STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

MUSKEGON COUNTY SHERIFF DEPARTMENT
(DEPUTIES UNIT),
Respondent-Public Employer,

Case No. C99 C-56

-and-

TEAMSTERS STATE, COUNTY & MUNICIPAL
WORKERS, LOCAL 214,
Charging Party-Labor Organization.
_____/

APPEARANCES:

Williams, Hughes, Corwin & Sininger, LLP, by Theodore N. Williams, Jr., Esq., for Respondent

Robert W. White, Esq., for Charging Party

DECISION AND ORDER

On February 29, 2000, Administrative Law Judge James P. Kurtz issued his Decision and Recommended Order in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, and recommending that the Commission dismiss the charges and complaint.

The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of the Act.

The parties have had an opportunity to review the Decision and Recommended Order for a period of at least 20 days from the date of service and no exceptions have been filed by any of the parties.

ORDER

Pursuant to Section 16 of the Act, the Commission adopts the recommended order of the Administrative Law Judge as its final order.

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

Date: _____

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APPEARANCES:

Williams, Hughes, Corwin & Sininger, LLP, by Theodore N. Williams, Jr., Atty, for the Public Employer

Robert W. White, Atty, for the Labor Organization-Charging Party

DECISION AND RECOMMENDED ORDER
OF
ADMINISTRATIVE LAW JUDGE

This matter was heard at Lansing, Michigan on May 19, 1999, before James P. Kurtz, Administrative Law Judge for the Michigan Employment Relations Commission, pursuant to a complaint and notice of hearing dated March 26, 1999, issued under Section 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCLA 423.216, MSA 17.455(16). Based upon the record and the post-hearing briefs of the parties filed on or before August 6, 1999, the undersigned makes the following findings of fact, conclusions of law, and recommended order under Section 16(b) of PERA:

Charge and Background Matters:

This unfair labor practice charge was filed on March 26, 1999, by the above labor organization (Union), naming as Respondent the Muskegon County Sheriff Department. The charge was amended on April 9 to indicate that the unit involved was the deputies unit of the department, rather than the unit of security officers, also represented by Charging Party. The charge alleged that the Employer, unilaterally and without notice or bargaining, transferred a unit position that had been held and performed exclusively by a deputy sheriff to a non-bargaining unit civilian employee. The position at issue is entitled "microcomputer analyst."

The County appeared on behalf of itself and its co-employer, the Sheriff, and in the answer filed on April 26, 1999, it denied that it had violated Section 10 of PERA. The County contended that its Board of Commissioners created a new position on December 8, 1998, when the prior employee holding the position retired; that the work was not historically performed by employees with the deputy sheriff classification; and that it was not a law enforcement position. The County admitted that it was using a non-bargaining unit civilian employee in the microcomputer analyst position; that no notification to the Union was required; and that the Union had made no effort to bargain over the inclusion of this position. The County noted that the number of bargaining unit positions in both units of the sheriff department had increased during 1999.

Factual Findings:

The Charging Party for some years had represented two broad units of nonsupervisory employees of the County. The largest bargaining unit, composed of more than 200 employees and referred to as the general employees unit, was taken over by the Union a number of years before the events in this case. This bargaining unit is not directly involved in this case, though it is referred to in the record in connection with the computer position at issue. This general unit is considered by the Union to be a "wall-to-wall" unit of all nonsupervisory employees of the County, including positions from probation employees to clerical and maintenance employees, but excluding an accounting classification and a secretary or secretaries in the personnel department. The second unit represented by the Union was composed of all sheriff deputies and security (corrections) officers. The Police Officers Labor Council filed a petition for election to represent this unit in Case No. R96 H-132. A consent election was held in two units, one an Act 312-eligible unit of deputies and the other composed of security officers, and the Teamsters were certified to continue to represent these units on October 29, 1996. The position at issue in this case was eligible to vote in the deputies bargaining unit in that election.

In the early 1980's, one of the Sheriff deputies, Bruce Raymond, began to take an interest in computers and on his own began to take community college courses on the subject. Over the years Raymond gradually took on the responsibility for the computerization of the sheriff department, including the installation and maintenance of its entire network, and the handling of all programing and software responsibilities. In 1988 Raymond was injured in a work-related accident, and he was off duty for seven months. When he returned to the department he was put on light duty as a records clerk, and continued his computer responsibilities. The computerization of the sheriff department gradually evolved into a county-wide system, and Raymond was part of the team of experts that worked on that project. In order to achieve the necessary computer expertise, including programs unique to law enforcement and jail management, Raymond traveled to seminars and suppliers throughout the United States.

Raymond continued to work his light duty records' position with his computerization responsibilities until he retired on January 22, 1999. During his time as records clerk, he would on occasion perform certain law enforcement functions, such as court services or security, the transporting of prisoners, and even making arrests. Since he was the sole person responsible for the

department's computer network for a number of years, he was on call to handle any problems when he was off duty or on vacation. During these same years the various other departments of the County were also being computerized, and Raymond would occasionally assist in that task. The computer network in the sheriff department is kept separate from the other County networks, and it is linked only to other law enforcement entities or agencies. The County has employed for an unspecified number of years microcomputer analysts in various departments, who work under the supervision of a data processing manager. The latest job description for that classification was approved in June 1992, and it requires a college degree or an associate's degree and experience in the field to hold the position.

When the Union's business representative learned from the unit's steward that Raymond was to be replaced by a civilian with the microcomputer analyst classification, this charge was filed. According to the Union agent, he had assumed that the existing microcomputer analysts were part of the Union's general employees' unit. The practice of the County is to supply the Union with the job descriptions of only unit employees, and the business agent testified that he was not aware that the computer analyst classification was considered by the County to be "non-union." After receiving the County's answer in this case, in which the County denied any obligation to notify the Union of its intent to use a non-union civilian employee, and alleging that the Union had made no effort to bargain over the position in the sheriff department, the business representative sent a letter, dated April 26, 1999, to the County personnel director. In this letter, the business representative expressed his understanding that the computer analyst classification "already exists in the General Employee Unit." The letter requested information relative to that classification and any other civilian classifications in the sheriff department, and it included a demand to bargain over the computer position in the sheriff department.

The County personnel director responded on May 14 by letter, and in it he stated, "The class of Microcomputer Analyst is a non-represented class of work. It is not currently represented by either the Sheriff Deputy unit or the General Employees Unit." The personnel director said he did not know what the Union meant by "civilian classification," but expressed the opinion that the classification at issue was not a law enforcement position. As for the information requested, the personnel director referred the Union to the County budget in its library system.

Discussion and Conclusions:

Both parties approach this case with certain suppositions and make certain contentions that cloud the issue somewhat. The Union correctly asserts that this case is akin to a unit clarification proceeding, in that the unit placement of the computer position in the sheriff department is at issue. See, for example, *Michigan State Univ.*, 1999 MERC Lab Op ___(Issued 12-28-99). The Union, however, often characterizes this case as involving the transfer or removal of bargaining unit work out of the unit to a civilian position. Instead, the work is still in the department and has not been moved elsewhere. The issue, therefore, is whether the work must be assigned to a sheriff deputy in the Union's unit of deputies, rather than to a civilian employee, that is, whether it is exclusively work that belongs only to the deputies unit. If the work can be assigned to other than a deputized law

enforcement officer, then the question arises into which, if any, bargaining unit must the position be placed.

The Employer, on the other hand, refers to this case as the creation of a new civilian position in a departmental reorganization, which position is "non-union." Based on the record herein, the position in question is not new, there is no evidence of a reorganization as the Commission case law uses that term, and there is a question as to the propriety of its non-union status. Assuming the nonsupervisory units represented by the Charging Party are, as it characterizes them, "wall-to-wall," then the Employer is beyond the point where it can create a "non-union" nonsupervisory classification whenever it wishes. The Commission has always required, wherever possible, that units be comprehensive, in order to avoid fragmentation and the eventual formation of residual bargaining units. *Hotel Olds v Labor Mediation Board*, 333 Mich 382, 30 LRRM 2156 (1952); *Univ. of Michigan, Flint Campus*, 1993 MERC Lab Op 615, 620-625. The original rationale for comprehensive units was to preclude the formation of units by labor organizations based on their extent of organization. In practice, however, this policy is often ignored by employers in order to avoid putting certain employees or classifications into a bargaining unit, and thereby leaving the door open to a future residual unit. See *MEA v Alpena Comm. College*, 457 Mich 300 (1998); *Eastern Mich. Univ.*, 1999 MERC Lab Op ___(12-28-99).

Even if the microcomputer analyst were found to be a new position, as contended by the Employer, its unit placement would be subject to either the consent of the Union, or an order of the Commission clarifying its unit placement. *Waterford Twp*, 1995 MERC Lab Op 484, 487-488; *City of Warren*, 1994 MERC Lab Op 1019, 1023-1024. As noted in *Charlotte Sch. Dist.*, 1996 MERC Lab Op 193, at 205, "it is the policy of the Commission to add new positions to established bargaining units, provided there is the requisite community of interest, rather than leave them unrepresented to form or be added to a residual unit. *Kalamazoo County Probate Ct*, 1994 MERC Lab Op 980, 984." The computer classification in this case, however, has existed in the County since at least 1992, so it is clearly not a new position in the sense that the work has never before been performed in and by the County.

The Charging Party has taken the position that it will represent the microcomputer analyst in the unit of deputies, whether or not it is a deputized law enforcement officer. The representative status of the computer position in the deputies unit depends entirely, under the facts in this case, on whether the position is exclusive bargaining unit work within the meaning of the line of cases following *Southfield Police Officers Ass'n v Southfield*, 433 Mich 168, 137 LRRM 2891 (1989), *rev'g* 162 Mich App 729, 127 LRRM 2909 (1987), *aff'g* 1985 MERC Lab Op 1025; see also *Detroit Water and Sewerage*, 1990 MERC Lab Op 34, 37-41. If it is exclusive unit work, then the County and Sheriff would be required to either fill it with another deputy, or to give the Union notice and an opportunity to bargain any changes in the existing unit position. See, for example, *Meridian Township*, 1986 MERC Lab Op 915, 919-922. If the position is not exclusively work belonging in the deputies unit, then the charge fails, since no issue has been raised and litigated as to the inclusion of the microcomputer analyst in any other bargaining unit, or as to the County's position on its "non-union" status.

The Union contends that since deputy Raymond was the only employee of the County that performed computer services in the sheriff department, then his services constitute exclusive bargaining unit work. The exclusivity of the work, however, centers on the tasks or services being performed on an employer-wide basis, and not on the person or persons performing the tasks. The extensive case law on the assignment or removal of bargaining unit work establishes that to be exclusive, the work in question must be such that only members of the unit have been or are performing such work, usually because of the particular qualifications needed or the nature of the job itself. See, for example, *Lansing Police Dep't*, 1999 MERC Lab Op 340, 344 (dispatching not exclusive to either fire or police employees); *Detroit Dep't of Transportation*, 1998 MERC Lab Op 500, 507 (paratransit busing not exclusive unit work since it had been subcontracted in the past); *Grand Rapids Community College*, 1998 MERC Lab Op 258, 265-266 (released time for administrative or support duty is not exclusive faculty work); *Kent County Sheriff*, 1996 MERC Lab Op 294, 302-303 (various clerk positions, such as inmate accounting clerk, not exclusive work of corrections officers).

The history of the computer position in the sheriff department is also instructive in reaching the decision that the work is not exclusive to the deputy's unit. Aside from the skills required for the job itself, which have little, if anything, to do with actual law enforcement responsibilities, the computer position in the department grew out of the voluntary avocation of deputy Raymond, rather than being a required part of the background, training, and duties of a sheriff deputy. Compare *Grosse Pointe Public Library*, 1999 MERC Lab Op 151, 156, where the requirement of computer skills was a factor in the movement of the position from one unit to another; with *Charlotte School Dist.*, 1996 MERC Lab Op 193, 201-203, where the addition of computer skills was found to be merely an enhancement of the existing classification.

Further, assignments to light duty are often made to nonunit positions as an accommodation to an injured employee who wants to maintain his or her unit status. In this case the records clerk position was turned into a virtually full-time computer specialist for the department at a time when it was just entering the computer age and required extensive computer services and expertise. This arrangement benefitted both parties, since Raymond got to perform duties that he apparently enjoyed and the County received the services of a computer specialist while accommodating an injured deputy. The computer work under this arrangement did not thereby become the exclusive domain or work of sheriff deputies. In fact, other than knowing how to work with law enforcement software, it is doubtful that the average deputy possesses anywhere near the expertise acquired by Raymond by his own initiative over the years. This is especially so where the minimum requirement for the County microcomputer analyst position is an associate's degree with two years full-time work experience in the installation, programming, and maintenance of large scale computer installations.

In this case, the work of computer analysts has existed in the County since at least 1992, and the County has employed analysts in various departments under the overall supervision of the data processing manager. It is clear, therefore, that the computer work done by deputy Raymond is not exclusive to the sheriff department or its deputies, and that the County was not required to replace Raymond with another deputy or employee in the deputies bargaining unit. As noted above, what

the County should have done with the position, or whether it is a historical exclusion from all of its bargaining units, is not before the undersigned in this case. While it would have been more politic for the County to have notified the Union of its intentions for the replacement of Raymond when he retired, instead of the Union learning about the matter after it was an accomplished fact, there was no obligation on its part to do so. The County, therefore, could fill Raymond's position with the civilian microcomputer analyst who is not included in the deputies bargaining unit. Accordingly, I recommend that the Commission issue the following order:

ORDER DISMISSING CHARGES

Based upon the findings of fact and conclusions of law set forth above, the unfair labor practice charge filed in this matter is hereby dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

James P. Kurtz
Administrative Law Judge

DATED:_____