

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

In the Matter of:

GENESEE COUNTY COMMUNITY
MENTAL HEALTH SERVICES,
Public Employer,

Case No. UC03 C-13

-and-

TEAMSTERS LOCAL 214,
Petitioner – Labor Organization.

APPEARANCES:

Shedd, Frasier & Grossman, P.L.L.C., by Amy J. DeNise, Esq., for the Public Employer

Rudell & O'Neil, P.C., by Wayne Rudell, Esq., for the Labor Organization

DECISION AND ORDER ON PETITION FOR UNIT CLARIFICATION

Pursuant to Section 12 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212, this matter was heard in Detroit, Michigan, on November 25, 2003, before D. Lynn Morison, Administrative Law Judge for the Michigan Employment Relations Commission. Based on the record, including the transcript of the hearing, exhibits, and the brief filed by the Genesee County Community Mental Health Services (Employer),¹ on January 12, 2004, the Commission finds as follows:

The Petition and Issue:

On March 26, 2003, Teamsters Local 214 (Petitioner) filed this petition seeking to clarify its bargaining unit of nonsupervisory employees by adding the newly created position of facilitator. Petitioner argues that the position shares a community of interest with the other members of its bargaining unit, and that the duties and responsibilities of the facilitator are essentially the same as those of the unit positions of clinical coordinator and clinical liaison. The Employer opposes the petition, contending that the facilitator position

¹ Petitioner did not file a post-hearing brief.

does not share a community of interest with Petitioner's bargaining unit and that the position is akin to the unrepresented positions of supervisor (general supervisor)² and unit supervisor. However, the Employer does not consider the position supervisory and does not contend that the position should be excluded from the bargaining unit on that basis. For the reasons set forth below, we hold that the facilitator does share a community of interest with positions in Petitioner's unit and should be included in that unit.

Facts:

The Employer and Petitioner are parties to a collective bargaining agreement dated January 23, 2000. The recognition clause of that contract describes the Teamsters bargaining unit as follows:

Assertive Community Treatment Program Coordinator, Assertive Community Treatment Specialist, Child and Adolescent Clinical Liaison, Clinical Access Manager, Clinical Liaison, Clinical Therapist-Adult Services, Clinical Therapist-Child and Adolescent Services, Clinical Therapist-Developmental Disabilities, Clinical Therapist for the Hearing Impaired, Clinical Therapist-Infant Mental Health Program, Consultant/Clinical Therapist, Coordinator-Hispanic Mental Health Services, Coordinator-Infant Mental Health Program, Coordinator of Older Adult Services-OBRA, Coordinator of Older Adult Outreach, Coordinator of Vietnam Veterans Treatment Program, Day Treatment Coordinator, Homeless Outreach Coordinator, Mental Health Educator, MRS Liaison, Nursing Home Coordinator, Nursing Home Specialist, OBRA Specialist, Occupational Therapy Coordinator, OlderAdult Services Inservice Trainer, Outreach Team Coordinator, Placement Therapist-Developmental Disabilities, Prevention Coordinator, Program Coordinator, Psychosocial Nurse Coordinator, Psychosocial Coordinator, Psychosocial Specialist, Psychosocial Specialist-Hearing Impaired, RN/Crisis Residential Specialist, RN/Day Treatment Specialist, RN/OBRA Specialist, RN/Outpatient Specialist, RN/Outreach Specialist, RN/Supportive Services Specialist, Senior Clinical Therapist-Adult Services, Senior Clinical Therapist-Child and Adolescent Services, Senior Clinical Therapist-Developmental Disabilities, Speech and Language Pathologist, but excluding the Executive Director, Program Chiefs, Service Directors, Supervisors, Staff Physicians/Psychiatrists, and all other employees.

At the time of the hearing in this matter, the Petitioner's bargaining unit was comprised of over one hundred employees in the aforementioned positions. All positions within Petitioner's unit are required to be professionally licensed and have master's level degrees or higher. The collective bargaining agreement lists annual salaries for bargaining unit positions and also lists their hourly rates. The collective bargaining agreement provides that bargaining unit employees who work in excess of forty hours per week shall receive overtime wages or compensatory time off in the amount of one and a half hours for every hour worked over forty. It further provides that overtime and compensatory time off for those bargaining unit

² Although the title of the position is "supervisor," it was referred to as the "general supervisor" during the hearing to distinguish it from the "unit supervisor." We will continue that practice here for the same reason.

members who are covered by the Fair Labor Standards Act (FLSA) shall be governed by the requirements of the FLSA.

The employees who are not in Petitioner's unit are represented by the American Federation of State, County and Municipal Employees (AFSCME) or are not represented. Employees in the AFSCME unit generally have high school diplomas or bachelor's degrees and are not required to have professional licenses. The residual group of unrepresented employees includes supervisors and managers.

The Facilitator:

The facilitator position was created after the Employer was approached by the Genesee Intermediate School District to assist with the mental health component of its Safe Schools/Healthy Students project. The project receives grant funds for two facilitators who are responsible for assessing the mental health needs of children within the District's schools. In making this assessment, the facilitator obtains information from each school's principal, teachers, and counselors. The facilitator helps identify ways for the children to access mental health services through the Employer's programs or through private mental health services providers, and to provide support within the school. In so doing, the facilitator must ensure that the program is in compliance with the Employer's accrediting body, CARFF, and with standards set by the Michigan Department of Community Health, Medicaid, and federal agencies. The Employer also anticipates that the facilitator may be involved in grant writing when the grant's renewal is sought. The job description for the position provides that the facilitator shall: "Supervise other grant staff; Maintain client caseload; Conduct assessments of children, adolescents, and families; . . . Serve as a liaison to schools, programs, and agencies; . . . Assist in program planning, development, and implementation; . . . [and] Conduct crisis intervention and resolution."

Although the job description provides that the facilitator will "supervise other grant staff," there is no evidence that the facilitator supervises other employees. The facilitator reports to Paul Jordan, whose position is classified as a general supervisor. Program director Nancy Ratta and another of the Employer's directors supervise Jordan.

To qualify for the facilitator position, the applicant must have a master's degree in clinical psychology or social work and three years of experience in providing mental health services to children, families, and/or adults. The facilitator must be able to work independently without support from an on-site supervisor and have knowledge of an extensive range of clinical treatments. Additionally, the position requires knowledge of the Mental Health Code and related rules and regulations, as well as familiarity with applicable licensing standards and Medicaid guidelines.

The position is salaried and normally works during the school day between the hours of 8:00 a.m. and 5:00 p.m., although the hours may vary with the needs of the school district. The Employer considers the facilitator position to be exempt from the overtime pay requirements of the Fair Labor Standards Act, 29 USC §201 et seq. and does not pay additional compensation for overtime if the facilitator is required to

work more than forty hours in a week.

The Clinical Coordinator and Clinical Liaison Positions:

Petitioner points to the unit positions of clinical coordinator and clinical liaison as being similar to the facilitator. The clinical coordinator must have a master's degree in social work and certified social worker status, or a master's degree in clinical psychology and limited licensed psychologist status. Additionally, an applicant for the position must have three years of experience in a children's mental health agency and must have knowledge of the Mental Health Code and related rules and regulations. The clinical coordinator must be able to work independently and must be able to evaluate and appropriately assess the mental health needs of children and adolescents. The Employer considers the clinical coordinator position to be exempt from the overtime pay requirements of the FLSA.

The duties of the clinical coordinator vary from program to program and include: conducting individual, group, family, milieu, and play and/or activity therapy; conducting diagnostic evaluations of clients; providing crisis intervention and disposition services; developing, implementing, and monitoring clients' progress; ensuring that applicable statutory regulations are met; assisting in the planning, developing, implementing and evaluating of program activities; providing liaison, consultation, and mental health education services for community agencies and resource persons; administering and interpreting psychological tests and documenting findings in written form; and facilitating the initial evaluation and coordinating the psychiatric evaluation for youth being referred for hospitalization.

Employment as a clinical liaison requires a master's degree in psychology, social work, nursing, or counseling and one year of clinical experience with mentally ill and/or developmentally disabled clients, or a bachelor's degree in psychology, social work, nursing, or counseling and three years of clinical experience with mentally ill and/or developmentally disabled clients. Additionally, the clinical liaison must have knowledge of an extensive range of clinical treatments and must have knowledge of the Mental Health Code and related rules and regulations. The Employer considers the clinical liaison position to be exempt from the overtime pay requirements of the FLSA. Four employees work as clinical liaisons. They are responsible for conducting the discharge planning for hospitalized clients and facilitating the exchange of information between the Employer and hospitals regarding clients and programs. They also serve as liaisons between the Employer and probate court and group homes. Employees in this position are responsible for ensuring compliance with regulatory requirements as those requirements are interpreted by management. The clinical liaisons are supervised by a utilization management supervisor.

Supervisor and Unit Supervisor Positions:

The Employer points to two nonunion positions, the general supervisor position and the unit supervisor position, as being similar to the facilitator position because all three positions are involved in program development and implementation, are expected to follow and interpret regulatory standards, and write reports. To qualify as a general supervisor, an employee must have a master's degree and, depending

on their degree field, must also have three or five years of experience working in mental health. The general supervisors work under the direction of a program director, such as Nancy Ratta. The general supervisor's job description states that, among other duties, the position supervises program staff, students, and volunteers; serves as a liaison to other programs and agencies; conducts periodical case reviews with program staff, and may maintain a client caseload.

The minimum requirements to hold the position of unit supervisor are a bachelor's degree and two years of experience working with developmentally disabled and/or mentally ill adults. The unit supervisor's job description states that, among other duties, the position performs duties in directing the work efforts of assigned staff; supervises program staff, students, and volunteers; provides staff training; conducts staff interviews; monitors program capacity and staff resource needs; ensures compliance with standards pertaining to case management/support coordination; and is responsible for the daily operations of the program under the direction of the program manager.

Discussion and Conclusions of Law:

The determination of whether the position of facilitator should be included in Petitioner's bargaining unit rests on whether the position shares a community of interest with the unit positions. In making unit determinations, our primary objective is to constitute the largest bargaining unit which, in the circumstances of the particular case, is the 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, 387 (1952); *Macomb Co*, 17 MPER ¶ 35 (2004); *Univ of Michigan*, 2001 MERC Lab Op 6, 8. It is our policy to require, whenever possible, that units be comprehensive in order to avoid fragmentation and the eventual formation of residual units. *Muskegon Co Sheriff Dep't Deputies Unit*, 2000 MERC Lab Op 88, 92. See also *Michigan Ass'n of Pub Employees v AFSCME Council 125*, 172 Mich App 761, 765 (1988). It is Commission policy, whenever possible, to avoid leaving positions unrepresented, especially isolated ones. *Charlotte Pub Schs*, 1999 MERC Lab Op 68; and *City of Muskegon*, 1996 MERC Lab Op 64, 70. Therefore, when a newly created position shares a community of interest with the unit that seeks to include it, we will accrete the position to the existing unit rather than leave it with a residual group of unrepresented employees. *Lake Superior State Univ*, 17 MPER ¶ 9 (2004); *Saginaw Valley State College*, 1988 MERC Lab Op 533, 538.

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. *Lenawee Intermediate Sch Dist*, 16 MPER ¶ 48 (2003); *Covert Pub Schs*, 1997 MERC Lab Op 594, 601; *Grand Rapids Pub Schs*, 1997 MERC Lab Op 98, 106. However, the fact that employees have different job duties or functions does not necessarily mean that they lack a community of interest. *Michigan Ed Ass'n v Alpena Cmty College*, 457 Mich 300, 306 (1998); *Covert Pub Schs*, 1997 MERC Lab Op 594, 602; *Washtenaw Cmty College*, 1993 MERC Lab Op 781, 790-791. The touchstone of an

appropriate bargaining unit is a common interest of all of its members in the terms and conditions of their employment that warrants inclusion in a single bargaining unit and the choosing of a bargaining agent. *Michigan Ed Ass'n v Alpena Cmty College*, at 304-305.

The employees working as facilitators and those working as clinical coordinators, and clinical liaisons are nonsupervisory employees who are required to have advanced degrees and experience working with mental health clients. All three positions have direct contact with the Employer's clients and either treat or arrange treatment for the clients. Each of the three positions works with the clients and with institutions such as schools, courts, and hospitals to determine the clients' mental health needs. All three positions are responsible for referring clients to the appropriate mental health service providers. The similarity in skills, education, training, and job duties is sufficient to establish that these positions share a community of interest.

The Employer contends that the facilitator does not share a community of interest with the bargaining unit positions because some of the facilitators' duties differ from those of bargaining unit members. The alleged differences are too minor to destroy the community of interest between the facilitator and the bargaining unit. See e.g., *Charter Twp of Lansing*, 17 MPER ¶ ____ (Case No. R03 L-177, decision issued February 28, 2005). See also *Michigan Ed Ass'n v Alpena Cmty College*, 457 Mich 300, 306 (1998); *Covert Pub Schs*, 1997 MERC Lab Op 594, 602; *Washtenaw Cmty College*, 1993 MERC Lab Op 781, 790-791.

ORDER

Based upon the above findings and conclusions, the petition is granted and the bargaining unit represented by Teamsters Local 214, is clarified to include the position of facilitator.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Nora Lynch, Commission Chairman

Harry W. Bishop, Commission Member

Nino E. Green, Commission Member

Dated: _____