

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

In the Matter of:

OAKLAND COMMUNITY COLLEGE,
Public Employer,

Case Nos. UC97 G-31 &
UC98 L-49

-and-

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

APPEARANCES:

Dickinson, Wright, PLLC, by Elizabeth M. Pezzetti, Esq., for the Employer

Monaghan, LoPrete, McDonald, Yakima & Grenke, by Kenneth M. Gonko, Esq., for the Petitioner

DECISION AND ORDER

This case was heard at Detroit, Michigan on May 7, 1999, before Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. Pursuant to Section 13 of the Public Employment Relations Act (hereafter "PERA"), 1965 PA 379, as amended, MCL 423.213, MSA 17.455(13), and based on the record, including briefs filed by the parties on or before August 2, 1999, the Commission finds as follows.

The Petitions and Positions of the Parties:

The petition in Case No. UC97 G-31 was filed on June 30, 1997, by Teamsters State, County and Municipal Workers, Local 214. Petitioner represents a bargaining unit of supervisory employees described as all full-time administrative and management staff employees of Oakland Community College. In this petition, Petitioner sought to clarify its unit to include a newly created position with the title Director of Financial Services. The petition in Case No. UC98 L-49 was filed on December 14, 1998, and the two cases were consolidated. In Case No. UC98 L-49, Petitioner seeks to add a new position titled Director of the Oakland Community College Foundation to this same bargaining unit. The Employer asserts that the Director of Financial Services should be excluded from the bargaining unit as a confidential employee, and that the Director of the Oakland Community College Foundation should be excluded as an executive.

Background Facts:

Petitioner was certified as the bargaining representative for the unit involved in this case in February of 1996. The unit includes employees of Oakland Community College at all five of the College's campuses. The unit is described in the certification as follows:

All full-time administrative and management staff employees; excluding the chancellor and chancellor's council; management staff who report directly to the chancellor or members of the chancellor's council; administrative staff who report to the chancellor; controller; human resources staff; confidential employees, and all other represented bargaining unit employees.

The College has approximately 820 employees. There are six separate bargaining units, and about 96% of the College's employees belong to one or another of these units. At the time of the hearing, Petitioner's unit consisted of approximately 125 employees with about 110 different job titles. Included in this bargaining unit were numerous positions with the word "director" in their title.

Director of Financial Services

Findings of Fact:

The position Director of Financial Services was first created and filled in 1997, shortly before the petition in Case No. UC97 G-31 was filed. The position was designated by the Employer as a confidential position not to be included in any bargaining unit. The Director of Financial Services reports to the Controller, who reports to Clarence Brantley, Vice Chancellor for Administrative Services.¹ In that capacity, he serves both as the College's chief financial officer and as treasurer of its Board of Trustees. The College's Director of Employee Relations is the College's chief representative in bargaining with its unions. However, Brantley is a member of the Employer's negotiating team in all collective bargaining negotiations between the College and its unions, and Brantley must approve any economic proposal made by the Employer.

The primary responsibility of the Director of Financial Services is to manage the daily functions of the financial services department. However, the Director of Financial Services has also been assigned to assist Brantley with his collective bargaining responsibilities.² The Director of Financial Services is responsible for costing out all the Employer's wage proposals. That is, the

¹ At the time of the hearing, the Controller position was vacant, and the Director of Financial Services was serving as interim controller.

² Prior to Petitioner's certification in 1996, another position, Director of Budget and Financial Planning, was responsible for assisting with labor negotiations. The individual holding this position publicly expressed her wish to be included in Petitioner's unit, and the Employer entered into a consent election agreement permitting her inclusion therein. Subsequent to the consent agreement, the Employer removed all duties related to collective bargaining negotiations from the position. These duties were then reassigned to a temporary position, Director of Accounting, until the Financial Services Director position was filled.

Director of Financial Services is given several potential proposals, and she analyzes each proposal's prospective financial impact on the College's budget. During the year prior to the hearing, the Director of Financial Services costed out proposals for two sets of negotiations. She spent a total of approximately three weeks on the proposals for these negotiations.

The Director of Financial Services also plays a role in calculating projected salary expenses. Financial accounting principles require the College to project what it will pay out in wages and salaries during a given budget period. Putting together this projection may require the College to project what it will be paying employees before the College reaches agreement on wages with their bargaining representative. Brantley, the Controller, and the Director of Financial Services work together to determine what figure should be used. The College must be able to establish to its outside auditors that this figure is a reasonable approximation of what the College actually intends to pay out. If a union knew this figure during negotiations, it could determine the College's actual settlement parameters. Although the College's financial reports are public documents, the record indicates that it would not be possible for a union to determine from looking at the report what the College's projection for its unit was because of the way the figures are combined in the report.

Although Brantley is always a member of the Employer's bargaining team, he attends negotiation sessions only when economic issues are being discussed that require his presence. The Director of Financial Services attends these negotiation sessions if Brantley is unable to be there. This is not a frequent occurrence. In the two years between her hire and the date of the hearing, the Director of Financial Services attended only one negotiation session.

Discussion and Conclusions of Law:

The Employer argues that the Director of Financial Services should be excluded as a confidential employee. A confidential employee is an employee who assists and acts in a confidential capacity to persons who formulate, determine and effectuate management policies with regard to labor relations. *Riverview Community Schools*, 1968 MERC Lab Op 419; *Wayne County*, 1988 MERC Lab Op 232. The confidential category is not limited to clerical employees. See *Benton Harbor Bd of Ed*, 1967 MERC Lab Op 733 (director of budget finance and accounting excluded as confidential); *Saginaw Twp Comm Schools*, 1972 MERC Lab Op 937 (supervisor of accounting is a confidential employee). While mere access to financial information is not a basis for excluding an individual as confidential, we have held that employees who cost out bargaining proposals in preparation for negotiations are performing confidential labor relations duties. *Clare-Gladwin ISD*, 1978 MERC Lab Op 898; *Swartz Creek Community Schools*, 1988 MERC Lab Op 848.

In the instant case, the Director of Financial Services has regular access to confidential labor relations information, i.e., information relevant to collective bargaining that is not made available to the union. The Director of Financial Services is regularly responsible for costing out wage proposals that may never actually be presented to the union and, therefore, is privy to confidential information about the Employer's bargaining strategy. Moreover, the Director of Financial Services is involved in determining projected salary expenses for financial accounting purposes and, therefore, has access to confidential information about the Employer's wage settlement parameters. These functions are a regular part of the Director of Financial Services' job, and there is no indication in the record that they could feasibly be performed by anyone else. Given these facts, we conclude that the position Director of Financial Services is a confidential position which should remain excluded from

Petitioner's bargaining unit.

Director of the Oakland Community College Foundation

Findings of Fact:

The Oakland Community College Foundation (hereafter "Foundation") is a 501(c)(3) corporation whose purpose is to raise funds for scholarships and programs at the College. The Foundation has a board of directors. Two of the College's trustees and its chancellor sit on the Foundation's Board, along with other members of the community with an interest in the College and status or position which facilitates the raising of monies for the Foundation.

Staff providing services full-time to the Foundation are paid by the College, receive the benefits given to College employees, and are considered College employees. Prior to about 1995, the Foundation had an executive director and an administrative assistant. In May of 1996, after the executive director left, the College created the position Foundation Manager as a position in Petitioner's bargaining unit. The Foundation Manager reported to the College's Executive Director of Workforce Development, monitored the budget, maintained records on donors and took telephone calls from donors and prospective donors. The Foundation Manager also helped plan and run established donor recognition and fund-raising events, such as golf outings. The Foundation Manager had little or no input into Foundation Board policies and did not routinely meet individually with prospective or existing donors.

Sometime in 1998, the Foundation Board decided that the Foundation should have a director with prior fund-raising experience, preferably in an educational institution. In June of 1998, the Foundation Manager transferred to another position within the College. The Foundation Manager position was left vacant and eventually eliminated. In November of 1998, the College created a new position, Director of Foundation, and posted it as a nonunit position. The salary for the new position is about \$20,000 more per year than the Foundation Manager's salary. Like the Foundation Manager, the new position reports to the Executive Director of Workforce Management. At the time of the hearing, the new director had not yet started work.

The new director is to be the primary contact between the Foundation Board and the outside community. The new director is required to attend every Foundation Board meeting. The new director is responsible for formulating fund-raising plans, for making recommendations to the Board regarding these plans and the resources necessary to implement them, and for recommending to the Board how unrestricted donations should be spent. The new director is also expected to meet directly with identified individuals, including the chief executive officers of area corporations, for the purpose of persuading them to donate money to the Foundation. Although the new director is an employee of the College, the Foundation Board has the effective authority to recommend her termination.

Discussion and Conclusions of Law:

PERA itself does not explicitly exclude "executives" from the right to engage in collective

bargaining provided by the Act. However, we have excluded from collective bargaining those employees who are “so intrinsically connected with a determination of policy that their engagement in concerted activity would damage, not enhance, the statutory purpose.” These employees we call executives. *City of Detroit*, 1969 MERC Lab Op 187. See also *Grandville Municipal Executive Assoc. v Grandville*, 453 Mich 428, 438-441 (1996), *aff’g* 1993 MERC Lab Op 206. The term “executive” as we use it is not synonymous with “managerial.” Rather, it is reserved for high-ranking public officials whose participation in collective bargaining would interfere with the public employer’s ability to administer legislative policy made by its governing body.

In *Detroit Police Dept*, 1996 MERC Lab Op 84, 106, we reformulated our definition of an executive under the Act to read as follows:

An executive means an employee who (1) is a policymaking head of a major department of a public employer; or (2) in the case of employers with 1,000 or more employees, is a chief deputy to a department head, or is the head of a section or division of a major department who reports directly to a chief deputy and who exercises substantial discretion in formulating, determining and effectuating management policy; or (3) pursuant to statutory or charter provisions, exercises a substantial degree of autonomy in carrying out his or her public services and who has direct access to or direct influence upon the governing body of a public employer in a policymaking role; or (4) formulates, determines and effectuates management policy on an employer-wide basis.

In the instant case, the Employer argues that the Director of Foundation falls within parts three and four of this definition. First, it contends that the Director of Foundation is an executive because she exercises a substantial degree of autonomy in carrying out her public services, and because she has direct access to or direct influence upon a governing body in a policymaking role. The Employer asserts that the Director of Foundation is the head of the Oakland Community College Foundation. It argues that although the Foundation is not a division of the Employer, but rather a separate entity, the Director of Foundation is an executive within the meaning of part three because she is the only policy-recommending individual for the Foundation. Second, the Employer asserts that the Director of Foundation is an executive within the meaning of part four of the above definition because she formulates, determines, and effectuates management policy for the Foundation on an employer-wide basis, and no one else at the College or the Foundation performs these tasks for the Foundation.

Part three of the executive definition set out in *Detroit Police Dept*, *supra*, covers individuals whose authority arises from statutory or charter provisions. The Foundation Director’s responsibilities have no basis in either statute or charter and, therefore, the Foundation Director position does not fall within that part of the definition. Moreover, in order to qualify as an executive under part three, an individual must also have direct access to or direct influence upon a governing body in a policymaking role. The Foundation Director serves as a policy advisor to a body, the Foundation. However, the Foundation is not her employer and does not set her terms and conditions of employment. Therefore, the Foundation Director’s inclusion in a collective bargaining unit of College employees does not have a potential impact on the Foundation’s ability to administer its own policies. We also find that the Foundation Director position does not fall within part four of our executive definition, individuals who formulate, determine and effectuate management policy on an

“employer-wide” basis, because the Foundation Director does not participate in the formulation of College-wide policies.

The record indicates that the Foundation Director is expected to associate on an equal basis with individuals with status and prestige, and that her duties and responsibilities are not routine. These are not, however, factors that we recognize as justifying the exclusion of an individual from participation in collective bargaining as an executive. Therefore, we conclude that Petitioner’s bargaining unit should be clarified to include the Foundation Director position.

Based on the findings of fact and conclusions of law set forth above, we reject the Employer’s argument that the Director of the Oakland County Community College Foundation is an executive, and we find that the position should be included in Petitioner’s bargaining unit. We agree with the Employer that the Director of Financial Services is a confidential employee, and we find that this position should be excluded from Petitioner’s bargaining unit. Accordingly, we issue the order set forth below.

ORDER

The bargaining unit of all full-time administrative and management staff employees of Oakland Community College represented by Petitioner is hereby clarified to include the position Director of the Oakland Community College Foundation. Petitioner’s request to clarify this unit to include the position Director of Financial Services is hereby denied.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Dated: _____