

assistants at the University of Michigan." 1978 MERC Lab Op 66 at 68. The ALJ's Supplemental Decision analyzed an extensive record of over 3,000 pages and exhibits and arrived at the essential conclusion that one category of Graduate Student Assistants (GSA), namely Research Assistants (RA), were not employees whereas two other categories of GSA's, namely Teaching Assistants (TA) and Staff Assistants (SA) were employees and were, therefore, entitled to bargaining rights under the Public Employment Relations Act.

The ALJ's Supplemental Decision and Recommended Order was served on the interested parties in accordance with Section 16 of the Public Employment Relations Act (PERA), 1947 PA 386, as amended by 1965 PA 379 and 1973 PA 26, MCLA 413.216 MSA 17.455(16). Thereafter both parties filed Exceptions with supporting briefs. The Employer argues several evidentiary errors were committed by the ALJ in his refusal to accept testimony on the impact of the 1975 GSA strike and on the effects that granting GSA's employee status would have on the University, faculty and students. The Employer also takes exception to the finding that TA's and SA's are employees under PERA. The Charging Party takes exception to the ALJ's conclusion that RA's are not employees of the University.

THE FACTS. This case focuses on the status of approximately two thousand graduate students who have appointments as GSA's. Appointments are made through the departments, usually after a student's application for admission to a graduate program is accompanied by an application for financial support. GSA appointments are one form of financial aid. All GSA appointments are for one semester, but may be and frequently are renewed from one semester to the next. All three types of GSA's are paid for their services. The funds for TA's and SA's are included in each department's regular budget; the funds for RA's are derived from the grant which supports the research project on which the student is working. Generally, GSA's earnings are subject to federal income tax, although there is a tax exemption for those students whose appointments fulfill a degree requirement.

Approximately 77% of the GSA's are TA's. They teach a substantial portion of the University's undergraduate courses, approximating 30% of all undergraduate student hours. As a

group they are involved in all aspects of teaching including planning the curriculum, grading the papers, assigning final course grades and handling students complaints. The degree of control the TA has over the content and teaching method of a course varies between departments and specific assignments. The selection process for making TA appointments is fairly mechanical, providing TA's little if any choice on the courses they will teach. The degree of supervision and the person or persons responsible for that supervision also varies between departments and specific course assignments. Because TA's are assigned courses according to the department's needs, it is only by chance that a TA will be supervised by his or her academic advisor. The University reserves the option to remove a TA for inadequate performance although such removal is rare.

The second category of GSA's, the SA's, comprises about 4% of the overall group. Their duties include counseling undergraduates, to advise them in selecting courses, and providing other professional and quasi-professional support services.

Finally, the RA's comprise about 17% of the overall group of GSA's. They perform research under the supervision of the faculty member who is the primary researcher of a research grant. Assignment to a RA's position typically results through a mutual agreement between a particular faculty member and a particular student. This selection process takes into account the nature of the research project. The degree of the student's interest varies from cases where the research goal is identical to the RA's thesis topic to cases where the research goal is unrelated to thesis work. In most cases, the RA appointment reflects and closely tracks the student's academic discipline and interests. Evaluation of the RA's work is generally indistinguishable from evaluation of progress as a student. Unlike the TA who works under a specific class schedule, the RA's work is performed under a flexible time framework. A department might not even have a central roster of RA's since each works with a specific faculty member.

The statement of facts provided above is but a summary of pertinent facts. Far greater detail and discussion of the facts is set forth in the ALJ's Decision.

DISCUSSION. First, we address Respondent's contention that the ALJ improperly excluded evidence. As to testimony offered to show the impact of the 1975 GSA strike we agree with

Judge Sperka that such evidence is not logically or legally relevant to the question of whether GSA's are employees. Likewise, we reject Respondent's assertion that the ALJ should have received evidence on the potentially adverse effects that collective bargaining could have on graduate education, on the recruitment of graduate students, on faculty-student relationships and on the University's ability to compete with universities whose graduate students cannot organize. Although such impact might arguably result from collective bargaining, its existence is irrelevant to whether the GSA's are employees under PERA. Cf. *Hillsdale Community Schools*, 1968 MERC Lab Op 859. Although it is true that the Michigan Administrative Procedures Act permits a wider reception of evidence than allowable in non-jury civil cases, it is also true that "[i]rrelevant, immaterial or unduly repetitious evidence may be excluded." MCL 24.215.

Turning to the merits, we agree with Judge Sperka that GSA's who have appointments as TA's or SA's are employees. We also agree that RA's are not employees.

Although PERA does not define public employees to specifically include or exclude students, MERC has consistently held that students can be employees. In 1971, MERC considered whether interns and residents at the University of Michigan Hospital School and School of Nursing were employees under PERA. *Regents of the University of Michigan and University of Michigan Interns-Residents Association*, 1971 MERC Lab Op 270. Members of the proposed unit were all medical school graduates and in the case of residents, licensed physicians. All were enrolled as graduate students of the medical school, although they did not attend classes at the school. Their ultimate goal was to gain training. The Commission (Member Milmet, dissenting) decided that the interns and residents were employees. It noted that the issue was whether "work is being performed in a 'master-servant' relationship or whether the person performing the work does so as his own 'master'." It analyzed this question, in part, as follows:

... To speak of the performance of services means that an act is performed for the benefit of another and not that the employee is engaged in pursuits of his own. Thus, a student in the ordinary classroom situation is not performing a

service for the school when he engages in his own studies. . . . 1971 MERC Lab Op at 279.

The Commission then proceeded to find an employment relationship existed. In doing so it rejected the argument that the special relationship of student to University eliminated the possibility of an employee-employer relationship. On appeal the Michigan Supreme Court agreed with the Commission. 389 Mich 96 (1973). The High Court noted that the categories of student and employee are not mutually exclusive and specifically rejected the University's argument that interns and residents could not be employees because they are "primarily students."

Three years after the Supreme Court decision in *Interns and Residents* MERC unanimously decided that undergraduates who worked 29 hours or less a week, and who worked out of a student employment office, were employees of the University where they were enrolled. *Michigan State University and Michigan State University Student Workers, et al*, 1976 MERC Lab Op 73. As to the duties of those students MERC stated:

The student employees perform duties similar to those assigned to the regular clerical, technical, and maintenance employees of the University, and their employment is designed to only supplement the regular work force of the University, and to provide students with jobs which help defray the cost of their education. 1976 MERC Lab Op at 77.

The decision continued:

Student employees must have as their primary purpose the achievement of a degree, diploma, or certificate, and their employment is considered interim or temporary and incidental to their educational pursuits. 1976 MERC Lab Op at 78.

The Employer in *MSA* relied upon the Supreme Court decision in *Interns and Residents* to argue that where workers are "primarily students, and where the work performed is secondary to the purpose of obtaining an education, the employment relationship is not the type contemplated by PERA." 1976 MERC Lab Op at 79. The Commission rejected that argument, and ruled that the students were employees under PERA "even

though their principal vocation is that of a student." 1976 MERC Lab Op at 80.

