

STATE OF MICHIGAN  
COURT OF APPEALS

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MICHIGAN EDUCATION ASSOCIATION,

Petitioner-Appellant,

v

ALPENA COMMUNITY COLLEGE,

Respondent-Appellee.

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UNPUBLISHED  
November 8, 1996

No. 180695  
MERC No. R93 I-179

Before: White, P.J., and Sawyer and R.M. Pajtas,\* JJ.

WHITE, P.J. (dissenting.)

I respectfully dissent. MERC is vested with broad discretionary authority in determining what constitutes an appropriate bargaining unit; that determination is a finding of fact reviewed by this Court for clear error. *Fraternal Order of Police v MSU*, 61 Mich App 542, 544, 545; 233 NW2d 75 (1975); *Muskegon Co Professional Command Assoc v Muskegon Co*, 186 Mich App 365, 374; 464 NW2d 908 (1990). MERC's primary objective in designating bargaining units as appropriate is to constitute the largest unit which, under the circumstances of the case, is most compatible with the effectuation of the purposes of the law and includes in a single unit all common interests. *Id.* at 373; *Hotel Olds v Labor Mediation Bd*, 333 Mich 382, 387; 53 NW2d 302 (1952). Consistent with this principle, MERC's policy is to avoid fractionalization or multiplicity of bargaining units. *Muskegon Co Professional Command Assoc, supra* at 373. The touchstone of an appropriate bargaining unit is a common interest of all its members in the terms and conditions of their employment that warrants inclusion in a single bargaining unit and the choosing of a bargaining agent. *Id.*

I find no clear error in MERC's decision. Its determination that the proposed unit is appropriate is supported by competent, material and substantial evidence. *Muskegon Co*, 186 Mich App at 374. MERC has noted the special circumstances bearing on the appropriateness of a residual unit:

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\* Circuit judge, sitting on the Court of Appeals by assignment.

One source of difficulty presented in the residual unit is that it is usually one created by agreements between various labor organizations and employers. Often the represented units are not as extensive as they would be had this Commission considered the matter. We are therefore faced, when petitioned to conduct an election among the group of residual employees, with finding a unit appropriate for collective bargaining quite different from that we would have found had we made the original determination. The resulting dilution of community of interest often prevents our finding the optimum unit. However, the greater importance of preventing further fragmentation by leaving remaining even smaller groups of unrepresented employees must govern. With these thoughts in mind we will consider the various positions in contest in the instant matter. [Muskegon Community College, 1980 MERC 1016, 1021-22.]

Further, respondent advanced competing arguments below, arguing that the proposed unit was both too narrow and too broad, yet not proposing an alternative unit. See *Harper Hospital*, 1974 MERC Lab Op 539, 543, and *Bennett Industries, Inc.* 313 NLRB 1363; 146 LRRM 1145 (1994).

As to respondent's argument that the proposed unit lacks community of interest, MERC addressed this issue and again noted that respondent had not proposed an alternative unit or set forth where the various positions belonged:

We will . . . summarize the various types of classifications sought by Petitioner to illustrate what the Employer contends is the inappropriate diversity of the unit; that is, some positions allegedly cannot be included in Petitioner's existing unit because of their instructional or educational duties or qualifications, whereas other positions possess no instructional or educational duties or qualifications.

A footnote immediately following this passage states:

As noted above, the consequences of this alleged dichotomy, that is, where the positions appropriately belong, is not set forth by the Employer. For example, the so-called "instructional" positions have never been included in the faculty unit; yet no claim is made by the Employer that they should be included there or in any other unit; and the residual unit sought herein is the only nonsupervisory unit left remaining in the College, since it is all-inclusive.

MERC described in detail the five groups composing the proposed unit, set forth and addressed respondent's arguments, and concluded:

. . . We find that the employees requested by the petition represent all of the remaining support positions of the Community College, localized in the Alpena area, who assist in carrying out its educational mission. Utilizing principles followed since the Supreme Court's decision in Hotel Olds v Labor Mediation Board, 333 Mich 382, 30 LRRM 2156 (1952), the requested accretion represents the largest appropriate unit possible under the circumstances of this Employer, since the employees to be accreted to the

existing clerical unit are all of the eligible unrepresented nonsupervisory, nonfaculty employees of the Employer. . . .

This Commission has always preferred broad units of support-type employees, and has found a community of interest among such employees, wherever prior bargaining history or the agreements of the parties do not prevent such findings. . . . the Commission has always found instructional units separate from support, auxiliary, or noninstructional employees. To further the policy of favoring the broader unit, the Commission will in appropriate cases permit consolidation of separate units of support or nonteaching employees . . . Thus, we reject the position of the College that the unit sought in this case is too broad or diverse and does not share a community of interest. [Citations omitted.]

\* \* \*

Although not all employees in the proposed unit have similar duties, skills, or educational qualifications, there are similarities in these areas among individual positions. The fact that salaries and benefits vary among the positions sought is not sufficient to destroy their community of interest. The employees all work on the Employer's main or auxiliary campuses, and the Employer's organization chart demonstrates a centralized management system. Under Hotel Olds, *supra*, we are required to find appropriate the single largest group of employees who share a community of interest. This rule is for the benefit of the employers, since it minimizes the fragmentation of units, prevents units based on extent of organization, and eliminates the problems associated with multiple bargaining obligations. We find that the unit sought by Petitioner satisfies this requirement. We conclude, therefore, that the residual group in this case, all nonsupervisory, nonfaculty employees excluded from existing units, may be accreted to the existing clerical unit to form a single all-college unit. [Citations omitted.]

I conclude that MERC's determination prevented further fragmentation and the leaving behind of even smaller groups of unrepresented employees, and was appropriate under the circumstances. *Muskegon Community College, supra*. I would affirm..

/s/ Helene N. White