

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

In the Matter of:

MICHIGAN STATE UNIVERSITY,
Public Employer,

Case No. UC16 G-011

-and-

MICHIGAN STATE UNIVERSITY ADMINISTRATIVE
PROFESSIONAL SUPERVISORS ASSOCIATION,
Labor Organization-Petitioner.

APPEARANCES:

Richard W. Fanning, Jr., Director, Office of Employee Relations, for the Employer

Hankins and Flanigan, PC, by Jayne M. Flanigan, for the Petitioner

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

On July 28, 2016, the Michigan State University Professional Supervisors Association (Petitioner) filed a petition for unit clarification with the Michigan Employment Relations Commission pursuant to Section 13 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.213. Petitioner seeks to include the position of neighborhood director in its bargaining unit of supervisory administrative and professional employees of Michigan State University (the Employer or the University). A hearing was conducted on the petition on November 16, 2016, and March 22, 2017, by Julia C. Stern, Administrative Law Judge for the Michigan Administrative Hearing System.¹ Based on the entire record, including post-hearing briefs filed by both Petitioner and the Employer on June 9, 2017, we find as follows.

The Petition and Positions of the Parties:

Between 2012 and 2016, Petitioner's bargaining unit included a supervisory position with the title engagement center manager. In May 2016, the Employer announced that it was abolishing the engagement center manager position and replacing it with a new unrepresented supervisory position titled neighborhood director. The four employees working as engagement center managers at the time the position was abolished were each appointed to one of the five neighborhood director positions. Petitioner made a demand to be recognized as the bargaining

¹ MAHS Hearing Docket No. 16-026438

agent for the neighborhood director position, but the Employer refused on the grounds that the new position was academic in nature and did not fall within the unit description as set out in the recognition clause of the parties' contract.

Petitioner asserts that the duties of the neighborhood director are not significantly different from those of the engagement center manager. It argues, however, that even if the neighborhood director is considered a new position, it should be included in Petitioner's unit because it shares a community of interest with that unit. Citing *Charlotte Pub Sch*, 1999 MERC Lab Op 68; 12 MPER 30022, and *City of Muskegon*, 1996 MERC Lab Op 64; 9 MPER 27040, Petitioner points out that our policy has been to avoid leaving individual positions unrepresented when possible. Therefore, when a new position shares a community of interest with the unit that seeks to include it, we generally accrete the position to the existing unit rather than leave it with a residual group of unrepresented employees. *Lake Superior State Univ*, 17 MPER 9 (2004); *Saginaw Valley State Coll*, 1988 MERC Lab Op 533, 538; 1 MPER 19110.

When created in 2012, the engagement center manager position was deemed by the Employer to be a non-academic support position. The Employer points out that, as the facts demonstrate, the duties of the engagement center managers evolved and expanded after the position was placed in Petitioner's unit. By May 2016, the engagement center managers' primary responsibilities involved the formation, implementation, and management of what the Employer refers to as "student success initiatives," i.e., programs designed to increase student retention and graduation rates. These duties are, according to the Employer, academic in nature because they are focused on the educational advancement of its students. The new duties added when the neighborhood director was created were also, according to the Employer, academic in nature. The Employer maintains that, since the new neighborhood director position was academic, it was correctly placed in a classification of non-represented academic positions known as academic specialists. It argues that the petition here should be dismissed because the parties have historically agreed to exclude academic positions from Petitioner's bargaining unit. It also asserts that the neighborhood director, as an academic position, does not share a community of interest with Petitioner's bargaining unit.

Findings of Fact:

Background

In 1985, Petitioner was certified as the representative for a bargaining unit described as "all regular administrative and professional employees serving in a supervisory capacity and located upon the main campus of Michigan State University, East Lansing and Lansing, Ingham County, Michigan, but excluding employees employed less than one-half time, executive and non-supervisory employees, and confidential and all other employees." Since that time the University has voluntarily recognized Petitioner as the bargaining agent for employees who work at other locations. In 2011, sergeants employed in the University Police Department were added to the unit through a representation election.

The University's employees are divided organizationally into two broad groups, academic and non-academic support. The University employs approximately 6,500 non-academic support employees and approximately 5,500 academic employees. Academic

employees include teaching faculty, both tenure-track and non-tenure track; librarians; archivists; and the positions classified as academic specialists. There are currently two bargaining units of academic employees, one consisting of non-tenure track teaching faculty and the other of graduate students. All other academic employees, including all academic specialists, are unrepresented. There are currently eight bargaining units of non-academic support employees. None of these units, including Petitioner's, currently include any academic positions, and there is no evidence in the record that Petitioner's unit has ever included an academic position.

