

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

In the Matter of:

LENAWEE INTERMEDIATE SCHOOL  
DISTRICT,  
Public Employer,

Case No. R02 I-133

-and-

LENAWEE COUNTY EDUCATION  
ASSOCIATION, LENAWE VOTIONAL  
TECHNICAL EDUCATION ASSOCIATION,  
MEA/NEA,  
Petitioner-Labor Organization.

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APPEARANCES:

Thrun, Maatsch & Nordberg, P.C., by Donald J. Bonato, Esq., for the Public Employer

White, Schneider, Young & Chiodini, P.C., by Timothy J. Dlugos, Esq., for the Petitioner

**DECISION AND ORDER DISMISSING  
PETITION FOR REPRESENTATION 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 December 16, 2002, 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 the hearing and briefs filed by the parties on or before January 31, 2003, the Commission finds as follows:

The Petition:

On September 27, 2002, the Lenawee County Education Association/Lenawee Vocational Technical Education Association/Michigan Education Association/National Education Association (LVTEA) filed this petition seeking to accrete to its bargaining unit of certified teaching employees the positions of teacher assistant and learning assistant. Petitioner contends that these positions, which are unrepresented, share a community of interest with other positions in the unit so as to warrant the direction of an accretion election. The Employer, Lenawee Intermediate School District, contends that the teacher assistant and learning assistant positions are paraprofessional and should be excluded from the unit of certified teachers

represented by Petitioner. The Employer further argues that the petition should be dismissed because the Union is seeking to fragment an existing residual unit of unrepresented classifications. In addition, the Employer contends that the petition is improper because it covers positions that have been excluded from the unit by specific agreement of the parties.

Findings of Fact:

I. The Bargaining Units

Petitioner LVTEA represents a bargaining unit comprised of all state vocationally certified instructors with regular classroom assignments employed by the Lenawee Intermediate School District. The current contract between the LVTEA and the school district covering the teaching employees is effective from August 31, 2000, through August 31, 2003. The recognition clause of that contract, Article I, expressly excludes a number of positions from the teaching unit, including all "aides," "vocational instructor's assistants" and "all other employees not specifically included as part of the bargaining unit above mentioned."

In addition to the LVTEA unit, there are two other bargaining units of employees of the Lenawee Intermediate School District. The Lenawee County Education Association/Lenawee Intermediate Education Association/ Michigan Education Association/National Education Association (LIEA) represents a unit consisting of professional employees working in the school district's special education program, including certified occupational therapy assistants, physical therapist assistants and health care assistants. It also includes teacher assistants who assist the professional special education staff. Teamsters, Local 214 represents a bargaining unit comprised of all regular full and part-time bus drivers employed by the Lenawee Intermediate School District. Neither of these labor organizations has expressed an interest in representing the positions covered by the instant petition.

There are approximately eighty unrepresented classifications within the Lenawee Intermediate School District. In addition to the learning assistant and teacher assistant positions at issue in this matter, unrepresented classifications include various secretarial/clerical positions, consultants, counselors, coordinators, test administrators, accountants, attendance officers, interpreters, mechanics and food service employees.

II. The Positions in Dispute -- Background

The positions of teacher assistant and learning assistant have existed in their present form since at least 1979 and 1996 respectively. At the time of the hearing in this matter, the school district employed approximately fourteen individuals in the teacher/learning assistant classifications.

Teacher assistants must have two years of related work experience, but no certification or degree is required for the position. The learning assistant position requires a high school diploma, college course work in education and/or human services, and demonstrated experience working "with individual student needs." Learning assistants must also have competence in math, reading and writing at a high school level, as well as competence in any combination of

technical areas such as the automotive field, machining/drafting, welding, electronics, construction, agriculture or graphics. An associate's degree is preferred for the learning assistant position, but not required. Both the teacher assistants and the learning assistants attend in-service and professional development training sessions, some of which are also attended by members of Petitioner's unit.

Both the teacher assistants and learning assistants are evaluated by the assistant principal in charge of student services, with significant input from the classroom teachers. The teachers fill out an evaluation form for each of the teacher/learning assistants and submit it to the assistant principal, who then meets with the teacher/learning assistants to discuss the evaluations. Although the assistant principal also performs his own observations of the teacher/learning assistants, he relies primarily upon the teacher's written comments in conducting the evaluations. The teachers are not usually present when the evaluations are received by the teacher/learning assistants; however, the teacher will attend an evaluation meeting if he or she has rated the teacher/learning assistant as needing improvement. In addition, some teachers review the evaluations with their assistants before submitting them to the assistant principal.

#### A. Teacher Assistants -- Duties and Responsibilities

According to the teacher assistant job description, the goal of the position is to "assist and support the vocational education teacher in daily classroom activities with emphasis on students with special needs." The record establishes that teacher assistants work under the general direction of the certified teachers, and a teacher is assigned to every class in which an assistant is present. The teacher assistants are responsible for working with students, both individually and in small groups, to reinforce or supplement the instruction of the teacher. The teacher may provide specific instructions to the teacher assistant on how best to assist the students, or the teacher may leave it up to the assistant to decide what type of instruction or assistance to provide.

At times, the teacher assistants prepare their own study materials to complement or supplement those of the classroom teacher. Lesson plans are generally created by the classroom teacher and then supplemented or modified by the teacher assistants as needed to meet the needs of individual students. With respect to the floral design portion of the ornamental horticulture program, however, the teacher assistant is solely responsible for the development of lesson plans and the procurement of materials.

Teacher assistants participate in parent-teacher conferences, and they typically work with the classroom instructors in evaluating students. For example, teacher assistants are often assigned the task of completing the "daily work habit grades," which evaluate the students on preparation and attitude and account for forty percent of their total grade in each course. Similarly, the teacher assistant assigned to floral design has been given the responsibility of grading the students in that portion of the ornamental horticulture program. Teacher assistants may also provide input regarding the final grade that a student is to receive for the marking period. However, it is the responsibility of the teacher to make the ultimate determination concerning final course grades.

When a teacher is absent, the teacher assistant may be asked to fill in as a substitute. In the accounting and computer information services programs, the Employer has never utilized a substitute other than the teacher assistant. In the ornamental horticulture program, the school district employs a substitute other than a teacher assistant whenever the regular teacher is to be absent for an entire day.

### B. Learning Assistants -- Duties and Responsibilities

According to the learning assistant job description, the purpose of the position is to “serve as a contributing member of the Vo-Tech Center Learning Support Services Department which assists Vo-Tech staff in implementing instructional plans for students with disabilities.” The record indicates that learning assistants function primarily as an adjunct to the certified teachers. They are responsible for supplementing and/or complementing the instruction provided by the classroom teachers. Lesson plans are created by the teachers and then modified or adapted by the learning assistant as necessary to assist students in understanding the subject material. Learning assistants work directly with individual students or with small groups of students for purposes of review or practice, and they sometimes grade assignments by marking papers as correct or incorrect; however, it is the teachers who are responsible for determining the final grades to be received by each student. The record establishes that a teacher is generally present in every classroom to which a learning assistant is assigned. On occasion, learning assistants may substitute for a teacher, but never for longer than a portion of one class period.

The learning assistants are assigned to work in classes with high concentrations of special education students. These students often require accommodations, which are formulated in a plan developed by a team consisting of some combination of the student, the student’s teacher, the student’s special education teacher, the student’s parents and therapists or other specialists. Learning assistants are not part of these teams, but they may be invited to provide input with respect to the needs of a particular student. Although learning assistants play an active role in ensuring that the accommodations set forth in the plans are met, the record establishes that it is ultimately the responsibility of the teacher to ensure that the accommodations are in fact satisfied.

### III. Salaries and Benefits

During the 2001-2002 school year, the salary for members of the LVTEA bargaining unit ranged from \$30,920 to \$62,175, depending on years of experience and level of education. Teachers are required to work approximately 185 to 188 days per year, with a certain portion of that time devoted to in-service/professional development training. Members of the LVTEA unit receive two personal days and twelve sick days per year, with a maximum accumulation of 160 sick days. Teachers are compensated in the amount of \$30 per unused sick day at retirement. Unit members are eligible for health, dental & optical insurance, as well as long term disability and life insurance. In addition, retirement benefits are provided to teachers via contributions to Michigan Public School Employees Retirement System (MPSERS).

During the 2001-2002 school year, the salary for teacher/learning assistants hired before July 1, 1991, ranged from \$19,973 to \$36,335, depending on years of experience and level of

education. The salary for teacher/learning assistants hired after July 1, 1991 ranged from \$17,324 to \$28,701. The term of employment for both positions is thirty-eight weeks. Teacher assistants and learning assistants receive two personal days and twelve sick days per year, with a maximum accumulation of 160 sick days. They are compensated in the amount of \$30 per unused sick day at retirement. Individuals employed by Lenawee Intermediate School District as teacher/learning assistants are eligible for health, dental and optical insurance, as well as long term disability and life insurance. In addition, retirement benefits are provided to teacher/learning assistants via contributions to Michigan Public School Employees Retirement System (MPSERS).

