

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

LAPEER COUNTY COMMUNITY MENTAL HEALTH AGENCY
AND LAPEER COUNTY BOARD OF COMMISSIONERS,
Employer-Petitioner,

- and -

Case No. UC00 K-45

TEAMSTERS STATE, COUNTY, AND MUNICIPAL
WORKERS, LOCAL 214,
Labor Organization.

APPEARANCES:

Marshall W. Grate, Esq., Roberts, Betz & Bloss, P. C., for the Employer

Wayne A. Rudell, Esq., Rudell & O'Neill, P.C., for the Labor Organization

DECISION AND ORDER
ON
PETITION FOR UNIT CLARIFICATION

Pursuant to the provisions of 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 April 25, 2001, before Nora Lynch, an Administrative Law Judge for the Michigan Employment Relations Commission. Based upon the entire record, including briefs filed by the parties on or before June 14, 2001, the Commission finds as follows:

The Petition:

In the petition filed on November 29, 2000, the Employer seeks to exclude the position of recipient rights director from the bargaining unit of all full-time and regular part-time employees of Lapeer County Community Mental Health Agency represented by Teamsters Local 214. The Employer maintains that this position is an executive and/or shares no community of interest with other employees in the bargaining unit. The Union contends that the position has been in the bargaining unit since certification of the unit by the Commission and has undergone no significant changes that would make it inappropriate for inclusion.

Facts:

The Lapeer County Community Mental Health Agency provides mental health services to Lapeer County residents, including services to the chronically mentally ill, the developmentally disabled, and individuals with other emotional or mental health needs. It also provides consultation services to entities such as the courts, schools, police agencies and others. The Agency is governed by two policy-making boards in a joint-employer relationship: the Lapeer County Board of Commissioners and the Lapeer County Community Mental Health Board.¹ The Lapeer County Board of Commissioners appoints the policy-making Board for the Agency. A third Board, the Recipient Rights Advisory Board, is responsible for recipient rights issues.

The Agency is headed by Executive Director Richard Berman and employs approximately 130 employees at three sites. In 1995, pursuant to a consent election in Case No. R95 F-96, Teamsters Local 214 was certified as the exclusive representative of the following nonsupervisory bargaining unit, consisting of approximately 65 employees:

All full-time and regular part-time employees of Lapeer County Community Mental Health, including social workers, psychologists, therapists, counselors, clinicians, case managers, RNs, LPNs, professional, para-professional, technical and clerical employees; excluding the executive director, OPC clinic division supervisor, residential services division supervisor, ACT division manager, finance division supervisor, office manager, DD partial day services supervisor, day programming services supervisor, MI day treatment supervisor, senior clinician, physicians, psychiatrists, supervisors and managers, substitutes, interns, seasonal employees, temporary employees, contractual employees, clients/consumers, and two confidential employees (executive secretary and administrative assistant).

The initial collective bargaining agreement between the parties reflected the above unit description and covered the period of May 12, 1998 to September 30, 2000. The parties agreed to an extension of the collective bargaining agreement in September of 2000 which included the provision that the extension would not be used as a contract bar to any unit clarification petition.² A successor contract was subsequently reached and ratified on or about April 16, 2001.

The position of recipient rights officer is mandated by the Michigan Mental Health Code, MCL 330.1755 *et seq*, which governs the operation of all community mental health programs in

¹ At hearing, the Union objected to the fact that only one of the joint employers, the Lapeer County Community Mental Health Agency, was represented. Counsel appearing for the Employer indicated on the record that he was authorized to represent both joint-employers.

²The Union argues that this agreement was superseded by the subsequent collective bargaining agreement and, therefore, has no effect; however we find that the issue was sufficiently preserved for our consideration even though a new contract was subsequently reached.

the State. The director of the recipient rights office, or recipient rights director, formerly called the recipient rights officer, has been included in the Teamsters' bargaining unit since certification. The Agency's job description for the position conforms to the requirements of the Mental Health Code, MCL 330.1755; there have been no amendments to this section since 1966. The job description was revised in November of 2000 to increase the educational requirements. The former qualifications required a minimum of a high school diploma with a degree in a human service field from an accredited college preferred. The November 2000, job description required a minimum of a bachelor's degree, with a master's degree in a human service field from an accredited college or legal degree preferred. Prior to filling the position, the Executive Director recruits and interviews applicants for the position and seeks the review of the Advisory Board. Several individuals have served in the position since its inception. The position is currently held by Amy Hand, who has a law degree.

Pursuant to statute, the recipient rights director receives reports of, and investigates, alleged violations of the rights of mental health services consumers and ensures that appropriate remedial action is taken. The recipient rights director is prohibited from performing clinical services. She reports directly to the Executive Director and is responsible only to him and the Boards. The recipient rights director is expected to update the Executive Director and Boards on new developments in the area, as well as to review and formulate policies to respond to any changes in administrative rules and laws. Any policy changes must be reviewed by both the Advisory Board and the full Board. To facilitate investigations, the recipient rights director has unimpeded access to agency records and personnel files. The recipient rights director is expected to maintain a record system for all reports of apparent or suspected rights violations and document conclusions related to complaints. She is responsible for ensuring that all employees receive training related to recipient rights protection. The recipient rights director must visit each contract site annually and monitor each site for contract compliance.

Amy Hand works thirty hours a week and generally schedules her own time. She has her own office, with four hours of secretarial support services in addition to the secretarial pool. Hand is paid at the PhD level; pursuant to the contract. Two other classifications in the bargaining unit are also paid at this level.

As indicated by the unit description above, the Teamsters 214 bargaining unit consists of a variety of nonsupervisory positions, including clerical, paraprofessional, and professional employees at different educational and skill levels. Many of the professionals have their own offices and set their own schedules with respect to meeting with particular clients. Due to the nature of the services offered by the Agency, all employees have the duty to report any perceived abuse or violation of recipients' rights. They are not expected to investigate, but simply to make the complaint.

Discussion and Conclusions:

The Employer maintains that the recipient rights director is an executive position, responsible for reviewing, implementing, and recommending all Agency policies pertaining to recipient rights. According to the Employer, the position was improperly included in the

bargaining unit and shares no community of interest with others in the unit. The Employer also argues that the investigative power of the recipient rights director, which may result in disciplinary measures against fellow bargaining unit members, creates a conflict of interest with the clinical staff. The Union asserts that there is no basis upon which to exclude the recipient rights director from the bargaining unit; the classification has been in the bargaining unit for many years with no significant changes in its essential functions.

We have indicated that we will not exclude from bargaining units employees who investigate activities of their coworkers, nor will we expand the definition of confidential or executive employee to cover such positions. *City of Detroit*, 1980 MERC Lab Op 182, 188. Similarly, the fact that employees may be entrusted with information not available to the public or other coworkers does not automatically exclude them from representation by a union. *City of Muskegon*, 1996 MERC Lab Op 64; *Huron Int Sch Dist*, 1980 MERC Lab Op 85. In *Wayne County Association for the Retarded*, 1977 MERC Lab Op 872, the employer objected to the inclusion of the position of client-rights advisor in an overall unit of nonsupervisory employees. This individual was a secretary/bookkeeper who was also responsible for receiving complaints regarding clients' rights, including mental or physical abuse; for assisting in the formation of policies regarding clients' rights; and for keeping the employer informed with respect to legal requirements. We found that these responsibilities did not provide justification to exclude her from the unit, on a confidential or any other basis. Similarly, in *Macomb County Road Commission*, 1978 MERC Lab Op 848, we refused to exclude a safety officer who investigated accidents involving bargaining unit employees from the unit on a conflict of interest basis and/or lack of community of interest. We rejected the employer's argument that the particular responsibilities in the security division required any special treatment under PERA. We reach the same conclusion here.

The recipient rights director has been in the bargaining unit since its inception in 1995. The record reveals no significant changes in job functions or in the statute governing the requirements for this position. The educational qualifications for the position have increased, but remain within the scope of the bargaining unit. We find that the recipient rights director shares a community of interest with others in the unit, with skills and training comparable to other professional unit positions such as psychologists, RNs, and therapists. With respect to the Employer's assertion of executive status, we find that the recipient rights director has insufficient authority to function as an executive within the Commission definition, which requires a substantial degree of autonomy and responsibility to formulate and effectuate management policy on an employer-wide basis. *St. Clair County Rd Comm*, 2001 MERC Lab Op ___ (Case No. UC00 F-24); *City of Grandville*, 1997 MERC Lab Op 140, 146. The recipient rights director is subordinate to the Executive Director and the governing Boards. Although the recipient rights director may suggest or draft policies with respect to recipient rights, authority to implement those policies lies with the Advisory and full Board as well as the Executive Director. We conclude that this position does not meet the criteria for executive status. *Antrim-Kalkaska Community Mental Health System*, 1998 MERC Lab Op 11, 16.

Based on the above discussion, we find that the position of recipient rights director is properly placed in the Teamsters 214 bargaining unit. We therefore issue the order set forth below:

ORDER

It is hereby ordered that the petition for unit clarification be dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chair

Harry T. Bishop, Commission Member

C. Barry Ott, Commission Member

DATED: _____