

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

In the Matter of:

SAGINAW VALLEY STATE UNIVERSITY,
Public Employer,

-and-

Case No. R14 E-036
Docket No. 14-013028-MERC

MICHIGAN EDUCATION ASSOCIATION,
Petitioner-Labor Organization.

APPEARANCES:

Braun, Kendrick, Finkbeiner, P.L.C., by Ellen E. Crane for the Public Employer

White, Schneider, Young & Chiodini, P.C., by Erin M. Hopper, for the Petitioner-Labor Organization.

DECISION AND DIRECTION OF ELECTION

Pursuant to Section 12 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212, this matter was assigned to Travis Calderwood, Administrative Law Judge with the Michigan Administrative Hearing System, acting on behalf of the Michigan Employment Relations Commission. Pursuant to Sections 13 and 14 of PERA, and based upon the entire record, including the position statements filed by the parties prior to hearing, the transcript of the hearings and briefs filed by the parties on or before October 30, 2014, the Commission finds as follows:

Petition and Procedural History:

On May 6, 2014, the Michigan Education Association (Petitioner), the authorized bargaining representative for the Saginaw University Support Staff Association, MEA/NEA (Association), filed a Petition for Certification of Representative with the Commission, seeking to accrete certain Technology Services Department (IT Department) classifications and Media

Services/Library classifications at Saginaw Valley State University (Employer or University) into the Association.¹

Petitioner argues that the positions it seeks to accrete to the bargaining unit it represents share a community of interest with the positions currently in the bargaining unit.

The Employer, objects to the Petition on several grounds: (1) the classifications sought are professional positions that are paid on a salary basis while the positions in the bargaining unit represented by the Association are all paid hourly; (2) there is a long-standing history of division between the secretarial/clerical services employees and the plant/business services employees presently in the bargaining unit and the positions within the IT Department and Media Services; (3) the positions sought have distinct educational pre-requisites, skills, training, and job functions that are unlike any required of the employees in the bargaining unit; (4) the Association's contract provides means of compensation, such as overtime pay, that are not available to the positions sought; and (5) there is a potential for conflicts of interest between the IT positions sought and current members of the bargaining unit represented by the Association.

An evidentiary hearing was held in Lansing, Michigan on July 23, and September 4, 2014.

At hearing, on July 23, 2014, the Association clarified on the record that, except for the positions already in the bargaining unit, its Petition seeks to accrete all positions in the Library Department that do not require a masters of library science degree (MLS) and all positions within the Information Technology Department (IT), with the exception of programmer/analyst positions.

Findings of Fact:

I. Background

The positions Petitioner seeks to accrete to the bargaining unit include the following classifications within the IT Services Department: senior systems administrator, systems administrator, network engineer, senior technology specialist, technology specialist, senior instruction technology specialist, instructional technology specialist, video production technology specialist, lab coordinator, senior enterprise application specialist, enterprise application specialist, and the database administrator/security officer. From the Library Department, the classifications sought include: library computer tech, archives specialist, and media services /Inter-Library Loan (ILL) assistant.

At the July 23 2014 hearing, the University introduced job descriptions for each of the positions sought in the Library Department, together with job descriptions for bargaining unit

¹ Prior to the May 6, 2014 Petition, the Association had filed Case No. R14 D-034. That petition, which was filed on April 2, 2014, sought to represent the University's "[o]perations, support center, network services and media services" positions. The Association withdrew that petition on May 6, 2014. There is no indication in the record that the positions sought earlier are different from the positions sought to be accreted in the present Petition.

members working within the department. At the September 4, 2014 hearing, the University introduced the job descriptions with regard to the IT Department.²

At the time of the hearing only two employee groups were represented by authorized bargaining agents. Petitioner represents both groups including the bargaining unit that is the subject of the petition, which comprises approximately 190 support and custodial employees, as well as a separate unit of approximately 300 full-time faculty members. Among the employee groups not represented are the 400 or so contingent and/or adjunct faculty, the University police officers, and approximately 400 full and part time positions which the University identifies as administrative professionals (AP). All positions sought herein are considered AP positions by the University.

The Association represents approximately 100 secretarial/clerical employees and approximately 90 custodial, maintenance, and skilled trades employees throughout the University. The secretarial/clerical employees were initially represented by Petitioner in their own stand-alone unit, while the custodial, maintenance, and skilled trades employees were originally represented by AFSCME. In 1989 however, the two groups merged and became one bargaining unit.

The current collective bargaining agreement between the Association and the University provides the following recognition provision:

The Bargaining Unit consists of all full-time and regular part-time Secretarial/Clerical Division employees and Plant/Business Services Division employees of Saginaw Valley State University but excluding: Human Resource Assistants, Office of Human Resources (2); Secretaries to the Vice Presidents (Business, Academic and Public Services), (3); Secretary to the Director of Institutional Research and Planning (1); Secretary to the Assistant to the President/Secretary to the Board of Control (1); Secretary to the Dean of Student Affairs (1); Supervisors and all others.

Bargaining unit positions include secretarial and clerical, custodial and ground and building maintenance classifications, as well as skilled trade classifications, such as HVAC or electrician positions. At the time of the hearing, no position within the bargaining unit required a four-year degree. However, a high school diploma or advanced secretarial experience is required for several positions within the unit while other positions within the unit, such as the skilled trades positions and pool technician, require the employee to have special certifications or licensing.

Every position within the unit is paid bi-weekly on an hourly basis, with wage rates for the 2014-2015 contract year ranging from \$11.70 an hour for a starting custodian to \$25.62 for a senior skilled trades position. The wage scale is fixed by contract. Bargaining unit members are

² Petitioner asserted that the job descriptions for the senior enterprise application specialist and enterprise application specialist in the IT department were created after the filing of its petition. However, it is the opinion of this Commission that Petitioner did not provide compelling evidence to support that contention.

compensated at a rate of time and a half for all hours worked over forty hours in a given week. The typical work day for full-time employees within the unit is 8:00 a.m. to 4:30 p.m., which includes a duty free lunch period along with two fifteen minute breaks. In addition to the typical work day, some unit members, depending on positions and hours worked, work first shift, second shift, or third shift hours. Support staff unit members receive medical, dental, vision, and disability benefits and, depending on the number of hours worked per week, may also qualify for group life insurance.

As stated above, the AP positions sought herein are all salaried positions, with the full-time positions exempt from the overtime requirements of the Fair Labor Standards Act (FLSA). 29 USC § 201 et seq. Petitioner provided testimony and evidence establishing that during the 2013 calendar year, the full-time IT Department AP positions sought had a salary range of \$37,000 to \$61,169 a year. Salary information was not provided for the Media Services positions. However, Petitioner offered unrefuted testimony that the ranges were similar for both groups.

Bargaining unit members accrue 4 hours designated as vacation hours per pay period along with additional hours based on years of service; total annual accrual of vacation hours is between 104 and 168 hours. Bargaining unit members may only use hours that they have already accrued and the time must be used in six-minute increments. Also, unit members who provide two weeks of notice prior to leaving employment are entitled to payout of the accumulated vacation hours; members also receive the payout if they have been discharged from employment.

The AP positions receive a standard 15 hours of vacation time on the first of every month, regardless of years of service or hours worked in the previous month. Additionally, AP positions, unlike unit members, are required to take vacation leave in four-hour increments and do not have to use any leave if their absence is less than four hours. AP positions do not receive a payout of unused hours if they are terminated and must provide four weeks advance notice of intent to resign in order to receive any payout.

Unit members accrue hours designated as sick time at a rate of four hours a pay period and must use it in six-minute increments. Unused sick time, after a member reaches 520 hours of accumulated time, may be converted to personal days or may be paid out to the member according to the formula set forth in the parties' collective bargaining agreement. Members also receive three personal days per year and are eligible for an additional personal day if they have used three or fewer sick days in the preceding year. AP positions receive a block of sick hours every July 1. The sick time allocated to these positions cannot be banked from year to year and cannot be paid out.

While testimony provided by bargaining unit members at hearing claimed that the health insurance plans provided to the Support Staff Unit and AP positions are identical, such a statement is not altogether accurate. At the time of the hearing, there were three health benefit plans available to members by way of their collective bargaining agreement. However, those three plans were becoming increasingly more expensive for unit members. Accordingly, the University agreed to allow members the option to purchase the cheaper health insurance plan offered to the AP positions.

II. IT Department

The University's IT Department is divided into two sub-departments, Technology and Support Services, headed by Director Larry Emmons, and Enterprise Applications and Development, headed by Director Pat Samolewski. Each of the two sub-departments are comprised of two work groups; within Technology and Support Services, there is Technical Services and the IT Support Center, while in Enterprise Applications and Development, there is Enterprise Applications and Web Technologies. The entire IT Department is overseen by Jim Maher, its executive director. Two managers and one assistant manager report to Emmons, while two other managers as well as the stand-alone position of database administrator/security officer report directly to Samolewski. Outside of the eight management positions, there are eighteen separate classifications in the department for a total of thirty-four positions. Of those positions, three positions are held by unit members and the remaining thirty-one are non-represented AP positions, five of which are programmer/analyst positions not sought in the Petition.³

Both Maher and Emmons provided testimony relating to the interaction between different AP positions in the IT Department and its two sub-departments and other various groupings. Maher testified that work could originate within the IT Support center, move over to Technical Services, and then end up in Enterprise Applications and Development before being completed. Maher also explained how projects might begin as strategic initiatives for which the department's leadership group would develop a project plan that might involve all aspects of the IT Department. Maher stated that given the different levels of responsibilities of the various AP positions, there "has to be a high level of coordinated effort."

Reporting directly to Emmons is the administrative secretary, a unit position occupied by Tish Yaros, who also serves as the Association President. The University's job description for the administrative secretary, the position that assists the director of technology and support services, Larry Emmons, lists the following as the position's job summary:

Assist the Director of Informational Technology Services with administrative duties and perform secretarial duties for the Information Technology Services department. As necessary, provide software assistance to microcomputer users.

The University requires, as the position's minimum educational requirement, "[t]wo years of college or the equivalent in experience."

Yaros provided testimony regarding the day-to-day duties of that position, along with information regarding the interaction between her position and other support staff unit positions with the AP positions sought in the Petition. Yaros testified that that she works closely with other

³ While one of the University's IT Organizational Charts for the IT Department indicates that the developer classification and the database administrator/security officer classifications are not being sought, Petitioner made it very clear at the time of the hearing that it wished to accrete all non-managerial classifications within the IT Department excluding programmer/analyst positions.

members of the IT Department, both in her sub-department as well as outside the department. She orders equipment, answers phone calls, and opens Cherwell tickets as needed.⁴

A. Technical Services

The AP positions in Technical Services are primarily responsible for the University's technology infrastructure, operating systems, specialized software and scripting. In addition to software and scripting, that sub-department also handles much of the University's technology hardware. Often AP positions are "out in the field" where they install and maintain pieces of technology hardware. One network engineer testified that he works almost exclusively in the field and not in the office. While in the field the IT Department AP positions often interact with other University employees, including bargaining unit members, either in performing services for or working alongside the non-IT Department employees. Examples of the latter would include: installing or pulling wires and cables, replacing and fixing broken jacks, installing or replacing of switches and other tasks of that sort. Network Engineer Dale Klimmek supported this with testimony that members might install cables that service the University's data closets, where the University's network servers and switches are housed, or perform other work necessary before he arrives to perform his own work.

1. Senior Systems Administrator and Systems Administrator (AP Position)

The job descriptions provided by the University for the senior level position provide the following job summary:

The Senior System Administrator is responsible for leading effective provision, installation/configuration, operation, and maintenance of systems hardware and software and related infrastructure. This individual leads the technical research and development to enable continuing innovation within the infrastructure. This individual ensures that system hardware, operating systems, software systems, and related procedures adhere to organizational values.

The non-senior level position description is essentially identical; the only substantive difference is that instead of "leading," the systems administrator "participates" in such functions.

Although neither the senior systems administrator nor a systems administrator testified as to their job duties or function, indirect testimony was provided regarding those positions. Maher testified that the senior position works very closely with the programmers/analysts, positions not sought in the petition, in the Enterprise group, writing scripts and programs.⁵

⁴ Cherwell tickets refers to the University's tracking system for IT related issues, which is explained in more detail later in this Decision.

⁵ The terms "programming" and "scripting" or the variations thereof were described as being similar by Maher. Maher explained that programming is writing "code that influences how a computer behaves or server behaves to perform duties." Emmons explained further that different positions would program in different programming languages.

The minimum educational requirement for either system administrator position is a “Bachelor’s degree in Computer Science or a related field.”

2. Network Engineer (AP Position)

The position of network engineer, as testified to by Klimmek, is responsible for maintaining the University’s data network so that users are able to connect to the network, both through physical connections as well as through wireless connections, and then access the appropriate servers, whether on campus or off campus. Klimmek testified that his duties routinely involve both software and hardware aspects, i.e., installing and maintaining hardware switches and routers and working with the software to control those switches. As noted above, much of Klimmek’s work is done in the field.

The University’s job description lists the following job summary for the network engineer:

The Network Engineer is responsible for effective provision, installation/configuration, operation, and maintenance of networking systems; hardware, software and related infrastructure. This individual participates in technical research and development to enable continuing innovation within the campus network. This individual ensures that system hardware, software and related procedures adhere to organizational values and industry best practices.

The minimum educational requirement for the network engineer position is a “Bachelor’s degree in Computer Science or a related field.”

3. Senior Technology Specialist/Technology Specialist (AP Position)

The University’s job description for the position of senior technology specialist states:

Responsible for providing second level hardware and software technical support for microcomputers and related equipment.

The University’s job description for the technology specialist lists the following as the position’s job summary:

Responsible for providing hardware and software technical support for microcomputer users and their related equipment. Provide first-line of phone and walk in support for all SVSU computer users; coordinate problem & resolution tracking system. Have access to security levels and controls in order to promptly troubleshoot and resolve end user needs.

Technology Specialist Doug Woodington generally described his job duties as follows:

If the call center does not resolve the issue there, it gets passed on to us, and we will go out in the field and repair or install new equipment, repair printers,

computers, install software, troubleshoot software, identify issues of equipment that needs to be replaced, or warranty work done on equipment.

The minimum educational requirement for the senior level specialist position is a “Bachelor’s degree in computer field, or closely related field . . . or an equivalent combination of related education, training, and experience.” The minimum educational experience for the non-senior level position is essentially identical.

B. IT Support Center

The second group under Technology and Support Services is the IT Support Center, known as the “Support Center.” As described by Maher, this group is responsible for “first level support, instructional support and training.” To that end the Support Center operates a call-in system that attempts to identify, troubleshoot, and correct information technology issues. University students, certain AP positions, and bargaining unit members all perform duties related to the Support Center call-in system.

The call-in system is divided into five separate groups with each one representing a different support area. Within each call group there is a hierarchy, or priority ranking, by which the calls are answered by different IT Support Center staff. For example, in Group 21, entitled “Login Password,” the first person designated in line to receive the call is Debra Newton, the AV west office coordinator and a unit member. If she is unable to solve the problem or is unable to take the call, the next person in line is Hank Pletscher, the lab coordinator, one of the AP positions sought by Petitioner in this matter.

Tracking of the calls that come into the Support Center is done with the Cherwell service management system, a tracking system utilized by the IT Department, which is visually represented by a report, entitled “team dashboard.” The team dashboard provides a report regarding the creation and resolution of tickets. Tickets are created upon the initiation of some service within the IT Department as a whole and could include a software issue, hardware issue, purchase request, etc. Tickets are created by the person who initiates the service and is reflected as such on the dashboard. The person who ultimately resolves the issue or satisfies the service request closes the ticket and is credited as doing so on the dashboard. If the person who initiates the service (i.e., creates the ticket) is unable to resolve it, the ticket is escalated through the IT Department until it reaches someone who is able to resolve and close it.

1. Senior Instructional Technology Specialist/Instructional Technology Specialist (AP Position)

The University’s job description for the senior instructional technology specialist lists the following as the position’s job summary:

Conducts comprehensive analysis and/or needs assessment to determine training solutions (workshops) and other performance solutions, including surveying faculty/staff as well as workshop calendar creation and that planning process.

Additionally, lead end-user training and instructional technology support; including primary technical support for campus technology, classroom/lab technology, remote device support, learning management system user support, and assisting users with other various hardware and software issues. The Senior Instructional Technology Specialist will be the lead trainer and train the other trainers on hardware/software solutions and ensure faculty/staff needs are being met.

The job summary listed on the University's job description for the position of instructional technology specialist states:

Provide end-user training and instructional technology support; including primary technical support for campus technology, classroom/lab technology, remote device support, learning management system user support, and assisting users with other various hardware and software issues.

The minimum job qualification for either specialist position is a "Bachelor degree in Educational Technology, or closely related field."

Maier explained that the technology specialists, with respect to utilizing technology, have "a wealth of knowledge and skill around curriculum delivery, course delivery, [and] the tools associated with teaching a course."

Both classifications are also responsible for certain duties with respect to the Support Center and are members of different priority groups within the various call groups.

2. Video Production Technology Specialist (AP Position)

The University's job description for the video production technology specialist lists the following as the position's job summary:

Produce videos and audio recordings including on location shoots and studio productions, duties include but are not limited to; audio recording and processing, video editing, composition of special effects, media conversion, and graphic design on an assortment of media platforms. Additionally provide technical support for campus technology; emphasis on classroom/lab technology, remote device support, learning management system user support, end-user training and instructional technology support, and assisting users with other various hardware and software issues.

This position provides video services and video production for the University's marketing department as well as the various academic departments. It is also responsible for certain duties with respect to the Support Center and is part of different priority groups within the various call groups.

The minimum job qualification for this position is a “Bachelor degree in Electronics, Media Production, or closely related field . . . or an equivalent combination of related education, training, and experience (3-5 years applied experience in Video Production).”

3. Lab Coordinator (AP Position)

The University’s job description for the lab coordinator lists the following as the position’s job summary:

The Lab Coordinator will provide oversight for lab operations, primary technical support for campus technology; emphasis on classroom/lab technology, remote device support, learning management system, user support, end-user training and instructional technology, and assisting users with other various hardware and software issues.

The minimum educational qualification for this position is a bachelor’s degree with a preference for a master’s degree or equivalent combination of education and experience in data processing, computer science, or information management. This position is also responsible for certain duties with respect to the Support Center and is part of different priority groups within the various call groups.

4. Technology Specialist (AP Position)

The University’s job description for the technology specialist within the Support Center, lists the following as the position’s job summary:

Technology Support Specialist will provide primary technical support for campus technology; emphasis on classroom/lab technology, remote device support, learning management system user support, end-user training and instructional technology support, and assisting users with other various hardware and software issues.

The position’s minimum educational qualification is listed as “Bachelor degree in computer field, or closely related field . . . or an equivalent combination of related education, training, and experience (3-5 years applied PC technical and/or help desk experience)”, with a preference for “A+ Certification and/or MCDST Certifications.” In the same fashion as all other positions in this sub-department’s group, this position is also responsible for certain duties with respect to the Support Center and is part of different priority groups within the various call groups.

5. AV West Office Coordinator (Bargaining Unit Position)

The University’s job description for the AV west office coordinator, a bargaining unit position, lists the following as its job summary:

Provide a wide range of classroom technology user-support services as well as automated media distribution functions [. . .]. Coordinate office activities and provide administrative/clerical support to the Instructional Technology Center.

The University requires, as the position's minimum educational requirement, "[t]wo years of college education and/or equivalent office experience." In the same fashion as the administrative secretary and other positions in the Support Center group, this position is also responsible for certain duties with respect to the Support Center and is part of different priority groups within the various call groups.

Debra Newton, the current unit member holding the coordinator position, testified that she works closely with Technology Specialist Andrew Meddaugh, describing herself and Meddaugh as the "the first line of defense" when telephone calls are made to the Support Center seeking assistance.

A large focus of the testimony provided at the hearing involved the Cherwell tickets opened and closed by Newton. The team dashboard introduced by the Union at hearing covered the period of January 5, 2014 through May 10, 2014, and indicated that during that time, Newton opened 811 tickets, the most of any Support Center employee, and closed 705 tickets, second only to Meddaugh. By contrast, Meddaugh opened 707 tickets and closed 913 tickets.⁶ A detailed report showing the type of ticket closed by each individual was introduced by the University. Of the 705 tickets closed by Newton, 471 involved password requests; 73 dealt with equipment checkouts; 55 were purchasing requests; 34 were labeled "Question;" 26 involved email; and 6 dealt with printers. Testimony provided by Emmons established that password request tickets were a standard routine task which could be done by any Support Center employee, including student workers. As explained by Emmons, when processing a password reset, the Support Center employee would verify the identity of the person making the request then use a "one step" single button to reset their password; such a call would take less than two minutes to resolve. The tickets involving purchase requests and equipment requests, as testified to by Emmons, were part of Newton's normal duties in her position. With respect to the remaining types of calls, "Question," email and printer tickets, the record is clear that when Newton was able to resolve those issues, she did so; and when they involved matters outside of her limited expertise, the tickets were escalated to other members of the Support Center.

C. Enterprise Applications

Enterprise Applications is one of the workgroups comprising the IT sub-department Enterprise Applications and Development. This group is supervised by Mary Aumann and includes four separate AP position classifications: senior enterprise application specialist, enterprise application specialist, senior programmer/analyst, and programmer/analyst. The programmer/analyst classifications are not sought in the petition.

⁶ Although not included in the team dashboard produced by Petitioner, the University produced a report showing that Yaros opened 289 Purchasing Request Cherwill tickets.

1. Enterprise Specialist (AP Position)

The University's job description for the senior enterprise application specialist lists the following as the position's job summary:

Provide support for enterprise applications, including end user support, setup/installation, administration, access, functionality and hardware related services as appropriate.

The job description for the enterprise application specialists provides the following as the position's job summary:

Provide services and support for software solutions as part of the Enterprise Applications team.

The minimum educational requirement for either position is a bachelor's degree.

2. Senior Programmer/Analyst (AP Position)

The University's job description for the senior programmer/analyst lists the following as the position's job summary:

Provide programming and analysis support for software solutions as part of the Enterprise Applications team. Demonstrate leadership skills and show initiative in project development.

The job description for the programmer/analyst provides the following as the position's job summary:

Provide programming and analysis support for software solutions as part of the Enterprise Application Team.

The minimum educational requirement for either position is a bachelor's degree in a computer related field.

3. Enterprise Applications Clerk⁷ (Bargaining Unit Position)

The University's job description for the enterprise applications clerk, the only unit position within the Enterprise Applications and Development sub-department, lists the following as the position's job summary:

⁷ The University at the hearings indicated that the enterprise applications clerk was a proposed new job title at the time of the Petition's filing. The title at the time of the hearing was "operations clerk." For purposes herein, the difference in title is irrelevant, as it is the nature of the work performed by that position that is relevant.

Perform scanning functions for the operations area and assist with operating the main administrative computer and other operational equipment as necessary.

The University requires as the position's minimum educational requirement, "[o]ne year of server-based administrative and student systems or the equivalent in education experience."

Mary Aumann provided testimony regarding the duties performed by the clerk, stating that the position "processes all the faculty evaluations, the bubble sheets that get filled." This position also performs document scanning/linking, which according to Aumann is similar to filing. Aumann testified that the type of scanning done by the AP members of the Enterprise group involved the creation of new document types and the creation of e-forms, both of which are large projects.

D. Web Technologies – Developer (AP Position)

Web Technologies, the other workgroup within Enterprise Applications and Development is headed by Manager Jacob Reinelt and consists of four positions all classified as developer.

The University's job description for the developer, lists the following as the position's job summary:

Support and develop Saginaw Valley State University's web site, web & database applications, and learning management system as part of the Web Technologies team of developers.

The University requires a computer related bachelor's degree "in a computer field, graphics design, or related field [or] an equivalent combination of related education, training, and professional web site or web programming experience" as the position's minimum educational requirement.

E. Database Administrator/Security Officer (AP Position)

The database administrator/security officer classification is a stand-alone position within Enterprise Applications and Development and reports directly to the sub-department's director, Pat Samolewski.

The University's job description for the database administrator/security officer, lists the following as the position's job summary:

To manage the administrative programming team and provide database administration & programming/analysis support for the administrative information system software package, and as necessary, for microcomputer/network based database applications and programs.

The University requires a computer related bachelor's degree as the position's minimum educational requirement.

Maier testified that the position was responsible for "maintaining, putting patches on, software updates, new releases, . . . security validations, and checking to make sure employees throughout the organization have appropriate rights . . . to do their job."