#### Discussion and Conclusions of Law:

The Employer contends that the teacher/learning assistant positions should be excluded from Petitioner's bargaining unit by contract, because the parties' current collective bargaining agreement expressly excludes all "aides," "vocational instructor's assistants" and "all other employees not specifically included as part of the bargaining unit." This Commission has always reserved the right in litigated representation cases to revise the bargaining unit and add any unrepresented employees who should be in that unit, provided that the petitioning labor organization has a sufficient showing of interest to cover any added employees. *Deckerville Community Schs*, 2000 MERC Lab Op 390, 392. The fact that at one time the parties agreed in a consent election agreement to exclude certain positions from the unit does not deprive the Commission of jurisdiction to determine their eligibility, nor are we bound by a bargaining history excluding positions from the unit. *City of Detroit*, 1999 MERC Lab Op 81; *City of Lansing*, 1985 MERC Lab Op 93, 104. Bargaining history is merely one factor to be considered in the determination of the appropriate unit. *Id*; *Wexford County Road Commission*, 1973 MERC Lab Op 895, 897.<sup>1</sup>

The gravamen of this dispute is whether the teacher unit is the appropriate unit for the assistant positions; i.e. whether the teacher/learning assistants share a community of interest with the employees in Petitioner's existing unit of certified teachers. A primary objective of the Commission is to constitute the largest unit which, in the circumstances of the particular case, is most compatible with the effectuation of the purposes of the law, and which 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.

With respect to the composition of teacher bargaining units at both the K-12 and college levels, this Commission has in the past included noncertified professional employees of a school district in the same bargaining unit with certified teachers where their work is functionally

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<sup>1</sup> The Employer also contends that the petition for representation election is inappropriate because the Union is seeking to fragment an existing residual unit of unrepresented classifications. However, this issue was not fully developed by the parties at the hearing and, therefore, we decline to make any ruling on this basis.

integrated with the work and efforts of the teachers. *Muskegon Heights Pub Schs*, 1993 MERC Lab Op 419, 422. See also *Wayne Westland Community Sch Dist*, 1976 MERC Lab Op 847. Thus, we have included such positions as librarians, social workers, counselors, and school nurses in bargaining units with teachers because the ultimate purpose of their employment is the education of students. See *Grand Haven Pub Schs*, 1987 MERC Lab Op 1025, and cases cited therein. See also cases cited by Petitioner in its brief in this matter, including *Grand Rapids Bd of Educ*, 1966 MERC Lab Op 241 (elementary interns) and *Lansing Community College*, 1971 MERC Lab Op 1062 (lab technicians).

However, our policy of including noncertified personnel in a teacher unit has been strictly limited to positions which function at a professional level; this Commission has consistently found bargaining units of professional teaching or instructional employees separate from units of paraprofessional or aide employees. See e.g. *Lansing Sch Dist*, 1989 MERC Lab Op 160, 167; *Detroit Bd of Educ*, 1977 MERC Lab Op 1000, 1003. There does not appear to be any dispute in the instant case that the teacher/learning assistants are paraprofessional employees. At the hearing, the school district's director of staff resources described the teacher/learning assistants as "paraprofessionals," and this description was not contradicted by any other witness. In fact, Petitioner acknowledges that the teacher/learning assistants are paraprofessionals several times in its post-hearing brief. Moreover, the skills, training and job duties of the teacher/learning assistants as described in the record do not differ substantially from those of other support-type positions which we have historically recognized as being paraprofessional in nature and, thus, inappropriate for inclusion in a unit of certified teachers.

For example, in *Lansing Sch Dist*, 1972 MERC Lab Op 264, the petitioner sought certification as the collective bargaining representative of all instructional and instructionally related employees of the school district, including teacher aides employed in the employer's adult education program. The aides were not certificated, nor were they required to have a college degree. The record revealed that teachers in the adult education program and the aides assigned to each of those teachers divided the classes by subject and students in order to give as much individual attention to the students as possible. When an adult basic education teacher was absent, the employer assigned an aide to take over the class rather than obtain a substitute to fill in during the absence.

