STATE OF MICHIGAN

COURT OF APPEALS

FERRIS FACULTY ASSOCIATION, Petitioner-Appellant,	UNPUBLISHED January 27, 2004
v	No. 243885 MERC
FERRIS STATE UNIVERSITY, Respondent-Appellee.	LC No. 00-000019

Before: O'Connell, P.J., and Wilder and Murray, JJ.

PER CURIAM.

Plaintiff appeals as of right from a decision by the Michigan Employment Relations Commission (MERC) denying plaintiff's petitions to add the full-time faculty at Kendall College of Art and Design at Ferris State University to plaintiff's collective bargaining unit of full-time faculty at Ferris State University. We affirm.

The MERC is authorized to determine appropriate bargaining units. *Grandville Executive Ass'n v Grandville*, 453 Mich 428, 433; 553 NW2d 917 (1996). The MERC's determination of an appropriate bargaining unit is one of fact; and on review, this Court will not disturb the MERC's finding unless there is "an absence of competent, material, and substantial evidence on the whole record to support the finding." *Michigan Ed Ass'n v Alpena Community College*, 457 Mich 300, 308; 577 NW2d 457 (1998). "This evidentiary standard is equal to 'the amount of evidence that a reasonable mind would accept as sufficient to support a conclusion. While it consists of more than a scintilla of evidence, it may be substantially less than a preponderance.'" *City of Lansing v Carl Schlegel, Inc*, 257 Mich App 627, 630; 669 NW2d 315 (2003). However, legal rulings will only be "set aside if they are in violation of the constitution or a statute, or affected by a substantial and material error of law." *Quinn v Police Officers Labor Council*, 456 Mich 478, 481; 572 NW2d 641 (1998).

Plaintiff first challenges MERC's factual finding that the existing bargaining unit at Kendall was appropriate. We conclude there was competent, material, and substantial evidence to support this finding. Although Kendall is technically a sub-unit within FSU, and although FSU has the ability to make changes to Kendall, FSU has not done so, and there was evidence that FSU was committed to maintaining Kendall's autonomous character. The only interaction between FSU and Kendall faculty was an attempt to merge a visual communications program, an attempt that failed because of differences between the two groups of faculty and students. Finally, Kendall retains its own academic governance through the vehicle of the Kendall Senate

which, uniquely, is comprised of both full-time and part-time faculty. Kendall's autonomy, philosophical differences, and unique senate all support the MERC's finding that the existing bargaining unit at Kendall, made up of both full-time and part-time faculty, was appropriate.

Plaintiff next contends that the MERC should not have considered the bargaining history of the bargaining unit at Kendall. We disagree. MCL 432.9e specifically allows the MERC "to consider bargaining history when determining appropriate bargaining units." *Police Officers Ass'n of Michigan v City of Grosse Pointe Farms*, 197 Mich App 730, 736; 496 NW2d 794 (1992). Furthermore, although the MERC "is to avoid fractionalization or multiplicity of bargaining units," *Michigan Ed Ass'n*, *supra* at 305, it is acknowledged that there will be two bargaining units at Kendall and FSU whether plaintiff prevails or not. We reject plaintiff's argument that one of the MERC's own opinions, *Southeastern Michigan Transportation Authority*, 1985 MERC Lab Op 278, 286, supports its contention that bargaining history is irrelevant under the circumstances presented here. That opinion was premised on a finding that the unit whose history was being considered had already been found *in*appropriate, whereas in the present matter, competent, material and evidence supports the MERC finding that the existing bargaining unit *was* appropriate. Therefore, the MERC did not violate a statute or make a material legal error by considering bargaining history.

Affirmed.

/s/ Peter D. O'Connell
/s/ Kurtis T. Wilder
/s/ Christopher M. Murray