Below the University President, the Provost has oversight responsibility for academic employees while the Executive Vice President for Administration is responsible for non-academic employees. The University has separate human resources offices for academic and non-academic staff. The academic specialist classification was created in 1959 to serve as an extension of the faculty and perform some of the same duties as faculty members. Academic specialists work with and alongside both faculty and non-academic support employees. Currently, academic specialists perform one or more of five separate functions within academic units of the University: academic advising, teaching, curriculum development, research, and outreach.² In late 2016, there were 853 employees classified as academic specialists. Thirty-four percent performed outreach, thirty-one percent were academic advisors, twenty-one percent were teachers, seven percent were involved in curriculum development, and another seven percent did research.

The Employer has one employee handbook for non-academic support employees and another for academic specialists. The Academic Specialist Handbook describes, in general terms, the duties of various subclassifications of academic specialist. It also sets out the policies to which academic specialists are subject and their terms and conditions of employment. At the time of the hearing, about 318 academic specialists were "continuing system" employees, as described in the handbook; the remainder were appointed for fixed terms. Continuing system academic specialists serve a series of probationary periods after their appointments before they achieve full permanent status. The method by which they are evaluated is described in the handbook. Academic specialist is considered an academic "rank"; academic specialists are eligible for promotion to the rank of senior academic specialist.

The policies and terms and conditions of employment for members of Petitioner's bargaining unit are set out in Petitioner's collective bargaining agreement and in the employee handbook for non-academic support employees. These terms differ from the terms and conditions of employment of academic specialists in several respects. Members of Petitioner's bargaining unit serve a much shorter probationary period than academic specialists. Salary increases for members of Petitioner's unit are negotiated by Petitioner and guaranteed by the contract. Salary increases for individual academic specialists are based in part on merit. Academic specialists receive two fewer vacation days per year than members

² Outreach activities, broadly described, involve contacts with, or the dissemination of information and knowledge to, other universities, government, and the general public. For example, the University employs Academic Specialists whose job is to teach police departments across the county how to put into use University-created research findings on policing techniques.

of Petitioner's bargaining unit, and they are not able to carry over unused vacation days to the next year as members of Petitioner's unit can. Members of Petitioner's bargaining unit receive annual longevity payments, three days of personal leave per year, and 104 hours of sick time per year. Their unused sick time can be banked to a maximum of 1400 hours, and retiring employees are paid for 50% of their banked hours upon retirement, up to a maximum of 700. However, academic specialists do not receive longevity payments, personal leave, or a specific amount of sick leave. In addition, while according to the record members of Petitioner's bargaining unit pay nothing for base plan health coverage provided by the Employer, academic specialists are required to pay a monthly contribution to receive the same coverage.

The Engagement Center Manager Position

In the 2010-2011 academic year, the Employer began what it called the "MSU Neighborhoods Initiative." The idea behind the initiative was to relocate student services from central locations to centers located in the Employer's various student residential "neighborhoods" so that students could more easily access them. The initiative began with a single "Engagement Center" in one residential neighborhood. During the 2011-2012 academic year, the Employer added two more Engagement Centers to the pilot center established the previous year. In April 2012, the Employer created the engagement center manager position as a non-academic support position and placed it in Petitioner's bargaining unit. In late 2012, the Employer established two more Engagement Centers, for a total of five, each staffed with an engagement center manager.

The services initially offered at the Engagement Centers were health clinics, tutoring, and academic advising. The engagement center managers managed the use of the Engagement Center space, coordinated activities and schedules, and met with the staff providing services at their Centers to ensure that they had what they needed to provide and expand their services. Engagement center managers supervised the clerical staff and student employees working at the Engagement Centers. In addition, each engagement center manager was assigned to one of four "pillars" — Academic, Health and Wellness, Intercultural, and Residential Education. The Engagement Center Managers convened meetings of professional staff from across the campus who provided or had an interest in providing student services in the engagement centers managers' assigned pillar areas. One of the five engagement center managers, Jodi Hancock, initially had no assigned pillar, but instead worked with student pillar groups and with the Neighborhood Advisory Council. In 2015, a fifth pillar, Purpose and Development, was created and Hancock was assigned to it.

The engagement center managers did not supervise the academic advisors or the tutors (both full-time and students) located at the Engagement Centers. However, their job regularly brought them into contact with these employees as well as staff from the residence halls, food service, the campus police, the Counseling Center, the Academic Orientation office, the Admissions Office, the Office of Financial Aid, and various other departments.

During the period that the Engagement Centers were being established, the Employer was focusing its attention on its retention and graduation rates, particularly the gap between the

rates of its student population as a whole and first-generation college students, students from low income households, and certain groups of minority students. The Engagement Centers were natural locations for programs focused on this problem because they were located close to dormitories where freshmen students typically lived.

According to Kelly High-McCord, a neighborhood director and former engagement center manager, within a year after they were established, the focus of the Engagement Centers began to shift toward actively promoting activities that increased “student success,” including programs that increased academic proficiency, the ability to navigate the University as an institution, and students’ social and emotional engagement. The overall goals of the student success initiative were a decrease in the percentage of students on probation after their first semester, an increase in graduation rates, and a shorter time between matriculation and the obtaining of a degree.

Prior to the fall of 2013, the Engagement Centers were under the supervision of the Assistant Vice President of Student Affairs, a position within the non-academic support division of the University. In August 2013, Dr. Kristine Renn, a faculty member whose academic area is strategies to increase educational achievement, was appointed Associate Dean of Undergraduate Studies and Director of Student Success Initiatives, and the Engagement Centers became her responsibility. Renn reported jointly to the Vice President of Student Affairs, on the non-academic support side, and to the Associate Provost of Undergraduate Education, on the academic side. Renn was not initially responsible for the academic advising taking place in the Engagement Centers, but she acquired this responsibility in a reorganization in 2015.

The duties of the engagement center managers began evolving shortly after the position was established. The duties of the engagement center managers at the time the position was abolished in 2016, are set out in the paragraphs below. As they had done from the beginning, they managed the use of the Engagement Center space and assisted groups in obtaining access to classrooms outside the Center and in arranging for field trips. This included hiring and supervising of clerical staff and student assistants and managing a neighborhood programming budget.

The engagement center managers also continued to head pillar committees. At some point before 2016, the pillar committees chaired by engagement center managers expanded to include representatives from the Office of the Provost and the University Vice-President, as well as groups within the University with a stake in the services being provided in the pillar area. At the time the engagement center manager position was abolished, the engagement center managers were responsible for recommending individuals to sit on their pillar committees and convening periodic meetings of the committees. They were also expected to report to other engagement center managers and communicate with other parts of the University regarding pillar activities. The engagement center managers also handled requests for funds from the budgets for their pillars, e.g., requests from groups for sponsorship funds for various programs and initiatives.

By 2016, the engagement center managers, together with representatives from Resident Life and the Office of Cultural and Academic Transitions, were responsible for educating resident mentors, cultural aides, and instructors of first-year writing classes about Engagement Center resources/programs and how they could use those resources to assist students. Resident mentors and cultural aides are students who live in residence halls and whose role is to help students in their residence halls adjust to campus life.

The engagement center managers conducted training sessions for resident mentors, cultural aides, and first-year writing instructors at the beginning of each academic year and also held periodic meetings throughout the year with the resident mentors and cultural aides located within their particular residential neighborhoods.

The engagement center managers were also responsible for convening “core teams” within their neighborhoods to discuss the effectiveness of existing services and the creation of new services. Core teams included representatives from the residence halls, culinary services, and neighborhood health clinics, and the academic advisors located in the Engagement Centers. Over time, the engagement center managers began using student data provided to them by the University to gauge the effectiveness of existing programs and services in meeting the student success goals and to assist in the creation of new programs tailored to these goals. The engagement center managers were first given access to MAP works, a data base of information gathered from surveys done of students about their experiences during their first five or six weeks at the University. By 2016, the engagement center managers also had access to an extensive database that compared the academic performance of various groups of the University’s students, including men versus women, first generation college students versus those with parents who had gone to college, residents of one neighborhood versus residents of another neighborhood, and students majoring in one field versus those majoring in another.

In 2014, “Student Success Teams” were created within each neighborhood, and engagement center managers were assigned to oversee them. These teams included residence hall staff from within the neighborhood, and academic advisors, tutors, and other learning resource staff from the Engagement Centers. Health clinic staff, academic advisors from colleges within the University, and other staff were also sometimes part of team meetings. The Student Success Teams met weekly to focus on individual students living within the neighborhood who were experiencing academic difficulties and were on probation. The purpose of the Student Success Teams was to come up with intervention plans tailored for individual students. In connection with the Student Success Teams, the engagement center managers were given access to portions of the academic records of individual students, including their course schedules and grades, the names of students’ high schools, their high school grades, and their standardized test scores upon entrance to the University.

