

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

In the Matter of:

SAGINAW TOWNSHIP COMMUNITY SCHOOLS,
Public Employer

Case No. R98 B-15

-and-

MICHIGAN EDUCATION ASSOCIATION,
Petitioner-Labor Organization

APPEARANCES:

For the Employer: Masud, Gilbert & Patterson, P.C., by Gary D. Patterson, Esq.

For the Petitioner: White, Przyblowicz, Schneider & Baird, P.C., by Jeffrey C. Murphy, Esq.

DECISION AND DIRECTION OF ELECTION

Pursuant to Section 12 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212, MSA 17.455(12), this case was heard at Lansing, Michigan on April 24, 1998, before Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. Pursuant to Section 13 and 14 of PERA and based on the record, including briefs filed by the parties on or before June 15, 1998, the Commission finds as follows:

The Petition and Positions of the Parties:

The petition was filed on February 9, 1998 by the Michigan Education Association. Petitioner currently represents a bargaining unit of teachers employed by the Saginaw Township Community Schools. Petitioner seeks an election to accrete to this unit teachers and counselors employed at the Employer's Mackinaw Academy, an alternative high school and junior high, who teach courses leading to a diploma. Included in the petition are instructors in the Academy's nursing assistant program. Petitioner does not seek to represent Academy teachers teaching English-as-a-Second-Language (ESL) and Adult Basic Education (ABE) programs that do not lead to a degree.

Petitioner asserts that as certified teachers teaching high school and junior high school level courses to students seeking diplomas, the employees in dispute share a community of interest with its existing unit. The Employer's position is that the Academy teachers do not have a community of

interest with Petitioner's unit because the academy teachers use different teaching methods than teachers in the regular K-12 program, are mostly part-time, do not work a standard day, and are scheduled differently than K-12 teachers. The Employer also asserts that Academy teachers do not share a community of interest with the existing bargaining unit because the Academy is located in a separate building, Academy teachers do not have day-to-day interaction with members of Petitioner's unit, and the Academy has its own administrative staff. Also significant, according to the Employer is the fact that many of the academy's students reside outside the Saginaw Township Community School District's boundaries. The Employer also asserts that Petitioner has inappropriately sought to exclude the ESL and ABE teachers.

Facts:

Petitioner represents a bargaining unit described in the parties' contract as all certificated, non-certificated, and specially endorsed classroom teachers, guidance counselors, permanent substitute teachers, school librarians, speech and hearing therapists, daily substitute teachers, department facilitators, school social workers and school psychologists. Specifically excluded from this unit are the superintendent of schools, assistant superintendents, directors, administrative assistants, principals, assistant principals, administrative interns, nurses, and all other supervisory and executive personnel.

The Employer created the Mackinaw Academy about two years ago, after it dissolved its adult education consortium with the Carleton School District. The Mackinaw Academy is an alternative high school and junior high school for students needing an educational program less structured than that of a traditional high school. Approximately 250 students attend on a regular basis. At the Academy, students can take high school courses leading to a high school diploma. There is also a small junior high school program. The Academy includes a program in which students can simultaneously obtain both a high school diploma and a nursing assistants' certificate. The Academy also has a small ESL program and an even smaller ABE program. These two programs do not lead to diplomas.

The Academy has five full-time and 10 part-time instructors. There are eight teachers in the high school and three in the junior high. All of these instructors are required to be certified teachers. The Academy has one counselor, two nurses teaching in the nursing assistant program, and one individual who only teaches ESL. Two other instructors teach part-time in the ESL program and part-time in the high school.

The Academy is open to students 16 years and up. The majority of its students are 18-20 years old. There are, however, a few students who are older than 20. In the school year 1997-98 the Employer began a small alternative junior high program. Students in this program are between the ages of 13 and 15.

