

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

In the Matter of:

LOWELL PUBLIC SCHOOLS,
Public Employer,

Case No. UC99 J-39

-and-

MICHIGAN EDUCATION ASSOCIATION,
Petitioner-Labor Organization.

APPEARANCES:

Varnum, Riddering, Schmidt & Howlett, LLP, by John P. White, Esq., for the Employer

White, Schneider, Baird, Young & Chiodini, PC, by Alexandra S. Matish, Esq., for the Petitioner

DECISION AND ORDER ON UNIT CLARIFICATION

This case was heard at Lansing, Michigan on August 25, 2000, before Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. Pursuant to Section 13 of the Public Employment Relations Act (hereafter "PERA"), 1965 PA 379, as amended, MCL 423.213; MSA 17.455(13), and based on the record, including briefs filed by the parties on or before November 15, 2000, the Commission finds as follows:

The Petition and Positions of the Parties:

The petition was filed on October 21, 1999, by the Michigan Education Association. Petitioner represents a bargaining unit consisting of all certified professional personnel employed by the Lowell Public Schools. It also represents a bargaining unit of support staff of the same Employer. Included in this unit are paraprofessionals, secretaries, food service employees, and custodial and maintenance employees. The support unit has included the position media center paraprofessional (hereafter "MCP") since at least 1978. According to Petitioner, at the beginning of the 1999-2000 school year, the Employer substantially altered the job duties of one MCP, the paraprofessional in charge of the media center at the Employer's Alto Elementary School. Petitioner maintains that because of its new responsibilities, the position no longer shares a community of interest with the support unit. Petitioner seeks to move this position to its unit of certified professional employees.

The Employer claims that the petition is barred by the existing collective bargaining agreement covering the support unit. The Employer also maintains that the job duties of the position

have not changed significantly. The Employer asserts that there is nothing to justify altering the established unit placement of this position.

Facts:

Respondent's school system consists of a high school, a middle school, and Cherry Creek, Bushnell, and Alto elementary schools. Cherry Creek, twice the size of the other elementary schools, contains grades second through fifth. Kindergarten and first grade classes are held at Bushnell. The third elementary school, Alto, serves students from kindergarten through fifth grade. Each of Respondent's schools has its own media center, or library; the elementary media centers also include computer labs. Respondent's high school media center is staffed by a professional librarian/certified teacher and two MCPs. One certified teacher/librarian and one MCP work in the middle school media center. Prior to the 1999-2000 school year, MCPs were in charge of the media centers at each of the three the elementary schools. Cherry Creek also had a second, part-time, MCP. The librarians in charge of the high school and middle school media centers are required to be certified teachers. MCPs are not required to be certified. However, Bette Haybarker, the MCP whose position is at issue here, is a certified teacher with an endorsement in library science.

At the end of the 1998-99 school year the MCPs in charge of the media centers at Bushnell and Alto schools both retired. The principals at Cherry Creek and Bushnell wanted their elementary school media centers to be more interactive and more focused on the curriculum, and Respondent decided that the retirements offered a good opportunity to change the way the centers were staffed. In June of 1999, Respondent created a new position within Petitioner's professional unit, library/media center-certified teacher. The teacher hired for this position had 35 years of teaching experience at all grade levels and had taught for many years at Cherry Creek. The library/media center teacher was given the responsibility for running the media centers at both Cherry Creek and Bushnell elementary schools, with a part-time MCP to assist her. Haybarker, who had been in charge of the media center at Cherry Creek, was assigned to run the media center at Alto.

The parties began negotiating a new collective bargaining agreement for the paraprofessional unit in January of 1999. Petitioner presented its list of contract demands shortly after the bargaining sessions began. In October of 1999, the parties signed a new contract covering the period July 1, 1999 through June 30, 2000. As in previous contracts, the MCP classification was explicitly mentioned. Petitioner did not raise the issue of Haybarker's unit placement until after the contract was signed when it filed this petition.

As noted above, prior to the 1999-2000 school year, an MCP was in charge of each of the three elementary school media centers. Classes generally came to the media centers at least once a week. The MCPs helped the students to find their way around the library, use the card catalog, and check out books. At Alto, the MCP explained the Dewey decimal system to students in the course of helping them to locate materials. Materials at the Cherry Hill media center are not organized primarily by Dewey decimal number, and the MCPs at Cherry Hill did not instruct students in that system. The MCPs regularly read stories to grades two and below in the media center. Older students came into the media center as classes and individually to do research, and the MCPs helped them to find appropriate materials. At Cherry Hill, entire classes of students were never in the media

center without their teachers. Alto, however, is an open plan school, and about half the classrooms open directly into the media center. Therefore, classes did come into the Alto media center without their teachers.

In addition to working directly with students, the MCPs in charge of the media centers prepared and administered budgets. They were responsible for storage and circulation of all materials. The MCPs selected, ordered, and processed all new materials for their media centers. The MCPs used periodicals and other sources generally used by library professionals to help them select new materials. They helped teachers find materials relating to curriculum units, including information from the Internet. They kept track of their center's audio-visual equipment and made sure that it was in working order. They helped teachers set up video cameras, and programmed VCRs. The MCPs trained and supervised volunteers. They put together displays and bulletin boards, and were responsible for keeping the media center neat and organized. They helped their schools' parent-teacher organizations conduct book fairs. MCPs were sometimes present in the media center during parent-teacher conference periods; however, their attendance at the conferences was not required. Some MCPs, including Haybarker, attended teacher staff meetings, although this was not required of them. The Employer pays for access to a regional educational materials center (hereafter "REMC") which periodically holds conferences. MCPs were not required to attend REMC meetings, although Haybarker regularly did so.

When Haybarker was transferred to Alto at the beginning of the 1999-2000 school year, she had all of the responsibilities, including preparing the budget and ordering materials, which she had at Cherry Hill. The previous MCP at Alto had asked teachers what they needed in terms of materials geared to their specific curriculum. When Haybarker arrived at Alto, she asked the principal to provide her with information about the curriculum for each grade level. The principal gave her pamphlets explaining the general curriculum for each grade. Haybarker uses these pamphlets to design displays for the library, and to assist her in ordering materials.

At Alto, it has become an accepted practice for classes to come to the media center as a group without their teachers. However, the MCP at Alto has the authority to tell a teacher that she is not comfortable having the class there without the teacher. Since Haybarker has been at Alto, the teacher generally comes with his or her class if that teacher's classroom is not adjacent to the media center. Whether or not a teacher is there, Haybarker is responsible for maintaining order and discipline in the media center. At the beginning of the year, Haybarker conducts a session with each class in which she explains the students' responsibilities for media center materials and the expectations for their behavior in the library. Haybarker then shows the students the different parts of the media center and explains their functions. Soon after Haybarker arrived at Alto, a volunteer brought it to the principal's attention that Haybarker had crossed the Dewey decimal numbers off the spines of books. The principal asked Haybarker not to do this. Currently, at the direction of her principal, Haybarker explains the Dewey decimal system to younger children as she is helping them learn to use the library. For example, when the third grade did a unit on animals, Haybarker took the class to the section of the center where materials on animals are kept, showed them the Dewey decimal number, and explained what it meant. When Haybarker shows younger children where the fiction section is, she explains how it is part of the Dewey decimal system as well. As she did at Cherry Creek, Haybarker regularly reads to students from kindergarten through second grade.

However, at the direction of the principal at Alto, Haybarker has also devised and implemented several reading programs. One is the authors program, where Haybarker focuses on reading stories from a different author each month. After she reads the story, Haybarker engages the students in discussion about the kinds of characters and situations the author used in the story, and she helps the students compare the story to other stories written by the same author. In another program, Haybarker focuses on a different character trait each month, including concepts such as respect and responsibility. Haybarker did not lead discussions after she read stories at Cherry Creek, and there is no evidence that the previous MCP at Alto did this either.

Haybarker attends teacher staff meetings at Alto and gives updates on happenings in the library. She also prepares a newsletter for the staff four or five times during the school year. There is no indication that the previous MCP at Alto did these things. However, it is not clear from the record whether Haybarker has been directed by her principal to do these things or whether she is acting on her own initiative. Haybarker has conducted training sessions for teachers at Alto on using the new computerized card catalog system, and on borrowing materials from the REMC via the computer. Again, there is no indication that the previous MCP at Alto held similar training sessions for teachers, or whether Haybarker was required by her principal to hold such sessions.

Discussion and Conclusions of Law:

Petitioner and the Employer entered into a new contract for the support employee unit in October of 1999, shortly before the instant petition was filed. This contract, like previous agreements, explicitly covered MCPs. The Employer contends that this contract bars the unit clarification petition in this case. The record indicates that the only MCP whose unit placement is at issue is the MCP in charge of the Alto school media center, the position currently held by Haybarker. Petitioner contends that the changes in job duties which justify altering the position's unit placement occurred sometime after the beginning of the 1999-2000 school year, when Haybarker was transferred to Alto. Since it is not clear if Petitioner could have known that Haybarker's duties had changed before it entered into the contract, we conclude that petition cannot be dismissed on the basis of contract bar.

Unit clarification is a proceeding for resolving disputes concerning the unit placement of newly-created positions and existing classifications which have undergone recent, substantial changes in their duties and responsibilities. Unit clarification is not appropriate for upsetting an agreement, whether contractual or not, or an established practice regarding unit placement. See *Wayne Co Risk Management Div*, 1996 MERC Lab Op 243; *Lansing PS*, 1994 MERC Lab Op 128; *Genesee County*, 1978 MERC Lab Op 552, 556.

In the instant case, petitioner contends that Haybarker's job underwent a significant change when she was moved to Alto. At the Alto media center, Haybarker instructs students in the Dewey decimal system. She did not do this at Cherry Creek, possibly because that system is not emphasized there. However, the MCP who worked at Alto before Haybarker also explained the Dewey decimal system to students. Although classes of students did not come to the media center at Cherry Creek without their teachers while Haybarker was there, Alto's media center is more visible from classrooms than Cherry Creek's center. The previous MCP at Alto supervised classes without

their teachers present. Moreover, Haybarker has the option of having a teacher remain with his or her class if she wishes.

The record indicates that Haybarker has at least one responsibility that she did not have at Cherry Creek, and that the previous MCP at Alto did not have. Rather than simply reading stories to children in the lower grades, Haybarker is now required to organize her reading around themes and discuss these themes with the children after she finishes a story. There are other things that Haybarker does which the previous Alto MCP did not do, and which Haybarker herself did not do at Cherry Creek. Haybarker uses pamphlets describing the curriculum for each grade level, which the previous MCP at Alto did not have. Haybarker has conducted training sessions for teachers at Alto concerning use of the computerized card system and ordering from REMC on-line. Haybarker also attends staff meetings and prepares newsletters for teachers regarding the media center. It is not clear from the record, however, whether these tasks are actually requirements of Haybarker's job, or whether she has taken it upon herself to do these things. Assuming that they are requirements, however, we find that these new responsibilities have not significantly changed the nature of the job. We also note that the Employer has not changed the educational requirements for this job. Compare *Grosse Pointe Public Library*, 1999 MERC Lab Op 151. We find no basis in this record for altering the unit placement of the MCP in charge of the media center at the Employer's Alto Elementary School.

Based upon the findings of fact, discussion, and conclusions of law above, we issue the following order:

ORDER

Petitioner's request to move the position of paraprofessional in charge of the Employer's Alto elementary school media center from its bargaining unit of support employees of the Employer to its bargaining unit of certified professional personnel is hereby denied.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Dated: