

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

In the Matter of:

FERRIS STATE UNIVERSITY,  
Public Employer,

-and-

MERC Case No. UC12 E-012  
Hearing Docket No. 12-001342

FERRIS FACULTY ASSOCIATION OF  
FERRIS STATE UNIVERSITY, MEA/NEA,  
Petitioner-Labor Organization.

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APPEARANCES:

Dykema Gossett, PLLC, by Robert A. Boonin, for the Public Employer

Kalniz, Iorio & Feldstein Co., L.P.A., by Fillipe S. Iorio, for the Labor Organization

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

Pursuant to § 12 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212, this case was assigned to David M. Peltz, Administrative Law Judge (ALJ) for the Michigan Administrative Hearing System (MAHS), acting on behalf of the Michigan Employment Relations Commission (MERC). Based on the entire record, including the transcripts, exhibits, and post-hearing briefs filed by the parties, the Commission finds as follows:

The Petition and Positions of the Parties:

On May 2, 2012, the Ferris Faculty Association of Ferris State University, MEA/NEA (FFA or Petitioner) filed a petition seeking to add two currently unrepresented positions, academic advisor and director of student academic affairs, to its bargaining unit consisting of faculty of Ferris State University (FSU or the University). The Employer contends that unit clarification is inappropriate because neither position shares a community of interest with Petitioner's bargaining unit. In addition, the University asserts that the unit clarification is inappropriate because the academic advisor is not a new or recently changed position. Rather, the Employer argues that the position was created in 2008, made permanent in 2010 and, therefore, has been historically excluded from Petitioner's bargaining unit.

After the petition was filed, the parties requested that the case be placed in adjourned without date status while the University and the FFA attempted to negotiate a settlement of this dispute. When those efforts failed, Petitioner moved to have the matter reactivated and an evidentiary hearing was scheduled for July 31, 2015. That date was adjourned at the request of the University. The hearing commenced on September 29, 2015. At the start of the hearing, the parties indicated that the dispute over unit placement of the director of student academic affairs position had been resolved. The hearing was completed on December 14, 2015, and post-hearing briefs were filed by the parties on March 21, 2016.

Findings of Fact:

I. Background

Ferris State University is a public institution with its main campus in Big Rapids and various satellite locations throughout the State. Of the University's 14,500 students, 10,000 are enrolled at the Big Rapids campus. There are five undergraduate colleges at the main campus: Education & Human Services, Business, Health Professions, Engineering & Technology, and Arts & Sciences. There are various pre-programs, departments, or schools within each college. For example, the College of Engineering & Technology is divided into four schools, each containing several departments and programs. In the College of Health Professions, there are nine different pre-programs, including nursing, radiography, and dental hygiene. The University also offers doctoral programs in pharmacy and optometry.

There are approximately 500 full-time faculty members and 400 adjunct faculty members employed by the University. Petitioner represents approximately 435 faculty members working at the Big Rapids campus. The most recent collective bargaining agreement between the FFA and the University covers the period July 19, 2013, through June 30, 2018. The recognition clause, Section 1.3, defines the unit as "All full-time board-appointed FSU teaching faculty (Academic Year or 12 month); librarians; educational counselors; admission counselors; personal counselors; program coordinators; and Board-appointed part-time faculty who are employed for at least one-half of the average load for their department, excluding all other University personnel and supervisors."

Wages of FFA members range from around \$50,000 to more than \$130,000 per year. Newly hired employees in bargaining unit positions are evaluated after their first year and a decision is made by the provost or vice president of academic affairs whether to grant or deny them reappointment for an additional year. Thereafter, reappointment decisions are made by the tenure review committee, which consists of the employee's peers. After five years of employment, FFA members are eligible for tenure which, pursuant to Section 3.1 of the collective bargaining agreement, affords them "the right to continual employment in a bargaining unit position until voluntary separation from employment, layoff or termination for just cause." Each college has its own procedures for granting or denying tenure. Prior to achieving tenure, bargaining unit members have just cause protection with respect to any disciplinary actions taken against them.

## II. Creation of the Academic Advisor Position

As explained in more detail below, academic advising is the process by which the University provides information and assistance to its students to ensure that they successfully complete their certification or degree programs in a timely manner. Historically, faculty members, counselors, and administrators were responsible for academic advising. Each student was assigned a faculty advisor in their specific degree program of their college. However, the faculty advisors generally did not reach out to students. Rather, each student was responsible for seeking out his or her faculty advisor for assistance with class registration or other academic issues.

Beginning in 2008, the University began restructuring how it would provide academic advising with the goal of being more proactive and responsive to the needs of its students. In March of 2008, it hired Linda Kuk as its first dedicated full-time academic advisor. Jenice Winowiecki Hansen was hired in the same capacity later that year. Winowiecki Hansen and Kuk were both hired as three-year “temporary” employees, a designation the University gives to new positions that must prove their necessity. Kuk was an advising assistant for pre-programs in the College of Health Professions, while Winowiecki Hansen worked as a biology advisor.

In the summer of 2010, the FSU’s board of trustees voted to make the advisor positions held by Kuk and Winowiecki Hansen permanent. Beginning in March of 2012, the University began hiring additional full-time permanent academic advisors. By the time of the hearing in this matter, there were thirteen academic advisors employed by the University, all of whom are assigned to the Big Rapids campus. Although the names of the academic advisor positions vary somewhat depending on the college or program to which they are assigned, they all have “advisor” somewhere within their job title.

The University has assigned academic advisors to most, but not all, of the colleges and programs offered at the Big Rapids campus. In programs where there are no advisors, the task is still handled entirely by faculty. Advisors Winowiecki Hansen, Kimberly Ducat, and David Schrock work in the College of Arts & Science. Winowiecki Hansen is a biology advisor while Ducat and Schrock work as professional advisors. All three are directly supervised by the College’s director of student academic affairs who, in turn, reports to the Dean of the College. Kuk, Natalia Carvalho-Pinto, and Natalia Tartari are all advising assistants in the College of Health Professions and report to the director of student academic affairs, Tami Lynn Wolverton. A fourth advisor in the College of Health Professions, Lori Kelsey, works exclusively with the RS to BSN on-line program as a health profession student advisor/recruiter. Michelle Kelenske is an advisor/vocational authorization officer in the College of Education and Human Services. She reports to the interim director of the school of education, who is a member of the faculty. Amie Calhoun is an academic advisor in the Criminal Justice program.

Four academic advisors are assigned to Retention and Student Services, which provides support services, including educational, academic, and career counseling, to undergraduate students throughout the University to help them transition to college life and move forward into their degree programs. Advisors assigned to Retention and Student

Services are Susan McNamara (academic advisor), Brooke Moore (coordinator of first year seminars/academic advisor), Jody Maloney (academic advisor) and Charles Malone (honors advisor). McNamara, Moore, and Maloney are supervised by the director of student academic programs, while Malone reports to the director of the honors program. Both supervisors report to William Potter, associate provost for Retention and Student Services.

### III. Advisor Duties, Qualifications and Benefits

Each academic advisor is assigned a caseload which typically ranges from 300 to 400 students, most of whom are either in their first or second year at FSU or who have transferred to the University from other institutions. Each semester, students are required to meet with their assigned advisor prior to registration. A hold is placed on all student accounts preventing them from registering until the advisor meeting has taken place. The purpose of this interaction is to ensure that students progress through their degree program on schedule. At the pre-registration meetings, the advisors seek to ensure that students have the necessary grades to enroll in the classes they have selected, verify that each student's schedule is in conformance with their individual degree or program requirements, counsel students on the appropriate courses to take to gain admission to professional programs offered by FSU, and address any questions or concerns raised by the students. The University emphasizes the monitoring of student schedules, because if a course is taken out of a mandatory sequence or a student fails to enroll in a pre-requisite course, it may significantly increase the time it takes for a student to complete his or her degree or result in the loss of financial aid. The advisors must stay up to date on the course requirements for each program in the area to which they have been assigned, including professional and graduate programs.

In addition to the mandatory pre-registration meetings, academic advisors monitor student progress throughout the semester, including accessing grades in the Banner computer system which is used by all FSU staff. When the advisor determines that a follow-up meeting with a student is necessary, he or she will contact the student and set up an appointment. Students may also initiate a follow-up meeting themselves by contacting their assigned advisor or signing up for an appointment online. During these follow-up meetings, the advisors may attempt to help students understand the transition to higher education, instruct students on how to interact with faculty and staff, and help them make decisions concerning their pursuit of a degree. Some students are seeking to apply to professional programs at the University, such as nursing, diagnostic medical sonography, or radiography. The advisors counsel students on the admissions process and academic requirements for these programs. Space in these professional programs is limited; if a student is unable to get into his or her desired professional program, that student may face a wait of up to two or three years until a slot opens. In such instances, the advisor will work with that student on formulating a plan for what to do during the interim period.

The academic advisors maintain written notes on their meetings with students and may also input information regarding these interactions into the Banner computer system for access by FSU faculty and staff. If a student has signed a form waiving their rights under the Family Educational Rights and Privacy Act (FERPA), the advisors may provide

information and advice to that student's parents and assist the family in finding online resources. The academic advisors are also the front-line contact for prospective students. They are involved in recruiting efforts via phone calls, emails and meetings with walk-ins, and they have been required to participate in weekend recruiting events. The advisors are present at orientation where they provide information and assistance to incoming students. They also play a role in the retention of students. In fact, since the creation of the full-time advisor position, student retention has improved by four percent and the probation rate has been cut in half. Advisors assigned to Retention and Student Success are required to track the retention rate of the students to whom they have been assigned.

