

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

In the Matter of:

DEARBORN PUBLIC SCHOOLS/
HENRY FORD COMMUNITY COLLEGE,
Public Employer,

Case No. R11 C-031

-and-

HENRY FORD COMMUNITY COLLEGE
SUPPORT STAFF ASSOCIATION (HFCC-SSA),
Labor Organization-Petitioner,

-and-

DEARBORN FEDERATION OF SCHOOL EMPLOYEES (DFSE),
Labor Organization-Incumbent.

APPEARANCES:

Butzel Long, by Robert A. Boonin, for Henry Ford Community College

Beir Howlett, P.C., by Peter Gojcaj, for the Dearborn Public Schools

Allen Brothers, P.L.L.C, by Charles S. Rudy, for Petitioner HFCC-SSA

Mark H. Cousens, for Incumbent Dearborn Federation of School Employees

DECISION AND DIRECTION OF ELECTION

Pursuant to §12 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212, MSA 17.455(12), this case was heard on July 26, 2011, for the Michigan Employment Relations Commission by Julia C. Stern, Administrative Law Judge for the Michigan Administrative Hearing System. Pursuant to §§13 and 14 of PERA and based on the record, including post-hearing briefs filed by Petitioner Henry Ford Community College Support Staff Association (HFCC-SSA or Petitioner) and the Incumbent Labor Organization Dearborn Federation of School Employees (DFSE) on or before September 9, 2011, the Commission finds as follows:

The Petition and Positions of the Parties:

On March 30, 2011, the HFCC-SSA filed a petition to represent a bargaining unit consisting of all nonsupervisory full-time and part-time support employees employed by, or at, Henry Ford Community College (HFCC). As discussed below, HFCC is part of the Dearborn Public Schools (DPS). The employees whom the HFCC-SSA seeks to represent are part of a larger bargaining unit of full-time and regular part-time support employees of DPS represented by the DFSE. This unit includes maintenance and operation, clerical, transportation, and food service employees.

Petitioner asserts that HFCC and the DPS, while technically one entity, are operationally separate employers, with each institution having its own funding sources, budget, board, management, and labor relations staff and exercising an employer's control over its own employees. Petitioner also argues that even if HFCC and the DPS are not considered separate employers, the divergence of interests between HFCC employees and employees in the DPS/Pre-kindergarten through Grade 12 (P-12) program is so great that it should override policy considerations favoring larger units and against disrupting established bargaining units.

DFSE maintains that the petition should be dismissed because Petitioner has not demonstrated either that the existing unit is inappropriate or that the employees whom Petitioner seeks to represent have an extreme divergence of interests from the remainder of the unit. According to the DFSE, Petitioner's argument comes down to a claim that employees at HFCC should be permitted to form a separate bargaining unit because it believes that they would be more successful at the bargaining table as a separate unit. Citing *Troy Sch Dist*, 21 MPER 37 (2008), DFSE contends that Petitioner cannot show the extreme divergence of community of interest that Commission precedent requires as justification for breaking apart an established unit.

HFCC and the DPS appeared at the hearing to assert their position that they function as separate entities. However, neither takes a position on whether an election should be directed pursuant to the petition.

Findings of Fact:

Relationship Between HFCC and the DPS

HFCC was founded in 1938 as Fordson Junior College under the auspices of the DPS, a general powers school district under the Michigan School Code, MCL 380.5. It was once common for school districts to operate so-called "junior colleges" offering programs of study after high school graduation. The School Code authorizes school districts, under certain circumstances, to establish collegiate and noncollegiate courses of study under the title "community college of the school district of . . ." See MCL 380.1602. However, after the passage of the Community College Act of 1966, MCL 389.1, most of these programs were gradually replaced by independent community college districts. In 1974, voters in the

Dearborn School District rejected a proposal to create an independent community college district, and the proposal has not been placed on the ballot again. According to the testimony, DPS is the last remaining “K(or P)-14” school district in the State of Michigan.

Like other community colleges, HFCC draws many students from outside its district, although in-district students pay a lower tuition rate than other in-state or out-of-state students. HFCC has three campuses, which are located on land owned by an independent corporation. None of HFCC’s campuses share buildings or grounds with DPS/P-12 programs.

HFCC originally had no separate board and was led by a dean who reported to the DPS superintendent. HFCC acquired its current governance structure some time before 1990. HFCC has a board of trustees whose members are comprised of the elected members of the Dearborn Board of Education. The HFCC board of trustees meets separately once a month, on different days from the Dearborn Board of Education, P-12 District, (as the board refers to itself), which meets twice a month. The Board generally deals with HFCC business at HFCC board meetings and DPS/P-12 business at DPS/P-12 meetings. However, there are exceptions, for example, if the Board wants to take action quickly on an HFCC matter without waiting for an HFCC board meeting.

HFCC’s chief executive is its president, currently Dr. Gail Mee. The chief executive for DPS/P-12 is its superintendent, currently Brian J. Whiston. Both Mee and Whiston are appointed by, and report directly to, their respective boards. Under Mee is her cabinet, consisting of two chief academic vice presidents, a vice president for student affairs, HFCC’s vice president/controller, its director of human resources, its director of research and planning, and the executive director of the HFCC foundation. Below the cabinet are associate deans and directors who report directly to vice presidents, and then several levels of managers, coordinators and other supervisory staff. None of HFCC’s administrative or supervisory employees have responsibility for DPS/P-12 programs or operations and Superintendent Whiston and the employees under him have no responsibility for HFCC’s programs or operations.

DPS/P-12 and HFCC have separate budgets and administer them separately. Prior to 1995, when the Legislature changed the way schools were funded, DPS/P-12 and HFCC were partially funded from the same local millage. At that time, the Board decided how to allocate those funds between HFCC and DPS/P-12. Since 1995, DPS/P-12 and HFCC have had completely separate funding sources. DPS/P-12 receives its revenue from local property taxes and State per-pupil funding like other general powers school districts. HFCC has three primary sources of revenue. HFCC’s largest source of revenue, accounting for about sixty-two percent of its revenue in 2011-2012, is tuition and fees paid by students. Because of increasing enrollment, HFCC’s tuition revenues have been increasing both in absolute numbers and as a percentage of its overall revenue. HFCC’s second largest source of revenue is an allocation it receives from the State as a community college. In 2011-2012, this appropriation comprised slightly less than thirty percent of the HFCC’s revenue, down from previous years. The third source of funding is property taxes. HFCC is the beneficiary of two millages passed after 1995. Both millages were earmarked for HFCC and separately

approved by voters in the DPS district. Both millages expire in 2015.

HFCC's controller testified that no funds received by DPS/P-12 are used for expenses incurred by HFCC and vice-versa. She testified that the State's appropriation to the HFCC is earmarked for community college operations, as are HFCC's two millages, and that DPS/P-12 is also restricted from using its property tax and state funding for HFCC programs. She also testified that it is HFCC's position that it would be unlawful to use tuition monies to fund DPS/P-12 programs, because there is at least a tacit representation made to students that their tuition and fees will be used to support the operating needs of the college.

Because they are one legal entity, financial reports for the DPS must incorporate data from both DPS/P-12 and HFCC. The reports, however, report the data from the two entities under separate headings and contain separate analyses for DPS/P-12 and HFCC. During the last audit period, the same firm conducted the audits for DPS/P-12 and HFCC, but this has not always been true in the past as DPS/P-12 and HFCC issue separate requests for proposals for their audits. Even during the last audit, separate teams were assigned to audit DPS/P-12 and HFCC and the team assigned to HFCC had experience doing college and university audits.

HFCC has its own purchasing department, a purchasing process that utilizes technology specifically developed for colleges and universities, and enters into contracts on its own behalf. Purchases over \$20,000 must be approved by the Board. However, purchases under that amount need to be approved only by HFCC's controller. HFCC also has its own business and payroll offices, pays its bills from its own accounts, and issues paychecks in its own name. HFCC purchases casualty and liability insurance separately from the DPS/P-12 through the Michigan Community College Risk Management Association. HFCC has its own technology department and its technology systems are separate from those of DPS/P-12.

HFCC employees are in five bargaining units. Three of them, the unit representing regular faculty, the unit representing adjunct faculty, and the unit representing administrators, consist only of HFCC employees. The other two, the DFSE unit and a unit of building engineers represented by the Dearborn Schools Operating Engineers Association (DSOEA), include both HFCC and DPS/P-12 employees. There are additional bargaining units for teachers and administrators at DPS/P-12. HFCC has its own human resources department responsible for the recruitment, hiring, supervision, training, assignment, evaluation, compensation, discipline, and discharge of HFCC employees. Personnel files for all HFCC employees are maintained by HFCC's human resources department, and HFCC handles the worker's compensation claims of its own employees. Health insurance for HFCC employees is under the umbrella of the DPS, but HFCC has its own group numbers. When employees transfer between DPS/P-12 and HFCC, as they are permitted to do under both the DSOEA and DFSE contracts, they are treated as new employees for health insurance purposes.

The Support Employees Bargaining Unit

The DFSE's bargaining unit has existed in its current form since at least 1966. The current collective bargaining agreement for this unit expired on August 31, 2011. All collective bargaining agreements covering this unit since the 1975-1978 agreement have been signed by the president of the DPS board, the DPS/P-12 superintendent and HFCC's president. Prior to 1992, collective bargaining agreements referred to the employer as the Dearborn Public Schools. Beginning with the 1992-1994 agreement, the collective bargaining agreement covering the unit has identified itself as an:

Agreement between the Board of Education of the School District of the City of Dearborn/Board of Trustees of Henry Ford Community College, heretofore referred to as the Employer, and the Dearborn Federation of School Employees.¹

The Employer's bargaining team for contract negotiations with the support unit consists of representatives from both HFCC, including its director of human resources, and DPS/P-12. The director of human resources for the DPS serves as the chief spokesperson.

At the time of the hearing, the support staff unit consisted of approximately 170 employees at HFCC and approximately 900 employees at DPS/P-12. The unit had sixty-two separate job classifications. Of the sixty-two classifications, sixteen full-time and fourteen part-time classifications had employees working only at DPS/P-12, and eleven full-time and three part-time classifications had employees only at HFCC. However, the larger job classifications had employees at both HFCC and DPS/P-12, and the majority of employees in the unit were in these classifications. The pay rates for each classification, including step increases, are set out in the collective bargaining agreement.

All positions, as opposed to job classifications, are designated as either HFCC positions or DPS/P-12 positions. Employees in DPS/P-12 positions normally work only in DPS/P-12 buildings or programs, and employees in HFCC positions normally work only at HFCC. There are two exceptions. First, HFCC sometimes requests the services of DPS/P-12 employees for specific tasks for which its employees lack the necessary skills. For example, it may request the services of a locksmith or plumber for a few hours or days. In addition, clerical employees who work at DPS/P-12 in 10 or 11 month positions frequently perform work for HFCC during the summer months as needed. In both cases, DPS/P-12 pays the employees and invoices HFCC for the cost of their services.

HFCC develops its own job descriptions for HFCC positions, including job descriptions for positions in classifications with employees at both DPS/P-12 and HFCC. For example, both DPS/P-12 and HFCC have employees in the classification Secretary IV. HFCC has a separate job description for each of the four positions at HFCC in this classification. An HFCC human resources supervisor testified that she believed that DPS/P-

¹ The collective bargaining agreement for the unit of building engineers also identifies the employer in this way. The record does not indicate how the employer is identified in agreements covering units consisting solely of HFCC employees.

12 had only a generic job description for Secretary IV, but was not sure since she had not seen the DPS/P-12 job descriptions. She also testified that HFCC does not consult with DPS/P-12 when it drafts job descriptions.

Although the DPS has one site for all job postings, all vacant positions are posted either as HFCC positions or DPS/P-12 positions. Hiring is handled by HFCC staff for HFCC jobs and by DPS/P-12 staff for jobs in DPS/P-12 programs. Under the terms of the collective bargaining agreement for the support unit, all vacant unit jobs are open for bid or transfer by any member of the unit, and the employer can consider applicants who are not current employees only when there are no bids or transfer requests within the unit or the bids and transfer requests have been exhausted without finding an acceptable applicant. The contract also contains detailed provisions describing how job vacancies will be filled from among the unit applicants who have the qualifications for the job in specific classifications. Pursuant to these provisions, transfers and promotions from one entity to the other are not uncommon.

Under the collective bargaining agreement, seniority is by classification. When positions in a classification are eliminated, the least senior employees are displaced unless the employees remaining in the classification lack the qualifications to perform the necessary work. Employees displaced may exercise their seniority to bump into their own classification, a lower classification in the same series, or a previously held classification. To bump, an employee must be capable of demonstrating the abilities required for the specific position, but need not have had experience performing that actual job. An employee with bumping rights may have a choice of positions into which he or she can bump.

Discipline of HFCC employees, including employees in the support unit, is handled by HFCC supervisors and staff from HFCC's human resources department. HFCC uses a system of progressive discipline that is not spelled out in the DFSE agreement; the HFCC human resources supervisor who testified about the HFCC system was not sure if DPS/P-12 uses the same system. Grievances involving HFCC employees in the support unit are handled by representatives from HFCC's human resources department, while grievances involving DPS employees are handled by representatives from DPS/P-12 all the way through the grievance procedure. For example, the DPS/P-12 superintendent is the final step before mediation for grievances filed by DPS/P-12 employees, while the HFCC's president is the final step for HFCC employees. The contract provides for binding arbitration only for discharge cases, and gives the Board the right to reject arbitration decisions in other types of cases. Representatives from HFCC's human resources department handle all arbitrations involving HFCC employees, and the HFCC board votes on whether to reject an arbitration award on a grievance filed by an HFCC employee.

Contract Negotiations for the Support Unit in 2010

One of Petitioner's arguments that the HFCC employees lack a community of interest with DPS/P-12 employees is based on events that occurred during negotiations for the support unit contract that expired on August 31, 2011. In December 2009, while the

parties were negotiating that contract, DPS/P-12 eliminated over one hundred support positions. Bumping and layoffs took place in the unit. The HFCC human relations supervisor who testified at the hearing believed HFCC's operations were disrupted by DPS/P-12 employees bumping into HFCC positions for which they were qualified, but had no experience. She gave as an example the bumping that took place in HFCC's admissions office during HFCC's registration period.

Both parties to the negotiations were aware that the elimination of support positions in DPS/P-12 was caused by the significant decrease in DPS/P-12 revenue. During the negotiations, the DFSE presented a proposal to the Employer for a separate wage scale for HFCC employees that would have tied their salaries to what HFCC received in state funding. The Employer responded with a proposal to eliminate bumping between HFCC and DPS/P-12, arguing that employees displaced from DPS/P-12 would be encouraged to bump into HFCC positions if the HFCC wage scale was higher. Both these proposals were dropped before the 2009-2011 contract was finalized in the spring of 2010. However, the parties did agree to substantial reductions in both wages and benefits for the entire unit and, in exchange, the reinstatement of about sixty of the positions eliminated in December 2009. Some unit employees at HFCC considered this agreement unfair, since HFCC's financial position was better than that of DPS/P-12, and no positions had been eliminated at HFCC. HFCC employees accused DFSE of ignoring their interests.

Discussion and Conclusions of Law:

Petitioner asserts that the unit as currently constituted is inappropriate under §13 of PERA and §9e of the Labor Mediation Act (LMA), MCL 423.93 because it includes the employees of more than one employer.

Section 13 of PERA states that the Commission shall determine the unit appropriate for the purposes of collective bargaining as provided in §9e of the LMA, which states:

The unit shall be either the employees of 1 employer employed in 1 plant or business enterprise within this state, not holding executive or supervisory positions, or a craft unit, or a plant unit, or a subdivision of any of the foregoing units.

As the parties acknowledge, HFCC is not legally a separate political subdivision of this state. Moreover, the same elected body, the Board of Education of the School District of the City of Dearborn, is responsible for and ultimately controls both HFCC and the DPS/P-12. We find that HFCC and DPS/P-12 are not separate employers for purposes of determining the appropriate bargaining unit under §13.

We have consistently held that we will not allow a group of employees to sever from an established bargaining unit unless there is a compelling reason. As we stated in *Troy Sch Dist*, 21 MPER 37 (2008),

Closely related to [our] objective of creating the largest possible unit of

employees sharing a community of interest is our longstanding policy of refusing to allow the fragmentation of a unit for which there is an established history of bargaining, unless the unit as currently constituted is per se inappropriate or the party seeking severance can demonstrate that there is an “extreme divergence of interests” among the employees in the existing unit. *Wayne Co Airport Police Dep’t*, 2001 MERC Lab Op 163, 167; *Dearborn Pub Sch*, 1990 MERC Lab Op 513, 517; *Kent Co Cmty Hosp*, 1989 MERC Lab Op 1105, 1109-110. That is, we do not permit a group of employees to sever from their existing unit without a compelling reason, even if a unit consisting solely of these employees would have been found appropriate in the absence of a prior bargaining history. *Dearborn Pub Sch*; *Taylor Bd of Ed*, 1983 MERC Lab Op 708, 710-711.

In other words, we normally presume that employees in an existing bargaining unit that is not, per se, inappropriate share a community of interest, and require a party seeking to overcome the presumption to show that there is an “extreme divergence of interests” between employees in the proposed unit and the rest of the bargaining unit.

In *Dearborn Pub Sch*, 1990 MERC Lab Op 513, we applied this presumption to dismiss a petition to sever office clerical employees from the nonsupervisory support employee unit involved in the instant case. We noted that the DFSE unit consisting of all nonsupervisory support employees was an appropriate unit, even though a separate unit of clerical employees would also have been appropriate in the absence of the bargaining history, and concluded that there was no extreme divergence of interest to support the creation of a separate bargaining unit. See also *Northern Michigan Univ*, 2002 MERC Lab Op 338 (campus police officers not permitted to sever from a broad unit of nonsupervisory university employees); *City of Grand Rapids (Police Dep’t)*, 17 MPER 56 (2004) (police department sergeants not permitted to sever from unit of nonsupervisory patrol officers). As DFSE correctly notes, we have not permitted groups of employees to sever from their existing units simply because they do not like the results of collective bargaining and/or believe they could do better bargaining separately. If this were the case, collective bargaining would become difficult because units would be in constant flux from contract to contract.

However, as we recently emphasized in *Northern Michigan Univ*, 25 MPER _____ (decided August 10, 2011):

The starting premise of any decision in a representation case must be the reaffirmation that the fundamental function of the adoption of PERA in 1965 was to recognize and codify the right of public employees to collectively designate an exclusive bargaining agent through whom their employer must deal with the workforce collectively, rather than individually. See *City of Detroit*, 23 MPER 94 (2010); MCL 423.209 & 423.211. PERA was enacted at the specific command of the people of Michigan, acting through their Constitutional Convention to adopt Const 1963, art 4, §48. The statute was described by the Legislature as intended to “declare and protect the rights and

privileges of public employees,” with the fundamental Section 9 right being the right of employees to act through “representatives of their own free choice.” MERC is “the state agency specially empowered to protect employees’ rights.” *Ottawa Co v Jaklinski*, 423 Mich 1, 24 n10 (1985). The statute, as adopted, did not codify rights of employers or of labor unions, other than as derivative of employee rights. Rather, PERA placed restrictions on the conduct of employers and unions, in furtherance of the paramount statutory right of employees to collectively designate an exclusive bargaining agent. *Leelanau Co*, 24 MPER 19 (2011); *City of Detroit*, 23 MPER 94 (2010); *Oakland Co & Oakland Co Sheriff*, 20 MPER 63 (2007), aff’d 282 Mich App 266 (2009).

The representation petition procedure was created by statute as one mechanism for the vindication of the Section 11 right of employees to designate or select an exclusive representative “in a unit appropriate for such purposes.” In making unit placement decisions, while remaining mindful of the goal of forming the largest practical bargaining unit, we must give primary adherence to the statutory command that we “insure public employees the full benefit of their right to self-organization, to collective bargaining and otherwise to effectuate the policies” of PERA. MCL 423.213.

We conclude that there are compelling reasons in this case to permit HFCC employees to form a bargaining unit separate from employees of DPS/P-12. Although DFSE may be correct that not much has changed within its bargaining unit, much has changed in public education since HFCC was founded as a “junior college” run by DPS in 1938 and since the bargaining unit was created. The many differences in mission, structure and operations that now exist between K-12 and post-secondary education provided by community colleges are reflected in the fact that the DPS is the only remaining “P-14” school district in the State. Another reflection of these differences is the fact that the State now provides public funding for community colleges on a different basis from funding for K-12 education. In addition, since 1995, PERA has had separate provisions applicable only to “public school employers” defined in §§1(h) and (i) as the board of a general powers school district, intermediate school district or public school academy, but not including the board of a community college.² These include fines that can be levied against employees for striking under §2a as well as differences in the scope of a public school employer’s duty to bargain under §15. The most significant reflection of these differences for this case, however, is the fact that for ten years or longer, the DPS has kept the finances and operations of DPS/P-12 and HFCC as separate as its status as a single legal entity and its collective bargaining obligations permitted.

In 2011, most employees working at community colleges, including noninstructional support employees, are either unrepresented or in units consisting solely of community college employees because the community college is their employer. HFCC employees and DPS/P-12 employees continue to be part of the same bargaining unit only because the voters

² We express no opinion as to whether these provisions apply to community college employees who are, like the employees at HFCC, employed by a general powers school district.

of the Dearborn School District, unlike most voters in this state, have not created HFCC as a separate community college district. We conclude that none of the many reasons for prohibiting severance from an existing unit apply to the HFCC employees in this case. We will, therefore, direct an election pursuant to the petition as described below:

ORDER DIRECTING ELECTION

Pursuant to the attached Direction of Election, we hereby direct an election among the employees set forth below.

All nonsupervisory full-time and part-time support employees employed at Henry Ford Community College (HFCC) and included in the bargaining unit of employees of the Dearborn Public Schools/HFCC currently represented by the Dearborn Federation of School Employees.

The above employees above shall vote whether they wish to be represented by the Henry Ford Community College Support Staff Association (HFCC-SSA) in the unit set forth above or to continue to be represented by the Dearborn Federation of School Employees in their current unit.³

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Edward D. Callaghan, Commission Chair

Nino E. Green, Commission Member

Christine A. Derdarian, Commission Member

Dated: _____

³ In severance elections, employees are not given the choice of voting for no representation. *Marquette Co Health Dep't*, 1993 MERC Lab Op 901, fn 2; *Taylor Bd of Ed*, 1983 MERC Lab Op 501.