

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

In the Matter of:

WAYNE COUNTY COMMUNITY COLLEGE DISTRICT,  
Public Employer,

-and-

Case No. UC04 F-022  
UC05 A-002  
UC05 A-003

WAYNE COUNTY COMMUNITY COLLEGE  
PROFESSIONAL AND ADMINISTRATIVE  
ASSOCIATION, AFT MICHIGAN, LOCAL 4467,  
Labor Organization- Petitioner.

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APPEARANCES:

Floyd E. Allen & Associates, by Shaun P. Ayer, for the Public Employer.

Law Offices of Mark Cousens, by Gillian H. Talwar, for the Petitioner.

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

Pursuant to Section 12 and 13 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212 and 423.213, this case was heard on September 21, 2005, before Roy L. Roulhac, and briefed before Doyle O'Connor<sup>1</sup>, Administrative Law Judges for the Michigan Employment Relations Commission. Based upon the entire record, including the transcript of hearing and briefs filed by the parties on or before February 13, 2006, the Commission finds as follows:

The Petition and Positions of the Parties:

Three petitions, filed on June 15, 2004 and on January 19, 2005, were consolidated for hearing. The petitions filed by the Wayne County Community College Professional and Administrative Association, AFT Michigan, Local 4467 (Petitioner or Union), sought clarification of the status of several positions or classifications which were variously asserted to have been newly created, significantly changed, or improperly removed from the existing bargaining unit.

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<sup>1</sup> Pursuant to Commission Rule 423.174 this matter was reassigned to Administrative Law Judge O'Connor following the retirement of Administrative Law Judge Roulhac.

The petition in UC04 F-022, filed June 15, 2004, sought to accrete to the existing bargaining unit the job titled systems project specialist.<sup>2</sup> The next two consolidated petitions arose from a restructuring by the Employer in August of 2004. The petition in UC05 A-002, filed January 19, 2005, as amended, sought to accrete to the existing bargaining unit the jobs titled: director of academic computing and director, systems administration<sup>3,4</sup>. The petition in UC05 A-003, also filed January 19, 2005, as amended, sought to accrete to the existing bargaining unit the jobs titled: controller and associate vice-chancellor for accounts receivable.

The Wayne County Community College District (Employer or College) asserts that the positions lack a community of interest with Petitioner's existing unit, are expressly excluded by the parties' collective bargaining agreement, or are supervisory and as such inappropriate for inclusion in the unit.

The Union asserts that the controller position was long vacant, and that when the title was reinstated as part of a reorganization, the primary duties assigned to the position remained the same as those previously performed by a former bargaining unit position titled chief accountant. The Employer asserts that the position of controller is a "high-level financial position" that has been historically excluded from the unit, although the Employer does not claim that the historic exclusion is based on executive or confidential status. The Employer does assert that the controller possesses supervisory authority over one part-time and one full-time bargaining unit position.

The Union asserts that the associate vice-chancellor for accounts receivable is in essence a replacement for the now unfilled position of accounting supervisor. However, the Employer insists that the job is a new position in an existing excluded classification and, therefore, is properly excluded from the unit.

It is undisputed that the position of director of academic computing was previously a bargaining unit position which had also been long vacant and which was also resurrected in the August 2004 reorganization. The Employer asserts that the reconstituted position should now be excluded as a supervisor as a large part of the incumbent's responsibilities consist of supervising various projects to ensure they are done in a timely fashion and within the preset budget.

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2 The petition in UC04 F-022 initially also sought accretion of several additional job titles. The petition was ultimately not opposed by the employer as to the program director, urban teacher program; the director of trade programs; and the English as a second language director position. Further, the petition was withdrawn as to the following positions: associate director of financial aid; assistant to the president; library technician; and audiovisual technician.

3 The position of director, systems administration, as it is referred to in the formal job description and in this decision, is referred to by the Union as *director/systems administrator* and by the Employer as *systems administrator director*.

4 The Petition in UC05 A-002 also sought the inclusion of the payroll supervisor title, but that proposed inclusion in the unit was ultimately agreed to by the employer. The petition also initially sought clarification of the unit placement of the district director for student accounts with the parties agreeing that the position did not currently exist.

The Employer opposes inclusion of the new classification of systems project specialist, asserting that it does not share a community of interest with the positions in the existing unit. It argues that this classification requires less education and training than other information technology positions in the bargaining unit.