The work of the advisors is generally limited to academic issues. If the advisor sees that a student has been getting poor grades or notices other academic problems, he or she may recommend lifestyle changes or suggest ways to improve study habits. However, they do not tutor students, nor do they perform any counseling duties. If it appears that a student needs advice about choosing a major or career or has more serious academic challenges, such as a need for an accommodation due to a disability, the advisor will refer that student to one of the University's educational counselors. However, Winowiecki Hansen testified that she assists students in determining whether a particular major is a good fit and that if one of her students is trying to decide between two majors, both of which are within the College of Arts and Sciences, she "would be confident in helping them determine what might be an appropriate career path." If the advisor decides that a student is having personal problems that may be interfering with his or her academic success, such as homelessness, eating disorders, or relationship issues, the advisor will refer that student to one of the University's personal counselors.

As noted, academic advisors generally work with students through the end of their second year of school. At that point, students typically enter their clinical or degree programs and they are assigned a faculty advisor for the remainder of their time at FSU. However, any student who is not able to get into his or her desired program or who is dismissed from a program will continue to meet with an academic advisor. In addition to faculty, some administrators continue to have advisory responsibilities. For example, Potter has an advising caseload of 20-22 students per semester who are in the Retention and Student Success program or are on academic probation.

The academic advisors are not required to teach any courses at FSU. However, at the time of the hearing in this matter, Winowiecki Hansen was teaching a biology course at the University for which she was being compensated at the adjunct faculty rate. Advisors have also taught FSU-100, a one-credit seminar designed to help new students transition to the University. In fact, Winowiecki Hansen has taught the introductory seminar every year since 2008, with the only exception being the fall of 2011 when she was off on maternity leave. Although working as an FSU-100 instructor was described as a purely voluntary duty by several witnesses, Potter described it as an "expectation" of the job for the academic advisors assigned to Retention & Student Services. FSU-100 is also taught by faculty, administrators, clerical staff, residence hall directors, and individuals from outside the University. FSU-100 instructors, including academic advisors, are compensated at the adjunct rate for that credit value.

FSU does not require that any of its academic advisors hold a counseling or other professional license. However, both Potter and Winowiecki Hansen described advising as a professional endeavor. Similarly, Wolverton testified that advising “is a field, I believe, it's a profession.” The University expects its advisors to avail themselves of professional development opportunities. In fact, Ducat’s job description indicates that the position is required to “[p]articipate in professional development related to student retention and success (e.g. meetings, workshops, seminars, etc.)” Winowiecki Hansen, Kuk, and Ducat have attended conferences and seminars presented by the National Academic Advising Association (NACADA) and the Michigan Academic Advising Association (MICADA), as well as various workshops and student success conferences.

Potter testified that because there is no degree in advising, it is not considered an academic discipline. However, academic advisors employed by FSU are required to have at least a bachelor’s degree and from one to three years of applicable experience depending on their position. A master’s degree is preferred for four of the advisor positions. Teaching experience at the college level is a preferred requirement for Winowiecki Hansen’s biology advisor position. Several of the advisor positions require more extensive qualifications. For example, the coordinator of first year seminars/academic advisor position held by Moore requires a master’s degree in education, developmental education, educational administration, and/or a related field and two years of experience in “implementation, operation, and teaching of first year seminars and/or developmental education programs.” Similarly, a master’s degree and “teaching or administrative experience working directly with a diverse student body in higher education” is necessary for the honors advisor position held by Malone and a PhD is preferred for that position.

Academic advisor is not a tenure track position. At the hearing, Potter testified that the advisors are not eligible for tenure because they are not in the bargaining unit and because there is no established structure or criteria by which they could be considered for tenure status. However, like other non-represented employees of the University, the advisors can only be terminated for just cause after completing an initial six-month probationary period. Moreover, James Rumpf, a member of Petitioner’s executive board and former FFA president testified that if the instant petition is granted, the Union would be willing to negotiate a tenure track for the academic advisor position. Academic advisors are not eligible for sabbatical, and it is not currently possible for an advisor to become a full professor. Salaries for the advisor positions range from \$40,000 to \$59,000. They are scheduled to work 40 hours per week, 12 months per year.

Academic advisors and faculty members within the same college or program are generally housed in a common geographic location. For example, Winowiecki Hansen, a biology advisor, has an office located within 30 feet of physical science faculty member Charles Bacon and on the same floor as other faculty members within that department. Potter testified that Winowiecki Hansen is assigned to that location because her position requires that she be in contact with members of the biology faculty. Similarly, the offices of Pinto and Kuk are in the same building as the College of Health Professions faculty because, according to Wolverton, they are expected to interact with faculty in that program. Kelenske’s office is on the same floor as faculty members in the College of Education and Human Services, as was Ducat’s when she was an advisor assigned to that college. Three

of the four Retention and Student Success advisors are housed on the same floor as faculty that teach reading and career decision-making, primarily to first year students.

Academic advisors routinely interact with faculty and other bargaining unit members regarding various issues, including helping staff to understand the courses being offered at the University. Winowiecki Hansen testified that she interacts with the FSU faculty on a daily basis, providing information about campus resources and student accommodations and answering general questions. Sometimes the advisors initiate the contact, while at other times they are sought out by a faculty member for assistance. If a student has an issue which is interfering with his or her academic progress in a particular class or is having a problem with a professor, an advisor may contact that professor on the student's behalf and may subsequently receive progress reports back from the professor. When the academic advisors make referrals to educational and personal counselors, they will typically provide information regarding the basis for the referral to the counselor.<sup>1</sup> The advisors may also interact with an admissions counselor on behalf of students who have questions about transfer credits or program eligibility. As noted, advisors enter notes into the Banner computer system which are used by faculty, counselors, and other University staff. Describing the interaction between academic advisors and faculty members, Potter explained that the advisors and faculty "work with the same students" and "with the same interests in mind."

Depending on the department or program to which they are assigned, academic advisors may attend meetings alongside faculty members. Although advising assistant Kuk does not attend faculty meetings, she is a regular attendee of the monthly College of Health Professions staff meetings at which the Dean provides information to faculty, program coordinators, clerical staff, and other employees of the college. Winowiecki Hansen and Ducat regularly attend the biology department's monthly faculty meetings, so they can keep current on issues pertaining to curriculum, admissions standards, or other matters that may be of importance to the students to whom they have been assigned. Their attendance at such meetings, however, is voluntary. Winowiecki Hansen has also been asked by the biology department to meet with candidates who are being considered by the University for faculty appointments. She has given tours of the facilities to candidates, answered their questions, and provided feedback on the candidates to the department chair.

#### IV. Counselors and Librarians

There are three groups of counselors within the bargaining unit. As noted above, the University employs educational counselors who work with students on disability issues, provide career advice, and help students with transition issues such as living on-campus and time management. Educational counselors have taught the FSU-100 course in the past, but have not done so recently. Prior to the creation of the permanent academic advisor position, educational counselors were required to advise students. They were relieved of

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<sup>1</sup> The advisors do not typically receive information back from the counselors unless the student has granted permission for that information to be released.

that duty in 2010. Personal counselors work with students, individually or in small groups, who have more serious psychological issues, including depression and eating disorders. Admissions counselors are responsible for recruiting students to the University. They visit high schools and community colleges and provide information about FSU to prospective students. Admissions counselors must be familiar with the program requirements for all of the degree programs offered by the University. At the time of the hearing in this matter, there were two admissions counselors, both of whom had been working in that capacity for 17 years. However, the University was in the process of phasing out their positions and replacing them with recruiters who will not be part of Petitioner's bargaining unit.

Counselors must have a master's degree in counseling, social work, or psychology and a license in the appropriate field. To acquire a professional license, counselors must put in approximately 1,500 to 2,000 hours of supervised practice time with clients. The University previously employed two educational counselors who were in the bargaining unit but did not possess such a license. However, they were hired before the University adopted the licensing requirement and were grandfathered into the unit pursuant to the collective bargaining agreement between FSU and Petitioner. Counselors can take advantage of professional development opportunities at the national and state level, including the National Counseling Organization and the Michigan Counseling Organization.

Counselors work twelve months a year and are eligible for tenure. The educational counselors, personal counselors, and admissions counselors each have their own seniority group. Each seniority group develops its own criteria for tenure based upon the specific requirements for that area or profession. Based upon peer review, they are evaluated for reappointment on an annual basis and, after five years, for tenure with heightened job security. Further promotional opportunities are available after a counselor has attained tenure. For example, tenured educational counselors are eligible for promotion from assistant professor to associate professor and, after an additional five years, to full professor.

As of July 30, 2015, there were approximately eleven librarians employed by FSU. Librarians do not do any teaching. Like counselors, they are eligible for tenure and for promotion from assistant professor to associate professor and then to full professor. Librarians are required to have a master's degree in Library Science and can seek a PhD in that academic discipline. They can avail themselves of various professional development opportunities. The collective bargaining agreement contains provisions applicable to 12-month librarians; however, there was no evidence presented at the hearing establishing how many librarians work year-round.

