

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

In the Matter of:

INGHAM COUNTY SHERIFF,
Public Employer,

Case No. R03 C-48

-and-

MICHIGAN ASSOCIATION OF POLICE,
Petitioner - Labor Organization,

-and-

CAPITAL CITY LODGE NO. 141 OF THE FRATERNAL ORDER OF POLICE,
Incumbent Labor Organization.

APPEARANCES :

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

Farrell and Associates, P.C., by M. Catherine Farrell, Esq., for the Petitioner

Wilson, Lawler & Lett, PLC, by R. David Wilson, Esq., for the Incumbent 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, MCL 423.212 and MCL 423.213, this case was heard at Lansing, Michigan on May 8, 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 June 26, 2003, the Commission finds as follows:

The Petition and Positions of the Parties:

The Michigan Association of Police filed the petition in this matter on March 13, 2003, seeking to represent "all non supervisory [Act] 312 eligible police officers" employed by the Ingham County Sheriff. The officers Petitioner seeks to represent are part of a bargaining unit currently represented by Capital City Lodge No. 141 of the Fraternal Order of Police (FOP).¹

¹ The Incumbent Union's post-hearing brief points out that its petition for Act 312 arbitration was filed on the day that the representation petition was filed. We note that the Act 312 petition does not bar the representation petition since the Act 312 petition was filed after the representation petition.

The current bargaining unit includes law enforcement officers and corrections officers. It is undisputed that the law enforcement officers are eligible for compulsory arbitration under Act 312, 1969 PA 312, as amended by 1976 PA 203, and 1977 PA 303, MCL 423.231-247, and the corrections officers are not Act 312 eligible. The Incumbent Union opposes the fragmentation of the bargaining unit and contends that bargaining history, the movement of employees between law enforcement and corrections, and the makeup of the retirement system require leaving all employees in the same unit. The Incumbent Union also contends that if an election is permitted, those corrections officers who are certified to work in law enforcement and who have successfully completed the Employer's field services training program should be included in the group of employees permitted to vote. Both the Petitioner and the Employer oppose permitting those corrections employees to vote.

Facts:

This bargaining unit has been represented by the FOP since the early 1970's. Since the commencement of the 1973 collective bargaining agreement, the bargaining unit has been described as: all deputized employees below the rank of sergeant, specifically including the positions of police officer, corrections officer (sometimes called "jail security officer") and detective. There has been no significant change in the description of the bargaining unit since the 1973 contract. The most recent contract between the Incumbent Union and the Employer covered the period of January 1, 2000, through December 31, 2002.

The bargaining unit consists of seventy-eight corrections officers and seventy-three law enforcement officers. The positions designated as law enforcement officers include detectives, police officers, and paramedics. Corrections officers and law enforcement officers work in shifts of eight, nine, ten or twelve hours. The current collective bargaining agreement sets out different pay scales for detectives, police officers and corrections officers, with the detectives having a higher pay scale than the police officers and the corrections officers. Although the salaries at the top of the scales for the police officers and the corrections officers are the same, the corrections officers have a lower starting salary and it takes longer for the corrections officers to reach the top salary.

The collective bargaining agreement provides the same retirement benefits for both law enforcement and corrections officers. The employees contribute a percentage of their payroll to the retirement system based on actuarial assessments as to the cost of the benefits. No distinction was made between corrections officers and law enforcement officers in preparing the actuarial assessment. Corrections officers and law enforcement officers contribute the same percentages of their wages to the retirement plan.

The corrections officers are required to maintain custody and control of jail inmates. Their responsibilities, as listed on their job description, emphasize maintaining the health, safety, and welfare of jail inmates. Corrections officers are under the direct supervision of the correctional command staff.

The law enforcement officers include detectives and police officers, some of whom are also qualified to serve as paramedics. The police officers are assigned to the field services division and fall under that command structure. Their primary function is to ensure the health, safety and well being of the public. They are responsible for responding to requests for service from the public as well as basic patrol duties. Some law enforcement officers are classified as “court officers” and are responsible for providing security in the courts. Additionally, some of the police officers have responsibilities related to the custody and control of jail inmates. Those classified as “transport officers” are responsible for transporting inmates to and from the sheriff’s office, court, other sheriff’s offices, and prisons. Also, the Employer occasionally utilizes police officers for hospital guard assignments. The Employer does not engage corrections officers in any of these assignments.

The law enforcement officers are certified by the Michigan Council on Law Enforcement (MCOLES). MCOLES certification is required for police officers, but it is not required for corrections officers. MCOLES certification requires successful completion of a police academy and employment with a law enforcement agency. If they do not have MCOLES certification, corrections officers cannot move from corrections to road patrol. The Employer sponsors two or three corrections officers per year in the police academy to allow them to receive the training required for MCOLES certification. However, a corrections officer’s successful completion of the police academy does not automatically result in a transfer to law enforcement. If a corrections officer is transferred to law enforcement after successful completion of the police academy, the officer must then go through field training officer status, a fourteen-week in-service training program offered by the Employer. The transferred officer must also serve a six-month probationary period.

Eight corrections officers have MCOLES certification. Six of them were involuntarily transferred from law enforcement to corrections. The Employer transferred two of the six because they were unable to pass the field services training program.

