

STATE OF MICHIGAN
COURT OF APPEALS

FARMINGTON EDUCATION ASSOCIATION,

UNPUBLISHED

Petitioner-Appellant,

v

No. 198190

MERC

FARMINGTON PUBLIC SCHOOLS,

LC No. 94-000059

Respondent-Appellee.

Before: Saad, P.J., and O'Connell and Matuzak,* JJ.

MATUZAK, J. (dissenting).

I respectfully dissent. I believe that the MERC clearly erred by finding that the Alternative Academy teachers were Adult Education teachers. Accordingly, I would reverse the MERC's denial of plaintiff's petition.

The MERC based its decision on the classification of the Alternate Academy as an adult education program and the fact that the academy is paid for through respondent's Adult Education program. I do not believe that the administrative arrangements for funding the academy are significant factors which can lead to the conclusion that teachers at the Alternate Academy are Adult Education teachers. While the Alternate Academy was never part of respondent's regular K-12 program, the job duties of Alternate Academy teachers are virtually identical to those of teachers at respondent's regular schools. Teachers at the Alternate Academy worked days rather than evenings, and did not teach other Adult Education programs. The Alternate Academy has a calendar, work schedule, and curriculum virtually identical to that of respondent's regular schools. The Alternate Academy students are the same age as regular high school students, and engage in extracurricular activities with the regular students. Moreover, any differences in the funding and classification of the Alternate Academy are equally offset by similarities in the way its students are classified and funded: under state funding formulas Alternate Academy students are counted as "pupils" rather than Adult Education "participants" and academy pupils are subject to per-pupil funding levels and hours which differ from those set for Adult Education participants.

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

In a very similar case between the same parties, *Farmington Public Schools v Farmington Education Assn*, 1982 MERC Lab Op 1519, the Commission wrote as follows:

This Commission has consistently included all teaching personnel ... of a school district in one bargaining unit. We agree with Petitioner that the pre-kindergarten teachers share a community of interest with the teachers in its bargaining unit based on common professional responsibilities and skills, as well as similarities in their work. 1982 MERC Lab Op 1522.

In this case, petitioner has presented an even stronger showing that the teachers of the Alternate Academy share “a community of interest” with their fellow teachers at respondent’s regular high schools, since they share professional responsibilities and skills and perform virtually identical work. The administrative distinctions in how the Alternate Academy is administered and funded do not constitute competent, material, and substantial evidence which would support the MERC’s finding that the teachers at the Alternate Academy were Adult Education teachers who should be considered excluded under the recognition clause.

Petitioner argues that the MERC further erred by finding that its petition for unit clarification barred on the basis that the issue was covered by the 1995 collective bargaining agreement. I agree. There was certainly no consensus regarding the status of Alternate Academy teachers which was somehow merged into the collective bargaining agreement recognition clause. The MERC concluded that, based on its finding that Alternate Academy teachers were Adult Education teachers, and that Adult Education teachers were expressly excluded under the collective bargaining agreement, it could not re-write the terms of the collective bargaining agreement via a unit clarification. Since the MERC’s conclusion was based upon the erroneous conclusion that Alternate Academy teachers were Adult Education teachers, the contract bar should not apply to the petition for unit clarification.

I would reverse.

/s/ Michael J. Matuzak