

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

ARENAC COUNTY,
Public Employer,

Case No. R00 H-95

-and-

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

APPEARANCES:

Cohl, Stoker & Toskey, P. C., by David G. Stoker, Esq., for the Public Employer

Rudell & O'Neill, P.C., by Kevin J. O'Neill, Esq., for the Labor Organization

DECISION AND DIRECTION OF ELECTION

Pursuant to Sections 12 and 13 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212 and 423.213, this case was heard in Detroit, Michigan, on January 12, 2001, by Administrative Law Judge James P. Kurtz for the Michigan Employment Relations Commission. Based upon the record, including post-hearing briefs filed by March 19, 2001, we find as follows:

The Petition and Arguments of the Parties:

The Union, Teamsters State County and Municipal Workers, Local 214, filed a petition on August 11, 2000, seeking to represent full and part-time department head/supervisors employed by Arenac County, including the maintenance supervisor, animal control officer, 911-director/emergency management coordinator, public guardian, child support enforcement officer, housing director, and equalization director. Arenac County is a small county located in east central Michigan, north of Bay County. Of 83 counties in Michigan, Arenac is the 2nd smallest in area, 13th smallest in taxable value, and 18th smallest in population.

At the hearing, the parties stipulated that the maintenance supervisor position would be included in the proposed unit and that the equalization director would be excluded. The Employer maintains that the 911-director/emergency management coordinator, public guardian, and housing director should be excluded as executive positions, and that the animal control officer, child support enforcement officer, and housing director should be excluded because they lack supervisory

responsibilities.¹

Facts:

911-Director/Emergency Management Coordinator

The 911-director/emergency management coordinator devotes about 50% of his time to each facet of this combined position. As emergency management coordinator, he is responsible for administering, planning, coordinating, and operating the Respondent's emergency preparedness activities. He serves as liaison with other government agencies to maintain effective emergency operations. His duties, as set forth in his job description, include developing emergency and disaster plans; coordinating the recruitment and training of volunteers; educating the public about actions required to protect persons and property in the case of a disaster; conducting practice alerts and exercises; coordinating activities of all public and private agencies in emergencies; and assisting the local emergency planning committee to develop site-specific standard operating procedures. The coordinator also advises the board on when to declare a "local state of emergency." He reports directly to the board and prepares a budget for board approval.

As 911-director, the incumbent supervises and directs the work of five full-time and two part-time dispatchers, and operates a countywide communications center which dispatches and coordinates all emergency services. Duties and responsibilities set forth in his job description include: monitoring service, developing policies and procedures and seeking approval of the authority board and then the board of commissioners; incorporating policy revisions as instructed by both boards; serving as liaison with participating agencies; receiving and resolving complaints; preparing a preliminary unit budget with the chief financial officer; attending and coordinating department staff meetings; and overseeing staff performance. The director hires and disciplines employees, but is expected to consult with the board of commissioners prior to discharging an employee. The incumbent is the first step in the grievance procedure. The record indicates that the incumbent's involvement in labor relations is limited to his participation in collective bargaining negotiations in 1997.

Public Guardian

The public guardian, hired by the board of commissioners, has been empowered by a probate judge to serve as conservator for citizens who are unable to handle their medical, housing, and financial affairs. At the time of the hearing in this matter, she was responsible for the affairs of ninety-seven county residents. She supervises and directs the work of one employee who works thirty hours a week. Although the guardian reports to the board, she interacts with it only in the rare event that there are problems. Her main contact is with the probate court. She prepares yearly budgets for board approval, and during negotiations for the current contract, she was asked for input by the board, but offered none. The guardian's job description lists twenty duties and responsibilities. The guardian is expected to: make personal and hospital visits; transport or arrange transportation to medical appointments; sign checks and deliver funds to home-bound clients;

¹ In its post-hearing brief, the Employer asserted that the 911-director/emergency management coordinator, public guardian and housing director should also be excluded on the ground that they perform confidential labor relations duties. This argument was not pursued at the hearing, however, and we decline to consider it here.

monitor clients' bank balances; file annual financial reports with various government agencies; apply for benefits on behalf of clients; deliver groceries, personal items, holiday food, and gifts; purchase and maintain funeral arrangements; file bankruptcy petitions on behalf of clients when necessary; keep families and others apprised of clients' well-being; budget finances and review with clients; remain on-call 24 hours a day, seven days per week to respond to various emergencies, including death bed and client behavior calls; and file inventory on all new clients with the probate court.

Housing Director

The housing director operates a one-person office and performs all clerical work associated with her job. The director's job description contains twenty-five duties and responsibilities. Most of her responsibilities require the approval of the housing commission that is charged with providing housing assistance to County residents. The director's responsibilities include receiving, disbursing, and accounting for funds; acting as the housing commission's secretary (takes minutes, records votes, publicizes program, writes correspondence, etc.); reviewing grant applications and determining eligibility for housing assistance; mediating problems arising between homeowners and contractors and reporting findings to the housing commission; supervising all housing commission employees and/or independent contractors; preparing an annual budget subject to the approval of the housing commission and the board of commissioners; maintaining regular contact with agencies performing similar functions; and, subject to the approval of the housing commission, meets regularly with the board of commissioners to keep them informed of housing commission activities.

