

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

VILLAGE OF PAW PAW,
Public Employer,

Case No. R00 F-63

-and-

TEAMSTERS STATE, COUNTY AND
MUNICIPAL WORKERS, LOCAL 214,
Petitioner-Labor Organization.

APPEARANCES:

Varnum, Riddering, Schmidt and Howlett, LLP, by Richard D. Fries, Esq., for the Employer

Terry Dorsey, Business Representative, Teamsters Local 214, for the Petitioner

DECISION AND DIRECTION OF ELECTION

Pursuant to Section 12 of the Public Employment Relations Act (hereafter **APER@**), 1965 PA 379, as amended, MCL 423.212; MSA 17.455(12), this case was heard at Detroit, Michigan on July 26, 2000, before Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. Pursuant to Sections 13 and 14 of PERA and based upon the record, including briefs filed by the parties on or before September 25, 2000, the Commission finds as follows:

The Petition and Positions of the Parties:

The petition was filed by Teamsters State, County and Municipal Workers, Local 214, on June 6, 2000. Petitioner seeks to represent a bargaining unit of all full-time patrolmen, corporals and sergeants employed by the Village of Paw Paw, excluding supervisors and all part-time employees. Petitioner contends that all individuals employed in these classifications are nonsupervisory employees who share a community of interest. The Employer maintains that the position of sergeant is a supervisory position which should be excluded from this unit.

Facts:

The Village of Paw Paw's police department currently consists of eight full-time police officers, including the chief of police, one detective lieutenant, one sergeant, a corporal, and four patrol officers. Respondent also employs part-time police officers to cover vacations and weekend

night shifts. None of the officers are currently represented by a labor organization.

Prior to June of 1999, when the department's police chief retired, the department consisted of the chief, a lieutenant, a detective sergeant, and a corporal. The detective sergeant primarily performed investigations. After the chief's retirement, the former lieutenant was appointed chief, the detective sergeant was promoted to detective lieutenant, the corporal was promoted to sergeant, and a patrol officer was promoted to corporal. The lieutenant continues to perform the investigative responsibilities which he performed as a sergeant. The job duties of the current sergeant are not exactly the same as those of any previous position.

The chief of police, the lieutenant, and the sergeant are all salaried employees, while the rest of the officers are paid on an hourly basis. The chief, the lieutenant, and the sergeant have individual offices, while the other officers have desks. The chief, the lieutenant, and the sergeant work the day shift, 7:00 a.m. to 3:00 p.m., Monday through Friday. The other five full-time officers rotate shifts and regularly work weekends. As noted above, the department employs part-time officers to work weekend nights, and to fill in for officers on vacation or on sick leave, if possible. As a rule, one car patrols on the day shift, one on the afternoon shift, and one on the night shift.

The sergeant regularly prepares a bi-monthly work schedule for the full-time and part-time officers. There is an established rotation schedule for the full-time officers. The sergeant is responsible for scheduling officers to work on overtime for special events, such as parades and festivals. The sergeant also contacts other agencies, such as the county sheriff's department, to borrow officers to help with these events, and he assigns officers to specific locations during the events. The sergeant approves all vacation requests, and he has the authority to deny a request for time off if the schedule cannot accommodate it. If an officer calls in sick, the sergeant calls from a list until he finds an officer who is able to work overtime, or a part-time officer who is able to work. The sergeant responds to complaints when he is on duty if the other officers are occupied. The sergeant also patrols when his other duties allow, although he does not schedule himself in place of a patrol officer.

The departmental command structure dictates that the most senior officer present, even an officer below the rank of corporal, may give orders to any less-senior officer. The sergeant, however, has some authority to direct the work of officers working on other shifts. The sergeant occasionally issues written directives to all patrol officers. For example, if the department received a complaint from a citizen concerning speeding in a particular location, the sergeant would draft a memo instructing the officers to establish a radar patrol and to document the dates and times they patrolled in that location. The sergeant would post the memo on the bulletin board, and each officer would be required to initial it to confirm that he had read it. It would then be the sergeant's responsibility to file the memo for later reference.

The current sergeant has served as the department's chief training officer for several years. His responsibilities for training did not change when he was promoted from corporal to sergeant. The training officer arranges for officers to attend outside training. The current sergeant and current lieutenant are both certified firearms instructors, and they both conduct firearms training and

certification for the department. Both the training officer and the lieutenant also provide formal training for newly-hired officers, including part-time officers. When a new officer first starts work, the training officer spends about a week working with the new officer on a full-time basis. The lieutenant also meets with the new officer several times during this period to discuss departmental policies. The training officer is responsible for notifying the chief when a new officer does not meet expectations during his formal training. When the current sergeant was a corporal, he recommended, pursuant to his duties as training officer, that an officer-in-training be terminated. The chief called a meeting to discuss the matter with the lieutenant, the training officer, and a patrol officer. The officers decided as a group to assign the new employee to another officer for an additional week to make sure that the problem was not a personality conflict. After the second officer agreed with the training officer's assessment of the officer-in-training, the latter individual was terminated.

The sergeant also now serves as the department's court officer. As court officer, he takes police reports to the court in the morning for review by the prosecutor's office or the village attorney. On the department's behalf, the sergeant attended a course on the proper handling of evidence. He subsequently drafted a set of procedures for the department for handling evidence. The sergeant also rewrote the department's policy regarding exposure to infectious diseases after attending training on that subject.

The chief, the lieutenant, and the sergeant together interview applicants for both full-time and part-time positions. After the interviews, the three men attempt to reach a consensus on the best candidate. If there is a disagreement, the chief decides who will be hired. The record indicates that if the department were to select an officer for promotion to corporal, the sergeant would participate in that decision, along with the lieutenant and the chief. If Respondent had to lay off an officer, and it decided to base that decision on merit, the sergeant would also participate in the selection of the individual to be laid off.

Any officer in the department may receive an official letter of commendation from the police chief. If the sergeant believes that a subordinate officer has done something exceptional in the line of duty, even if it does not warrant a formal commendation, he brings it to the attention of the chief. Several officers have had letters placed in their personnel files on the sergeant's recommendation. The record does not indicate whether these letters were signed by the sergeant or the chief.

Under village policy, all written disciplinary notices must be issued by the chief. The sergeant has the authority to send an officer home if the officer comes to work smelling of intoxicants and the sergeant is unable to reach the chief. The record indicates that although the sergeant may recommend that an officer be disciplined, the chief will not discipline the officer without first speaking to the officer himself.

The sergeant's formal written job description reads as follows:

A Sergeant may be assigned by the Chief of Police to any division, unit, or special assignment as he deems necessary for the efficient overall operation of the police department. He is responsible for the efficiency and discipline of all officers and employees under his supervision. He shall promote harmony among his subordinates.

He is responsible for the cooperation of his subordinates with all other divisions of the police department. He shall act in cases not regularly commensurate with his assignment when the delay necessary to inform the proper unit might result in the failure of the department to perform a police duty. He shall so regulate his command that, at all times when he is absent, it shall be under the command of a competent authority.

Discussion and Conclusions of Law:

A supervisor, as we define that term under PERA, is an individual with the authority to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or to effectively recommend such action, as long as this authority requires the use of independent judgment and is not merely routine. *East Detroit School District*, 1966 MERC Lab Op 60; *MEA v Clare-Gladwin ISD*, 153 Mich App 792,796-798, aff'g 1985 MERC Lab Op 915. "Effectively recommend" means that the employee's superiors generally accept his or her recommendation without an independent investigation. *Kalkaska Co and Sheriff*, 1994 MERC Lab Op 693, 699; *Bronson Methodist Hosp*, 1973 MERC Lab Op 946, 953. An individual is not a supervisor under PERA if his or her authority is limited to the routine direction of the daily work of other employees and/or making work assignments of a routine nature. *City of Detroit*, 1996 MERC Lab Op 285; *Detroit Dept of Parks and Recreation*, 1966 MERC Lab Op 661.

In the instant case, the sergeant has input into the selection of new patrol officers. Unless there is a consensus, however, the actual decision regarding whom to hire is made by the police chief. The evidence indicates that the sergeant would play a similar role in any decision to promote or lay off an officer. The record indicates that the only disciplinary authority possessed by the sergeant is the authority to send an officer home for the balance of his shift, and that the sergeant only has that authority when the chief is not available. As training officer, the sergeant recommends the termination of any new officer who he believes is not performing well during his or her formal training. However, there is no evidence that the training officer's recommendation to terminate would be accepted by the chief without an independent investigation.

The sergeant is responsible for routine scheduling, and he makes certain types of work assignments. In both of these matters, we find, his discretion is limited. The sergeant has a number of administrative duties, in addition to his responsibilities as training officer, which occupy his time. However, these responsibilities are not of a supervisory nature. We conclude that the sergeant is not a supervisor as we have defined that term. Accordingly, the sergeant's position should be included in Petitioner's bargaining unit.

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. Accordingly, we direct an election among the following unit which we find appropriate under Section 13 of PERA:

All full-time patrolmen, corporals and sergeants employed by the Village of Paw Paw;
excluding the police chief, supervisors, part-time employees, and all other employees.

Pursuant to the attached Direction of Election, the above employees shall vote whether they wish to
be represented by Teamsters State, County and Municipal Workers, Local 214.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Dated: