

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION**

In the Matter of:

HENRY FORD COLLEGE,
Public Employer,

-and-

HENRY FORD COMMUNITY COLLEGE FEDERATION OF TEACHERS,
AFT, LOCAL 1650,

Petitioner in Case No. UC14 J-014/Docket No. 14-034261-MERC,
Intervenor in Case No. UC15 B-005/Docket No. 15-021101-MERC,

-and-

HENRY FORD COMMUNITY COLLEGE ADMINISTRATORS'
ASSOCIATION, LOCAL 71,

Petitioner in Case No. UC15 B-005/Docket No. 15-021101-MERC,
Intervenor Case No. UC14 J-014/Docket No. 14-034261-MERC.

APPEARANCES:

Dykema Gossett, PLLC, by Robert A. Boonin and Corey Wheaton, for Henry Ford College

Mark H. Cousens for Henry Ford Community College Federation of Teachers, AFT, Local 1650

McKnight, Canzano, Smith, Radtke & Brault, P.C., by David R. Radtke, for Henry Ford Community College Administrators' Association, Local 71

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

On October 3, 2014, the Henry Ford Community College Federation of Teachers, AFT, Local 1650 (Local 1650), filed a unit clarification petition, Case No. UC14 J-014/Docket No. 14-034261-MERC, with the Michigan Employment Relations Commission (Commission) seeking to clarify its bargaining unit to include the position of Manager of Teaching and Support Services. On February 24, 2015, Henry Ford Community College Administrators' Association, Local 71 (Local 71) filed a unit clarification petition, Case No. UC15 B-005/Docket No. 15-021101-MERC, seeking to clarify its bargaining unit to include the positions of Learning Lab Coordinator and the Project Assistant/Manager.

The petitions were consolidated. An evidentiary hearing was conducted for the Commission in Detroit, Michigan, on September 24, September 25, and October 27, 2015, before Administrative Law Judge Travis Calderwood. Based on the entire record, including post-hearing briefs filed by all parties on or before January 15, 2016, we find as follows:

The Petitions:

The position of Manager of Teaching and Support Services sought by Local 1650's petition was initially placed in the bargaining unit represented by Local 71 by the College. The position of Learning Lab Coordinator (Coordinator) sought by Local 71 in its petition was initially placed in Local 1650's bargaining unit by the College. The position of Project Assistant/Manager also sought by Local 71 was unrepresented at the time of Local 71's filing. During the September 24, 2015, hearing, counsel for Local 71 withdrew its petition with respect to the Project Assistant/Manager position.

Findings of Fact:

Local 1650 is the exclusive bargaining representative for the College's full-time faculty. Its collective bargaining agreement with the College contains the following recognition clause:

The Board recognizes the Union as the sole and exclusive bargaining representative for the Bargaining Unit consisting of all classroom teachers (except part-time extracontractual classroom teachers teaching less than ten contact hours); all department chairpersons, all counselors, all librarians, all Career Service Officers, Student Outreach and Support Services Director, Special Needs Program Advisers, Student Newspaper/Student Activities Officer, and Athletic Director (except for the non-classroom teaching positions cited above working less than nineteen hours per week). With respect to part-time teachers of English Composition, an assignment of eight or more contact hours shall constitute membership in the Bargaining Unit. All members of the Bargaining Unit shall hereinafter be referred to as "teachers".

Local 1650's bargaining unit is comprised primarily of full-time faculty members who normally work ten-month schedules based on the College's academic year. The unit members typically do not work during the summer months and if they do they receive extra compensation per their contract. Local 1650's faculty members are typically assigned instructional duties between 12 and 15 credit hours per semester. While Local 1650 members do not receive vacation time off, they do receive the equivalent of .5 personal days per contractual month, for a total of five days per the standard ten-month school year.

Local 71's unit is comprised entirely of full-time administrative staff employed by the College. Its recognition clause, contained within the collective bargaining agreement, states:

The Board hereby recognizes the Association as the sole and exclusive collective bargaining representative for all College personnel employed by the Board as

administrators, excluding the President of the College, positions that report directly to the President of the College, Human Resources staff, and all unclassified Administrative Assistants. If a position no longer reports directly to the President as set forth above, said position shall become part of the bargaining unit.

By contract, Local 71's members' work periods consist of forty-eight weeks of work during the 12-month calendar year. Members receive 5 personal days along with twenty days designated as "non-work days". Despite being termed "non-work days", the practical effect of these days, in conjunction with the annual salary provided to Local 71 members, is that each employee receives twenty days a year of paid vacation. The contract requires that at least half of these "non-work days" be taken during the non-academic calendar.

In May of 2013, the College found itself faced with a \$16.67 million deficit which could have resulted in the College defaulting on its payroll obligations as early as mid-July. The College began to restructure its organization to cut costs and alleviate the financial crisis – numerous administrative positions were eliminated and/or combined. One such combining of positions involved the Vice President of Academic Affairs for Arts and Sciences and the Vice President of Academic Affairs for Career and Technical Education which were merged into one position, the Vice President of Academic Affairs, held by Dr. Tracy Pierner.

Academic Affairs was further restructured with the creation of Teaching and Learning Services: a new division comprised of the Eshleman Library, the Learning Lab/Tutoring Center, the Center for Teaching Excellence and Innovation (CTEI), the Learning Management Support Course Management System, and the Curriculum Support System. In July of 2013, Dr. Adam Cloutier became the Director of this new division, reporting directly to Dr. Pierner.

Manager of Teaching and Support Services

One of the areas under the newly created Teaching and Learning Services division was the CTEI, which had existed at the College since 1999. The CTEI's primary responsibility is for faculty professional development and it promotes faculty development by sponsoring conferences on various academic issues and booking discussion groups, among other activities. It also conducts orientation for new faculty members. Additionally, it aids members of the faculty who may be struggling in the performance of their positions.

The CTEI is governed by an advisory board that is comprised of ten full-time faculty members, one administrator and one adjunct faculty member. Up until the creation of the Manager position, the CTEI had always been directed by a full-time faculty member on release time from a portion of their assigned instructional duties.¹

Another area under the new division headed by Dr. Cloutier involved the College's curriculum catalog. At times in the past, the College's curriculum was managed by a Curriculum Specialist.

¹ Faculty members in this position would be responsible for instructional loads less than the typical 12 to 15 credit hours per semester to manage the CTEI.

Often that position was staffed by a part-time administrator who, by nature of being part-time, was not part of Local 71's bargaining unit. However, there were times in the past that the specialist position was a full-time position and was considered a part of Local 71's unit.

Dr. Cloutier testified that following his appointment to head the new division, he and his division staff began to propose changes and suggestions for how the new division should operate. Both CTEI and curriculum were identified as areas that could benefit from having full-time leadership installed. Dr. Cloutier recognized that it might be difficult to get two separate full-time positions approved; he also saw a potential benefit of blending the two areas and chose to propose one full-time position that would oversee both the CTEI and the curriculum catalog.

The position proposal was then submitted to Dr. Pierner. Somewhere along the line, responsibilities relating to online learning were added to the proposed position. In May of 2014, the College posted the Manager of Teaching and Support Services. The job description released at that time provided the following as a summary of the position:

Manage HFCC's online learning program. Researches, reviews, and identifies new educational content and technologies, grants and other funding proposals to advance excellence in teaching and learning instructional design.

The minimum qualifications required by the posting required related work experience in at least two of the three main responsibility areas of the position – instructional design and pedagogy, online learning, and curriculum management. The posting went on to identify specific qualifications required with respect to those three areas. That job posting did not result in the position being filled.

Following the College's failure to secure a suitable candidate for the Manager of Teaching and Support Services, the decision was made to drop the online learning component of the position and post it again. Additionally, other duties relating to assessment were added. The new job posting provided as the summary of the position:

Manage HFCC's faculty professional development and curriculum support services. Researches, reviews, organizes, conducts, and identifies new and effective educational practices to advance excellence in teaching, learning and assessment.

Dr. Cloutier admitted that while he was supposed to remove all duties related to online management, he had missed the language requiring related work experience in at least two of the three main responsibility areas of the position – instructional design and pedagogy, online learning, and curriculum management. All other references to online learning management were removed from the position. The position was eventually filled by Dr. Deborah Smith.

Both Dr. Pierner and Dr. Cloutier testified at length regarding the three actual areas of responsibility with which the Manager position is entrusted - assessment coordinator, curriculum manager, and professional development director.

With respect to curriculum management, testimony reveals that the position is not in charge of creating or even necessarily evaluating or approving of curriculum used by faculty at the College. Rather, the creation of curriculum typically follows a path that begins with faculty approval at a division level where it would be presented to the College Council, and then possibly to the Vice President of Academic Affairs and/or College President.² The Manager's duties with respect to curriculum, while possibly involving some management of the process from faculty divisions through to the College Council, ultimately is to take the approved curriculum and update the College's curriculum database.

The record reveals that the majority of the assessment duties possessed by the Manager position can be summarized as a collecting and organizing of the various assessment activities done at the College, along with, as described by Dr. Cloutier, research of best practices and assessment activities done at other institutions. Testimony provided by both Dr. Cloutier and Dr. Pierner clearly indicate that the Manager of Teaching and Support Services position does not engage in conducting any actual assessment of students or what those students have learned in the classroom.

The final aspect of the Manager of Teaching and Support Services position involves professional development. The majority of professional development occurs through the CTEI and can be provided to both faculty and nonfaculty employees of the College. Presenters of professional development programs include faculty, the Manager and other administrators and sometimes even support staff. With the creation of the Manager of Teaching and Support Services position, the CTEI Director, a position held by a faculty member on release, was no longer needed.

Learning Lab Coordinator

The College has operated the Learning Lab/Tutoring Center (Lab) for the benefit of its students for quite some time. Up until the events that gave rise to the present proceeding, the Lab was overseen and managed by a faculty member covered by the Local 1650 Agreement. While titled Learning Lab Coordinator or Director³, the position was, for most of its existence, not a full-time position and instead was staffed by faculty members on a part-time release basis in situations similar to that of the Center for Teaching Excellence and Innovation Director. According to Dr. Cloutier, prior to the creation and filling of the Learning Lab Coordinator position in January 2015, Dr. Peter Kim, a full-time member of the College's English Department, had been on full-time release in order to manage the Lab. Prior to Dr. Kim performing the work, Mr. Scott Still, another faculty member, managed the Lab from 2009 through 2011. Prior to this, Faculty Member Jeff Morford performed the work from 2005 through 2009. Dr. Cloutier testified that Dr. Kim, while serving in the Coordinator/Director position, had the authority to hire and discipline the Lab staff.

² The College Council is a body made up of both administrators and faculty members; the former being the predominant group.

³ The position may also have been known as Coordinator of Supplemental Instruction.

Dr. Cloutier also testified that he, along with Dr. Kim, worked on a proposal to create a full-time Coordinator position. The position was designed as a full-time position that works on a 12-month calendar. The position's essential responsibility is the management and oversight of the Lab and includes the scheduling and supervision of the Lab's part-time faculty tutors, full-time and part-time support employees, and the students who work as tutors. The Coordinator possesses the authority to recommend the hiring of support staff, evaluate support staff, and recommend discipline for support staff and student tutors. The Coordinator position reports directly to Dr. Cloutier. Dr. Cloutier claimed that, given the nature of the duties, it was his desire that the position be placed within Local 71's bargaining unit.

Dr. Cloutier submitted the proposal to Dr. Pierner. At some point, Dr. Cynthia Glass, the College's Vice President of Administration, became aware of the proposed position and reviewed it with Dr. Pierner. Dr. Glass testified that she thought that the position should be placed within the Local 1650 bargaining unit as opposed to Local 71's bargaining unit "based on the history of who had been performing the work."⁴

Local 1650 and the College memorialized their agreement with respect to the Coordinator position in an August 29, 2014 Letter of Agreement. That Letter of Agreement covered four additional issues between the College and Local 1650, in addition to the Coordinator position. The Letter of Agreement provides for an identical work period of forty-eight (48) work weeks and twenty "non-work days" as provided to Local 71's members under the contract. At the time of the hearing, the Coordinator position was the only position within Local 1650 that operated on a 12-month calendar. The agreement further states that:

All contract provisions apply – Insurance Benefits, Pension Supplement, Probation & Tenure, Governance, Calendar, Community Service, etc. – including "preferred minimal educational requirement" of a Master's Degree.

Ultimately, the position was posted with a job description summary that stated, "[t]his is a 12-month full-time tutoring position with supervisory responsibilities." The position was filled in January of 2015 by Chardin Clayborne. Mr. Clayborne's duties are not substantially different from those performed by the faculty members who preceded him. Dr. Cloutier testified that he believed Clayborne's tutoring duties amounted to two hours a week.

Discussion and Conclusions of Law:

The Commission's authority to determine units appropriate for collective bargaining under PERA is established by §13 of the Act, which states:

The commission shall decide in each case, to insure public employees of the full benefit of their right to self-organization, to collective bargaining and otherwise to effectuate the policies of this act, the unit appropriate for purposes of collective

⁴ A "Statement of Agreement" attached to the July 29, 2013 Collective Bargaining Agreement between the College and Local 1650 provides that the "parties agree to form a joint committee to pursue the integration of the Learning Lab and the Tutoring Center and determine the role of full time faculty in tutoring."

bargaining as provided in section 93 of Act No. 176 of the Public Acts of 1939, as amended, being section 423.93 of the Michigan Compiled Laws. . .

Unit placement is a permissive, not a mandatory, subject of collective bargaining. *Detroit Fire Fighters Ass'n, Local 344, IAFF v City of Detroit*, 96 Mich App 543, 546, (1980); *Ishpeming Supervisory Employees, Local 128, AFSCME v Ishpeming*, 155 Mich App 501, 515 (1986); *Michigan Educational Support Personnel Ass'n v Southfield Public Schools*, 148 Mich App 714, 716 (1985). When the parties cannot agree, unit placement and the scope of the bargaining unit are matters to be decided by the Commission under § 13. *City of Detroit (Water and Sewerage Dep't)*, 29 MPER 62 (2015); *City of Warren*, 1994 MERC Lab Op 1019, 1023; *Livonia Pub Sch*, 1996 MERC Lab Op 479, 481. The reclassification and removal of positions from a bargaining unit without a substantial change in job duties is a question of unit placement that, absent the agreement of the parties, must be resolved by the Commission. *City of Ann Arbor*, 16 MPER 17 (2003) (no exceptions); *Michigan State Univ*, 1992 MERC Lab Op 120, 123.

In exercising our authority to determine the scope of the appropriate unit, however, we defer to the parties' past agreements, both explicit and implicit, regarding bargaining unit placement. This principle is reflected in our unit clarification petition case law, which we recently summarized, in *Univ of Michigan*, 29 MPER 23 (2015), as follows:

The Commission Rules and its case law regarding unit clarification petitions are both well-settled. We have long followed the holding of the National Labor Relations Board in *Union Electric Co*, 217 NLRB 666, 667 (1975), which we adopted in *Genesee Co*, 1978 MERC Lab Op 552, 556, and more recently restated in *City of Detroit & AFSCME Council 25*, 23 MPER 102 (2010), and *Jackson Pub Sch*, 1997 MERC Lab Op 290, 298-299:

Unit clarification, as the term itself implies, is appropriate for resolving ambiguities concerning the unit placement of individuals who, for example, come within a newly established classification of disputed unit placement or, within an existing classification which has undergone recent, substantial changes in the duties and responsibilities of the employees in it so as to create a real doubt as to whether the individuals in such classification continue to fall within the category -- excluded or included -- that they occupied in the past. Clarification is not appropriate, however, for upsetting an agreement of a union and employer or an established practice of such parties concerning the unit placement of various individuals, even if the agreement was entered into by one of the parties for what it claims to be mistaken reasons or the practice has become established by acquiescence and not by express consent.

We have also recognized that a position is not "newly established" if it has the same job duties as a former position and has merely been given a new title. *City of Detroit (Water and Sewerage Dep't)*, supra; *City of St Clair Shores*, 1988 MERC Lab Op 485.

As noted above, our policy is not to alter an established bargaining unit or unit configuration even if it is not one that we would have found appropriate if asked to determine the appropriate unit when the union(s) first sought to represent the employees. However, when a position is genuinely new, unions representing different bargaining units claim the position, and the employer places it in one of these bargaining units, we defer to the employer's good faith decision as long as it is reasonable and the position shares a community of interest with the unit in which it is placed. *City of Detroit (Water and Sewerage Dep't)*, supra; *University of Michigan*, supra; *City of Lansing*, 2000 MERC Lab Op 380; *Henry Ford CC*, 1996 MERC Lab Op 374; *Saginaw Valley State College*, 1988 MERC Lab Op 533. We do not choose to make determinations regarding relative degrees of community of interest, nor do we attempt to find the "optimum" or "most" appropriate unit. *Lansing Sch Dist*, 22 MPER 96 (2009); *City of Lansing, Bd of Water & Light*, 2001 MERC Lab Op 13, 16; *Henry Ford Cmty Coll*, 1996 MERC Lab Op 374, 379-380.

We determine whether community of interest exists between a position and a bargaining unit 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 Schs*, 1997 MERC Lab Op 594, 601; *Grand Rapids Pub Schs*, 1997 MERC Lab Op 98, 106.

In the present case, the Manager of Teaching and Support Services is a newly-established classification that the College chose to place in Local 71's bargaining unit. The position is a combination of three separate job functions as designed by the College: assessment coordinator, curriculum manager, and professional development director. Testimony provided at the hearing indicates that prior to the creation of the Manager position, the duties involving curriculum were done by a member of Local 71's bargaining unit, while the duties involving professional development and the CTEI were done by members of Local 1650's bargaining unit. The record, as developed, in our opinion does not indicate that there was a position involved with assessment that either petitioner could rightfully claim as their own prior to the Management position's creation. Both Petitioners make valid and logical arguments as to how each of their units have a community of interest with the new position as it relates to assessment. We agree that the Manager position shares a community of interest with both units. In accordance with the legal principles identified above, we refuse to substitute our judgement for that of College, as requested of us by Local 1650, and we will not disturb the placement of the Manager of Teaching and Support Services in Local 71.

With respect to the contested position of Learning Lab Coordinator, the parties stipulated that employees covered by the Local 1650 Agreement served as Coordinator of the Learning Lab from 2005 through 2014.⁵ Consistent with this practice and the "Statement of Agreement-Learning Lab/Tutoring Center" attached to the July 29, 2013 Collective Bargaining Agreement, the College and Local 1650 entered into a Letter of Agreement on August 29, 2014 to formally

⁵ The position may also have been known during this time period as Learning Lab Director or Coordinator of Supplemental Instruction.

include the Learning Lab Coordinator within the Local 1650 bargaining unit. Although Article I (A) of the College's Agreement with Local 71 recognizes Local 71 as the representative of Administrators, the Learning Lab Coordinator's duties have been performed by non-administrators to the exclusion of all others for at least 10 years without protest. During this time period, the duties have not been considered Administrator's work by either Local 1650 or Local 71. The duties performed by the current Lab Coordinator are not substantially different from those performed by his faculty member predecessors. As noted above, the Commission has long recognized that unit clarification is not appropriate for upsetting an agreement of a union and employer or an established practice concerning unit placement even if the practice has become established by acquiescence and not by express consent.

The above notwithstanding, even if we were to conclude that the unit clarification petition filed by Local 71 was properly brought forth in the instant case, Petitioner Local 71 has not provided sufficient cause for us to question the college's decision to place the Coordinator position in the Local 1650 unit. 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." *Ferris State University*, __MPER__ (2017). See also *Wayne State Univ*, 1972 MERC Lab Op 140, 144-146; *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; and *Eastern Michigan Univ*, 1972 MERC Lab Op 118.

We see no reason to deviate from the above policy. Based upon the record presented in this matter, it is evident that the Coordinator is the type of supportive professional staff which this Commission has consistently found to have a community of interest with teaching faculty. According to Dr. Cloutier, the Learning Lab is "an extension of the classroom" that provides assistance to students with their classes. This assistance involves personal counseling as well as the tutoring provided by the Lab Coordinator. Faculty members teach in the learning lab as well as direct students to go to the learning lab for assistance with difficulties. The Learning Lab Coordinator position is a tenure track position as are many of the positions in the Local 1650 unit. In addition, Article I (A) of the Local 1650 Agreement is a broad recognition clause. It covers counselors, librarians, career services officers, the student support services director and the athletic director as well as classroom teachers. Consequently, we find that, even in the absence of the bargaining history, the Coordinator is sufficiently involved in the educational process to warrant its inclusion in Local 1650's unit.

Although Local 71 argues that the Coordinator does not share a community of interest with the Local 1650 bargaining unit because the position works on a 12-month calendar as opposed to the 10-month academic calendar typically worked by members of the Local 1650 unit, the Commission has long held that such incidental differences in the terms of employment are subject to bargaining and do not preclude a finding of a community of interest. In *Reese Public Schools*, 30 MPER 8 (2016), for example, we held:

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.

In the present case, the fact that the Coordinator position operates on a 12-month calendar as opposed to a 10-month calendar is not sufficient to preclude the Commission from finding that the position shares a community of interest with the Local 1650 unit. Significantly, the parties stipulated that the Placement Officer and Co-op Study Director, as well as Trade and Apprentice Program Instructors, previously worked a 12 month schedule under the Local 1650 agreement. Although the Commission recognizes that there may be differences between the Coordinator's working conditions and those of some other members of the Local 1650 unit, we do not find that these differences override the community of interest established by virtue of the Coordinator's "synergistic efforts" in the education of students.

We have considered all other arguments put forth by the parties and having determined that they do not warrant any change in our conclusions, we issue the following order.

ORDER

Petitioner Local 1650's request to clarify its faculty bargaining unit to include the Manager of Teaching and Support Services position is hereby denied. Petitioner Local 71's request to clarify its administrators' bargaining unit to include the Learning Lab Coordinator position is also hereby denied.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____/s/
Edward D. Callaghan, Commission Chair

_____/s/
Robert S. LaBrant, Commission Member

_____/s/
Natalie P. Yaw, Commission Member

Dated: April 12, 2016