

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

In the Matter of:

PORT AUSTIN AREA WATER
& SEWER AUTHORITY,
Public Employer,

Case No. R00 L-155

-and-

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 347,
Petitioner-Labor Organization.

APPEARANCES:

Braun, Kendrick, Finkbeiner, PLC, by Ellen E. Crane, Esq., for the Public Employer

Korney & Heldt, P.C., by J. Douglas Korney, Esq., for the Petitioner

DECISION AND DIRECTION OF ELECTION

Pursuant to Section 12 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212, this case was heard at Detroit, Michigan on March 20, 2001, before Julia C. Stern, Administrative Law Judge, acting as hearing officer for the Michigan Employment Relations Commission. Pursuant to Sections 13 and 14 of PERA, and based on the record, including a brief filed by the Employer on April 23, 2001, the Commission finds as follows:

The Petition and Positions of the Parties:

The International Union of Operating Engineers, Local 547, filed this petition on December 19, 2000. Petitioner seeks an election in a bargaining unit consisting of all full-time and regularly scheduled part-time employees of the Port Austin Area Sewer and Water Authority, including system operators, the controller, and the superintendent, but excluding supervisors. The Employer contends that the superintendent should be excluded from the unit both as a supervisor and as an executive. It also asserts that the controller should be excluded as a confidential employee.

Facts:

The Port Austin Area Sewer and Water Authority provides drinking water and operates a waste water system for the Village of Port Austin and parts of Port Austin Township. The parties stipulated that the Authority is a public employer under PERA. The Authority is governed by a five-member board which meets once a month. It operates three facilities: a water treatment plant, a sewage treatment plant and an office. The Employer employs three full-time and one regular part-time system operators, a controller, and a superintendent. At the time of the hearing in this matter, the superintendent position was vacant.

The superintendent, under the general supervision of the Board, is responsible for all aspects of the Authority's operations, including the operation of both plants and repairs to pipes and water mains. In addition to overseeing daily operations, the superintendent is responsible for long-range planning, maintenance of the system including pipes and mains, and preparing and administering the Employer's budget. The superintendent attends all Board meetings. The superintendent schedules, assigns and directs the work of the system operators on a daily basis and determines when overtime is necessary. The superintendent is responsible for the Employer's compliance with regulatory requirements and for the submission of the necessary operation reports. The position requires Class C wastewater treatment certification, F4 water filtration certification, and S4 water distribution system certification. The record indicates that the previous superintendent, after consulting with the Board, once issued a written disciplinary warning. This warning stated that the employee would be discharged after the next offense, and the superintendent subsequently discharged the employee without first seeking the Board's approval. When the Employer hires new operators, the superintendent screens the applications. A three-member committee consisting of the superintendent and two Board members interviews applicants and makes a recommendation to the full Board. In formulating its recommendation, the committee generally defers to the superintendent's judgment as to who is the most qualified candidate. The superintendent has also negotiated compensation packages with prospective employees, within limits set by the Board.

The controller is the only employee who regularly works in the office. She answers the telephone. She prepares work orders when residents call to have their water turned off or on. The controller sends out bills and assessments, receives payments, and does the banking. The controller enters the daily financial transactions into the computer and prepares a monthly financial statement for the Board. The controller has the authority to sign certain kinds of checks, including paychecks. The controller types letters, although the previous superintendent generally typed his own personal correspondence. She maintains all the files, including personnel files, budget information, and copies of board meeting minutes.

Discussion and Conclusions of Law:

Petitioner asserts that all evidence regarding the authority possessed by the superintendent is merely speculative, since the superintendent's position is currently vacant. At the time of the hearing, the Employer was attempting to fill the superintendent's position. However, nothing in the record suggests that the Employer intends to change the position's responsibilities or authority. We find that the superintendent exercises independent judgment in assigning and directing the work of the operators on a daily basis. We also find that the

superintendent has the authority to effectively recommend discipline, including discharge. “Effectively recommend” means that the supervisor’s recommendations are generally accepted by his or her superiors without an independent investigation. *Kalkaska Co. and Sheriff*, 1994 MERC Lab Op 693. Although the previous superintendent consulted the Board before issuing a disciplinary reprimand on the one occasion when the need arose, the Board accepted the superintendent’s recommendation without undertaking its own investigation. The authority to issue formal discipline or effectively recommend such discipline is an important indication of supervisory authority, even if that authority is rarely exercised. *Bloomfield Hills SD*, 2000 MERC Lab Op 363, 365. The record also indicates that the superintendent has considerable influence in determining who will be hired and the level of employee compensation. Based upon these facts, we conclude that the superintendent is a supervisor as we have defined that term. See *MEA v Clare-Gladwin ISD*, 153 Mich App 792,795-798, *aff’g* 1985 MERC Lab Op 915. As such, the position must be excluded from the unit sought by Petitioner. As a result of this conclusion, it is unnecessary for us to determine whether the superintendent is also an executive.

With respect to the controller, Petitioner relies upon the fact that the position has never performed any confidential labor relations duties. However, we have permitted a public employer to designate one employee to assist the individual responsible for the Employer’s labor relations in a confidential capacity, even when no confidential labor relations duties have been performed in the past. See e.g. *Carsonville-Port Sanilac Schools*, 1982 MERC Lab Op 1075; *Pickford PS*, 1980 MERC Lab Op 935; *Dickinson Co Rd Comm*, 1973 MERC Lab Op 745,746. We conclude that the Employer may designate the controller as its confidential employee and exclude her from the proposed unit on that basis.

ORDER DIRECTING ELECTION

Based on the findings of fact and conclusions of law above, we find that a question concerning representation exists under Section 12 of PERA. We direct an election in the following unit, which we find appropriate under Section 13 of PERA:

All full-time and regularly scheduled part-time employees of the Port Austin Area Sewer and Water Authority, including system operators; but excluding supervisors, including the superintendent, and confidential employees, including the controller.

Pursuant to the attached Direction of Election, the above employees shall vote whether they wish to be represented by the International Union of Operating Engineers, Local 347.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Dated: _____