

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

In the Matter of:

COUNTY OF MACOMB,
Public Employer,

Case No. UC99 L-48

-and-

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
MICHIGAN COUNCIL 25 and LOCAL 411,
Petitioner-Labor Organization.

APPEARANCES :

James Meyerand, Esq., Corporation Counsel, for the Public Employer

Martens, Ice, Klass, Legghio, Israel & Gorchow, P.C., by Renate Klass, Esq., for the Petitioner

**DECISION AND ORDER
ON PETITION FOR UNIT CLARIFICATION**

Pursuant to Section 12 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212, this matter was assigned to David M. Peltz, Administrative Law Judge for the Michigan Employment Relations Commission. The parties agreed to a stipulation of facts in lieu of a formal hearing in this matter. Based upon the entire record, including the joint exhibits submitted by the parties along with the stipulation, the Commission finds as follows:

The Petition and Procedural Background:

Petitioner American Federation of State, County and Municipal Employees, Michigan Council 25 and Local 411 (AFSCME) represents a bargaining unit of nonsupervisory employees of the County of Macomb, including various positions within the County's Community Mental Health Department (CMH). In the petition for unit clarification, filed on December 27, 1999, and amended on January 15, 2004, AFSCME seeks to accrete to its bargaining unit approximately 55 unrepresented CMH employees in the following classifications: case managers I, II and III, developmentally disabled psychologists, developmentally disabled respite care developers, mental health workers II and III, registered nurses, specialists I and II and therapists I

and II.¹ An evidentiary hearing in this matter was scheduled for April 16, 17, and 18 of 2002, but was adjourned at the request of the parties.

At a prehearing conference on January 13, 2004, the Union and Employer jointly submitted a five-page stipulation of facts along with several exhibits. The parties filed additional joint exhibits on February 19, 2004. In a letter dated April 8, 2004, the parties formally expressed their desire to have this matter decided entirely on the basis of the stipulation of facts and joint exhibits, and the Employer indicated that it “takes no position” with respect to the accretion of the positions sought by Petitioner in this matter.

Facts:

The January 13, 2004 stipulation of facts submitted by the parties provides, in pertinent part:

1. Michigan AFSCME Council 25 and its affiliated AFSCME Local 411 (jointly “AFSCME”) and the County of Macomb enter into this stipulation of facts for purposes of these proceedings before the Michigan Employment Relations Commission (“MERC”) in Case No. UC99 L-48.
2. AFSCME is the exclusive bargaining representative for over 700 employees of the County of Macomb.
3. AFSCME’s earliest recognition dates back to approximately 1974.
4. The County departments and divisions in which AFSCME represents employees include, but are not limited to, Community Mental Health, M.S.U. Extension Services, County Clerk Office & Register of Deeds, Emergency Services and Communications, Equalization, Facilities and Operations, Finance, Health, Library, Management Information Services, Martha T. Berry, Parks & Recreation, Human Resources, Prosecuting Attorney, Public Works Commission (including, but not limited to, Pumping Station), Purchasing, Sheriff, Treasurer and Veterans Affairs.
5. Community Mental Health (“CMH”) Department employees were added to this AFSCME bargaining unit in stages starting in 1981. A series of MERC elections resulted in four certifications which added CMH’s Life Consultation Center, Community Placement Program, Partial Day Services, and North, Southeast and Southwest Youth Services’ Case Managers I, II and III, Developmentally Disabled (“DD”) Psychologist, DD Respite Care Developers, Mental Health Workers II and III, Registered Nurses, Specialists I and II and Therapists I and II (“The Paragraph 5 Classifications”) to the

¹ On January 26, 2002, the Employer filed a petition for unit clarification seeking to have the Commission make a determination regarding the appropriate unit placement of all unrepresented CMH classifications (Case No. UC02 B-002). That petition was withdrawn by the Employer on March 8, 2004.

AFSCME unit. In addition those elections also resulted in some CMH clerical positions joining the unit:

