition should be dismissed because the disputed positions do not share a community of interest with Petitioner's bargaining unit. A primary objective of the Commission is to constitute the largest 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. *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. See e.g. *Covert Pub Schs*, 1997 MERC Lab Op 594, 601; *Grand Rapids Pub Schs*, 1997 MERC Lab Op 98, 106. In making a unit placement determination, we are 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. *City of Lansing, Bd of Water and Light*, 2001 MERC Lab Op 13; *City of Zeeland*, 1995 MERC Lab Op 652.

With respect to support employees of a school district, we have long held that broad units of noninstructional personnel are presumptively appropriate. *Northville Pub Schs*, 2001 MERC Lab Op 380; *Waverly Cmty Schs*, 1989 MERC Lab Op 819. See also *Beecher Cmty Sch Dist*, 1995 MERC Lab Op 174 (school security aids responsible for patrolling halls and grounds included in a unit of custodians, clerks, and maintenance employees) and *Roseville Cmty Schs*, 1985 MERC Lab Op 998 (parking lot attendant included in a unit of custodians and maintenance employees,

secretaries, clericals, cafeteria employees, and bus drivers). Here, the skills, duties, work hours, and wages of the hall monitors and parking lot attendant, as described in the record, do not differ in any significant respect from the positions in the MESPA unit, and the Employer has set forth no factors sufficient to destroy the presumption of appropriateness that exists in this matter. While it is conceivable that the positions sought by MESPA might also share a community of interest with the bus drivers and custodians in the SLESPA support unit, that union has not sought to represent the hall monitors and parking lot attendant. Absent a showing of extreme divergence of community of interest between an existing unit and a residuum of unrepresented employees, our policy has been to allow accretion, rather than leave the unrepresented employees without collective bargaining representation. See e.g. *Chelsea Sch Dist*, 1994 MERC Lab Op 268, 276.

Although we find that the hall monitors and high school parking lot attendant share a community of interest with the support personnel represented by Petitioner, we agree with the Employer that the unit sought herein by MESPA is too narrow in that it fails to include an unrepresented residual position, the playground/lunchroom supervisor. The record indicates that the work of the playground/lunchroom supervisors is substantially similar to that of both the hall monitors and the parking lot attendant. The primary function of each of these positions is to supervise the conduct of students outside of the classroom setting. The only material difference between the hall monitors, parking lot attendant, and playground/lunchroom supervisors is the fact that the positions work in different areas of the schools. In fact, one employee works as both a hall monitor and a playground/lunchroom supervisor. Moreover, the current hall monitor at South Lyon High School previously worked as a playground/lunchroom supervisor. With respect to wages, the playground/lunchroom supervisors and the hall monitors both earn between \$9.52 and \$11.53 an hour, while the parking lot attendant is paid only slightly more at \$13.14 per hour. All three positions work only during the hours when students are in school. Like the hall monitors and the parking lot attendant, at least one of the playground/lunchroom supervisors carries a radio to facilitate regular communication with other school personnel.

We find no merit to Petitioner's contention that any community of interest which may exist between the playground/lunchroom supervisors and the MESPA unit is negated by the fact that the playground/lunchroom supervisors work substantially fewer hours than other unit positions. Although the record indicates that the playground/lunchroom supervisors work only during the lunch hour and while the students are outside on the playground, we have consistently found that regularly scheduled part-time employees have a substantial and continuing interest in their employment such that they should be included in a unit of regular full-time employees. See e.g. *Lansing Twp*, 18 MPER 12 (2005); *Grand Traverse Medical Care Facility*, 1987 MERC Lab Op 825. We also disagree with Petitioner's contention that the recognition clause of the parties' contract, which excludes the playground/lunchroom supervisors, prohibits the accretion of the playground/lunchroom supervisors into the MESPA unit. An exclusion in the recognition clause of an agreement, standing alone, does not constitute a waiver of representation of unrepresented employees during the contract term, which would bar an election. *Lansing Twp, supra*; *City of Detroit*, 1999 MERC Lab Op 81, 87.

Where a petition seeks a unit that is too narrow, we generally direct an election in the appropriate unit, giving the petitioner additional time after the date of the direction of election to indicate whether it is interested in participating in an election in an expanded unit and to supply an additional showing of interest. *Livonia Pub Schs*, 1988 MERC Lab Op 1068, 1086. See also *City of Detroit (Project Assistant)*, 1973 MERC Lab Op 282; *City of Holland (Bd of Pub Works)*, 1982

MERC Lab Op 1638. But see *Western Michigan Univ*, 1987 MERC Lab Op 1029 (petition seeking only a portion of public safety clerical-technical employees dismissed). Having concluded that the band assistant, hall monitor, parking lot attendant, and playground/lunchroom supervisor positions constitute an appropriate group for accretion by election to Petitioner's existing unit, we hereby direct an election among those employees, subject to MESPAs establishing a showing of interest among this group. Accordingly, the Employer shall provide a list of employees in the expanded group no later than fourteen (14) days from the date of this decision. Petitioner then has fourteen (14) days from the date of receipt of that list to supply a showing of interest to support its participation in an election for the expanded unit. If Petitioner fails to establish an adequate showing of interest in this expanded group, its petition shall be dismissed.

ORDER

We conclude that a question concerning representation exists within the meaning of Section 12 of PERA. Accordingly, we hereby direct an election in the following group of employees:

All tutors, computer facilitators, hall monitors, career facilitators, parking lot attendants, lunchroom supervisors, and the band assistant.

The above employees may vote pursuant to the attached Direction of Election whether they wish to be represented for purposes of collective bargaining by South Lyon MESPAs/NEA. If the employees vote to be represented by Petitioner, they will be considered to have voted to be added to Petitioner's existing unit of clerical, paraprofessional, and other support employees, as described above, and the notice of election will so indicate.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Nora Lynch, Commission Chairman

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____