

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

In the Matter of:

RICHMOND COMMUNITY SCHOOLS,  
Public Employer,

Case No. 21-D-0875-RC

-and-

MICHIGAN EDUCATION ASSOCIATION,  
Labor Organization-Petitioner.

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**APPEARANCES:**

Thrun Law Firm, P.C., by Katherine Wolf Broaddus, for the Public Employer

McKnight, Canzano, Smith, Radtke & Brault, P.C., by Benjamin L. King, for the Petitioner

**DECISION AND ORDER ON PETITION FOR ELECTION**

Pursuant to the provisions of §12 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212, a petition for a representation election was filed on April 21, 2021, by the Michigan Education Association (MEA or Petitioner). Petitioner seeks an election for certification as the authorized bargaining representative of “[a]ll regularly employed full-time and part-time GSRP and Preschool lead teachers, aides and childcare providers” employed by the Richmond Community Schools District (District or Employer). The Employer objected to the petition and refused to consent to an election asserting a lack of community of interest among the petitioned-for employees, and that the proposed unit would be one based on departmental lines which would result in fragmentation. The Employer further asserted that regardless of the existence of a community of interest among the petitioned-for employees, the classification of Lead Childcare Provider should be excluded from the unit based on supervisory status.

An evidentiary hearing was held on September 16, 2021, by Zoom video-conferencing, before Administrative Law Judge Travis Calderwood of the Michigan Office of Administrative Hearings and Rules (MOAHR).<sup>1</sup> Based on the entire record, including the post-hearing briefs filed by the parties on November 1, 2021, we find, for the reasons set forth below, that the petitioned-for unit is appropriate, and that the Employer failed to establish the supervisory status of the Lead Childcare Provider. Accordingly, we direct an election in the petitioned-for unit.

**Findings of Fact:**

The District is located in the City of Richmond in the County of Macomb. There are currently several bargaining units operating within the District including, but not limited to, units

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<sup>1</sup> MOAHR Docket No. 21-011038-MERC.

represented by the MEA/NEA Local 1, Richmond Education Association (REA) and the Educational Para-Professional Teamsters State, County, and Municipal Workers Local 214 (Teamsters). The REA unit is comprised of the District's teachers and other certified staff, while the Teamsters unit includes the District's paraprofessional aides. According to the party representatives, the Teamsters' representative at the time of the petition's filing was contacted regarding possible interest from the Teamsters in representing the proposed unit. The Teamsters' representative indicated that the Teamsters had no interest in the proposed unit. In addition, during the September 21, 2021 hearing, an MEA representative who was present indicated, off-the-record, that the REA was not interested in representing any of the petitioned-for positions.

The District maintains and operates a series of preschool and/or childcare programs at its Will L. Lee Elementary school. The three programs operated by the District and relevant to this petition are: (1) a childcare program for before and after school care (Childcare Program); (2) the Great Start Readiness Program which serves three and four year old students (GSRP); and, (3) a tuition based pre-school program which also serves three and four year old students (Preschool Program). The administrator of all three programs is Heidi Mangune, the District's Elementary Dean of Students and Preschool Director (EDS). The record established that each of the petitioned-for positions is evaluated annually by the EDS and that each is an at-will position not subject to the protections of the state's Teacher Tenure Act.

#### 1. Childcare Program

The District's before and after school Childcare Program covers students between the ages of three and twelve. The program operates daily in two separate sessions – the morning session from 6:30 a.m. to 7:50 a.m., and the afternoon session from 2:50 p.m. to 6:00 p.m. The Childcare program is funded directly by the parents who utilize its services. The District maintains two staff classifications in the program, the Lead Childcare Provider and the Childcare Provider.

There is no specific curriculum followed by the program and the daily activities organized for students are not covered by any applicable state standards. However, Jessica Thurman, a current Preschool Lead Teacher who had previously worked as a childcare worker and a preschool aide, testified that while the Childcare staff are not necessarily trained in any particular curriculum, they do borrow ideas from staff in the GSRP and Preschool Program who are trained in, and use, the Creative Curriculum program.

The terms of employment for both the Lead Childcare Provider and Childcare Provider are controlled by respective annual employment agreements. Both positions are paid an hourly rate of pay, with the Lead Childcare Provider earning \$15.91 per hour and the Childcare Provider earning \$10.93 per hour. The District maintains the program Monday through Friday throughout the school year. Childcare Providers work a minimum of one and a half hours per day, or seven and a half hours per week. The Lead Childcare Provider and any Childcare Providers who qualify as full-time employees under the Affordable Care Act are eligible to enroll in the District's health insurance program.

The District requires that the Lead Childcare Provider possess at a minimum an Associate's Degree or a Child Development Associate (CDA) credential. Childcare Providers are required to have a high school diploma.

a. Lead Childcare Provider

The Lead Childcare Provider acts as the day-to-day head of the program, and is responsible for talking with parents, managing enrollment, tuition, and schedules, tracking overtime, and ordering supplies. Heidi Mangune identified Anna English as the current Lead Childcare Provider. Mangune testified that English's duties supervising the program include registering and enrolling students in the program, maintaining records, interacting with parents, communicating staffing needs, preparing activities, developing training programs, preserving and allocating the program's budget, and supervising other childcare workers. English operates the Pro-care communication system for the Childcare program, which allows her to send and receive messages from parents concerning their child's anticipated days of attendance, from which English then prepares the student schedule for the program. Relative to her supervision of the Childcare Providers, Mangune testified that English has the authority to assign staff members to move into alternate positions to cover absences, determine staff hours and assignments, converse with staff members about performance issues, and recommend which employees to retain or terminate from employment, the latter typically being subject to further investigation and review by either Mangune or Superintendent Brian Walmsley.

b. Childcare Provider

Jessica Thurman testified that as a past Childcare Provider she often played board games with the children, helped with homework, read stories, and did arts and crafts. Thurman explained that the activities done with the students would either be set by the Lead Childcare Provider or by Childcare Providers like herself. Thurman further testified that decisions concerning the daily activities of the program were made "kind of collaborative" between the Lead Childcare Provider and the other Childcare Provider. Thurman testified that when she was a Childcare Provider she interacted with teachers in both the Preschool Program and GSRP. Elyse Cook, a current GSRP Teacher and former Preschool Teacher and GSRP Associate teacher, likewise testified that she interacted with Childcare Providers in her GSRP Lead Teacher position.

2. Great Start Readiness Program (GSRP)

The GSRP is a preschool program for three- and four-year-old children that operates pursuant to state funding and oversight. The District operates the GSRP program Monday through Thursday from 7:50 a.m. to 2:50 p.m. The program is staffed by GSRP Leader Teachers (GSRP Lead) and GSRP Associate Teachers (GSRP Associate). The GSRP program utilizes both the Creative Curriculum identified above, as well as the state mandated GSRP Manual. While the GSRP and the Preschool Program both teach students in the same age range, the GSRP, as a state-funded and regulated program, has more requirements regarding teacher training, recording systems, home visits and parent-teacher interaction/meetings. According to witness testimony, a typical school day for students begins with their arrival at 7:50 a.m. At that time, the students have breakfast with the GSRP Lead and Associate Teacher during which the GSRP Lead or Associate Teacher reads stories to them. Following breakfast, the students have large group time which includes academic lessons that may cover subjects such as learning numbers and letters, singing songs, and playing games. Next the class splits into two separate groups each led by either the GSRP Lead or the Associate Teacher, in which the students participate in academic or social-emotional based lessons. Following the small group activities, the students have one hour of free play followed by a music and movement period where the students sing songs. Throughout these

activities, the GSRP Lead takes notes to monitor and record the students' growth. After that, the class has a half hour of outside, or gymnasium time, depending on the weather. When the students return to the classroom, either the GSRP Lead, or Associate Teacher, leads story time while the other prepares lunch. When lunch is finished, the GSRP Lead and Associate Teacher help the students clean up and get ready for naptime. During naptime, the GSRP Lead performs various administrative tasks, including drafting newsletters to parents and/or responding to e-mails. Snacks and an afternoon group activity where the students sing and/or participate in other learning activities led by the GSRP Lead occur after naptime. The day concludes with outside playtime and then a return to the classroom where the students collect their belongings before going home.

a. GSRP Lead

As indicated by their title, GSRP Leads are the instructional leaders of their GSRP classrooms. In addition to their primary responsibility of planning educational activities and providing instruction to students, the GSRP Leads also assess students and monitor student progress and development throughout the school year. Current GSRP Lead Cook testified that she is also in charge of enrolling students in the program, which consists of collecting and verifying submitted paperwork, communicating with parents regarding enrollment, and conducting home visits.

Like the personnel in the Daycare Program, the GSRP Lead's employment is governed by an annual employment agreement. GSRP Leads are, however, salaried employees who earn approximately \$52,000.00 per school year. Additionally, the GSRP Leads are entitled to ten personal and three bereavement days per school year and qualify as full-time employees under the Affordable Care Act allowing them to enroll in full family health insurance.

The District requires that GSRP Leads have either a valid teaching certificate and an Early Childhood Education Endorsement, or a bachelor's degree in early childhood education or child development, with a specialization in preschool teaching.

The GSRP Leads work Monday through Friday from August 30 until June 17. Because the students typically arrive at 7:50 a.m., the GSRP Leads start their workday at 7:30 a.m. The GSRP Lead spends the time before student arrival preparing for the day with their Associate Teachers by prepping the classroom and reviewing the day's lesson plan.

b. GSRP Associate

The primary role of the GSRP Associate is to assist the GSRP Lead with the instruction and management of students in the classroom. According to Cook, during her time as a GSRP Associate she would "teach along with the [GSRP Lead]" and also "prepare, help do lesson plans." In that regard, Cook testified that the GSRP Associate prepares about half of the lesson plans. Essentially, the GSRP Associate assists the GSRP Lead with all aspects of the day-to-day operation of the GSRP classroom which includes the planning of educational activities, the preparation of meals/snacks, the assessment of students, and the instruction of students.

Like the other above-described positions, the GSRP Associate's employment is governed by an annual employment agreement. Unlike the GSRP Lead however, the GSRP Associates are hourly employees who earn \$13.67 per hour. GSRP Associates who qualify as full-time

employees under the Affordable Care Act are eligible to enroll in the District's health insurance program. Similar to the Lead Childcare Provider, the GSRP Associate position requires an associate's degree in early childhood education or childhood development.

According to Cook, the GSRP Associate works Monday through Friday throughout the school year with each day beginning at 7:30 a.m., the same start time as the GSRP Lead. The GSRP Associate spends the time before students arrive helping the GSRP Lead prepare for the day by prepping the classroom and reviewing the day's lesson plan.

### 3. Tuition-Based Preschool Program

The Preschool program is available for three and four-year-olds. The Preschool program offers both morning and afternoon sessions, and is staffed with a lead teacher and an aide. The morning session begins at 7:50 a.m. and ends at 10:50 a.m. The afternoon session begins at 11:30 a.m., and ends at 2:30 p.m. The District employs both Preschool Lead teachers and Preschool Aides, who together run the classroom and supervise students. Like the GSRP, Preschool staff use the Creative Curriculum in preparing lesson plans for the children. The parents pay for their children to attend preschool, as is also the case with the Childcare Program.

According to witness testimony, a typical Preschool program day begins at 7:30 a.m., with the arrival of the Preschool Lead and the Aide. From then until 7:45 a.m., the two prepare the classroom and the Preschool Lead discusses the day's plans with the Aide. At 7:45 a.m., the Preschool Lead leaves the classroom and collects the students from the front of the building.

Class begins at 7:50 a.m., with a morning meeting typically consisting of songs and/or games designed to help the students learn letter recognition and counting skills. Next, the students participate in snack and play time after which the class splits into two groups – each half led by either the Preschool Lead or the Aide. During this small group time, the Preschool Lead and Aide work on various learning activities with their respective group. Following small group, the students are either taken outside or to the gymnasium for more play time.

Following the morning students' departure at 10:50 a.m., the Preschool Aide typically begins cleaning the classroom and preparing for the afternoon, while the Preschool Lead, if necessary, review their notes from the morning session and enters them into the computer. Following the students' departure from the afternoon session at 2:20 p.m., the Preschool Lead continues working until 3:00 p.m.

#### a. Preschool Lead

Similar to the Lead Daycare Provider and the GSRP Lead, the Preschool Lead is the instructional leader of the Preschool Classroom. In that role, the Preschool Lead's primary responsibilities include the planning of educational activities and the provision of educational instruction to the Preschool students. Preschool Leads are responsible for lesson planning. Preschool Leads also assess the students, monitor progress and development, maintain student records, and interact with parents.

Similar to the other job classifications sought in the petition, the Preschool Lead's employment is also governed by an annual employment agreement. The Preschool Lead is

compensated at an hourly wage rate of between \$12.88 and \$13.67. Additionally, the position is allotted forty hours of leave time and three bereavement days per school year. Preschool Leads that qualify as full-time employees under the Affordable Care Act are eligible to enroll in the District's health insurance program.

The District requires that Preschool Leads have an associate's degree and either a CDA certificate or nine credit hours along with 960 hours of working with children. Although as noted above, there is a morning session and afternoon session, Preschool Leads do not necessarily work the entire day. Moreover, while many Preschool Leads may work every day per week, others work fewer days.

#### b. Preschool Aide

The Aide position's support function vis-à-vis the Preschool Lead is very similar to that of the GSRP Associate vis-à-vis the GSRP Lead. The Aide's primary responsibility is to assist the Preschool Lead with the instruction and management of students in the classroom as well as to assist with the Lead's other duties. The Aide helps the Preschool Lead plan the educational activities for the students, monitor and assess students, prepare meals/snacks, instruct the students, and prepare lesson plans. Cook, a former Preschool Lead, testified that while it is the Preschool Lead's responsibility to develop lesson plans, the Aide frequently collaborates with the Preschool Lead and provides input on the lesson plans. Cook further stated that while administrative tasks, including note taking, maintaining paperwork, and administering assessment tests, are the Preschool Lead's responsibility, it is normal for Aides to also assist with these administrative tasks. Moreover, Aides regularly lead small group instruction and student activities.

As is the case with each of the other positions sought in the petition, the Preschool Aide's employment is governed by an annual employment agreement. Like most of the other job classifications, the Preschool Aide is paid an hourly wage rate of between \$10.61 and \$10.93. Preschool Aides who qualify as full-time employees under the Affordable Care Act may enroll in the District's health insurance program.

The District requires that Preschool Aides have a high school diploma. Aides work Monday through Friday throughout the school year and, on any given day, can work either the morning session, the afternoon session or both sessions. The record establishes that there are no Aides who work less than ten hours per week in that position.

#### 4. Position Overlap

The record established that some individuals employed by the District work in more than one of the foregoing positions at different times throughout either the school day or the school week. For example, Acie Wilson's contract indicates that she works 7.5 hours as a Childcare Provider and 17.5 hours per week as a Preschool Aide. Moreover, as evidenced by the multiple positions held by both Cook and Thurman, it is apparent that employees may move among the various positions from year to year.

#### Discussion and Conclusions of Law:

Among the most fundamental rights guaranteed to public employees by Section 9 of PERA,

is the right to bargain collectively with their public employers through representatives of their own free choice. We have routinely held that the starting premise in any decision in a representation proceeding must be the reaffirmation that the fundamental function of the adoption of PERA in 1965 was to recognize and codify the right of public employees to collectively designate an exclusive bargaining agent through which their employer must deal with the workforce collectively, rather than individually. See *Three Rivers Community Schools*, 28 MPER 65 (2015). Moreover, under Section 13 of the Act, MCL 423.213, we possess the statutory mandate to designate an appropriate bargaining unit relative to the facts of each particular case brought before us.

We have consistently recognized and affirmed that when making representation determinations, we look 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). Part of our rationale in applying the aforementioned principle is to minimize the fragmentation of units. *Bay Area Transportation Auth*, 1995 MERC Lab Op 154, 158. Additionally, our continued adherence to the *Hotel Olds* policy serves to maximize the size of the unit and avoid multiplicity of bargaining units. *Port Huron Sch Dist*, 1995 MERC Lab Op 314.

When determining whether a particular bargaining unit is appropriate relative to the facts of a specific case brought before us, we ask whether the positions included in that unit share a “community of interest.” We 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; 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 promotional 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.

In making a unit placement determination, we are not required to find the “optimum” or “most” appropriate bargaining unit, but only a unit appropriate for collective bargaining based upon the facts of each particular case. *City of Lansing, Bd of Water and Light*, 2001 MERC Lab Op 13; *City of Zeeland*, 1995 MERC Lab Op 652. The fact that in a specific case petitioned- for employees have different job duties or functions does necessarily warrant the conclusion that they lack a community of interest. *Michigan Ed Ass’n v Alpena Cmty Coll*, 457 Mich. 300, 306 (1998) (The Supreme Court held that it is not necessary for all employees in a bargaining unit to “have similar duties, skills, or educational qualifications” to maintain a community of interest). Rather, the touchstone is whether employees in the unit have a common interest in their terms and conditions of employment sufficient to warrant their inclusion in a single bargaining unit and their collective choice of a bargaining agent. *Jackson Pub Sch*, 23 MPER 97 (2010); *Alpena Cmty Coll*, at 304-305.

Although a representation matter is treated as a non-adversarial proceeding, to the extent that there is a burden of proof, it falls upon the party attempting to deny the right of representation for purposes of collective bargaining to public employees covered by PERA. It is up to that party, in this case the District, to present evidence sufficient to support a determination that inclusion of a position or positions would be improper under the Act. *Lake Co & Lake Co Sheriff*, 1999 MERC Lab Op 107; *Antrim Kalkaska Cmty Mental Health*, 1998 MERC Lab Op 11, 15. Depriving

employees of the right to pursue an election for the purpose of freely selecting their own bargaining representative must be seen as an “extraordinary, and therefore rare, outcome.” *City of Detroit*, 23 MPER 94 (2010). Furthermore, “it is our policy, whenever possible, to avoid leaving positions unrepresented, especially isolated ones”. *St Clair Community College*, 34 MPER 25 (2020); *Faust Public Library*, 30 MPER 23 (2016), on remand from the Michigan Court of Appeals, 311 Mich App 449 (2015).

In this case, the Petitioner seeks to certify a new bargaining unit within the District that encompasses staff from the Childcare Program, the GSRP, and the Preschool Program. Petitioner argues in its post-hearing brief that the “petitioned for unit is an appropriate unit because the petitioned-for employees share an overwhelming community of interest by sharing similarities in all of the categories considered by the Commission.” Conversely, the District argues that Commission precedent establishes that “no community of interest exists among [the] expansive list of employees.” Accordingly, the District has the burden of convincing us that the petitioned for positions are inappropriate for placement within the same unit under the specific facts presented. The District further asserts that English, the Lead Childcare Provider, should be considered a supervisor under the Act and, therefore, excluded from the petitioned-for unit. Lastly, the District argues that because the Petitioner is seeking to organize a unit “around the District’s preschool program umbrella”, such a unit would be based on “departmental lines and inevitably result in fragmentation.”

We have long held that a presumptively appropriate unit in a public school district includes all teachers, certified and non-certified, K-12 and adult education. *Saginaw Twp Community Schs*, 1998 MERC Lab Op 479, 486; *Alma Pub Schs*, 1996 MERC Lab Op 72, 74; *Hesperia Community Schs*, 1994 MERC Lab Op 972, 976. Additionally, we have determined that pre-kindergarten teachers share a community of interest with K-12 teachers. *Hastings Area School District*, 17 MPER 55 (2004); *Farmington Pub Schs*, 1982 MERC Lab Op 1519.

The District points out, citing *Lansing Sch Dist*, 2 MPER 20045 (1989) and other cases, that we have “found units of teaching or instructional employees separate from units of paraprofessional or aide employees who act in a supportive or auxiliary role to the classroom teachers.” Accordingly, the District concedes that GSRP Leads and Preschool Leads share a community of interest with the District’s K-12 teachers who are represented by the local MEA unit, the REA. The District further points out that in *Kalamazoo City Sch Distr*, 3 MPER 21092 (1990), we stated that we have “consistently refused to mix paraprofessional positions in school districts with teachers and other professional classifications comprising the teaching or professional bargaining unit.” As such, it appears that the District would also concede that as it pertains to the positions of GSRP Associate and the Preschool Aide, the Para-Professional unit represented by the Teamsters is the more appropriate unit.

We note however, in *St Joseph County ISD*, 31 MPER 28 (2017) (no exceptions), we adopted the ALJ’s Decision and Recommended Order in a series of consolidated proceedings which included unit clarification petitions seeking the accretion of a GSRO Associate Teacher to a teaching aide bargaining unit. In that case, based on the specific facts presented, it was determined that the GSRP Associate Teacher position did not share a community of interest with the teacher aide unit due to the former’s active participation in “curriculum and instructional planning” which rendered it a “teaching position.” We highlight this case to underscore the importance of applying our precedent and principles with respect to representation matters to the

specific facts brought forth and established in each individual case. Here, had we been provided with the opportunity of placing these positions in the REA or Teamster unit, our precedent and principles regarding the placement or non-placement of teaching and non-teaching staff into a single unit would certainly guide our decision. In this case however, neither of those established units sought to accrete these positions and, in fact, it appears that neither have any interest in representing the petitioned for employees.<sup>2</sup> As such, the issue for us to resolve is whether the positions in the unit sought by Petitioner have a community of interest with each other such that placement in the same unit would be appropriate under the facts and circumstances of this case. In answering this question, we remain cognizant that any decision excluding one or more of these positions from the petitioned-for unit would cause those positions to remain unrepresented since no other unit is seeking their inclusion.

Initially, we will identify those factors that establish a community of interest between the positions. First and most obvious, is the fact that each of the petitioned-for positions works with children, primarily for the purposes of supervision and/or guidance in early stage learning. The record establishes that for the vast majority of duties performed in the GSRP and the Preschool program, the respective leads and support positions have large areas of overlap. Moreover, as testified by Cook, while the ultimate planning duties for each program are technically the responsibility of the Lead position, the Associate and Aides nevertheless contribute significantly to those tasks. With respect to the Daycare Program, there is evidence of both interaction and collaboration with the staff of the other two programs. There is no question that each of the positions is similar in their subordination to Mangune, and that each position is an at-will position, without traditional tenure protection, and subject to annual evaluations conducted by Mangune. Additionally, given the various past positions held by both Cook and Thurman relative to their current positions, the evidence supports our conclusion that there is both interchange and transfer between the various positions. The record further indicates that some individuals move between the various positions on a daily basis.

We note that there are obvious differences between the positions, including, but not limited to, differences in educational requirements and program funding. Regarding the differences in education, we repeat our Supreme Court's holding in *Alpena Cmty Coll*, supra, that similarity in education among all members of a particular bargaining unit is not essential to find the existence of a community of interest. Further, although the three separate programs have differing funding sources, and although we recognize that such differences in funding can pose bargaining challenges, we find that these differences do not prevent the placement of a position or positions in the unit where a community of interest is apparent. See *Beecher Community Schools*, 1989 MERC Lab Op 311. Lastly, while we also recognize that there are differences in the pay for each position ranging on the high-side from the GSRP Lead's annual salary of \$52,000.00, the only salaried position sought here, to the Preschool Aide's low of \$10.61 an hour, as well as differences in personal time off and other benefits, the existence of these differences in pay and benefits is not dispositive regarding the underlying issue of community of interest. See *Saginaw Valley State Univ*, 29 MPER 28 (2015); *Dearborn Pub Sch*, 2002 MERC Lab Op 287 (2002).

Accordingly, for the above reasons we conclude that, based upon our examination of the

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<sup>2</sup> While it could be argued that either of those units would be the "most appropriate" unit for different combinations of the positions at issue in this case, we stress again that we are not concerned with the "most appropriate" unit, but rather that placement is appropriate under the circumstances of this particular situation.

facts as presented in this particular case, the petitioned-for positions possess a community of interest sufficient to support the placement of them in an appropriate singular bargaining unit pending the outcome of an election.

Next, we consider whether the position of Lead Childcare Provider should be considered a Supervisor under the Act and thus excluded from the unit under Section 13 of PERA, which precludes supervisors from being included in the same unit with the employees they supervise. *School Dist of City of Dearborn v Labor Mediation Bd*, 22 Mich App 222 (1970).

As we previously stated in *Faust Public Library*, supra, a supervisor is an employee who has authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, direct, reward, or discipline employees, to adjust their grievances, or to effectively recommend any of those actions, if the exercise of that authority is not of a merely routine or clerical nature, but requires the consistent use of independent judgment. See also *MEA v Clare-Gladwin ISD*, 153 Mich App 792, 796-798 (1986). The mere fact that an employee has input into, or makes recommendations concerning, personnel decisions does not necessarily mean that the employee has effective authority to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, and is insufficient to establish supervisory authority. *Saginaw Valley State College*, 1988 MERC Lab Op 533, 536. Effective authority in personnel matters means that the employee's superiors generally accept his or her recommendation without an independent investigation. *Butman Twp*, 2000 MERC Lab Op 13, 16.

An individual is not deemed to be a supervisor under PERA if the delegated authority is limited to the routine direction of the daily work of other employees and/or the making of work assignments of a routine nature. *Bloomfield Hills Sch Dist*, 2000 MERC Lab Op 363. The fact that an employee merely assigns or oversees the performance of work by others on a routine basis is not enough to confer supervisory status. *Kalkaska Co and Sheriff*, 1994 MERC Lab Op 693, 698. Furthermore, responsibilities such as maintaining timecards, and granting time off, are insufficient to establish supervisory status. *Village of Ortonville*, 17 MPER 46 (2004).

Here, the District, through the testimony of Mangune and Walmsley, failed to establish that the Lead Childcare Provider, currently Anna English, qualifies as a supervisor under the Act. There is nothing in the record to support the conclusion that the position has any effective authority over the sorts of decisions and actions that would constitute a supervisory position. Notably, there was no evidence presented that the position has any independent authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees. While Mangune and Walmsley testified that English asks employees to cover absences and tries to find substitutes to work if an employee might go into overtime, the exercise of this type of authority does not confer supervisory status.

Likewise, although the Employer presented testimony that English can bring problems concerning staff members to Mangune and can suggest the retention or release of employees from one year to the next, there was no record evidence that her recommendations are followed. To the contrary, the record evidence demonstrated that Mangune or Walmsley are the only individuals with final authority over such matters, and that English's "recommendations" are typically subject to an independent investigation. The mere fact that English may have some input into such matters is insufficient to warrant a finding of supervisory status. Rather, it appears that the position's

“supervisory” authority is relegated to the routine direction of the daily work of other employees and/or making work assignments of a routine nature.” See *Bloomfield Hills Sch Dist*, supra.

Lastly, we address the District’s concerns that the proposed unit would result in fragmentation. Here, we again note that although the creation of this singular bargaining unit might not have been our first choice, given the circumstances presented, and the lack of interest from existing bargaining units in representing these positions, the placement of them together is the only outcome that satisfies our primary objective of advancing the right of public employees to be represented by representatives of their choosing. Moreover, were we to break up the petitioned for group into more “appropriate” groupings as identified by the District, i.e., instructional versus aide or teaching support positions, we would be creating more bargaining units and exacerbating the “fractionalization or multiplicity of bargaining units” in direct contravention of our stated goals and policy. See *Mich Ass’n of Public Employees v AFSCME Council 125*, 172 Mich App 761, 765 (1988).

We have considered all other arguments advanced by the parties and conclude that they do not warrant any different result. In accord with our findings, we issue the following order:

Order Directing Election

We hereby direct an election in the unit identified in the petition as “All regularly employed full-time and part-time GSRP and Preschool Lead Teachers, Aides, and childcare providers”, which we find appropriate for collective bargaining purposes within the meaning of Section 13 of PERA.

The employees actively employed in the above classifications as of the date of this Order may vote pursuant to the attached Direction of Election on whether they wish to be represented for purposes of collective bargaining by the Michigan Education Association or by no union.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

  
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Tinamarie Pappas, Commission Chair

  
\_\_\_\_\_  
William F. Young, Commission Member

Issued: June 15, 2022

## DIRECTION OF ELECTION

IT IS HEREBY ORDERED THAT AN ELECTION BY SECRET BALLOT SHALL BE CONDUCTED AMONG THE EMPLOYEES WITHIN THE UNIT OR UNITS FOUND TO BE APPROPRIATE IN THE COMMISSION'S DECISION ON THIS MATTER. THE CHOICES ON THE BALLOTS SHALL BE AS SET FORTH IN THE COMMISSION'S DECISION.

ELIGIBLE TO VOTE ARE THOSE EMPLOYEES DESIGNATED IN THE ORDER DIRECTING ELECTION.

INELIGIBLE TO VOTE ARE EMPLOYEES WHO HAVE QUIT OR BEEN DISCHARGED FOR CAUSE, AND WHO HAVE NOT BEEN REHIRED OR REINSTATED BEFORE THE ELECTION DATE.

IT IS FURTHER ORDERED THAT THE EMPLOYER SHALL PREPARE AN ELIGIBILITY LIST IN ALPHABETICAL ORDER, CONTAINING ELIGIBLE VOTERS' NAMES AND ADDRESSES IN ACCORDANCE WITH THE ABOVE DESCRIPTION AND SUBMIT COPIES OF SUCH LIST FORTHWITH TO THE EMPLOYMENT RELATIONS COMMISSION AND TO THE OTHER PARTIES.

IT IS FURTHER ORDERED THAT THE ELECTION SHALL BE CONDUCTED BY MAIL BALLOT AT SUCH TIME AND DATE AS A COMMISSION AGENT SHALL DETERMINE.

IT IS FURTHER ORDERED THAT THE EMPLOYER SHALL CAUSE TO BE POSTED IN PROMINENT PLACES IN AND ABOUT THE PREMISES, SAMPLE BALLOTS AND NOTICES OF ELECTION (FURNISHED BY THE COMMISSION), SETTING FORTH THE TIME, DATE, AND PLACE OF THE ELECTION AT LEAST FIVE (5) DAYS PRIOR TO SAID ELECTION.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION