

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

In the Matter of:

VILLAGE OF ORTONVILLE,
Public Employer,

Case No. R03 D-76

-and-

TEAMSTERS LOCAL 214,
Petitioner - Labor Organization.

APPEARANCES:

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

Rudell & O'Neil, P.C., by Kevin J. O'Neil, Esq., for the Petitioner

DECISION AND DIRECTION OF ELECTION

Pursuant to Section 12 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212, this case was heard in Detroit, Michigan on December 11, 2003, before D. Lynn Morison, Administrative Law Judge for the Michigan Employment Relations Commission. Based upon the entire record, including briefs filed by the parties on or before February 2, 2004, the Commission finds as follows:

The Petition and Positions of the Parties:

Teamsters Local 214 filed the petition in this matter on April 14, 2003, seeking an election in a bargaining unit of all full-time employees, including laborers and crew leaders, of the Village of Ortonville's Department of Public Works (DPW). The Employer contends that the position designated as the "DPW supervisor" possesses supervisory authority and, therefore, should be excluded from the proposed bargaining unit. The Petitioner contends that the position is actually a crew leader lacking true supervisory authority and should be included in the unit.

Facts:

The Village of Ortonville is governed by a village council and employs a village manager, a clerk/treasurer, a deputy clerk/treasurer, a DPW supervisor, and two laborers. The village manager reports directly to the village council and directly supervises the clerk/treasurer and the DPW supervisor. There are three DPW employees: the DPW supervisor and the two

laborers. The DPW may also employ part-time workers, although none were employed at the time of the hearing. The DPW employees are responsible for a variety of duties, including maintaining, repairing, plowing and salting roads, repairing storm sewers and drains, cleaning the streets, maintaining public buildings and parks, and mowing city property.

All three DPW employees perform the same general work and wear identical uniforms. They receive the same health and pension benefits and are paid hourly wages according to the scale in the Village's personnel policy. The employee designated as the DPW supervisor earns \$15.95 per hour, slightly more than the most senior laborer, and is provided with a truck to use on the job and for transportation to and from work.

All three DPW employees work forty hours per week. Their schedules are staggered to ensure that the work is covered and to avoid the need for overtime. During the winter months when it is necessary to clear the roads of snow, the DPW supervisor calls employees in to work, setting their schedules. When it appears that they will not be able to complete the work necessary to clear the streets within their scheduled eight-hour shift, the DPW supervisor informs the village manager, who then decides whether overtime should be authorized.

The three DPW employees each filled out their own time cards until July 2003, when the Village made the DPW supervisor responsible for filling out the cards. If the DPW supervisor is absent, one of the laborers fills out the time cards. Approval for schedule changes must be obtained from the DPW supervisor in advance; he then reports these schedule changes to the village manager. When laborers call in to report that they will be absent, they call the DPW supervisor who in turn notifies the village manager. With respect to vacation days, laborers inform the DPW supervisor of the time requested and indicate these dates on the calendar in the village office. The village manager reviews all vacation requests to ensure that there is adequate coverage.

The DPW supervisor typically meets weekly with the village manager. The village manager gives instructions on what must be done during the week and discusses any schedule changes. They also discuss projects to be done in addition to the DPW's regular duties and the date by which these projects should be completed. The DPW supervisor then informs the laborers of these duties, and allows them to choose their own assignments. All three DPW employees share the responsibility of keeping track of the completed work by recording it in a logbook.

Decisions on hiring full-time DPW employees are made by the village council. The council's personnel committee, which includes the village manager and two members of the village council, is responsible for screening resumes, interviewing job applicants, and making hiring recommendations to the village council. When the last laborer was hired, both the remaining laborer and the DPW supervisor assisted in screening resumes, interviewed the job applicants, and made recommendations to the personnel committee on whom to hire. However, the personnel committee, after separately interviewing the applicants, rejected the applicant who was the first choice of the two DPW employees, but agreed with their second choice and recommended that person to the village council.

The procedure for hiring temporary/part-time employees differs from that used when hiring full-time employees. The DPW supervisor reviews the applicants and may hire a part-time employee without the participation of the village manager or the village council. The last part-time employee was hired because the Village needed someone to work in the interim between the resignation of a full-time employee and the hiring of his replacement. Because the son of another Village employee happened to be available at the time, the DPW supervisor hired him for the temporary position. The DPW supervisor is responsible for training newly hired DPW employees and for approving requests from laborers to take training courses.

Under the Village's personnel policy, all DPW employee grievances are first submitted to the DPW supervisor; the policy also provides that the DPW supervisor "is responsible for any disciplinary actions, with the exception of dismissal." Although theoretically the DPW supervisor may have authority to issue verbal and written reprimands, no laborers have been reprimanded. Only the village council has the authority to discharge an employee. The issue of the DPW supervisor's authority to suspend an employee has not yet arisen; if the issue arises, the village manager will take the matter to the village council.

The DPW supervisor evaluates employees each year; he discusses the evaluations with the village manager and makes recommendations on whether specific employees should receive wage increases. The village manager then informs the village council of the recommendations, which are given considerable weight by the council in determining whether to give wage increases to particular employees.

