

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

In the Matter of:

CHARTER TOWNSHIP OF SHELBY,
Petitioner-Public Employer,

Case No. UC00 D-14

-and-

UNITED AUTO WORKERS, LOCAL 1777,
Labor Organization.

APPEARANCES:

Laura J. Campbell, Esq., Associate General Counsel, International Union, UAW, for Petitioner

Lange & Cholack, P.C., by Eric W. Cholack, Esq., for the Labor Organization

DECISION AND ORDER ON UNIT CLARIFICATION

Pursuant to Section 13 of the Public Employment Relations Act (hereafter "PERA"), 1965 PA 379, as amended, MCL 423.213; MSA 17.455(13), and a notice of hearing dated August 8, 2000, this case was heard at Detroit, Michigan on September 26, 2000, before Julia C. Stern, Administrative Law Judge (hereafter "ALJ"), acting as hearing officer for the Michigan Employment Relations Commission. Based upon the record, including briefs filed by the parties on or before December 13, 2000, this Commission, in the exercise of its administrative expertise, finds as follows:

Petition and Issue:

This petition for unit clarification was filed on April 11, 2000, by the Charter Township of Shelby, seeking to exclude as confidential two positions currently represented by the United Auto Workers (hereafter "UAW"), Local 1777. Petitioner seeks to remove the position of assistant to the personnel director/human resources director from a bargaining unit of non-supervisory office, clerical, technical, and maintenance employees. Petitioner also seeks to remove the position of personnel analyst from a bargaining unit of supervisory employees represented by the same union.

Findings of Fact:

Shelby Township has approximately 230 employees. These employees are represented in six separate bargaining units. Four of these units are Act 312 eligible, and five of the six units have contracts that expire on the same date. The Township's human resources department consists of three full-time positions: the human resources director, the personnel analyst, and the assistant to the human resources director. The assistant position was vacant at the time of the hearing. The department also uses a part-time employee for filing and copying.

UAW Local 1777 has represented a general unit of non-supervisory employees, including the personnel analyst, and a supervisory unit, including the assistant to the human resources director, since 1990. There are approximately 80 employees in the non-supervisory unit, and 25 in the supervisory unit. The recognition clauses in each of the contracts negotiated by the parties for these units have excluded confidential employees. However, the Employer never designated anyone from these units as confidential. The record indicates that the Employer's personnel director, now called human resources director, has functioned without a confidential assistant and performs all confidential clerical work himself.

In June of 1999, the Employer filed a unit clarification petition requesting that the personnel analyst from the supervisory unit and the assistant to the personnel director from the non-supervisory unit be excluded as confidential employees. However, the Employer withdrew the petition after hiring a new human resources director in September of 1999. Following a period of evaluation, the new director concluded that the Employer's labor relations work had been handled too informally and that its collective bargaining agreements had been interpreted and administered inconsistently. The new director resolved to institute improvements in the functionality of the department. He decided that the department would begin assembling and maintaining databases on collective bargaining agreements in comparable communities. He concluded that to handle this task efficiently, the personnel analyst should be assigned to three bargaining units, and the assistant assigned to the other three. Each would then be responsible for putting together the databases for his or her units and for keeping these databases current between negotiations. Each employee would also be responsible for typing proposals to be presented to the unions at negotiations for his or her units, and for attending and taking notes during these negotiations. Both employees would participate in discussions held prior to bargaining sessions regarding the Township's bargaining positions for their units. Both employees would also assist in administering the contracts for the units assigned to them.

Discussion and Conclusions of Law:

The Employer maintains that two confidential exclusions are necessary due to the personnel director's overly burdened schedule. The Union acknowledges that the Employer is entitled under the terms of the contracts to designate one confidential employee, but contends that there has been no showing that a second confidential is required.

Confidential employees are those who assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies with regard to labor relations. The confidential exclusion is applied cautiously so as not to deprive employees of their right to be

represented, and the number of exclusions is to be limited to those employees necessary to perform required confidential duties. *Pontiac SD*, 1997 MERC Lab Op 173; *Swartz Creek CS*, 1988 MERC Lab Op 848. An employer is entitled to designate one employee as confidential and to exclude that employee from participating in collective bargaining, even if that employee has never actually performed any confidential labor relations duties. However, the employer bears the burden of showing justification for excluding additional employees as confidentials, and administrative convenience alone cannot justify their exclusion. *Pontiac SD*, 1997 MERC Lab Op 173; *Williamston Schools*, 1994 MERC Lab Op 1062; *City of River Rouge*, 1971 MERC Lab Op 603. The employer must also show that the confidential work cannot feasibly be reassigned to minimize the number of employees excluded. *Lapeer County and 40th Judicial Circuit Court*, 1998 MERC Lab Op 611.

In the instant case, the Employer asserts that two confidential exclusions are necessary to assist the personnel director in professionalizing the human resources department. Some of the duties that the human resources director intends to assign to the personnel analyst and assistant, however, are not confidential in nature. These include the collection of data on collective bargaining agreements in other communities and the handling of grievances. See e.g. *City of Saginaw*, 1984 MERC Lab Op 1167; *Detroit Central City Community Health*, 1981 MERC Lab Op 620; *City of Ypsilanti*, 1975 MERC Lab Op 362. See also *American Radiator & Standard Sanitary Corporation*, 119 NLRB 1715; 41 LRRM 1416 (1958); *The BF Goodrich Co*, 115 NLRB 722; 37 LRRM 1383 (1956). Although the confidential workload may be heavy at times due to the simultaneous expiration of most of the Employer's contracts, the record indicates that the actual amount of confidential work is relatively small. While it may be administratively convenient for the Employer to divide the confidential work between two employees, the Employer has not demonstrated that it would not be feasible to assign that work so that it can be performed solely by one employee.

The cases upon which the Employer relies in its brief are distinguishable on their facts. In *City of Mt. Clemens*, 1997 MERC Lab Op 625, the parties had agreed to exclude two and one-half positions as confidential. We denied the employer's request for an additional exclusion in that case. Similarly, in *Lapeer CS*, 1989 MERC Lab Op 8, we held that the employer was not entitled to exclude another employee as confidential where the parties had already agreed to two confidential exclusions. Two of the cases cited by the Employer involved employers much larger than Shelby Township. In *Van Buren PS*, 1984 MERC Lab Op 827, there were 625 employees and seven bargaining units, while the employer in *Bloomfield Hills PS*, *supra*, employed at least 600 employees. It is well-established that the number of individuals employed is a relevant factor in determining the appropriate number of confidential exclusions. See e.g. *Bloomfield Hills Public Schools*, 1983 MERC Lab Op 718; *City of Riverview*, 1983 MERC Lab Op 400. Finally, in *Beecher C S*, 1984 MERC Lab Op 152, we found that the Employer could not feasibly reassign all confidential duties to one employee.

For the reasons set forth above, we conclude that the Employer has not demonstrated the necessity for two confidential positions. The Employer may designate either the personnel analyst or the assistant to the human resources director as confidential and remove that position from its bargaining unit.

ORDER

For the reasons set forth above, Petitioner's request to remove both the position of assistant to the personnel director and the personnel analyst from their respective bargaining units is denied, but it may remove one of the two positions at its discretion.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Dated: _____