

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

In the Matter of:

CITY OF ADRIAN,
Public Employer,

Case No. R03 A-05

-and-

AMERICAN FEDERATION OF STATE, COUNTY,
AND MUNICIPAL EMPLOYEES (AFSCME),
MICHIGAN COUNCIL 25, AFL-CIO,
Petitioner - Labor Organization.

APPEARANCES:

Keller Thoma, by Richard W. Fanning, Jr., Esq., for the Public Employer

Miller Cohen, P.L.C., by Richard G. Mack, Jr., Esq., and Bruce A. Miller, Esq., for the
Petitioner

DECISION AND DIRECTION OF ELECTION

Pursuant to Sections 12 and 13 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212 and MCL 423.213, this case was heard at Detroit, Michigan on March 19, 2003, before D. Lynn Morison, Administrative Law Judge for the Michigan Employment Relations Commission. Based on the record, including the transcript and briefs filed by the parties on or before April 14, 2003, the Commission finds as follows:

The Petition and Positions of the Parties:

The petition was filed on January 13, 2003, by the American Federation of State, County, and Municipal Employees, Michigan Council 25, AFL-CIO (AFSCME). The petition, as amended, seeks to include in the proposed bargaining unit all regular full-time and part-time secretaries, account clerks, payroll clerks, clerk typists, customer relations clerks, administrative assistants, library assistants and police cadets, excluding all others. The only issue to be resolved is the propriety of including the position of library assistant III in the proposed unit. The Employer asserts, contrary to Petitioner, that the library assistant III is a supervisory position, and as such should not be included.

Facts:

The City of Adrian library has three professional staff members with Master of Library Science degrees: the director, the assistant director and the children's librarian. There are also four library assistant Is, two library assistant IIs (the children's librarian assistant and the audiovisual librarian), one library assistant III, three pages, and a custodian.

The position at issue, the library assistant III, is a full-time, hourly position and is held by Robert Irish, a library employee since June 1985. His direct supervisor throughout his employment has been Jule Fosbender, the library director.

The library assistant III is responsible for the library's computer system and oversees the circulation desk. The circulation desk is staffed by the library assistant III, the library assistant Is, and the pages. Both the pages and the library assistant Is are part-time employees. The library assistant I position is included in the proposed bargaining unit. The library assistant III makes a higher hourly wage than the library assistant I, although they generally perform the same tasks with respect to staffing the circulation desk: checking materials out for patrons, keeping records up to date, answering phone calls, sorting mail, answering patrons questions about circulation procedures, and collecting fines.

The library director has designated certain tasks that must be performed by the circulation desk staff in opening the library each morning. The library assistant III is responsible for ensuring that those tasks are completed each day. The director has also given each library assistant I specific assignments for those times when they are not assisting patrons at the circulation desk. For example, one library assistant I is responsible for sending out notices to inform patrons that they have overdue materials, and another library assistant I sends reports to the credit bureau when materials are extremely overdue. The library assistant III checks work done by other staff members at the circulation desk and corrects it if necessary, including work done at the desk by the library director, assistant director and library assistant IIs. The library assistant III is also responsible for giving work assignments to new circulation desk employees, training them and monitoring their performance. Due to his computer expertise, the library assistant III is also responsible for training all of the library staff with respect to computer matters.

The library assistant III job description provides that the library assistant III schedules, supervises and trains the library assistants and pages who work at the circulation desk. The library assistant III does not approve vacation requests or personal leave time. When directed to do so by the library director, he may adjust employees' schedules and call employees in to work on days that they are not scheduled, when necessary to cover another employee's absence. However, he has no authority to initiate such actions on his own. The library assistant III may only allow employees to leave early if he first checks with the library director.

The library assistant III has no authority to discipline beyond verbal reprimands and no record is made of such reprimands. Irish has never been asked to assist in any disciplinary procedure for a library assistant I and cannot suspend or discharge or effectively recommend such action. The library assistant III does not formally evaluate the library assistant Is, and Irish has never been asked for an opinion on the work performance of a library assistant I. He has never been asked to lay off, recall, promote or reward a library assistant I.

The library assistant III has no authority to hire or to effectively recommend the hiring of library assistant Is. Generally, when someone is to be hired for the circulation desk, the library director screens the applications, and sets up interviews. She may invite the library assistant III to sit in on the interviews and may discuss the individual with the library assistant III, but she does not always do so. Irish did not participate in the interviewing process for any of the four current library assistant Is or the three current pages. Although Irish has been involved in the hiring process on prior occasions, he did not hire or recommend the hiring of those employees. When the Employer hired a new library assistant I recently, Irish was not involved in the hiring process and did not learn about it until after the person had been hired.

Discussion and Conclusions of Law:

It is evident that any authority the Employer has delegated to the library assistant III is not sufficient to qualify the position as supervisory. Although PERA contains no definition of the term "supervisor," we have often utilized the definition contained in the National Labor Relations Act, 29 USC §152(11):

The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Sch Dist of the City of East Detroit, 1966 MERC Lab Op 60, 64. See also *Michigan Education Ass'n v Clare-Gladwin Intermediate Sch Dist*, 153 Mich App 792, 796-797 (1986) *aff'g* 1985 MERC Lab Op 915, 918-919; *Kalkaska County and Sheriff*, 1994 MERC Lab Op 693, 698. Possession of any of the above powers may confer supervisory status, and it is the possession of the power, and not the exercise of the power, that is determinative. *Bloomfield Hills Sch Dist*, 2000 MERC Lab Op 363; *Huron County Medical Care Facility*, 1998 MERC Lab Op 137, 146; *Sch Dist of the City of East Detroit*, at 64.

It is undisputed that Irish has never hired, transferred, suspended, laid off, recalled, promoted, discharged, or rewarded any employees and there is no evidence that the library assistant III has the authority to do so or to effectively recommend such action. The Employer's contention that the library assistant III is a supervisor rests on its claim that the library assistant III has authority to assign, discipline, and/or responsibly direct the library assistant Is. We find no merit in the Employer's contention for the reasons that follow.

The authority to “responsibly direct” other employees does not mean that every employee who oversees the work of others qualifies as a supervisor under PERA. *Kalkaska County and Sheriff*, at 698. The authority to “responsibly direct” the work of others would generally not be enough, by itself, to demonstrate that the position is aligned with management and should be considered a supervisor. *Michigan Community Services, Inc*, 1994 MERC Lab Op 1055, 1060; *Detroit Dep’t of Parks and Recreation*, 1969 MERC Lab Op 661, 666-668. See also *City of Detroit - Police Department*, 1968 MERC Lab Op 129. An individual is not a supervisor under PERA if his or her authority is limited to directing the daily work of other employees and/or making work assignments of a routine nature. See *City of Lansing*, 2000 MERC Lab Op 380, 382; *City of Grand Rapids Police Dep’t*, 2000 MERC Lab Op 384, 387; *Village of Paw Paw*, 2000 MERC Lab Op 370, 373; *Whitmore Lake Pub Schs*, 1999 MERC Lab Op 117, 120; *Huron County Medical Care Facility*, 1998 MERC Lab Op 137, 146. Although the library assistant III is responsible for ensuring that the library assistant Is perform their assigned duties, this oversight does not require the use of independent judgment. He has no authority to change their assignments or to effectively recommend changes. His role is to ensure that a standard list of daily tasks is performed either by himself or by one of the library assistant Is. He has no authority to adjust the library assistant Is’ work schedules or to require them to report on a scheduled day off, but only carries out the director’s instructions with respect to scheduling. These responsibilities do not qualify the library assistant III as a supervisor. See *Village of Paw Paw*, at 373; *Kalkaska County and Sheriff*, at 698-99.

The authority to issue formal discipline, or to effectively recommend such discipline, is an important indicator of supervisory authority even if that authority is rarely exercised. *Riverview C.S.*, 2003 MERC Lab Op ___(UC99 J-38); *Tuscola Intermediate School District*, 2000 MERC Lab Op 226, 229; *City of Detroit, Dep’t of Public Works*, 1999 MERC Lab Op 283, 287-288. An individual who is “in charge” of a group of employees is generally found not to be supervisor unless he or she has an effective role in discipline or in recommending discipline. *City of Detroit*, 1996 MERC Lab Op 282, 286. See also *Michigan Community Services, Inc*, at 1060. The library assistant III has no role in formal discipline. The only “discipline” he may issue is an oral reprimand of which no record is made. He has no authority to evaluate the work performances of employees or to recommend formal discipline when that performance is unacceptable. These limitations on the library assistant III’s authority to discipline further support the conclusion that the position is not supervisory. See *City of Detroit Human Resources Dep’t*, 1999 MERC Lab Op 81, 92.

In conclusion, we find that the library assistant III has no authority to issue or recommend formal discipline, has only sporadic and marginal involvement in the hiring process and has no authority to control the assignments of the library assistant Is. His authority to direct the activities of the library assistant Is is limited to routine daily matters, and he possesses none of the other powers indicative of supervisory authority. Accordingly, we conclude that the library assistant III is not a supervisor and should be included in the proposed bargaining unit.

ORDER DIRECTING ELECTION

Based on the findings of fact and conclusions of law above, we find that a question concerning representation exists under Section 12 of PERA. We direct an election in the following unit, which we find appropriate under Section 13 of PERA:

All regular full-time and part-time secretaries, account clerks, payroll clerks, clerk typists, customer relations clerks, administrative assistants, police cadets, library assistant Is, library assistant IIs and the library assistant III, but excluding all other employees of the City of Adrian.

Pursuant to the attached Direction of Election, the aforesaid employees will vote on whether or not they wish to be represented for purposes of collective bargaining by the American Federation of State, County, and Municipal Employees, Michigan Council 25, AFL-CIO.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Nora Lynch, Commission Chairman

Harry Bishop, Commission Member

Maris Stella Swift, Commission Member

Dated: _____