## V. Teaching Faculty

The primary duty of FSU faculty members is teaching. Although there is no minimum time requirement for teaching and faculty members can set their own schedule and office hours, they typically work a normal teaching load which is defined as either 12 credit hours, 18 contact hours or 360 student credit hours generated per semester. A faculty member who is teaching a full load generally has four classes of three credits each.

Department chairs, who are elected to that position by a vote of their fellow faculty members, typically have a reduced teaching load during their three-year term. Faculty members determine the graduation requirements for students within their discipline and make decisions on which students to admit. They also play a role in the faculty hiring process by reviewing the credentials and suitability of candidates and serving on search committees, the composition of which vary by department. Faculty members have input in developing curriculum, admission standards, and criteria for promotion and tenure.

Most FSU faculty members work a nine to ten month “academic year” schedule. Some faculty regularly work year-round, while others do so only on special assignment. Faculty members have a five-year probationary period before they are eligible for tenure. The criteria for tenure is different in each college, but generally new faculty appointees submit material to their peers within the department or program for review. The purpose of the review process is to demonstrate that they are mastering their teaching responsibilities and developing professionally within their discipline, for example, by being active in the profession, publishing, attending professional meetings, and providing service to the academic community. Both the administration and the faculty member’s peers must agree that these conditions have been satisfied before tenure can be awarded. Tenured faculty are eligible for sabbatical once they have been employed by the University for at least seven years.

FSU is in the process of complying with the accreditation requirements of the Higher Learning Commission (HLC), a regional accrediting body for universities and colleges. Pursuant to HLC mandates, every faculty member must have at least a master’s degree in his or her discipline to teach undergraduate students and a PhD to teach graduate students. There are, however, faculty members in the bargaining unit who are teaching, but who do not yet have a master’s degree.

Academic advising has always been a responsibility of the FSU faculty. As noted, faculty members, along with counselors and administrators, had been solely responsible for student academic advising. Although the duties of faculty members changed somewhat around 2010 with the introduction of the permanent advisor position, they continue to advise students. This is reflected in Section 7.1 of the collective bargaining agreement, which sets forth the professional responsibilities of unit members, including faculty, counselors, and librarians. That section of the contract provides:

A. The primary professional responsibilities of members are teaching and the provision of counseling, library, and other educational services.

B. *Further, members of the bargaining unit have professional responsibilities which may include advising students; orientation; registration of students; participation in University committees; keeping regular posted office hours, which are scheduled at times convenient for students; and participation in traditional functions which have academic significance. Members shall not be asked to*

spend an excessive or unreasonable amount of time on such services. [Emphasis supplied.]

In colleges and departments to which advisors have been assigned, faculty members assume the responsibility of academic advising for students who have entered their degree or professional programs. This transition from academic advisor to faculty generally occurs after a student has completed his or her second year at the University. As of the date of the hearing in this matter, advisors had been assigned to most colleges and programs at the Big Rapids campus. Rumpf is a professor in the College of Engineering and Technology, one of the colleges to which no advisors are assigned. He testified that one of his duties is to advise students enrolled in the program regarding issues including career choices, classes, and internships. Like the academic advisors, Rumpf meets with students prior to registration and reviews their class selections. During these meetings, Rumpf utilizes the Banner computer system to check transcripts and review grades. If a student has personal issues or academic problems, he will refer them to a counselor. Advising responsibilities for the approximately 100 students in the College of Engineering and Technology are divided amongst the faculty, although some members do not do any advising within a given semester. Rumpf's advising caseload at the time of hearing was 20 students. Rumpf estimated that he spends more than ten percent of his time during any given school year advising students. Rumpf does not teach the FSU-100 course, but he confirmed that other faculty members have done so.

## VI. The Petition for Unit Clarification

As noted, the instant petition was filed by the FFA on May 2, 2012. At or around the same time, the Ferris State Faculty Association (Clerical/Technical Unit) also filed a petition for unit clarification seeking to represent the academic advisors. That petition was later withdrawn and that labor organization disavowed any interest in representing the academic advisors.

The hearing in the instant case began on September 29, 2015. In his opening statement, counsel for the University argued that this matter should be dismissed, in part, because the academic advisor position had been in existence for several years before the FFA filed its petition and, therefore, had been historically excluded from the unit. However, the parties introduced little in the way of evidence regarding the timing of Petitioner's filing. Rumpf, the former president of the FFA, was asked on direct examination why the petition was filed in 2012:

Q [Counsel for Petitioner]: Okay. And my understanding is that the petition was filed in 2012, I think May of 2012, April of 2012?

A [Rumpf]: Yes.

Q. And do you know why the petition was filed in 2012?

A: I do.

Q: And why?

A: The petition was filed then when it was found that the administration was going to take some counselors out of the bargaining unit and turn them into administrators.

Q: Okay. And what about with respect to advisors?

A: Advisors, that was when we found out that they were to become permanent employees rather than just temporary.

On cross-examination, the University's attorney asked Rumpf whether he was aware that the academic advisor position was actually made permanent in 2010. In response, Rumpf explained that he thought the advisors became permanent "around 2012." Although personnel reports would reflect whether a position is temporary or permanent, Rumpf testified that the FFA does not get such reports on all staff members and that he did not recall receiving such a report for the academic advisor position.

#### Discussion and Conclusions of Law:

The unit clarification process is used to resolve ambiguities concerning unit placement of individuals in newly created classifications and in situations where there is ambiguity due to recent substantial changes in existing job classifications so as to raise a question as to appropriate bargaining unit placement. *City of Grand Rapids*, 19 MPER 43 (2006); *Lapeer Co*, 1993 MERC Lab Op 649; *Port Huron Area Sch Dist*, 1989 MERC Lab Op 763. It is well-settled that a unit clarification petition is not appropriate to move established positions in or out of bargaining units contrary to bargaining history. *Genesee Co*, 1978 MERC Lab Op 552, 556. This is true even if the basis for the exclusion was not express agreement but rather the union's acquiescence, and even if the excluded positions share a community of interest with Petitioner's unit. *Washtenaw Cmty Coll*, 1993 MERC Lab Op 781, 788; 6 MPER 24128; *Birmingham Pub Sch*, 1983 MERC Lab Op 1013, 1019-1020. To determine the unit placement of a position which has been historically excluded from the bargaining unit, a labor organization must file a petition for representation election. *Blackman Charter Twp*, 1988 MERC Lab Op 419; *Lansing Sch Dist*, 1972 MERC Lab Op 264, 269-270.

The University argues that the petition filed by the FFA is inappropriate because the academic advisor position has been historically excluded from the bargaining unit. According to the University, the Union waited over 18 months to file its petition, if measured from when the academic advisor position was made permanent, or more than four years based upon when the professional advisor position was first created and staffed.

PERA does not provide a specific time limit for filing a unit clarification petition. This Commission has dismissed unit clarification petitions for 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. For example, in *Washtenaw Cmty Coll*, at 787-788, we held that the petitioner's inadvertence or mistake in seeking a position did not excuse

the union's delay of at least a year in filing the petition. However, we have also clarified the unit placement of positions that were in existence for several years before the filing of a petition where the union was not properly made aware of the basis for clarification. See e.g. *City of Novi*, 30 MPER 41 (2016), where we rejected the employer's contention that the position had been historically excluded. The position had been vacant for several years before the union became the representative of the bargaining unit, and the union was not informed of the existence of the position until the employer posted the vacancy several years after the union became the bargaining representative. Since the union promptly objected to the unit placement upon learning of the vacancy posting and filed its petition within a couple months of the vacancy posting, we found unit clarification was appropriate. In *Wayne Co Cmty Coll Dist*, 20 MPER 55 (2007), the employer argued that the unit clarification petition should be dismissed because the positions at issue had not undergone substantial changes since revised job descriptions were provided to the union almost two years before the petition was filed. We found that the petitioner did not agree or acquiesce to the exclusion of the positions because the employer used vague and misleading language in the job descriptions such that the petitioner "could not reasonably be expected to have known, at the time the positions were created, that these positions shared a community of interest with the positions in its bargaining unit." *Id.* at 162. See also *Wayne Co Cmty Coll Dist*, 19 MPER 72 (2006) (petition timely where union filed its petition within five months of becoming aware of the existence of the new classification); *Jackson Pub Sch*, 1997 MERC Lab Op 290; 10 MPER 28042 (petition timely even though the union demanded that it be accreted to its bargaining unit fourteen months after the position was created and filed a unit clarification petition six months after the demand).

While a representation matter is treated as a non-adversarial proceeding, to the extent that there is a burden of proof, it falls on the party seeking to deny the right of employees to be represented for purposes of collective bargaining. *Lake Co & Lake Co Sheriff*, 1999 MERC Lab Op 107; 12 MPER 30028; *Antrim Kalkaska Cmty Mental Health*, 1998 MERC Lab Op 11, 15. Therefore, it was incumbent upon the University to present proofs supporting its argument that Petitioner acquiesced to the exclusion of the academic advisors from its bargaining unit. Having carefully reviewed the record in this matter, we find no evidence establishing that the FFA could have reasonably expected to have known that the academic advisor position shared a community of interest with its bargaining unit well in advance of the filing of the instant petition.

