

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

In the Matter of:

VILLAGE OF NORTH BRANCH,  
Public Employer,

Case No. R03 D-78

-and-

INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 324,  
Labor Organization-Petitioner.

APPEARANCES:

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

Korney & Heldt, P.C., by J. Douglas Korney, Esq., for the Petitioner

**DECISION AND ORDER**

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 September 18, 2003, before D. Lynn Morison, Administrative Law Judge for the Michigan Employment Relations Commission. Based upon the entire record, including the briefs filed by the parties on or before November 18, 2003, the Commission finds as follows:

The Petition:

The International Union of Operating Engineers, Local 324, filed this petition on April 14, 2003. Petitioner seeks an election in a bargaining unit consisting of all full-time and regular part-time employees within the Village of North Branch's Department of Public Works (DPW) and excluding all professional, office and clerical employees. The Employer contends that one of these employees, DPW Supervisor Ronald Seaman, is a supervisory employee and is, therefore, not properly included in the bargaining unit with non-supervisory employees.

Facts:

The Village of North Branch is governed by the Village President, Ronald Ward, the Village Clerk, Betty Lou Kennedy, the Village Treasurer, and six council members, all of whom are elected by the Village residents. The Village has two departments, the police department, with four employees, and the Department of Public Works (DPW), with three employees. The

DPW employees are responsible for a variety of duties, which largely consist of maintaining the Village's streets, sidewalks, grounds, sewer system, and water system.

The three DPW employees are DPW Supervisor Ronald Seaman, Earl Diller, and Mike Kohler. Seaman has worked for the Village since 1984; Diller since 1992; and Kohler since 1997. All three are full-time hourly employees, though they do not punch a time clock nor complete a time sheet. Their standard workday is eight hours, from 7:00 a.m. to 3:30 p.m. Diller and Kohler earn \$16.12 per hour; but Seaman earns \$18.32. They receive premium pay if they work overtime. All three employees wear identical DPW uniforms to work.

Seaman was given the title "DPW Supervisor" in 1997, but did not get a pay raise at that time. He now gets paid 15% more in consideration of his additional responsibilities. Seaman is responsible for the oversight of the daily operation of the DPW. Seaman is also designated as the Village's Street Administrator for a joint program between the Village and the State of Michigan created for the upkeep of local streets. Additionally, Seaman serves as the Village's representative for the Abandoned Well Management Project, in which the State subsidizes efforts to locate and plug the Village's abandoned wells. Seaman's responsibilities also include inspecting, reporting on, and presenting recommendations concerning the condition of the Village's sidewalks, streets, and traffic signs. He makes recommendations to the Village Council regarding policies on maintaining the sewer lines and on increases or decreases in the Village budget for DPW supplies, and various DPW projects.

Seaman is responsible for generating the daily activity logs which account for the work done and the time spent on each assignment by each of the DPW employees. Generally, prioritizing jobs is a group effort by the three DPW employees. Seaman then determines which employee will work on which particular job based on the qualifications of the employees. On one occasion, after considerable discussion and Seaman's initial refusal, Village President Ronald Ward persuaded him to change an employee's work assignment to enable the employee to work on something Ward needed done. However, Seaman stipulated that the employee was to return to his previous assignment within ten minutes. There have been no other incidents in which Seaman and Ward discussed employee assignments. Ward will occasionally stop by the DPW and ask Seaman to give priority to certain jobs because he has received requests from Village residents. This occurs no more than once every month or two. Ward does not oversee the activities of the DPW on a daily basis and sometimes has no contact with DPW employees for a week or more. Seaman has the authority to issue written reprimands and to recommend that an employee be discharged. However, Seaman has never recommended discharge, or issued any other formal discipline to a DPW employee.

The Village Clerk holds Seaman responsible for the approval of vacation time, personal leave, sick leave and overtime. However, Kohler and Diller merely tell Seaman when they have worked overtime, plan to take vacation, or have taken time off so he can enter the time on the activity logs. He has never disapproved requests for time off and generally does not expressly approve them. The one occasion on which Seaman approved a vacation request occurred when Diller was selected for a random drug test. When Diller did not report for the drug test as expected, Seaman prepared a written reprimand for Diller and gave it to the Village Clerk. After talking to Diller about the matter, Seaman told the Village Clerk to destroy the reprimand

without issuing it to Diller. Diller told Seaman he would quit, rather than take the drug test. After Seaman talked to Diller to try to persuade him not to quit, Diller said he wanted to take a week's vacation. Seaman approved the previously unscheduled vacation. When Diller returned from vacation, Seaman would not permit Diller to return to work until Diller took the drug test. No discipline was issued to Diller as a result of the incident.

The last full-time DPW employee hired by the Village, Mike Kohler, was hired by the Village Council based on the recommendations of the Village's personnel committee and the DPW Supervisor. In voting on the motion to hire Kohler, Ward gave considerable weight to Seaman's recommendation that they hire Kohler instead of the other applicant. Ward gives a great deal of weight to Seaman's opinions with respect to DPW matters because of his seniority, experience, expertise and their long term relationship, as well as his position as DPW supervisor. In 2000, Seaman hired his son, James Seaman, to work part-time. Seaman is responsible for ensuring that newly hired DPW employees receive appropriate training. He also informs the Village Council when DPW employees have received additional licenses that entitle them to wage increases. The DPW supervisor also makes recommendations to the Village Council for the annual wage increases of the DPW employees. His recommendations are given considerable weight and are generally followed.

#### 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. See *City of Holland*, 2002 MERC Lab Op 40, 41; *Village of Paw Paw*, 2000 MERC Lab Op 370; *City of Grand Rapids Police Dep't*, 2000 MERC Lab Op 384. Possession of any of the aforementioned powers may confer supervisory status, and it is the possession of the power, 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*, 1966 MERC Lab Op 60, 64. See also *Clare-Gladwin Intermediate Sch Dist*, 153 Mich App 792, 796-797 (1986) *aff'g* 1985 MERC Lab Op 915, 918-919.

Employees who merely assign or oversee the performance of work by others on a routine basis are not supervisors under the above definition. *Kalkaska County*, 1994 MERC Lab Op 693, 698. In this case, the DPW Supervisor does more than assign and oversee the daily activities of the other two DPW employees. He has sole responsibility for DPW operations. He has the authority to determine which projects the DPW employees will work on and even the Village President obtains his permission before diverting a DPW employee to a different assignment. The Village has also given him the responsibility to approve or disapprove of the DPW employees' overtime, sick leave, personal leave, and vacation requests. He determines the training needs of each employee and arranges for him or her to receive required training. He is responsible for making recommendations to the Village Council with respect to the employees' annual wage increases. He is responsible for oversight of a number of joint projects between the Village and the State. He advises the Village Council on matters of DPW policy and the DPW budget. He has hired a part-time employee and recommended the hiring of the last full-time employee hired by the Village Council. Accordingly, we find that the DPW supervisor utilizes

independent judgment as the representative of management in responsibly directing the DPW employees. See *City of Holland*, 2002 MERC Lab Op 40, 42; *Whitmore Lake Pub Schs*, 1999 MERC Lab Op 117, 120-121.

The authority to discipline, or to effectively recommend discipline, is a particularly important indicator of supervisory authority, even if that authority is rarely exercised. See *Tuscola Intermediate Sch Dist*, 2000 MERC Lab Op 226; *City of Detroit Dept of Pub Works*, 1999 MERC Lab Op 283, 288. Seaman has the authority to discipline DPW employees even though he has not done so formally. The incident with Diller shows that even though no formal discipline was actually issued to Diller, Seaman had the authority to issue a written reprimand and had the authority to prevent Diller's return to work if Diller refused to take the required drug test.

Accordingly, we find sufficient indicia of supervisory authority present within the DPW Supervisor's responsibilities to conclude that the DPW Supervisor is a supervisor and is not appropriately included in the proposed bargaining unit of nonsupervisory DPW employees.

#### 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 full-time and regular part-time employees within the Village of North Branch's Department of Public Works, excluding supervisors, professional, office and clerical employees.

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 International Union of Operating Engineers, Local 324.

#### MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Nora Lynch, Commission Chairman

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Harry W. Bishop, Commissioner

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Maris Stella Swift, Commissioner

Dated: \_\_\_\_\_