Finally, the Employer asserts that the petition is untimely as to the director, systems administration classification, but offers no other basis for excluding this classification from the existing unit or for leaving it in an unrepresented residual group.

#### Findings of Fact:

The Union represents a broad bargaining unit of community college professionals and administrators consisting of over one hundred separate classifications of directors, coordinators, programmers, computer specialists, administrators, analysts, deans and managers. The original 1971 certification of the unit by the Commission included “all administrators” and excluded “executives and confidential employees.” That certification was supplemented by an accretion in 1988 that included all personnel “performing duties within the professional and administration community”.<sup>5</sup> The subsequent collective bargaining agreement between the parties defines the unit instead by a listing of job titles that are either included or excluded. The practice of the parties in specifying inclusion by job titles has led to a proliferation of disputes over the inclusion of new or arguably changed positions.<sup>6</sup> Regardless, the unit is in essence a single unit including all full-time and part-time non-instructional non-supervisory professional and administrative personnel at the College.

The contract between the parties provides for salary scale categories of A-1 through A-5 and B-1 through B-6 with five steps within each of those eleven categories. The relevant 2004-2005 salaries for full-time employees range from an A-1 starting rate of \$28,923 to a B-6 at step five salary of \$87,104.

The consolidated cases involved fourteen disputed positions. The parties agree that three of the positions should be placed in the unit (program director- urban teacher program, director of trade programs, and English as a second language director); that two should be excluded (associate director of financial aid and assistant to the president); that two were properly placed in another bargaining unit (library technician and audiovisual technician); and that one position was presently non-existent and, therefore, not in dispute (director-student accounts).

The five positions remaining in dispute fall into either the fields of accounting (controller and associate vice chancellor of accounts receivable) or computing-information technology (director of academic computing, systems project specialist, and director, systems administration).

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<sup>5</sup> In February of 2000, the parties additionally entered into a settlement agreement, related to a prior unit clarification petition filed by the Employer (UC98 C-15), that listed specific positions which the parties agreed were supervisory and, therefore, properly excluded from the unit.

<sup>6</sup> The Union asserted without contradiction, but did not factually establish, that there are currently 143 positions, out of a total of 570 full-time positions, which are claimed by the Employer to be exempt as confidential or executive.

## 1. Controller

Mohammed Mirza holds the controller position. Before August of 2004, Mirza held the title of chief accountant, which was a bargaining unit position. Mirza's position was then re-titled controller, a position that had been vacant for three to four years. The title of chief accountant was then left unfilled and allowed to lapse. As controller, Mirza reports to the same individual he reported to as chief accountant.<sup>7</sup>

The job description for controller provides a listing of primary responsibilities: to review requests for expenditures for personnel and non-personnel items; to certify that funds exist in the cost center to cover the expenditure; to oversee accounting operations; to review and analyze short-term investments and banking requirements; to initiate the improvement of the accounting system; to oversee payroll operations; to assure internal fiscal controls; to assure oversight of restricted funds; to conduct all coordination related to College fiscal operations; to manage all College fiscal operations; and, to undertake additional duties as directed by the president. No testimony was offered regarding the actual duties carried out by the controller position as it was configured before it was left vacant for several years.

The job description for Mirza's former classification of chief accountant provided the following broad functions and responsibilities: assists in the financial and accounting coordination of all funds of the College; ensures accurate and timely reporting of all accounting reports; supervises accounting staff as assigned; plans and maintains accounting functions and operations as assigned; processes and oversees accounting activities related to restricted and contract training funds; reconciles various final reports with the general ledger and makes the necessary adjustments; reviews or prepares all bank account reconciliations; analyzes reconciling items and prepares adjusting entries; maintains the general ledger; prepares various management reports; maintains and oversees the maintenance of payroll and accounts payable outstanding check reports and updates paid/void items monthly; prepares State expenditure classification reports; may perform cash transfers as assigned; performs other related duties as assigned.

Two employees, one in the bargaining unit and one not, report to Mirza as controller, just as they did when he was titled chief accountant. Mirza assigns and prioritizes the day-to-day work of these two employees and signs their time sheets. Mirza verbally counseled one employee about coming to work on time and did his own informal evaluation of an employee, but had not done a formal evaluation as required of supervisory employees. Mirza's level of authority over subordinate employees is unchanged from the level he had as chief accountant.