It is undisputed that the academic advisor position was created as a three-year temporary position and filled by Kuk in March of 2008 and by Winowiecki Hansen later that same year. However, there is no evidence establishing that Petitioner was aware of the existence of the position at that time. Moreover, the temporary status of the position alone would likely have made the position ineligible for inclusion in the faculty unit at that time. We have long held that employees hired for a specific limited period, with no expectation of further employment after that period, are not eligible for inclusion in a bargaining unit under § 13 of PERA. See e.g. *City of New Buffalo*, 1989 MERC Lab Op 590; *City of Tecumseh*, 1984 MERC Lab Op 1175; *City of Benton Harbor*, 1972 MERC Lab Op 467; *Flint Co Rd Comm*, 1969 MERC Lab Op 34.

Similarly, there is no evidence establishing that the Union was notified of the change in status of the academic advisor position in 2010, when the University decided to make the position permanent. Although Kuk and Winowiecki Hansen were made permanent employees of the University during the summer of 2010, they remained the only two academic advisors on staff until Natalia Carvalho-Pinto was hired as an advisor on March 19, 2012. In fact, Rumpf, the FFA president from 2007 to 2015, testified that he thought the advisor position became permanent in 2012, and it was this change in status that motivated Petitioner to seek representation of the advisors. The petition was filed on May 2, 2012, less than two months after Carvalho-Pinto was hired.<sup>2</sup> Although personnel reports would reflect whether a position is temporary or permanent, Rumpf testified that he did not recall receiving such a report for the advisor position. Moreover, the University failed to introduce any evidence that was sufficient to establish that it provided notice to the Union which would have made Petitioner aware of the basis for unit clarification prior to 2012. Under these circumstances, we cannot conclude that Petitioner acquiesced to the exclusion of the academic advisors from its bargaining unit.

The University next contends that the petition for unit clarification must be dismissed because the academic advisor position does not share a “sufficient” community of interest with the faculty bargaining unit to warrant the accretion sought by the FFA. According to the University, faculty members enjoy a “unique role and status” because of their duties and expertise, which make them distinct from the academic advisors. Petitioner asserts that the academic advisors share a community of interest with the faculty unit based on their shared status as professionals, similarities in duties and interaction.

A primary objective of the Commission is 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). 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. See e.g. *Covert Pub Sch*, 1997 MERC Lab Op 594, 601; 11 MPER 29016.

When a union files a unit clarification petition seeking to add a new position to its unit, no other union claims the position, and there is no assertion by the employer that the new position is executive, confidential or supervisory, the only issue is generally whether the position shares a community of interest with the petitioner's existing unit. See e.g. *Detroit Judicial Council*, 2000 MERC Lab Op 7; 13 MPER 31021; *Lansing Cmty Coll*,

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<sup>2</sup> In its brief, the University cites the fact that the hearing in this matter did not commence until September 29, 2015, presumably to bolster its assertion that the FFA dragged its feet in seeking clarification of the unit. This contention is utterly without merit, as this matter was adjourned without date for several years with the University's consent while the parties attempted to negotiate a settlement. When the FFA requested that the case be reactivated, the hearing was scheduled for July 31, 2015. That date was adjourned at the request of the University.

2000 MERC Lab Op 99. We do not determine relative degrees of community of interest or attempt to find the "optimum" or "most" appropriate unit. *City of Lansing, Bd of Water & Light*, 2001 MERC Lab Op 13; *Henry Ford Cmty Coll*, 1996 MERC Lab Op 374, 379-380; *Saginaw Valley State Coll*, 1988 MERC Lab Op 533; 1 MPER 19110. When newly-created positions share a community of interest with the unit that seeks to include them, it is appropriate to accrete them to the existing unit rather than permit them to remain with a residual group of excluded employees. *Chelsea Sch Dist*, 1994 MERC Lab Op 268, 276; *Saginaw Valley State Coll*.

We have consistently found that a community of interest exists between teaching faculty and supportive professional staff who may do little or no actual teaching based upon the integration of their functions and their "synergistic efforts aimed at the education of university students." *Wayne State Univ*, 1972 MERC Lab Op 140, 144-146. See also *Glen Oaks Cmty Coll*, 16 MPER 72 (2003); *Grand Rapids Cmty Coll*; 1992 MERC Lab Op 540; *Grand Rapids Cmty Coll*, 1992 MERC Lab Op 548; *Highland Park Cmty Coll*, 1981 MERC Lab Op 823, 828; *Henry Ford Cmty Coll*, 1977 MERC Lab Op 51; *Eastern Michigan Univ*, 1977 MERC Lab Op 564; *Kellogg Cmty Coll*, 1974 MERC lab Op 454. The rationale for this policy was fully explained in *Eastern Michigan Univ*, 1972 MERC Lab Op 118.

At issue in *Eastern Michigan Univ*, was whether a faculty bargaining unit should consist of both faculty members and various classifications of counselors and advisors. The university argued that the Commission should find as the appropriate collective bargaining unit only those employees carrying the rank of professor, associate professor, assistant professor, and instructor. It asserted that those in the non-teaching jobs should be excluded on the basis that they did not have academic tenure and because only one group – the faculty – was completely devoted to the teaching curriculum. We rejected that argument and concluded that the unit should include all teaching faculty, academic advisors, counselors, and residence hall head advisors. In so holding, we explained:

[A] functional approach to the definition of a bargaining unit in a major university better reflects the realities of such institutions than the strictly professional approach used by the NLRB in its recent cases involving bargaining units in private universities.

\* \* \*

A bargaining unit in a major university should not be limited to faculty members of demonstrably diverse professional and intellectual interests. The extensive supporting professional staff at the University should bargain with the general faculty. The supporting staff and faculty are functionally integrated groups by virtue of their synergistic efforts aimed at the education of University students.

A community of interest exists between the various professional groups which the labor organization seeks to include within one bargaining unit. This relationship arises out of one of the major aims of the University. The

record disclosed that a primary purpose of the University is to educate and prepare students for the eventual roles that they will lead in life. This educational process is the central focus of the activities of both the faculty and the several classes of advisors and counselors.

\* \* \*

Separation of these groups as proposed by the University would create fragmented bargaining units which we have consistently sought to avoid.

*Id.* at 122-123 (internal citations and emphasis omitted).

We see no reason to deviate from the above policy. Based upon the record presented in this matter, it is evident that the academic advisors are the type of supportive professional staff which this Commission has consistently found to have a community of interest with teaching faculty. Witnesses for both the University and the FFA described advising as a professional endeavor. The advisors provide valuable information and assistance to FSU students to ensure that they successfully complete their certification or degree programs in a timely manner. Each advisor meets with the 300 to 400 students to which he or she has been assigned prior to registration and conducts follow-up meetings as necessary. At these meetings, advisors review grades, counsel students on class selection and degree requirements, help students understand the transition to the University and assist them with making other decisions relating to their pursuit of a degree. The advisors also work with students who are having academic issues and make referrals to counselors if they determine that a student has a more serious academic or personal problem. Although the advisors are not required to teach any courses, many of them have routinely volunteered to teach FSU-100; in fact, serving as an instructor for the freshman seminar is an “expectation” of the job for advisors in Retention and Student Services. One advisor was also teaching a biology course at the time of the hearing. In addition, advisors are also involved in student recruitment and retention and they play a role in the orientation process for new students. We find that the duties of the advisors are sufficiently involved in the educational process to warrant their inclusion in Petitioner’s unit.

The record also establishes that there are similarities in job skills, type of work, educational training, and daily contact with bargaining unit members which further support finding a community of interest in this matter. Despite the creation of the academic advisor position, faculty members continue to advise students on topics such as scheduling and program or degree requirements. Potter explained that advisors and faculty “work with the same students” and “with the same interests in mind.” Academic advisors have offices located near faculty members who work in the same college or program and they routinely interact with faculty and other bargaining unit members, including at faculty or departmental meetings. Advisors enter notes in the Bannon computer system which are available for use by University staff, including members of Petitioner’s unit. Although there are differences in educational requirements, salary and some working conditions, we do not find that these factors override the community of interest established by virtue of their synergistic efforts in the education of students. See e.g. *Washtenaw Cmty Coll*, 1993 MERC Lab Op 781, 790-791; 6 MPER 24128; *Eastern Michigan Univ*, 1972 MERC Lab

Op at 123. Nor is the fact that advisors are ineligible for tenure determinative for purposes of unit placement. *Michigan Tech Univ*, 1993 MERC Lab Op 410.

Finally, we note there is no other labor organization seeking to represent the academic advisor position. Under such circumstances, denying the petition would leave the advisors unrepresented, and thereby conflict with well-established Commission policy. See e.g. *Charlotte Pub Sch*, 1999 MERC Lab Op 68, 73; 12 MPER 30022; *City of Muskegon*, 1996 MERC Lab Op 64, 70; 9 MPER 27040.

**ORDER**

Based upon the above findings and conclusions, the petition filed by the Ferris Faculty Association of Ferris State University, MEA/NEA, is hereby granted and the bargaining unit is clarified to include the position of academic advisor.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

\_\_\_\_\_/s/  
Edward D. Callaghan, Commission Chair

\_\_\_\_\_/s/  
Robert S. LaBrant, Commission Member

\_\_\_\_\_/s/  
Natalie P. Yaw, Commission Member

Dated: March 27, 2017