

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

ST CLAIR COUNTY COMMUNITY COLLEGE,
Public Employer,

Case No. UC01-L038

-and-

ST CLAIR EDUCATION ASSOCIATION, EDUCATIONAL
SUPPORT PERSONNEL, MEA/NEA,
Labor Organization-Petitioner,

APPEARANCES:

Touma, Watson, Whaling, Coury & Castello, P.C., by Douglas S. Touma, Esq. for the Employer

Amberg, Firestone and Lee, P.C., by Michael K. Lee, Esq. for the Labor Organization

DECISION AND ORDER ON UNIT CLARIFICATION

Pursuant to Sections 12 and 13 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCLA 423.212 and 423.213, this case was heard on April 22, 2002, by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission. Based on the record and post-hearing briefs filed by June 5, 2002, we find as follows:

The Petition:

The petition filed on December 7, 2001, by the St. Clair Education Association, Educational Support Personnel, MEA/NEA, seeks to clarify the bargaining unit status of the position of Secretary to the Vice-President for Academic Services (Secretary to the Vice-President), which the Employer re-designated as Administrative Coordinator to the Vice-President for Academic Services (Administrative Coordinator). The Employer contends that with the addition of many administrative and confidential responsibilities, the duties of the Secretary to the Vice-President have drastically changed and are no longer clerical or ministerial. The Employer asserts that the position should be designated as a "career plan" position and excluded from the bargaining unit.

Facts:

The Petitioner, the St. Clair County Education Association, Education Support Personnel,

MEA/NEA, and the Employer are parties to a collective bargaining agreement that covers a number of classifications, including secretarial and clerical positions. Excluded from the bargaining unit are employees who have been designated as “career plan” personnel due to their administrative and confidential responsibilities. Until July 2000, the Office of Instruction had three clerical employees. Two were members of Petitioner’s bargaining unit and one was an excluded career plan employee. In July 2000, the Employer removed one of the Office of Instruction’s bargaining unit employees from the bargaining unit and assigned her to the Office of the Vice-President for Academic Services (Vice-President) as an excluded career plan employee. A grievance protesting the secretary’s removal from the bargaining unit was resolved by the parties’ stipulation that on August 15, 2001, a recommendation would be made for the secretary to become a bargaining unit member in a human resources position and that if the position were not returned to the unit, the dispute would be resolved through “continued processes.”

In August 2001, however, the Vice-President refused to recommend the transfer of the secretary, who had been reclassified as the Administrative Coordinator, to a human resources position in Petitioner’s bargaining unit. The Vice-President maintained that she needed two career plan employees. The Vice-President’s responsibilities include evaluating, disciplining, recommending dismissal and processing grievances of faculty and of employees in the continuing education division and the Center for Business and Industry. In carrying out these functions, the Vice-President relies on the Administrative Coordinator, who in addition to assisting with phone calls, paperwork, and bookkeeping is responsible for logging and monitoring multiple contracts generated by the business and industry center. The Vice-President is also responsible for insuring that all personnel records for adjunct faculty and all work records used for pay and promotion of adjunct and full-time faculty are accurately maintained. To perform these duties, she relies on the Assistant for Instructional Personnel, a career plan employee who has been excluded from the bargaining unit since 1988. According to the Vice-President, the duties of the Administrative Coordinator and the Assistant for Instructional Personnel cannot be consolidated into one position.

The major portion of the Administrative Coordinator’s duties involves gathering information needed to prepare, file, and monitor Perkins grant applications. According to the Administrative Coordinator’s position description, she also coordinates bi-annual meetings for occupational advisory committees and adjunct faculty in-services programs; makes annual conference arrangements; compiles capital needs requests; assists the Director of Curriculum and Articulation and the tech prep coordinator as necessary; and provides notary public services for the general college population and the community.

The Administrative Coordinator explained that as a secretary in Petitioner’s bargaining unit, her involvement in processing and handling confidential information was minimal and was limited to putting a file in a drawer and making a phone call for the vice president. She related that as an Administrative Coordinator, her involvement in handling confidential information has increased extensively and she now handles information that involves lawsuits, faculty evaluations, discipline, and grievances. Three grievances have been filed in the past two years. According to the Administrative Coordinator, when grievances are filed she makes telephone calls and appointments, reads confidential information, types, and takes papers to the Employer’s lawyers. The Administrative Coordinator estimates that she spends thirty percent of her time handling confidential information and fifty percent processing Perkins grant applications.

As a clerical employee in Petitioner's bargaining unit, the Administrative Coordinator's responsibilities included: managing the total office operations; scheduling appointments and meetings; making travel arrangements; monitoring the completion of state reports; recording and maintaining Perkins funds accounts; attending state meetings; maintaining and revising all advisory committee files; inputting final class schedule changes and cancellations; maintaining faculty location cards; processing forms, mail and printing materials; performing other duties relative to telephone; electronic mail; word processing; filing; upkeep of supplies; and processing and maintaining confidential information.

Conclusions of Law:

Petitioner contends that its petition should be granted because the Administrative Coordinator is a non-confidential position that should be included in its bargaining unit. The Employer contends that the Administrative Coordinator position should be excluded and should remain a career plan employee because the position's duties are primarily administrative and include spending a substantial amount of time on confidential personnel matters. According to the Employer, the Administrative Coordinator performs her duties independently and deals directly with many different departments. The Employer contends that the position is clearly not clerical or ministerial.

Under PERA, there is no definition of confidential employees, nor does the Act contain a statutory exclusion for such employees. However, we have defined a "confidential employee" as one who assists and acts in a confidential capacity to a person or persons who formulate, determine, and effectuate management policy with regard to labor relations. It has been our policy to strictly limit the confidential exclusion so as to fulfill PERA's purpose of providing employees an opportunity to be represented and bargain collectively. See e.g., *City of Saginaw, City Attorney*, 1991 MERC Lab Op 253. An employer bears the burden of justifying the need to exclude employees from bargaining units as confidentials. An employer's administrative convenience alone is not sufficient to meet this burden. *City of Saginaw, City Attorney*.

We find no merit to the Employer's argument that the Administrative Coordinator should be excluded from the bargaining unit because she spends a substantial amount of time handling confidential personnel matters. The Employer offered no evidence to justify its need for two confidential employees in the Vice-President's office. Moreover, the Employer has not demonstrated that the work performed by the Administrative Coordinator involves confidential labor relations work. An employee who merely types or reads answers to grievances is not performing confidential work. *City of Saginaw, City Attorney*. We also do not conclude that the Administrative Coordinator is performing confidential work by handling information that involves lawsuits, faculty evaluations, and discipline.

We also find no merit to the Employer's contention that the Administrative Coordinator should be excluded from the bargaining unit because her duties are administrative and are performed independently. We do not recognize exclusions for administrative employees, absent the parties' agreement. *Ferris State University*, 1996 MERC Lab Op 16. Nothing in the record indicates that the parties have agreed to exclude employees from the bargaining unit merely because they perform administrative duties. Rather, a fair

reading of the record indicates that employees designated as career plan employees are excluded from the bargaining unit because their duties are both confidential and administrative. We find that the Administrative Coordinator's duties are similar to her responsibilities as a member of Petitioner's bargaining unit and do not warrant her exclusion as a career plan employee. Further, her exclusion is not justified by the Employer's administrative convenience. *Lansing Community College*, 2000 MERC Lab Op 99; *City of Mt Clemens*, 1997 MERC Lab Op 625, 629. Based on the above discussion, we grant the unit clarification petition.

ORDER

Petitioner St. Clair Education Association, Educational Support Personnel, MEA/NEA's request to clarify its bargaining unit to include the Administrative Coordinator is hereby granted.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chairman

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Date: _____