

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

In the Matter of:

NORTHERN MICHIGAN UNIVERSITY,
Public Employer,

Case No. R01 E-069

-and-

NORTHERN MICHIGAN UNIVERSITY
POLICE OFFICERS ASSOCIATION,
Petitioner-Labor Organization,

-and-

MICHIGAN AFSCME COUNCIL 25,
Incumbent-Labor Organization.

APPEARANCES :

Miller Canfield, Paddock and Stone, P.L.C., by Thomas P. Hustoles, Esq., for the Public Employer

Patrick Spidell, Business Agent, for the Petitioner

Roger J. Smith, Staff Specialist, for the Incumbent

**DECISION AND ORDER ON
PETITION FOR REPRESENTATION ELECTION**

Pursuant to Section 12 of the Public Employment Relations Act (PERA), 1947 PA 336, as amended, MCL 423.212, this case was heard in St. Ignace, Michigan on January 31, 2002 before David M. Peltz, Administrative Law Judge for the Michigan Employment Relations Commission. Pursuant to Sections 13 and 14 of PERA, and based upon the entire record, including the transcript of hearing and briefs filed by the parties on or before April 2, 2002, the Commission finds as follows:

The Petition:

In the petition for representation election filed on May 15, 2001, and amended on June 26, 2001, the Northern Michigan University Police Officers Association (POAM) seeks to sever approximately eight nonsupervisory campus police officers from a broad unit of nonsupervisory employees of Northern Michigan University currently represented for purposes of collective

bargaining by Michigan AFSCME Council 25 (AFSCME). The classifications at issue are Police Officer, Police Specialist and Police Trainee. At the time of hearing, the Police Trainee position was not filled. Petitioner argues that the police officers should be represented in a stand-alone unit because an extreme divergence of community of interest exists between them and the rest of the employees currently making up the AFSCME unit. The Employer and the Incumbent contend that there is no basis for severing the police officers from the historical unit of nonsupervisory employees of the University.

Findings of Fact:

At the start of the January 31, 2002 hearing in this matter, the parties entered into the following stipulation of facts:

1. The bargaining unit represented by AFSCME was organized in 1967. The unit includes all regular employees of the University, excluding (1) employees regularly scheduled to work less than twenty hours per week, (2) clerical/technical personnel, (3) supervisory personnel, (4) management personnel, (5) administrative personnel, (6) professional personnel, (7) academic personnel, and (8) student personnel.
2. The police officer classifications were first included within the bargaining unit in 1975 pursuant to an agreement between AFSCME and the Employer. The first collective bargaining agreement to include police officer classifications was dated July 1, 1976. The police officer classifications have been included in each successive contract between the parties.
3. The POAM filed the petition for representation election prior to the expiration of the 1998-2001 contract.
4. The bargaining unit consists of the following classifications: Food Service Worker I, Food Service Worker II, Building and Grounds Attendant, Housekeeper – Kaye House Warehouse Attendant, Apprentice, Mechanical I, Facilities Maintenance Attendant, Steam Plant Operator/Controls Technician, Heavy Equipment Operator/Landscaping Specialist, Trades Specialist I, Mechanic II, Plumber/Pipefitter/HVAC Repair, Trades Specialist II, Welder, Senior Electrician, Police Trainee, Police Officer, and Police Specialist.
5. The police officer classifications are not covered by the provisions of Act 312 of 1969, MCL 423.231 *et seq.*
6. Two police officers have served as president of the AFSCME local: Don Maki (1985-1986) and Sharon Burns (1988-1989). Maki subsequently became a staff representative for AFSCME Council 25.
7. During the course of bargaining with the Employer, AFSCME previously negotiated job descriptions for each of the classifications within the unit,

including the police officer classifications. These job descriptions have included specific educational requirements. The Employer does not waive any rights it may have under the contract with respect to the negotiation of job descriptions.

8. Petitioner does not seek to represent supervisors or the director of the University's public safety department.

At the time of the hearing, the AFSCME bargaining unit numbered approximately 145 employees. All of the positions within the unit are paid on an hourly basis. The collective bargaining agreement in effect at the time the petition was filed covered the period of October 1998 to October 2001. The hourly wage rate for the police officer classifications for the final year of that contract ranged from \$7.74 to \$17.69. The wage rate for the non-police positions for the same year ranged from \$8.64 to \$18.52 per hour. The contract provides for a standard fringe benefit package applicable to all bargaining unit members.

