

STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMMISSION  
LABOR RELATIONS DIVISION

In the Matter of:

ST. CLAIR COUNTY ROAD COMMISSION,  
Public Employer,

- and -

Case No. UC00 F-24

ST. CLAIR COUNTY ROAD COMMISSION  
ADMINISTRATIVE AND TECHNICAL EMPLOYEES  
ASSOCIATION,  
Petitioner – Labor Organization.

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APPEARANCES:

Michael R. Kluck, Esq., Michael R. Kluck & Associates, for the Public Employer

Peter P. Sudnick, Esq., for the Petitioner

**DECISION AND ORDER ON UNIT CLARIFICATION**

Pursuant to Section 12 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212, this matter came on for hearing at Detroit, Michigan, on January 24, 2001, before Nora Lynch, Administrative Law Judge for the Michigan Employment Relations Commission. Based upon the entire record, including briefs filed by the parties on or before March 16, 2001, the Commission finds as follows:

The Petition:

In the petition filed on June 30, 2000, the St. Clair County Road Commission Administrative and Technical Employees Association (Ad-Tech) seeks to clarify its bargaining unit by adding the newly created position of deputy managing director. The Employer maintains that the deputy managing director is an executive position which should be excluded from the unit.

Facts:

The St. Clair County Road Commission is responsible for the maintenance and construction of roads within the County. Managing Director Donald Maronde, who reports to a three-member Board of Directors, heads the Road Commission. The Board also oversees the Department of Public Works (DPW). The functions of the Road Commission are organized into three distinct areas: internal services, consisting of personnel, purchasing, and accounting; public

works, involving the operation of the wastewater treatment plant and the maintenance and construction of sanitary sewers and water mains; and road construction and maintenance. The majority of employees work in the area of road construction and maintenance.

Approximately 115 employees, represented by two unions, staff the Road Commission. One union, the Service Employees International Union (SEIU) represents two divisions of employees, the production workers and the clericals. The other union, the Ad-Tech Association, was certified by the Michigan Employment Relations Commission in 1997 to represent the following three bargaining units, with a total employee complement of approximately 15 to 20 employees:

Unit I: Supervisor/Foremen – District foremen, shop foremen, supervisor special services, data processing manager, purchasing agent, accounting supervisor.

Unit II: Department heads – Director of operations, wastewater treatment plant supervisor, airport manager, director of engineering.

Unit III: Engineers – Engineer I, II, III surveyor, county highway engineer (traffic engineer).

The managing director, executive secretary and director of internal services (personnel director) are not included in classifications represented by the Petitioner, based on executive and/or confidential status.

In December of 1999, the director of operations retired from the Road Commission. At that time, the director of operations position was included in the Ad-Tech unit. The Employer then implemented a plan to replace this position with the classification of deputy managing director. This position was designated by the employer to be an executive position, excluded from any bargaining unit. As reflected in the Employer's table of organization, the former director of operations had been on the same level on the organizational chart as the director of internal services, wastewater treatment plant superintendent, and director of engineering. In the revised chart, the position of deputy managing director was placed a line above these positions, directly below the managing director. The deputy managing director is paid at Grade 11, which is the same level of compensation as the director of engineering.

Victor Strek was hired to fill the position of deputy managing director in February of 2000. Strek reports directly to the managing director and has frequent daily contact with him. Strek's general responsibilities include supervising the work of the Road Commission and public works department; directing the daily maintenance and construction activities on county and state roads and bridges; and overseeing the maintenance of the Road Commission's equipment, facilities, and grounds. On a daily basis, Strek administers service and materials contracts, reviews work orders for work to be done in the townships, and addresses office needs, such as implementing a new phone service for maintenance foremen and employees in the field. As deputy managing director, Strek has only limited responsibilities for DPW activities; the wastewater treatment plant superintendent reports directly to the managing director.

The Road Commission is divided into four districts or garages, servicing various areas of the County. Each district has a foreman; there is also a shop foreman who supervises the buildings, grounds, and fleet maintenance activities. The foremen directly supervise the approximately 78 employees in construction and maintenance. As indicated in the unit descriptions above, the foremen are all Ad-Tech bargaining unit positions. As deputy managing director, Strek has supervisory authority over these positions, as did the former director of operations. Strek conducts bi-weekly meetings with the foremen; they submit status reports to him for activities in their respective areas, as well as reports on special projects.

The Road Commission currently has an operating budget of \$18 million. Strek has no direct input in preparing the budget. He may approve purchases for road construction projects, but has no purchasing authority over internal services or DPW activities. Significant expenses are generally pre-approved as part of the budget process. Unusual expenditures are submitted to the managing director.

With respect to personnel, the internal affairs director generally reports to the managing director, although he may discuss issues with Strek. Strek has no role in formulating or initiating personnel policies. Each organized employee group is governed by an employee handbook; Strek has not played a role in changes or amendments to these documents. Strek participates with the internal affairs director in interviewing and hiring new employees in the maintenance area, including drivers, laborers, and foremen. Their recommendations are reviewed by the managing director and the Board. Although he has not done so, Strek has authority to administer discipline, but has no authority to discharge employees.

As deputy managing director, Strek is a member of the bargaining team involved with SEIU negotiations. Other members of the team are the managing director, the director of internal affairs, a commissioner, and the Board attorney. Strek has attended negotiation sessions involving the SEIU bargaining units and was consulted regarding non-economic proposals for the maintenance workers. Strek has also met in closed session with the management team when bargaining strategy was discussed. He has not had the opportunity to participate in bargaining with the Ad-Tech units.

With respect to overall Board policies, neither the managing director nor Strek can formulate or implement policy on his own without the prior approval and consent of the Board of Commissioners. All formal policies of the Board are contained in the Road Commission Policy Book. The Board conducts a policy review annually. Strek has not participated in this annual review.

## Discussion and Conclusions:

The Employer maintains that the deputy managing director should be excluded from the unit as an executive because he is the head of a major department of the Road Commission; he is second in command in the department, and has extensive responsibilities within the organization, including participation in budget activities and labor negotiations. The Petitioner argues that the deputy managing director does not have the wide-ranging authority and discretion to formulate policy on an employer-wide basis which is required to establish executive status.

In *City of Grandville*, 1997 MERC Lab Op 140, 146, on remand from *Grandville Municipal Executive Assoc v City of Grandville*, 453 Mich 428 (1996), we reviewed the history of our rule of excluding executives from collective bargaining on a public policy basis. We indicated that we would continue to apply the following definition of executive as initially set forth in *City of Detroit (Police Dept)*, 1996 MERC Lab Op 84, 106:

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 of 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.

As stated in *City of Detroit (Police Dept)*, we indicated the factors which we would continue to examine include: extent of budget responsibilities; preparation of department rules and regulations; degree of participation in labor relations or formulation of collective bargaining policy; and extent of authority and scope of responsibilities. We also explicitly overruled our holding in *Ingham Co Road Comm*, 1995 MERC Lab Op 306, that employees with responsibilities for determining labor relations policy should be termed executive, rather than confidential, employees.

In examining the record with these factors in mind, we find that the deputy managing director does not qualify as an executive. There is no question that the deputy managing director functions as a high level supervisor and department head. However, he is subordinate to the managing director and his authority in significant areas is limited. The deputy managing director does not directly participate in the budget process; his role in personnel matters is generally only a consulting one; his participation in labor relations matters and negotiating contracts is minimal; he does not formulate or determine management policies on an employer-wide basis. *Arenac Co*, 2001 MERC Lab Op \_\_\_ (Case No. R00 H-95); *Wexford Co*, 2001 MERC Lab Op \_\_\_ (Case No. UC00 I-34); *City of Fenton*, 1998 MERC Lab Op 189. To the extent that the Employer relies on *Ingham Co Road Comm*, we note that our decision in that case finding the director of operations to be an executive relied primarily on his wide-ranging responsibilities in

personnel and labor relations matters. As indicated above, this is no longer a basis for classifying an employee as an executive. In summary, we find that the position of deputy managing director does not qualify for exclusion from the Ad-Tech unit as an executive, and we issue the following order:

ORDER

Based upon the above findings and conclusions, the collective bargaining unit represented by the St. Clair County Road Commission Administrative and Technical Employees Association is hereby clarified to include the position of deputy managing director.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Maris Stella Swift, Commission Chair

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Harry W. Bishop, Commissioner

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C. Barry Ott, Commissioner

DATED: \_\_\_\_\_