

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

In the Matter of:

DETROIT PUBLIC SCHOOLS COMMUNITY DISTRICT,  
Public Employer,

Case No. 21-D-0915-UC-02<sup>1</sup>

-and-

DETROIT ASSOCIATION OF EDUCATIONAL OFFICE EMPLOYEES,  
Petitioner-Labor Organization.

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**APPEARANCES:**

Clark Hill, PLC, by William A. Moore and Stephanie V. Romeo, for the Public Employer

Nate Walker, Staff Representative, American Federation of Teachers, AFL-CIO, for Petitioner

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

Pursuant to the provisions of section 12 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212, this petition for unit clarification was filed with the Michigan Employment Relations Commission (MERC) on April 23, 2021, by the Detroit Association of Educational Office Employees (DAEOE). The DAEOE requests that the Commission determine the appropriate unit placement of the Executive Administrative Specialist (EAS) position which is currently unrepresented for purposes of collective bargaining.

The petition was referred to the Michigan Office of Administrative Hearings & Rules (MOAHR) on June 17, 2021, and heard on behalf of the Commission by Administrative Law Judge David M. Peltz.<sup>2</sup> The hearing occurred virtually via Zoom video conference on August 5, 2021. Based on the entire record, including the transcript, exhibits and post-hearing briefs filed by the parties, the Commission finds, for the reasons set forth below, that the petition as to the EAS classification should be dismissed.

**Background and Positions of the Parties:**

The DAEOE represents a bargaining unit consisting of clerical and technical employees of the Detroit Public Schools Community District (DPSCD). The most recent collective bargaining agreement between Petitioner and the DPSCD expired on June 20, 2020, but was extended by agreement of the parties and remained in effect at the time of the hearing. Appendix A of the

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<sup>1</sup> This decision is being issued as a spin-off from MERC Case 21-D-0915-UC. See footnote 3.

<sup>2</sup> MOAHR Hearing Docket No. 21-012530-MERC-02

contract lists each classification within the DAEOE bargaining unit, along with pay class and position codes. The clerical classifications include Clerical Series Levels I-IV, Purchasing Agent, Storekeeper, Technical Series Levels I-IV, Financial Specialist and Legal Assistant. The technical classifications include D.P. Programmer, Equipment Technician, HR Information Systems Technician and Communications Technical.

The DAEOE contends that the EAS classification is newly created and shares a community of interest with the clerical positions within its bargaining unit. The DPSCD argues that the request is inappropriate because the EAS classification has existed since 2017 and has historically been excluded from Petitioner's unit as confidential. In addition, the DPSCD asserts that the EAS classification does not share a community of interest with any positions within the existing DAEOE unit.<sup>3</sup>

#### Findings of Fact:

Gwendolyn Anderson has been employed by the DPSCD in its Office of Labor Relations since 1999 and has been Senior Director of that department since July 1, 2021. Anderson testified that there has been a longstanding agreement between the school district and the DAEOE to exclude seven clerical positions from Petitioner's unit as confidential. In support of this contention, the district introduced into evidence an email from former DAEOE president Ruby Newbold to DPSCD management dated February 1, 2012. In that email, Newbold complained that the school district appeared to have added additional confidential positions beyond the seven agreed to by the parties. Indeed, Petitioner's current president, Stephanie Carreker, testified that she is aware that the school district has excluded seven confidential clerical positions from the DAEOE bargaining unit since 2011 or 2012.

In 2017, the school district reclassified the existing confidential clerical positions to a new classification entitled Executive Administrative Specialist (EAS). Anderson testified that management discussed the reclassification with Newbold that same year. According to Anderson, Newbold questioned the confidential designation but agreed that the employees assigned to the new EAS classification did not belong in the DAEOE bargaining unit because their salaries were higher than those of other positions within the unit. Anderson testified that after discussions regarding the appropriate unit placement of the EAS position, Newbold agreed to allow the individuals employed in the EAS position to choose whether to become members of Petitioner's bargaining unit and have their wages reduced to align with the compensation received by other DAEOE positions or maintain their current wage levels and execute individual employment contracts with the district.

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<sup>3</sup> In the petition, DAEOE seeks to accrete into its existing bargaining unit employee positions in the classifications of EAS, Technical Client Specialist (TCS) and Technical Support Specialist (TSS). The Organization of School Administrators (OSAS) intervened in the matter concerning the unit placement of the TCS and TSS positions. Following the hearing, after review of the transcript and exhibits, ALJ Peltz determined the record was insufficient concerning the TCS and TSS, making it necessary to reopen the record concerning the placement of those positions. The ALJ bifurcated the case by creating a spin-off case to address the EAS classification under case number 21-D-0915-UC-02, and to continue proceedings as to the TCS and TSS positions under the lead case number 21-D-0915-UC.

In an email to DPSCD Superintendent Nikolai Vitti dated October 23, 2017, Deputy Superintendent Luis Solano included a chart identifying what each employee assigned to the EAS position had selected with respect to their unit placement. That chart indicates that there were six individuals employed as confidential clericals at the time and that five elected to sign individual employment contracts with the district and remain unrepresented. According to Anderson, the sixth clerical employee decided to retire.

Carreker was elected DAEOE president in 2018. Carreker testified that she did not believe there were any EAS positions in existence during her predecessor's term and that she was not aware of any agreement between Newbold and the school district to exclude the EAS positions from the bargaining unit. Carreker further testified that after taking office 2018 she became aware of an EAS position in Human Resources and "objected to it", maintaining that the position was a DAEOE bargaining unit position. At that time, it was Carreker's belief that only one employee held an EAS position. Shortly thereafter, in a conference call with management representatives to discuss the EAS classification Carreker took the position that the EAS was performing bargaining unit work, and should be included the DAEOE unit. The DPSCD disagreed with Carreker's assertion, and the EAS position remained outside of the bargaining unit. When asked at hearing whether there was any reason why Petitioner did not file a unit clarification petition concerning the EAS position in 2018, Carreker responded, "No, there's not."

#### Discussion and Conclusions of Law:

A unit clarification petition is appropriate to resolve ambiguities in unit placement caused by the creation of a new position or by recent substantial changes in the job duties of existing classifications. *Tuscola Co Rd Comm*, 27 MPER 57 (2014); *Big Bay De Noc Sch Dist*, 17 MPER 81 (2004); *Genesee Co*, 1978 MERC Lab Op 552. When newly created, or recently changed, 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. A unit clarification petition is not appropriate, however, to accrete positions historically excluded from a bargaining unit whether that exclusion was by express agreement or acquiescence, unless the employer substantially changed the duties and responsibilities or hours of work of the position in question. *City of Novi*, 30 MPER 41 (2016); *Grosse Pointe Pub Library*, 19 MPER 32 (2006); *Port Huron Area Sch Dist*, 1989 MERC Lab Op 763, 766. We have long 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. *Henry Ford Community College*, 30 MERC Lab Op 71 (2017); *City of Detroit (Water and Sewerage Dep't)*, 29 MERC Lab Op 62 (2015). To determine 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.

PERA does not provide a specific time limit for the commencement of a unit clarification proceeding. Rather, the determination is based on factors including the date or timeframe the position was created or substantially modified, the date of the Union's initial awareness of the existence of the position, and whether the position has been historically excluded from the unit. For example, in *Washtenaw Cmty Coll*, 1993 MERC Lab Op 781, 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. See also *Washtenaw County*, 22 MPER 76 (2009) (petition seeking to accrete 18 positions found untimely where each position was at least fourteen months old); *City of Battle Creek*, 7 MPER 25 (1994) (EIP coordinator position which was created almost a year before the unit clarification petition was filed could not be accreted to bargaining unit without a representation election). However, we have clarified the unit placement of positions that were in existence for several years before the filing of a petition where the record established that the union was not aware of that exclusion. See e.g., *City of Novi*, 20 MPER 41 (2016) (acquiescence of previous bargaining agent could not be attributed to newly certified union).

In the instant case, Gwendolyn Anderson, the school district's senior director of labor relations, testified that the EAS classification has existed since 2017 and that former DAEOE president Ruby Newbold was aware of the existence of that classification. Anderson also asserted that Newbold and the school district in 2017 reached agreement to allow those individuals in EAS positions to choose between becoming members of Petitioner's bargaining unit and have their compensation realigned, or execute individual employment contracts and maintaining current wage rates.

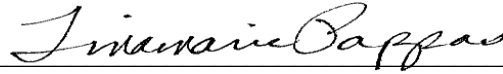
Petitioner contends that evidence concerning agreements between Newbold and the school district should not be considered because Newbold was not called to testify in this matter. However, even if we disregarded such evidence, we would still conclude that Petitioner acquiesced to the exclusion of the EAS classification from the bargaining unit. Carreker, the current president of the DAEOE, testified about her knowledge of the EAS classification since 2018 and her notifying management that same year that the EAS was performing bargaining unit work. She could not however explain why she (or the DAEOE) did not file for unit clarification at that time. Petitioner does not suggest, nor does the record indicate, that the EAS position has undergone any substantial changes in duties or responsibilities since 2018. Likewise, there is no assertion that the parties had a continuing controversy over the status of the positions. *City of Detroit*, 1980 MERC Lab Op 561, 571-572. Under these circumstances, we conclude that the petition as to the placement to the EAS classification into the DAEOE is untimely and inappropriate.

We have carefully considered the remaining arguments of the parties and conclude that they do not warrant a change in our decision. Accordingly, for all of the reasons set forth above, we dismiss the segment of the petition for unit clarification with respect to the EAS classification. The technical positions in the petition shall be decided in MERC Case 21-D-0915-UC.

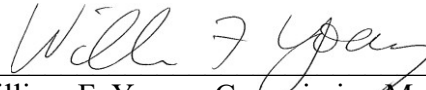
**ORDER**

Based upon the above findings and conclusions, the request filed by the Detroit Association of Educational and Office Employees to accrete the EAS classification to its bargaining unit is hereby denied.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION



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Tinamarie Pappas, Commission Chair



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William F. Young, Commission Member

Issued: July 15, 2022