

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

In the Matter of:

CITY OF GRAND RAPIDS (POLICE DEPARTMENT),
Public Employer,

Case No. UC99 K-44

-and-

ASSOCIATION OF PUBLIC ADMINISTRATORS OF GRAND RAPIDS,
Petitioner-Labor Organization,

-and-

POLICE OFFICERS LABOR COUNCIL,
Intervenor-Labor Organization.

APPEARANCES:

Mari Beth Jelks, Labor Relations Manager, for the Public Employer

Kalniz, Iorio, & Feldstein, Co., LPA, by Ted Iorio, Esq., for Petitioner

John A. Lyons, P.C., by Timothy J. Dlugos, Esq., for the Intervenor

DECISION AND ORDER ON UNIT CLARIFICATION

Pursuant to the provisions of Sections 12 and 13 of the Public Employment Relations Act (hereafter **APER**A@), 1965 PA 379, as amended, MCL 423.212 and 423.213; MSA 17.455(12) and (13), and a notice of hearing dated February 24, 2000, this information-type representation case was heard at Lansing, Michigan on March 23, 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, exhibits, and the briefs filed by the parties on or before June 22, 2000, this Commission, in the exercise of its administrative expertise, finds as follows:

Petition and Issue:

This petition for unit clarification was filed on November 12, 1999, by the Association of Public Administrators (hereafter **AP**APA@). The APA seeks to include in its bargaining unit of City supervisory employees the job classification of **A**crime scene supervisor.@ See *City of Grand Rapids*, 1992 MERC Lab Op 339, 354, for the representation case establishing the APA bargaining unit. The position involved in this case was given the title of **A**forensic services manager@(hereafter **AF**SM@) by the Employer during reorganization of the police department's crime laboratory, which is now known

as the forensic services unit. Petitioner APA contends that the City eliminated one of its bargaining unit positions, a crime laboratory specialist, at the time of the reorganization, and replaced the eliminated position with the FSM classification. The APA argues that the two positions are essentially the same and that they share a community of interest. The APA further contends that the FSM position is supervisory and, on that basis alone, the classification must be placed in its City-wide unit of supervisory employees.

The Grand Rapids Police Officers Labor Council (hereafter POLC) intervened in this matter, arguing that the FSM should be included in its crime scene technician/police intern bargaining unit.¹ This claim is based upon the fact that the approximately 12 crime scene technicians who work out of the crime laboratory were previously overseen by a police sergeant, who, as part of the Employer's reorganization, was transferred to a field position. Accordingly, the POLC contends that the new FSM position is not a true supervisory employee, but rather is merely a leader and may be included in its nonsupervisory unit with the crime scene technicians. The City takes a neutral position with respect to which unit the FSM should be included within, while at the same time agreeing that the new position has been delegated broader supervisory powers over the forensic services unit as part of the reorganization initiated by the chief of police.

Factual Findings:

All investigative functions of the police department, which employs more than 300 police officers, are under the direct supervision of a police captain. One of the support functions under his supervision is the crime laboratory, now forensic services unit, which employs the civilian crime scene technicians and, in the past, at least one crime scene specialist. The latter position, which was included in the APA bargaining unit, required specialized training in crime scene technology and two years experience in crime scene investigation. The specialist coordinated and assigned all narcotics and drug testing, made sure that all court dates were covered, prepared latent fingerprint chemicals and processed the evidence, trained officers on drug matters and helped them become court qualified as expert witnesses in drug analysis, and recommended the purchase of supplies for the unit. She sometimes had a part-time assistant, who was usually a crime scene technician. The specialist was herself a former crime scene technician, and has assisted the City in the interviewing process for the hiring of new technicians.

A police sergeant, referred to as a leader by the City, was responsible for overseeing the crime scene technicians. This position, which was rotated occasionally among the sergeants, was also in charge of the department's motor pool fleet, property management unit, including uniform distribution and inventory matters, and the evidence room. The police captain estimated that the sergeant would spend 50 to 60 percent of his or her time overseeing the technicians, and the rest of the time

¹The POLC represents two other bargaining units in the City, a police officer/sergeant unit, and a unit of emergency telephone operators.

performing other duties. The sergeants assigned to these duties had no specialized expertise in laboratory functions beyond what was expected of trained and experienced police officers. The main responsibilities of the sergeant assigned to the crime lab were to assign duties to the technicians, check and monitor their daily logs, do the payroll, evaluate them, and perform coaching or minor discipline. Any serious discipline was referred to the captain.

The Employer's new police chief, hired by the City in about 1998, has, as a goal, the assignment of all sworn officers to law enforcement duties, including the reassignment of those performing administrative duties. As an example, the records management unit of the department, previously under the supervision of a police lieutenant, was placed under the supervision of a civilian records manager who is included in the APA bargaining unit, and the City's dispatchers are supervised by a civilian. In the summer of 1999, the Michigan State Police offered to perform all drug analysis work, since the State has a crime laboratory in the City. In view of the substantial savings this would entail for the City, including the fact that a drug analysis laboratory would not need to be included in the plans to build a new police headquarters, the City transferred its drug work to the State. This resulted in the layoff of the crime laboratory specialist, who took a technician position in the bargaining unit of crime scene technicians.

At this same time, the police chief and the City decided to professionalize the forensic services unit by creating a new career management position that would have the education, expertise, and background to keep up with the new technology developing in the field of forensic science, and who would be permanently in charge of the unit and handle all personnel matters. The chief of police wanted the new position to be a professional, civilian, supervisory classification that would have the necessary education and background for the proper collection, accurate identification, and preservation of the physical evidence from crime scenes. The police supervisors concluded that the sergeants did not have the scientific knowledge and technical background to head the forensic unit. The department was also concerned about the right of the sergeants to transfer to other positions, which happened with some regularity. Therefore, the City created the FSM classification, which required, as a minimum, a bachelor's degree in forensic science or a related field and three years of progressively responsible experience in evidence collection and field work, along with some experience in supervision and training.

The former crime laboratory specialist was appointed to the new FSM position in late 1999 on an acting basis, pending resolution of this dispute over her unit placement. The new FSM position performs some work similar to the crime laboratory specialist, such as packaging and forwarding drug information to the State Police. However, she is also now generally responsible for the administration of the forensic unit, both on a personnel, as well as a scientific and professional, level. Her new and additional responsibilities include controlling all of the assignments of the technicians, reviewing and evaluating their work, and granting them time off. She also may recommend and implement discipline, and she will be involved in the hiring and training of technicians.

Discussion and Conclusions:

Contrary to the contention of the Intervenor in this matter, we find that the FSM position has

been granted real and actual supervisory authority over the operations of the forensic unit of the police department, and that the position is not that of a work leader who may be included in its unit of nonsupervisory crime scene technicians. *Tuscola Int Sch Dist*, 2000 MERC Lab Op ____ (Case No. UC98 J-41, issued August 31, 2000). 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. An employee who possesses only routine responsibility to direct or assign work, but has no other indicia of supervisory authority, is not a supervisor under our definition. *Huron County Medical Care Facility*, 1998 MERC Lab Op 137, 146; *Detroit Parks and Recreation*, 1969 MERC Lab Op 661, 666-668.

The duties delegated by the City to the FSM position are clearly more than the routine assignment and overseeing of work, along with timekeeping responsibilities, that is characteristic of work leaders. Compare *Butman Twp*, 2000 MERC Lab Op 13, 16-17, where a working superintendent was found to be a leader, not a supervisor, because of his limited independent judgment and his routine exercise of discretion on personnel matters. The intent of the Employer in making the changes in the forensic unit was to upgrade and professionalize both its operations and its management by creating a new supervisory position that would permanently manage the unit, while at the same time possessing the skills to keep abreast of technological developments. We recently faced a similar decision on supervisory status in *Johannesburg-Lewiston Area Schools*, 2000 MERC Lab Op ____ (Case No. UC98 J-42, issued August 29, 2000), reconsideration pending, wherein we found that the employer had created a new supervisory director position over its library/media centers, even though many of the previous nonsupervisory functions were retained in the new classification. See also *Van Buren County*, 2000 MERC Lab Op ____ (Case No. UC99 G-23, issued October 26, 2000), for a discussion of the effects of changing technology on bargaining units and the work force.

The Intervenor cites our decision in *Berrien County Sheriff*, 1999 MERC Lab Op 177, 186-188, for its contention that the FSM is a lead employee in the forensics unit, rather than a supervisory employee in a labor relations sense. In *Berrien*, we held that sergeants who acted as substitute supervisors of a shift in the place of higher-ranking officers, and who normally performed duties similar to other deputies or corrections officers, were lead employees, and that their delegated functions and responsibilities were insufficient to confer upon them supervisory status. In *Berrien*, each of the shifts of the road patrol and jail were under the immediate supervision of a lieutenant, and the sergeant assigned to the same shift merely acted as a substitute for the regular supervisor in his or her absence. It is well-settled that sporadic exercise of supervisory duties will not exclude an employee from a nonsupervisory bargaining unit. *Melvindale Police Dept*, 1975 MERC Lab Op 695, 698; *Model Neighborhood Inner City Drug Abuse Program*, 1975 MERC Lab Op 406, 408 (nursing supervisor); *United Rent-All*, 1972 MERC Lab Op 378, 385.

The position at issue in the instant case, however, is in charge of, and exercises her delegated supervisory responsibilities over, the forensic services unit on a full-time basis. These responsibilities have increased markedly since she worked as the crime laboratory specialist, where she usually

worked alone and had no regularly delegated responsibilities relative to the crime scene technicians. The FSM now controls all of the assignments of the technicians, reviews and evaluates their work, grants them time off, may recommend and implement discipline, will be involved in the hiring and training of technicians, and is generally responsible for the administration of the forensic unit. Thus, there has been a real change in the duties and responsibilities of the FSM position when compared to either the former laboratory specialist classification or the duties exercised by the sergeant over the unit, and such change, we find, is more than cosmetic in nature. Compare *Univ of Mich*, 1994 MERC Lab Op 391, 392, aff'd unpublished opinion of the Court of Appeals, issued July 12, 2000 (Docket No. 176332), where the Commission found that the nonunion animal technician classification was basically the same as the eliminated union position of animal aide. Thus, we conclude that our decision in *Berrien County Sheriff* is inapplicable to the case at bar, and that the FSM position is a supervisor as defined by this Commission. *Model Neighborhood Program, supra* at 408 (social worker).

Having found that the FSM position is supervisory, it cannot be included in the nonsupervisory bargaining unit represented by the Intervenor POLC, since the Commission will not mix supervisors with nonsupervisory employees. *City of Grand Rapids*, 1999 MERC Lab Op 74, 77; *City of Grand Rapids*, 1992 MERC Lab Op 339, 342. In view of the supervisory status of the FSM classification, it must be added to the existing unit of City supervisory employees represented by the Petitioner APA, and we will so order:

ORDER GRANTING PETITION

For the reasons set forth above, and in accord with the findings and conclusions herein, the request of Petitioner Association of Professional Administrators of Grand Rapids to clarify its bargaining unit of supervisory employees of the City of Grand Rapids by including in the unit the position of forensic services manager is hereby granted.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Dated: