

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

In the Matter of:

REESE PUBLIC SCHOOLS,
Public Employer,

-and-

MERC Case No. UC14 K-019
Hearing Docket No. 15-012620

REESE PROFESSIONAL EDUCATION ASSOCIATION, MEA/NEA,
Labor Organization-Petitioner.

APPEARANCES:

Thrun Law Firm, P.C., by Martha J. Marcero, for the Public Employer

White, Schneider, Young & Chiodini, P.C., by Jeffrey S. Donahue and Catherine E. Tucker,
for the Labor Organization

**DECISION AND ORDER
ON PETITION FOR UNIT CLARIFICATION**

On November 25, 2014, the Reese Professional Education Association, MEA/NEA (Petitioner or Union), filed this petition for unit clarification with the Michigan Employment Relations Commission (Commission) pursuant to § 13 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.213. During a scheduled evidentiary hearing conducted for the Commission in Lansing, Michigan, on May 22, 2015, by Travis Calderwood, Administrative Law Judge of the Michigan Administrative Hearing System, the parties agreed to provide stipulated facts and file briefs. Based on the entire record, including the stipulated facts and briefs filed by all parties on or before August 7, 2015, we find as follows:

The Petition:

The Reese Professional Education Association, MEA/NEA, filed the present petition on November 25, 2014, seeking to clarify its bargaining unit to include the newly-created singular position of social worker/home school liaison (social worker). Petitioner contends that the social worker position enjoys a community of interest with its unit of professional instructional personnel and is neither confidential, managerial, nor supervisory in nature. The Employer contends that the parties' contract does not support the inclusion of the social worker in the Petitioner's bargaining unit. Moreover, the Employer argues that the social worker does not share a community of interest with the current positions included in Petitioner's bargaining unit.

Facts:

The Parties stipulated to the following facts:

1. The Association and the Board of Education of the Reese Public School District ("the Board") are parties to a collective bargaining agreement ("CBA") that took effect on August 27, 2013, and will expire on August 26, 2015.
2. The Board is the body duly elected to govern the District.
3. Article I.A of the parties' current CBA provides:

The Board hereby recognizes the R.P.E.A. as the exclusive bargaining representative as defined in Section 11 of Act 379, Public Acts of 1965, for all professional instructional personnel, including personnel on tenure, probation, classroom teachers, guidance counselors, librarians; but excluding supervisory and executive personnel and office and clerical employees. The term "teacher", when used hereinafter in this Agreement, shall refer to all whose employment is regulated by the Michigan Teachers Tenure Act (TTA) and the term "employee" refers to those whose employment is not covered by the TTA - both are equally represented by the R.P.E.A. in the bargaining or negotiating unit as above defined.

4. In July of 2014, the District posted a new position on its website for a social worker. The social worker posting on the District's website links to a job description, which identifies the title of the position as "home/school liaison."
5. The qualifications for the home/school liaison include the following: (1) school worker license from the State of Michigan; (2) BA degree in social work or an equivalent BA degree; and (3) prior job experience as required for licensing.
6. The job description indicates that the home/school liaison will report to the building principal and that the position will be evaluated yearly by the building principal.
7. The job description indicates that the home/school liaison will be employed for the "[s]chool year calendar" for "30 hours per week."
8. The job description identifies eleven performance responsibilities for the home/school liaison.
9. Prior to the beginning of the 2014-2015 school year, Nichole Russell applied for and was hired by the District to fill the newly-created social worker or home/school liaison position.
10. Ms. Russell holds a BA degree in social work and a license in clinical social work from the State of Michigan. She does not and has never held a teaching certificate or

school counseling endorsement or certification. She is not qualified to serve as a school counselor or a teacher pursuant to the requirements set forth in § 1233 of the Michigan Revised School Code.

11. The social worker position is based on an annual federally funded grant for at risk students, and is a "flow through." In other words, the \$30,000 in grant money received by the District was directly paid to the social worker.

12. The social worker is paid \$25.00 per hour and she does not receive insurance or other benefits. There is no certainty that the grant will be continued from one year to the next. The position is paid on an hourly basis and timesheets are required biweekly.

13. In her position as home/school liaison or school worker, Ms. Russell did not perform any class scheduling or career advising services.

14. During the 2014-2015 school year, Ms. Russell typically arrived for work at the District at 8:00 a.m. and left between 2:00 p.m. and 3:30 p.m. She typically worked Monday through Friday.

15. Ms. Russell interacted with students on a daily basis. In some cases, students approached her to ask for assistance directly. In other cases, she was directed by parents, teachers, and other staff members to offer assistance to other students who could benefit from her services. She met with students before, during, and after school.

16. Ms. Russell worked with students in the District's elementary, middle, and high schools. She worked with students of all different backgrounds and classifications, to include students who had been identified as "at risk" (e.g., those who live in single-parent households or those with substance abuse issues) and those who were members of the general education population. Participation by the students was voluntary.

17. Ms. Russell assisted students with organizing academic course materials, managing assignment due dates and project deadlines, and tracking their academic goals and progress.

18. Ms. Russell met with several middle school students one day a week to lead discussions and provide training and guidance on social norms and socially acceptable behavior as part of the "Links" program. Ms. Russell did not grade or evaluate students as part of this program.

19. Ms. Russell met with male students at the District's elementary school once a month as part of a "Boys' Group" that she organized. During their meetings, Ms. Russell led discussions and team-building activities designed to teach them social, behavioral, and anger management skills.

20. Ms. Russell interacted with teachers and other staff members on a daily basis.

21. Ms. Russell worked with teachers in assisting students with academic and behavioral issues. Any teacher in the District could contact Ms. Russell to request assistance with one of his or her students at any time. Teachers regularly approached her in-person or contacted her by e-mail.

22. Ms. Russell worked with teachers in organizing student assemblies regarding, *inter alia*, appropriate social media use. Ms. Russell also coordinated with an admissions recruiter from Saginaw Valley State University to present a program entitled "Preparing for College" to the District's middle school students.

23. Ms. Russell attended several staff meetings at the elementary, middle school, and high school buildings throughout the year. She was not required to attend these meetings.

24. Ms. Russell regularly reported to the principals assigned to the District's elementary, middle, and high school buildings. Ms. Russell also met on occasion with the District's superintendent, who is her supervisor.

25. Ms. Russell interacted with parents of students in the District on a regular basis.

26. In her communications with District staff, parents, and students, Ms. Russell referred to herself as a "home/school liaison" and a "school counselor."

27. In her position as the District's social worker or home/school liaison, Ms. Russell was required to use communication, organization, interpersonal, and technology skills on a regular basis. In particular, she regularly communicated with colleagues, students, and parents in-person, by phone, and by e-mail; organized assemblies and programs for students and managed and organized her caseload and students' information using District technology. All employees are required to have email and use it to communicate with others.

28. Ms. Russell was required to make decisions that required professional judgment and discretion on a regular basis. In particular, she was required to assess and report suspected instances of child abuse or neglect to Child Protective Services ("CPS"). All school employees are required to make a report to Child Protective Services of suspected child abuse or neglect.

29. Ms. Russell did not hire, transfer, suspend, lay off, recall, promote, discharge, assign work, reward, discipline, or grant time off to any other employees.

30. Ms. Russell did not attend meetings for building administration, participate in the establishment of administration policies, or make recommendations regarding the assignment, addition, or reduction of District personnel.

31. In her position as the District's social worker or home/school liaison, Ms. Russell was not responsible for daily classroom instruction or for evaluating or assessing students for grades.

32. Ms. Russell and the District's teachers cannot interchange positions.

33. No teacher in the District is subject to evaluation by the principal at each level (i.e., elementary, middle, and high school). Ms. Russell was not evaluated by the principal at each level during the 2014-2015 school year.

34. No teacher in the District is paid hourly or works 30 hours per week.

35. On or about November 25, 2014, the Association filed a Unit Clarification Petition with the Michigan Employment Relations Commission ("MERC") seeking to clarify the appropriate placement of the social worker position.

36. On January 30, 2015, the parties participated in a teleconference with MERC Elections Officer Denise Hinneburg regarding the Association's Petition.

37. On February 9, 2015, the Association and the District each filed a Position Statement with MERC regarding the Association's Petition.

Discussion and Conclusions of Law:

A unit clarification petition is appropriate to determine the bargaining unit status of a newly created position or a position that has undergone significant changes. *City of Detroit*, 1997 MERC Lab Op 454, 455; *City of Battle Creek*, 1994 MERC Lab Op 440, 447; *Genesee Co*, 1978 MERC Lab Op 552, 556. Here, there is no question that the social worker position is a newly created position.