- a. On April 1, 1981 Therapists I and II and Specialists I and II assigned to the CMH Life Consultation Center (“LCC”) located in the County’s Verkiulen Building were added to the bargaining unit;
 - b. On February 16, 1982 Therapists I, II and III, Specialists I and II and Mental Health Workers, I, II and III assigned to the North and South Youth Services programs located in the Verkiulen Building and at 25401 Harper were added to the bargaining unit;
 - c. On April 2, 1982 Therapists I, II and III, Specialists I and II and Mental Health Workers I, II and III, Account Clerks II and III and Clerk Typists assigned to the Adult Day Treatment Center located on Groesbeck Highway were added to the bargaining unit;
 - d. On August 27, 1985 Mentally Ill (“MI”) Children’s Case Manager, Mi [sic] Adult Case Manager I, II and III, Adult Social/Recreation Case Worker I and II and Typist Clerk I, II and III assigned to the Community Placement Program (“CPP”) located in the County’s Verkiulen Building, were added to the bargaining unit; and
 - e. Following these certifications the parties’ collective bargaining agreement recognized the unit as including all LCC, Youth Services, Adult Partial Day and CPP Case Managers I, II and III, DD Psychologists, DD Respite Care Developers, Mental Health Workers II and III, Registered Nurses, Specialists I and II and Therapists I and II (“The Paragraph 5 Classifications”.)
6. The CMH Life Consultation Center (“LCC”), Community Placement Program (“CCP”), Partial Day Services, and North, Southeast and Southwest Youth Services programs provided a wide array of mental health services to County residents, including but not limited to, intake, triage, assessment, in and out-patient therapy and counseling, case management, residential placement, outreach and related services, to mentally ill, developmentally disabled and dual diagnosed County residents and their families.
 7. The LCC AFSCME-represented employees who worked in the non-clerical classifications named in [P]aragraph 5 above performed intake, triage, assessment, therapy, case management, residential placement, outreach and related services for the developmentally disabled (sometimes referred to as “DD”.) The CPP AFSCME-represented employees who worked in those Paragraph 5 Classifications provided a similar range of services to the mentally ill (sometimes referred to as “MI”). AFSCME-represented employees employed in the [P]aragraph 5 classifications in Youth Services

provided outpatient counseling, therapy and related services to mentally ill youth to the County's North, Southeast and Southwest areas. At that time the County maintained an Adult Services program, which utilized non-AFSCME-represented Paragraph 5 Classification employees to provide outpatient counseling, therapy and related services to mentally ill adults in the County's North, Southeast and Southwest areas.

8. Since these certifications issued CMH has undergone substantial organizational changes, such as merging the AFSCME-represented LCC, CPP and Youth Services programs with the non-represented Adult Services. This merger was, in part, designed to "knock down the walls" among these mental health services. In the course of that merger the distinction between Adult and Youth Services was eliminated. Employees who previously only performed Adult Services functions now perform the range of tasks previously assigned to the LCC, CPP and Youth Services employees. Additionally, the County has carved out some of the triage/assessment/referral/placement functions and assigned them to some new organizational sub-groups, each occupied by employees holding Paragraph 5 Classifications and some work locations were changed. The post-reorganization CMH strives for a seamless delivery of mental health services, including but not limited to, intake, triage, assessment, in and out-patient therapy and counseling, case management, residential placement, outreach and related services, to the mentally ill, developmentally disabled and dual diagnosed County residents and their families.
9. During negotiations for the 1995-96 [collective bargaining agreement] and subsequent contracts, AFSCME and the County discussed the need to conform their bargaining unit description to the reorganized CMH. Because the parties failed to complete their discussions on that subject, they agreed to continue the old, but now outdated, bargaining unit description in their new contract with the notation that "Due to the restructuring of Community Mental Health, classifications and divisions will be discussed by the Community of Mental Health Labor/Management Committee."

* * *

14. [T]he AFSCME-represented and non-AFSCME-represented employees holding [P]aragraph 5 classifications have the following characteristics in common:
 - a. Hold common Paragraph 5 Classifications, namely, Case Manager I, II and III, DD Psychologist, DD Respite Care Developer, Mental Health Worker II and III, Registered Nurse, Specialists I and II and Therapist II;
 - b. Are hired through the same County Human Resources Office;

- c. Are required, within each classification, to have equivalent education, skills and training;
- d. Are, within each classification, rated on the same credentialing and privileging standards;
- e. Receive, within each classification, similar wages . . . ;
- f. Receive identical benefits;
- g. Perform, within each classification, the same essential duties . . . ;
- h. Work in the same locations . . . ;
- i. Work under the same supervision . . . ;
- j. Work with the same clerical employees;
- k. Are able to move and have moved between represented and non-represented Paragraph 5 Classifications;
- l. Have common promotional ladders;
- m. Are overseen by the same centralized CMH administration and management;
- n. Are subject to the same Human Resources labor relations department; and
- o. Interact with one another in what is intended to be a seamless delivery of mental health intake, triage, assessment, in and out-patient therapy and counseling, case management, residential placement, outreach and related services to mentally ill, developmentally disabled and dual diagnosed County residents and their families.

Discussion and Conclusions of Law:

The County does not take a position with respect to the appropriate unit placement of the classifications sought by the Union. It is well-established that when an employer refuses to take a position on unit placement, and the proposed bargaining unit is presumptively appropriate, a petition may be granted without the Commission taking any evidence. *Alpena Community College*, 1994 MERC Lab Op 955; *Harper Hosp*, 1974 MERC Lab Op 539. See also *Bennett Indus*, 313 NLRB 1363; 146 LRRM 1145 (1994). Here, it appears from the face of the petition that the county-wide nonsupervisory unit sought by Petitioner is presumptively appropriate. See

e.g., *Wayne Co*, 1988 MERC Lab Op 232; *Berrien Co*, 1979 MERC Lab Op 587; *Livingston Co Bd of Comm'rs*, 1980 MERC Lab Op 449; *Ionia Co (Community Mental Health)*, 1984 MERC Lab Op 497. However, since this case presents somewhat unusual facts, and because granting the petition will impact the representation rights of a large number of employees, we will accept the stipulation offered by the parties for purposes of making a finding of unit appropriateness. See *Health Acquisition Corp*, 332 NLRB 1308; 165 LRRM 1378 (2000).

Restructuring or administrative reorganization of an employer may impact bargaining unit configuration and representation rights, creating unique and difficult issues which this Commission must resolve. *Ferris State Univ*, 2002 MERC Lab Op 263, 270. In *Southeastern Michigan Transp Auth*, 1985 MERC Lab Op 278, 288, we reviewed our policy with respect to unit determinations in such cases and concluded that accretion without an election is generally limited to those situations where the bargaining unit to which the employees are accreted is the only appropriate unit. See for e.g., *Flint Osteopathic Hosp*, 1974 MERC Lab Op 117; *City of Ann Arbor*, 1977 MERC Lab Op 1026; *Calhoun Co*, 1979 MERC Lab Op 124; *Herman Keifer Hosp*, 1972 MERC Lab Op 685. Where a merger or administrative reorganization results in two or more alternative units, each of which is appropriate, we have held that the right of employees to a voice in the selection of their bargaining representative should be preserved. See e.g., *Bay Med Ctr*, 1972 MERC Lab Op 977; *State Judicial Council*, 1983 MERC Lab Op 264. Here, the County has not proposed any alternative unit to which the unrepresented CMH positions should be added, and the stipulation submitted by the parties overwhelmingly establishes that Petitioner's unit is not only an appropriate unit; it is in fact the *only* appropriate unit in which to include the positions sought by the Union.

In making unit determinations, our primary objective is to constitute the largest bargaining unit which, in the circumstances of the particular case, is the most compatible with the effectuation of the purposes of the law, and which includes within a single unit all employees sharing a community of interest. *Hotel Olds v State Labor Mediation Bd*, 333 Mich 382 (1952); *Univ of Michigan*, 2001 MERC Lab Op 6, 8. Community of interest is determined by examining a number of factors, including similarities in duties, skills and working conditions, similarities in wages and employee benefits, amount of interchange or transfer between groups of employees, centralization of the employer's administrative and managerial functions, degree of central control of labor relations, common promotion ladders and common supervision. See e.g., *Grosse Pointe Pub Library*, 1999 MERC Lab Op 151; *Covert Pub Schs*, 1997 MERC Lab Op 594, 601. We have always required, whenever possible, that units be comprehensive in order to avoid fragmentation and the eventual formation of residual units. *Muskegon Co Sheriff Dep't Deputies Unit*, 2000 MERC Lab Op 88, 92. See also *Michigan Ass'n of Pub Employees v AFSCME Council 125*, 172 MERC Lab Op 761, 765 (1988).

The stipulation and exhibits establish that the jobs of CMH employees holding "Paragraph 5 Classifications" underwent a substantial change as a result of the reorganization. The unrepresented employees now have the same duties and responsibilities as their AFSCME-represented counterparts in those classifications. All of the employees work in the same locations under identical supervision and conditions. The skills and educational requirements are also equivalent, as are the benefits to which they are entitled. The employees receive, within each classification, similar wages, and are subject to the same administration and management.

In addition, there is now a clear integration of function, with all employees working together in what is intended to be a “seamless delivery” of mental health services. In essence, the reorganization has resulted in a situation in which two groups of employees are working side-by-side in the identical positions, with the only discernible distinction being unit inclusion. The NLRB has recognized that such a situation is “impractical” and inappropriate. See *Abbott-Northwestern Hosp*, 274 NLRB 1063; 118 LRRM 1521 (1985). It is also clearly inconsistent with our policy favoring the largest unit of all employees sharing a community of interest. *Hotel Olds*. On these facts, we conclude that Petitioner’s unit is the only possible unit in which to include the unrepresented CMH employees and find an accretion appropriate.

In so holding, we note that there is no issue here with respect to the continued majority status of the Union, since the employees sought to be accreted do not numerically overshadow the existing bargaining unit of 700 nonsupervisory employees. Compare *Geo V Hamilton, Inc*, 289 NLRB 1335; 129 LRRM 1067 (1988); *Renaissance Ctr Partnership*, 239 NLRB 1247; 100 LRRM 1121 (1979).

ORDER CLARIFYING UNIT

Based upon the above findings and conclusions, the petition filed by American Federation of State, County and Municipal Employees, Michigan Council 25 and Local 411, is hereby granted. The bargaining unit is clarified to include all currently unrepresented employees of the County’s Community Mental Health Department in the following classifications: case managers I, II and III, developmentally disabled psychologists, developmentally disabled respite care developers, mental health workers II and III, registered nurses, specialists I and II and therapists I and II.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Nora Lynch, Commission Chairman

Harry W. Bishop, Commission Member

Maris Stella Swift, Commission Member

Dated: _____