In this case, the Respondent similarly argues that because GSA's are "primarily students" they cannot be employees under PERA. Admittedly, this position has been adopted by the NLRB, interpreting that National Labor Relations Act. *Adelphi University*, 79 LRRM 1545, 195 NLRB No. 107 (1972), *Leland Stanford Junior University*, 87 LRRM 1519, 214 NLRB No. 82 (1974). On the basis of the reasoning set forth in *MSU* we do not agree. The Respondent also correctly points out that the NLRB has ruled contrary to MERC and the Michigan Supreme Court, that interns and residents are not employees under the federal labor act. *Cedars-Sinai Medical Center*, 223 NLRB 251 (1976), appeal dismissed for lack of jurisdiction, *Physicians National House Staff Association v Fanning*, 642 F 2d 492, 104 LRRM 2940 (DC Cir, en banc, 1980), cert. denied, 106 LRRM 2513 (Feb. 23, 1981). We think, however, that the rationale set forth in *Interns and Residents* is sound and should continue to be followed in interpreting PERA.

The Respondent also relies on the Commission's decision in *Detroit Board of Education and MESC and McNamara Skill Center Union*, 1972 MERC Lab Op 87, to support its contention that GSA's are not employees under PERA. In that case MERC held that students at the McNamara Center were not employees even though they were compensated for providing services in operating a cafeteria, working on cars, repairing clothing, performing maintenance work on the building and doing general clerical work. MERC held that the trainees' compensation was not wages because they provided no services to MESC which paid them and because compensation was not related to the nature of the training. The "primary factor," the decision states, was that the "substance of the relationship between the trainees and the agencies is not that of employee to employer." Respondent's arguments based on *McNamara* are misplaced. That decision does not stand for the proposition that the issue of employee, *vel non*, is determined by the overall relationship between student and faculty. Rather, the rationale of *McNamara* focuses on the specific services rendered and decides if an employment relationship exists by determining whether students are providing benefit for another rather than pursuing their individual educational goals. That this rationale was

intended by *McNamara* is clear from the Commission's comments about it made in the *MSU* case. In that 1976 decision, MERC specifically rejected the argument premised on *McNamara* which the Respondent here asserts.

Relying upon the Supreme Court decision in *Interns and Residents* and the Commission decisions in *McNamara* and *MSU* we find that the GSA's who hold appointments as TA's and SA's are employees, whereas RA's are not. Like the students in *MSU* and *Interns and Residents*, TA's provide a benefit to the University rather than engaging in pursuits of their own. They provide services similar to those of nonstudent employees; they do not control what courses they teach or what hours they work; they are supervised and may be removed for inadequate performances; and, they are compensated based on the amount of work they provide. They are supervised by faculty who retain control and oversight, as Respondent's principal representatives, for the quality of the work performed. They are subject to the immediate direction and control of the Respondent and they may be disciplined or relieved of their duties for inadequate performance. The work they perform fulfills one of the central missions of the Respondent. Likewise, the SA's perform regular duties of a type which benefit the University.

Although, admittedly, TA's and SA's are "principally students," their relationship to the University as to their teaching and counseling appears to us to be one of employment. We also agree with Judge Sperka that the relationship between RA's and the University does not have sufficient indicia of an employment relationship. The nature of RA work is determined by the research grant secured because of the interests of particular faculty members and/or by the student's own academic interest. They are individually recruited and/or apply for the RA position because of their interest in the nature of the work under the particular grant. Unlike the TA's who are subject to regular control over the details of their work performance, RA's are not subject to detailed day-to-day control. RA's are frequently evaluated on their research by their academic advisors and their progress in their appointments is equivalent to their academic progress. Nor does the research product they provide further the University's goal of producing research in the direct manner that the TA's and SA's fulfill by their services. Although the value of the RA's research to the University is real it is clearly

also more indirect than that of teaching 30% of the under-graduate courses. RA's are substantially more like the student in the classroom or the trainees in *McNamara*. They are working for themselves.

For the above-stated reasons we reject the Exceptions of both parties in this case.

ORDER

IT IS HEREBY ORDERED that the Order recommended by the ALJ is adopted as the Order of the Commission in this case.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

William M. Ellmann, Member
Elaine Frost, Member

DISSENT

I respectfully dissent from the opinion of my colleagues. I believe their analysis leaves out the fact that in most instances the role of Graduate Student Assistants as workers is not independent of their status as students, and depends critically upon the students' satisfactory progress towards a terminal degree. In this respect the facts of the present case differ markedly from the facts presented to this Commission in *Regents of the University of Michigan v MERC (Interns and Residents)*, 1971 MERC Lab Op 270, *rev'd* 1971 MERC Lab Op 270, *rev'd* (affirming MERC majority), 389 Mich 96 (1973). There the individuals alleged to be employees and determined by the Michigan Supreme Court to be employees under PERA were full-fledged doctors. They had earned their medical degrees and were engaged in a process of continuing education whereby they become eligible for certification as specialists. In the meantime, they performed services for the University that were in furtherance of patient care at the University Hospital. Here, by contrast, we have students who have not yet earned their final degrees and whose work may be an integral part of the formal degree requirements or an informal part of their training for a teaching career. I find this distinction to be of major importance.

Although I was not earlier persuaded that medical interns and residents should be considered employees entitled to the protections of PERA, I am today even more skeptical that graduate students should be considered employees. The facts indicate that the vast majority of the graduate student assistantships are occupied by individuals who are actively engaged in course work. Many of them hold appointments which involve payment of stipended monies that are exempt from federal income taxation due to the fact that the work performed under these appointments is work required for the student's graduate degree. Others are engaged in teaching undergraduates under close faculty supervision, and can thereby claim some teaching experience when they finish their degrees. Still other graduate assistants are utilized by faculty members in a close apprenticeship type of relationship whereby the graduate students participate in outside-funded research. The record reveals that it is not uncommon for such Research Assistants to derive substantial professional recognition, and hence higher employability upon graduation because of their participation in guided research. Also, a significant number of the Research Assistants pursue research endeavors that form the foundation or may be the exclusive basis for their theses.

These facts persuade me that the work performed by graduate student assistants is by and large either derivative or incidental to their function as students. Thus, although it would be logically possible to consider these individuals both students at the University and employees of the University, I would conclude that the factors which evidence an employment relationship are entirely subordinate to these factors which indicate that the primary relationship must be characterized as an educational or training one.

To the extent that there is some evidence of an employment-type relationship, the evidence goes more to the form of the relationship than to the substance of it. It has always been our duty to look beyond the titles, nomenclature, and formal indicia of an asserted employment relationship to examine what is the substantial economic reality of the relationship. *McNamara Skill Center*, 1972 MERC Lab Op 87. The substantial economic reality which I see as operative in this case is that the Respondent in order to attract and keep quality graduate students frequently

offers them appointments as teaching, research, or staff assistants. This is done as a means of providing them support during their term as students. It is no doubt true that many of these students provide useful services, in turn, to the University. However, the primary purpose and structure of the relationship is to foster the educational relationship of the University as an institution of higher learning to its advanced graduate students. This factor is critical in my opinion and requires us to find that collective bargaining is not appropriate for any of the graduate student assistants considered in this case. I note in passing that many of these same factors that I find convincing are mentioned as grounds for decision in the National Labor Relations Board's cases on the employee status of students. See, e.g. *Adelphi University*, 195 NLRB 639, 79 LRRM 1545 (1972); *College of Pharmaceutical Sciences*, 197 NLRB 959, 80 LRRM 1456 (1972); *Leland Stanford Junior University*, 214 NLRB 621, 87 LRRM 1519 (1974); *St. Clare's Hospital*, 223 NLRB 1002, aff'd on reconsideration, 229 NLRB 1000, 95 LRRM 1180 (1977). In its Decision denying reconsideration of its earlier Order in *St. Clare's Hospital*, the Board analyzed the various ways in which student status can have a bearing on employment status, and concluded in regard to that "category of cases in which students perform services at their educational institutions which are directly related to their educational program":

The rationale for dismissing such petitions is a relatively simple and straightforward one. Since the individuals are rendering services which are directly related to and indeed constitute an integral part of—their educational program, they are serving primarily as students. In our view this is a very fundamental distinction for it means that the interests of the students and the educational institution in the services being rendered are predominantly academic rather than economic in nature. Such interests are completely foreign to the normal employment relationship and, in our judgment, are not readily adoptable to the collective bargaining process. St. Clare's Hospital, 225 NLRB at 1002.

Further, I am convinced that the introduction of the frequently hard-edged instruments of collective bargaining into

the sensitive relationship of teacher to student, mentor to apprentice, or academic department to degree-seeking candidate could have a potentially long-term destructive effect far outweighing any immediate beneficial byproducts of collective bargaining to the students. In any event, the advent of collective bargaining for this generation of graduate students may leave indelible scars on the institution, and degrade the special atmosphere so necessary to nurture professional growth and academic achievement. This special atmosphere may then be unavailable to future generations of graduate students. The majority has attempted to impress the form of an employment relationship on what I view as a quintessentially different type of relationship. I do not think the purposes of PERA would be served thereby.

For these reasons I would find all categories of graduate student assistants to be nonemployees. Accordingly, I would dismiss the charge in the instant case.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION
Morris Milmet, Chairman

Dated: November 4, 1981

SUPPLEMENTAL
DECISION AND RECOMMENDED ORDER
OF
ADMINISTRATIVE LAW JUDGE

Pursuant to an order described below of the Michigan Employment Relations Commission, and Sections 10 and 16 of the Public Employment Relations Act, 1947 PA 336, as amended by 1965 PA 379, MCLA 423.210, 423.216, MSA 17.455(10) and (16), hereafter referred to as PERA or the Act, this matter came on for hearing at Ann Arbor, Michigan, before Shlomo Sperka, ALJ for the Michigan Employment Relations Commission, hereafter referred to as the Commission. These proceedings involve the Regents of the University of Michigan, hereafter sometimes referred to as Respondent or the University, and Graduate Employees' Association, sometimes hereafter referred to as Charging Party.

At the hearing both parties were represented by counsel and were afforded full opportunity to be heard, to examine and

cross-examine witnesses and to present evidence and arguments on the issues raised in the charge. Based upon the entire record in this proceeding, including the pleadings, transcript of testimony, exhibits and briefs filed by the parties, the undersigned makes the following findings of fact and conclusions of law and issues the following recommended order:

FINDINGS OF FACT

HISTORY OF THE PROCEEDINGS. On August 19, 1977, the undersigned ALJ issued a decision and recommended order in this matter finding that Respondent had violated Section 10(e) of PERA. Exceptions were filed to that recommendation and, on January 18, 1978, the Commission issued an order remanding the matter to the undersigned for further hearing. *Regents of the University of Michigan*, 1978 MERC Lab Op 66. The operative portions of the Commission order read as follows:

The exceptions object to the refusal of the ALJ to take evidence on the issue of whether or not graduate student assistants are employees under PERA. Respondent's sole defense to the unfair labor practice charge was that there was no obligation to bargain under PERA since graduate students are not employees within the meaning of the Act. At the hearing, the ALJ limited Respondent to making an offer of proof, finding that this issue had been decided by the Commission in prior cases. *University of Michigan Regents v MERC*, 389 Mich 96 (1975), *aff'g University of Michigan (Interns and Residents)*, 1971 MERC Lab Op 270, and *Michigan State University*, 1976 MERC Lab Op 73.

The Commission has carefully considered the oral arguments of the parties, the exceptions, response to exceptions, and the entire record in this matter. We find merit in Respondent's exceptions. The ALJ erred in excluding evidence on this issue, since we believe this matter can only be resolved on the basis of a complete record.

The decisions in *University of Michigan*, *supra*, and *Michigan State University*, *supra*, clearly indicate that the categories of "student" and "employee" are not mutually exclusive. However, on the basis of the record before us, we are unable to decide whether these cases conclusively settle the issue raised by Respondent. Many facts introduced in the offer of proof and at oral argument must be more fully

developed before a determination can be made as to the essential nature of the relationship between graduate student assistants and the University. See *Detroit Public Schools (McNamara Skills Center)*, 1972 MERC Lab Op 86.

ORDER

Based upon the foregoing, it is hereby ordered that the instant case be remanded to the ALJ for the purpose of taking evidence on the employee status of the graduate student assistants at the University of Michigan.

The hearing on remand commenced on May 8, 1978. Testimony was taken during approximately 19 days of hearing ending on February 15, 1979. The hearing produced a record of over 3,000 pages and several volumes of exhibits. The parties submitted briefs of approximately 100 pages each which were received October 16, 1979.

The hearing on remand was cast in the form of a hearing on Respondent's motion to dismiss the charge for lack of jurisdiction by MERC over graduate student assistants. Respondent as moving party presented its case first and Charging Party thereafter presented its case in opposition to the motion. Testimony on behalf of Respondent was presented primarily through members of the faculty and administration. Charging Party called as witnesses graduate student assistants in the bargaining unit presently represented by Charging Party. Since the hearing on remand is in continuation of the earlier hearing, testimony and exhibits received at the earlier hearing are part of the record.

STATEMENT OF FACTS. The issue in this matter is whether persons holding appointments as graduate student assistants at the University of Michigan are employees within the meaning of PERA when engaged in activities within the scope of the graduate student appointment. Although it is not contended that all graduate students of Respondent are employees, it is necessary to place the group in question in the larger context of the University.

The Respondent, Regents of the University of Michigan, govern the University of Michigan, which is a center of undergraduate, post-graduate, and professional education. According to the exhibits, the University enrolls approximately 48,000 students of whom approximately seven to eight thousand are

post-graduate students in the Horace M. Rackham School of Graduate Studies, which is the overall designation of the graduate school. The graduate school offers advanced degrees in approximately 140 fields of specialization, excluding the professional schools.

During the hearing, statistical data regarding the student body was introduced. Most of this data came from the 1977-78 academic year, immediately prior to or during the period of the hearing. These exhibits showed approximately 7,000 students in the graduate school during that year. Approximately 3700, or 54 percent, received some type of financial support. Approximately 2,000, or 30 percent, had appointments as graduate student assistants in approximately 50 academic departments, programs or centers.

Graduate student assistant appointments (hereafter, sometimes, GSA) are in three categories: Graduate student teaching assistant (TA), graduate student research assistant (RA), and graduate student staff assistant (SA).¹ According to the exhibits, during the sample period, of the approximately 2,000 persons holding graduate student appointments, approximately 77 percent were employed as teaching assistants, 17 percent as research assistants, three percent as staff assistants, three percent held appointments as both TA and RA, and less than one percent as TA and SA.

The basic requirement for graduate student appointment is that the individual be registered as a graduate student of the Respondent enrolled for a minimum of six credit-hours. Retention and renewal of such appointments are premised on the individual remaining in good standing as a graduate student and continuing to make good progress towards a terminal degree.

Selection for an appointment as a graduate teaching assistant is through the department. Usually, the graduate student upon application for admission advises whether he will need financial support. If requested, each department attempts to put together a package of financial aid including fellowships,

1. An earlier decision of the Commission, University of Mich, 1971 MERC Lab Op 1053, dealing with the same graduate student assistants, refers to a large number of other titles not mentioned in the instant record. Presumably, these are subdivisions within the larger groups. As noted in the first decision in this matter, Charging Party was certified in 1974 as collective bargaining agent for a unit of graduate assistants, including teaching, research and staff assistants.

grants, loans, and other sources including graduate student appointments. This package is offered to the applicant. In successive school years, the appointment may be renewed or other types of aid substituted. Upon application the student will usually be told how many semesters of each type of aid he may expect. Notice of prospects for future appointments will vary by department.

In some departments postings of available positions are maintained and graduate students may apply for specific openings. Some departments do not use the standard university-wide financial aid form and may use a direct department request form. Students may directly approach a faculty member or department chairman to seek available teaching positions. Selection for positions as staff assistants were not described in great detail on the record, but appear to follow the same basic pattern.

Respondent stressed the great contrast between the hiring of teaching assistants and the procedures for hiring faculty members, particularly for possible tenure. The latter is conducted with great pomp and circumstance involving careful evaluation of the applicant's academic credentials and past experience, meetings with peers and departmental committees--each department exercising extreme care before admitting a new colleague who will be eligible for tenure in due course. It is not clear whether nontenure track instructors, engaged for short periods of time, are subject to the same procedures as those hired for tenure track positions.

To teach the courses in its curriculum, Respondent employs various ranks of professors within the tenure track, and lecturers and instructors who may or may not be in the tenure track. Respondent utilizes graduate teaching assistants to teach some undergraduate courses. The salary of teaching assistant is close to that of lecturer.

Every department which uses teaching assistants has a budget for the purpose. The specific salary or stipend paid to each TA may vary based on how many sections are to be taught and how many TAs will be appointed. Those departments develop their schedule of classes with the understanding that a certain number of TAs will be employed to teach undergraduate courses. The number of TAs in any given department, and the types of courses assigned to them, varies. In the English

department, freshman courses are taught by TAs. In some language departments introductory and intensive courses are taught by TAs.

The specific assignments or duties assigned to the TA will vary from department to department and course to course, but in the aggregate TAs perform virtually all tasks associated with course instruction. Some departments use highly structured class plans and syllabi and the TA must follow these. In others, he may participate in the design of the course with varying degrees of freedom in this regard. Among the duties which TAs may and do perform in one or more departments are course design, writing and delivering lectures, conducting discussion sections after the principal lecture, preparing a course syllabus, selection of readings, selection of texts, teaching alone, teaching under supervision of a senior TA, teaching under supervision of a faculty member, supervising laboratory sections, instructing individual students, preparing quizzes or examinations alone, with a committee of TAs or with the senior faculty member, administering examinations, grading quizzes and exams, grading courses, grading lab papers and performance and other assignments, class performance, assigning the final grade for the course, and signing the university grade sheet form. TAs must maintain office hours to meet with students. The specific classes assigned to the TA to teach may be built around the TA's own class attendance schedule.

The appointment form for a TA is similar to that of a faculty appointment form. TAs have faculty library cards and may use department letterheads, mail privileges, office supplies and equipment in connection with their teaching duties.

Staff assistants often work as advisors or counselors to students. They assist undergraduates in selecting courses and provide other assistance as counselors. Some act as counselors to other TAs. This title also includes persons employed at the University's museums and collections.

Evaluation of the TA by the department is called for by certain University policies. Different departments carry out this process in different ways. Some use student evaluations; in some, faculty and/or other TAs participate. In some the process is quantified and computerized.

Although Respondent reserves the right to remove a TA from an appointment for poor performance with the consequent

loss of stipend, it appears that this is a rare occurrence. Respondent's witness testified that if such removal were required, the type of appointment might be changed and support continued to the end of the semester. Evidence in the case shows efforts by certain departments to monitor the quality of the TAs' teaching performance and, in some examples, to help improve it. Some departments provide teaching aids and specific instruction and assistance in the performance of the teaching element of the duties. A department may determine that a particular individual is not suited for reappointment as a TA. However, it appears that TA appointments are made, certainly in the first instance with little regard to teaching ability. All GSA appointments are for one semester only and terminate without any notice of nonrenewal.

Respondent maintained an appeal procedure which the individual could use if an appointment was terminated or for any other dispute in the interpretation and application of the program. This "grievance procedure" was administered by the Respondent prior to recognition of the Charging Party and execution of a contract which contained a formalized grievance and arbitration procedure.

The financial remuneration or stipend received by the GSA is not subject to Social Security taxes but is subject to income tax, except for so-called "Form K" appointments. These are issued when the work performed is in fulfillment of the "work experience requirement," explained below.

Under Federal regulations, income taxes are not due for wages received for work required of all candidates for a particular degree. The Form K appointment is used as long as the individual's appointment fulfills his or her own "work experience requirement." The work experience requirement is a condition precedent to a graduate degree imposed by some departments. Whether to maintain such a degree requirement and the amount and type of work, is determined by each department. It varies from a half-semester to the equivalent of several semesters of full or part-time work. The principal element of the work experience requirement is that it may not be satisfied through academic course work. Departments accept a wide variety of activities pursued in or out of the University. Many departments permit the fulfilling of the work experience requirement by the performance of teaching assistant or other

graduate assistant appointments. Appointments beyond the length of the department's requirement will be subject to income tax. In a given year, about one-third of the GSAs are working pursuant to a Form K appointment.

Certain appointments require a certificate of academic relevance. This appears to be utilized when the appointment is outside the graduate student's academic department. The majority of TA and RA appointments are within the appointee's own department, for obvious reasons. However, it is not unusual for graduate students to have skills or knowledge which can be utilized in departments where appointments are available. In these situations, the GSA appointment will be available only if the certificate is issued. It appears from the record that these are issued more-or-less pro forma, but absent this the student may be hired as a temporary hourly. In the summer, when GSA appointments are not available, the GSA may be hired to continue the same work as an hourly employee.

GSTAs teach a substantial percentage of the scheduled undergraduate courses. During the sample period, according to an exhibit, approximately 30 percent of all student credit hours at undergraduate course levels were generated by GSTAs.

Appointments as research assistant (RA) differ in many respects from a teaching assistant appointment although some procedural elements are similar. The appointment form is the same, as is designation by appointment fraction, e.g., a .5 fraction appointment equals a one-half time appointment and pays one-half the equivalent of a full-time appointment.

Among the differences between the types of appointments is the method of selection. RA appointments rarely partake of the fairly routine selection of candidates and mechanical assignment of sections characteristic of TA assignments in the larger departments. Usually the RA appointment grows out of a relationship between a graduate student and a faculty member.

Because the RA work preferably relates in some manner to the student's degree area, the faculty member making the appointment is often, also, the student's academic advisor. A graduate student will often seek out that faculty member whose area of concentration most closely coincides with the student's interest. Sometimes the student will have come to the University of Michigan for the specific purpose of studying with a particular member of the faculty. RA appointments may develop

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from this relationship. The student's interest may change due to his earlier years of graduate study, and he may shift from one professor to another for access to specific guidance in his studies. However, a large number of RA appointments have a more prosaic origin. Graduate students are aware of current research within their department or discipline. The student may shape his thesis to conform to available grants. The graduate student may simply wish to secure support and will inquire among the faculty in his own or related areas for possible RA appointments or other forms of support.

To understand these facts, it is necessary to describe the method by which research funds are secured. Graduate students, after completing their class work, must complete a research project to earn a doctoral degree. The student or the University has access to many types of funds, such as fellowships, grants, and other direct means of supporting graduate students. None of these are involved in this matter. The only appointment involved in this proceeding is the RA appointment.

The RA assistantships are based entirely on funds coming from outside the University. The vehicle which brings these funds to the University campus is the individual faculty member, not the University as such. These funds come from federal government agencies, private foundations, and other sources for a total of 1400 funding sources. The majority are federal funds. These agencies and foundations make available substantial amounts of money to researchers pursuing areas of research of interest to the funding source. Ordinarily, a faculty member develops a research proposal and submits it to a one or a number of agencies, seeking their support of his project. Conversely, a government agency or foundation may notify scholars in a particular discipline that it is interested in funding research with a certain goal, or on a particular topic. The topic or goal may be general or quite specific.

In addition, the University is the home of numerous research institutes. These are not academic departments with scheduled courses in a specific discipline, but are built around groups of faculty, often, with large numbers of nonfaculty professionals, drawn from one or more disciplines, who group together for the purpose of carrying on research in specific areas. These institutes, many of national and worldwide stature, may seek research projects or contracts to perform research;

interests to the grant or may perform the work in the hope of adapting the data to his own purposes. If his thesis interests differ from the grant, the faculty member may be aware of other available funding and will seek fellowship or other support from outside sources interested in furthering this particular discipline. The graduate student may inquire of faculty other than his own advisor, if there are projects of some interest to him available. Many graduate students, after their years in the school, are skilled researchers in a particular area and may be approached by a faculty member to handle a particular element of a research project. The relationship of the principal researcher to the graduate student may vary. He may be the student's official thesis advisor, but need not be. The RA appointment may be in one of the institutes; the degree, of course, is awarded by a specific academic department in which the principal researcher may or may not have an appointment.

Not all the research grants are, in popular terms "research" that is, experimenting or seeking new knowledge. The grant may be used to develop or apply knowledge to a particular problem and the graduate student may be asked to implement a particular project, for example, to train others in a given field; to develop written works embodying and organizing knowledge or new theories for the purpose of making recent developments more accessible; or to permit others to apply proposed methods in a given discipline.

All of these activities are, as stressed by Respondent, academically relevant to the graduate student to some degree. The graduate student may join a research project as an RA in order to use the data developed with a totally different application. He may work on it to develop a technique or a skill, or because of his interest in the area, although his own thesis may be unrelated. Often the graduate student receiving an RA appointment has not selected his thesis. Some Charging Party witnesses testified that their RA work could not be related to thesis work since they had not yet selected a thesis topic. They sought the RA appointments, even if only for periods of a semester or two, to support themselves while engaged in their studies. At the other extreme, the student may persuade a professor to incorporate his proposed thesis subject into a related grant proposal but in every case, the research grant is awarded to the faculty member who is principle researcher.

often, they are sought out by others seeking research or information in a given area. The research grant or contract is usually associated with a specific faculty person in the research institute. The subject matter for which these funds are available reflect, on a broad national scale, the priorities and concerns of government and other major funding sources.

The faculty member, usually designated as principal researcher, draws up a grant proposal, including a budget covering wages and salaries for associated faculty, for professional research associates, technicians, clericals, temporary hourly or unskilled help and, last but by no means least, graduate student research assistants. The budget will also cover all other costs: materials, equipment, books, travel, attendance at conferences, computer time and all other costs necessary to successfully complete the project. In addition, every proposal includes an additional amount paid to Respondent to cover its "overhead" related to the presence of the project on the campus. This is computed as a percentage of overall personnel costs including salaries, wages and fringe benefits. Payments of this overhead cost range between 10 and 90% of personnel cost. The average is 74%.

The grant proposal is funnelled through certain university screening procedures and, before submission to the various grantors, must receive the imprimatur of the University. If the grant is awarded the funds are paid to Respondent and placed in a special account for that particular project. The funds will then be dispersed by Respondent under the direction and administration of the principal researcher.

Seeking and securing grants is not a once-in-a-lifetime occurrence for the faculty member, but a regularly repeated process. Furthermore, in many fields a variety of funding sources for advanced research exist and the faculty member of stature will be aware of and may have access to them. In this context, it is easier to explain the manner in which the RA appointment may develop. A graduate student, as noted above, has been drawn to a particular faculty member because of similar interests. The professor may be conducting research pursuant to a grant in an area of immediate interest to the graduate student. If the grant includes such funds, the student may request, or the professor may offer, an RA appointment. Who initiates the proposal seems of little moment. The student may tailor his

In many respects, the relationship between the University and the RA is similar to that of the TA. The stipend is paid by a University check although the funds come from different sources. Both are eligible for similar benefits and both work with other graduate students who enjoy a variety of types of financial support. Usually the student ready for an RA appointment prefers this form of support to the TA since the teaching reduces time available for research. Evaluation of the work of the RA will, in most cases, be indistinguishable from evaluation of his progress as a student since the quality of this research work will relate to his progress towards or on his thesis. This is less so where the RA work is not directly on the thesis and the principal researcher on the project is not his academic advisor.

Work methods will, necessarily, differ from those of the TA, reflecting the difference in work content. Teaching classes is almost never part of an RA appointment. It may include searches of literature, study of sources or other academic tasks which a TA might also perform. The hours of work expected are markedly different. Nominally, both prior to and under the collective bargaining agreement with Charging Party, the same appointment fraction terminology was applied to both types of appointment. The collective bargaining agreement with Charging Party carefully calculated and set forth maximum duties and hours of the TA. That agreement, however, recognized that it was impossible to place a limit of hours per week on the RA appointment.

Faculty members may and do hire technicians, students at hourly rates and post-doctoral professionals to work on grant research. Some faculty testified that for their own research projects they hire only associate researchers and technicians and seek separate grants for thesis support. This approach distinguishes the faculty member's "own" research from other research, although the grants supporting both would be, at least in name, awarded to the faculty member. Other witnesses indicated that RA's are engaged to develop data for the principal researcher's experiments.

Testimony indicated that upon entering graduate school, students are not usually skilled researchers. Although they have acquired a basic body of knowledge in undergraduate studies, they lack the scope necessary to pursue a research project. Depending on his level of accomplishment, the newly

appointed RA may spend a greater time learning than he will in producing valuable knowledge. Nevertheless, the same group of witnesses testified that in due course, the RA will develop a collegial relationship with the faculty member in pursuing knowledge within their discipline, and may even become a greater specialist in his specific topic, although the faculty advisor will continue to serve as a guide in the graduate student's work.

A great deal of testimony was taken as to whether or not RA work was necessarily "relevant" to the student's own studies. A graduate student employed for research not relevant to his studies will be hired as a "temporary hourly employee." This is not an academic appointment. The RA appointment is utilized when the research is "relevant." This requirement, however, still permitted a wide divergence in testimony as to whether specific RA appointments were "relevant" to the thesis. In many cases, the RA did not yet know what his thesis would be. Charging Party's witnesses were as enthusiastic in declaring the academic irrelevancy of their RA appointments as Respondent's cross-examination and witnesses were confident of the relevancy in every case. Despite this conflict of testimony, it is clear that in virtually all cases, the RA appointment reflects and closely tracks the student's academic discipline and interests.

The relationship between the RA and the central administration and even the department is relatively tenuous. The department may not even have a central roster of RA's since each RA works with a specific faculty member. The central administration processes all the paperwork, but does not screen the RA or other GSA selection except for basic requirements such as minimum hours enrollment, certificate of academic relevance, (unless the appointment is within the student's own department), tax status, such as Form K requirements, and similar administrative concerns. The administration reviews departmental records to see that the hours of work allocated to each GSA comports with the stipend size. Occasionally, a TA will be appointed but a class registration will not justify the course. Respondent will make an effort to change the type of appointment to permit the support to continue. As a matter of practice, support has continued even when the department has been unable to find a specific appointment or duties for the

student. Respondent seeks to avoid reducing the support package once awarded.

POSITIONS OF THE PARTIES. Charging Party takes the position that holders of graduate student assistant appointments perform services in employment for Respondent. Charging Party contends that this issue is clear under Michigan law and that federal holdings are irrelevant. It argues that the teaching assistantships insure sufficient teachers for undergraduate courses, and that the training aspect of the undergraduate TA is secondary. It argues, further, that research assistants perform services on projects of faculty researchers even in the few cases in which the grant design is adjusted to provide support to the RA's desired research. It argues that the form "K" appointment and work experience requirement relate to tax liability and degree requirements but do not change the nature of the services performed. Charging Party's brief sees in appointment assistants as all elements of employment: graduate student assistants are hired and sometimes fired, are paid wages for the performance of services, are directed in the manner of performing their services; perform services necessary for the "employer's business"; are evaluated for the quality of their work and may be discharged or not rehired based on the manner in which they perform their duties. The brief argues that although a research assistant may work on a project which has some degree of relationship to his own dissertation, the objective of the work is always to further the project which is the responsibility and interest of the principal researcher who has secured the grant. Where a grant is secured for purposes of a thesis, Charging Party argues that there is still a joint goal of the RA and the primary researcher and, in any event, these cases are the exceptions. It argues that since research is one of the primary missions of Respondent, RA's have the same relationship to the completion of research grants that TA's have to the function of teaching.

The Respondent takes the position that appointments of graduate students are solely educational in nature, to provide financial assistance to students to permit them to pursue their education. It argues that the granting of appointments, possible termination or noncontinuance of appointments and evaluation of performance of the required duties are all related to the training or educational content of the appointment. Since a common

goal of graduate students is eventual teaching on a college faculty, teaching experience is a necessary part of training. The RA is engaged in research as a student, either directly or indirectly on his own dissertation, and receives support as a student for that purpose. Respondent stresses that throughout the graduate student's career within the institution the relationship with faculty will be one of student and teacher and never that of an employee. Graduate students must attend classes (within degree requirements) and have not received a terminal degree. Respondent argues that if it only sought to fill teaching or research positions, it would hire experienced teachers or researchers and would not expend its funds for unskilled beginners in teaching and research. Respondent distinguishes Michigan cases relied on by Charging Party and, in turn, looks to other Commission cases which it feels are relevant. Respondent strongly urges reliance on federal decisions which have found graduate student assistants not to be employees of universities in the private sector.

ANALYSIS AND CONCLUSIONS OF LAW

The issue to be decided in this matter, pursuant to the demand, is whether Commission jurisdiction exists over graduate student assistants holding appointments with Respondent. Other formulations of the issue, such as asking what is the "essential relationship" of the graduate students and the Respondent or whether they have "employee status," are means of analyzing the issue. The question to be resolved must be formulated in terms of PERA and MERC jurisdiction and the decision must be based on governing cases of the Michigan Courts and this Commission. Federal decisions and decisions of other states, however interesting and instructive, are not determinative. The Commission has recently restated this:

In our administration of PERA, we are not bound by NLRB doctrine or rulings, although we may look to these

- Each of the parties was kind enough to append to its brief a copy of another state supporting its position. Charging Party furnished a copy of Florida State University, 3F PER 304 (1977), a Florida Public Employment Relations Commission, affirmed by the Florida Court of Appeals, 101 LRRM 2203 (1979). Respondent provided the text of University of Massachusetts, Case No. SCR 2096 (1979), a decision of the Massachusetts Labor Relations Commission. Presumably, the net effect is that one cancels out the other.

for guidance From time to time we may specifically adopt a holding of the NLRB. However, even then our administration of PERA will not be tied to the vagaries of the NLRB adjudication. . . . We shall continue to interpret and administer PERA based on the needs of public employment in Michigan, exercising our judgment as to policies appropriate for effectuation of the will of Michigan's legislature. *Detroit Bd of Education*, 1980 MERC Lab Op 49, 68-69.

Respondent argues that this case presents an issue of first impression which does not require the Commission to reverse any prior holding. Respondent distinguishes *University of Michigan (Interns and Residents)*, *supra*, and relies on federal decisions, arguing that the Commission has changed its position on occasion to reflect the holdings of the National Labor Relations Board. *University of Michigan*, 1977 MERC Lab Op 655 (licensed practical nurses).

Despite various factual distinctions which Respondent correctly notes between graduate student assistants and interns and resident physicians, the undersigned finds that the Michigan decisional law requires a finding that the teaching assistants herein are employees under PERA. *Interns and Residents* makes it clear that a student of an educational institution may be an employee of the same institution under PERA even though the activities performed as an employee contribute to his education at the same institution.

Graduate student assistants are students. MERC jurisdiction will attach only if they perform services as employees. In the opinion of the undersigned, the record demonstrates that teaching and staff assistants do perform services as employees. A basic part of the mission of Respondent is providing undergraduate education. The teaching assistants teach or otherwise generate close to a third of the undergraduate credit hours of instruction. By accepting teaching assistant appointments, the teaching assistants become obligated to perform the duties of teachers of undergraduate students. This teaching is part of the total conduct of Respondent's "business." The amount of compensation or stipend is related to the hours of effort required to fulfill the appointment. That engaging in this activity is beneficial to the graduate student and that graduate students seek these appointments for the support to continue their education with Respondent does not change the facts.

Other facts relied on by Respondent are, no doubt, true. Graduate students receive these appointments in tandem with other kinds of financial aid. Where possible academic departments seek to award the most desirable students grants or fellowships requiring the performance of no specific services. The appointment is for one semester at a time. The teaching assistant may or may not receive guidance and training in teaching skills and will have different freedom in conducting the particular class depending on the department and his or her prior experience. One may demur from some of Charging Party's descriptions of the teaching assistants' relationship to Respondent. The application of the terminology of employment such as "hire," "fire," and so forth, may strike a jarring note but the substance is shown. As to "firing" the record does not indicate very many instances. If anything, the record showed a desire to continue the student's stipend, no matter what. However, this desire does not convert the relationship to one of a mere gratuity unrelated to services.

Charging Party cites, and Respondent attempts to distinguish, *Betts v Ann Arbor Schools*, 403 Mich 507 (1978), in which the Supreme Court held that a student teacher was an employee within the meaning of the Workers Compensation Act, MCLA 418.101, et. seq. Plaintiff in that case was an undergraduate student of a university (The University of Michigan) and taught as a student teacher for a nearby public school district, receiving no wage or compensation of any kind. The Court found that the plaintiff was an employee of the school district as a "integral cog in defendant's business of education." Respondent distinguishes the case on the basis of the fact that the holding makes the plaintiff an employee of the institution in which he performed teaching duties and not of the institution of which he was a student. In the instant case, the graduate student assistants have both relationships with one institution, performing their teaching duties (for compensation) for the same institution for which they are students. The Court found that the training and improving in skills afforded that plaintiff, was itself a form of compensation for the services he rendered to the school district. Although this plaintiff was to receive his degree from the university in which he was enrolled and not from the public school district, the Court makes it clear that the fact that he was present for training purposes did not preclude

the finding of an employment relationship based in the performance of services. That holding is consistent with the *Interns and Residents* decision in which the employing institution and the degree granting institution were the same.

Respondent contends that the governing decision in this matter is the Commission decision in *Detroit Public Schools, (McNamara Skills Center)*, 1972 MERC Lab Op 87. In that case the Commission found that trainees under a federal program for the unemployed were not employees of the school district conducting the program. The trainees were engaged in a variety of vocational training programs. They spent their time in classroom situations with the exception of a small number who helped operate a cafeteria in the facility. The Commission found that the recipients were students and that the support they received was a form of assistance while they completed the training program. Respondent compares the graduate students with the students in *McNamara* in that both groups receive financial support while they engage in a course of studies and provide minimal services to the educational institution.

In the opinion of the undersigned, the analogy is flawed. The students in *McNamara* comprise the total student body of the institution. By contrast, Respondent provides both graduate and undergraduate education. Lengthy citations from the exhibits are not necessary to establish that Respondent operates a major center of undergraduate education. The teaching assistants are utilized in the teaching of a substantial portion of the undergraduate hours. Obviously, they do not come to Respondent, nor does Respondent select them, for the purpose of teaching undergraduates, but once enrolled they are methodically and deliberately used to assist Respondent in performing its undergraduate teaching mission. The recipients of training allowances in *McNamara* performed virtually no services for the school district. No clients or students were instructed by other students. The "training allowances" were paid by the Michigan Employment Security Commission, not by the school district, based on the applicable unemployment compensation payment rates.

It is true that while instructing undergraduate courses, the TA develops skills related to possible future employment as a college teacher. Some departments encourage their graduate students to take the TA appointments for that reason. These

facts, however, do not change the underlying fact. The TA in an undergraduate classroom is teaching, or assisting in teaching, the undergraduate students. Very likely, the obligation of teaching the subject matter may aid the TA in sharpening and improving his knowledge of his subject. However, that is true for all but the most moribund instructor of any class. The graduate students engaged in teaching are much more closely analogous, in function to the housestaff in *University of Michigan (Interns and Residents)*, *supra*. They are gaining or improving skills while performing work which helps the institution fulfill its mission, or—to put it somewhat crassly—helping it "produce" its "product." The distinction stressed by Respondent—that the housestaff physicians have received their terminal degree while the graduate student assistants have not—seems to be a distinction without a difference. Furthermore, a substantial proportion of the teaching assistants may have received a masters degree, or completed the equivalent (since many programs of the Respondent do not bother with the intermediate step of the separate masters degree) while engaged in teaching as TA's. Such a degree would permit the holder to teach undergraduate courses in a college or community college not requiring a doctorate.

Respondent's brief contrasts the "primary activity" of interns—work—with the graduate student whose primary activity is "study." That is not the issue. One must distinguish the individual's "primary" goal or activity from the particular function he fulfills while serving pursuant to an appointment as a graduate student assistant. It is nowhere denied that the graduate student is a student or that his primary activity and reason for being at the University is to be a student. But during the hours of the day or week in which the TA performs the duties of his appointment, he or she does so as an employee. Respondent's distinction may have application to the graduate student as student.

During the majority of his work week, and in many, if not most, elements of his life at the University, the graduate student is and remains a student. All elements of that relationship not related to the appointment as student assistant remain outside of PERA. The Supreme Court decision in *Interns and Residents* is as explicit on this point as it is as to employee status. The above analysis and conclusions apply equally to the small group of graduate student staff assistants.

the research described in the grant proposal makes him an employee.

The contrary view focuses on the graduate student rather than on the research. In seeking a research degree, the doctoral candidate develops a thesis topic together with a faculty member who is his or her graduate advisor. A committee of senior faculty may become involved in this process at a later point. The development of the thesis topic, its acceptance by the graduate advisor, its further shaping in the give-and-take of the candidate and the advisor, are part of a long and sometimes arduous intellectual exercise. If all or part of the work is to be conducted pursuant to an RA appointment, the intermingling of the educational and employment relationship will be inevitable. The decision to accept a candidate, to accept his thesis proposal, and to conclude that the student and thesis warrant support are all, without a doubt, educational decisions. Once the appointment is made, these educational decisions will continue to be made at various points in the progress of the student towards his degree. Although the conditions of a particular RA appointment may be imposed upon the doctoral candidate as he pursues his work, the employment component is an afterthought imposed upon the existing situation.

Research carried on as part of a course of study is often identical with the research assigned as part of the "work" of the RA. In this situation study and work are identical. The concerns of the department or professor with the work of the graduate student as a "student" and with his "production" as an "employee" are one. Evaluating the quality of the work will permit no distinction between evaluation of the student in his progress as a degree candidate and as an employee carrying out research. This is true for the majority of the research assistants, not only for those whose thesis work is identical with the research appointment.

The RA may fall in three rough groupings. A certain proportion of RA's have helped design the grant application to match their preselected thesis topic. Here the interrelation of work and study is obvious. Where the RA work is related to, but not identical with the thesis area, the result will be the same. Although the grantor, (government agency or foundation) and the professor who is principal researcher will benefit from the research, nevertheless, the professor must simultaneously evaluate the

The subject of the research assistants requires separate analysis. Research assistants make up approximately 17 percent of the graduate student assistants. Their work is different from that of the teaching assistants. They present a close question and both sides of the issue should be considered.

In assessing the employee status of the RA, Charging Party stresses that every RA appointment is issued pursuant to the conditions of a grant by an outside funding source. The grant is based on the principal researcher's proposal to conduct certain research, and the granting agency awards its funds on that premise. No matter what relationship the research may have to the thesis of an individual graduate student appointed as an RA, the student assistant is assisting the prime researcher in fulfilling his obligation to the granting source. Charging Party sees an employment relationship in this.

The record indicates the broad scope of grant research. A large number of grant sources contribute very large sums to research efforts conducted within the context of the University. Some funds provide for fellowships and other unconditional grants. Others support research assistants through grants to prime researchers, including funds to be used to support graduate students. Obligations attach to this process. The obligation may be no more than to pursue a line of research to determine if it is fruitful. Here, no results or poor results may be an answer. The size of this funding equals a significant fraction of the Respondent's budget. The availability of this funding eases the burden of the University since faculty research is one of the missions of a research university, as well as a vital professional activity of the individual faculty members. The availability of these outside funds to support research within the university has led to the growth of the university as a major research center.³ This growth includes faculty research and the independent research centers outside the academic departments or schools.

In this context, one may argue that the research assistant is but a cog in the wheel of this vast enterprise, and that when he accepts an appointment as an RA, the obligation of performing

3. See, e.g., GRIFF, GRADUATE EDUCATION, (Center for Applied Research in Education, N.Y., 1965); WOLFE, THE HOME OF SCIENCE: THE ROLE OF THE UNIVERSITY, (Carnegie Commission on Higher Education, N.Y., 1972); BARZUN, THE AMERICAN UNIVERSITY, (Harper & Row, N.Y. 1968).

student's work in his role as "teacher." This work will be presented to him by the student to earn a research degree, either in a final thesis or during the progress of the work which the professor must monitor. At the same time, the professor as prime researcher and administrator of the RA appointment must evaluate and monitor the work for fulfillment of the obligations of the RA appointment.

A third category of RA's may work on research not directly related to a thesis. The student may not have yet selected a thesis. Some RA appointments are in research institutes on contracts to fulfill obligations to outside grantors. The work may be thesis work, but depending on the closeness of the student's thesis topic to his job obligations, these RA's will come closer to the "employee" role. At the least, appointments in this latter category are "academically relevant" to the student's course of study.

Charging Party vigorously resisted the pervasive use of the term "academic relevance." Its brief, indeed, questions whether there actually exists a "certificate of academic relevance." However, the concept does appear to have some standing. The recognition clause of the collective bargaining agreement entered into by Charging Party includes in the definition of "research assistant" those whose employment is "considered academically relevant by the department or degree program in which the degree is being pursued."

Where the RA appointment is less directly related to thesis work, the "ratio" of the work and student components may be altered. These are questions of gradation; nevertheless, there appears to be no clear basis upon which to distinguish within the group of graduate student-research assistants. In every case, the element of academic relevance to the degree program is present. Were it not, the student would (or should) be hired as some type of temporary hourly employee to perform research tasks. It is true that these categories of support are not always strictly separated. During the summer, for example, when RA appointments are not available, a graduate student may be paid as an hourly employee to continue research which during the regular school year he performs under an RA appointment. This type of practice underlines the fact that the department or graduate advisor will pragmatically seek to continue the student's financial support whenever possible.

Charging Party argues that the steady flow of overhead payments to Respondent as part of each grant makes these a part of the "business" of the Respondent. In the opinion of the undersigned this is not a significant fact. Respondent does not encourage research by its faculty to collect overhead payments as a kind of huge "brokerage" or "finders" fee. Respondent is not founded for that purpose. Overhead payments by the grant donors are a recognition of the cost to Respondent of the grant system within the context of the University. Although the record describes a kind of symbiotic relationship between faculty researchers and the University, this fact of academic life does not totally redefine the nature of the University.

Charging Party argues in its brief that it was Respondent which insisted on including RAs in the unit originally and Respondent should be estopped from taking a different position now. See, *University of Michigan*, 1971 MERC Lab Op 1053. However, this equitable argument is insufficient to resist a finding based on the record. Furthermore, this recommendation may change the result of that case but it does not require a reversal of the principles of bargaining unit law contained therein because unit issues are not the basis for the finding here. Unit questions are not reached if some of the "employees" in the proposed unit are not employed by the putative employer. If there is no question concerning representation, unit questions never arise. This finding is much like the analysis in the dissenting opinion in *Wayne County (General Hospital)*, 1980 MERC Lab Op 122, 128.

This recommendation must also be distinguished from *Macomb County (Probation Officers)*, 1970 MERC Lab Op 309, in which state-paid probation officers were found to have an employment relationship with the county in which they were assigned to perform identical work together with county probation officers. In the case of the RAs, it is the nature of the work, and not the source of the funding, that distinguishes them from other GSAs.

On the basis of the record of the original hearing and the hearing on remand,⁴ and the above findings of fact and analysis, the undersigned concludes that the research assistant category

4. See, *Lipka v Brown City Community Schools* (on Rehearing), 403 Mich 554, 558 (opinion of Kavanagh, C.J.), in which the Chief Justice reversed his finding upon rehearing and commented thereon.

must be found to fall outside the scope of an employment relationship which would be susceptible to PERA jurisdiction. Therefore, in applying the remedial order in this matter, the appropriate unit shall not include persons holding the appointment of graduate student research assistant and Respondent's motion to dismiss is granted in respect to this classification.

REMEDY. The contract which is the subject matter of this dispute has expired by its own terms. The original recommended order required Respondent to execute that contract. The remedy should be expanded to require execution of the contract and application of its terms up to and including the present time, together with an obligation to bargain, on demand, for a new collective bargaining agreement. The terms of the existing agreement are to remain in effect until the parties reach agreement on a new contract or have bargained in good faith to impasse. Portions of the contract relating to research assistants may be ignored or deleted.

RECOMMENDED ORDER

The recommended order contained in the original decision and recommended order is again recommended with the following modifications:

Paragraph (b) 1 should be modified by deleting the period at the end of the sentence and adding "and, upon request, bargain for a new contract."

The notice to employees should be amended by substituting the following paragraph for the second paragraph of the notice portion:

WE WILL sign a collective bargaining agreement containing the agreement reached on November 18, 1976, with the Graduate Employees Organization, and upon request, bargain for a new contract.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Shlomo Sperka,
Administrative Law Judge

Dated: July 14, 1980

In the Matter of:
PONTIAC CONSUMERS
CO-OP OPTICAL, INC.,
Respondent,

-and-

IEU, LOCAL 932 and
MARY CLARK, An Individual,
Charging Parties.

Case No. C80 F-166

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VII-F Employer Unfair Labor Practices
Discrimination Not Found

Employment Conditions, Discriminatory Changes—Transfers, Reassignments or Reduction of Work—Grievance Filing—Retaliation Not Found. Commission majority affirms ALJ finding that optical company reduced hours of employee because of reduced volume of business and not because she had filed grievances securing substantial benefits for herself under the contract. Although the reduction in hours reduced her benefits under contract provisions governing part-time employees, Commission affirms ALJ finding that this reduction was nondiscriminatory despite the fact that union strongly disputed this interpretation of the contract and prior experience was somewhat ambiguous. Commission agrees that employer made a good faith interpretation of its contract despite past practice. (Dissent finds reduction of hours and benefits was retaliation for successful grievance filing and finds an employer obligation to bargain as to benefits of part-time employees. Dissent also finds evidence of animus in threats by employer during negotiations with reference to the high cost of this employee's prior grievance settlements.) (LMA)

Appearances:

For Respondent: H. Wallace Parker, Esq.

For Charging Parties: Greenspon and Washington, by
George B. Washington, Esq.

DECISION AND ORDER

On May 26, 1981, ALJ Shlomo Sperka issued his Decision and Recommended Order recommending dismissal of the unfair labor practice charges in the above-entitled matter. The Decision and Recommended Order was served on the parties in accordance with the Labor Mediation Act (LMA), 1939 PA 179, as amended, MCLA 423.23, MSA 17.455(24). Thereafter, Charging Parties filed timely Exceptions alleging error in the Judge's