IV. Media Services/Library Department

The Melvin J. Zahnnow Library Department is comprised of three sub-departments; Access Services, Collection Development and Acquisitions, and Reference and Research Services. The only positions sought in the Petition are part of Access Services and include: library technology specialist⁸, archives specialist and the media services/ill assistant. Thomas Zantow occupies the position of head of Access Services and oversees and manages the sub-department and its employees. Also present within Access Services are two full-time circulation & media services assistant positions and one part-time circulation assistant, all of which are unit positions. The University, at the time of the July hearing, was considering combining the circulation & media services assistant positions with the circulation assistant. Typically, the unit members in Access Services operate the circulation desk in the library and also oversee the management and training of University student workers assigned to that area. Because of understaffing, Zantow and the other AP positions routinely work at the circulation desk on the weekend and evening shifts.

1. Library Computer Tech

The library computer tech job description provided by the University lists as its job summary, "[p]rovides hardware and software support to library for public workstations (OPAC's), library instruction lab and library staff offices." Testimony provided by Zantow, as well as Jim Maier, the IT services executive director, establishes that the position functions very similarly to the technology specialists in IT Services and in the past has worked closely with them.

The position's job description lists as its minimum educational requirement a "Bachelor's degree in computer science or equivalent education and experience."

2. Archives Specialist

The University's job description for the archives specialist lists the following as the position's job summary:

⁸ The position is listed as library computer tech on the "2014 Organizational Chart-Melvin J. Zahnnow Library" but is titled library technology specialist on the job description, last updated on August 24, 2005, provided by the University at hearing. For purposes herein, the position will be referred to as library technology specialist.

Responsible for managing the Zahnow Library Archives operations, including the organization, description, and digitization of the collections. Shares responsibility for providing Circulation support for the library public collections.

A minimum of a bachelor's degree is required for this position.

Testimony provided at hearing established that this position oversees the physical management of the Library's archives and works to provide archive access to the students and outside institutions. Zantow testified that the archives specialist has "total responsibility for a collection, both in terms of content and management" and is the "ultimate authority within the library in issues relating to the archives."

3. Media Services & Interlibrary Loan Assistant

The University's job description for the media services & inter-library loan assistant lists the following as the position's job summary:

Responsible for providing general reference support for Media Services by assisting faculty, staff, students and other library users in the use of Media Services holdings. Also responsible for providing Circulation support for the use of Media Services and General Collection items. Responsible for providing informational help for the Special Collections/Archives. Assists in maintaining and supporting the library facility and general equipment. Assists in the library Interlibrary Loan Services.

The University requires, as the position's minimum educational requirement, a Bachelor's degree in "Library Science, education or related media services field."

The individual currently in this position, Kirker Kranz, had previously done certain audiovisual work that has since been taken on by the AV west office coordinator, a position in the bargaining unit represented by the Association.

Discussion and Conclusions of Law:

In determining whether to direct an election in this matter, we find it necessary to address two separate issues. The first is whether a community of interest exists between bargaining unit members and the AP positions sought. We conclude that it does. The second is whether allowing the election as sought would create a fractionalization or fragmentation of the AP group, either in the specific departments targeted herein or University-wide. We conclude it would not, so long as the positions sought include all AP positions in the IT Department.

Interestingly enough, we were confronted with a similar issue between these same two parties previously in *Saginaw Valley State University*, 19 MPER 53 (2006), in which we had to consider both community of interest and fractionalization with respect to a CAD position, originally designated as an AP position. In that case, we concluded as we do here that a sufficient

community of interest existed between that position and the positions in the bargaining unit represented by the Association; we found further “nothing in the record that would suggest that accreting the positions to Petitioner’s bargaining unit would be inconsistent with our objective to avoid fractionalization or multiplicity of bargaining units.” *Id.*

Community of Interest

As we have consistently held, the primary objective of this Commission is to constitute the largest unit which, in the circumstances of the particular case, is most compatible with the effectuation of the purposes of the law and which includes within a single unit all employees sharing a community of interest. *Hotel Olds v State Labor Mediation Bd*, 333 Mich 382 (1952). We determine whether a community of interest exists by examining a number of factors, including: similarities in duties, skills, and working conditions; similarities in wages and employee benefits; amount of interchange or transfer between groups of employees; centralization of the employer's administrative and managerial functions; degree of central control of labor relations; common promotion ladders; and common supervision. See e.g. *Covert Pub Schs*, 1997 MERC Lab Op 594, 601; *Grand Rapids Pub Schs*, 1997 MERC Lab Op 98, 106.

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. Absent a showing of extreme divergence of community of interest between an existing unit and a residuum of unrepresented employees, our policy has been to allow accretion, rather than leave the unrepresented employees without collective bargaining representation. *Charter Township of Lansing*, 18 MPER 12 (2005); *Chelsea Sch Dist*, 1994 MERC Lab Op 268, 276.

The University’s initial argument in opposition to the petition is that the positions sought do not share a community of interest with the employees in the support unit. We do not recognize a distinct and separate category for “administrative” employees. *Washtenaw Cmty College*, 17 MPER 29 (2004); *Lake Superior State Univ*, 17 MPER 9 (2004). Although we have, in some cases, permitted the exclusion of “administrative” positions in cases in which there was a prior agreement between the parties to keep such employees out of the unit, see e.g. *Ferris State Univ*, 1996 MERC Lab Op 16, the standards pursuant to which such positions are deemed “administrative” must be clear from the record. *Lake Superior State Univ; Saginaw Valley State College*, 1988 MERC Lab Op 533. In the instant case, there is no agreed upon definition or standard by which positions are deemed “administrative professional.” While the University appeared to imply that whether a position was covered by the FLSA was a factor in making its determination, the record establishes that not all AP positions are exempt from the FLSA. Further, we do not recognize the FLSA statute as a determining factor when considering community of interest. *Port Huron Area Sch Dist*, 27 MPER 33 (2013).

It is undeniable that there are differences in terms of pay, benefits, and working conditions, between the members of the bargaining unit and the AP positions sought from both the IT Department and Media Services; however, none rise to the level of creating a significant

divergence of interest. It is not enough that one group is salaried and one is hourly or that one accrues vacation time differently; nor are any of the other differences between the two groups, proffered by the University, sufficient to justify dismissal of the petition. Instead, each of the cited differences is subject to bargaining and present in countless other bargaining units throughout the public sector. Additionally, as we have stated in the past “the existence of a dispute concerning the employer’s contractual obligations to such a position is of no relevance to the underlying issue of community of interest.” See *Dearborn Public Schools*, 2002 MERC Lab Op 287; 15 MPER 33065 (2002); See also e.g., *Port Huron Area School District*, 1996 MERC Lab Op 396.

Turning to the issue of education and experience, while it is true that no current position within the bargaining unit requires a four-year college degree, we have held that differences in educational requirements and qualifications alone are not determinative of whether to include a position in a particular bargaining unit. See e.g. *Muskegon Pub Schs*, 1979 MERC Lab Op 1202, 1204-1205. Additionally we note that several of the positions being sought allow for an equivalent combination of related education, training, or experience in lieu of a four-year degree.

The University also argues that there is no common advancement avenue between the positions sought and current bargaining unit positions; i.e., a secretary could not advance to a technology specialist in the same fashion that a secretary in one classification could advance to another secretary classification. While to a certain extent such an argument is true, it ignores the fact that the same is true within the IT Department; i.e., a technology specialist cannot normally advance to a programmer position as the skills needed in each classification are distinct. Moreover, the same situation also is present in the bargaining unit as it is currently constituted; i.e., an electrical skilled trade position does not have a normal advancement path to a plumbing skilled trade position.

With respect to the IT Department, the record clearly establishes that there is some overlap and similarity between the bargaining unit positions in that department and the AP positions sought. In the Support Center both groups work together in resolving technical issues experienced by the members of the University’s community. Additionally, the record clearly establishes that the two groups work together on various projects. As an example, while the enterprise application clerk may not create or develop the documents she is scanning or cataloging, she works on items created by certain AP employees in that group. As another example, in Media Services, the record establishes that both bargaining unit members and AP positions work with the circulation desk and to some extent with the Library’s archives and share the same supervision and management. For these reasons, we conclude that there is a community of interest between the AP positions sought herein and Petitioner’s bargaining unit.

Fragmentation or Proliferation

We note that the fragmentation issue raised by the University involves a fragmentation of the IT Department by nature of the Association’s exclusion of programmer/analyst positions from its Petition. The issue is not that the Petition would create a fragmentation between the positions sought and the remainder the University’s non-represented AP positions.

Part of our rationale in applying the long-standing principle of *Hotel Olds*, 333 Mich 382 to constitute the largest unit of employees sharing a community of interest, is to minimize the fragmentation of units and prevents units based on the extent of organization. *Bay Area Transportation Auth*, 1995 MERC Lab Op 154, 158. Additionally, the *Hotel Olds* policy also serves to maximize the size of the unit and avoid multiplicity of bargaining units. *Port Huron School District*, 1995 MERC Lab Op 314.

As we restated in *Wayne Co Cmty Coll Dist*, 19 MPER 72 (2006), it is our policy, whenever possible, to avoid leaving positions unrepresented, especially isolated ones. *Charlotte Pub Sch*, 1999 MERC Lab Op 68; *City of Muskegon*, 1996 MERC Lab Op 64, 70. Accordingly, when a position shares a community of interest with a unit that seeks to include it, we will 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.

The University claims that because this is the first group of AP employees seeking representation, it is important that they be placed in a bargaining unit that is in both the employees' and the University's best interests. While the University's position in this regard is reasonable, we have found it appropriate to have employees who share a community of interest placed in the same unit, even if another hypothetical unit formulation would also have been reasonable. See *Univ of Michigan*, 18 MPER 82 (2005).

With respect to the IT Department, the University asserted at hearing and throughout its filings that a proper bargaining unit would consist of all the AP positions within the IT Department, as opposed to one that excludes certain positions. The University urges us, in the absence of our dismissal of the petition, to instead direct an election for a stand-alone unit of IT Department employees which would also include the programmers/analysts. The University claims there is "no rational basis for the exclusion of the aforementioned classifications from a unit containing the rest of the IT Department AP classifications." We agree and, therefore, will direct an election that includes those positions. However, we do not agree that a stand-alone unit is appropriate given the expressed desire of at least some of the members of those departments by way of the showing of interest along with the community of interest between the bargaining unit positions and the positions the Association seeks to add to the unit. The University claims that allowing such a unit would not lead to a proliferation of bargaining units since there presently are only two other bargaining units. We agree, as adding one more bargaining unit to a public body as large as the University would not amount to proliferation. However, the fact that an action does not create a situation that we seek to avoid is not reason enough to undertake the action.

Additionally, the University's witnesses testified at length regarding various problems and obstacles they believed would occur if the positions sought were indeed accreted into the bargaining unit represented by the Association. These "problems" include a potential for conflicts of interest between the IT positions sought and the bargaining unit members by nature of the IT Department's role in policing and securing the University's technology network. While we have given deference to the administrative structure of the employer when circumstances warrant, *City*

of Saginaw, 1984 MERC Lab Op 915; *City of Ann Arbor*, 1977 MERC Lab Op 1026, we remain cognizant that in doing so “we must tread with extraordinary care when making any policy choice which tilts the balance in favor of administrative convenience to the detriment of employee free choice.” *Lenawee ISD*, 24 MPER 28 (2011); *City of Detroit*, 23 MPER 94 (2010); *Wayne County*, 22 MPER 36 (2009). With respect to the conflict of interest mentioned above, we will not exclude from bargaining units employees who investigate activities of their coworkers. *Bd of Ed of the Sch Dist of the City of Detroit*, 1980 MERC Lab Op 182, 188. Similarly, the fact that employees may be entrusted with confidential information not available to other employees does not automatically exclude them from representation by a union. *City of Muskegon*, 1996 MERC Lab Op 64.

The paramount function of a representation election is to provide an opportunity for employees to freely select, or reject, a union to serve as their exclusive representative. Here, we have a group of unrepresented employees who constitute an appropriate bargaining unit that has indicated that they may wish to be represented by the Association. Depriving these employees of the right to pursue such an election, absent some extraordinary reason, is contrary to the purpose of PERA. For these reasons, an election must be ordered, as the petition raises a question concerning representation. We have considered all other arguments made by the parties and conclude they do not warrant a change in our decision.

Finally, the unit in which we direct this election is expanded from the petitioned for unit to now include programmer/analyst positions, such that the election will now seek to accrete all AP positions within the IT Department and all AP positions within Media Services that do not require a MLS degree. We, therefore, shall give Petitioner a reasonable time, in this case 10 working days from the date of this decision, to supply additional showing of interest to support participation in an election. If Petitioner fails to establish an adequate showing of interest in the expanded unit within this 10-day period, its petition shall be dismissed. See *Livonia Public Schools*, 1988 MERC Lab Op 1068.

Accordingly, upon the proper showing of interest as indicated above, and pursuant to the attached direction of election, the following unit of employees shall vote whether or not they wish to be represented by the Saginaw University Support Staff Association, MEA/NEA. If the employees vote to be represented by this labor organization, they shall be added to the existing unit of support and custodial employees now represented by Petitioner, and the notice of election shall so indicate.

DIRECTION OF ELECTION

We find that a question of representation exists within the meaning of Section 12 of PERA. Accordingly, we hereby direct an election in the following unit, which we find appropriate for collective bargaining purposes within the meaning of Section 13 of PERA:

All non-supervisory employees in the Technology Services Department not already represented by the Saginaw University Support Staff Association, MEA/NEA, and all non-supervisory employees of the Media Services/Library Department not already represented by the Saginaw University Support Staff Association, MEA/NEA, that do not require a Masters in Library Science employed by Saginaw Valley State University.

The above employees may vote pursuant to this Direction of Election whether they wish to be represented for purposes of collective bargaining by the Saginaw University Support Staff Association, MEA/NEA. If a majority of the above employees vote to be represented by the Saginaw University Support Staff Association, MEA/NEA, they shall be accreted to the existing unit of support and custodial employees already represented by this labor organization.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____/s/
Edward D. Callaghan, Commission Chair

_____/s/
Robert S. LaBrant, Commission Member

_____/s/
Natalie P. Yaw, Commission Member

Dated: October 21, 2015

DIRECTION OF ELECTION

ON THE CONDITION THAT PETITIONER TIMELY PROVIDES THE REQUIRED SHOWING OF INTEREST, IT IS HEREBY ORDERED THAT AN ELECTION BY SECRET BALLOT SHALL BE CONDUCTED AMONG THE EMPLOYEES WITHIN THE EXPANDED UNIT FOUND TO BE APPROPRIATE IN THE COMMISSION'S DECISION ON THIS MATTER. THE CHOICES ON THE BALLOTS SHALL BE AS SET FORTH IN THE COMMISSION'S DECISION.

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

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

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

IT IS FURTHER ORDERED THAT THE ELECTION SHALL BE CONDUCTED ON THE PREMISES OF THE EMPLOYER AT SUCH TIME AND DATE AS A COMMISSION AGENT SHALL DETERMINE AFTER CONSULTATION WITH THE PARTIES.

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

MICHIGAN EMPLOYMENT RELATIONS COMMISSION