The contract contains certain language applicable only to the police officer classifications. Article 8 of the contract authorizes police officers to take a meal break during a regular 8 hour shift, during which time the officers remain on call. That section of the contract also provides that seniority and employee preference will be considered when schedules are being established for police officers. Article 9 of the contract contains specific rules relating to overtime assignments and compensation for the Police Officer and Police Specialist positions. Finally, Article 15 of the contract provides that police officers shall be considered probationary employees for the first 180 calendar days of continuous employment following their being sworn in after successful completion of the Basic Police School, whereas the probationary period for non-police employees begins to run upon their hire or transfer into the unit.

The non-police positions within the bargaining unit generally require a minimum educational level of a high school degree or equivalent and four years of relevant work experience. However, an associate's degree in Heating, Venting and Air Conditioning or equivalent combination of education and experience is required for the HVAC Specialist position, while the Facilities Management Specialist is required to possess an associate's degree in Engineering, Mechanical or Electrical or an equivalent combination of education and industrial/commercial experience. Several of the non-police positions within the bargaining unit are governed by specific certification or licensing requirements. For example, the Heavy Equipment Operator/Landscaping Specialist must possess a Michigan Pesticide Applicators Certification Category 3A and Category 3B, while a journeyman plumber or pipefitting license is required for the Plumber/Pipefitter/HVAC Repair classification. A valid Michigan operator's permit or commercial driver's license (CDL) is also required for many of the non-police positions within the unit.

Employees in the police officer classifications must, as a condition of their employment, meet the minimum standards of the Michigan Commission on Law Enforcement Standards (MCOLES) and become certified police officers. Certification requirements include attendance at a qualified police training academy and successful completion of a drug-screening test. Campus police officers must possess a bachelor's degree in law enforcement and a valid Michigan operator's permit, and they must be certified as a medical first responder. Candidates

for the Police Specialist position also must have a minimum of two years' experience as a university or college police officer. Once hired, the officers are required to participate in continuing training courses in topics such as firearms, first aid, legal developments and defensive tactics.

Employees in the police officer classifications are governed by the same disciplinary procedures and work rules as other members of the bargaining unit. They are also subject to policies, procedures and disciplinary rules specific to the police department, including confidentiality requirements and rules governing police officer conduct. All bargaining unit members, including campus police officers, receive training on matters of common concern, such as asbestos safety, hazardous materials (HAZMAT) and "right to know."

The department of public safety operates 24 hours a day, seven days a week. The only other department within the bargaining unit that operates on such a basis is the heating department. The campus police work out of the University's services building, which also houses the engineering and planning department, the grounds department, and central receiving. The police department is located in a secured area of the building and special clearance is required for entry.

Pursuant to Act 120 of 1990, MCL 390.1511 *et seq.*, the University's board of control has granted its police officers the same powers and authority as are granted by law to general peace and police officers in the state. In addition, employees in the police officer classifications are deputized by the Marquette County Sheriff. The responsibilities of campus police officers include enforcement of University ordinances, state laws and traffic regulations, both on and off campus, and conducting preliminary criminal investigations throughout the county. Campus officers have been required to investigate incidents involving other Northern Michigan University employees, including fellow bargaining unit members. After making an arrest, the officers turn over the case to the Marquette County Prosecutor's Office. If a case requires a more in-depth investigation, the campus police turn it over to a detective. At no point do the officers make recommendations to the University with respect to employment-related discipline.

The department of public safety participates in numerous multi-jurisdictional operations, including programs pertaining to drunk driving and alcohol consumption by minors. In addition, the department is a member of various mutual aid pacts which require its officers to respond to emergencies in surrounding communities on an "as needed" basis. The department is currently in the process of developing an emergency response team to deal with terrorist acts and other crises. The department of public safety has also formulated a contingency plan in the event that a University bargaining unit were to go on strike. The plan calls for the campus police officers to work extended shifts to secure the campus in the event of labor unrest.

Recently, the University's board of control established a public safety department oversight committee. The committee is responsible for reviewing complaints regarding misconduct by campus police officers. At the time of the hearing, the committee was comprised of one student, the director of the department of public safety and an AFSCME steward. Pursuant to MCL 390.1511(3), the committee may recommend to the University that it take disciplinary measures against an officer who is "found responsible for misconduct in office."

Investigations into allegations of misconduct by campus police officers are conducted by a supervisor from the department.

One former campus police officer is currently employed in a bargaining unit position outside of the department of public safety. The transfer occurred pursuant to the bidding process set forth in the collective bargaining agreement. Another campus officer took a custodial position within the AFCSME bargaining unit during a period of time in which he was temporarily laid off from the department of public safety.

Discussion and Conclusions of Law:

Petitioner argues that the campus police officers in this case should be permitted to sever from the larger bargaining unit on the ground that law enforcement personnel have traditionally been found to have a peculiar, distinct community of interest. In designating bargaining units as appropriate, a primary objective of the Commission is to constitute the largest unit which, in the circumstances of the particular case, is most compatible with the effectuation of the purposes of the law, and to include in a single unit all common interests. *Hotel Olds v State Labor Mediation Bd*, 333 Mich 382 (1952). This principle must be balanced, however, against our traditional policy prohibiting the fragmentation or fractionalization of existing bargaining units. This policy is designed to encourage the stability of established bargaining relationships and established bargaining units. *City of Grosse Pointe Farms (Department of Public Safety)*, 2002 MERC Lab Op ___, issued January 31, 2002 (Case No. R00 G-90); *Dearborn Public Schools*, 1990 MERC Lab Op 513, 517. Severance of an established unit is inappropriate absent some extreme divergence in the interests of the employees making up the historical unit. *Northville Public Schools*, 2001 MERC Lab Op ___, issued December 20, 2001 (Case No. R01 G-081). See also *Kent County Community Hosp*, 1989 MERC Lab Op 1105; *Lansing School Dist, Paraprofessional Unit*, 1989 MERC Lab Op 160, 166-167.

Balancing the foregoing principles, the record does not support a finding that there is an extreme divergence of community of interest between the police officers and the remaining unit employees. The overall unit of nonsupervisory employees has been in existence for approximately 35 years, and the police officers have been represented as part of this unit for all but the first eight of those years. The officers have participated equally with the other unit employees, as evidenced by the fact that two former officers have served as president of the local. All of the unit employees are paid on an hourly basis, and the wages earned by the police officers are within the same range as other unit members. The contract contains provisions common to all classifications, including language pertaining to medical insurance, vacation pay, and other fringe benefits. The police officers work out of the same facility as other unit members and, like the employees within the heating department, the officers are part of a 24 hours a day, seven days a week operation. All unit members are subject to the same general disciplinary procedures and work rules, and numerous employees within the unit are, like the police officers, subject to certification and licensing requirements. Although the police officer classifications are the only positions within the unit for which a bachelor's degree is required, other classifications are subject to educational requirements, including two positions for which an associate's degree is required. Finally, there have been at least two instances of interchange between the police officer classifications and other unit positions. For these reasons, we find no extreme divergence

of interest between the police officers and other unit employees sufficient to warrant severance of this historical unit.

In support of its contention that the campus police officers should be allowed to sever from the larger bargaining unit, Petitioner makes much of the fact that the AFSCME unit is one of the only labor organizations in the state representing both police and non-police employees of a state university in the same unit. However, there is no evidence in the record to support this assertion and, even if it were true, we fail to see how this fact is relevant to the issue which is vital to our resolution of this case: whether the interests of the officers are extremely divergent from those of the other unit members. We also find no merit to Petitioner's contention that severance is necessary to preserve the integrity of the department of public safety. This Commission has repeatedly rejected any interpretation of PERA which would bar the same labor organization from representing both police and non-police employees on conflict of interest or other grounds. See e.g. *City of Inkster* (22nd Judicial District Court), 2000 MERC Lab Op 95; *Redford Township*, 1984 MERC Lab Op 397; *Village of Fowlerville*, 1971 MERC Lab Op 462; *City of Escanaba*, 1967 MERC Lab Op 701, aff'd 19 Mich App 273 (1969).

Were the campus police officers Act 312 eligible, they clearly would have been entitled to a vote to determine whether they wished to remain in the historical unit. See e.g. *Montcalm County*, 1997 MERC Lab Op 157, aff'd 235 Mich App 580 (1999); *City of Detroit*, 1986 MERC Lab Op 966. Yet, there is no dispute in this case that the officers are not eligible for compulsory arbitration. We might also have considered the officers to be an appropriate separate unit had they been the subject originally of a petition for separate representation. However, whether such a unit is appropriate is not the issue in this case. The police officers are already in an appropriate unit. See *Dearborn Public Schools*, *supra*. Given the historical nature of the existing unit, the lack of evidence indicating any extreme divergence of community of interest between the police officers and the other employees in the unit, and the fact that the petition involves only a small segment of a much larger unit, we issue the following order:

ORDER

The petition for representation election filed by the Northern Michigan University Police Officers Association in this matter is hereby dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Dated: _____