

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

In the Matter of:

WHITMORE LAKE PUBLIC SCHOOLS,
Public Employer,

Case No. R98 F-75

-and-

MICHIGAN EDUCATION ASSOCIATION,
Petitioner.

APPEARANCES:

Bruce R. Bigham for the Public Employer

White, Przybylowicz, Schneider & Baird, P.C., by Douglas V. Wilcox, Esq.

DECISION AND DIRECTION OF ELECTION

Pursuant to Section 12 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212, MSA 17.455(12), this case was heard at Detroit, Michigan on January 8, 1999, before Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. Pursuant to Section 13 and 14 of PERA and based on the record, including briefs filed by the parties on or before February 16, 1999, the Commission finds as follows:

The Petition and Positions of the Parties:

The petition was filed on June 8, 1998, by the Michigan Education Association. Petitioner represents a bargaining unit consisting of nonsupervisory paraprofessional employees of the Whitmore Lake Public Schools. Petitioner seeks by election to accrete to this unit all full-time and regular part-time food service employees of the Employer. At issue is the propriety of including the position of head cook in the unit. The Employer asserts that this is a supervisory position.

Facts:

The Employer is a public school district with an enrollment of approximately 1250 students. The Employer maintains two school buildings, an elementary building housing pre-kindergarten through 4th grade, and a secondary building housing grades 5th through 12th. Since 1991, each

building has had its own kitchen where food is prepared and served. The two kitchens together prepare about 1500 hot lunches and about 500 breakfasts per week.

Both kitchens have a head cook who is in charge of the operation of that kitchen. The Employer does not employ a food service director or supervisor. The head cooks report to their respective building principals. In addition to a head cook, both kitchens have an assistant cook, a cashier, and a dishwasher. The cashiers and dishwashers are regularly scheduled part-time employees. The number of hours these employees work per week is based, in part, on the head cooks' recommendations. The head cooks and the assistant cooks are full-time hourly employees. The head cooks, however, regularly work five more hours per week than the assistant cooks. The head cooks also work overtime as needed. While the food service employees generally work only during the school year, the head cooks are paid to attend conferences during the summer.

The head cooks are responsible for ensuring that their kitchens comply with state health regulations and that the menus comply with federal nutritional standards. The head cooks generally prepare the main meals and do the baking. The head cooks also make the menus, order food and supplies, and are responsible for inventory. Most food is ordered through a purchasing service, but the head cooks may receive permission to buy directly from a vendor. Head cooks sign for food deliveries and for services, and must remain after school hours if a delivery or repairman is late. The head cooks do not participate in the preparation of the food service budget. However, in planning meals and ordering supplies, the head cooks must match costs to expenses.

There are no job descriptions for the food service positions, and the head cooks have the authority to determine the duties of each position. In practice, each food service employee has a regular assignment. Even though employees have regular assignments, the head cooks tell them what specifically they are to do that day, as well as overseeing their work throughout the workday. The head cooks also reassign employees when necessary; for example, when an employee is absent and a substitute is not available.

As noted above, the head cooks monitor the day-to-day performance of the other kitchen employees and are responsible for ensuring that their kitchens comply with state health regulations. The head cooks train new food service employees and keep all food service employees informed about changes in regulations or policies. The head cooks have no authority to issue formal discipline. However, the record indicates that they effectively recommend discipline. On one occasion, an employee was given a written warning for chronic tardiness based upon a head cook's recommendation. The written warning referred to the head cook as the employee's supervisor. On another occasion, the building principal discharged a food service employee for poor performance on a recommendation made by the same head cook. In the latter case, the head cook submitted her notes on the employee's performance to both the building principal and the superintendent before the employee was discharged, and the principal also spoke to the employee. However, there was no other independent investigation and the principal's discharge letter stated that it was the judgment of the employee's supervisor (i.e., the head cook) that the employee was not able to do the job.

The head cooks sign employees' weekly time sheets. Except for the head cooks, food service employees generally do not work overtime. The head cooks themselves may work overtime without prior approval. Both head cooks have full authority to hire substitutes and to call them to work when needed. In practice, each head cook has one individual available to substitute in her kitchen. If that substitute is not available, the head cook distributes the work among the rest of the employees. When the head cook is absent, the assistant cook fills in for her.

When a regular kitchen position becomes vacant, it is the head cook's responsibility to submit a position requisition to the personnel office. The head cook prepares the actual job posting which lists the job qualifications and the hours to be worked. The head cook has the authority to make changes in either the qualifications of the job or the hours. For example, when a cashier's position became vacant after the kitchens acquired computerized cash registers, the elementary school head cook changed the qualifications for the position on the posting to include computer knowledge. After the job is posted, the head cook screens all applications and makes the initial determination of who is to be interviewed. The head cook then has the choice of either conducting or participating in the first round of interviews. After these interviews, the head cook gives the superintendent her recommendation. The superintendent and the elementary school head cook have sometimes conducted second interviews together. The superintendent has the authority to make the decision who to hire. The record indicates that at least four or five food service positions have been filled since 1991, including positions in the secondary school kitchen during the tenure of the current head cook. The record also indicates that the superintendent has always hired the head cook's first choice.

Discussion and Conclusions of Law:

We have defined the term "supervisor" to mean:

any individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

School District of the City of East Detroit, 1966 MERC Lab Op 60, 64.

Employees who merely assign or oversee the performance of work by others on a routine basis are not supervisors under the above definition. *Kalkaska County*, 1994 MERC Lab Op 693. However, supervisors with the "authority to responsibly direct" employees assigned to them exercise independent judgment as representatives of management. See *Huron County Sheriff's Dept.*, 1995 MERC Lab Op 505, and *City of Midland*, 1993 MERC Lab Op 601, where shift sergeants were found to be supervisors under the above definition. In this case, the head cooks do not merely assign and oversee the work of food service employees on a daily basis. The head cooks have full responsibility for the operation of their kitchens. They ensure that the kitchens operate smoothly and

that the kitchens comply with applicable state and federal regulations. The head cooks determine how much training, instruction, and supervision of employees is necessary to fulfill these responsibilities. In addition, the head cooks have the authority to change their employees' regular assignments, and to change the qualifications for the positions they supervise. They determine what hours the part-time employees work, and have input into how many hours the part-time employees will work. They hire substitutes and call them in as needed. We find that the heads cooks utilize independent judgment as representatives of management in responsibly directing the food service employees under them.

The authority to discipline or effectively recommend discipline is an important part of supervisory authority. In *City of Detroit*, 1996 MERC Lab Op 282, we found that senior storekeepers who assigned and directed the work of subordinates, and also had the authority to issue oral and written reprimands, were supervisors under the Act. As noted in the findings of fact, we find that the head cooks in this case have the authority to effectively recommend discipline up to and including discharge. The head cooks also have significant involvement in the hiring of regular employees in their kitchens. Although the superintendent possesses the actual authority to decide who to hire, the superintendent does not always interview applicants, and routinely accepts the head cooks' recommendations. We find that the head cooks possess the authority to effectively recommend who will be hired as a regular food service employee.

For reasons set forth above, we conclude that the position of head cook is supervisory and, therefore, should be excluded from the voting group.

Order Directing Election

Based on the findings of fact and conclusions of law above, we find that a question concerning representation exists under Section 12 of PERA. We direct an election among the following employees:

All full-time and regular part-time food service employees of the Whitmore Lake Public Schools; excluding head cooks, other supervisors and all other employees.

Pursuant to the attached Direction of Election, the above employees shall vote whether or not they wish to be represented by the Michigan Education Association. A vote for this labor organization shall indicate a desire to be included in the labor organization's existing bargaining unit of nonsupervisory paraprofessional and other support employees of the Whitmore Lake Public Schools.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Dated: _____