

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

In the Matter of:

VAN BUREN COUNTY,  
Petitioner-Public Employer,

Case No. UC99 G-23

-and-

COURTHOUSE SUPERVISORY CHAPTER OF  
LOCAL 2628, MICHIGAN COUNCIL 25, AMERICAN  
FEDERATION OF STATE, COUNTY & MUNICIPAL  
EMPLOYEES, AMERICAN FEDERATION OF  
LABOR-CONGRESS OF INDUSTRIAL  
ORGANIZATIONS,  
Labor Organization.

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**APPEARANCES:**

Howard L. Shifman, P.C., by Howard L. Shifman, Esq., for Petitioner

Kevin Bramlet, Administrative Director, for the Labor Organization

**DECISION AND ORDER ON UNIT CLARIFICATION**

Pursuant to the provisions of Sections 12 and 13 of the Public Employment Relations Act (hereafter "PERA"), 1965 PA 379, as amended, MCL 423.212 and 423.213, MSA 17.455(12) and (13), and a notice of hearing dated November 9, 1999, this information-type representation case was heard at Lansing, Michigan on February 10, 2000, before James P. Kurtz, Administrative Law Judge, acting as Hearing Officer for the Michigan Employment Relations Commission. Based upon the record, including the transcript of the hearing, exhibits, and briefs filed by the parties on May 8, 2000, this Commission, in the exercise of its administrative expertise, finds as follows:

**Petition and Issue:**

This petition for unit clarification was filed on July 20, 1999, by the Employer, County of Van Buren, seeking to exclude the position of systems manager or supervisor from a collective bargaining unit of County supervisory employees represented by the Union, Courthouse Supervisory Chapter of Local 2628, Michigan Council 25, American Federation of State, County & Municipal Employees, American Federation of Labor-Congress of Industrial Organizations. In the gradual evolution of the position at issue, it is now referred to in the record as the information services director (hereafter "ISD"). The County contends that the position should be excluded from the supervisory bargaining unit on the ground that it has become a confidential and/or executive position due to the development

and upgrading over the recent years of the County's computer network system. The Union opposes the exclusion of the position, contending that the ISD does not perform any of the traditional duties attributed to confidential employees, and that he does not participate directly in the collective bargaining process.

Factual Findings:

The County first used computers in its equalization department to assist in determining state equalized value and assessments for property tax purposes. In June of 1991, it posted a job opening for computer technician in that department. In late 1992, as the role of computers in the County expanded, a computer department was created, along with a supervisory position known as systems manager. This position was to supervise computer technicians and any other support personnel. Subsequently, the name of the department became information services, and the name of its supervisor, who reports directly to the county administrator, was changed to its present title of information services director. At the time of the hearing, the ISD supervised a technician who has the same access to the computer network, but no issue is being raised as to the technician's inclusion in a bargaining unit.

In the decade preceding the hearing, the qualifications and responsibilities for the ISD position have greatly increased. The three computers in the equalization department have grown to approximately 225 in a network that includes all of the departments and co-employers of the County, and all of its courts, including the circuit, probate and district courts. The ISD is in charge of this comprehensive network, and acts as its "gatekeeper," controlling who has access to the various levels and types of information. The employees of the County, approximately 165 in number, are included in six bargaining units, except for a few unrepresented part-time secretaries, cooks, and corrections employees in the sheriff department. The only exclusions from the collective bargaining units are four "front office" employees; namely, the County administrator, a full-time and a second part-time administrative assistant,<sup>1</sup> and the human resources specialist, who handles all collective bargaining and personnel matters for the County and its courts. The entire employment complement on the computer network, including elected officials, judges, and court employees is approximately 225, with more than 300 passwords.

The County has had no confidential secretarial exclusion as such, and there appears to be no present need for one. All departments of the County are now computerized, along with the courts, in a County-wide network. All records and communications, including personnel files and documents related to collective bargaining, are now placed directly on computers and edited by the employees responsible for them. Some records, such as property and tax matters, are made available to the general public. With regard to collective bargaining, internal memoranda, including directions for the

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<sup>1</sup> The record did not set forth the duties and responsibilities of the two administrative assistants or the basis for their exclusion from collective bargaining. Accordingly, their status relative to the issue of confidential work is not at issue in this case.

bargaining negotiations, are now transmitted and edited by computer, rather than by hard copy as in the past. These include communications from or to the County human resources specialist and its labor or other counsel, and/or with County officials or commissioners, or with the officials or judges of the various courts. Notes of all meetings, including collective bargaining negotiations, are kept on computer, as well as all matters relating to the processing of grievances.

The ISD is responsible for the storage, retrieval, security, and back up of all data stored on three centralized warehouse servers, which store the data for the computer network of the County and its courts. Security involves both limiting access by employees to certain data, and preventing persons outside of the system from gaining access. The ISD must have access to everything on the network in order to perform his backup duties, and he may change any of the some 300 passwords in use. He is also responsible for restoring files that have been lost or accidentally deleted, which includes collective bargaining files. The human resources specialist works with the ISD in setting policies in regard to employee access to the network and related security issues. The ISD is responsible for upgrading and maintaining the computer network, monitoring policies on use of the network by employees, and training County and court employees, including elected officials, in the use of the computer system. As administrator of the network, the ISD must also maintain the required information and reporting links to the State, and make sure that the State receives the required reports, such as court data and statistics.

#### Discussion and Conclusions:

Given the fact that the County has no recognized confidential exclusion, the Union's position herein would deny the County the only exclusion that it seeks. From the earliest cases decided under PERA, the Commission has always allowed a public employer to designate an employee of its choice as a confidential exclusion from collective bargaining. *City of Bay City*, 1966 MERC Lab Op 271, 276-279. See also *Warren Woods Schools*, 1971 MERC Lab Op 99, 105-108. The exclusion is intended for the employee who assists the chief negotiator or the person who determines, formulates, and effectuates labor relations policy for the public employer. *Riverview Comm Schools*, 1968 MERC Lab Op 419, 421-423. The exclusion is applied cautiously by the Commission since those excluded are deprived of their right to representation and collective bargaining under PERA. *Lake County Sheriff*, 1999 MERC Lab Op 107, 112-113; *Benton Harbor Bd of Ed*, 1967 MERC Lab Op 743, 744-746. Where litigated, the exclusion is generally limited to one employee of an average size public employer. *Livingston County*, 1972 MERC Lab Op 490, 492 (one court reporter-secretary out of four may be designated as the confidential exclusion in a judicial unit of three courts); *City of Romulus*, 1971 MERC Lab Op 206, 208-209 (employer told to pick one of three requested confidentials). While the choice of whom to exclude as a confidential has always been left to the Employer, *Oakland Comm College*, 2000 MERC Lab Op 77, 79; *Monroe County*, 1971 MERC Lab Op 393, 396-397, it has been our policy to strictly limit that exclusion to only those employees who are directly involved in collective bargaining, or their assistants. *Pontiac School Dist*, 1997 MERC Lab Op 173, 180-181.

The Commission and its ALJ's have had to confront, in a number of recent cases, the effects of technology on the work force. See e.g. *Johannesburg-Lewiston Area Schools*, 2000 MERC Lab

Op \_\_\_\_ (Case No. UC98 J-42, issued 8/29/00), motion for reconsideration pending (reorganization caused in part by new technology in the library/media centers); *Brimley Area Schools*, 2000 MERC Lab Op \_\_\_\_ (Case Nos. UC99 F-20 and UC99 G-21, issued 5-24-00) (technology coordinator, rather than bookkeeper, excluded as confidential); *Muskegon County Sheriff*, 2000 MERC Lab Op 88, 92-93 (computer work assigned to deputy on light duty held not to be exclusive bargaining unit work); *Charlotte School Dist*, 1996 MERC Lab Op 193, 202-203 (added computer duties did not require advance bargaining); *Portage Police Dep't*, 1995 MERC Lab Op 251, 256 (bargaining not required prior to adding cameras to patrol cars); *Washtenaw Comm College*, 1993 MERC Lab Op 781,789 (use of computer did not substantially alter the duties and responsibilities of position). All of these cases recognize the fact that bargaining units and job descriptions are fluid in nature, and that unit descriptions and work responsibilities and duties are constantly changing and evolving. This is the underlying reason for the Commission's policy of defining units generically, rather than by classification or department, in view of the subsequent problems caused by unit descriptions that are too narrowly defined or defined by classification. *Herman Kiefer Hospital*, 1972 MERC Lab Op 685, 694-695. See also *City of Warren*, 1966 MERC Lab Op 25, 28-29.

In the instant case, the Employer has eschewed the use of the traditional high-level secretarial employee as its confidential exclusion based on the new reality of its computer network. Rather than have a secretary type up bargaining proposals in hard copy form, the human resources director now types confidential matter directly into her computer and sends it by E-mail to other bargaining team members, County officials and commissioners, or judges and other court officials. Under these circumstances, there is no longer the need, nor the justification, for a confidential clerical exclusion. *Brimley Area Schools*, *supra*. Instead, the County seeks to exclude the supervisory employee in charge of the computer network based on the fact that he has the broadest access to whatever is put on the network, including the ability to access every computer on the network, limit access of employees and others to the network, retrieve lost or misplaced data, and change passwords.

The Union's assertion that the Employer's choice of a confidential does not perform any of the traditional duties of a confidential or participate directly in collective bargaining is true to the extent that the traditional methods of preparing and transmitting bargaining proposals and data have been supplanted by technology. As we have held this same date in our decision in *Garden City Schools*, 2000 MERC Lab Op \_\_\_\_ (Case No. UC99 C-10, issued 10/26/00), it is appropriate for an employer, in recognition of technological developments, to designate as its confidential exclusion, the one employee "who has total access to, and control of, an employer's information network." Such designation may, upon the filing of a petition, take the place of any previously designated position that is no longer confidential due to the change in technology, and the affected confidential position may be returned to the appropriate unit, if any. In this case, and in conformity with Commission policy on limiting the confidential exclusion, the County seeks to exclude as a confidential only the one individual, aside from the top level executives of the County who are responsible for the bargaining itself. We agree that the County may exclude the ISD as a confidential employee, in view of his all-encompassing duties and responsibilities with regard to the computer network, including access to all labor relations matters, and given the fact that this position is the only requested confidential exclusion in County government. Accordingly, based on all of the above, we enter the following order:

**ORDER GRANTING PETITION**

For the reasons set forth above, and in accord with the findings and conclusions herein, Petitioner's request to clarify the bargaining unit of supervisory employees of the County of Van Buren, represented by AFSCME Council 25, Local 2628, by excluding from the unit the position of information services director as a confidential labor relations employee is hereby granted.

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: \_\_\_\_\_