The Employer urges this Commission to deny Petitioner's request to clarify its bargaining unit to include the position of social worker and contends that the recognition clause contained within the parties' collective bargaining agreement does not include the sought after position. Although the recognition clause does not list the social worker position amongst those positions expressly included in the bargaining unit, the recognition clause does not exclude the position of social worker. The Employer seeks to bolster this argument by providing case law addressing historical exclusions of certain positions from bargaining units, whether by express agreement or through acquiescence. As the Employer notes, when a position has been historically excluded from a union's bargaining unit, the union must file a representation petition to add the position to its unit. *City of Ann Arbor*, 19 MPER 54 (2006); *Northeast Michigan Cmty Mental Health*, 1999 MERC Lab Op 369, 373; *City of Lansing*, 1994 MERC Lab Op 261, 266. We have dismissed unit clarification petitions involving positions created as little as a year to eighteen months before the filing of the petition based on our finding that such positions were historically excluded. See *Wayne Co Cmty Coll Dist*, 20 MPER 55 (2007); *Washtenaw Cmty Coll*, 1993 MERC Lab Op 781, 787-788. Here, the position was created in the summer of 2014. The job was posted in July 2014, and filled in time for the social worker

to begin work in the fall. The Association filed its petition to clarify its unit to include the social worker position in November 2014. Therefore, we cannot say that the union's efforts to represent the position were delayed for so long a period as to be considered acquiescence in the Employer's failure to place the position in Petitioner's bargaining unit. Further, the Employer has failed to offer evidence that Petitioner ever agreed to the position's exclusion from the bargaining unit. Therefore, the evidence does not establish that the social worker position was historically excluded from the bargaining unit.

Second, the Employer asserts that there is no community of interest between the social worker position and the members of Petitioner's unit. As we have consistently held, it is our objective to constitute the largest unit which, in the circumstances of the particular case, is 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 (1952). To this end, we must determine whether a community of interest exists by examining a number of factors, including: similarities in duties, skills, and working conditions; similarities in wages and employee benefits; the amount of interchange or transfer between groups of employees; centralization of the employer's administrative and managerial functions; the degree of central control of labor relations; common promotion ladders; and common supervision. See, e.g., *Covert Pub Sch*, 1997 MERC Lab Op 594, 601; *Grand Rapids Pub Sch*, 1997 MERC Lab Op 98, 106.

With respect to public schools, we have repeatedly held that the inclusion of both teaching and nonteaching professional staff in the same bargaining unit is proper because of the functionally integrated nature of the work and the efforts of both groups. *Muskegon Hts Pub Sch*, 1993 MERC Lab Op 419, 422. See also *Wayne-Westland Cmty Sch Dist*, 1976 MERC Lab Op 847. As such, we have included non-teaching positions in bargaining units with teachers where the functions of the non-teaching positions directly relate to the educational process. The employees in the non-teaching positions are required to have a professional education and background, and to exercise related skills in the performance of their duties. See *Battle Creek Pub Sch*, 1990 MERC Lab Op 113, recon den 1990 MERC Lab Op 269; *Grand Haven Pub Sch*, 1987 MERC Lab Op 1025, and cases cited therein. We do not require teacher certification for inclusion in such a unit as long as the position is related to the educational process on a professional level. *Washtenaw Intermediate Sch Dist*, 1993 MERC Lab Op 555; 6 MPER 24080.

Under the facts provided by the parties, it is our conclusion that the social worker position's functions and duties directly relate to the educational process. Furthermore, the position requires a professional education and background and must exercise related skills in the performance of the duties required of it. Accordingly, it is our finding that the social worker position does share a community of interest with the other members of Petitioner's bargaining unit. Our finding that the social worker position shares a community of interest with the other members of Petitioner's unit is not affected by the fact that the position is hourly as opposed to salaried or that it receives different benefits; such differences are subject to bargaining and are present in countless other bargaining units throughout the public sector. Additionally, as we have stated in the past "the existence of a dispute concerning the employer's contractual obligations to such a position is of no relevance to the underlying issue of community of

interest.” See *Dearborn Pub Sch*, 2002 MERC Lab Op 287; 15 MPER 33065. See also, e.g., *Port Huron Area Sch Dist*, 1996 MERC Lab Op 396. Lastly, while we recognize that the social worker position is funded by an annual federal grant that may not be continued, such an issue, while potentially a bargaining problem, will not prevent us from placing the position in the unit where a community of interest is apparent. See *Beecher Cmty Sch*, 1989 MERC Lab Op 311.

We have considered all other arguments put forth by the parties and hold that they do not warrant any change in our conclusions. In accord with our findings, we issue the following order:

ORDER

Petitioner's request to clarify its bargaining unit to include the position of social worker/home school liaison is hereby granted.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: June 20, 2016