

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

In the Matter of:

MICHIGAN STATE UNIVERSITY,
Public Employer

Case No. R02 B-028

-and-

CLERICAL-TECHNICAL UNION
OF MICHIGAN STATE UNIVERSITY,
Labor Organization-Petitioner

-and-

MICHIGAN CENTER FOR RURAL HEALTH,
Interested Party

APPEARANCES:

Samuel A. Baker, Director of Employee Relations, for the Employer

John Klusinske, Contract Administrator, for the Petitioner

John Barnas, Executive Director, Michigan Center for Rural Health, for the Interested Party

DECISION AND ORDER

Pursuant to Section 12 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212, this case was heard in Lansing, Michigan on June 25, 2002 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 entire record, including exhibits admitted at the hearing and the transcript of the hearing, the Commission finds as follows:

The Petition and Positions of the Parties:

The petition in this case was filed on February 20, 2002, by the Clerical-Technical Union of Michigan State University. Petitioner represents a bargaining unit which includes nonsupervisory clerical employees of Michigan State University. Petitioner seeks to add the position administrative/executive secretary – Michigan Center for Rural Health to this unit. Petitioner asserts that Michigan State University and the Michigan Center for Rural Health (hereinafter the Center) are co-employers of the position. Michigan State University maintains

that the petition should be dismissed because it is not an employer of the position in dispute. The Center agrees with the University, maintaining that it is the sole employer of its administrative secretary. There is no dispute that the administrative secretary performs clerical duties or that the position, if employed by the University, would share a community of interest with Petitioner's unit.

Facts:

History of the Center

The legislature created the Michigan Center for Rural Health in 1990 by adding Section 2612, MCL 333.2612, to the Michigan Public Health Code. This section states, in pertinent part:

- (1) The department¹ may establish with Michigan state university and other parties determined appropriate by the department a nonprofit corporation pursuant to the nonprofit corporation act, Act No. 162 of the Public Acts of 1982 . . . The purpose of the corporation shall be to establish and operate a center for rural health. In fulfilling its purpose, the corporation shall do all of the following:
. . .
- (2) The incorporators of the corporation shall select a board of directors consisting of a representative from each of the following organizations:
 - (a) The Michigan state medical society or its successor . . .
 - (b) The Michigan osteopathic physicians' society or its successor . . .
 - (c) The Michigan nurses association or its successor . . .
 - (d) The Michigan hospital association or its successor . . .
 - (e) The Michigan primary care association or its successor . . .
 - (f) The Michigan association for local public health or its successor . . .
 - (g) The office of the governor.
 - (h) The department of public health.
 - (i) The department of commerce.
 - (j) The Michigan senate . . .
 - (k) The Michigan house of representatives . . .
- (3) The board of directors of the corporation shall appoint an internal management committee for the center for rural health. The management committee shall consist of representatives from each of the following:
 - (a) The college of human medicine of Michigan state university
 - (b) The college of osteopathic medicine of Michigan state university
 - (c) The college of nursing of Michigan state university
 - (d) The college of veterinary medicine of Michigan state university

¹ The "department" was the Michigan Department of Public Health.

- (e) The cooperative extension service of Michigan state university
- (f) The department of public health.

Articles of incorporation for the Center were filed on February 2, 1994. Incorporators included the director of the Michigan Department of Public Health and the provost of Michigan State University. The address of the corporation was an office on the Michigan State University campus, in a building occupied by the College of Osteopathic Medicine.

In January 1996, the Governor issued an executive order creating the Michigan Department of Community Health (hereinafter the Department). The Department of Public Health was abolished. In March 1997, the Governor issued Executive Order 1997-4. Section II (3) of this executive order states:

All the statutory authority, duties, powers, functions and responsibilities of the Center for Rural Health, including but not limited to the statutory authority, powers, duties, functions and responsibilities set forth in Part 26 of Act No. 368 of the Public Acts of 1978, being Sections 333.2223 and 333.2612 of the Michigan Compiled Laws, are hereby transferred to the Director of the Department of Community Health by a Type III transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.²

Both the University and the Center interpret this executive order as transferring to the Department of Community Health both the statutory authority and responsibilities of the former Department of Public Health over the Center, and any powers or responsibilities Section 2612 may originally have given to the University

Operation of the Center

The Center is managed by a 12-member board of directors consisting of representatives of the organizations and institutions described in MCL 333.2612(2), plus a representative from the University's College of Osteopathic Medicine who serves ex-officio. Instead of representatives from the now-abolished departments of public health and commerce, the board includes representatives from the Department of Community Health and the Department of Consumer and Industry Services. Each board member is appointed by the organization or institution he or she represents, and serves at the pleasure of the appointing institution. The Center has no "internal management committee" as set out in MCL 333.2612(3). Instead, the

² MCL 16.103(c) states:

Under this act, a type II transfer means the abolishing of an existing department, board, commission, or agency and all its statutory authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds, are transferred to that principal department as specified under this act.

Center has an executive director hired by and reporting to the board. Pursuant to the Center's bylaws, the board elects a president, vice-president and secretary-treasurer annually from among its members, and the president is the chief executive officer of the corporation. The board also has standing committees, including executive, personnel, and finance committees.

The Center currently has six employees: the executive secretary, the executive director, and four program directors. The board of directors and its executive director select Center employees and determine their compensation. Employees receive their paychecks from the Center for Rural Health, and the Center provides them with fringe benefits, including a defined contribution pension plan. The Center has its own personnel policies, developed by the board's personnel committee, and its own set of job descriptions. Center employees do not have privileges normally available to employees of the University, such as employee access to the University's libraries or special prices for tickets to University events. The Center's executive director and the board determine employees' duties and supervise their work. Nothing in the record indicates that any University representative, except the board member appointed by the University, plays any role in supervising the work performed by Center employees, in deciding whether Center employees will be hired, disciplined, or discharged, or in determining compensation.

At the time of the hearing, the Center administered three programs. Under the State Office of Rural Health program, the Center disseminates information to rural hospitals, rural health clinics and community health centers throughout rural Michigan. The Center publishes a newsletter and also gathers information from these facilities. The State Office of Rural Health Program is funded by a federal-state matching grant administered by the Department. The Center also administers the Critical Access Hospital Program, assisting small rural hospitals in reducing their size and providing technical assistance for the Medicare program. This program is funded by a federal grant administered by the Department. The third program is the Rural Health Initiative. Under this program, the Center has done surveys on emergency medical services in rural areas and is doing a physician recruitment/retention study. The legislature appropriated money for the Rural Health Initiative program as part of the Department's budget. In administering these programs the Center works closely with employees of University departments concerned with health issues. The Center has a particularly close relationship with the University's College of Osteopathic Medicine.

Approximately 80% of the Center's funding comes through the Department as part of the programs above. The Center receives no money directly from the University. However, the University provides the Center with free office space in the University's College of Osteopathic Medicine, phones, and fax lines. Its computers are part of the University's computer network, and the Center's employees have University e-mail addresses. The University also provides the Center with space on the University's website. The Center has a University account, established by the Dean of the College of Osteopathic Medicine, against which it can charge copying services, mail processing, phone bills, and employee parking fees up to a maximum of \$15,000 per year. According to the Center's executive director, the Department has discussed moving the Center to a state office building, at which the Department would provide the above services.

Discussion and Conclusions of Law:

The general characteristics of an employer under PERA are: (1) that it selects and engages the employee; (2) that it pays the employee's wages; (3) that it has the power of dismissal; (4) that it has the power and control over the employee's conduct. *Michigan Council 25, AFSCME v St.Clair Co*, 136 Mich App 721, 736 (1984), reversed in part on other grounds 425 Mich 204, 233 (1986); *Wayne Co Civil Service Comm v Wayne Co Bd of Supervisors*, 22 Mich App 287(1970). See also *GREIU v Grand Rapids*, 235 Mich App 398 (1999) (housing commission, and not the city, was the employer where the statute gave the commission the power to hire and fire its employees, control their work and determine the amount of their compensation). The most significant characteristic of an employer is the right to exercise control over the method by which the employee carries out his work. See *Wayne Co Civil Service Comm* at 294.

The record indicates that the University does not select or hire employees of the Center, does not discipline or discharge them, does not determine the amount of their compensation, and does not exert any control over their work. It also does not pay the wages of Center employees, although it does contribute financially to the Center by providing office space, equipment and other services. Petitioner argues, however, that the University is an employer of the Center's employees pursuant to MCL 333.2612. Petitioner notes that Section 3 of that statute states that the Center's board of directors is to appoint an internal management committee, the majority of which are to be representatives of various departments of the University. According to the Petitioner, if this committee had been appointed as the statute requires, University representatives would control the work performed by Center employees, as well as their selection, discipline, and the amount of their compensation.

The Center and the University contend that Executive Order 1997-4 abolished all the University's statutory authority and responsibilities for the Center. We note that the Governor clearly has the authority under MCL 16.103 to transfer functions from one principal department to another within the executive branch of government. However, neither the University nor the Center have cited any authority for their position that the Governor may, by executive order, eliminate duties or authority given to a public university by the legislature.

However, MCL 333.2612 does not give the University any of the powers of an employer under PERA. The statute does not provide the University with any direct authority to hire Center employees, determine their compensation, discharge them, or control their conduct. Under MCL 333.2612, the University had the authority to participate in establishing the Center, ensuring that it was properly incorporated as a non-profit corporation, and selecting the first board of directors. The Center's board of directors, and not the University, has the statutory authority and/or responsibility to appoint the internal management committee. Under the statute as written, the management of the Center is entirely under the board's control.

We conclude that the University does not possess, either in practice or by statute, the authority of an employer over employees of the Center for Rural Health. For this reason, we find that the petition to add the Center's executive secretary to Petitioner's bargaining unit of University employees must be dismissed.

ORDER

Based on the above findings of fact and conclusions of law, the petition in Case No. R02 B-028 is hereby dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chair

Harry Bishop, Commission Member

C. Barry Ott, Commission Member

Dated: _____