Animal Control Director

The board of commissioners hires the animal control director. At the time of the hearing, he was responsible for the kennel's operation seven days a week. His duties include answering stray dog, cat, and loose cattle reports, and feeding animals and cleaning their cages. Between January of 1993 and the fall of 1995, a part-time employee worked 19 hours per week. Her duties included cleaning kennels, performing paperwork, and handling phone duties. She worked under the supervision of the animal control director. Since 1995, the director has worked in a one-person office. When the incumbent director was hired in December of 2000, the board of commissioners indicated that a part-time kennel employee would be hired to work every other weekend to allow the animal control director to have some time off-duty. The part-time employee's duties will not include clerical/phone duties.

Child Support Enforcement Officer

The child support enforcement officer is a salaried position that is authorized to work twenty-four hours per week. She works with the county prosecutor to establish paternity and to force fathers to make child support payments to their children who are on state aid. The incumbent is responsible for processing referrals from the State of Michigan's Family Independence Agency (FIA), setting up appointments and interviewing clients, drafting and filing court documents, preparing monthly and quarterly reports, and drafting and processing the unit's annual contract with FIA. She prepares a budget, which she submits to the county commission. The child support enforcement officer's only direct meetings with the board related to her own salary and benefits. No employees report to her.

Discussion and Conclusions of Law:

In *City of Grandville*, 1997 MERC Lab Op 140, on remand from *Grandville Municipal Executive Association v City of Grandville*, 453 Mich 428 (1996), we reaffirmed the definition of an executive which we adopted in *Detroit Police Department*, 1996 MERC Lab Op 84, 106, as follows:

An executive means an employee who (1) is a policy-making 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 provision, exercises a substantial degree or 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 policy making role; or (4) formulates, determines and effectuates management policy on an employer-wide basis.

We also reaffirmed that in determining executive status, we would continue to look at factors such as the number of executive positions relative to the size of the organization, the extent of budget responsibilities, responsibility for preparation of departmental rules and regulations, the degree of interchangeability of functions between the employee and his immediate supervisor, and the degree of participation in labor relations or the formulation of collective bargaining policy. See *Detroit Police Department*, *supra*.

Having carefully reviewed the record in the instant case, we disagree with the Employer's contention that the 911-director/emergency management coordinator, public guardian, and housing director should be excluded from the unit as executives. Given the Employer's size and the incumbents' lack of wide-ranging authority and discretion to formulate, determine, and effectuate management policy on an employer-wide basis, we do not consider any of the above positions to be an executive. For example, the housing commission, rather than the housing director, formulates and establishes policy. The director serves as the commission's agent and is primarily responsible for processing grant applications and determining client eligibility. He also serves as the commission's secretary; and receives, disburses and accounts for clients' funds. The director's contact with the board of commissioners is limited to providing information about the housing commission's activities. The budget prepared by the director must be approved by the housing commission prior to being submitted to the board of commissioners.

Similarly, we find that the public guardian lacks wide-ranging authority to formulate policies on an employer-wide basis. Her duties and responsibilities are described in minute detail in her job description and leave little room for the exercise of discretion. In sum, she is responsible for managing all aspects of the lives of clients who have been found by a court to be incompetent to manage their own affairs. These duties do not involve formulating or effectuating management policy on an employer-wide basis.

Finally, there is nothing on the record to demonstrate that the 911-director/emergency management coordinator has been granted sufficient authority to exclude him from the bargaining unit as an executive. The policies that he develops must be approved by an authority board prior to

being submitted to the board of commissioners, and both boards must approve any policy revisions. Moreover, the 911-director/emergency management coordinator does not play a significant role in negotiating collective bargaining agreements. At best, he was invited to attend a negotiating session in 1997. Accordingly, we conclude that the 911-director/emergency management coordinator, public guardian, and housing director should not be excluded as executives.

We agree with the Employer, however, that the animal control director, the child support enforcement officer, and the housing director, should be excluded from the supervisory unit. A supervisor, as we define that term, 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. *MEA v Clare-Gladwin ISD*, 153 Mich App 792,796-798, aff'g 1985 MERC Lab Op 915; *Grand Rapids Police Department*, 2000 MERC Lab Op 384-387; *East Detroit School District*, 1966 MERC Lab Op 60. In the instant case, the record indicates that the animal control director, the child support enforcement officer, and the housing director do not, in fact, have any employees working under their direction. Accordingly, these positions are not supervisory under PERA and, therefore, should not be included in a supervisory unit.

DIRECTION OF ELECTION

Based upon the above facts and conclusions of law, we find that a question concerning representation exists under Section 12 of PERA. Accordingly, we direct an election among employees in the following unit which we find appropriate under Section 13 of PERA:

All full and part-time department heads/supervisors, including the 911-director/emergency manager, the public guardian, and the maintenance supervisor.

Pursuant to the attached Direction of Election, the above employees shall vote to determine whether or not they wish to be represented by Teamsters State, County and Municipal Workers, Local 214.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chairman

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Dated: _____