

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF YPSILANTI,
Public Employer,

Case No. R02 F-078

-and-

TEAMSTERS STATE, COUNTY, AND MUNICIPAL
EMPLOYEES, LOCAL 214,
Petitioner – Labor Organization.

APPEARANCES:

Pear Sperling Eggan & Muskovitz, P. C., by David E. Kempner, Esq., for the Public Employer

Rudell & O'Neill, by Kevin J. O'Neill, Esq., for the Labor Organization

DECISION AND DIRECTION OF ELECTION

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 Detroit, Michigan, on July 22, 2002, by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission. Based on the record and a post-hearing brief filed by the Employer on September 17, 2002, we find as follows:¹

The Representation Petition:

On June 3, 2002, Teamsters State, County and Municipal Employees, Local 214, filed a petition for an election among seven positions in the Employer's Department of Public Works (DPW). The parties stipulated that five of the positions – DPW office manager, DPW working supervisor, environmental services supervisor, traffic supervisor, and DPW general supervisor - are supervisory and should be included as part of any unit we find appropriate. The parties also stipulated that the facilities/road project manager is not a supervisory position and should be excluded from any unit in which an election may be directed. A mechanic position, referred to in the petition as maintenance supervisor, is the only classification in dispute.

If an election is ordered, the Union seeks to limit the supervisory bargaining unit to employees in the

¹ The Union did not file a post-hearing brief.

DPW. The Employer contends that the only appropriate supervisory unit would consist of all un-represented civilian supervisors. The parties stipulated that the following classifications are supervisory: recreation program coordinators (three employees), recreation supervisor, accounting supervisor, city assessor, city treasurer, and deputy city clerk.

Facts:

The City of Ypsilanti employs 135 regular and thirty to forty seasonal employees who work in ten different departments, including the DPW. Ninety regular employees are included in four bargaining units. Forty-five others are un-represented. The un-represented employees include thirteen supervisory employees whom the parties agree are supervisors. Five of the supervisory employees are employed in DPW; four in the recreation department, one in the clerk's office, and three in the finance department. Supervisors are eligible to transfer to other departments.

The pay structure for non-union employees consists of thirteen grades; each grade has nine steps. The positions sought by the Union are in the DPW and fall within pay grades 3, 5, 6 and 7. The positions that the Employer seeks to include in any supervisory bargaining unit are in pay grades 3, 5, 8, and 10.

The terms and conditions of employment for all un-represented employees are set forth in an employee handbook. All civilian supervisory employees receive the same benefits and, generally, are governed by the same work rules and policies. Time records are kept for all non-exempt employees;² lunch hours for all supervisors are flexible; DPW and building department supervisors wear uniforms and are subject to being called back to work during emergencies; and all non-union employees are subject to the same drug and alcohol testing policy, although certain parts of the policy only apply to employees holding CDL licenses.

The DPW employees' worksite is located at 14 West Forest, although DPW supervisors work throughout the City. Supervisors in the finance department and the clerk's office work at City Hall, 1 South Huron, about one and a half miles away. While performing their duties, DPW supervisors have frequent contact with employees in other departments. Non-supervisory DPW employees are members of a city-wide bargaining union that includes employees at different locations in the city.

Keith Reed, the DPW employee Petitioner claims is a supervisor, has been employed as a mechanic for four years. He works in the Forest Street garage that is supervised by the DPW general supervisor. Prior to January 2002, Reed worked alone in the garage 80-90% of the time. During times when another employee was assigned to assist Reed, Reed did not have authority to discipline or recommend that the employee be disciplined. On July 1, 2002, an employee who was hired as a temporary mechanic in January 2002, became a regular employee. He is paid the same hourly wage as Reed. Reed has no authority to discipline or evaluate the work of the recently hired mechanic or to hire or fire employees. The general supervisor evaluates Reed as well as the recently hired mechanic.

² The DPW supervisors whom Petitioner seeks to organize include at least one exempt employee. Some supervisors in other departments are non-exempt.

Conclusions of Law:

Petitioner argues that the DPW mechanic position is supervisory and should be included in its petitioned-for bargaining unit. A supervisor is one who possesses authority to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or to effectively recommend such action, as long as this authority requires the use of independent judgment and is not merely routine. See *Village of Paw Paw*, 2000 MERC Lab Op 370; *City of Grand Rapids Police Department*, 2000 MERC Lab Op 384. The record in this case clearly establishes that the DPW mechanic is not a supervisor. The mechanic does not possess any of the indicia of supervisory status set forth above and should not be included in the proposed bargaining unit.

Our primary objective 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 which includes within a single unit all employees sharing a community of interest. *Hotel Olds v State Labor Mediation Bd.*, 333 Mich 382 (1952); *University of Michigan*, 2001 MERC Lab Op 6, 8. Community of interest is determined by examining a number of factors, including similarities in duties, skills and working conditions; similarities in wages and employee benefits; amount of interchange or transfer between groups of employees; centralization of the employer's administrative and managerial functions; degree of central control of labor relations; common promotion ladders and common supervision. *Covert Public Schools*, 1997 MERC Lab Op 594, 601, *Grand Rapids Public Schools*, 1997 MERC Lab Op 98, 106. We have always required, whenever possible, that units be comprehensive. *Muskegon County Sheriff Department Deputies Unit*, 2000 MERC Lab Op 88, 92. A single departmental unit is inappropriate where the community of interest is broader. *Livonia Public Schools*, 1988 MERC Lab Op 1068, 1079-1080. For a departmental unit to be appropriate, the party seeking that unit must prove that its employees do not share a community of interest with other un-represented employees. *Livonia Public Schools*, 1989 MERC Lab Op 190, 192-193.

In this case, Petitioner offered no evidence to support its view that a bargaining unit limited to DPW supervisors is appropriate. Moreover, at the hearing, Petitioner did not set forth any factors that would support a finding that DPW supervisors have a separate community of interest. Nor did Petitioner file a post-hearing brief to explain why the city-wide unit proposed by the Employer is inappropriate. We, therefore, find that Petitioner has failed to prove that an extreme divergence of interest exists between the DPW supervisors and other non-union supervisory employees to warrant directing an election in the departmental unit it seeks to represent. As we noted in *Livonia Public Schools*, any litigated unit, residual or otherwise, must include all un-represented employees with a community of interest. See also *Deckerville Community Schools*, 2000 MERC Lab Op 390, 392.

In summary, we conclude that the DPW mechanic is not a supervisor and should not be included in a civilian supervisory bargaining unit and that a unit limited to DPW supervisory employees is inappropriate. Teamsters Local 214 is given 30 days from the date of the direction of this election to indicate whether it

wishes to participate in an election for a unit consisting of all un-represented civilian supervisory employees and to supply an additional showing of interest adequate to support its participation in such election. If the Labor Organization fails to indicate interest in representing the expanded unit and fails to make an adequate showing of interest within 30 days, the petition will be dismissed.

BARGAINING UNIT DIRECTION OF ELECTION ORDER

Based upon the above findings and conclusions, we conclude that a question concerning representation exists within the meaning of Section 13 of PERA. If the Labor Organization indicates that it is interested in representing the expanded unit and makes an adequate showing of interest within 30 days of the date of this order, we will direct an election in the following unit:

All civilian supervisory employees employed by the City of Ypsilanti, including the following classifications: DPW office manager, DPW working supervisor, environmental services supervisor, traffic supervisor, DPW general supervisor, recreation program coordinator, recreation supervisor, accounting supervisor, deputy city clerk, city treasurer, city assessor, and excluding all others.

Pursuant to the attached Direction of Election, the above employees shall vote to determine whether they wish to be represented by the Teamsters State, County and Municipal Employees, Local 214.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chairman

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Date: _____