

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

In the Matter of:

ST. CLAIR COMMUNITY COLLEGE,
Public Employer,

Case No. 19-J-1987-UC

-and-

ST. CLAIR COMMUNITY COLLEGE CAREER PLAN ASSOCIATION,
Incumbent,

-and-

ST. CLAIR COMMUNITY COLLEGE EDUCATION SUPPORT SPA MEA/NEA,
Petitioner.

APPEARANCES:

Fletcher Fealko Shoudy & Francis, P.C., by Todd J. Shoudy, for the Public Employer

Rob McGregor for the Incumbent

White Schneider, P.C., by Andrew J. Gordon, for the Petitioner

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

This is a unit clarification petition. In resolving such a petition, the Legislature has instructed that we must “decide in each case, to insure public employees the full benefit of their right to self-organization, to collective bargaining and otherwise to effectuate the policies of this act, the unit appropriate for the purposes of collective bargaining.” MCL 423.213 (codifying Section 13 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended).

On October 8, 2019, the St. Clair Community College Education Support SPA, MEA/NEA (ESPA), filed this petition. Pursuant to a collective bargaining agreement, ESPA currently represents “all full-time and regular part-time personnel” in various support-staff jobs at the St. Clair Community College (College); the jobs include those of “Campus Patrol Officer” and “Senior Campus Patrol Officer.” Exh. 2 at 3, 28. This proceeding involves the College’s creation of two new public safety positions: the “Public Safety Officer” and the “Campus Patrol Cadet.” The College placed the Public Safety Officer position in a bargaining unit represented by the St.

Clair College Career Plan Association (Career Plan). It placed the Campus Patrol Cadet position in no bargaining unit asserting that the position was temporary in nature and, therefore, not appropriate for inclusion in either unit.

ESPA asks us to grant its unit clarification petition and determine that both new positions should be placed in the unit it represents.¹ We agree with that request.²

Findings of Fact:

1. The ESPA Contract and the Two Campus Patrol Officer Positions

The current contract between ESPA and the College runs from July 1, 2019, through June 30, 2021. The contract lists the classifications included within the bargaining unit. Those classifications encompass secretarial or support positions, lower-level library employees, clerks, technicians, Campus Patrol Officers, and Senior Campus Patrol Officers. Several classifications identified in the contract as part of the bargaining unit are listed multiple times. Notably, the Campus Patrol Officer classification is listed four separate times, and the Senior Campus Patrol Officer position is listed twice. According to Chrystal Lilly, who has served as ESPA president since January of 2018, multiple listings for a particular classification “indicate the number of positions that are supposed to be for that job.” Tr. 28. All members of the ESPA are paid on an hourly basis.

Section 4.6 of the contract is entitled “Bargaining Unit Work.” There, the College “agrees that supervisors or non-unit personnel shall not be used to displace employees regularly employed in the bargaining unit, except in temporary situations to maintain effective operations of the College.” Exh. 2 at 4.

In addition to the ESPA unit, the College has four other bargaining units. These include a faculty unit, a custodial and maintenance unit, a supervisory unit, and the Career Plan Association unit. The Career Plan unit encompasses higher-level non-supervisory employees. While full-time Career Plan employees are paid a salary, part-time Career Plan employees are paid on an hourly basis. (T-81) Testimony provided by both Lilly and Bethany Mayea, the College’s Vice President of Human Resources, indicates that many classifications in the ESPA unit have a corresponding higher level classification within the Career Plan unit and that over the last several years, several ESPA members have applied, and been selected, for these higher level positions within the Career Plan unit. Examples provided during the hearing included a payroll clerk moving to a payroll manager position and a secretary to a coordinator position.

Although the ESPA contract provides for four Campus Patrol Officer and two Senior Campus Patrol Officer positions, records indicate that at the time of the hearing the College

¹ ESPA’s petition originally sought to include a third new position, “College Resource Officer,” in its bargaining unit. But the union abandoned that request after learning that the position was a City of Port Huron Police Department employee assigned by contract to the College rather than an individual employed by the College directly.

² Administrative Law Judge Travis Calderwood of the Michigan Office of Administrative Hearings and Rules conducted an evidentiary hearing for the Commission in Detroit on March 6, 2020. MOAHR Docket No. 20-000154-MERC.

employed only one person in the former position—and none in the latter position. Those same records indicate one vacancy for each position. Those were not the only positions in the ESPA bargaining unit that the College left unfilled once they became vacant. Indeed, the number of filled positions in that bargaining unit has fallen significantly over the past ten or so years. As of June 30, 2010, there were 60 individuals identified as ESPA members; by June 30, 2019, that number fell to 40. And that number had fallen further to 34 by the time of the hearing.

Lilly testified that she believed the College was not making a good faith effort to fill the vacant positions in the ESPA unit. In an October 25, 2019, email sent to the College’s Vice President of Human Resources, Bethany Mayea, Lilly identified several vacant ESPA positions and asked whether the College intended to fill them. Mayea responded that “the College is always considering staffing needs and staffing continually remains a moving target”; that “there has been no decision at this time to post the positions you note”; but that “there has also not been any direct decision that we will not consider these positions further in the future.” At the hearing, Mayea explained the ESPA vacancies as resulting from a decline in the college’s enrollment by roughly a third since 2010.

The Campus Patrol Officer pays an hourly wage. The job description for the position provides:

Campus security officers promote lawful behavior and protect the welfare of students, faculty and staff as a uniformed presence on campus. They perform foot, bicycle and vehicle patrols of the campus to monitor behavior, secure buildings and property, monitor alarm systems, investigate disturbances, maintain order during events and enforce regulations. They monitor the physical safety of campus buildings by locking and unlocking doors, patrolling and monitoring, and addressing suspicious behavior. They enforce traffic and parking regulations. In emergency situations, campus security officers respond to the scene, provide first aid, and alert police or emergency personnel as appropriate.

Exh. 3.³ The job description characterizes the position as a “full-time” “40 hour per week” job, and further indicates that the Officer works “variable shifts and hours including nights and weekends required.” *Id.* Although the description states that the “position will work mainly the afternoon shift,” it also says that the Officer must “[r]espond[] after hours when called to secure buildings due to alarm breaches.” *Id.*

In addition to the normal duties one would associate with a security position, the description also lists the following specific duties:

Prepares routine, standardized reports to include collection and reporting of Clery data and vehicle accident reports that occur on campus.⁴

³ Although the body of the position description refers to “campus security officers,” the heading of the document lists the position as “Campus Patrol Officer.” *Id.*

⁴ The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), 20 U.S.C. §1092(f), requires colleges that receive federal aid to report campus crime information to all students and employees and to submit that information to the U.S. Department of Education annually.

Serves as Campus Security Authority as outlined by the Clery Act.

Although the parties did not enter any job description for the Senior Campus Patrol Officer into the record, Mayea testified that the duties of that position were similar to those of the Campus Patrol Officer, albeit with a higher skill set and level of responsibility. Tr. 104-05. The Campus Patrol Officer classification requires an associate's degree and/or prior "successful security experience."

Before January 2018, the College employed ESPA members in both the Campus Patrol Officer and Senior Campus Patrol Officer classifications. Employees in both classifications reported to Cori Krohn, the College's Campus Patrol and Training Manager.

2. The New Public Safety Officer Position

The College opened its first-ever on-campus student housing unit in the Fall Semester 2018. According to Mayea, the College believed the addition of student housing made it necessary to create a higher-level position with increased independent discretion, authority, and decision-making capabilities. In particular, she testified that the College needed a position that could make decisions regarding housing issues that could arise during evenings and weekends. In January of 2018, the College created the Public Safety Officer classification to address that need. Mayea testified that she, along with Krohn, created the position.

The position description for the Public Safety Officer indicates that it is a full-time salaried position with "variable shifts and hours including nights, weekends, and on-call hours required." The job summary provides the following general description:

Provides leadership and discretion to maintain the effective and efficient day to day operation of the Campus Patrol department. Promote lawful behavior to protect the welfare of students, faculty and staff as a uniformed presence on campus. Responsible for the service, safety and security of all College properties.

The position goes on to list several specific responsibilities, including the following:

Manage the prevention and suppression of crime; monitor and provide training to Campus Patrol Officers to continually advance knowledge within campus patrol team.

Lead point of contact for all security services and responses relating to student housing, including hours when Campus Patrol Officers are not scheduled.

Handle all sensitive reports relating to Clery Act and Title IX for initial reporting purposes. Assist with investigations and interviews as directed.⁵

Maintain Clery Act statistics and review all reports for determination of Clery Act reportable crimes, serve as Campus Security Authority as outlined in the Clery Act.

As with the Campus Patrol Officer positions, employees in this classification report to Krohn. And a Public Safety Officer, like a Campus Patrol Officer, must have an associate's degree in a related field. Prior to the creation of the new position, there were no classifications within the Career Plan bargaining unit performing campus security work.

Mayea testified that the College decided to place the Public Safety Officer position in the Career Plan unit rather than the ESPA because "the level of responsibilities were aligned with the Career Plan." She noted, in particular, the "independent decision making" responsibility Public Safety Officers would have in choosing whether or not to give tickets to parking violators, resolving disputes in campus housing, and deciding whether to call police or emergency medical personnel to the school. Tr. 81-82. The officers who occupied the new position, she said, had "on-call responsibilities where they could be called at any point during the evening or weekends." Tr. 83. And they had certain supervisory and training responsibilities over Campus Patrol Officers. Tr. 85-86. In addition, she noted, the new position was paid on a salary basis, like the employees in the Career Plan. Tr. 81.

The College posted an internal on-line hiring announcement for the Public Safety Officer position on January 18, 2018. That announcement identified the position as a job classification in the Career Plan Unit. ESPA did not raise any objection to the position's placement in the Career Plan unit at that time. Nor did ESPA object when the College hired two people into the position that March. In September 2019, Lilly met with Mayea and questioned whether the College intended on filling the existing vacancies in the Campus Patrol and Senior Campus Patrol positions. (Tr. 39). After receiving no commitment from Mayea during the meeting to fill any of the open Campus Patrol positions, ESPA objected to the College's placement decision by filing the instant petition shortly thereafter when one of the two Public Safety Officers resigned, the College posted an announcement to fill the vacancy, and then ultimately hired two additional individuals to the Public Safety Officer position, while leaving the vacant Campus Patrol positions unfilled (Tr. 68). Lilly echoed the concerns about unfilled positions raised in her September meeting with Mayea in an October 25, 2019 email. Mayea's response again indicated a lack of intention to post any of the ESPA position vacancies including those of Campus Patrol Officer and Senior Campus Patrol Officer.

3. The New Campus Patrol Cadet Position

In the Fall of 2019, the College created the position of Campus Patrol Cadet, for which only its students would be eligible. Mayea testified that the College saw the new position as an opportunity for students to receive "hands-on" experience in the public safety field. The job

⁵ Title IX of the Education Amendments of 1972, 20 USC §1680 et seq., generally provides that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any education program or activity receiving Federal financial assistance." 20 USC §1681(a).

description for the Cadet position identifies it as a “part-time” , hourly position, with preference given to students enrolled in the College’s Criminal Justice program. Ex. 4.

That semester, the College hired two students as Campus Patrol Cadets. The offer letters listed a start date of September 1, 2019. They did not specify any end date. One of the new hires resigned fairly quickly; the other worked in the position from September 2019 until December 20, 2019, the end of the College’s Fall semester. Following the Fall Semester, the College terminated the one remaining Cadet. After reposting the position, the College hired a new Cadet for the Winter Semester. According to the offer letter provided to that student, the position would run from January 2, 2020, through May 15, 2020 (the end of the semester). The College made no change to the job description for the Cadet position. In explaining why the College included an end date in its Winter 2020 offer letter, when it had not included such a date in the offers to the students hired in the previous semester, Mayea testified that the College had not previously realized the degree of interest in the Cadet position and “wanted to provide that opportunity to other students.” Tr. 96. Mayea further testified that the College had not yet made a decision whether to continue the position to the 2020-2021 academic year, though she “would hope that it will.” Tr. 93.

The College did not place the Campus Patrol Cadet position in any of its existing bargaining units. Mayea testified that the College generally did not place semester-by-semester student positions in any bargaining unit. Tr. 93. She testified that it was “possible” that the school would allow Cadets to continue from one semester to the next, but that “assuming we had other candidates we would likely go with a different candidate.” Tr. 99.

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.” *Michigan State University*, 32 MPER ¶ 22 (2018). There is no question that both the Public Safety Officer and the Campus Patrol Cadet are “new” positions at the College. This is therefore an appropriate proceeding for determining the bargaining-unit status of those positions.

To determine whether a bargaining unit is appropriate, we generally ask whether the positions assigned to that unit share a “community of interest.” *E.g., id.* “Community of interest is determined 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.” *City of Detroit and Detroit Water and Sewerage Dept*, 29 MPER ¶ 62 (2018). A position might, however, share a community of interest with multiple bargaining units. When the employer places the position in one of those units, we do not ask which of the units is the *most* appropriate. In that regard, we do not determine relative degrees of community of interest. *City of Novi*, 30 MPER 41 (2016). Instead, we “will defer to the employer's decision to place the new position in one of several existing units as long as a community of interest exists between the new position and employees in the unit in which the position is placed and the employer's decision was made in good faith.” *City of Detroit, supra.*

Where, by contrast, there is only one union seeking to represent a particular position, and the employer seeks to place that position outside of *any* existing bargaining unit, the question is generally whether the position shares a community of interest with the petitioning union's bargaining unit. *City of Bay City*, 16 MPER ¶ 31 (2003) (“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.”). In such a case, we have recognized that any “burden of proof” falls “on the party seeking to deny the right of employees to be represented for purposes of collective bargaining.” *Ferris State Univ.*, 30 MPER ¶ 63 (2017). See also *Faust Public Library*, 30 MPER ¶ 23 (2016) (noting that “it is our policy, whenever possible, to avoid leaving positions unrepresented, especially isolated ones”).

1. *The Public Safety Officer Position*

The College stipulated that the Public Safety Officer shares a community of interest with the existing ESPA unit. Tr. 6-7. The issue is whether the Public Safety Officer also shares a community of interest with the Career Plan unit. If so, we must then determine whether the College made a good faith and reasonable decision to place the new position in the Career Plan unit instead of the ESPA unit. If we determine there to be a lack of community of interest with the Career Plan unit, the relative degree of good or bad faith surrounding the Employer's placement decision becomes irrelevant. Here, we believe that the Public Safety Officer position shares an insufficient degree of community of interest with the Career Plan unit to justify the College's placement decision. Conversely, the degree of community of interest with the ESPA unit is compelling. Moreover, the circumstances surrounding the College's decision to place the position in the Career Plan unit suggest a motive other than one of a good faith evaluation of relative degrees of community of interest and a genuine desire to effectuate a reasonable placement decision. We therefore conclude that the Public Safety Officer should have properly been placed in the ESPA unit.

The College argues that the Public Safety Officer is similar in “the level of position, authority, decision making responsibility, and pay structure” to the jobs that are included in the Career Plan unit. College Post-Hearing Br. 8. With regard to pay structure, that is certainly partially correct—the Public Safety Officer, like other full-time positions in the Career Plan unit, is paid on a salary basis. However, part-time positions in the Career Plan unit, like the positions in the ESPA unit, are paid on an hourly basis. Furthermore, we have previously noted that the inclusion of salaried and hourly employees in the same unit is “not unusual.” *City of Novi*, 30 MPER ¶ 41 (2016). Beyond the partial similarity in pay structure, there is little basis for finding the necessary community of interest with the Career Plan unit.

The College relies heavily on the supposed independent decision-making authority of the Public Safety Officer, but the nature of that authority is not especially impressive or persuasive: The Public Safety Officer can exercise discretion not to ticket parking violators and can decide whether to call police or emergency medical services in response to events occurring on campus. But many employees (and nonemployees, for that matter) may be put in the position of deciding whether to call such emergency responders—notably including the Campus Patrol Officers. See

Tr. 103-04. That is hardly a factor that could define a relevant community of interest. The other examples of independent authority cited to by the College appear, at best, to require a mere incremental degree of higher discretion, authority, or knowledge from that exercised or required of the Campus Patrol or Senior Campus Patrol positions. Beyond the assertion concerning “independent authority”, the College offers no other evidence of similarity in skills, job duties, or working conditions between the Public Safety Officer position and the remaining positions in the Career Plan unit to support its placement decision.

And there are other equally significant factors that weigh heavily against finding a community of interest between the Public Safety Officer position and the Career Plan unit. Most notably, the Public Safety Officer is the *only* campus safety position that has ever existed in that unit Tr. 35, 101. The other job classifications in the Career Plan unit are not akin in any way to that of a safety or security type position. The Public Safety Officer thus lacks a key “similarity of duties” with the rest of the unit. Cf. *City of Detroit, supra*. The Public Safety Officer position appears as well to be the *only* Career Plan position that reports to the Campus Patrol and Training Manager. Exh. 6. It thus lacks another key factor, “common supervision”, with any other job classification in the Career Plan unit. Cf. *City of Detroit, supra*. Additionally, the Public Safety Officer appears to have no greater degree of interaction with the other employees in the Career Plan unit than it has with the other employees of the College in general, so the element of interaction or interchange is likewise non-existent.

In addition to the lack of a community of interest, we find that the College’s placement of the new Public Service Officer position in the Career Plan unit was not undertaken in good faith. The evidence demonstrates a steady attrition in the ESPA bargaining unit, the result of the College leaving positions in that unit unfilled. Between 2010 and the time of the hearing, the unit had shrunk by nearly half—significantly more than the one-third drop in enrollment in the College during that time. Most significantly, , at the time of the hearing, the College had left unfilled five of its six Campus Patrol Officer or Senior Campus Patrol Officer positions. At the same time that it was leaving these ESPA positions open, with no indication it had any intention of filling any of them, it chose to create a new Public Safety Officer position, with only slightly different responsibilities, none of which it claims could not have been performed by the existing Campus Patrol or Senior Campus Patrol classifications, and place it in a different union’s bargaining unit.

We believe the evidence thus supports the conclusion that the College created the new position, at least in part, to displace work from the ESPA unit. The College argues that the attrition in the ESPA unit is the result of budget pressures stemming from declining student enrollment. But that does not fully answer the bad-faith charge, and is contrary to other simultaneous actions taken by the College. Most particularly, it decided to move forward with its plan for on-campus housing, and then, despite its declining enrollment, decided to hire *new* campus safety personnel in addition to those already employed. But instead of hiring them into the existing Campus Patrol Officer and Senior Campus Patrol Officer vacancies in the ESPA unit, it created an entirely new position in a different bargaining unit. If the College’s assertion is that decline in student enrollment made the filling of the vacant ESPA public safety positions untenable, it would seem to follow that the hiring of *any* additional public safety type positions would be equally untenable.

This is most particularly apparent in the fact that we find nothing in the work of the new Public Safety Officer that could not have been performed by Campus Patrol Officers or Senior Campus Patrol Officers under the job description for those positions. Mayea testified that the College decided to create a new position so that someone could perform public safety functions in campus housing “during the nights and during the weekends.” Tr. 78-79. But the Campus Patrol Officers and Senior Campus Patrol Officers were already compelled to work “nights and weekends .” Exh. 3. And as we explained earlier in our opinion, the independent decision-making responsibilities of the Public Safety Officer position—while perhaps going beyond those of the Campus Security Officers in some respects—would hardly have warranted creating a new position. To be sure, nothing in PERA bars an employer from making an irrational economic decision. But the lack of any rational or compelling economic or managerial reason for the creation of a new position, combined with the College’s pattern of failing to fill positions in the ESPA unit generally, and the many vacant Campus Patrol Officer slots it left in the ESPA unit specifically, convince us that the placement of the new Public Safety Officer job in the Career Plan unit did not reflect a good-faith decision.

The College also argues that ESPA’s petition is untimely.. It notes that the ESPA’s first objection to the College’s placement of the Public Safety Officer position came in the Fall Semester of 2019, 18 months after the position was first posted. It argues that ESPA’s petition should fail, because “[u]nit clarification is not appropriate for upsetting an established practice of the parties concerning unit placement.” College Post-Hearing Br. 10 (citing *Genesee Co*, 1978 MERC Lab Op 552; *City of Greenville*, 2002 MERC Lab Op 236). Although we have in the past sometimes found that a delay of a year to 18 months in seeking clarification is sufficient to create such an “established practice,” see *Washtenaw Community Coll*, 6 MPER ¶ 24128 (1993), we do not believe the facts justify such a finding here. First of all, it was not clear until the 2019 hiring announcement that the College was likely using the new Public Safety Officer job to displace work from the ESPA unit. At that point, the ESPA promptly filed this petition. See Tr. 71-72. Secondly, as of the date of the filing of the petition, the parties had not reached any agreement, express, tacit, or otherwise, concerning the inclusion or exclusion of the Public Safety Officer as it relates to the EPSA unit. *Jackson Pub. Schools*, 23 MPER 97 (2010)

2. *The Campus Patrol Cadet Position*

Because no other union seeks to represent individuals in the Campus Patrol Cadet position, we must ask only whether the occupant of that position shares a community of interest with the ESPA unit. See *City of Bay City*, *supra*. On its face, this question appears simple. The Campus Patrol Cadet position, like the Campus Patrol Officer and Senior Campus Patrol Officer positions, is a public safety job that is paid by the hour. The positions have substantially overlapping duties and supervisory structures. We have no doubt that the positions share a community of interest.

Resisting that conclusion, the College argues that holders of the Cadet position “are casual or temporary employees with no expectation of continued employment.” College Post-Hearing Br. 11. PERA contains no general exclusion for temporary employees. To the contrary, the statute generally reaches *any* “individual holding a position by appointment or employment in the government of this state, in the government of 1 or more of the political subdivisions of this state,

in the public school service, in a public or special district, in the service of an authority, commission, or board, or in any other branch of the public service.” MCL 423.201(e). The statutory text contains a limited exception for a particular class of temporary workers—those “employed by a private organization or entity who provides services under a time-limited contract with this state,” MCL 423.201(e)(i). That exception does not apply to the Campus Patrol Cadet, who is employed directly by the College rather than a private entity.

According to the plain text of the statute, the occupant of the Campus Patrol Cadet position is a covered “public employee.” If we are to exclude that position from the ESPA unit, we may do so only on the ground that the assertedly temporary status of the position deprives Cadets of the community of interest they would otherwise share with the workers in that unit. This is necessarily a fact-specific issue, as are all determinations of what constitutes an appropriate bargaining unit. Although we have sometimes concluded that temporary employees lack a community of interest with workers who have more secure job tenure, *e.g.*, *Wayne Cnty Comm Coll Dist*, 20 MPER ¶ 4 (2007), we have also sometimes included temporary workers in bargaining units with workers who have more job security. See, *e.g.*, *Michigan Tech Univ*, 3 MPER ¶ 21074 (1990). The question, we have said, is whether the allegedly temporary workers “share a community of interest with unit employees and ... have a sufficient expectation of continued employment to justify voting in a representation election.” *Id.*

Because its argument would result in the Campus Patrol Cadet being unrepresented, the College must bear the burden of demonstrating both that the position was a temporary one and that its temporary nature eliminated the requisite community of interest. See *Ferris State Univ*, *supra*. We conclude that the College has not carried its burden.

This case is similar to *Macomb Community College*, 1 MPER ¶ 19137 (1988). There, we held that police cadets hired by the eponymous college were public employees covered by PERA, and that the cadets could not be excluded from coverage as “temporary” workers. Like those serving in the Campus Patrol Cadet position here, the cadets in *Macomb* were students at the college that employed them, they worked part time, and were paid a regular wage. Although the average cadet worked less than a full year, we held that the “turnover of cadets” did “not make the cadets temporary employees” excludable under our precedents. *Id.*

In *Macomb Community College*, we noted that the cadets did “not have a fixed term of employment.” *Id.* Here, even as of the date of the hearing, the job description for the Cadet identified the position as “part-time” not as “temporary.” We acknowledge that at least according to the terms of the offer letters issued in 2020, the Campus Patrol Cadets were told that their job would last only through the semester. (As we noted above, the College included no such one-semester limitation when it created the Cadet position.) But such *formal* time limitations do not operate to remove a position from a bargaining unit when the workers in that position *actually* have a reasonable expectation of continued employment. That much is clear from our decision in *Wayne County Community College District*, *supra*. There, we held that students hired by their college as notetakers were not excludable temporary workers. Even though some of the notetakers were “told when they [we]re hired that their employment [was] for a specific term”—and *all* of the notetaking positions depended for funding on “a federal grant that varies in amount from year

to year”—we concluded that the college’s past practice gave the students in that position a sufficient expectation of continued employment. *Id.* We emphasized that “the note takers’ assignments [we]re generally for an entire college semester,” making them like “the long-term substitute teachers, employed for an entire semester, whom we have always found to be regular employees.” *Id.*

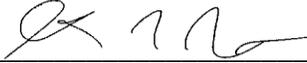
The College’s Campus Patrol Cadets, like the notetakers in *Wayne County*, are hired for an entire semester. The College now says that it does not intend for Cadets to continue in the position from one semester to the next. In light of our analysis in *Wayne County*, we doubt that a failure to extend employees’ terms beyond a semester would be sufficient to deprive them of representation under the Act. We need not ultimately decide that question, however, because the College’s expression of intention remains highly equivocal. Mayea, the College’s Vice President of Human Resources, testified merely that “assuming we had other candidates we would likely go with a different candidate” after a student had served in the position for a semester. Tr. 99. She expressly acknowledged that a student could serve as a Cadet for more than one semester. *Id.* And, as we have noted, the offer letters sent to the initial class of Cadets in the Fall of 2019 contained *no* definite limitation on the job’s term. The College inserted such a limitation only in the offer letters issued for the Winter Semester 2020—*after* ESPA filed this petition, which raises the suspicion that the limitation reflected a calculated effort to bolster the College’s position in this proceeding.

The Campus Patrol Cadet was a new position when ESPA filed this petition. We thus do not have the benefit of history as we did in *Wayne County Community College District* and *Macomb Community College*. But, pursuant to our decision in *Ferris State University*, *supra*, it is the employer’s burden to justify excluding an employee from representation under PERA. Whether a Cadet has an expectation of employment beyond a single semester is at least ambiguous, and we must resolve that ambiguity against the College. Should the College over time develop a consistent practice of refusing to reappoint Cadets who have already served for a semester, it would be appropriate for us to entertain a new unit clarification petition. At that point, we would be forced to consider whether workers hired for a single semester could be excluded from bargaining despite the analysis we offered in *Wayne County Community College*. That question is purely hypothetical at this point, however. Given the present state of the record, we conclude that the Campus Police Cadet has a community of interest with the jobs in the ESPA unit, and that the College has not carried its burden to show that the position should be excluded from bargaining.

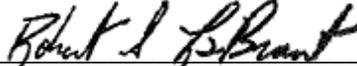
ORDER

The St. Clair Community College, ESPA, MEA/NEA's petition to clarify its bargaining unit to include the positions of Campus Patrol Officer and Campus Patrol Cadet is granted.

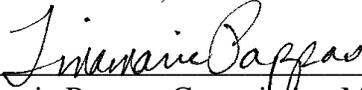
MICHIGAN EMPLOYMENT RELATIONS COMMISSION



Samuel R. Bagenstos, Commission Chair



Robert S. LaBrant, Commission Member



Tinamarie Pappas, Commission Member

Issued: November 12, 2020