

**STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION**

In the Matter of:

CARMAN-AINSWORTH COMMUNITY SCHOOLS,
Public Employer,

MERC Case No. R17 A-002
Hearing Docket No. 17-003955

-and-

MICHIGAN EDUCATION ASSOCIATION,
Labor Organization-Petitioner,

-and-

BENDLE/CARMAN-AINSWORTH EDUCATION CONSORTIUM,
Interested Party.

APPEARANCES:

Collins & Blaha, P.C., by Jeremy D. Chisholm and Seth A. Filthaut, for Carman-Ainsworth Community Schools

Wendy Heinig, Michigan Education Association, for the Petitioner

Eddie Kindle, Superintendent, Carman-Ainsworth Community Schools, for the Bendle/Carman-Ainsworth Education Consortium

DECISION AND ORDER

On January 10, 2017, the Michigan Education Association filed a petition with the Michigan Employment Relations Commission for a self-determination election pursuant to Section 13 of the Public Employment Relations Act (PERA), 1965 PA 379 as amended, MCL 423.213. Petitioner seeks to combine two bargaining units, each of which are represented by a labor organization affiliated with Petitioner. The case was heard in Detroit, Michigan, on May 2, 2017, by Julia C. Stern, Administrative Law Judge (ALJ) for the Michigan Administrative Hearing System (MAHS), acting on behalf of the Michigan Employment Relations Commission (MERC).¹ Based on the record, including briefs filed by the Petitioner and the Carman-Ainsworth Community Schools on June 26, 2017, we find as follows.

¹ Notice of this hearing was sent to the Bendle Public Schools, but no one appeared at the hearing to speak on its behalf.

The Petition and Positions of the Parties:

The Carman-Ainsworth Education Association, an affiliate of the Petitioner, currently represents a bargaining unit of certified teaching personnel and registered nurses employed by the Carman-Ainsworth Community Schools (Carman-Ainsworth). The Bendle/Carman-Ainsworth Alternative Education Association, another Petitioner affiliate, currently represents a bargaining unit of teachers and counselors in two alternative high school programs open to students of Carman-Ainsworth, the Bendle Public Schools (Bendle) and the Flushing Community Schools.

Petitioner asserts that the teachers in the two bargaining units share a community of interest and seeks, through a self-determination election, to combine the two units. Carman-Ainsworth objects to the election on the grounds that the Bendle/Carman-Ainsworth Consortium (the Consortium or B-C Consortium), and not Carman-Ainsworth, employs the alternative education teachers. According to Carman-Ainsworth, the Consortium has existed for over thirty years and, although its services have changed and Carman-Ainsworth has replaced Bendle as its fiscal agent, the Consortium remains the employer of the alternative education teachers. It asserts that since the units have different employers, combining the two units would not be appropriate and the petition should be dismissed. In response, Petitioner asserts that Bendle no longer participates in the administration of the two alternative high school programs and, therefore, Carman-Ainsworth is now their employer.

Findings of Fact:

The 1979 Adult/Community Education Agreements

Carman-Ainsworth and Bendle are adjacent school districts located in Genesee County. Carman-Ainsworth is the larger district. In 1979, Carman-Ainsworth and Bendle entered into two agreements, a “Cooperative Education Agreement,” and a “Community Education Agreement,” to provide adult basic education and high school completion classes, and adult and youth enrichment and leisure programs to residents of both school districts. These classes were held in buildings in both districts. The impetus for the agreement was the state school funding arrangements at the time, under which Bendle, as an “in-formula” district, was eligible to receive state funds to operate adult basic education and high school completion programs while Carman-Ainsworth, an “out-of-formula” district, was not. The 1979 agreements provided that: (1) Bendle would operate adult basic education and high school completion programs for both districts as a direct extension of Bendle; (2) the director of community education for Carman-Ainsworth would be responsible for administration of all community education programs, including the adult basic education and high school completion programs, and would be directly responsible to the superintendents of both districts or their designees; (3) Bendle would provide all education, administrative, management and operational services necessary for the adult basic education and high school completion programs;² (4) Bendle would receive state membership aid

² David Swierpel, who was hired to work in the program in 1979 and later became its director, testified that since Bendle had no separate human resources personnel, Carman-Ainsworth administrators handled certain personnel matters for the program.