Students attending Mackinaw Academy reside either in the Saginaw Township District or in a surrounding school district. In 1997-98, the majority of the students were from outside the

Employer's district limits. Mackinaw Academy's diploma lists Saginaw Township Community Schools as the granting school district. Students from the Employer's traditional high school, Heritage High, may attend Mackinaw only with a referral from a counselor, unless they have dropped out of school for a semester or more. Credits from Mackinaw are transferrable to Heritage, and vice-versa, so that students may attend Mackinaw for a while and then return to Heritage. This, however, is unusual. In addition, some students from Heritage High attend Mackinaw High to pick up the credit or two they need for a diploma from Heritage High.

The Employer does not consider Mackinaw Academy to be part of its K-12 program. Unlike other schools operated by the Employer, Mackinaw Academy has a director, not a principal. While school principals report directly to the Assistant Superintendent, the director of the Academy reports first to the Employer's Director of Community Services. The Employer receives state funding for the Academy on a per-pupil basis the same way it receives funding for its K-12 program. For state aid purposes, the Academy is not considered a separate entity, and any funds not expended on Academy programs must be paid over to the Employer's general fund. However, the Academy has its own budget, approved by the Employer's Director of Finance, and state aid for Academy pupils is credited directly to the Academy's account. Because of its popularity and growing ability to attract students, the Academy is self-supporting.

Mackinaw Academy, including the alternative junior high school, is physically located in a large building which also houses the Employer's Sherwood Elementary School, the District's latchkey program, and several other community education programs. Rent for the space and utilities is paid from the Academy's budget into the Employer's general fund.

Except for the absence of teacher work days, the calendar for Mackinaw Academy is the same as for the Employer's K-12 program. Instead of semesters, however, the Academy has one fall and one winter enrollment period. The winter enrollment period does not necessarily coincide with the start of the second semester in the K-12 program.

The class offerings at the Academy are designed to allow students at the Academy to pass the state MEAP test and to receive a state-endorsed diploma. A Mackinaw Academy diploma requires 20 credits while a Heritage High diploma requires 22. However, the content of courses taught at the Academy usually differs from the content of the same courses taught at Heritage High. The Academy's curriculum is tailored specifically to prepare students to enter the workforce or to succeed at the community college level. For example, while the Academy teaches both geometry and algebra, its courses don't include all the aspects of these subjects typically taught in a traditional high school course. Delta Community College regularly provides the Academy with assistance in developing its curriculum.

The structure of the high school program at Mackinaw is radically different from that of Heritage High. There are no attendance requirements for students in the regular high school program

at Mackinaw, there are no lectures, and there are no classes in the traditional sense.¹ Rather, the high school consists of various “labs”: a math lab, an English lab, a science lab, a social studies lab, and a business/computer lab. There are also ESL classes which are held from 8:30 a.m. to 12:00 p.m., Monday through Thursday. There are no ABE classes; ABE students attend regular high school labs. The labs open between 9:00 a.m. and 10:00 a.m. and close between 5:00 and 7:30 p.m., Monday through Thursday. Every lab has a different schedule and is open at different times on different days of the week. The high school labs are all closed on Friday. Each lab is staffed at all times by one certified teacher. There is a lead teacher for each lab, and that lead teacher spends most of his or her time in that lab. However, other teachers also teach in each lab. For example, at any given time the English lab may be staffed by the lead English teacher, by another teacher who works in the social studies lab as well, or by a third teacher who also teaches ESL.

Students enrolling in the Academy’s high school program must register for classes. Unless a student has a specific reason, such as transportation or child care problems or a work schedule conflict, they are registered for six classes. However, after enrolling, a student is permitted to come and go as he pleases and to work at his own pace. Within each lab there are folders containing course outlines for the courses being taught in that lab. The social studies lead teacher testified that in her lab, for example, eight different social studies’ courses were being taught during the spring of 1998. During this period some students were enrolled in one social studies course, and some in more than one. Students come into a lab, pick up the course folder for a class in which they are enrolled, and work independently following the course outline or syllabus. The lab teacher is available to answer questions and to provide individualized instruction as needed. Lab teachers regularly sit down with individual students, go over the work they have done, and point out errors. From time to time lab teachers may schedule a field trip or show a film. Lab teachers also have the discretion to give unit tests and to assign term papers or other projects.

The record indicates that lab teachers are generally aware of how all the students working in their labs are progressing. When a student has completed the course outline and feels that he or she has mastered the subject matter, the student takes a proficiency test which is administered by the lab teacher. The lab teacher may orally quiz a student to see whether they are prepared, and he or she may suggest that the student take more time to review a particular area before taking the test. However, the decision whether to take the proficiency test is the student’s. After the student takes the proficiency test, it is graded by the lab teacher. Seventy percent is considered passing, 80% to 90% is a B, and over 90% is an A. If the student does not receive a passing grade, the student may go back and review the material and retake the test at a later date. Unlike a student in a traditional high school who must complete a course within a semester or retake the course, an Academy student need not complete a class within a particular enrollment period. He or she may finish earlier, or may take more time as needed. However, a student who is not showing progress is dropped from the

¹ The nursing program is conducted in accord with Department of Public Health regulations which strictly prescribe both the curriculum and the number of classroom and clinical hours required. However, although the nursing classes are traditional classes, nursing students complete the other coursework they need for high school diplomas in the labs.

program.

Attendance is taken by hall monitors as the students come in the door at the beginning of the morning, the afternoon, and the evening sessions. However, students are not required to spend any particular amount of time in the classroom or in any particular classroom. They may move around at will. Some students choose to spend all their time in a particular lab until they complete a course, while others move from one lab to another within the course of a day. Students are not required to do only math work in the math lab, for example. Students may and do choose to work on course work in one subject in the lab room for another subject. The lab teacher in that room may assist them if they have problems, but is not required to do so. Since there are no attendance requirements, theoretically students may simply pick up the course outline and complete the course work at home, returning only to take the proficiency test.

As indicated above, teachers in the Academy's high school program do not prepare or give lectures. Teachers in the Academy's high school program provide individualized instruction in the labs. They may also arrange and supervise field trips. Academy teachers do not prepare the day-by-day lesson plans required of teachers in a traditional program. However, Academy teachers work together to prepare and revise course outlines and syllabi for each course. The record indicates that they may individualize them for a particular student. Academy teachers do not prepare or grade daily assignments, and are not required to give midterm tests or quizzes. They may assign papers or special projects, which they then grade. They may also, at their discretion, give unit tests. They also administer and grade the proficiency exam which students must pass for each course.

Because the philosophy of the school is based on students' taking responsibility for their own progress, Academy teachers do not hold parent-teacher conferences or prepare any kind of written report on a student's progress. In fact, when a minor student enrolls in the Academy, his parents are specifically advised that they should not expect to be contacted if there is any type of problem with the student or if he does not attend. However, parents are advised that they can call at any time and find out how the student is progressing. Teachers are not expected to contact parents, although they may do so, but they regularly call students directly if the student has not shown up at school for some time. Teachers may also "mentor" individual students.

The Academy has a separate handbook. This handbook incorporates the Employer's code of student conduct, as well as the rules of the Academy. However, the Academy's basic disciplinary policy is study-or-leave. Lab teachers may order students who are being disruptive to leave a lab and return at another time. The Academy employs hall monitors and a parking lot attendant whose jobs are to police the nonclassroom areas of the school. If a student is ordered to leave several classrooms on the same day, or is being disruptive in the hall, the Director will tell him or her to go home and come back another day. Because of this policy, other types of discipline are rarely administered.

There are two junior high labs, one for math and science and one for English and social studies. These labs are similar to the high school labs in that students work at their own pace and can move from lab to lab at will. Since the students in the junior high are under 16, however, the

Employer is required to have attendance policies. Junior high school students arrive at 9:00 a.m. and should remain until 3:30 p.m., Monday through Thursday, and 3:00 p.m. on Friday. Many of the junior high school students, however, do not maintain good attendance. There is also a separate program for junior high students who have been suspended or expelled from a traditional junior high. This program is held in one of the junior high labs evenings until 8:30 p.m..

Unlike the teachers in Petitioner's unit, Academy teachers are paid on an hourly basis. They receive health benefits, but have a larger co-pay than members of Petitioner's bargaining unit. As indicated above, most Academy teachers are part-time. The junior high school teachers work from 8:30 a.m. to 3:00 or 3:30 p.m., Monday through Friday. The full-time high school teachers work 34 hours per week. However, the length of the workday of even the full-time Academy teachers varies from day to day. An Academy teacher may be assigned to a lab for as many as nine consecutive hours, with a half hour lunch period, while his next day will be shorter. The number of students in a teacher's lab will vary from day to day, with the maximum being about 25. On Friday, the part-time staff do not come in. The full-time high school Academy teachers have a paid hour staff meeting and a two hour paid preparation period on Friday morning, and the counselor works one hour.

Academy teachers participate in District staff training programs and serve on District-wide committees. They are subject to the Employer's general work rules, appear in the Employer's employee directory and have been featured in its employee newsletter. Like other District staff, they receive free athletic passes.

Discussion and Conclusions of Law:

We have long held that the presumptively appropriate unit in a public school district includes all teachers, certified and non-certified, K-12 and adult education. *Alma Public Schools*, 1996 MERC Lab Op 72,74; *Hesperia Community Schools*, 1994 MERC Lab Op 972, 976. See also *Alpena School Board*, 1967 MERC Lab Op 187 (junior college teachers included in the same unit with K-12 teachers); *Lansing Public Schools*, 1989 MERC Lab Op 14,18. This policy is in accord with the statement of the Court in *Hotel Olds v Labor Mediation Board*, 333 Mich 382 (1952), that the appropriate unit in public employment should be the largest possible unit of employees with similar interests. In accord with this directive, we have attempted to discourage the proliferation of multiple bargaining units of professional teachers employed by the same employer.

Significantly, in finding appropriate single units of adult education teachers and K-12 teachers, we have recognized the fact that adult education teachers, unlike K-12 teachers, may teach individuals over age 19. We have held that this is not a factor to be considered in determining their community of interest. We have also rejected arguments by employers that adult education teachers did not share a community of interest with K-12 teachers because the adult education teachers were not required to be certified and did not have protection under the Michigan Tenure Act. *Ferndale Bd. of Ed.*, 1987 MERC Lab Op 919; *Lansing School Dist.*, 1972 MERC Lab Op 264. We have held that the fact that school districts are not required to provide adult education services is not relevant to the community of interest question. *Hesperia Community Schools*, *supra*, at 978. We have held that the lack of

interchange between adult education and K-12 teachers is not sufficient to rebut the presumption of appropriateness created by similarities in skills, responsibilities, functions, and training among teachers. *Lansing Public Schools*, 1989 MERC Lab Op 14, 19.² Also, when one group is organized and the other is not, differences in pay, benefits, seniority, bumping and other rights arising from the collective bargaining agreement have little relevance to community of interest. *Brighton Area Schools*, 1996 MERC Lab Op 586, 592-593. The fact that most or all of the adult education teachers are part-time (and, consequently, have different hours of work than the full-time K-12 teachers) has been held to be insufficient to rebut the presumption that these teachers share a community of interest with the K-12 teachers' unit. *Schwartz Creek Community Schools*, 1986 MERC Lab Op 358, 361. Likewise, the fact that adult education teachers followed a different school calendar and had different hours of work was held to be irrelevant in *Hesperia*, *supra*. We have held that the fact that teachers work at separate locations and have separate lines of supervision does not destroy their community of interest. *Holly Area Schools*, 1986 MERC Lab Op 756, 759. Since teachers within a K-12 program may not have regular contact with teachers outside their own school, the lack of regular contact between teachers in an alternative high school and teachers in the Employer's K-12 program was held to be unimportant in *Brighton Area Schools*, *supra*.

As indicated by the discussion above, we have virtually always found a community of interest to exist between adult education and K-12 teachers in a public school system. It is our longstanding view that school districts should not be permitted to create a separate unit for adult education teachers. As we noted in *Alma Public Schools*, *supra*, at 75, even if adult education teachers are placed in the same unit with K-12 teachers, an Employer is not required to grant them the benefits or other terms and conditions of employment which apply to K-12 teachers. An Employer is free to demand during bargaining that the terms and conditions of employment of every group of teachers recognize the special needs of the specific program in which they are employed.

The Employer argues in this case that the job duties and methods of instruction used by Academy teachers differ so much from those of the teachers in the K-12 program that the above should not apply. According to the Employer, the general job duties of the Employer's K-12 teachers, like those of teachers in general, include the preparation of lesson plans and lectures, the evaluation of students, the recording and reporting of grades, the supervision and discipline of students, interactions with parents, and recording of attendance. According to the Employer, the record establishes that Academy teachers do not prepare daily lesson plans, do not deliver lectures or lead group discussions, do not regularly grade assignments or tests, are not responsible for assigning grades to students at specific times, do not have the same responsibility for supervising students and

² The Employer cites *Grand Rapids Public Schools*, 1997 MERC Lab Op 98, as standing for the proposition that the accretion of professional employees to a teachers' unit is inappropriate when there has been no interchange between these employees and the teachers in the unit. In that case, the union representing a bargaining unit of teachers and other professional employees sought to add the position of elementary school assistant to its bargaining unit. We held that the elementary school assistants did not share a community of interest with this unit because they were not professional employees performing instructional duties or duties directly related to instruction.

enforcing discipline as teachers in a regular classroom, are not required to regularly conduct parent-teacher conferences, and are not required to take attendance.

The record indicates that Academy teachers do prepare lesson plans, although not on a daily basis; grade assignments and tests; and are responsible for assigning and reporting a student's final grade in a course. Although they do not hold formal parent-teacher conferences, they are expected to talk to parents about students and the students' progress whenever parents inquire. Most important, Academy teachers provide one-on-one instruction on a regular basis, they follow the progress of their students, they prepare individualized assignments, they grade projects and papers; that is, they teach. We conclude that despite the Mackinaw Academy's unusual methods of instruction and the numerous differences between the Academy's program and the Employer's traditional K-12 program, Academy instructors share a community of interest with Petitioner's unit. As a consequence, we will order an election in which these employees may vote whether they wish to become part of Petitioner's existing unit.

We agree with the Employer, however, that all professional instructors, including instructors in the ESL and ABE programs, and professional employees performing duties directly related to instruction, should be included in the voting group. As set out above, the fact that instructors are teaching in an adult education program which does not lead to the granting of a diploma does not justify their exclusion from the bargaining unit.

ORDER DIRECTING ELECTION

Based on the findings of fact and conclusions of law above, we find that a question concerning representation exists under Section 12 of PERA and we direct an election among the following employees:

All full-time and regular part-time teachers and other instructional professionals employed by the Saginaw Township Schools at its facility known as the Mackinaw Academy, including high school and junior high school instructors, counselors, and instructors in the nursing assistant, English-as-a-Second-Language, and Adult Basic Education programs; but excluding supervisors, including the director of the Academy, hall monitors, parking lot attendants, and all other employees

Pursuant to the attached Direction of Election, the above employees shall vote whether they wish to be represented by the Michigan Education Association. A vote for this labor organization shall indicate a desire to be included in that labor organization's existing bargaining unit consisting of classroom teachers and other instructional professionals.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Dated: _____