The engagement center managers regularly implemented new programs that were related to the promotion of student success. For example, they created half-day workshops for students on academic probation called “Academic Restart.”

In a 2015 job description, the education/experience requirements of the engagement center manager job were listed as “knowledge equivalent to that which normally would be

acquired by completing a Master's degree in Education, Psychology, Social Work, Communications, Human Resources, or a related field," plus three to five years of progressively more responsible work experience in one or more of a long list of areas, including developing student support services and activities, and advising individuals and groups.

Creation of the Neighborhood Director Position

As noted above, Dr. Kristine Renn, the engagement center managers' supervisor, acquired responsibility for the academic advising function at the Engagement Centers in a reorganization in 2015. Each Engagement Center has a position called advising director who supervises the academic advisors at that Engagement Center. The academic advisors located at the Engagement Centers advise freshmen and students who have not yet declared a major. They also provide information to all students about changing majors or entrance into special programs. Students who have declared a major are generally assigned to academic advisors within their colleges. An important part of the job of the academic advisors in the Engagement Centers is making decisions about student academic status. That is, the academic advisors decide whether a student who is on academic probation should be dismissed or "recessed" from the University or have his or her academic probation extended. The academic advisors also decide whether students who have left the University for academic reasons should be readmitted. When Renn became the academic advisors' supervisor, she acquired the responsibility for reviewing and ruling on appeals from these academic status decisions. Renn testified that she and her assistant found this responsibility both time-consuming and burdensome. At some point in late 2015 or early 2016, Renn proposed that the engagement center managers be given supervisory authority over the academic advisors, including the responsibility for reviewing appeals of student status decisions. According to Renn, her proposal was rejected because the engagement center managers were considered non-academic support employees.

In early May 2016, Renn contacted Melanie Trowbridge, the Assistant Director of Academic Human Resources, and told her that she had a group of employees that she believed should no longer be considered non-academic support. Renn told Trowbridge that she wanted to create a new academic position, titled neighborhood director, which would also supervise academic advisors. Renn showed Trowbridge a tentative job description that she had drafted for the new position. Renn also told Trowbridge, that there was a "new concept going forward for what the position would be responsible for." As Renn explained at the hearing, the new position was "a transformation, an evolution... that focused highest priority on the academic support and service in the Neighborhood."

After listening to Renn describe the neighborhood director position, Trowbridge consulted Appendix A of the Academic Specialist Handbook, which describes the typical duties of various categories of academic specialist. Trowbridge concluded that the duties outlined in the neighborhood director fell within the description of the typical duties of academic specialists in the "academic advising category." These included:

1. Provide advice on course and curriculum selection;

2. Monitor students' programs;
3. Recommend certification for graduation;
4. Maintain contact with advisors in other units;
5. Provide incidental information on the relationship between course selection and career options;
6. Refer students, when necessary, to other units in the University for assistance with educational, career and personal concerns;
7. Participate in activities devoted to the retention of students within University programs;
8. Provide assistance and guidance to students who are entering programs;
9. May be involved in instructional activities associated with classes, labs and seminars
10. Participate, as required by the unit, in professional development activities, both on and off campus, including conferences, workshops and seminars to enhance the ability and knowledge to perform as an advisor;
11. Participate in department/school, college and University level committees;
12. Make a significant professional contribution by making scholarly presentations, present papers, lectures or beyond related to academic advising or training;
13. Assume leadership roles involving the coordination, supervision and training of new academic advisors.

For items one, two, four, five, and eight, Trowbridge relied on the fact that the neighborhood directors would be supervising academic advisors and would conduct staff meetings that included them. Up to 50% of an academic specialist's duties can be non-academic in nature. Trowbridge concluded that at least 70% of the duties of the new position were duties of an academic specialist responsible for academic advising, and that, therefore, the proposed new position fell within the academic specialist classification. Trowbridge testified that although she looked for a job description for the engagement center manager position, she was not able to find one. Trowbridge admitted at the hearing that she did not give any consideration to whether the proposed new position would be performing duties previously performed by a position included in a collective bargaining unit.

On or about May 12, 2016, Renn announced in a meeting of engagement center managers that their position would be eliminated and that a new position, neighborhood director, would be created. There were four engagement center managers at that time, one

having recently resigned. She informed the engagement center managers that if they wanted to be considered for the new position, they should submit an application through the University's normal channels and they would be interviewed. Kelly High-McCord, one of the engagement center managers, asked Renn about the salary and fringe benefits of the new job and requested a job description. Renn said that she did not have this information, but that the Employer's human resources office for non-academic staff should have shared the information with Petitioner. When High-McCord asked Petitioner, however, she discovered that it had not been informed that the Employer was considering eliminating the engagement center manager position and replacing it with a new position.

On June 4, 2016, Petitioner made a request to the Employer for information about the neighborhood director position and its duties, and the Employer provided the information. On June 9, 2016, the Employer and Petitioner met to discuss the new position, at which time the Employer told Petitioner that the Employer had determined that the new position was academic and would not be included in Petitioner's bargaining unit. On June 30, 2016, the Employer's non-academic Human Resources Department sent letters to all the engagement center managers notifying them that they would be placed on layoff status effective August 15, 2016, and that their last day of work would be August 12, 2016. The letters advised them to contact the Talent Management Office within the Human Resources Department for non-academic employees to discuss options for possible reassignment.

On July 6, 2016, Petitioner sent a letter to the Employer's Office of Employee Relations objecting to the transfer of work outside its bargaining unit through the elimination of the engagement center manager position and the transfer of its work to the new position of neighborhood director. The letter stated that Petitioner had compared the proposed job description for the neighborhood director position and the present job duties of the engagement center managers and concluded that the duties were not changing in any substantial respect. The letter requested that the Employer voluntarily recognize Petitioner as the bargaining representative of the neighborhood director position. It also requested that the layoff notices be rescinded and that the current engagement center managers be placed in the neighborhood director position.

On July 11, 2016, the Employer sent Petitioner an email declining to recognize it as bargaining representative for the neighborhood director position on the grounds that the new position was academic in nature and did not fall within the unit description as set out in the recognition clause of the parties' contract. However, it informed Petitioner that the current engagement center managers would be offered placement into the new position without interviewing.

The engagement center managers received two separate sets of job offers for the neighborhood director positions. After the first set of offers, sent on July 24, 2016, the engagement center managers collectively complained to the Academic Human Resources Office about the benefits that they would lose if they accepted the offers and became academic specialists. On August 4, 2016, they were sent new offers. The salary in each engagement center manager's job offer was 10% higher than the previous offer. However, the benefits offered continued to be those received by academic specialists, and the

engagement center managers were to lose all their accumulated sick leave. All four engagement center managers accepted the second offer. The fifth neighborhood director position was filled from an internal University posting.

The Engagement center managers' new job titles and salaries became effective on August 16, 2016, and they continued to perform their existing job duties without interruption. In late August, the neighborhood directors held the training sessions for intercultural aides, residence hall advisors, and first-year writing instructors that they had previously scheduled for that date. The new neighborhood directors were assigned to shadow the advising directors in their Centers, who were now their subordinates, to learn what the advising directors did. This included sitting with the advising directors as they reviewed files of students in academic difficulty and discussing how advisors made decisions about academic status. Since the neighborhood directors were to be responsible for evaluating the advising directors, who are classified as academic specialists, they also received training on the evaluation process for academic specialists.

A job description for the neighborhood director position was entered into the record, and two engagement center managers/neighborhood directors, Kelly High-McCord and Jodi Hancock, testified at the hearing about changes in their job duties after they became neighborhood directors. A new feature of the neighborhood director position is the assignment of each individual neighborhood director to a different "focus area" as well as a different pillar. According to the neighborhood director job description, activities associated with the focus areas should comprise 35% of the neighborhood director's job. The focus areas are: (1) academic advising processes and policies; (2) student success initiatives for upper-class students in residence halls and off campus; (3) academic and learning resources; (4) Spartan Success Scholars; and (5) campus partnerships focused on first year transitions and development of associated curriculum (living/learning communities, bridge programs, first-year seminars, and academic orientation program). Spartan Success Scholars is a program that identifies incoming students who, based on their academic data, may need academic support and provides that support, including matching them with student mentors. The engagement center managers had performed some duties associated with each of the focus areas except for the academic advising focus area. However, the neighborhood directors are expected to, and have begun, expanding the number of programs within their particular focus areas. The neighborhood director with the academic and learning resources focus area was also given supervisory authority over tutors and help room staff, and the neighborhood director with the Spartan Success Scholar focus area now supervises a new position within that program, Coaching Coordinator.

The neighborhood director assigned to the academic focus area is Jasmine Lee. Lee is responsible for ensuring that academic advising and academic advising policies are consistent throughout all five Neighborhoods. The Engagement center managers, as noted above, were not involved in the academic advising process and Lee's responsibilities within her focus area are new.

All five neighborhood directors now supervise the advising directors and academic advisors located at their Centers and have the responsibility to evaluate them and the authority

to discipline. The role of the neighborhood directors in the actual advising process was not entirely clear from the record. High-McCord and Hancock testified that they had “helped the advising directors resolve some issues.” However, as of the date of the hearings in the fall of 2016 and spring of 2017, they had not reviewed any appeals from academic status decisions made by academic advisors. They also testified that they did not attend the meeting of academic advisors at the end of the fall 2016 semester, at which academic advisors discuss academic status decisions, because the academic advisors asked them not to attend. However, the neighborhood directors’ current supervisor, Assistant Dean for Student Success Initiatives and Director of Neighborhoods Luke Schultheis, testified that reviewing appeals of academic status decisions is now the responsibility of the neighborhood director position and that neighborhood director Jasmine Lee had reviewed appeals.

High-McCord and Hancock testified that, except as set out above, the duties of their positions did not change when they ceased to be engagement center managers and became neighborhood directors. The Employer did not present any evidence that directly disputed this testimony.

Discussion and Conclusions of Law:

A unit clarification petition is appropriate for resolving 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. A unit clarification petition is not appropriate to accrete positions historically excluded from the 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; *City of St Clair Shores*, 1988 MERC Lab Op 485.

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 should be excluded based on its executive, confidential or supervisory status, the only issue is generally whether the position shares a community of interest with the petitioner’s existing unit. See e.g., *City of Bay City*, 16 MPER 31 (2003); *Lansing Cmty Coll*, 2000 MERC Lab Op 99.

When an employer seeks to remove an existing position from an established bargaining unit, the question is not whether the position now has a closer community of interest with another bargaining unit or group, but whether, because of the changes in duties, the position no longer shares a community of interest with the established unit. See *City of Grand Rapids*, 19 MPER 69 (2006); *Ingham Co*, 1993 MERC Lab Op 808, 812-813; *Northern Michigan Univ*, 1989 MERC Lab Op 139, 150. We are, as we have stated, reluctant to move positions from one unit to another, or to unrepresented status, without a significant change in the nature of the position. *Saginaw Valley State Coll*, 1988 MERC Lab Op 533, 538.

The Employer argues, first, that the petition should be dismissed because the neighborhood director position is a new academic position and academic employees have been historically excluded from Petitioner's bargaining unit. Although "academic" employees are not explicitly excluded in the unit description, Petitioner's unit does not currently include any positions categorized by the Employer as academic. Nor is there any indication in the record that Petitioner's unit ever included an academic position. As noted above, however, Petitioner maintains that the neighborhood director position is simply the engagement center manager position with a new title and the addition of some insignificant new duties. Petitioner asserts that it has never agreed or acquiesced to the Employer's removal of an existing position from its unit by designating it as academic.

The Employer argues that *City of Bay City*, 2001 MERC Lab Op 250, and this case are essentially identical. In *Bay City*, we dismissed a unit clarification petition filed by a union when the employer removed a supervisory position from its unit, after retitling it, on the grounds that the position was now "managerial." The petitioning union represented a unit that included both supervisors and non-supervisory professional employees. Although the unit description explicitly excluded only department directors and assistant directors, other higher-level supervisory positions classified by the employer as managerial had been historically excluded. These included two positions that each had overall supervisory authority over and managerial responsibility for a division within the Employer's Development Services Department. The Development Services Department had two divisions that had division managers and two, including the planning division, which did not. After the employer hired a new director for the Development Services Department, the new director decided that the planning division needed a division manager to assume some supervisory and administrative duties, including administering outside contracts, and being responsible for the division budget, that the director was then performing. The director assigned these responsibilities to the city planner, a unit position in the planning division, and reassigned most of the city planner's existing duties to other staff. The city planner, like the two division managers, then began reporting directly to the department director and taking part in management meetings with the director. After unsuccessfully attempting to obtain the union's agreement to remove the city planner position from its unit, the employer announced that it was replacing the city planner position with a new unrepresented position titled planning division manager, with overall responsibility for the supervision and management of the planning division. The former city manager was appointed planning division manager.

The union in *City of Bay City* filed a unit clarification petition seeking to have the planning division manager included in its unit, arguing that the city planner position had merely been retitled and the minimal changes to the position's job duties did not provide a basis for removing it from the unit. The employer argued that as a "manager," the new position did not share a community of interest with the unit. We noted that we did not recognize "managerial" employees as having a community of interest separate from other supervisors. However, we noted that higher-level supervisors, which the Employer referred to as managerial employees, had consistently been excluded from the union's bargaining unit since the unit was certified. Because the record established that the parties had an established practice of excluding "managerial" employees from the unit, and because the new position now had the same level of responsibility as the excluded "managerial" positions, we concluded that the new position was

part of a residual unit of excluded positions that could only be added to the unit by filing a petition for a representation election. The unit clarification petition was therefore dismissed.

Bay City is not the only case where we have found positions excluded from a bargaining unit as “administrative” or “managerial” based on the parties’ prior agreement to keep such employees out of the unit. See, e.g., *Ferris State Univ*, 1996 MERC Lab Op 16. However, as we noted in *Saginaw Valley State Univ*, 29 MPER 28 (2015), the standards by which employees are deemed “administrative” or “managerial” must be clear from the record. In *Bay City*, the union had clearly acquiesced in the exclusion from its supervisory and professional unit of “managerial” employees with overall supervisory authority and managerial responsibility for a division or other segment of a department. That is, the union and employer had implicitly agreed not only to exclude managerial employees but also on what constituted a “managerial,” position. Here, however, there is no evidence that there are clear standards for what constitutes an “academic” versus a “non-academic support” position.

Many of the duties of the neighborhood director, on which the Employer’s Academic Human Resources Office based its decision that the neighborhood director was an academic position, had been performed exclusively by the engagement center managers for some time. The duties added to the neighborhood director position included supervisory authority over the academic advisors. Academic advisors are themselves academic specialists, and the Academic Human Resources Office relied in large part on the neighborhood director’s role as supervisors of the academic specialists when it decided to classify the neighborhood director as an academic specialist. We find no evidence, however, that Petitioner explicitly or implicitly agreed that supervisory authority over academic advisors makes a position academic. For this reason, we reject the Employer’s argument that the unit clarification petition should be dismissed because the neighborhood director was historically excluded from Petitioner’s unit.

The Employer also argues that the neighborhood director does not share a community of interest with Petitioner’s unit because the position is functionally integrated with the University’s academic mission. It maintains that we have recognized that non-academic employees in universities and colleges have a separate community of interest from academic employees, including non-teaching professional staff who support the academic mission of the university or college. In support of this proposition, the Employer cites *Eastern Michigan Univ*, 1972 MERC Lab Op 118; *Wayne State Univ*, 1972 MERC Lab Op 140; *Henry Ford Cmty Coll*, 1984 MERC Lab Op 1091; *Glen Oaks Cmty Coll*, 16 MPER 72 (2003); and *Ferris State Univ*, 30 MPER 63 (2017).

As discussed below, we have, in fact, recognized that non-teaching professional staff whose roles are functionally integrated with those of the teaching faculty in universities and colleges share a community of interest with the faculty because of their “synergistic efforts aimed at the education of University students.” *Eastern Michigan*, at 123. For purposes of this decision, we assume that the duties of the Neighborhood Directors are functionally integrated with those of the teaching faculty and, if the issue was before us, we would find them to share a community of interest with a bargaining unit representing teaching faculty and/or other academic staff. However, whether the neighborhood directors share a community of interest with teaching faculty or other staff deemed academic by the Employer is not an issue here.

Rather, as correctly framed by the Petitioner, the issue is whether they have a community of interest with Petitioner's unit. We disagree with the Employer that we have held that so-called academic staff have no community of interest with administrative or professional employees whose functions are not directly educational.

In *Eastern Michigan Univ*, two unions petitioned to represent units that included tenure track faculty, non-tenure track lecturers, and academic advisors, counselors, and residence hall advisors. The employer sought to limit the unit to tenure track faculty. We concluded that professional employees who did not teach but who performed functions that were functionally integrated with the faculty's educational role shared a community of interest with the teaching faculty. Based on the principle that the appropriate bargaining unit is the largest unit of employees sharing a community of interest, we therefore directed an election in a single unit of teaching faculty, academic advisors, counselors and residence hall advisors. The companion case, *Wayne State Univ*, also cited by the Employer, involved election petitions filed by four unions. Two sought units limited to teaching faculty, and one sought a combined unit of instructional and academic staff. The fourth sought only to represent academic staff, including academic advisors, academic service officers, extension program coordinator, archivists, counselors, counselor assistant, and the editor of the university press. As in *Eastern Michigan*, we concluded that faculty and academic staff, i.e. non-teaching professional employees whose roles were functionally integrated with that of the faculty, shared a community of interest, and that the appropriate unit was a single unit combining both groups. Therefore, we directed an election in a combined unit of instructional and academic staff. In *Glen Oaks Cmty Coll*, we held that because the duties of the director of tutoring and testing were functionally integrated with those of the teaching faculty, the position shared a community of interest with community college teaching faculty. In *Ferris State*, we agreed that an existing unit of faculty should be clarified to include the new position of academic advisor because the new position was sufficiently involved in the educational process. In none of these cases, however, were we asked to determine whether "academic staff," i.e., non-teaching employees whose duties were functionally integrated with those of the teaching faculty, shared a community of interest with other professionals employed by a university or college.

