

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

In the Matter of:

CITY OF DETROIT (HUMAN RESOURCES DEPT.),  
Public Employer,

Case No. R97 G-112

-and-

MICHIGAN COUNCIL 25, AFSCME, AFL-CIO,  
Petitioner-Labor Organization.

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APPEARANCES:

David J. Masson, Chief Assistant Corporation Counsel, for the Public Employer

Kevin Bramlett, Administrative Director, for the Petitioner

**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 February 23, 1998, and March 25, 1998, before Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. Pursuant to Sections 13 and 14 of PERA and based on the record, including briefs filed by the parties on or before July 13, 1998, the Commission finds as follows:

The Petition and Positions of the Parties:

On July 7, 1997, Michigan Council 25, AFSCME, AFL-CIO, filed a petition seeking to accrete by election approximately 24 clerical employees of the City of Detroit, Department of Human Resources, to its existing bargaining unit of nonsupervisory employees of the City of Detroit. The classifications sought by the Union are described in the petition as follows:

All full-time and regular part-time typists, senior typists, personnel records clerks, senior personnel records clerks, head clerks, principal clerks, data program aides,<sup>1</sup> and administrative supervisors assigned to the City of Detroit, Department of Human Resources.

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<sup>1</sup> The record indicates that there are no employees with this classification title in the human resources department.

The Employer argues that the petition should be dismissed because the parties have agreed to exclude all positions in the human resources department from the unit. In addition, the Employer contends that some or all of the disputed classifications are confidential and/or supervisory as defined by this Commission. Petitioner asserts that all of the employees covered by the petition are clericals who share a community of interest with the employees in its existing unit and that none of the positions are supervisory or confidential in nature.

Background:

The City of Detroit employs approximately 18,000 employees, 16,000 of whom are represented by unions. The City has approximately 110 separate bargaining units represented by a variety of different unions. The nonsupervisory unit represented by Petitioner is the City's largest unit. Petitioner also represents a bargaining unit of supervisory employees.

The department of human resources employs approximately 298 employees. One of its responsibilities is to administer the City's civil service rules. These rules apply to both unorganized and organized employees, through incorporation of the rules into the City's collective bargaining contracts. Another responsibility of the department is to administer labor relations for the City. The department is headed by a director and is divided into eight divisions: (1) labor relations; (2) employment certification; (3) classification and compensation; (4) recruitment and selection; (5) hearings and policy development; (6) organization and employee development services; (7) administrative services; and (8) field operations. Employees in the field operations division are already included in Petitioner's unit. The remaining employees are currently unrepresented.

Preliminary Matters:

The Employer asserts that the petition should be dismissed because the master agreement currently in effect between the Employer and the Petitioner specifically excludes employees of the City's human resources department. We disagree. Absent an explicit agreement by the petitioner not to seek representation of the positions in question, a contract which excludes certain positions will not serve as a bar to an election petition seeking to add these positions to the unit. *Berrien County Sheriff*, 1984 MERC Lab Op 1072, 1078. See also *City of Saginaw F.D.*, 1992 MERC Lab Op 601; *Swartz Creek Community Schools*, 1986 MERC Lab Op 358. There is no evidence in the record suggesting that Petitioner has explicitly agreed to refrain from seeking representation of positions in the human resources department. Accordingly, the Employer's argument is without merit.

The City further contends that all of the positions covered by the petition are confidential. According to the Employer, every employee in every division of the human resources department performs a function which affects the employment status, benefits, or other terms and conditions of employment of City employees, including those in bargaining units. Every employee is expected to be knowledgeable about the contents of every City collective bargaining agreement as it impacts upon his or her area. Every employee is expected to be involved in planning for the future. This may include suggesting changes to the status quo with respect to mandatory bargaining subjects. The Employer cites *City of Detroit Police Dept.*, 1996 MERC Lab Op 84, 104-105, for the proposition

that the term “confidential employee” includes individuals who formulate, determine and effectuate confidential labor relations policies. While the clerical employees covered by this petition are expected to provide input into the Employer’s labor relations policies, they neither formulate, determine nor effectuate these policies. Thus, we reject the Employer’s contention that all of the positions covered by the petition are confidential.

Alternatively, the Employer argues that the following five positions covered by the petition are confidential: (1) the senior typist in the labor relations division; (2) the senior typist in the benefits unit; (3) the principal clerk in the classification and compensation division; (4) the senior typist in the classification and compensation division; and (5) the senior typist in the hearings and policy development division. In addition, the Employer asserts that the following seven positions covered by the petition are supervisors who should not be included in a nonsupervisory unit: (1) head clerk, administrative services division; (2) administrative supervisor - personnel record transactions, administrative services division; (3) senior typist, benefits unit, labor relations division; (4) senior typist, employment certification division; (5) principal clerk, classification and compensation division; (6) principal clerk, organization and employee development division; and (7) principal clerk, recruitment and selection division. Each of these positions are discussed in detail below.

#### Head Clerk and Administrative Supervisor-Personnel Records Transactions

The head clerk and the administrative supervisor-personnel records transactions both work in the personnel records section of the administrative services division overseeing the work of two personnel records clerks and two senior personnel records clerks. The personnel clerks and senior personnel clerks primarily process status changes. The clerks check to make sure that the information on the status change forms is correct and that it complies with the rules. The head clerk has immediate oversight over the clerks’ work. If there is a problem with a form, the clerks take the form first to the head clerk. The administrative supervisor is the head of the personnel records section. She is responsible for making sure that the section is running smoothly. The administrative supervisor has final approval on all forms that the clerks process. If a problem form is brought to the head clerk, she may consult with the administrative supervisor. The administrative supervisor also reviews seniority lists prepared by the clerks before they are issued.

The head clerk is responsible for rating probationary clerks and for recommending whether they will be given permanent status. She is also responsible for reviewing their job performance. However, the administrative supervisor reviews and signs these documents. The head clerk initially recommends the promotion of personnel clerks to senior personnel clerk status, but the administrative supervisor also reviews these recommendations. According to the record, both the head clerk and the administrative supervisor have the authority to issue oral reprimands and to recommend further discipline, although neither has ever exercised this authority. Both the head clerk and the administrative supervisor can approve time off. The head clerk is the first step of the grievance procedure for personnel clerks and senior personnel clerks, and the administrative supervisor is the second step.

The Employer asserts that the head clerk and the administrative supervisor-personnel records

transactions are both supervisors. Our definition of a supervisor includes all individuals having the authority to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, discipline, or responsibly direct employees, or to adjust grievances, or to effectively recommend such actions, as long as this authority requires the use of independent judgment and is not merely routine. See *City of Detroit*, 1996 MERC Lab Op 282,285. As the Employer points out, it is the delegation of supervisory authority by the employer which makes the employee a supervisor. That is, as long as his authority is real and not theoretical, the fact that the employee has had little or no occasion to exercise that authority is not relevant. *MEA v Clare-Gladwin I.S.D.*, 153 Mich App 792,797 (1986).

The fact that both the head clerk and the administrative supervisor assign and oversee the work of personnel clerks and senior personnel clerks in that division is, by itself, insufficient to support a supervisory finding. Employees who have routine authority to assign and direct work, but possess no other indicia of supervisory authority, are not supervisors under our definition. *City of Detroit*, 1969 MERC Lab Op 661; *Michigan Community Services, Inc.*, 1994 MERC Lab Op 1055. However, the record also indicates the head clerk and the administrative supervisor together rate probationary employees and effectively determine whether they will be retained. In addition, the head clerk and the administrative supervisor jointly evaluate nonprobationary employees and, in effect, determine whether an employee will be promoted. The division head testified that both positions have the authority to issue oral reprimands, a type of formal discipline, as well as to recommend other types of discipline. Based on this evidence, we find that both the head clerk and the administrative supervisor-personnel records transactions possess sufficient authority to make them supervisors under the Act.

#### Principal Clerk and Senior Typist - Classification and Compensation Division

There are six professional positions, plus a manager, in the classification and compensation division. The principal clerk and the senior typist perform clerical duties for all of these positions. The Employer asserts the principal clerk is both a supervisor and a confidential employee, and that the senior typist is a confidential employee.

The principal clerk oversees the work of the division's senior typist and is responsible for ensuring that she is properly trained. She also assigns most of the senior typist's work and approves her time off. The principal clerk rated the senior typist when she was a probationary employee, and effectively decided that she would be retained. The principal clerk prepares periodic written performance reviews for the senior typist. She has the effective authority to determine whether the senior typist will be promoted or otherwise rewarded. Although the principal clerk cannot issue any formal discipline, the record indicates that the division head would accept her disciplinary recommendation without independent investigation. Based on this evidence, we find that the principal clerk in the classification and compensation division has the effective authority to discipline the senior typist and, therefore, is a supervisor under our definition of the term.

The record also establishes that both the principal clerk and the senior typist in the classification and compensation division are confidential employees. We have long recognized that clerical employees may be excluded from participating in collective bargaining if they perform a

confidential labor relations function. In *City of Bay City*, 1966 MERC Lab Op 271, we adopted the definition of a confidential employee used by the National Labor Relations Board (NLRB). That is, we held that an employee who assists and acts in a confidential capacity to a person or persons who formulate, determine and effectuate management policies with regard to labor relations is a confidential employee. We have also held that the number of clericals excluded as confidential should be limited to those necessary to perform the required confidential duties. See, e.g., *Wayne County*, 1988 MERC Lab Op 232.

In the instant case, the classification and compensation division maintains the City's job classification plan, which covers all positions within City employment. This division makes recommendations to the labor relations director concerning the classification and compensation of both unrepresented and unionized positions. These recommendations involve subjects which the Employer is required to negotiate with the unions representing the positions. The record indicates that the division's recommendations are not generally available to the unions. The division also prepares confidential market wage studies to be given to the labor relations director for use in negotiations. Both the principal clerk and the senior typist regularly type, revise, copy and otherwise handle these documents. The record does not indicate what percentage of the division's recommendations involve unionized employees. However, since more than 90% of the City's workforce is represented, the majority of the recommendations involve unionized employees. Accordingly, we conclude that the Employer has demonstrated the need for both clerical positions in the classification and compensation division to be designated as confidential.

#### Principal Clerk - Organization and Employee Development Services

The Employer argues that the principal clerk in the organization and employee development services division is a supervisor. Although many of the principal clerks employed by the City are supervisors and belong to the supervisory unit represented by the Principal Clerks Association, the classification also includes nonsupervisory employees assigned to perform difficult and responsible clerical work. For example, there is a principal clerk in the administrative services division who works in the records room. The Employer does not contend that this principal clerk is a supervisor, and we find no evidence in the record to support the Employer's contention that the principal clerk in the organization and employee development services division is a supervisor under our definition of the term.

The organization and employee development services division is responsible for employee development and training, apprenticeship programs, tuition reimbursement programs, and student programs. The principal clerk serves as the tuition refund coordinator for the division and exercises considerable discretion in that role. She also oversees the work of a senior typist and a typist and assigns them work on a day to day basis. As indicated above, however, routine responsibility for assigning and overseeing work is not sufficient to make an employee a supervisor. Unlike the principal clerk in the classification and compensation division, the principal clerk in the organization and employee development services division does not prepare regular performance evaluations of clerical employees. The record indicates that if a new clerical employee were to be hired in the organization and employee development services division, the principal clerk would provide the

division head with notes on the employee's performance, but would not be asked to rate her or to sign off on the probationary report. There is no indication in the record that the principal clerk has any role in the hiring or promotion of employees. The division head testified that the principal clerk has the authority to issue oral reprimands, and that if the principal clerk recommended further discipline, the division head would be likely to accept that recommendation. However, on the one occasion that disciplinary action was actually taken, the principal clerk merely spoke to employees about the problem. The division head and manager then met with the employees to issue oral warnings and to inform the employees that written warnings would follow if the problem continued. The record does not support a finding that the principal clerk in this division has the authority to effectively recommend discipline. Accordingly, we conclude that the principal clerk in the organization and employee development services division is not a supervisor under our definition of the term.

#### Principal Clerk - Recruitment and Selection Division

The principal clerk regularly assigns and directs the work of two employees, a typist and a junior typist. When the junior typist position was last filled, the principal clerk reviewed and screened the applicants, participated in the interviews, and recommended that the current employee be hired. The principal clerk also rated the junior typist during her probationary period and recommended that she be retained. In addition, the principal clerk has recommended the promotion of a typist under her supervision to a position outside the recruitment and selection division and the typist was, in fact, promoted. Although the principal clerk does not have the authority to issue formal discipline, the record indicates that she has the authority to recommend discipline, and that her recommendation would be accepted by the division head without any independent investigation. The principal clerk is also the first step in the grievance procedure for unrepresented employees. Based on this evidence, we find that the principal clerk in this division is a supervisor.

#### Senior Typist - Labor Relations Division

The labor relations division is responsible for the negotiation and administration of all collective bargaining agreements between the City of Detroit and its unions. The labor relations division also advises the mayor and managers on employment relations issues. This division employs between ten and 14 labor relations specialists who serve as chief bargaining spokesmen for the City in negotiations with its approximately 110 collective bargaining units. The other members of the City's bargaining teams come from City departments where the employees involved are employed, and from other divisions of the human resources department. Before contract negotiations begin, it is the practice of the labor relations division to solicit suggestions from department managers and from human resources personnel actively involved in the administration of the contract involved. The labor relations division then uses these suggestions to make decisions about the positions it will take at the bargaining table.

Two senior typists are assigned to the labor relations division. One is assigned to the benefits unit, while the other works in the main office of the labor relations division. The benefits unit is located in a different building than the negotiating staff. In addition to the senior typist, the unit also

includes a benefits manager, three accountants, another professional staff person, a typist, and five benefit clerks.<sup>2</sup> The benefits unit handles daily benefits activities for all active City employees and retirees, including planning and coordinating open enrollment periods, processing eligibility and other changes, and conducting benefits eligibility audits. The benefits unit compiles detailed information on benefit plans, and communicates information about benefits to employees. The benefits unit is responsible for maximizing the cost effectiveness, efficiency and quality of the benefits the City provides to its employees. Therefore, the unit engages in ongoing analyses of all benefit plans. The unit studies benefit design and costing, and keeps abreast of current legislation affecting benefits and benefit trends. It analyzes internal and external cost and utilization data. It works with carriers, suppliers and consultants to lower costs, and it audits carriers. The benefits unit recommends benefit changes or improvements for both organized and unorganized employees. The benefits unit participates in contract negotiations by providing the City's negotiators with both information and proposals relating to health care benefits. The benefits unit has done cost histories for certain benefits. It also costs out union benefit proposals during negotiations. The benefits manager is usually present at the bargaining table whenever the City and one of its unions are discussing benefit issues.

The Employer asserts that the senior typist in the benefits unit is both a supervisor and a confidential employee. The classification of senior typist is generally included in Petitioner's nonsupervisory bargaining unit. The record establishes that the senior typist in the benefits unit assigns and reviews the work of the typist in her division. At the time of the hearing, the typist was still serving her probationary period. At the end of that period, the division manager will solicit the opinion of the senior typist, but she will not be required to rate the typist or sign a recommendation that she be retained. The division manager testified that the senior typist has the authority to recommend discipline, and that her recommendation would likely be accepted. However, the manager also stated that the senior typist would be expected to bring potential disciplinary problems to her attention. We conclude that the senior typist in the benefits unit does not, in fact, have the authority to effectively recommend discipline and, therefore, that she does not meet our definition of the term "supervisor."

We agree with the Employer, however, that the senior typist in the benefits unit is a confidential employee who should be excluded from collective bargaining. The unit formulates draft proposals and recommendations for changes in benefits to be negotiated at the bargaining table. These proposals and recommendations are typed by the senior typist before being sent to the labor relations director. These proposals and recommendations are clearly confidential documents unless and until a City negotiator decides to show them to a union. The senior typist also helps prepare documents containing cost analyses of union benefit proposals, a confidential function. See *Marquette Public Schools*, 1981 MERC Lab Op 896. Moreover, the record indicates that the three clericals assigned to the office of the labor relations director are already performing confidential work full time, and that these clericals and the senior typist in the benefits unit work in separate locations. Thus, the record supports the need for this senior typist position to be excluded as confidential.

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<sup>2</sup> The position of benefits clerk is not included in the petition. No reason for the omission of this position appears in the record.

We also agree with the Employer that the senior typist in the main office of the labor relations division is a confidential employee who should be excluded from the unit. This senior typist works with two other clerical employees. The record indicates that much of their daily work involves confidential labor relations matters relating to collective bargaining. The senior typist and the two clericals working with her open the division's mail and receive faxes. They see suggestions for contract proposals sent by the managers to the labor relations division, distribute them to the appropriate labor relations specialists, and perform other clerical and administrative tasks relative to these suggestions. They also handle and distribute market wage surveys and costing information conducted by the classification and compensation division, together with the economics unit of the labor relations division. They type, copy and distribute changes to City proposals made both before and after the start of negotiations. At least one of the three clericals is required to be on hand any time a negotiation session is to take place to type new proposals and contract language to which the parties have tentatively agreed.

The record also indicates that the senior typist and the two clericals perform confidential work relating to grievances. In most of the City's labor agreements, the first and second steps of the grievance procedure are handled at the departmental level. The labor relations division assists departments at these levels any time a department asks for their help. Generally, the labor relations division is required to be present at all third step grievance meetings, and to conduct fourth step hearings. The fifth step is arbitration. Staff members from the labor relations division may present the case to the arbitrator. For AFSCME grievances, labor relations staff members usually present disciplinary cases, and assist attorneys from the law department on other cases. The clerical employees file and classify grievances. They also type all draft and final fourth step responses. They collect, receive, file and distribute to the appropriate staff member all documents collected by the labor relations division for use in arbitrations and fourth step hearings. At the direction of a staff member, the three clericals also call potential City witnesses and schedule interviews between them and a staff member. If the labor relations division is handling a case before this Commission, the clerical employees provide clerical assistance to the labor relations staff members handling the case. They also provide attorneys from the law department with documents relating to Commission proceedings, and type and fax correspondence between the labor relations director and the law department relating to Commission cases. Based on this evidence, we conclude that that senior typist working in the main office of the labor relations division, as well as all other clerical positions within that office, are confidential within our definition of the term.

#### Senior Typist - Employment Certification Division

The Employer contends that the one senior typist in the employment certification division is a supervisor. This division is responsible for employment certification, unemployment claims, and residency investigations. The senior typist and two other clerical employees handle all the clerical work for the unemployment section. Currently, one of the two clericals is a student intern, and the other is a clerical employee temporarily on loan from another department. The senior typist is responsible for training these clericals, as well as assigning and directing their work. She also approves time sheets and screens applications for summer students. In practice, the senior typist generally comes to the division head to discuss disciplinary actions before they are taken. However,



the record indicates that she has the authority to sign both written and oral reprimands. A copy of a memo written by the senior typist in the employment certification division was entered into the record. The memo refers to a conversation between the senior typist and a clerical employee regarding the department's dress code, and also references an earlier memo on the same subject. No specific disciplinary action is referenced in the memo, but a copy of this memo was kept in the division's internal files. The senior typist in this division also has the authority to issue formal written reprimands and notices of suspension, although she has never had the occasion to do so. Based on this testimony, we conclude that the senior typist in the employment certification division, despite her classification title, is a supervisor.

#### Senior Typist - Hearings and Policy Development Division

The Employer contends that the senior typist in the hearings and policy development division is a confidential employee. This division is responsible for drafting proposed human resources policies and proposed work rules for all City departments. The senior typist prepares all draft policies and draft rules, including all changes that are made before these policies and rules are finalized. This typist also prepares internal documents relating to so-called special conferences which the unions may demand pursuant to their contracts with the City. In addition, the typist has typed proposed changes to existing contracts between the City and its unions for use by labor relations director. The senior typist regularly assists the law department in the processing of grievances filed under union contracts by reviewing personnel files to remove confidential material before files are turned over in response to subpoenas. In addition, this typist is responsible for typing drafts of fourth step answers prepared by in the division in connection with the City's contract with AFSCME. The senior typist also types written recommendations of the division to the civil service commission concerning requests by represented employees for waivers of the residency requirement. These recommendations are kept confidential until the civil service commission acts on the matter. Furthermore, the senior typist sits in on every meeting of the civil service commission, takes minutes, and types them up for the commission's signature. This includes closed executive sessions during which the commission deliberates and decides grievances under the grievance procedure for unrepresented employees. On occasion, these decisions impact union employees. There is no suggestion in the record that this typist's confidential duties could be handled by another confidential clerical. Accordingly, we conclude that the senior typist in the hearings and policy development division should be deemed a confidential employee.

#### Summary of Findings and Conclusions:

We find that Petitioner has not specifically agreed not to represent employees in the Employer's human resources department, and that the exclusion of these employees from Petitioner's unit in the recognition clause of its contract does not serve to bar this petition.

Furthermore, we conclude that the head clerk and administrative supervisor-personnel records transactions in the personnel records section of the administrative services division, the principal clerks in the classification and compensation division and the recruitment and selection division, and the senior typist in the employment certification division are supervisors and, therefore, should be

excluded from the bargaining unit. We find that the principal clerk in the organization and employee development services division and the senior typist in the benefits section of the labor relations division are not supervisors within our definition of that term.

Finally, we do not agree with the Employer that all the employees covered by the petition are confidential employees who should be excluded from collective bargaining. However, we find that the senior typist in the labor relations division, the senior typist in the benefits unit of the labor relations division, the principal clerk and the senior typist in the classification and compensation division, and the senior typist in the hearings and policy development division, all perform necessary confidential labor relations duties and should be excluded from the unit on that basis.

### **ORDER DIRECTING ELECTION**

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

All full-time and regular part-time junior typists, senior typists, personnel records clerks, senior personnel records clerks, principal clerks, and head clerks assigned to the City of Detroit, Department of Human Resources who are currently unrepresented by any labor organization; but excluding supervisors, including the head clerk and the administrative supervisor-personnel records transactions in the administrative services division, the principal clerk in the classification and compensation division section, the principal clerk in the recruitment and selection division, and the senior typist in the employment certification division; confidential employees, including the senior typist in the labor relations division, the senior typist in the benefits unit of the labor relations division, the principal clerk and senior typist in the classification and compensation division, and the senior typist in the hearings and policy development division; and employees in all classifications not specifically mentioned above.

Pursuant to the attached Direction of Election, the above employees shall vote whether they wish to be represented by Michigan Council 25, AFSCME, AFL-CIO, or by no labor organization. A vote for this labor organization shall indicate a desire to be included in that labor organization's existing bargaining unit of nonsupervisory employees of the Employer.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Maris Stella Swift, Commission Chair

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Harry W. Bishop, Commission Member

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C. Barry Ott, Commission Member

Dated: \_\_\_\_\_