

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

In the Matter of:

TUSCOLA INTERMEDIATE SCHOOL DISTRICT,
Public Employer,

Case No. UC98 J-41

-and-

TRI-COUNTY BARGAINING ASSOCIATION,
Labor Organization-Petitioner.

APPEARANCES:

Luce, Basil & Collins, by Alan Luce, Esq., for Employer

White, Przybylowicz, Schneider & Baird, P.C., by Douglas V. Wilcox, Esq., for Petitioner

DECISION AND ORDER ON UNIT CLARIFICATION

This case was heard at Lansing, Michigan on September 28, 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 February 18, 2000, we find as follows:

The Petition:

The petition was filed by the Tri-County Bargaining Association, MEA/NEA, on October 15, 1998. Petitioner represents a bargaining unit of nonsupervisory professional employees of the Tuscola Intermediate School District. In July of 1998, the Employer removed the position of computer specialist from the unit, asserting that the specialist was the supervisor of computer technicians who are also in this unit. The parties agreed that Petitioner would file a petition for unit clarification and obtain a determination of the computer specialist's status. The parties also agreed that the position would remain in Petitioner's unit pending our decision.

Facts:

The position now known as computer specialist was created in 1990. At that time, it was titled "data processing technician." Between 1990 and 1993 the position was in a bargaining unit of paraprofessional employees represented by the Tuscola Intermediate Paraprofessional Association (hereafter "TIPPA"). However, the position's duties continued to increase in complexity. Effective with the beginning of the 1993-94 school year, the parties, including TIPPA, entered into a

memorandum of understanding changing the position's title to computer specialist and moving it to the professional unit represented by Petitioner. In about 1995, the ISD created a new position, computer technician, whose function was to assist the specialist. The computer technicians were in the paraprofessional unit until February of 1998, when the parties entered into a memorandum of understanding transferring them to the professional unit.¹

At the time of the hearing, the ISD's information technology division consisted of the computer specialist, two computer technicians, and a secretary. The information technology division is located in the ISD's Tuscola Technology Center, where computer and other technical courses are also taught. Although the specialist reports to the principal of the Technology Center, the specialist is in charge of the information technology division. The specialist oversees the work of the technicians. Moreover, although the technicians have certain regular assignments, the specialist also assigns them work. The computer specialist handles all customer complaints and emergencies, prioritizes problems, and reassigns the technicians to deal with these problems as necessary.

The computer specialist, and the technicians under his direction, are responsible for maintaining the ISD's computer equipment, including the server, computers, and cable linkages which comprise the ISD's limited access network. Four or five of the ISD's nine constituent local districts also use the ISD's information technology division as their only technical support. The information technology division regularly maintains, repairs and upgrades computer equipment owned by these districts. The ISD's information technology division also provides computer training for staff of the ISD and its constituent districts. This training includes both formalized classroom instruction and one-on-one instruction.

The information technology division develops and maintains specialized software programs used by the ISD's Technology Center. The ISD has a technology committee which develops long-range goals for the ISD, makes budget projections, and discusses training needs. The computer specialist chairs this committee, which also includes administrators, teachers and clerical staff employed by the ISD. The computer specialist regularly recommends the purchase of computer equipment and software by the ISD.

The specialist also helps local districts with long-range technology planning. Some of the local districts have technology committees, and the specialist sits on these committees. In other districts, the specialist meets regularly with the superintendent to discuss the district's technology needs. In both situations, the specialist makes recommendations about what equipment or software to buy, and provides information on prices. The specialist has also helped local school districts who have decided to upgrade their computer networks. The specialist has made recommendations on the purchase of equipment and helped to develop preliminary budgets. The specialist has also developed bid packets for local districts to distribute to vendors of computer equipment and guided the districts through the bidding process. The specialist also actively promotes the services of the information technology section to private businesses in the area and has provided private businesses with services similar to those which he provides for local districts.

¹The computer specialist's alternate title is information systems coordinator. The computer technicians are also known as information systems assistants.

In addition to the duties above, the specialist sits on the management committee of the Greater Thumb Telecommunications Consortium, a group consisting of intermediate school districts whose purpose is to expand the use of telecommunication technologies among its members. This nine-member committee consists mostly of administrators. The specialist also is responsible for overseeing the transmission of electronic data from the ISD and its constituent school districts to the Michigan Department of Education (hereafter "MDE"). This data includes fourth Friday student counts, staff counts, and various types of financial information. In addition to filling out some of the forms himself, the specialist teaches employees of the local school districts how to use the MDE's electronic forms. He also checks to make sure that all of these forms are filed in a timely manner.

When the ISD hired its first computer technician, the specialist helped the personnel department develop the job posting and an advertisement for the local newspaper. He also prepared a written test for the applicants. The specialist reviewed all applications and selected the individuals to be interviewed. The interviewees took the written test prior to their first interview. A team consisting of the specialist, the assistant building principal, the ISD's assistant superintendent, another administrator, and a member of the teaching staff came up with a set of questions and conducted the first interviews. The team reached a consensus on two candidates. The specialist interviewed the two candidates again and made a recommendation to the assistant superintendent. The assistant superintendent accepted his recommendation. When the ISD hired a second technician in 1997, the specialist again selected the applicants for the initial interview. The interview committee this time consisted of the specialist, his principal, and the assistant superintendent. This time the interview committee reached a consensus on one candidate. The specialist conducted a brief second interview by telephone with this candidate before recommending to the assistant superintendent that he be hired. In about August of 1998, the ISD hired a technician to replace one who had left. The interview committee again consisted of the specialist, the principal and the assistant superintendent. The committee agreed on two candidates. As when the first technician was hired, the specialist reinterviewed both candidates and made a recommendation to the assistant superintendent. The candidate he recommended, however, turned down the job, as did the second candidate preferred by the committee. The committee concluded that it did not want to hire any of the other candidates it had interviewed. When the specialist heard about another candidate through a contact in another district, he contacted that individual, reviewed his resume, and arranged for him to be interviewed by the committee. The specialist also conducted an individual interview with the candidate before recommending to the assistant superintendent that he be hired.

When the technician position was first created, the principal of the Technology Center consulted with the specialist before preparing and signing the technicians' written performance evaluations. The specialist now prepares and signs the evaluations. The principal and then the assistant superintendent review and approve them. The specialist has not received the training in conducting performance evaluations which the ISD usually provides to its supervisors. However, the specialist evaluated both technicians using the ISD's standard form in July of 1998.

The specialist has the authority to issue written reprimands to the technicians, although he has never had occasion to exercise this authority. He does not have the authority to issue discipline beyond a written reprimand. The specialist has met individually with technicians to discuss problems with their work.

Discussion and Conclusions of Law:

The Employer contends that the computer specialist is the supervisor of the computer technicians. The Employer asserts that since the computer technicians are now in Petitioner's professional bargaining unit, the specialist should be removed from that unit.

The computer specialist assigns and oversees the work of the computer technicians. Petitioner argues that this simply reflects the specialist's greater professional experience. As Petitioner correctly notes, we have held that a public employee is not a supervisor under PERA if his or her authority is limited to overseeing the performance of work 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. On the other hand, we have also recognized that in public employment the employer's governing body, on the recommendation of an executive, generally makes the final decision on matters of hiring, promotion, and layoff. Governing bodies may also have the final say on whether an employee will be discharged or receive a severe disciplinary penalty such as a suspension. This does not mean, however, that there are no first-line supervisors in the public sector.

An individual who has the responsibility for overseeing the work of others is likely also to have the authority to engage in informal discussions with those employees about perceived deficiencies in their work. We have held that the authority to issue formal discipline, or to effectively recommend such discipline, is an important indicator of supervisory authority even if that authority is rarely exercised. *City of Detroit (DPW)*, 1999 MERC Lab Op 283, (auto subforemen who have the authority to issue "oral written" and written reprimands are supervisors); *City of Detroit*, 1996 MERC Lab Op 282 (senior storekeepers); *Mesick Consolidated Schools*, 1988 MERC Lab Op 838 (bus mechanic). The computer specialist position at issue here has the authority to issue written reprimands to the technicians.

Another important indicator of supervisory status is the responsibility for preparing written evaluations of an employee's performance. See e.g. *Huron Co Medical Care Facility*; 1998 MERC Lab Op 137; *City of Mt. Pleasant (PS Dept)*, 1996 MERC Lab Op 425; *City of Midland*, 1993 MERC Lab Op 605. In the instant case, the specialist prepares and signs periodic written performance evaluations for the technicians. After the specialist signs the evaluations, they are reviewed by his building principal and then the assistant superintendent. However, there is no indication that these administrators participate in the preparation of the evaluations or routinely modify them.

The specialist has played a significant role in the hiring of three technicians. The specialist helped develop the qualifications for the technician position. He also prepared the tests to be taken by the applicants as part of the interview process. An interview committee including the specialist conducts the initial interviews and reaches a consensus on either one or two candidates. However, the specialist then conducts a second interview of the selected candidate(s) before making his recommendation to the assistant superintendent. The interview committee has twice selected two candidates, leaving the specialist to choose between them. Since the assistant superintendent sits on the interview committee, he has already personally interviewed the candidates when he receives the specialist's recommendation. If the assistant superintendent had disliked a candidate, he or she would probably not have been hired. Nevertheless, the fact is that the specialist has been given the authority

to effectively make the final decision.

In sum, the computer specialist supervises the work of computer technicians in Petitioner's unit, gives them assignments, and prepares and signs periodic written evaluations of their work. The computer specialist has the authority to issue written reprimands to the technicians. He also has been delegated the authority to effectively determine which applicant will be hired for that position. Based on these facts, we find that the computer specialist is a supervisor of the computer technicians under the Act and should not be included in the same bargaining unit with these employees. Accordingly, we issue the order set forth below.

ORDER

Petitioner's request to clarify its bargaining unit to include the position of computer specialist is denied.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Dated: _____