This Commission concluded that inclusion of the aides in a unit of teaching personnel would not be appropriate. *Lansing Sch Dist, Id.* at 268. We found that although the aides in many ways functioned "precisely as a teacher," that fact was not sufficient to overcome the substantial difference in basic education required for the two positions. We also noted that while there was cooperation between the adult basic education teacher and the aide, the teacher was responsible for passing upon the competency of the aides assigned to them. We held that this responsibility, while not necessarily indicative of supervisory status, indicated "acknowledgement by the Employer of the superior education and judgment of the teacher relative to the professional aspects of teaching." In dismissing the petition with respect to the aides, we also restated our policy of not including professional and non-professional employees in the same bargaining unit. *Id.*

Similarly, in *Grand Rapids Pub Schs*, 1981 MERC Lab Op 972, the petitioner sought to accrete childcare workers to its existing unit of professional employees of the school district,

including certified teachers. The teachers were required to have a degree, while others in the professional unit, including nurses and physical therapists, were required to be certificated and to be educated beyond high school. Although various childcare workers had college degrees and some were certificated, neither was required for the position. The record established that the childcare workers occasionally provided input to a committee that met to evaluate the needs of handicapped or impaired students, but that their participation was not required.

This Commission found in *Grand Rapids Public Schs* that the childcare workers were similar to other support positions within the school district, including teacher aides, which functioned as an adjunct to the teachers. For that reason, as well as the lack of degree and certification requirements, we dismissed the petition. See also *Mt Clemens Community Schs*, 1984 MERC Lab Op 331 (certified occupational therapist aide who works closely with professional staff and handicapped students excluded from teacher unit on the ground that duties of position are more akin to classroom aides and do not evidence independent judgment typical of teachers).

We conclude that the teacher and learning assistants here, like the aides and support personnel in the above-described cases, do not function in the full professional manner of the teaching profession so as to warrant their inclusion in Petitioner's unit. The record indicates that the teacher/learning assistants primarily act in a supportive or auxiliary role to the classroom teachers and, therefore, do not share a community of interest with the teachers unit. Although the teacher/learning assistants are involved in the academic instruction of students, both individually and in small groups, the record establishes that the assistants are present for the purpose of assisting the teachers in that regard, and that they work under the general direction of the teachers to whom they have been assigned. The assistants have no function regarding curriculum and no significant involvement in the creation of lesson plans. Rather, their primary responsibility is to help to execute, explain and reinforce the lesson plans created by the teachers. Similarly, while the teacher assistants participate in the evaluation of students, particularly with respect to daily work habit grades, it is ultimately the responsibility of the teachers to determine the final grade for each student.

The process in which the teacher/learning assistants are evaluated also supports our conclusion that it would be inappropriate to include the assistants in the teachers unit. Although the teacher assistants and learning assistants are not evaluated directly by the classroom teachers, the record indicates that the teachers play an important and significant role in the evaluation process. In conducting his review of the teacher/learning assistants, the assistant principal in charge of student services relies mainly upon the written performance evaluations prepared by the teachers. The teachers also attend the evaluation sessions whenever they have evaluated the teacher/learning assistant as needing improvement. As in *Lansing Sch Dist*, 1972 MERC Lab Op 264, the involvement of the teachers in the evaluation process reflects "acknowledgement by the Employer of the superior education and judgment of the teacher relative to the professional aspects of teaching." *Id.* at 268.

An examination of other factors relevant to the community of interest determination further establishes that dismissal of the petition is warranted in this case. While the teacher/learning assistants are eligible for health insurance and other fringe benefits, which are virtually identical to those received by members of Petitioner's unit, the salary range for the

assistants is substantially lower than that of the teachers. Further, the record establishes that neither a college degree nor certification is required for either of the positions at issue in this case. While lack of certification is not necessarily determinative of community of interest, see e.g. *Grand Haven Pub Schs*, 1987 MERC Lab Op 1025, 1027, that fact, along with the lower salaries for the teacher/learning assistant positions, is further indication that the assistants do not function in the full professional manner of certified teachers.

As a result of our determination that the teacher/learning assistants do not share a community of interest with the employees in Petitioner's existing bargaining unit of certified teachers, we issue the order set forth below:

**ORDER**

Based upon the above findings, the petition for election in this matter is hereby dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Nora Lynch, Commission Chair

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Maris Stella Swift, Commission Member

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Harry W. Bishop, Commission Member

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