

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

In the Matter of:

CHARTER TOWNSHIP OF LANSING,
Public Employer,

Case No. R03 L-177

-and-

TEAMSTERS LOCAL 580,
Petitioner-Labor Organization.

APPEARANCES:

Michael R. Kluck & Associates, by Thomas H. Derderian, Esq., for the Public Employer

Mike Parker, Business Agent, 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 at Detroit, Michigan on April 1, 2004, before David M. Peltz, Administrative Law Judge for the Michigan Employment Relations Commission. Pursuant to Sections 13 and 14 of PERA, and based upon the entire record, including the exhibits, transcript of hearing and briefs filed by the parties on or before May 19, 2004, the Commission finds as follows:

The Petition and Positions of the Parties:

On December 5, 2003, Teamsters Local 580 filed a petition seeking to accrete the part-time code compliance officer and the part-time water department secretary to its existing bargaining unit of clerical employees of the Charter Township of Lansing. The Employer argues that the petition should be dismissed because the compliance officer and water department secretary are both part-time employees and, as such, should be excluded from the unit based upon bargaining history, and pursuant to language in the parties' collective bargaining agreement expressly excluding part-time and temporary employees. In addition, the Employer contends that the position of code compliance officer is filled by an independent contractor who is not an employee of the Township.

Facts:

Teamsters Local 580 and the Charter Township of Lansing are parties to a collective bargaining agreement covering the period of March 2003 to December 2005. The recognition clause of the parties' agreement describes the bargaining unit as follows:

Section 1. The Employer recognizes and acknowledges that the Union is the exclusive representative in collective bargaining with the Employer of those classifications of employees covered by this Agreement and listed below:

* * *

Unit B. Payroll Clerk, Police Secretary, Water Department Secretary, Water Department Service Men, regular part-time Parks and Recreation/Building Maintenance person, and all other secretaries and clerks, excluding the Secretary of the Supervisor.

* * *

The unit shall not include part-time and temporary employees.

There is no definition of a part-time employee contained within the collective bargaining agreement.

Code Compliance Officer

The code compliance officer position has been in existence since 1999 or 2000 and is currently held by Tami Welt. Welt was hired as code compliance officer in February of 2003 by the township supervisor. She was trained in her job responsibilities by the township building inspector, who provided her with copies of all relevant forms and ordinances. As code compliance officer, Welt is responsible for enforcing municipal ordinances, including regulations pertaining to disabled vehicles, trash and appliance storage, and overgrown grass. She issues citations for violations which are forwarded to the township supervisor, the building inspector, or the police chief for further action.

Welt's normal work hours are 8:30 a.m. to 12:30 p.m., Monday through Friday. She is expected to work twenty hours each week.¹ Welt begins each day by stopping at the building inspector's office. There she picks up complaints which have been called to the Township's attention and receives direction from the building inspector on how to handle various matters. Welt prepares monthly reports for the building inspector chronicling the addresses she has visited and the number of violations she has issued. Welt also occasionally attends meetings with the building inspector and the township supervisor.

Welt works by herself in the field investigating complaints and other violations, which she may discover on her own. Welt also investigates complaints relayed to her by telephone throughout the day. Although she consults with the building inspector, Welt decides where to go and the manner in which to perform her work. If she is sick or cannot work, Welt notifies either the building inspector or the deputy township supervisor. Similarly, Welt notifies the building inspector when she plans to take vacation time.

¹ In addition to her duties as code compliance officer, Welt also works as a dispatcher for Ingham County animal control. Her normal work hours for that position are 3:00 p.m. to 11:00 p.m.

The Township pays Welt by the hour for the time she actually works and does not withhold taxes from her paycheck. Welt does not get paid for vacations, holidays or sick days, nor does she receive any benefits. She uses her own vehicle to carry out her duties as code compliance officer and is reimbursed for mileage by way of a separate check each pay period.

The Township has not formally evaluated Welt's job performance, nor has anyone from the Township ever told Welt that she is doing her job incorrectly. Welt has never been provided with copies of employment policies or in any way been instructed by the Township that she must comply with such directives.

Water Department Secretary

The water department secretary position has been in existence for approximately four to five years. The incumbent, Lilia S. Adams, works at the Westside Water Department performing clerical duties. Her work hours vary from 12 to 25 hours per week.

Conclusions of Law:

The Employer initially argues that both the code compliance officer and water department secretary should be excluded from Petitioner's unit because they are established positions about which, historically, there has been no dispute, and because the contract states that the unit "shall not include part-time . . . employees." This Commission has always reserved the right in litigated representation cases, other than decertification cases, to revise the bargaining unit and add any unrepresented employees who should be in that unit, provided that the petitioning labor organization has a sufficient showing of interest to cover any added employees. *Deckerville Cmty Schs*, 2000 MERC Lab Op 390. Thus, bargaining history cannot be used to exclude unrepresented employees. *Grand Rapids Cmty College*, 1992 MERC Lab Op 548, 551-552. See also *City of Southfield*, 1989 MERC Lab Op 684, 691. Likewise, an exclusion in the recognition clause of an agreement does not, in and of itself, constitute a waiver of representation of unrepresented employees during the contract term which would bar an election. *City of Detroit*, 1999 MERC Lab Op 81, 87; *Eaton Rapids*, 1988 MERC Lab Op 511, 517; *Berrien Co Sheriff*, 1984 MERC Lab Op 1072, 1078. Given that there is no evidence in the record suggesting that Petitioner has ever explicitly agreed to refrain from seeking representation of the positions at issue in this case, we find the Employer's reliance on the contract and past practice to be without merit. *City of Royal Oak (Police Dep't)*, 2002 MERC Lab Op 282.

We have consistently found that regularly scheduled part-time employees have a substantial and continuing interest in their employment such that they should be included in a unit of regular, full-time employees. *Charter Twp of Lansing*, 1998 MERC Lab Op 655, 658; *Grand Traverse Medical Care Facility*, 1987 MERC Lab Op 825. There are no fixed number of hours which an employee must work in order to meet this test, although an employee who works a very small number of hours may, as a result, lack a substantial interest in his or her employment. *Charter Twp of Lansing*; *Holland Pub Schs (Food Service Program)*, 1989 MERC Lab Op 584, 588. In the instant case, the record indicates that the code compliance officer is expected to work 20 hours per week, while the water department secretary's work hours typically vary from 12 to 25 hours per week. We find this evidence sufficient to establish that both the code compliance officer and the water department secretary have a substantial and continuing interest in their employment to qualify as regular part-time employees for purposes of PERA.

Next, the Employer contends that the code compliance officer should be excluded from the Petitioner's bargaining unit because Welt, the incumbent, is an independent contractor. The essential test for determining whether an individual is an independent contractor, rather than an employee, is whether the employer maintains control over the manner and means of performing the work, as well as the end result to be achieved. *Sanilac Co Cmty Mental Health Services*, 1984 MERC Lab Op 1180, 1183. Also relevant is whether the work done by the employee can be characterized as an integral part of a larger common task. *Shiawassee Co Health Dep't*, 1990 MERC Lab Op 863, 866-867. See also *City of Detroit v Salaried Physicians Professional Ass'n*, 165 Mich App 142, 147-148 (1987), aff'g 1986 MERC Lab Op 394.

In the instant case, there is no question that the duties and responsibilities of the code compliance officer are an integral part of the common task of enforcing ordinances of the Township. Although Welt works independently in the field, she reports to the Township office each day and consults with the building inspector. She is expected to work a regular schedule and must notify the building inspector or other township official of any absence due to sickness or vacation. She prepares monthly reports for the building inspector and attends meetings with him and the township supervisor. We find that the compliance officer works under the broad control of the Township and does not exercise the initiative and independent decision-making associated with an independent contractor. *Wayne Co Dep't of Health*, 1978 MERC Lab Op 507; *Sanilac Co Cmty Mental Health Services*. We conclude that she functions as an employee of the Township and not as an independent contractor.

The Employer also maintains that the code compliance officer has a separate community of interest from the employees in Petitioner's Unit B, which includes clerical and service employees. Beyond this conclusory allegation, however, the Township has not identified any specific factors which would establish that accreting the code compliance officer to Unit B would be inappropriate. In determining unit placement, we are not required to find the "optimum" or "most" appropriate unit, but rather only a unit appropriate for collective bargaining based upon the facts of each case. *City of Lansing, Bd of Water and Light*, 2001 MERC Lab Op 13; *City of Zeeland*, 1995 MERC Lab Op 652. Absent a showing of extreme divergence of community of interest between an existing unit and a residuum of unrepresented employees, our policy has been to allow accretion, rather than leave the unrepresented employees without collective bargaining representation. See e.g. *Chelsea Sch Dist*, 1994 MERC Lab Op 268, 276. Given that there is no other labor organization seeking to represent the code compliance officer, and because denying the petition would leave the position unrepresented, it is in accordance with well-established Commission policy to include the code compliance officer in Petitioner's unit of support employees. See e.g. *Charlotte Pub Schs*, 1999 MERC Lab Op 68, 73; *City of Muskegon*, 1996 MERC Lab Op 64, 70.

The Employer also appears to challenge the community of interest between the water department secretary and the existing unit. However, at the hearing in this matter, the Employer's attorney conceded on the record that if the incumbent water department secretary was a regularly scheduled, full-time employee working forty or more hours each week, she would be eligible for inclusion in Petitioner's bargaining unit of clerical employees. There is no question that the duties and responsibilities of the water department secretary are clerical in nature. We have generally found that clerical employees share a community of interest and constitute a presumptively appropriate bargaining unit. See e.g. *City of Lansing, Bd of Water and Light*, 2001 MERC Lab Op

13, 16; *Waverly Cmty Schs*, 1989 MERC Lab Op 819, 820; *City of Wayne*, 1986 MERC Lab Op 200, 204. We find nothing in the instant case to rebut this presumption.

ORDER

Based upon the above findings of fact and conclusions of law, we conclude that a question of representation exists under Section 12 of PERA with respect to the part-time code compliance officer and the part-time water department secretary. The Employer may accrete these employees into Unit B of Petitioner’s bargaining unit. If the Employer does not voluntarily accrete the positions into the unit, a mail ballot election will be ordered. If the employees vote to be represented by Petitioner, they will be added to Unit B of Petitioner’s bargaining unit and the Notice of Election will so indicate.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Nora Lynch, Commission Chairman

Harry W. Bishop, Commission Member

Nino E. Green, Commission Member

Dated: _____