Henry Ford Cmty Coll, although presenting a somewhat different issue than the cases above, also does not stand for the proposition that "academic staff" lack a community of interest with "non-academic" professional employees. In *Henry Ford*, the union that represented a unit of faculty, counselors, librarians, and placement officers sought to clarify its unit to include the new positions of financial aid manager, library circulation manager, and financial and special needs manager. We dismissed the petition on the grounds that the new positions, because they were not functionally integrated into the educational process did not share a community of interest with the teaching faculty. That is, we concluded that "non-academic" professional employees of a college did not belong in the same unit as teaching faculty. We did not hold that "non-academic" professionals and "academic" employees who do not teach lacked a community of interest. We conclude in this case that the fact that the duties of the neighborhood director position may be functionally integrated with those of the faculty does not establish that the neighborhood directors have no community of interest with Petitioner's unit.

The Employer also argues that an examination of the traditional factors used to determine community of interest support its claim that the neighborhood director has no community of interest with Petitioner's unit. These traditional factors include similarities in duties, skills and working conditions between groups, 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., *Ferris State Univ*, 30 MPER 63 (2017); *Covert Pub Sch*, 1997 MERC Lab Op 594; 11 MPER 29016.

As academic specialists, the neighborhood directors are subject to different policies administered by a different human resource office than members of Petitioner's bargaining unit. The policies and terms and conditions of employment for the neighborhood directors are set out in the Academic Specialist Handbook, while members of Petitioner's bargaining unit are governed by policies and terms set out in the employee handbook and Petitioner's collective bargaining agreement. All these differences, however, arise from the fact that when the Employer removed the position from Petitioner's unit, it placed it in a classification of unrepresented employees whose terms and conditions of employment are unilaterally set by the Employer.

We conclude that the differences in benefits and other terms of employment listed above do not establish that the neighborhood directors lack a community of interest with Petitioner's unit.

We also conclude that the new duties added to the neighborhood director position did not destroy its community of interest with Petitioner's unit. We find that while the duties of the engagement center manager underwent significant change between the time the position was first created and when it was abolished, almost all the responsibilities now assigned to the neighborhood directors were also assigned to the engagement center managers. Although each neighborhood director now has a "focus area" for which he or she is responsible, except for the one neighborhood director who focuses on academic advising, all the duties associated with the focus areas are the same or expanded versions of duties performed by the engagement center managers. These new duties do not, we find, change the nature of the position. We also find that the supervisory responsibilities over academic advisors given to the neighborhood director did not destroy the position's community of interest with Petitioner's bargaining unit. The neighborhood directors now directly supervise the Advising Directors and have the same authority over them that they have over engagement center clerical staff. They also, through the advising directors, supervise advisors. By the date of this decision, all the neighborhood directors may also have processed appeals from academic status decisions made by the advisors; the evidence indicated that this was part of their job. However, the record indicates that for four of the neighborhood directors, responsibilities associated with academic advisors and/or academic advising are a small part of their jobs. Lee, the fifth neighborhood director and the one neighborhood director with academic advising as her focus area, appears to spend a higher percentage of her time on academic advising. There was, however, only general testimony about Lee's duties. Most importantly, the Employer did not argue that Lee's position should be excluded from the unit even if the other neighborhood director positions were not. Inasmuch as the engagement center managers had supervisory responsibilities that expanded

over time, we find that the extension of the engagement center managers'/neighborhood directors' supervisory authority over employees located in the Engagement Centers to the academic advisors did not significantly change the nature of the job or destroy its community of interest with Petitioner's bargaining unit.

Because we find that the duties added to the neighborhood director position in August 2016 did not substantially change the nature of the position or destroy its community of interest with Petitioner's unit, we hereby issue the following order.

ORDER

The bargaining unit represented by Petitioner Michigan State University Administrative Professional Supervisors Association is hereby clarified to include the position of neighborhood director.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: March 26, 2018