

STATE OF MICHIGAN
COURT OF APPEALS

COLDWATER COMMUNITY SCHOOLS,

Petitioner-Appellee,

v

COLDWATER EDUCATIONAL SUPPORT
PERSONNEL ASSOCIATION,

Respondent-Appellant.

UNPUBLISHED

November 16, 1999

No. 214020

MERC

LC No. 97-000033

Before: Whitbeck, P.J., and Gribbs and White, JJ.

MEMORANDUM.

Respondent Coldwater Educational Support Personnel Association appeals as of right from a determination of the Michigan Employment Relations Commission (MERC) that on-call substitute bus drivers employed by petitioner Coldwater Community Schools do not belong in the same collective bargaining unit as the school district's regularly scheduled bus drivers. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The determination of an appropriate bargaining unit is a question of fact for the MERC to decide, and the MERC's findings will not be overturned on appeal if they are supported by competent, material and substantial evidence on the whole record. MCL 423.9e; MSA 17.454(10.4); *Michigan Education Ass'n v Alpena Community College*, 457 Mich 300, 307; 577 NW2d 457 (1998); *Police Officers Ass'n of Michigan v Grosse Pointe Farms*, 197 Mich App 730, 735; 496 NW2d 794 (1993). "Substantial evidence" is evidence that a reasonable mind would accept as sufficient to support a conclusion. This Court will not set aside findings merely because alternative findings also could have been supported by substantial evidence on the record. *In re Payne*, 444 Mich 679, 692; 514 NW2d 121 (1994).

Here, the MERC followed a number of its previous decisions where it was determined that on-call, per diem substitute workers were casual and irregular employees who did not share a sufficient community of interest with regularly scheduled employees to be included within the same bargaining unit. E.g., *Chelsea School District*, 1994 MERC Lab Op 268; *Lansing School District*, 1978 MERC Lab Op 453; *Waterford School District*, 1977 MERC Lab Op 697. The MERC's findings are supported

by the fact that the substitutes in this case worked assignments of irregular duration, had no guarantee or commitment to work from one day to the next, and were permitted, within reason, to decline particular assignments without penalty and to hold other employment. The MERC also noted that the substitutes, as a group, usually worked substantially less hours than the regularly scheduled drivers. We find the MERC's determination that the on-call substitute drivers should not be included in the same bargaining unit with the regularly scheduled drivers is supported by competent, material and substantial evidence on the whole record.

Affirmed.

/s/ William C. Whitbeck

/s/ Roman S. Gibbs

/s/ Helene N. White