

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

In the Matter of:

JOHANNESBURG-LEWISTON AREA SCHOOLS,
Public Employer,

Case No. UC98 J-42

-and-

NORTHERN MICHIGAN EDUCATION ASSOCIATION,
MICHIGAN EDUCATION ASSOCIATION/NATIONAL
EDUCATION ASSOCIATION
Petitioner-Labor Organization.

APPEARANCES:

Thrun, Maatsch, and Nordberg, P.C., by G. Michael White, Esq., for the Public Employer

White, Przybylowicz, Schneider, & Baird, P.C., by Douglas V. Wilcox, Esq., and Alexandra S. Matish, Esq., for Petitioner

DECISION AND ORDER
ON
MOTION FOR RECONSIDERATION

On August 29, 2000, we issued our Decision and Order in the above case denying a request by Petitioner Northern Michigan Education Association, Michigan Education Association/National Education Association to clarify the bargaining unit of classroom teachers by adding to it the newly-created combined position of director of library, media and technology services/director of curriculum and professional staff development, also known as the director of media services/curriculum director, at the Johannesburg-Lewiston Area Schools. On September 18, 2000, Petitioner filed a timely motion for reconsideration of that decision. The Employer filed a timely response in opposition to the motion on September 29, 2000.

In its motion, Petitioner argues that we erred in finding that the director of library, media and technology services/director of curriculum possesses supervisory authority. The Union concedes that the new director conducted an evaluation of a bargaining unit member, but argues that the evaluation is not relevant to these proceedings because it was performed after the petition for unit clarification

had been filed. We disagree. In our previous decision in this case, we concluded that the director of library, media and technology services/director of curriculum has been delegated real, as opposed to routine, supervisory authority. The fact that the director had not yet exercised that authority when the petition for unit clarification was filed does not alter our conclusion that she is a supervisor. We have long held that it is the possession of supervisory authority, and not the exercise of that power, that is determinative. See e.g. *Huron County Medical Care Facility*, 1998 MERC Lab Op 137, 146; *City of Detroit, Dept of Health*, 1991 MERC Lab Op 41, 45; *East Detroit School District*, 1966 MERC Lab Op 60, 64. We also find no merit to Petitioner's contention that the new director does not have supervisory authority because the evaluation she performed was in violation of the parties' collective bargaining agreement. Whether the contract permits the director to perform such an evaluation is a contract interpretation issue outside of the scope of this unit clarification proceeding. Accordingly, Petitioner's motion for reconsideration is hereby denied.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Dated: _____