Although the Employer’s policy prohibits it from allowing the two MCOLES certified corrections officers who failed their field services training program to work in law enforcement, the other six could do so in an emergency. However, the Employer permits only five of the eight corrections officers with MCOLES certification to work as law enforcement officers when additional help is needed in that area. Generally, when involuntary overtime must be performed by certified officers, that work is done by those officers regularly employed as law enforcement officers. The only exception to that is when Michigan State University (MSU) contracts with the Employer for law enforcement assistance at MSU home football games. There are six to eight MSU home football games per year, and the officers who work at those games work six-hour shifts. Five of the eight corrections officers who are certified as law enforcement officers may volunteer or may be required to work overtime at those events. Of the five corrections officers whom the Employer considers eligible to work overtime in law enforcement, only three have performed such duty in the past year.

Discussion and Conclusions of Law:

We have previously indicated that Act 312 eligibility is an important, and often controlling factor in determining community of interest. *City of Dearborn Hts*, 1984 MERC Lab Op 1079. Act 312 eligibility creates a separate and distinct community of interest such that, upon the filing of an appropriate petition, the Act 312 employees may be given the right to vote on severance. *City of Centerline*, 1987 MERC Lab Op 500, 502; *City of Grand Rapids*, 1987 MERC Lab Op 193, 195; *City of Fenton*, 1984 MERC Lab Op 1086, 1088. Further, we have held that Act 312 eligibility establishes an extreme divergence of community of interest sufficient to override our general policy against disturbing existing units. *County and Sheriff of Montcalm*, 1997 MERC Lab Op 157, 171, aff'd 235 Mich App 580 (1999); *County of Ottawa*, 1992 MERC Lab Op 370, 373; *City of Walker*, 1991 MERC Lab Op 60, 64; *City of Grand Rapids*, 1987 MERC Lab Op 193, 195; *Jackson County Bd of Comm & Sheriff*, 1985 MERC Lab Op 468, 470.

In contending that it would be inappropriate to permit severance of the law enforcement officers from the existing bargaining unit, the Incumbent Union relies on our recent decision in *Wayne County (Airport Police Department)*, 2001 MERC Lab Op 163, aff'd sub nom *Wayne County Police Association, v Wayne County Airport Police Department*, unpublished opinion per curiam of the Court of Appeals, decided February 14, 2003 (Docket No. 235669). However, we find that case clearly distinguishable. In *Wayne County*, the existing bargaining unit included both Act 312 eligible and non-eligible employees, and the petitioner sought to represent only a portion of the Act 312 eligible employees. Under those circumstances, we refused to disturb the established bargaining unit in order to permit a segment of the Act 312 eligible employees to be separately represented. In the instant case, Petitioner seeks to represent all Act 312 eligible employees.

Factors indicating a community of interest between the corrections officers and the law enforcement officers are present here, including transfers between classifications, and similarities in the skills required. However, since *City of Dearborn Heights*, 1984 MERC Lab Op 1079, and *City of Fenton*, we have consistently stated our preference for placing all Act 312 eligible employees in a single unit separate from non-eligible employees. See *Town of Genesee*, 1994 MERC Lab Op 210, 216; *Charter Township of Orion*, 1994 MERC Lab Op 87, 91; *City of Wyandotte*, 1993 MERC Lab Op 234, 236; *City of Southfield (Public Safety)*, 1993 MERC Lab Op 36, 42.

The parties recognize that the Commission and the Court of Appeals have determined that corrections officers are not eligible for compulsory arbitration under Act 312. See *Capitol City Lodge No 141, Fraternal Order of Police v Ingham County Bd of Comm'rs*, 155 Mich App 116 (1986); *Tuscola County and Sheriff*, 2003 MERC Lab Op ____, (Case No. UC02 E-015, October 1, 2003); *Presque Isle County*, 1993 MERC Lab Op 669; *City of Detroit, Police Dep't*, 1992 MERC Lab Op 76; *County of Macomb, Sheriff's Department*, 1991 MERC Lab Op 542. However, the FOP contends that those corrections officers with MCOLES certification who have successfully completed the Employer's field services training should be permitted to vote in the election along with the law enforcement officers. With certain exceptions, for example, illness or temporary layoff, in order to be eligible to vote in a Commission conducted election, an employee must be employed and working on the eligibility date. This means the actual

performance of bargaining unit work, rather than training, orientation, or certification for such work. See for example, *Emro Marketing*, 269 NLRB 926 (1984), *F & M Importing Co*, 237 NLRB 628 (1978). We conclude that those employees currently working as correction officers who have field service training and MCOLES certification do not qualify as eligible voters.

ORDER DIRECTING ELECTION

Based upon the above, we conclude that a question concerning representation exists herein under Section 12 of PERA, and that the following employees constitute a unit appropriate for collective bargaining under Section 13 of PERA:

All non-supervisory law enforcement officers employed by the Ingham County Sheriff including police officers, detectives, and excluding corrections officers.

The above-described employees shall vote pursuant to the attached Direction of Election whether they wish to be represented for purposes of collective bargaining by the Michigan Association of Police or by the Capital City Lodge No. 141 of the Fraternal Order of Police. A vote for the Michigan Association of Police shall indicate a desire to be represented by this labor organization as a separate unit. A vote for the Capital City Lodge No. 141 of the Fraternal Order of Police shall indicate a desire to remain represented by this labor organization as part of a unit also including non-supervisory corrections officers.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Nora Lynch, Commission Chairman

Harry Bishop, Commission Member

Maris Stella Swift, Commission Member

Dated: _____