

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

In the Matter of:

MICHIGAN STATE UNIVERSITY,  
Public Employer,

MERC Case No. UC17 C-002

-and-

INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES (IATSE),  
LOCAL 274,  
Labor Organization-Petitioner,

-and-

MICHIGAN STATE UNIVERSITY-ADMINISTRATIVE PROFESSIONAL  
ASSOCIATION (APA),  
Labor Organization-Interested Party.

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**APPEARANCES:**

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

Pinsky, Smith, Fayette & Kennedy, LLP, by Katherine Smith Kennedy, for Petitioner IATSE

White Schneider PC, by Jeffrey S. Donahue, for the APA

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

On March 24, 2017, the International Alliance of Theatrical Stage Employees IATSE Local 275, (hereinafter IATSE or Petitioner) filed a petition for unit clarification with the Michigan Employment Relations Commission (the Commission) pursuant to Section 13 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.213. Petitioner represents full-time and on-call stage employees employed by Michigan State University (hereinafter the Employer or the University). It seeks to include in this unit a newly-created position, Concert Producer/Technical Manager (CPTM). The Employer placed this position in a bargaining unit of its employees represented by the Michigan State University-Administrative Professional Association (hereinafter the APA).

A hearing was conducted on the petition on December 19, 2017, and February 27, 2018, by Julia C. Stern, Administrative Law Judge (ALJ) for the Michigan Administrative Hearing

System.<sup>1</sup> Based on the entire record, including post-hearing briefs filed by Petitioner, the Employer, and the APA on April 26, 2018, we find as follows.

The Petition and Positions of the Parties:

Petitioner operates a hiring hall for stage employees in Lansing, Michigan and represents stage employees employed at various performance venues operated by the University both on and off the University's East Lansing, Michigan, campus. Job classifications listed in the collective bargaining agreement between the University and Petitioner include stage manager, AV tech, slide projector operator, carpenter, electrician, grip, property person, dresser, maintenance, hair and makeup, audio board operator, climber w/out net, stitcher, laundry, light board programmer/operator, forklift, "in-costume," flyman, rigger, and truck loader.

The Concert Producer/Technical Manager (CPTM) was created in 2016 as a position within the University's College of Music (COM) and placed by the University in the APA unit. Ben Frick was hired to fill the position in January 2017 and began work in March 2017. Although he also works at other COM locations, Frick's duties primarily involve the Fairchild Theater, which since 2013 has been designated by the University as "academic space" for the COM.

As explained in more detail below, the Fairchild Theater is part of a building known as the Auditorium. The Fairchild Theater shares its stage with another larger theater in the same building called the Auditorium Theater, or alternatively, the Concert Auditorium. Ron Fenger is considered by the University to be an employee of the Wharton Center, another University performance venue. Since about 2012 or 2013, Fenger has been assigned full time to the Auditorium as a stage manager. As noted above, stage manager is position within the IATSE bargaining unit.

According to Petitioner, the CPTM's duties are essentially those of a stage manager and the position, therefore, belongs in its unit. It points out that Frick and Fenger regularly work together and also divide up tasks based upon which of them is scheduled to work when the work needs to be done. According to Petitioner, many of the "administrative" duties assigned to Frick are similar to tasks performed by Fenger. It also points out that the CPTM position was created after the University rejected a request by the Wharton Center to create another stage manager position to assist Fenger at the Auditorium. Petitioner argues that the Commission should not defer to the University's decision to place the CPTM position in the APA unit, because this decision was neither reasonable nor made in good faith.

The Employer admits that there is overlap between Fenger's duties and the duties of the CPTM. However, it asserts that the CPTM is not the same position as stage manager and that Frick has broader responsibilities of an administrative nature within the COM. The Employer points to the testimony of Frick's supervisor, Director of Administrative Services and Assistant Dean for the COM, Greg Bloomfield, that Frick has taken over tasks which formerly belonged to Bloomfield and, before that, to another COM employee within the APA unit, Lori Garza. The

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<sup>1</sup> MAHS Hearing Docket No. 17-010675

Employer asserts that based on the overall duties of the CPTM, it reasonably placed the new position in the unit of nonsupervisory administrative employees represented by the APA, a unit which includes other COM employees. The Employer argues that the Commission should defer to its decision to place the new position in the APA unit rather than in the unit represented by Petitioner.

The APA agrees with the Employer that the CPTM is not a stage manager but a distinct position. Like the Employer, the APA points to Bloomfield's testimony that Frick has many duties which formerly belonged to Bloomfield and, before him, to a position within the APA. It also points to the testimony of APA President Maurice Koffman that there is often overlap between duties performed by APA members and members of other units which Koffman described as "bleed over." The APA asserts that the CPTM has a community of interest with its unit, and that Commission should defer to the Employer's unit placement decision.