and adult basic education reimbursement from the State of Michigan for all students enrolled in the adult basic education and high school completion programs; (5) Bendle would be responsible for all financial transactions, including payroll, for all administrative, instructional and clerical personnel involved in the community education/adult basic education and high school completion programs, e.g., Bendle would issue these employees' paychecks; (6) Bendle would maintain all financial records for these programs; (7) instructional classes would be conducted in both districts, and Carman-Ainsworth would charge Bendle for the use of classrooms, facilities, custodial, and other related costs in Carman-Ainsworth buildings; (8) Bendle would reimburse Carman-Ainsworth for any administrative personnel costs incurred by Carman-Ainsworth in the amount proportional to the effort devoted by Carman-Ainsworth administrators to the programs; (9) costs associated with advertisement and promotion would be borne by Bendle. Both these agreements were continuing agreements that automatically renewed annually unless a party provided written notice to amend or terminate.

David Swierpel was hired in 1979 as a coordinator for the adult education program. When he was first hired, Swierpel was responsible for one aspect of the program, that is, before and after school enrichment programs for adults and youth. A director of community education oversaw the whole adult education program. In 1993, Swierpel became the director of community education for Carman-Ainsworth and acquired overall responsibility for the adult education program as it then existed. Swierpel remained in this position until he retired in June 2014, and it was unclear from the record whether he was ever replaced. Swierpel testified that he was interviewed for the director of community education position by Carman-Ainsworth's assistant superintendent, and that in this position, he had an employment contract with Carman-Ainsworth. Swierpel received his paychecks from Carman-Ainsworth both as coordinator and as director of community education. The record does not indicate whether Bendle reimbursed Carman-Ainsworth for his services. Despite the fact that the 1979 agreements stated that the director of community education would be responsible to the superintendents of both districts, Swierpel testified that throughout his employment, both as coordinator and director of community education, he considered himself an employee of Carman-Ainsworth.

Swierpel testified that the director of community education, together with the supervisor of adult education, interviewed all candidates for adult education instructor positions and decided whom to hire. The Bendle Board of Education then formally approved their hiring. The instructors received paychecks from Bendle. The director of community education put together the annual budget for the adult education program.

At different times during Swierpel's tenure as director of community education there were a variety of other administrative positions that performed services for the adult education program. These included but were not limited to several coordinators and a supervisor or director of adult education. By the time Swierpel retired as director of community education in 2014, the program no longer offered enrichment or adult basic education or high school completion classes. The program by that time consisted of two alternative high schools, as discussed below, for students of high school age. Each of these high schools had a principal, but it was not clear whether there were any other administrators assigned exclusively to what had become an alternative education program.

The adult education instructors were not part of any bargaining unit or represented by a labor organization until approximately 1981, when they were organized into a separate unit represented by what is now called the Bendle/Carman-Ainsworth Alternative Education Association. Swierpel testified that he personally negotiated a series of collective bargaining agreements covering this unit after he became director of community education in 1993. Swierpel further testified that after he and the Association had reached a tentative agreement, Swierpel would discuss the terms of the agreement with the superintendents of both Bendle and Carman-Ainsworth. According to Swierpel, he was not involved in the process after that and did not know whether the agreements were submitted to the Bendle and/or the Carman-Ainsworth Boards for approval before they became final. As discussed below, Swierpel signed the final agreements which were also signed by the Board president and superintendent of the district designated as the fiscal or administering agent.

Sometime in the early 1990s, Bendle and Carman-Ainsworth agreed to jointly create an alternative high school for students of high school age and to operate it under the terms of their adult education agreement. The high school, Atlantis, was a school for students from both districts who had either left high school voluntarily or had been asked to leave high school. Atlantis was located in the Carman-Ainsworth District and eventually moved into a former Carman-Ainsworth elementary school building. The Atlantis curriculum at first consisted of traditional instruction, but over time became a blend of on-line learning with teacher facilitation. Teachers and counselors for Atlantis, like the adult education teachers, were selected by the director of community education and supervisor of adult education and formally hired by the Bendle Board. Atlantis teachers were included in what was then the bargaining unit of adult education teachers.

The 2007 B-C Consortium Agreement and the Creation of the Career Academy

In 2007, Carman-Ainsworth and Bendle entered into a new written agreement creating an entity known as the “B-C Consortium.” The new agreement was drafted in anticipation of an agreement between the school districts and Baker College of Flint, a private educational entity, to create a program under which students could complete the requirements for high school graduation while taking post-secondary classes. The agreement creating the B-C Consortium stated that the “Consortium Education Program” was to be a pilot program, but that the agreement would renew from year to year unless notice of termination was given by one of the parties. The agreement allowed for amendments to the agreement, and the addition of new districts to the Consortium, with the approval of a majority of both the Carman-Ainsworth and Bendle Boards of Education.

The B-C Consortium agreement created a “Consortium Advisory Committee,” comprised of the superintendents of the two school districts, to provide direction for the programs by making recommendations to the two boards. The agreement gave the advisory committee the authority to hire a consortium director as an employee of the Consortium. In fact, however, Swierpel continued, in his position as director of community education, to oversee the Consortium’s programs until his retirement in 2014. Per the consortium agreement, the advisory committee was also responsible for designating suitable facilities for the operation of the consortium program, for developing and maintaining a student code of conduct, for developing

the school calendar, for determining graduation requirements and student eligibility, and for determining the type and number of classes to be offered each year.

The original 2007 agreement designated Bendle as the fiscal agent for the B-C Consortium. Per the agreement, Bendle, as fiscal agent, was to: (1) include the total full-time equated membership of all high school students enrolled in Consortium programs in Bendle's state membership count and receive per capita funding from the state for these students; (2) maintain all student records and grade reports for students enrolled in Consortium programs; (3) handle the expulsion of students from the programs as required by the student code of conduct; (3) maintain all financial records of expenses and revenue incurred in accord with State accounting requirements and Consortium and member district accounting policies and procedures; (4) with input from the Consortium advisory committee, prepare, review, and present an annual budget to be approved by the Boards of both member districts; and (5) disburse funds and pay expenses in accord with the budget. Any surplus funds generated from the Consortium program were to be distributed to the member districts on a prorated basis based on the percentage of Consortium Program students enrolled in each district, and any financial deficit was also to be shared by the member districts on the same prorated basis.

The section of the 2007 Consortium agreement titled "Employment of Staff" included the following:

- A. The Consortium, with input from the Consortium Advisory Committee, shall have the authority and responsibility to employ, direct, evaluate, promote, demote and discharge all personnel required to operate the Consortium's programs and services. Such personnel shall be placed on the appropriate wage and fringe benefit schedules established by the Consortium. All certified employees will require formal approval of employment by the Fiscal Agent.
- B. The Consortium, with input from the Consortium Advisory Committee, will be responsible for employing, paying, evaluating, and discharging all Consortium personnel including the administrative, supervisory, instructional and various support staff. The Consortium shall be responsible for providing Consortium personnel with Workers Compensation as specified by law. The Consortium shall be responsible for complying with provisions of Michigan's Revised School Code relevant to the employment of personnel.
- C. The Fiscal Agent shall authorize the Consortium Advisory Committee to be directly involved in the employment of all personnel assigned to Member District programs. This involvement shall include the determination of need, development of responsibilities, recruitment, selection, evaluation, reassignment, promotion and discharge of such personnel. The Fiscal Agent retains authority on the employment, demotion and discharge of all Consortium personnel.

The B-C Consortium, over the signatures of the Bendle and Carman-Ainsworth superintendents, then entered into an agreement with Baker to operate a high school known as the Carman Park-Baker Career Academy. Admission to the Career Academy, which was by

application, was initially limited to students from Bendle and Carman-Ainsworth. Later, however, the Consortium and the Flushing Community Schools entered into an agreement which allowed Flushing students to attend. College-level classes at the Career Academy were taught by instructors employed by Baker College, while high school classes were conducted in the same building by alternative education teachers. At least at the time of the hearing, the Career Academy was located in a building owned by Baker College in which other Baker classes were also conducted. This building was within the boundaries of Carman-Ainsworth but near its border with Bendle. Students completing the Career Academy program received a high school diploma as well as a transcript from Baker for collegiate-level courses completed successfully.

The instructors teaching at the Career Academy were not initially included in any bargaining unit. However, in 2010 they became part of the unit represented by the Bendle/Carman-Ainsworth Educational Association.

In 2012, Bendle and Carman-Ainsworth executed an amendment to the B-C Consortium agreement that effectively designated Carman-Ainsworth as the fiscal agent for the Consortium. That is, Carman-Ainsworth took on the responsibility for pupil accounting, i.e., reporting to the State on the students enrolled in the Consortium programs; for receiving state per capita funding for these students; for maintaining the financial records of the Consortium, including accounting for all revenue received from grants, gifts and federal and state funding; and for paying the bills of the Consortium, including issuing paychecks. The amendment also stated that the parties would “designate and appoint a Budget Committee to develop, approve and adopt a budget (Consortium Budget) no later than August 1 of each fiscal year.”

Collective Bargaining Agreements Covering the Alternative Education Unit

As discussed above, Swierpel testified that after he became director of community education in 1993, and before he retired in 2014, he personally negotiated a series of collective bargaining agreements covering the adult/alternative education instructor unit. Copies of three collective bargaining agreements covering this unit were entered into the record. The first covered the period September 1, 2010, through August 31, 2012. When this agreement was executed, Bendle was the fiscal agent for the B-C Consortium. The cover page of the 2010-2012 agreement names the employer as the “Bendle Board of Education,” and the recognition clause states that “the Bendle Board” recognizes the Bendle/Carman-Ainsworth Educational Association as the exclusive bargaining representative. On the signature page, however, the employer is listed as the “Bendle/Carman-Ainsworth Adult Education Consortium.” The signature page has spots for the signatures of the president of the Bendle Board of Education, the Bendle superintendent, and the director of community education. The grievance procedure in this contract lists the “director of adult education” as the first step in the grievance procedure, the director of community education as the second step, and a committee consisting of the Bendle and Carman-Ainsworth superintendents as the third and final step before arbitration.

The second collective bargaining agreement in the record covered the period September 1, 2013, through August 31, 2015. By this time, Carman-Ainsworth had become the fiscal agent for the B-C Consortium. The cover page of the agreement names the employer as the “Carman-Ainsworth Board of Education,” and the recognition clause states that the “Carman-Ainsworth

Board,” has recognized the Bendle/Carman-Ainsworth Educational Association as the exclusive bargaining representative. The signature page of this agreement, like the previous agreement, lists the employer as the “Bendle/Carman-Ainsworth Adult Education Consortium.” The 2013-2015 agreement is signed by the Carman-Ainsworth Board president, the Carman-Ainsworth superintendent, and the director of community services. In this agreement, the first step of the grievance procedure is listed as the principal of alternative education and the second step is “the superintendent or his designate.” Swierpel testified that he continued to be the second step until he retired in June 2014. As in the previous agreement, the third step of the grievance procedure in the 2013-2105 agreement was a committee of the Bendle and Carman Ainsworth superintendents.

The third collective bargaining agreement covers the period July 1, 2016, through June 30, 2017. Swierpel had retired by this time, and it is not clear from the record who served as the employer’s negotiator for this agreement. The cover page and recognition clause again name the Carman-Ainsworth Board of Education as the employer, but the Consortium is again listed as the employer on the signature page. This agreement is signed by the president of the Carman-Ainsworth Board and the Carman-Ainsworth superintendent. The steps in the grievance procedure in the 2016-2017 agreement are the same in the 2013-2015 agreement, except that the third and final step in the 2016-2017 agreement is no longer a committee of the two superintendents, but the Carman-Ainsworth superintendent alone.

The Alternative Education Program in 2017

Petitioner argues that as of the filing of the petition, Bendle was no longer playing a role in the direction of the alternative education program. That is, according to Petitioner, whether or not the 2007 B-C Consortium agreement was still formally in effect, the consortium had effectively ceased to exist. The evidence presented on this point was as follows. First, after the 2007 Consortium agreement was amended to make Carman-Ainsworth the fiscal agent, alternative education instructors began receiving their paychecks from Carman-Ainsworth. Second, when Carman-Ainsworth took over the responsibility for managing the finances of the program in the summer of 2013, Carman-Ainsworth, according to its human resources coordinator, concluded that the number of Consortium positions needed to be reduced. The human resources coordinator testified that she consulted with Bendle about what positions should be eliminated. Carman-Ainsworth then posted the remaining positions, and the individuals who had been teaching alternative education had to apply, be interviewed, and fill out new paperwork as Carman-Ainsworth employees. Swierpel had not yet retired, and he interviewed and selected the employees for the positions. According to the human resources coordinator, only one alternative education position was eliminated, although several others had their hours reduced.

At least until Swierpel retired, curriculum decisions for the adult/alternative education programs were made jointly by the director of community education, the supervisor or director of adult education, and, later, the principals of the alternative high schools. For most of this period, Bendle’s director of curriculum provided input to these individuals on curriculum, particularly the English curriculum. Sometime before 2014, however, Bendle abolished its curriculum director position. Thereafter, according to Swierpel, Carman-Ainsworth’s curriculum

director provided advice and input. The record did not indicate who was primarily responsible for curriculum decisions in 2017.

Copies of letters sent by Swierpel in 2013 to alternative education teachers confirming their employment for the upcoming school year were entered into the record. These letters were signed by Swierpel as director of community education and were sent out on Carman Ainsworth stationary.

As discussed above, no evidence was presented regarding whether a replacement for Swierpel as director of community education was hired after he retired in 2014 or, if not, who performed the functions he had performed, including interviewing and hiring alternative education teachers.

Discussion and Conclusions of Law:

The seminal case dealing with a petition to combine two bargaining units represented by the same union is *Lansing School Dist*, 1978 MERC Lab Op 403. In that case, the petitioning union had, for long periods, represented separate units of nonsupervisory cafeteria and custodial-maintenance employees of the Lansing Schools. After the union sought to combine the two units, but the employer would not agree, the union filed a petition for an election. We noted that we had consistently held that a unit of all non-supervisory non-teaching employees within a school district was appropriate. We found that while the existing units were appropriate, the proposed unit of cafeteria and custodial-maintenance employees was also an appropriate bargaining unit. We also found that despite the history of separate bargaining, bargaining for a single unit would not impose an unreasonable burden on the employer, and that the unit employees should be allowed to decide whether the units should be merged. We therefore directed a self-determination election in which employees in both existing units were allowed to vote separately as to whether they wished to be represented in single unit of cafeteria and custodial-maintenance employees or to remain in separate units. We stated that if majorities of employees in both units voted in favor of a single unit, we would certify petitioner as the representative of this unit. If both units voted to remain separate, or if only one of the units voted to combine, the two bargaining units would remain separate. As noted, we did not consider the fact that the employees in that case had historically been represented in separate units to be grounds for denying the petition. Similarly, we find in this case that the fact that the alternative education teachers have historically been represented separately is not, by itself, a reason to dismiss the petition.

Petitioner asserts that the proposed single unit of teaching and other professional employees is appropriate. It is well established that the presumptively appropriate bargaining unit in a public school district includes all teaching personnel and nonsupervisory professional employees, including adult education teachers, teachers of enrichment classes, teachers who are required by law to be certified, and teachers who are not required by law to be certified and/or are not covered by the Michigan Teacher Tenure Act. See, e.g., *Ferndale Bd of Ed*, 1982 MERC Lab Op 1452; *Swartz Creek Cmty Schs*, 1986 MERC Lab Op 358; *Lansing Pub Schools (Adult and Vocational Education)*, 1989 MERC Lab Op 14; *Hesperia Pub Schs*, 1994 MERC Lab Op 972.

However, we have also held that we cannot, or will not, under the authority given us by Section 13 of PERA, order a public employer to bargain on a multi-employer basis. *Common Pleas Court of the City of Detroit*, 1974 MERC Lab Op 83; *Wayne Co Airport Authority*, 17 MPER 85 (2004); *Public Safety Academy*, 20 MPER 12 (2007). There is no dispute that the teachers in the bargaining unit represented by the Carman-Ainsworth Education Association are employees of Carman-Ainsworth. Thus, if the alternative education teachers are, as Carman Ainsworth claims, employees of the B-C Consortium and not Carman Ainsworth, a bargaining unit consisting of these teachers and the teachers employed by Carman-Ainsworth would not be an appropriate unit under Section 13 of PERA.

In the 1970s, 1980s, and 1990s, the Commission decided a series of cases involving agreements between school districts to jointly provide certain services to their residents. In *Center Line Schs*, 1976 MERC Lab Op 729, three school districts, including the Center Line School District, agreed to operate a vocational education center for students in all three districts. One of the issues in the case was whether an individual employed at the center as a job coordinator was a member of a bargaining unit of Center Line School District employees. Center Line handled the finances for the vocational center, and the individual received his paycheck from Center Line. However, he had a contract of employment to which all three districts were parties. The ALJ held that the contract of employment clearly indicated that the individual was employed jointly by the three districts, and not by Center Line, and that he was not properly included in the bargaining unit of Center Line employees. No exceptions were filed to the ALJ's findings on this issue.

In *Lakeview Public Schs*, 1977 MERC Lab Op 899, another unfair labor practice case, the issue was again whether individuals providing services to a program, in this case an adult continuing education and high school summer school program operated pursuant to a joint agreement signed by three school districts, were employees of the district that financially administered the program and issued paychecks to the employees. By terms of the agreement, the program was governed jointly by the school boards of the three districts. The director of the program was hired pursuant to an employment contract signed by all three districts. Policies and rules for the program were drafted by a governing committee comprised of the program director and the individual superintendents of the three districts, and policies and rules were submitted to all three boards for approval. The program was funded partially by state aid and partially by fees. The Lakeview District served as the reporting entity for state aid purposes and collected and administered the state funding and fees. Although classes were held in all three districts, the administrative offices for the program were in a Lakeview facility; the program paid rent to Lakeview for that space. We affirmed the finding of the ALJ that a secretary working for the program was not an employee of Lakeview, but rather was employed jointly by all three districts. We also affirmed his finding that Lakeview was not required to recognize the union representing its clerical employees as the bargaining representative for this secretarial position.

In *Fruitport Cmty Schs*, 1981 MERC Lab Op 677, the Fruitport Schools entered into one agreement with the Grand Haven School District to jointly provide an adult education program, and another agreement with three different school districts to provide certain special education services. We refused to include two clerical employees, each of whom provided services under one of these agreements, in a bargaining unit of employees of Fruitport Community Schools, even though Fruitport was the "employer of record" under both agreements. We held that each

clerical employee was employed by a joint employer or joint venture formed by the school districts who entered into the agreements, and that it was not appropriate to include these two employees in a unit of Fruitport employees.

In a series of subsequent decisions involving consortia formed by groups of school districts to provide certain services, including adult education classes, we held that the consortium itself was the employer. In *West Ottawa Pub Schs*, 1982 MERC Lab Op 629, aff'd *West Ottawa EA v West Ottawa Pub Schs*, 126 Mich App 306 (1983), we rejected a union's argument that a leisure enrichment program was an alter ego of the school district designated as the administering district for the consortium. In *Grand Haven Pub Schs*, 1988 MERC Lab Op 444, aff'd *In Re Grand Haven Pub Schs*, 183 Mich App 186 (1989), we held that the Grand Haven-Fruitport Community Education Consortium was the employer of instructors in its adult education program, despite the fact that Fruitport served as the administering district and that each of the participating districts operated its own community education department, headed by a director who selected, hired, and evaluated his own staff. We noted in that case that the instructors signed annual letters of agreement with the Consortium, and that the two directors together determined wages and benefits, working conditions and policies for all community education teachers. In *Garden City Pub Schs*, 1988 MERC Lab Op 878, the agreement between Garden City and the Dearborn Public Schools creating an adult education consortium stated that Garden City would "operate for itself and Dearborn as a direct extension of Garden City" certain adult education classes. Garden City included all adult education students in its pupil report to the state, kept attendance records for the program, and received all state adult basic education reimbursement and other state aid for the adult education students. Garden City was responsible for administration of the program, except for certain clerical, custodial, administrative and supervisory services provided by Dearborn employees at Dearborn locations for which Dearborn billed Garden City. The interviewing and hiring of new employees, the allocation of job assignments, and the day-to-day supervision of teachers working at Dearborn locations was done by administrators at Dearborn paid by the consortium, and administrators paid by the consortium also performed these functions for teachers working at Garden City locations. Applying the test for employer status under PERA set out in *Wayne Co Civil Service Comm v Bd of Supervisors*, 222 Mich App 287, 294 (1970), we concluded that the powers of an employer were possessed by the Garden City-Dearborn Adult Education Consortium, and jointly by the two school boards that controlled it, and that the Consortium was the employer under PERA. This same consortium was again found to be the employer of adult education instructors in *Garden City/Dearborn Pub Schs Adult Education Consortium*, 1994 MERC Lab Op 1. In *Holland-West Ottawa-Saugatuck Consortium*, 1990 MERC Lab Op 418, the union argued that an adult education consortium could not be the employer because neither the School Code nor the School Aid Act recognized adult education consortia as independent entities. Rejecting this argument, we held again that the consortium, rather than any of the individual school districts, was the employer under PERA of employees performing services for the consortium.

As the cases above indicate, we have repeatedly held that the fact that one of the member districts of a consortium reports to the State the consortium's students as its pupils, collects and accounts for state funding and other revenue, or disburses funds and issues paychecks to consortium employees, does not make that district the employer under PERA of employees providing consortium services. Where the consortium operates as a distinct entity and its member districts share responsibility for its operations, we have consistently found the consortium to be

the employer under PERA and have refused to include consortium employees in bargaining units of employees of any of the member districts.

In 1979, Carman-Ainsworth and Bendle entered into two agreements, a “Cooperative Education Agreement,” and a “Community Education Agreement,” which created an adult education program serving residents of both districts. Under these agreements, Carman-Ainsworth and Bendle shared responsibility for the administration of the program. Bendle handled pupil accounting and finances, and its Board formally hired and employed all the instructors. The director of community education, who may have been selected by Carman-Ainsworth but was responsible to both superintendents under the agreements, managed the program and selected the instructors. Administrators employed by Carman-Ainsworth also provided certain personnel and possibly other services to the program.

The 2007 agreement between Carman-Ainsworth and Bendle creating the B-C Consortium stated that it would renew annually unless notice was given by one of the parties to terminate. The fact that in 2012 the parties executed an amendment to the 2007 agreement indicates that, at least in 2012, the 2007 agreement was still in effect; there is no evidence in the record that the agreement was ever terminated. The 2007 agreement provided that responsibility for the Consortium’s program would be shared by the two districts. According to this agreement, a “Consortium Advisory Committee,” comprised of the Carman-Ainsworth and Bendle superintendents, was to oversee the program and hire a consortium director. In addition, the advisory committee was to make certain decisions, such as establishing the school calendar and determining the type and number of classes to be offered by each high school, which would normally be made by an employing school district. Per the 2007 agreement, the Consortium, presumably the consortium director, with input from the consortium advisory committee, was responsible for directing, evaluating, promoting, demoting and discharging all personnel required to operate the Consortium’s programs, although certified employees were required to be formally hired by the fiscal agent district. The Consortium advisory committee was also to be “directly involved” in employment decisions including the determination of the need for positions, recruitment, selection, evaluation, reassignment, promotion and discharge of personnel. Per the 2012 amendment to the agreement, a Budget Committee, appointed by the parties, was to develop, approve and adopt the annual budget. In short, although the fiscal agent district retained final authority over personnel decisions, all significant decisions related to the operation of the alternative education programs were to be made either jointly by the Carman-Ainsworth and Bendle superintendents, or by a consortium director selected by the superintendents with input and involvement from both superintendents. Under the decisions discussed above, these responsibilities shared by Bendle and Carman-Ainsworth are sufficient to establish the B-C Consortium as the employer of the alternative education instructors in this case.

There are some indications in the record that the B-C Consortium might not be currently functioning as provided in the 2007 agreement, as amended. For example, it was not clear whether there is currently a consortium director, and, if not, who performs the functions assigned to this position under the 2007 agreement. Also, for reasons left unexplained, the Bendle superintendent was apparently removed from the grievance chain in the most recent collective bargaining agreement covering the alternative education unit. We ascribe no significance, however, to the fact that the recognition clause and cover page of this agreement refer to Carman-Ainsworth as the employer, or the fact that no Bendle representative signed the

agreement. The signature page refers to the B-C Consortium as the employer, and it appears to have been the practice to have collective bargaining agreements covering the alternative education unit signed by representatives of the Consortium's fiscal agent. More to the point, there was no evidence in the record that by 2017, the Consortium advisory committee had ceased to exist or stopped carrying out the responsibilities assigned to it in the Consortium agreement. We conclude that there is not enough evidence in this record to support a finding that the alternative education program is no longer controlled jointly by a consortium consisting of Bendle and Carman-Ainsworth, but is now operated solely by Carman-Ainsworth. For this reason, and in accord with our previous decisions, we find that the B-C Consortium is the employer of the alternative education teachers under PERA and that a unit consisting of these teachers and those employed by Carman-Ainsworth would not be appropriate. We, therefore, issue the following order.

ORDER

The petition for a self-determination election is dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: September 14, 2017