

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

In the Matter of:

UNIVERSITY OF MICHIGAN,  
Public Employer-Respondent,

-and-

Case No. UC13 K-015  
Docket No. 14-003605-MERC

UNIVERSITY OF MICHIGAN SKILLED  
TRADES UNION,  
Labor Organization-Petitioner,

-and-

AFSCME COUNCIL 25, LOCAL 1583,  
Labor Organization-Intervenor.

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**APPEARANCES:**

David J. Masson, Associate Vice President and Deputy General Counsel, for the Public Employer-Respondent

Tinamarie Pappas, for the Labor Organization-Petitioner

The Sanders Law Firm, P.C., by Herbert A. Sanders, for the Labor Organization-Intervenor

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

On November 23, 2013, the University of Michigan Skilled Trades Union (Petitioner or UMSTU), filed this petition for unit clarification with the Michigan Employment Relations Commission (Commission) pursuant to Section 13 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.213. An evidentiary hearing was conducted for the Commission in Lansing, Michigan, on May 29, 2014, by Travis Calderwood, Administrative Law Judge for the Michigan Administrative Hearing System. Based on the entire record, including post-hearing briefs filed by all parties on or before July 28, 2014, we find as follows:

### The Petition and the Proceedings:

Petitioner filed this petition for unit clarification on November 23, 2013. Petitioner represents a unit of skilled trade employees at the University of Michigan. It seeks to add a newly classified position, the Environmental Protection Equipment Specialist (EPES), to its unit. Petitioner argues that the Employer's placement of the EPES position within the Intervenor's unit was not reasonable, as said classification shares a community of interest with the UMSTU and not with AFSCME. Both the Employer and the Intervenor contend that the EPES position should remain in that unit, arguing that the unit clarification petition is improper because the position's duties have been consistently performed by an AFSCME unit classification, Maintenance Mechanic III, since at least 1986. Additionally, both the Employer and Intervenor argue that the EPES position shares a community of interest with the AFSCME unit.

### Findings of Fact:

Since the mid to late 1960's, Petitioner has been the authorized bargaining agent representing skilled trade employees at the University, including several classifications at the journeyman and apprentice levels, as well as classifications without trade level distinctions. At the time of the hearing on May 29, 2014, there were approximately 445 employees within the UMSTU unit. The current collective bargaining agreement between the Petitioner and the Employer took effect on August 1, 2011, and was set to expire on May 31, 2015.

Intervenor, the American Federation of State, County, and Municipal Employees (AFSCME), Council 25, and its affiliated Local 1583, represents various service-maintenance employee classifications including the newly-created EPES classification throughout the various University facilities. The current collective bargaining agreement between the Intervenor and the Employer took effect on March 26, 2013, and is set to expire on June 30, 2017.

The University's Electrical Engineering and Computer Science Building (EECS) houses two laboratories: the Solid State Electrical Lab (SSE Lab) and Lurie Nanofabrication Lab (Nano Lab). Both labs serve as training facilities for students in electrical engineering sciences. The SSE Lab has been operating since 1986 and produces solid state electronic components. The Nano Lab, which produces computer silicon microchips, became operational in late 2007.

Both labs create hazardous waste products, which contaminate air and produce waste water. Both labs rely on air scrubbers and chemical feed pumps to combat the waste produced by their respective manufacturing processes. The two main chemicals used by the scrubbers and pumps to treat the contaminated air and water are sulfuric acid and sodium hydroxide, two very toxic and hazardous chemicals. Since opening in 1986, the SSE Lab has used three air scrubbers to clean the chemicals from the air and four chemical feed pumps to treat the contaminated water. The Nano Lab utilizes four air scrubbers and eleven chemical feed pumps.

As is the case with any mechanical system, the remediation systems tasked with treating the hazardous and contaminated waste produced by the two labs require maintenance, upkeep, repair and other work from time-to-time. Beginning in 1986, the SSE Lab's scrubbers and pumps were maintained by Bill Wrentz, an AFSCME Maintenance Mechanic III. During the last five or six years that Wrentz worked in the SSE Lab, AFSCME Maintenance Mechanic III, Robert Pollina, assisted Wrentz a couple of days a week. In 2006, Tim Bohl, an AFSCME Maintenance Mechanic I, took over the job of maintaining the scrubbers and pumps.<sup>1</sup> Bohl was assisted by Pollina a couple days a week. Sometime in late 2007 or early 2008, Donny Long, another AFSCME Maintenance Mechanic I, assumed responsibility of the scrubbers and pumps. Just like with Wrentz and Bohl, Long was also assisted by Pollina a couple of days a week. Finally in August of 2011, Pollina, assumed sole responsibility over the scrubbers and pumps in the SSE Lab and Nano Lab.

Pollina offered extensive testimony regarding his duties as they relate generally to a Maintenance Mechanic III as well as the nature of his duties as related to the SSE Lab and Nano Lab. With respect to the duties listed on the University's Classification Description for Maintenance Mechanic III, Pollina testified that he had engaged in some, but not all, of the listed duties, and had witnessed other Maintenance Mechanics III, perform some, but not all, of those same listed duties. Pollina also testified that many of the things that he was now required to do, by nature of his responsibility over the SSE and Nano Labs, were duties not typically done by the Maintenance Mechanic III classification. These include: retrofitting and redesigning the existing scrubbers so that they conform to current industry standards; designing and building a new automated chemical feed station; repairing and replacing diaphragms, chemical feed pumps, component parts and chemical supply tubing; and conducting safety training. In addition to those duties and others not listed, Pollina is also responsible for and exposed to highly toxic and hazardous chemicals; Maintenance Mechanic III's are typically not exposed to the same.<sup>2</sup>

In January of 2013, Pollina informed his direct supervisor, Joel Foos, and the University's North Campus Regional Manager, Rocky Kohler, that the duties he was performing with regard to the scrubbers and pumps were no longer correctly reflected in his Maintenance Mechanic III classification.<sup>3</sup> Pollina then requested that the University review his current classification for the purpose of updating his duties and salary. University Labor Relations Representative, John Lund, assumed the task of reviewing

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<sup>1</sup> Sometime after assuming duties with respect to the scrubbers and pumps in the SSE Lab, Bohl also assumed the identical duties with respect to the Nano Lab when it became operational in 2007.

<sup>2</sup> Pollina explained that with the increase in scrubbers and pumps because of the Nano Lab beginning operations in 2007, the amount of exposure has increased dramatically such that he now wears personal protection equipment that his predecessors did not. Additionally, Pollina also handles biocide, a chemical not used by the Maintenance Mechanics prior to him.

<sup>3</sup> Petitioner goes to great lengths to establish that Rocky Kohler, as the University's North Campus Regional Manager, is Pollina's supervisor. While this may be true in so far as Kohler is the Regional Manager, the record establishes that Joel Foos, the Asset Manager, is responsible for the EECS and, therefore, more directly supervises Pollina.

Pollina's request. Lund met with Pollina and Foos, and also took a tour of the two labs. Lund next requested that Pollina and Foos provide a draft of the duties performed by Pollina. Lund ultimately determined that a new classification encompassing the duties performed by Pollina and reflected in the draft provided by Pollina and Foos was needed. Lund also determined that the new position, titled Environmental Protection Equipment Specialist (EPES), had duties comparable to Medical Equipment Repair Specialist, Millwright, and Heavy Equipment Mechanic, each of which occupied the highest pay grade level (Pay Grade 14) within the AFSCME unit with an hourly rate of \$27.61.<sup>4</sup>

Following negotiations with AFSCME representative, Angela Dameron, the EPES classification was created at the Pay Grade 14 level and placed within the AFSCME unit. Pollina was awarded the new position. There was no evidence presented that indicated that the new position was posted or that other individuals besides Pollina were considered or allowed to apply for the position. The record clearly establishes through testimony by Federico Kenneth Chaves-Torres, Petitioner's President, and Lund, that the University never discussed the EPES classification's creation or inclusion in the AFSCME unit with Petitioner prior to it being done.

Petitioner, in its effort to establish a community of interest with the other positions within the UMSTU unit, introduced testimony to support the claim that some of the work performed by Pollina was very similar to that of an apprentice steamfitter. Petitioner also claims in its post-hearing filings that the EPES' duties closely resemble those of the following classifications within the UMSTU unit; Air Conditioning Refrigeration Mechanic (and apprentice), Sanitary and Storm Water Systems Specialist, and Mechanical Systems Field Service Specialist.

The Employer introduced evidence and testimony in an attempt to establish a community of interest between the EPES and the AFSCME unit. Specifically, the University pointed to the EPES' duty to maintain fume hoods, exhaust, and waste systems and how such responsibilities were similar to the Maintenance Mechanic duties involving the replacement of water, sewer, air, and gas lines.<sup>5</sup> Additionally, the University provided evidence establishing that other AFSCME positions, Medical Equipment Specialist, Laundry Plant Mechanic, and Millwright, each performed duties which were very similar to those done by Pollina in his role as EPES.

#### Discussion and Conclusions of Law:

The Commission Rules and its case law regarding unit clarification petitions are both well-settled. We have long followed the holding of the National Labor Relations Board in *Union Electric Co*, 217 NLRB 666, 667 (1975), which we adopted in *Genesee Co*, 1978 MERC Lab Op 552, 556, and more recently restated in *City of Detroit &*

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<sup>4</sup> By comparison, the Maintenance Mechanics III classification has a pay grade of 11 and an hourly pay rate of \$23.18.

<sup>5</sup> Although Petitioner sought to establish that Pollina himself had never engaged in such duties himself prior to working in the SSE and Nano Lab, such a fact does not necessarily prove that Maintenance Mechanics never engaged in those duties.

*AFSCME Council 25*, 23 MPER 102, 383 (2010), and *Jackson Pub Sch*, 1997 MERC Lab Op 290, 298-299:

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

The University argues that the present unit clarification petition should be dismissed on the grounds that the EPES is not a new position, nor has it been substantially changed. We agree. The record, as developed, clearly establishes that a Maintenance Mechanic, at some level, has been performing the duties of the position now titled EPES at the EECS since as far back as 1986. It is undisputed that initially a Maintenance Mechanic, Wrentz, by the nature of his classification had the requisite skills necessary to assume the duties and responsibilities of maintaining the scrubbers and pumps at the SSE Lab. Following Wrentz leaving employment, the University chose to continue assigning those duties to other Maintenance Mechanics, regardless of the fact that the duties were clearly outside the enumerated duties listed as part of the Maintenance Mechanic job classification.

The above notwithstanding, even if we were to conclude that the unit clarification petition was properly brought forth in the instant case, Petitioner has not provided sufficient cause for us to question the University's decision to place the EPES in the AFSCME unit. We are of the opinion that the record before us clearly establishes that the EPES shares a community of interest with both the UMSTU and AFSCME units. In reaching this conclusion we are guided by the principle that in making unit determinations, we are not required to find the "optimum" or "most" appropriate unit, but rather only a unit appropriate for collective bargaining based upon the facts of each case. *City of Lansing, Bd of Water and Light*, 2001 MERC Lab Op 13; *City of Zeeland*, 1995 MERC Lab Op 652. We have consistently held that in matters where a position shares a community of interest with more than one bargaining unit and conflicting claims are made regarding it, we will defer to the employer's good faith decision as to unit placement. *City of Lansing*, 2000 MERC Lab Op 380; *Henry Ford CC*, 1996 MERC Lab Op 374; *Saginaw Valley State College*, 1988 MERC Lab Op 533.

We have considered all other arguments put forth by the parties and hold that they do not warrant any change in our conclusions. In accord with our findings, we issue the following order:

**ORDER**

Petitioner's request to clarify its skilled trades bargaining unit to include the Environmental Protection Equipment Specialist position is hereby denied.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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/s/  
Edward D. Callaghan, Commission Chair

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/s/  
Robert S. LaBrant, Commission Member

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/s/  
Natalie P. Yaw, Commission Member

Dated: September 24, 2015