

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

In the Matter of:

CITY OF DETROIT, DEPARTMENT OF PUBLIC WORKS,  
Public Employer,

-and-

Case No. UC98 J-40

ASSOCIATION OF CITY OF DETROIT SUPERVISORS,  
Labor Organization-Petitioner,

-and

AMERICAN FEDERATION OF STATE, COUNTY  
AND MUNICIPAL EMPLOYEES COUNCIL 25,  
Labor Organization-Intervenor.

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Charles MacKay, Esq., Asst. Corporation Counsel, for the Public Employer

Joseph Solomon, President, for the Petitioner

Kevin Bramlett, Administrative Director, for the Intervenor

**DECISION AND ORDER**

This case was heard at Detroit, Michigan on March 12, 1999, before Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. Pursuant to Section 13 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.213, MSA 17.455(13), and based on the record, including briefs filed by the Employer and the Petitioner on or before April 29, 1999, the Commission finds as follows:

**The Petition and Positions of the Parties:**

The petition was filed on October 8, 1998, by the Association of City of Detroit Supervisors (ACODS). Petitioner represents a bargaining unit consisting of certain supervisory classifications within the City of Detroit Department of Public Works (DPW). Intervenor American Federation of State, County and Municipal Employees (AFSCME) Council 25 represents a bargaining unit of nonsupervisory employees of the Employer, including employees of the DPW. Petitioner asserts that a position currently included in the Intervenor's unit, auto repair subforeman, is a supervisory position. In its petition for unit clarification, it seeks an order moving this position to its unit. Both

the Intervenor and the Employer take the position that the auto repair subforemen are not supervisors, and that they should remain in the Intervenor's unit.<sup>1</sup> The Employer also argues that the petition is untimely because the subforeman position is not a new position, and its duties have not changed.

Facts:

Since about 1986, Petitioner has been the bargaining representative for certain supervisory classifications within the DPW. The position at issue, auto repair subforeman, works in the street maintenance section of the vehicle management division of the DPW. Both the subforemen and the mechanics who work under them are currently part of Intervenor's nonsupervisory bargaining unit. Immediately above the subforemen are the positions of auto repair foreman and senior auto repair foreman. Both of these positions are included in Petitioner's unit. Directly above the foremen and senior foreman is a position titled senior supervisor.

The street maintenance section of the vehicle management division is responsible for repairing and performing routine maintenance on vehicles used by street maintenance crews. Employees work at two locations. The larger is the yard located at 19<sup>th</sup> and Michigan in the City of Detroit. Vehicles serviced at the 19<sup>th</sup> and Michigan yard include demolition equipment, snow removal equipment, salt trucks, and paving equipment. A senior supervisor has overall responsibility for operations at both locations, but works from the yard at 19<sup>th</sup> and Michigan. A senior foreman, a foreman, a subforeman, and nine mechanics work at 19<sup>th</sup> and Michigan on the day shift.<sup>2</sup> There is also an afternoon shift of six mechanics supervised by a foreman at this location. The second location is known as the Southfield yard. The Southfield yard services mostly lawn maintenance equipment, but also repairs trucks and some heavy equipment. One subforeman and two mechanics work at that location. The subforeman reports to the day-shift foreman at the 19<sup>th</sup> and Michigan yard. However, the subforeman is normally the highest ranking employee at the Southfield location. The subforemen and foremen fill in for each other, and either a foreman or a subforeman may be called in on overtime to oversee emergency work performed during hours when the yards are not normally in operation.

The subforemen at both locations are responsible for assigning jobs, directing the work of the mechanics, inspecting completed work, and assisting with difficult jobs. Most of the actual repair and maintenance work is done by the mechanics, although the subforemen may work on vehicles if the workload requires it. The subforemen spend most of their time overseeing the work and keeping track of its progress, communicating with street crews about the equipment, ordering supplies and parts, and filling out paperwork.

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<sup>1</sup> The Intervenor expressed its position in this matter by letter, but it neither appeared at the hearing nor filed a brief.

<sup>2</sup> The record contains little information about the day-to-day duties of the senior foreman. Testimony elicited at the hearing suggests that the senior foreman may frequently be away from the yard.

The subforeman at the Southfield yard, and either the foremen or the subforeman at the 19<sup>th</sup> and Michigan yard, initial daily time cards for the mechanics and fill out weekly time sheets. The weekly time sheets for both locations are signed by the senior foreman. Both foremen and subforemen approve vacation requests.

New mechanics are required to undergo a 90-day probationary period. If they successfully complete the probationary period, and also pass a test administered by the Employer's Human Resources Department, they are promoted to the journeyman classification, "general automotive mechanic." During the probationary period, either a subforeman or a foreman fills out a weekly evaluation sheet rating the mechanic's performance. At the end of each month, the weekly reports are submitted to the senior foreman for approval, and then to the senior supervisor. At the end of the probationary period, the senior foreman or someone above him submits a recommendation to the Human Resources Department indicating whether the employee should be retained, removed, or have his probationary period extended. If the weekly evaluations have been negative, the senior foreman will discuss the employee's performance with the foreman or subforeman before submitting the recommendation.

There are no regular written evaluations of mechanics after they have passed their probationary period. If a mechanic is not performing well, the subforeman may discuss the problem with him. If the mechanic's performance does not improve, the subforeman begins keeping notes of the mechanic's errors. Although the subforeman do not have the authority to issue suspensions and have no formal role in the grievance process, the record indicates that they do have the authority to issue "written oral" warnings, the first step in the disciplinary procedure. They also have the authority to issue written warnings.

#### Discussion and Conclusions of Law:

The Employer argues that the petition in this case is untimely, since the position of auto repair subforeman is not a new position and its duties have not undergone any recent substantial change. The Employer relies on *City of Battle Creek*, 1994 MERC Lab Op 440, *Birmingham Public Schools*, 1983 MERC Lab Op 1013, and other cases in which we have held that a petition for unit clarification is not appropriate when a position has been in existence for some time, the union did not make a timely demand to represent the position, and the employer has not substantially altered the duties of the position.

Section 13 of PERA, MCL 423.213; MSA 17.455(13), gives us discretion to determine the appropriate bargaining unit. However, a unit which includes both supervisors and nonsupervisory employees is, by statute, inappropriate. MCL 423.213; MSA 17.455(13); MCL 423.9e, MSA 17.454(10.4). As a consequence, we must determine whether or not a position is supervisory whenever the issue is raised, even if there is a history of bargaining and no recent significant changes have been made in the position. *Lapeer County*, 1997 MERC Lab Op 149, 154; *Kalkaska County Sheriff*, 1994 MERC Lab Op 693, 697. When supervisors have historically been included in a bargaining unit with nonsupervisory employees, a unit clarification petition to remove them from this

unit may be appropriate. *City of Mt. Pleasant(Public Safety Dept)*, 1996 MERC Lab Op 425; *Detroit Bd of Ed*, 1978 MERC Lab Op 1140. Therefore, the petition in this case is timely.

The term “supervisor,” as defined by this Commission, means an individual with the authority to hire, transfer, promote or otherwise reward, discharge, suspend or otherwise discipline, employees, to responsibly direct or assign them work, or adjust their grievances, or the authority to effectively recommend that any of these actions be taken, if the exercise of that authority requires the use of independent judgment. *East Detroit School Dist*, 1966 MERC Lab Op 60. We have recognized that the authority to discipline or to effectively recommend discipline is a particularly important indicia of supervisory authority, regardless of whether that authority is frequently exercised. *City of Detroit*, 1996 MERC Lab Op 282, 286. An individual who is “in charge” of a group of employees is generally found not to be supervisor unless he or she has an effective role in discipline or in recommending discipline. *Id.* See also *Michigan Community Services, Inc*, 1994 MERC Lab Op 1055, 1060. The determination of supervisory status is made on a case-by-case basis. *City of Detroit, supra*, at 285.

In the instant case, the subforemen regularly assign and direct the work of the mechanics. The subforeman at the Southfield yard is normally the only supervisor of mechanics at that location. The subforeman at the 19<sup>th</sup> and Michigan yard is in charge of the mechanics whenever he fills in for the Southfield subforeman or for the afternoon shift foreman at the 19<sup>th</sup> and Michigan location. The subforemen have the same authority to approve vacation requests as the foremen. Like foremen, the subforemen complete weekly evaluations of probationary mechanics and sign certification forms allowing mechanics to take the test to be promoted to the journeyman level. Most importantly, the record indicates that subforemen have the authority to issue both “oral written” and written reprimands. Based on these facts, we conclude that the position of auto repair subforeman in the street maintenance section of the vehicle management division of the City of Detroit DPW is a supervisor within the meaning of that term under PERA. See *City of Detroit, supra* at 286 (senior storekeepers having the authority to issue oral or written reprimands found to possess disciplinary authority for purposes of determining supervisory status). We also conclude that because of its supervisory status, the position of auto repair subforeman in the street maintenance section of the vehicle management division should be transferred from its current unit to the supervisory unit represented by Petitioner.

**ORDER**

Petitioner's request to clarify its unit to include the position of auto repair subforeman is hereby granted. The position shall be removed from the unit consisting of nonsupervisory employees of the City of Detroit represented by AFSCME Council 25 and placed in Petitioner's unit.

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: \_\_\_\_\_