As the purchasing agent for the DPW, the DPW supervisor is expected to approve all minor purchases. However, the laborers order additional road salt as needed and charge minor purchases of other supplies to the Village's accounts without getting prior approval. The DPW supervisor and one of the laborers each have cards allowing them to make purchases on the Village's account at Home Depot. The DPW supervisor periodically checks with the clerk/treasurer to find out how much money remains in the DPW budget to avoid overspending. For major purchases, which the prior DPW supervisor defined as costing over one hundred dollars, the DPW supervisor must go to the village manager. If the village manager agrees that the purchase should be made, he presents the matter to the village council for approval.

The DPW supervisor also acts as the Village's Act 51 "street administrator." As street administrator, the DPW supervisor submits the Village's application to the State seeking funding for road maintenance.

Discussion and Conclusions of Law:

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. *City of Holland*, 2002 MERC Lab Op 40, 41; *Village of Paw Paw*, 2000 MERC Lab Op 370. "Effectively recommend" means that the supervisor's recommendations are generally accepted by his superiors without an independent investigation and are accepted at face value. *Port Austin Water & Sewer Authority*, 2001 MERC Lab Op 230; *Kalkaska Co and Sheriff*, 1994

MERC Lab Op 693, 699; and *Village of Port Austin*, 1991 MERC Lab Op 346, 348. A finding of supervisory status requires that an individual or classification exercises independent judgment and be identified or aligned with management in the performance of their duties. *County and Sheriff of Montcalm*, 1997 MERC Lab Op 157, 167; *Huron Co Sheriff's Dept*, 1995 MERC Lab Op 505, 509.

Employees who merely assign or oversee the performance of work by others on a routine basis are not supervisors. *Kalkaska Co and Sheriff*, at 698. Moreover, responsibilities such as maintaining time cards, and granting time off, are insufficient to establish supervisory status. *Michigan State Univ*, 1999 MERC Lab Op 542, 547-548 (no exceptions); *Berrien County Sheriff*, 1999 MERC Lab Op 177, 187. Nor does the title "supervisor" mean that the position necessarily meets the criteria of a supervisor under PERA. *City of Detroit, Dep't of Public Works*, 2001 MERC Lab Op 20, 23; *County of Wayne*, 1991 MERC Lab Op 219, 226.

The record indicates that there is very little to distinguish the role of the DPW supervisor from that of the laborers. He does the same work as the laborers, spending the bulk of his time on the same type of tasks that they perform. Although the DPW supervisor has the authority to assign tasks, the DPW supervisor and the laborers each determine which of the tasks assigned to the DPW they will personally perform. The responsibility for routine assignments of work is not enough to demonstrate supervisory status. See *Berrien County Sheriff*, 1999 MERC Lab Op 177; *Kalkaska Co and Sheriff*, 1994 MERC Lab Op 693. The DPW supervisor is nominally in charge of the DPW budget, but his budgetary oversight is limited to periodically checking with the clerk/treasurer to determine how close they are to spending the amount budgeted. While he has authority to make small purchases for the DPW, the laborers are also permitted to make such purchases and are authorized to charge the purchases to the Village's accounts. When one of the laborers resigned, the remaining laborer participated in hiring a new full-time laborer to the same extent as the DPW supervisor. Although the DPW supervisor hired a part-time temporary employee, the hiring of a temporary employee is not sufficient to establish supervisory authority. *Township of Redford*, 1984 MERC Lab Op 397, 415. See also *City of Midland (Police Dep't)*, 1993 MERC Lab Op 601, 607.

The village manager has the final decision on whether laborers' vacation requests should be approved and decides whether the laborers should work overtime. When the DPW supervisor evaluates the laborers, those evaluations go to the village manager who then communicates the DPW supervisor's oral recommendations on wages to the village council. We have held that the responsibility for preparing written evaluations of an employee's performance can be an important indicator of supervisory status. *Huron Co Medical Care Facility*, 1998 MERC Lab Op 137; *City of Midland*, 1993 MERC Lab Op 601. However, where the effective personnel decisions are made by higher management, the fact that an individual may be expected to evaluate the performances of employees working under him is not sufficient to qualify that individual as a supervisor. *City of Lansing*, 1985 MERC Lab Op 93, 101; *Saginaw Co Probate Court, Juvenile Div*, 1983 MERC Lab Op 954, 958.

Although the DPW supervisor's job description indicates that he has authority to discipline, his authority is limited; he has no authority to discharge and all effective personnel decisions are made by higher management. See *City of Lansing*. It is clear that the DPW

supervisor is a crew leader who, at a minimum, must consult with the village manager on all personnel decisions made in his department. We find that there is insufficient evidence of real and effective supervisory authority on the part of the DPW supervisor to justify his exclusion from the nonsupervisory bargaining unit.

For the foregoing reasons, we conclude that the position of DPW supervisor is properly included in the proposed bargaining unit and issue the following order:

ORDER DIRECTING ELECTION

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 employees, including laborers and crew leaders, employed by the Village of Ortonville's Department of Public Works, but excluding supervisors.

Pursuant to the attached Direction of Election, the aforesaid employees will vote on whether they wish to be represented for purposes of collective bargaining by Teamsters Local 214.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Nora Lynch, Commission Chairman

Harry W. Bishop, Commissioner

Nino E. Green, Commissioner

Dated: _____