

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

In the Matter of:

LANSING ENTERTAINMENT AND PUBLIC
FACILITIES AUTHORITY,
Petitioner,

Case No. UC00 A-2

-and-

INTERNATIONAL ALLIANCE OF THEATRICAL
STAGE EMPLOYEES, LOCAL 274, AFL-CIO,
Labor Organization.

APPEARANCES:

Foster, Swift, Collins & Smith, P.C., by Stephen O. Schultz, Esq. for Petitioner

Pinsky, Smith, Fayette & Hulswit, by Michael L. Fayette, Esq., and Katherine M. Smith, Esq. for
the Labor Organization

DECISION AND ORDER ON UNIT CLARIFICATION

Pursuant to 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 MSA 17.455(13), this case was heard in Lansing, Michigan, on July 12, 2000, by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission. Based upon the record, including post-hearing briefs filed by September 5, 2000, we find as follows:

The Petition:

On January 13, 2000, Petitioner Lansing Entertainment and Public Facilities Authority (hereafter **LEPFA**®) filed a petition to clarify a two person bargaining unit represented by the International Alliance of Theatrical Stage Employees (hereafter **IATSE**®), Local 274, by excluding, as a supervisor, the technical services manager. The Union opposes the petition on the ground that the supervisory authority exercised by the technical service manager is so sporadic that it does not justify the position's removal from the unit. In the alternative, IATSE argues that the existing unit is appropriate because both positions therein exercise power over non-unit employees.

Facts:

The LEPFA is a public authority charged with managing and operating the Lansing Center, the convention center, Oldsmobile Baseball Park, and the Lansing City market. The IATSE

represents five bargaining units, including the technical services unit at issue in this case. The technical services department consist of two full-time employees - a technical services manager (hereafter **ATSM@**) and an audio visual/maintenance technician (hereafter **AAVT@**). This department also utilizes up to twenty-five on-call employees. Generally, only three to five of these on-call employees are engaged at any one time.

The TSM oversees the entire technical services operation (including lighting, electrical and telephone service, sound, and audiovisual equipment) at LEPFA-managed facilities, prepares the budget for the technical service department, makes recommendations for equipment purchases, schedules, assigns and directs the work of the full-time AVT and the on-call technical services personnel, assists customers in ascertaining technical equipment needs, and occasionally serves as manager-on-duty at LEPFA facilities. According to the vice president of operations, the TSM is responsible for disciplining the employees whom he supervises, and he has the authority to recommend their termination. The TSM exercised his disciplinary authority on one occasion when he informally counseled the AVT about a complaint which had been registered. The record discloses that an employee who failed to report to work for several days was suspended by the executive director. However, it is not clear whether that employee was the AVT or one of the part-time on-call employees.

The record indicates that the TSM assists in hiring and evaluating employees, including the AVT. When the current AVT was hired several years ago, the TSM assisted in preparing interview questions, served on a two-person interview panel, and the candidate believed by the TSM to be the best qualified was hired.¹ At the direction of his supervisor, the TSM has twice been called upon to evaluate the performance of the AVT. In both instances, the TSM was required to prepare the performance evaluation and review it with the vice president of operations prior to discussing it with the AVT. The TSM is also the first step in the grievance procedure set forth in the parties=expired collective bargaining agreement.

Many of the day-to-day activities of the AVT and TSM are the same, and they constantly interact through the day. When the TSM is unavailable, the AVT performs some of his administrative duties and is temporarily in charge of the department. However, the AVT has no authority to evaluate, discipline or terminate employees. Although the AVT is not authorized to hire new employees, he does have the authority to make recommendations with respect to hiring decisions.

Conclusions of Law:

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

¹The vice president of operations testified that he participated in the interview when the current AVT was hired because he was relatively new to the Authority, but that managers at the technical services level now make all hiring recommendations.

to effectively recommend such action, provided that the authority requires the use of independent judgment and is not merely routine in nature. *East Detroit School Dst*, 1966 MERC Lab Op 60; *MEA v Clare-Gladwin ISD*, 153 Mich App 792 (1986), aff'g 1985 MERC Lab Op 915. Effectively recommend means that the employee's superiors generally accept his or her recommendation without an independent investigation. *Kalkaska Co and Sheriff*, 1994 MERC Lab Op 693; *Bronson Methodist Hosp*, 1973 MERC Lab Op 946.

In the instant case, the TSM oversees the technical services operation, prepares budgets, assigns and directs the work of the full-time AVT and other on-call technical services personnel. He is also responsible for interviewing, hiring and evaluating personnel. Furthermore, the TSM has disciplinary authority and has the ability to adjust grievances at the first step of the grievance procedure. We have recognized that the authority to discipline or to effectively recommend discipline is a particularly important indicia of supervisory authority, regardless of whether that authority is frequently exercised. *City of Detroit, Dept of Public Works*, 1999 MERC Lab Op 283. See also *Huron Co Medical Care Facility*, 1998 MERC Lab Op 137 (it is the possession of the power and not the exercise of it that is determinative). For these reasons, we conclude that the TSM is a supervisor within the meaning of PERA.

We have considered all arguments raised by the Union and conclude that they do not warrant a change in the result. Based upon our finding that the TSM position is supervisory within the meaning of PERA, it cannot be included in the same bargaining unit as the AVT, a non-supervisor. See *City of Grand Rapids*, 1999 MERC Lab Op 74; *Macomb County*, 1997 MERC Lab Op 233.

ORDER GRANTING PETITION

The Employer's petition to exclude the technical services manager from the bargaining unit represented by the International Alliance of Theatrical State Employees, Local 274, AFL-CIO is granted.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chairman

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Date: _____