## 2. Associate Vice Chancellor of Accounts Receivable

The position of associate vice chancellor of accounts receivable, held by William Cartwright, was newly created in August of 2004. There are two pre-existing positions titled associate vice chancellor for instruction and associate vice chancellor for career programs, both of which were treated by the parties as excluded from the unit.

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<sup>7</sup> The chief accountant position was paid at the B-6 salary range, which is the highest in the unit. There is no evidence on the salary range for the controller position.

The collective bargaining agreement has a general exclusion which reads, “senior administrative staff which includes but is not limited to” a set of specific titles including the singular position of “associate vice chancellor” and the singular position of “senior associate vice chancellor,” along with several specific assistants to the vice chancellor positions, without any express reference to the two existing specific associate vice chancellor positions.

The employer’s job description for the associate vice chancellor of accounts receivable position, which was not adopted until after the unit clarification petition was filed, provides that the new position is responsible for and controls activities of centralized accounts receivable and collection functions; establishes work unit goals and objectives; supervises employees, monitors activities and satisfies reporting requirements, etc. The now unfilled position of accounting supervisor had a job description which provided that it would: supervise and coordinate the processing of all college finances, accounts, and liabilities; identify new and improved methods for the controlling of these functions; and supervise all clerical efforts related to accounting procedures; etc. The minimum qualifications for both positions included a bachelor’s degree in business and several years of accounting experience. Both job descriptions require specific supervisory experience as a minimum qualification.

The record establishes that the position in question is paid at the same pay grade as at least one of the pre-existing excluded associate vice chancellor positions. Cartwright reports to the vice chancellor, as does one of the other two associate vice chancellors. He attends committee meetings with the other vice chancellors that are not attended by anyone in the bargaining unit.

Cartwright’s position only requires a bachelor’s degree, while the job descriptions of the other two vice chancellors require a master’s degree for one (with PhD preferred) and a PhD as a minimum requirement for the other. While the job description for Cartwright lists supervisory duties, only three lower level non-bargaining unit employees report to Cartwright<sup>8</sup>, and there was no evidence that Cartwright actually exercised supervisory authority even as to those non-bargaining unit employees.

The Employer claims the position to be a part of a historically excluded group of “senior administrative staff.” However, there is nothing in the record that establishes any agreed upon definition of “senior administrative staff.”

### 3. Director of Academic Computing

The position of director of academic computing was previously a bargaining unit position. The incumbent sought and was granted an upgrade in pay and status to information support manager, while still remaining in the unit. The position then remained vacant for some period of time, until it was resurrected and filled in the August 2004 reorganization, at which point the Employer unilaterally placed it outside the unit. There was no indication that either the formal job description or the duties actually performed by the position underwent any significant change.

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<sup>8</sup> Those positions are an accounting specialist, a financial analyst, and a senior financial analyst.

The job posting and the job description prepared by the Employer describe entirely administrative duties with no reference to supervisory responsibility. The August 2004 job posting provided that the position is responsible for planning, use, acquisition, and maintenance of technological resources for campus student learning centers and collaborating with senior academic administrators and faculty to develop the overall academic technology. The related job description details the position's specific duties including providing strategic leadership and direction relative to learning technologies; training faculty and staff; coordinating various instructional technology programs; ensuring that there are adequate resources in classrooms; conducting faculty and student surveys to evaluate satisfaction with current training; writing status reports and making presentations on the status of technology; managing and supervising projects to ensure all projects are done on time and within budget. A minimum qualification of a Master's degree in a computer, business, or instructional technology related field is required. There is no reference in the job description to any supervisory duties or experience required.

The Employer asserts that the incumbent director of academic computing now supervises her predecessor in that position, Mary Thakady. Thakady was promoted to the higher ranking and higher paid bargaining unit position of information support manager. As a manager, Thakady is paid at a salary grade more than \$15,000 higher than that of the new director of academic computing, whom the employer asserts is Thakady's supervisor. There was no evidence that the director of academic computing actually exercises any supervisory authority over the higher ranked information support manager.

#### 4. Systems Project Specialist

There are several systems project specialist positions. The position posting describes the duties as: participates in staff or user group meetings and training sessions involving technical subject matters; assists in the development of technical training materials and technical documents; assists in monitoring the development and implementation of new interface applications; assists in establishing technical policies pertaining to the development of new and modifications of existing interface applications; assists in implementation of multi-vendor software applications; conducts group and individual training on new hardware and software; assists in the coordination of hardware and software updates and provides technical guidance and one-to-one training; monitors problems and assists coordinating the involvement of staff and vendors to ensure effective implementation of new or enhanced systems; and participates in professional development activities.

These positions assumed most, if not all, of the duties of the former bargaining unit titles of computer lab coordinator and computer lab assistant which were eliminated in the reorganization. The positions both formulate and implement new or modified computer applications for use by College staff. The individuals also participate in troubleshooting, training, and professional development activities for the staff.

The job posting for the systems project specialist requires an Associate's Degree or equivalent technical training and experience. The systems project specialists are paid at a range within the A-3 or A-4 pay ranges encompassed by the unit. There are some computer technology related classification titles in the unit that are paid more than the systems project

specialist positions and others that are paid less than the systems project specialist positions. The unit includes approximately eight positions in the Information Technology Department.

The Employer asserts that other computer technology related positions in the unit require a minimum of a Bachelor's degree or higher. In fact, several of the job descriptions submitted as joint exhibits detail the degree requirement for unit positions as being an Associate's Degree (computer lab coordinator; academic computer campus coordinator). Others job descriptions require an Associate's Degree or equivalent (systems project specialist; manager of technical systems), while others require a Bachelor's degree or equivalent (technical director, MIS; lead programmer/analyst; NT systems administrator; coordinator for multimedia management and digital archiving; microcomputer applications specialist).

#### 5. Director, Systems Administration

The job description for the director, systems administration classification, which at present encompasses two incumbents, describes the position as being responsible for maintaining the College's computer networks with an emphasis on planning and review of advanced information technology. Like the director of academic computing, this position reports to the District director for information technology.

The Employer filled one position in the disputed classification in 2003. Union President Mary Gill was unaware of the creation of the position at that time. After a bargaining unit member transferred in August 2004 into the second position created in this classification, and that fact came to Gill's attention, the petition was promptly filed, in January 2005. The Employer admits that it failed to notify Gill of the initial creation of the position, despite contract language in which the Employer expressly agreed at Article II, "In the event that the Board... creates a new position which may have a possible 'community of interest' within the Bargaining Unit, the Director of Human Resources...shall inform the President of the Union of this position prior to announcing it publicly...."

#### Discussion and Conclusions of Law:

In designating a unit as appropriate for collective bargaining under Section 13 of PERA, a primary objective 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. *South Lyon Cmty Schs*, 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. *Covert Pub Schs*, 1997 MERC Lab Op 594, 601; *Grand Rapids Pub Schs*, 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 College*, 2000 MERC Lab Op 165. A restructuring or administrative reorganization of an employer, such as occurred at the Employer in August 2004, may impact

bargaining unit configuration and representation rights, creating unique issues that this Commission must resolve. *Ferris State Univ*, 2002 MERC Lab Op 263.

## 1. Controller

The Employer is correct in asserting that the controller position was historically not included in the unit and that it would ordinarily not be appropriately subject to a unit clarification petition. However, the controller position was long dormant. With the promotion of Mirza, the chief accountant position was eliminated, supporting a conclusion that sufficient work for the two related positions did not exist. The addition of duties to the existing bargaining unit position of chief accountant warranted an upgrade in status; yet, the position remains a non-supervisory professional position with authority only over day to day work assignments of one and one-half employees. The mere re-titling of a position to give it the title of a historically excluded position cannot be determinative of unit placement, especially where, as here, there are no relevant and substantial differences in the duties between the new and old classification titles given to Mirza's work. See, *City of Detroit, Department of Public Works*, 2001 MERC Lab Op 20; *City of Ann Arbor*, 16 MPER 17 (2003) (no exceptions).

With the new title of controller, Mirza undertook substantial additional duties related to the College's investments and finances; however, there was nothing in the record to support the claim that he had acquired actual supervisory authority or tasks different in kind or degree from the duties he performed when classified as chief accountant. The testimony was consistent with a comparison of the job descriptions for controller and for chief accountant which makes clear that both positions were high level technical administrative positions, and that neither position was designed to carry out supervisory type duties other than those ancillary to their primarily administrative duties.

As controller, Mirza exercises a level of control over workflow and the day-to-day activities of subordinates, including signing time sheets, much as he did when classified as chief accountant. The responsibility for routine assignments of work is not enough to demonstrate supervisory status. See *Berrien Co Sheriff*, 1999 MERC Lab Op 177; *Kalkaska Co and Sheriff*, 1994 MERC Lab Op 693. Responsibilities such as maintaining time cards, and granting time off, are insufficient to establish supervisory status. *Michigan State Univ*, 1999 MERC Lab Op 542, 547-548 (no exceptions); *Berrien Co Sheriff*, at 187.

The re-titling of the position appears to have been accompanied only by an increase in the level of administrative authority. The position recently re-titled controller is non-supervisory and is appropriate for inclusion in this unit of administrators and professionals.

## 2. Associate Vice Chancellor of Accounts Receivable

The position of associate vice chancellor of accounts receivable is an administrative position in the accounting field, which substantially replaces a former bargaining unit position. The minimum qualifications and established duties are comparable to those of other positions within the existing bargaining unit.

While the position has supervisory authority, it is exercised only over lower level non-bargaining unit employees. It is now well settled that the exercise of supervisory authority over non-unit employees does not require excluding a position from an otherwise non-supervisory unit. See e.g. *City of Midland (Police Dept)*, 1993 MERC Lab Op 601, 607.

As with the controller position, the Employer gave this new position the pre-existing title of associate vice chancellor. However, despite the fact that the two other positions titled associate vice chancellor have been historically excluded from the unit, there is no evidence of an agreement to exclude the specific position in question.

On balance, it does appear that this position titled associate vice chancellor for accounts receivable is largely a replacement for the former bargaining unit position of accounting supervisor, albeit with expanded administrative duties and organizational stature. There is no proper basis for excluding the position from the unit based on the duties performed.

### 3. Director of Academic Computing

The position of director of academic computing was previously a bargaining unit position. The position remained vacant for some period of time, until it was resurrected and filled in the August 2004 reorganization, at which point the Employer unilaterally placed it outside the unit, even though it had previously been included. The Employer's claim that the director is, or was ever intended to be, a supervisor is not supported by the record, including the Employer's own job posting for the position. The director of academic computing is an administrative position and should be in the bargaining unit.

### 4. Systems Project Specialist

The Employer makes no claim that the systems project specialists should be placed in another unit, which would leave this position in a residual unit. It is Commission policy, whenever possible, to avoid leaving positions unrepresented, especially isolated ones. *Charlotte Pub Schs*, 1999 MERC Lab Op 68; and *City of Muskegon*, 1996 MERC Lab Op 64, 70. When a newly created position shares a community of interest with a 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 College*, 1988 MERC Lab Op 533, 538.

The duties, pay ranges, and minimum qualifications for the systems project specialist classification make placement of it in the existing administrative and professional unit appropriate.

### 5. Director, Systems Administration

The only issue as to the inclusion of the director, systems administration is whether the petition was timely filed. There is no claim of a lack of community of interest, nor a claim of executive or confidential status. See *Lake Superior State Univ*. The classification is an admittedly newly created one and, therefore, appropriate for a timely unit clarification petition.

*Big Bay De Noc Sch Dist*, 17 MPER 81 (2004). PERA does not provide a specific time limitation for unit clarification; however, the Commission will not entertain such petitions where they are so untimely as to upset an established agreement or practice of the parties regarding unit placement. *Port Huron Area Sch Dist*, 1989 MERC Lab Op 763.

The Employer's assertion that the Union acted in an untimely manner cannot be accepted where the evidence establishes that the Employer withheld information from the Union regarding the creation of this job classification that it had contractually agreed to provide. The Union was unaware of the filling of the first position within this classification. The Union filed its petition within five months of actually becoming aware of the existence of the new classification. There is no basis for finding an implicit agreement by the Union to exclude the director, systems administration from its unit. The classification of director, systems administration is properly placed in this unit with comparable classifications.

**ORDER CLARIFYING UNIT**

The petition filed by Wayne County Community College Professional and Administrative Association, AFT Michigan, Local 4467 is granted. The bargaining unit is clarified to include the positions of: controller; associate vice chancellor of accounts receivable; director of academic computing; systems project specialist; and director, systems administration.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Christine A. Derdarian, Commission Chair

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

Dated: \_\_\_\_\_