Petitioner and the Employer also disagree about whether they agreed to exclude the CPTM from the unit in their collective bargaining agreement covering the term September 1, 2014 through August 31, 2018. According to the Employer, the parties clearly and unambiguously agreed to exclude any employee of the COM working at the Fairchild Theater. According to the Employer, therefore, the petition is inappropriate because it is contrary to the parties' existing agreement regarding unit placement. Petitioner disagrees with the Employer's interpretation of the contract language and denies that it ever agreed to exclude full time employees performing the duties of a stage manager at Fairchild or anywhere else.

Findings of Fact:

University Performance Venues and  
the IATSE Unit

The University has several performance venues which employ members of the IATSE bargaining unit. These include the Breslin Student Activities Center, Spartan Stadium, several outdoor campus venues, the Auditorium Theater, and the Wharton Center for Performing Arts. The Wharton Center contains several different performance spaces, including a professional theater, and its "clients" include both outside entities, such as traveling Broadway productions, and entities within the University itself. The Wharton Center is the managing entity for other University venues including the Auditorium Theater, and it employs several full-time stage managers represented by IATSE who work at the venues it manages. As noted above, Fenger, who is a Wharton Center employee, is a stage manager assigned full time to the Auditorium. There are also several other IATSE-represented stage employees of the University called "house staff," or "first on-call." These employees are scheduled by the Wharton Center to work at whatever venue they are needed. One of the house staff employees has, since 2014, been assigned by the University to work 20 hours per week as technical director for a small theater within the Residential College. The rest of the week he works as head electrician at Wharton. In addition to the stage managers and house staff, the University employs additional on-call stage employees as needed for performances. It obtains these employees by referral from Petitioner's hiring hall.

Sandy Thomley, a member of the IATSE unit, is a stage manager and the Wharton Center's chief production manager. Thomley supervises the scheduling and assignment of the full-time stage managers and house staff. Thomley also has overall responsibility for "advancing" all outside shows using the Wharton Center's venues. That is, Thomley meets with representatives of the show in advance to find out their technical needs, what they need the University to provide in the form of equipment or anything else, when they will be using the venue, and what time they will arrive. Thomley communicates this information to the stage managers, who in turn are responsible for renting any equipment that the venue does not have and for determining how many and what types of on-call staff the show will need. The stage managers then submit their requests for on-calls to Thomley, who is responsible for notifying the hiring hall.

As mentioned above, the Auditorium building contains two theaters sharing a single stage, the Auditorium Theater or Concert Auditorium and the Fairchild Theater. The Wharton Center is responsible for maintenance in the Auditorium building itself and for theatrical maintenance, i.e., repair and replacement of the stage equipment. Funds for these items are included in the Wharton Center budget; some of that money, however, comes from the academic budget in recognition of the COM's use of the Fairchild. According to the floor plan of the Auditorium building, about half of the Auditorium is taken up by seating for the Auditorium Theater and about a quarter of the building, on the other end, is seating for the Fairchild. Between the two seating areas is a large stage. The stage can be partitioned by curtains or an orchestra shell, but the two theaters are not used for different activities at the same time. There are separate entrances at each end of the building for each theater. According to the floor plan, there also are small rooms, of varying sizes, opening off corridors on both sides of the building in both the Auditorium and Fairchild sections of the building. One of these, according to the record, is an office shared by Fenger and Fitch.

### The College of Music

The University's COM has two buildings on the University's campus, the Music Building and the Music Practice Building. It has classroom space in both these buildings and in the Fairchild Theater. The COM also operates two community music schools for youth, one in East Lansing and one in Detroit, where classes and occasional performances are held. Within the Music Building is a small performance space, Cook Recital Hall. COM student recitals are normally held in Cook or in another small venue called Hart Recital Hall. The COM sponsors a ticketed concert series that are open to the public in both Fairchild and Cook. The COM also uses the Demonstration Hall ballroom, another location on campus, for concerts. IATSE-represented employees have never worked in Cook Recital Hall or in any of the buildings listed above except for the Fairchild Theater.

The COM stages an annual opera. Until recently, the operas were performed in the Wharton Center's professional theater but are now held in Fairchild. Article 8, paragraph 50(b) of the 2014 MSU-IATSE collective bargaining agreement, discussed in more detail below, requires the COM, on a limited basis, to use IATSE rather than student labor for operas. In addition to operas, the COM also rents Cobb Hall in the Wharton Center for several student orchestral ensemble performances, and rehearsals for these performances, each year. When it

does so, its relationship with the Wharton Center is basically the same as any other University client using the space. That is, although COM students generally move risers and chairs, the performances are overseen by a Wharton stage manager and if any additional technical help is needed, IATSE on-calls are used.

A number of positions within either the APA unit or the unit represented by the Administrative Professionals Supervisory Association (APSA) work for the COM performing so-called “front of the house” functions for its concerts. These include box office and marketing. One COM position within the APA unit is responsible for coordinating touring activities and scheduling performances for the COM’s jazz ensembles. Another, the facilities coordinator, has primary responsibility for scheduling at the Demonstration Hall ballroom. Video or audio recordings are made of some of COM’s performances and the COM has a department, Recording Services, which does the recording. The videographer and recording engineer positions in Recording Services are in the APA unit. No COM position is currently represented by IATSE.

### History and Use of the Fairchild Theater

The Auditorium/Fairchild Theater was one of the first theaters on the University campus. However, after the Wharton Center opened in 1980 the two theaters in the Auditorium building were underutilized. In 2013, the COM was assigned the Fairchild Theater, but not the Auditorium building as a whole, as “academic space.” This occurred after it became clear that funding was not going to be available for a planned new COM building. After the decision was made to assign the Fairchild to the COM, an extensive renovation of the Fairchild and its stage was undertaken to make it a desirable place for COM concerts and for occasional use by others as a music performance area. An orchestra pit and catwalk were added so that operas could be staged in the Fairchild. Acoustical experts were brought in, and a surround sound system was installed for composing classes. Other changes to the construction of the building had to be made to conform to the fire codes because the Fairchild was to be used as classroom space. New and updated lighting systems were installed in both Fairchild and in the Cook Recital Hall; once programmed, these systems can be operated by pushing a series of buttons. To improve acoustics at Cook, the seating there was reduced from 360 to 180, and activities formerly held in Cook were moved to the larger renovated Fairchild. The renovation of Fairchild was completed shortly before the COM took over the theater in 2013. However, according to COM Dean Jim Forger, the COM’s expansion into Fairchild was gradual. It was not until about 2015 that the COM began fully using the Fairchild.

The Department of Theater, which normally uses Wharton for its student productions, is assigned the Fairchild for three weeks each year in order to give its students experience on the Fairchild’s type of stage. Depending on the production, the Theater Department may use just the Fairchild or both the Fairchild and the Auditorium Theater. According to Dean Forger, ten days in the fall and ten days in the spring are also reserved for use of the Auditorium by the Wharton Center for the scheduling of outside events. Student-organization-sponsored pop concerts by touring artists are held in the Concert Theater on those dates, and high school graduations are also held there. During these events the part of the stage facing Fairchild is sometimes used as a staging area. The Fairchild has also been used as overflow seating, with a video feed, for events in the Concert Theater.

Except for the periods when the stage is used by the Department of Theater or the Wharton Center, the Fairchild/Auditorium stage is used by the COM. Regular COM choral rehearsals are held in the Fairchild, as are piano performance classes and conducting classes. Guest artists come and teach in the Fairchild. Student choral performances and brass concerts that are too loud for Cook are held in Fairchild. As noted above, the COM sponsors concerts in the Fairchild that are open to the public and require tickets. This includes concerts geared toward specialized segments of the community. For example, the COM sponsors concerts in the Fairchild specially for autistic children and their families.

### The 2014-2018 Collective Bargaining Agreement

When the Fairchild Theater was assigned to the COM in 2013, Fenger had already been working at the Auditorium full time as a stage manager for several years. At that time, the Fairchild/Auditorium Theater hosted a mix of COM events, student-sponsored events, and outside rentals. On-call employees were used for some of these events, but Fenger normally worked all of them. After the Fairchild was assigned to the COM and its renovation was complete, the COM began using Fairchild more frequently for performances and for classes. Lori Garza, a COM employee and a member of the APA unit, was the individual within the COM who was directly responsible for the Fairchild. Garza handled requests from faculty to use the Fairchild space and kept Fenger informed about who would be using Fairchild and when. Fenger continued to be scheduled so that he was present whenever there was a performance in the Concert Auditorium or the Fairchild. Fenger was also sometimes present when COM classes were being held in the Fairchild. During those times, Fenger helped COM faculty become familiar with the equipment and provided whatever assistance they needed. As the COM gradually expanded its use of the Fairchild, Fenger's hours began to increase beyond what he could handle even with overtime. At some point, the Wharton Center, without explicit approval from the COM, began to schedule house staff to work as stage managers at Fairchild when Fenger could not be there. There was conflicting testimony as to whether this began before September 2014 or sometime in 2015.

On July 29, 2014, Petitioner and the University began negotiating what became their 2014-2018 collective bargaining agreement. Article 8, paragraph 56, of the parties' previous agreement began with this paragraph:

Should any University building or facility that is designated and incorporated in this Agreement be rented, leased or loaned to any party or organization other than Michigan State University for any type of production, it is agreed that all terms and conditions of this Agreement will apply with the following exceptions:

Article 8, paragraph 56 (a) of the previous agreement was entitled "Theater Department." The paragraph concluded with this sentence, "The past practice of the Theater Department of staffing under the terms of the Agreement will continue."

Paragraph 56 (b) of Article 8, entitled "College of Music" read:

Insofar as the College of Music is concerned, the University retains the right to continue and initiate academic programs which will expose students to all aspects of music presentations. Such programs will adhere to University curriculum standards of acceptable laboratory/studio activity. Such programs, however, will not be conducted in an attempt to avoid using IATSE bargaining unit members. Three stage technicians from the local call-board will be used for operas. If there is a need for more technicians, an on-site determination will be made by the Wharton Center Director and the Union. The Director's determination will be final and binding in the event that mutual agreement is not reached. If an opera call exceeds a total of thirteen (13) stagehands including students, the Technical Directors and the Union will meet to discuss additional staffing. Any impasse will be resolved by the Director of Performing Arts Facilities and Programs or designee.

On August 11, 2014, the University presented Petitioner with a set of proposals for a new agreement. Its proposals added this sentence to the end of Article 8, paragraph 56(b):

College of Music performances and programs held in Fairchild Auditorium shall be exempted from this agreement with the exception of operas as described above.

Amy Houda, who at some point in the negotiations became the University's lead spokesperson, testified that on July 27, 2014, before the University presented its first proposal, there was discussion between the parties regarding the fact that the Fairchild Theater had now been deemed academic space and that the University would be proposing to exclude IATSE from that venue when the College of Music was using it for their events. According to Houda, it was made clear to IATSE at the table that the purpose of this proposal was that COM events held in the Fairchild Theater, except for operas, be excluded from the collective bargaining agreement. Houda testified that, in return, the University offered to expand the number of campus outdoor venues for which IATSE would be the exclusive provider of labor.

Matt Woolman is Petitioner's business agent. Although he was not Petitioner's chief spokesman, he was part of Petitioner's negotiating team for the 2014-2018 contract. According to Woolman, what he understood from the proposal to add the above sentence to Article 8, paragraph 56(b) was that the University wanted to get away from using on-call labor at Fairchild. Woolman testified that, as he understood it, the purpose of the University's proposal was to allow COM students at the Fairchild to do the type of stagehand work, such as moving tables, chairs, risers, etc., that would be done by IATSE-represented on-calls at Breslin and Wharton. However, Woolman could not recall anything said at the table that would have confirmed that this was also the University's understanding.

John McDaniel was also on Petitioner's negotiating team. McDaniel recalled Dean Forger explaining, during the discussion of the University's proposal to add the sentence to paragraph 56(b), that the lighting at Fairchild could now be operated by touch panel, that sound reinforcement there was currently being done by Recording Services, and that the COM performances were not going to be using a fly rail. According to McDaniel, the University said

that, therefore, there was no need at Fairchild for IATSE's "labor package." McDaniel explained that the on-call "labor package" includes a lighting technician and usually a sound reinforcement engineer. McDaniel testified that IATSE brought up the fact that if the COM was going to be using Fairchild, Petitioner would be losing work because the Wharton Center could not schedule at the Auditorium when Fairchild was in use. According to McDaniel, in response to that complaint, the University offered to expand the number of outdoor venues using IATSE labor. Neither Houda, Woolman, or McDaniel recalled discussing either stage management duties in general or Fenger's duties or role at the Fairchild.

Later during the August 11, 2014, negotiating session, the University proposed the following as a memorandum of understanding (MOU) to be appended to the contract:

It is hereby agreed that should the College of Music determine that they need additional professional technical support in Fairchild Auditorium, *IATSE shall be offered the work before any outside contractor*. Examples may include events that may involve complex theatrical or musical presentations. [Italics added]

In addition, standard theatrical maintenance, as deemed necessary by venue managers, will be performed by IATSE.

On Houda's copy of the proposals, she wrote "Local 274 will be the sole provider of labor," which Houda indicated was the language that Petitioner orally suggested as a substitute for the above language in italics when the parties discussed the MOU.

On August 25, 2014, the University gave Petitioner a package proposal which included the MOU. Substituted for the language in the MOU in italics was this sentence, "IATSE Local 274 shall be offered, as the provider of labor, for sound reinforcement, rigging, and lighting when needed as deemed necessary by the Director." The package also included the proposed new sentence at the end of Article 8, paragraph 56(b) of the previous agreement. Petitioner accepted the package proposal. Consequently, both the amended Article 8, paragraph 56(b) language and the MOU became part of the contract effective September 1, 2014.<sup>2</sup>

Woolman testified that during the negotiations, the University suggested to Petitioner that they create a new unit position, assistant stage manager. According to Woolman, Petitioner does not have an assistant stage manager position in its unit, and it asked the University what role the assistant stage manager position would have and what qualifications it would require. Woolman's recollection was that the University's idea, as explained to him, was a part-time on-call position with the same duties as a stage manager. Woolman testified that around this time, the Wharton Center was proposing the creation of another full-time stage manager position to be assigned to work at both Wharton and the Auditorium. Petitioner rejected the concept of a part-time stage manager position, and the University did not pursue it further.

According to McDaniel, the University's proposal to create an assistant stage manager position was made in response to Petitioner's complaint about losing work at Fairchild. The

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<sup>2</sup> As a result of other changes, Article 8, paragraph 56(b) of the previous agreement was renumbered as Article 8, paragraph 50(b) of the 2014 Agreement.

University did not propose the new position specifically for Fairchild or the Auditorium. However, according to McDaniel, it was made in the context of a discussion about the amount of overtime Fenger was working and the fact that on-calls were being assigned there to work as stage managers to fill in for him.

#### Creation of the CPTM Position

Bloomfield was hired by the COM in December 2014. Among his other responsibilities, Bloomfield became responsible for the Fairchild and its operations. Bloomfield is a member of a bargaining unit represented by the Administrative Professional Supervisors Association (APSA). Bloomfield took over scheduling the use of Fairchild, and communicating with Fenger, from Garza. On July 9, 2015, Fenger wrote a memo to Bloomfield and Thomley complaining about the number of people who had keys to the stage and the condition in which it was being left when he was not there. Fenger asserted that items would “go missing,” not being put away, or becoming broken and described what he believed were unsafe conditions.

Around this time, COM began the process of creating the position which became the CPTM. The COM prepared a job description for the new position which went through several revisions. The University’s Human Resources Department, then, performed a job audit to determine in which, if any, bargaining unit the new position should be placed, and concluded that the job’s duties were primarily “administrative-type non-manual work” of the type normally performed by members of the APA. The position was posted as an APA position sometime after October 2016. Frick was hired to fill the position in January 2017 and began work in March 2017.

#### The Duties of the CPTM and the Stage Manager

Frick testified that when he was interviewed for the CPTM position he was told he would be managing day-to-day activities within the Fairchild Theater, working with the logistics of scheduling classes and COM performances, and working with the stage manager to ensure that COM performances went well and that everybody had what they needed. Frick also described his current duties as, “daily communicating with faculty and artists and then kind of handing it off to the stage manager for performances.” Frick’s responsibilities in the Auditorium are limited to the Fairchild; he has no responsibilities for concerts or other events scheduled by Wharton for the Concert Theater. Frick also has no responsibilities related to Department of Theater productions.

The CPTM job posting included an extensive list of duties. Some of the duties listed in the position’s job posting are the same or similar to those of a stage manager as described by Fenger and Thomley. These include: (1) supervising physical aspects of rehearsals, performances and scheduled classes, including coordinating, advancing, advising, and assisting with the load-in, set up and load-out of productions and performances; (2) providing assistance with stage lighting, logistics for performances, rehearsals, classes, and recording sessions and ensuring that rehearsal and production needs are arranged and available for use prior to all events; (3) working with faculty, staff, students, visiting artists, designers, producers and vendors to determine in advance performance production needs; (4) providing access to designated hall users and service

providers in the absence of other staff; and (5) proactively ensuring the cleanliness, appearance and maintenance of the hall in coordination with University departments.

Frick and Fenger share an office at the Auditorium. Frick is supervised by Bloomfield, and Fenger by Thomley and, above her, the Wharton Center Director of Operations. Frick is a salaried employee who works normal daytime business hours; he comes in for COM rehearsals or productions held on weekends and for evening rehearsals if Fenger cannot be there. Fenger normally works afternoons and evenings. As stage manager, Fenger is responsible for running performances; making sure everything goes well; communicating with the stagehands and making sure they all know where to go and where to be; ensuring that the performance starts on time and ends on time; and looking out for safety issues. Fenger performs these duties for COM performances at Fairchild, for Department of Theater productions in Fairchild or the Auditorium, and for non-COM events in the Concert Auditorium. COM performances use students as stagehands and to operate the computerized lighting system. Most COM performances require only an area microphone or a few spot microphones, and Fenger places the microphones and makes sure that they are operating during the performance. Depending on which one of them is there when the recording is being made, either Frick or Fenger may assist the Recording Services technicians by, e.g. adjusting the lighting for a video recording or helping the technicians set up additional microphones.

When a performance is not actually taking place, Fenger works with Frick to ensure that all the equipment is properly set up and ready for the next COM activity, either a class or rehearsal or performance. Frick provided this example of the way his work often intersects with Fenger's. Frick receives an email from a COM faculty member or an artist using Fairchild indicating what equipment they need for a performance, and Frick communicates this to Fenger. Depending on what it is, Frick may help Fenger set up the equipment. If equipment needs to be set up on stage during the day, and Frick is available, Frick will set it up himself. If the equipment does not need to be up until the evening, Fenger will set it up as well as tear it down after the performance is over. Both Frick and Fenger routinely move the orchestra shell which closes off the back of the stage during a musical performance, as well as pianos, choral risers, percussion equipment and music stands.

Fenger agreed that the COM, generally through Frick, tells him the date and time of its performances, rehearsals and classes and what equipment is needed. Fenger's job is to find the equipment and to set it up and take it down. According to Fenger, before Frick was hired, Fenger had quite a lot of contact with COM faculty about their equipment needs, but now Fenger's contact with faculty is mostly limited to performances.

Frick did lighting design for an annual musical performance program put on by the COM called Musique 21. Musique 21 usually has a more complex production design than the typical COM performance. Frick worked with the program's director to design a light program that captured the mood of the show, while Fenger helped during the design process by working the light board at Frick's direction. Frick himself worked the light board during the performances. Two Musique 21 programs were held in Fairchild before Frick was hired. For the first one, the faculty member who directed the program brought in a lighting designer from outside the University. For the second, Fenger designed the lighting.

While Frick is formally responsible for ensuring that the Fairchild is well-maintained and clean, Fenger administers the maintenance budget for the Auditorium, including the stage and determines what should be fixed and what should be replaced. As noted above, Frick and Fenger normally work different schedules; whichever one of them is there is responsible for granting access to the theaters and stage.

When a non-COM client rents the Auditorium Theater, a rental meeting is held between representatives of the client, and Wharton representatives, including Fenger; Steven Ouellette, Wharton's director of operations; and representatives from the Wharton's box office and marketing departments. The client explains what it needs, and, if the client is a professional band, it usually hands out a "rider" which specifies in detail everything the client needs for the show. The number of and type of on-call employees for the show is decided at that meeting, and a schedule is worked out for rehearsals and/or a sound check, and setup and tear down. Fenger fills out a form specifying the number and type of stagehands that will be needed and the time they are to report and submits it to Thomley to be sent to Petitioner in advance. Fenger is also responsible for finding and renting any equipment that the client needs, but the Auditorium does not have. Other Wharton employees are responsible for meeting other client needs, such as security for the show or parking for a bus. As noted above, Frick has no responsibility for non-COM events held in the Auditorium Theater.

The list of duties in the CPTM's job posting also includes duties that are outside of a stage manager's normal responsibilities. These include: (1) assisting with the creation and maintenance of master planning calendars related to theater and production and managing conflicting needs for hall access and usage; (2) communicating and coordinating performance, rehearsal and class needs with all affected areas which includes coordinating movement of musical instruments; (3) responding not only to planned classes, rehearsals and performances but also coordinating and providing assistance with appropriate activities scheduled in service of student learning, faculty research and creative activities; (4) evaluating proposed courses of actions by users which may affect the . . . life safety and fire safety of the occupants of the building; and (5) participating in the planning and development of Departmental policies and procedures and making recommendations concerning budget and stage expenditures.

The CPTM is responsible for putting together the master calendar of classes, guest classes, and guest artist performances and rehearsals that take place in Fairchild as well as the faculty and student performances that take place both in Fairchild and in Cook Recital Hall. In making the master calendar, Frick has to ensure that COM events scheduled at Fairchild not only do not conflict with events scheduled at the Concert Auditorium, but also do not conflict with COM events at Wharton or Cook which may involve the same individuals. He also has to resolve competing requests from faculty members, and sometimes students, to use Fairchild. For example, a student taking a piano class in Fairchild may ask Frick for an opportunity to practice on that particular piano. For the part of his job that involves the calendar, Frick regularly communicates with COM administrators, faculty, and guest artists and their representatives. Frick's interactions with faculty extend beyond scheduling; as an example, Frick received a request from a faculty member to have lighted candles on the stage during a performance and was responsible for consulting with the fire marshal about whether and how this could be done

safely. Before Frick was hired, Bloomfield had these responsibilities and before Bloomfield, they were the responsibility of Lori Garza. By early December 2017, Frick had finished entering all the information for the Winter 2018 semester into the master calendar, and the calendar is his ongoing responsibility.

The COM uses project management software called Base Camp to keep track of information about its events, including but not limited to the calendar information. The information in Base Camp can be accessed by anyone authorized to see the data, including Marketing and Recording Services staff. Frick does all the data entry for that program. Fenger does not have access to Base Camp, but enters some of the same kind of data into the Wharton Center's Event Booking program whenever there is an event at Fairchild or the Auditorium that involves IATSE on-call employees. During and after the performance, Fenger also keeps track of the on-call employees' hours and submits the hours, rates, and any type of equipment rental expense to Wharton.

Frick has also performed an assortment of other duties for the COM that do not involve his presence in the Fairchild. As of the date of the hearing, Frick had done projection, sound and lighting for one performance at the COM's Community Music School in Lansing and had overseen several performances done by outside community members at Cook. Frick is not responsible for regular "front of the house" work for the Fairchild performances open to the public, i.e., box office, ushering, marketing, or relationships with patrons. However, he has done some graphic design for the COM's marketing department. On the date of the hearing, Frick was also assisting Bloomfield in planning a new online ticketing system for the Fairchild. To date, this involved participating in meetings to discuss what the COM wants and could get from the new software. Insofar as the record discloses, Fenger's duties are confined to the Auditorium building and its stage.

The CPTM job description lists the qualifications for the position as follows

Knowledge equivalent to that which normally would be acquired by completing a four-year college degree program in Technical Theatre or Theater Design and Technology or related field: one to three years of progressively more responsible or expansive work experience in technical theater, or an equivalent combination of education and experience.

The physical requirements of the job, as listed in the job description, include carrying equipment up to 50 lbs., pushing/pulling pianos up to 990 lbs., and climbing a ladder with up to 25 lbs. of equipment. There is nothing in the record about the qualifications required for a stage manager position.

Frick has experience working in professional theaters in California and Chicago. Before being hired by the Employer, Frick managed some high school theaters, where, according to Frick, he did everything including budgeting, scheduling, and scenic lighting and sound design. On occasion, he also acted as stage manager for those theaters. Fenger has been a stage manager for more than 27 years. Prior to being assigned to work exclusively at the Auditorium, Fenger split his time between the Auditorium and the Wharton Center.

## Discussion and Conclusions of Law:

A unit clarification petition is appropriate for resolving questions in unit placement caused by the creation of a new position or recent substantial changes in the job duties of existing classifications. *University of Michigan*, 32 MPER 7 (2018); *Tuscola Co Rd Comm*, 27 MPER 57 (2014); *City of Grand Rapids*, 19 MPER 43 (2006). However, unit clarification is not appropriate for upsetting an agreement of a union and employer or an established practice of such parties concerning unit placement. *Genesee Co*, 1978 MERC Lab Op 552, 556; *City of Greenville*, 2002 MERC Lab Op 236, 15 MPER 33053. A corollary to this rule is the principle that an employer cannot unilaterally reclassify and/or remove positions from an existing unit without a recent significant change in their job duties. *Ingham Co*, 1993 MERC Lab Op 808, 812, 6 MPER 24132. The purpose of a unit clarification petition, however, is to resolve disputes over the unit placement of a new or altered position, not to determine if the employer violated either its duty to bargain or the parties' collective bargaining agreement by unilaterally removing work from a unit.

When a union files a unit clarification petition seeking to add a new position to its unit, no other union claims the position, and the employer does not assert that the position is executive, confidential or supervisory, the issue is generally whether the new position shares a community of interest with petitioner's existing unit. See, e. g., *Detroit Judicial Council*, 2000 MERC Lab Op 7, *Lansing Community College*, 2000 MERC Lab Op 99. However, we do not determine relative degrees of community of interest. See *Henry Ford Community College*, 1996 MERC Lab Op 372, 379-380. When two unions claim a new position, we defer to an employer's good faith, reasonable decision to place the position in one of their units if the evidence indicates that the position shares a community of interest with this unit or with both units. *City of Bay City*, 16 MPER 31 (2003); *Lansing Sch Dist*, 22 MPER 96 (2009).

The last sentence of Article 8, paragraph 56(b) of the parties' 2014-2018 collective bargaining agreement reads, "College of Music performances and programs held in the Fairchild Auditorium shall be exempted from this agreement with the exception of operas as described above." Houda credibly testified that although "agreement" was not capitalized in the University's proposal to add this sentence to the paragraph, the University's bargaining team explained that "agreement" meant the collective bargaining agreement. The University asserts that the last sentence of paragraph 56(b) clearly and unambiguously reflects the parties' agreement that all COM work at Fairchild - except for operas, and in accordance with the MOU, when the COM needs additional professional technical help - would not be covered by the IATSE collective bargaining agreement. According to Petitioner's witnesses, however, they understood the University's proposals to refer to on-calls, i.e., both the proposal to add the sentence to paragraph 56(b) and the MOU affirmed that the COM would have no obligation under the contract to use IATSE on-calls in the Fairchild to perform the type of work IATSE on-calls typically perform. They point out that there was no discussion about stage management, which is work typically done by full-time IATSE employees, in the context of these proposals. We agree that Petitioner's representatives could have reasonably understood the University's proposals as encompassing only on-call work. We note that excluding the last line, the subject of Article 8, paragraph 56(b) appears to be the COM's use of students to perform work that would otherwise be done by IATSE members in order to expose the students to the different aspects of

music performance. The CPTM, of course, is not a student employee, and there is no indication in the record that the COM has ever used students to substitute for a stage manager. The evidence indicates that in late 2014 there were full time COM employees doing work in the Fairchild that IATSE's on-calls might have done, e.g., sound reinforcement and sound recording. However, we conclude that the parties did not agree to exclude from Petitioner's unit full time stage managers working in the Fairchild.

As discussed in the findings of fact, many of the CPTM's duties are the same or similar to those performed by a stage manager. Fenger, the stage manager, normally supervises performances held in the Fairchild including COM performances; Frick may supervise performances held on weekends. However, both Fenger and Frick, depending on their schedules, set up and tear down or supervise the set up and tear down of equipment for performances, rehearsals and classes. Moreover, if performers and/or faculty members need assistance with lighting, sound, or any other equipment used on the Fairchild stage, either Fenger or Frick may provide this assistance depending on which of them is present.

The CPTM however, is not a stage manager. In addition to tasks which Fenger also performs, the CPTM has duties which are not typically performed by a stage manager. The most significant of these is responsibility for the COM's master calendar, which includes, but is not limited to, events in Fairchild. For Frick this involves resolving competing demands by faculty members to use the Fairchild space and making sure that COM performances and rehearsals scheduled for Fairchild do not conflict with COM performances and rehearsals scheduled for Cook or other venues. Carrying out these responsibilities, and the CPTM's responsibility for ensuring that the right type of equipment and the right instruments are there for each use, requires that Frick have ongoing contact with COM faculty and administrative staff. Before the creation of the CPTM position, these aspects of Frick's position belonged to COM administrative employees, first Garza and then Bloomfield. While Fenger handles performances by non-COM entities who seek to use the Concert Theater for individual events, the type of scheduling that this involves is substantially different from Frick's ongoing responsibilities for scheduling COM events. Moreover, Frick's responsibilities are not limited to the Fairchild and its stage but extend to other COM locations, including Cook and the local Community Music School, where COM performances are held. His job description also suggests that, in the future, his duties may also encompass COM endeavors other than "planned classes, rehearsals and performances."

The COM has also assigned Frick to several ad hoc tasks not related to the management of the Fairchild stage. These include assisting Bloomfield in planning the new online ticketing system planned for the Fairchild and doing some graphic design for the COM's marketing department.

In sum, while the CPTM performs some duties traditionally performed by a stage manager, the position has also assumed responsibility for some matters that were previously the responsibility of COM administrators in the APSA or APA unit. We determine whether a community of interest exists between groups of employees 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. *Bloomfield Twp*, 32 MPER 10 (2018); *Covert Pub Sch*, 1997 MERC Lab Op 594, 601. The CPTM position is a COM position and, thus, its line of reporting is different from any IATSE-represented position. However, because of the similarities between work performed by the CPTM position and employees in the IATSE unit, we find that the CPTM shares a community of interest with that unit. We also conclude, however, that based on its duties, the CPTM also shares a community of interest with the APA unit.

As noted above, when an employer creates a genuinely new position and two unions claim it, we generally defer to the employer's unit placement decision if the decision is reasonable and made in good faith and the position shares a community of interest with both units or the unit in which the Employer has placed it. IATSE argues that the University's decision not to place the position in the IATSE unit was not made in good faith. In support, it points to the history of requests by the Wharton Center to create a new full-time IATSE stage manager position for the Auditorium/Fairchild and the University's proposal during contract negotiations to create a part-time stage manager position as evidence that the University itself recognized that the CPTM belongs in the IATSE unit. We do not agree. Here the University decided that rather than hiring an additional full-time stage manager for the Wharton, the COM's needs would be better served by a position within the COM that combined some of the duties of a stage manager with administrative responsibilities. We conclude that the University's decision to place that position in the APA unit was made in good faith.

Based on the findings of fact and conclusions of law set forth above, we issue the following order.

**ORDER**

The petition filed by IATSE Local 274 to clarify its bargaining unit to include the position of Concert Producer/Technical Manager is dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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/s/  
Edward D. Callaghan, Commission Chair

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/s/  
Robert S. LaBrant, Commission Member

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

Dated: November 15, 2018