

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

WEXFORD COUNTY,
Petitioner-Public Employer,

Case No. UC00 I-34

-and-

TECHNICAL, PROFESSIONAL AND
OFFICEWORKERS ASSOCIATION OF MICHIGAN,
Labor Organization.

APPEARANCES:

Cohl, Stoker & Toskey, P. C., by John R. McGlinchey, Esq. for the Employer

Patrick Spidell, Business Agent, for the Labor Organization

DECISION AND ORDER ON UNIT CLARIFICATION

Pursuant to Sections 12 and 13 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCLA 423.212 and 423.213, this case was heard in Lansing, Michigan, on December 20, 2000, by Administrative Law Judge James P. Kurtz for the Michigan Employment Relations Commission. Based upon the record, including briefs filed by March 29, 2001, we find as follows:

Background:

The County of Wexford employs approximately 165 employees. The Employer and the Union, Technical, Professional and Officeworkers Association of Michigan, are parties to a collective bargaining agreement covering the period September 18, 1996 through December 31, 2000. The Union is the exclusive bargaining representative for a unit described in the agreement's recognition clause as:

All full-time supervisory and administrative employees . . . in the classifications of maintenance supervisor, equalization director, civic arena director, general accounting office supervisor, community corrections coordinator, director of planning and building, building inspector, electrical inspector, plumbing/mechanical inspector, and community corrections assistant, but excluding all elected officials, executives (county administrator and under-sheriff), sheriff department supervisory employees, senior administrative assistant, nonsupervisory employees, part-time employees, temporary employees, causal employees, seasonal employees,

confidential employees (administrative assistant) all employees represented by other collective bargaining units and all other employees.

On September 5, 2000, the Employer filed a unit clarification petition to exclude the equalization director, civic center general manager, and the director of planning and building from the bargaining unit as executives.

Facts:

The equalization director is a statutory position responsible for establishing policy and overseeing and participating in the appraisal and equalization of all classes of properties within Wexford County. As a department head, the equalization director reports to the county administrator, who is the chief administrative officer for the board of commissioners, the County's policy-making body. The director prepares the department's budget and is responsible for supervising the work of four employees -- two appraisers, a deputy equalization director, and a secretary.

The civic center general manager is responsible for operating the civic auditorium, an ice arena, a grandstand area, and the county fairground. She is responsible for a budget of \$630,000, supervises employees in other supervisory bargaining units, makes recommendations to and attends meetings of the board of commissioners. She reports to the county administrator. The incumbent prepares the department's budget, formulates policies and rules, coordinates all scheduled events, and prepares master and capital improvement plans. She is authorized to hire, evaluate, and fire employees, and is the first step in the grievance procedure.

The planning and building director is responsible for formulating policies and rules, developing the county's master plan, conducting building inspections, administering state and local laws relating to land use, and preparing the department budget. He also reports to the county administrator, participates in board meetings, and has the authority to purchase materials and equipment. The department's budget is approximately \$250,000. The director also has the authority to hire, fire, and discipline employees. He participates in the grievance procedure at step one, prepares employee performance evaluations, and represents the County during his contacts with outside agencies and builders.

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*.

Historically, equalization directors have been excluded from supervisory units because of the statutory nature of their functions and the county-wide scale of their duties. *Mecosta Board of Commissioners v AFSCME*, 166 Mich App 374 (1988), *rev'g* 1986 MERC Lab Op 654. In *Mecosta*, the Court observed that the equalization director position was closely connected with the county budget, since his assessments affected the state equalized value of property and had a direct impact on a county's major source of funding. The Court noted that the equalization director performed, on a county-wide scale, essentially the same duties as a city assessor. We have consistently excluded city assessors from supervisory bargaining units where the evidence reveals that they are appointed full-time under the city charter and perform duties and responsibilities normally accorded that office. See e.g. *City of Fenton*, 1999 MERC Lab Op 189, 193. In the instant case, the equalization director works full-time and performs statutory duties set forth in MCL 211.34(2). We adopt the rationale articulated by the Court in *Mecosta* and exclude the equalization director from the supervisory unit as an executive.

The Employer asserts that the civic center general manager should be excluded from the supervisory unit as an executive because the position prepares the department budget, deals directly with the board, formulates department policies and county contracts, is responsible for major initiatives to bring revenue to County, and operates with highest degree of autonomy and discretion. The Employer claims that the civic center manager's responsibilities exceed those of positions which were excluded as executives in *City of Royal Oak*, 1992 MERC Lab Op 512, and in *City of Grand Rapids*, 1979 MERC Lab Op 198. In *City of Grand Rapids*, we excluded police chiefs and majors primarily because they exercised a genuine degree of executive discretion in determining actual or operative policy for a medium-size employer (375 employees, of which sixty-one were in some type of supervisory job). Similarly, in *Royal Oak*, the recreation director exercised responsibility for formulating and effectuating management policy over five major departments with ninety-three employees. In contrast, the civic center manager position at issue here effectuates policy-making authority in a small county and heads a department that contains only four full-time employees. She reports to the board of directors through the county administrator, the county's chief administrative officer. Therefore, we find the cases relied upon by the Employer to be factually distinguishable from the instant case and reject the Employer's argument that the civic center manager should be excluded from the supervisory unit as an executive.

We also conclude that the planning and building director is not an executive. Although the director, like the civic center manager, attends board meetings and effectuates policy for a department, his policies are subject to the approval and scrutiny of the county administrator. The director participates in collective bargaining at step one of the grievance procedure but does not

otherwise play a role in formulating collective bargaining policy. Moreover, the planning and building director's budget is only \$250,000. In view of the size of the Employer and the limited policy-making role exercised by the planning and building director, we find that this position does not qualify for exclusion from the supervisory unit as an executive employee.

ORDER

We grant, in part, the unit clarification petition filed by Wexford County by excluding, as an executive, the equalization director position, from the supervisory and administrative bargaining unit represented by the Technical, Professional and Officeworkers Association. Furthermore, we deny Petitioner's request to exclude, as executive, the civic center manager and the planning and building director from the bargaining unit.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chairman

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Dated: _____