

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

In the Matter of:

LIVINGSTON COUNTY (EMERGENCY MEDICAL SERVICES DEPT.),  
Public Employer,

Case No. R04 E-063

-and-

AMERICAN FEDERATION OF STATE, COUNTY AND  
MUNICIPAL EMPLOYEES (AFSCME), COUNCIL 25,  
Labor Organization-Petitioner.

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**APPEARANCES :**

Jennifer P. Bowen, Esq., for the Public Employer

Miller Cohen, P.L.C., by Richard G. Mack, Jr., 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 at Lansing, Michigan on September 7, 2004, before Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. Pursuant to Section 13 of PERA and based on the record, including briefs filed by the parties on or before October 18, 2004, the Commission finds as follows:

**The Petition and Positions of the Parties:**

On May 4, 2004, the American Federation of State, County and Municipal Employees (AFSCME), Council 25, filed this petition for a representation election in a unit consisting of all regular full-time and part-time emergency medical services (EMS) supervisors employed by Livingston County in its EMS department, excluding the business manager and all other employees. The EMS supervisors are currently unrepresented.

The Employer asserts that the unit sought is inappropriate because it excludes the business manager, a supervisory position. Petitioner does not take a position on the supervisory status of the business manager, but maintains that even if the business manager is a supervisor, the position does not share a community of interest with the EMS supervisors.

Facts:

The Employer's EMS department provides advanced life support (ALS)-level paramedic care and emergency, and some non-emergency, patient transport within Livingston County. The department's paramedics are also part of several emergency response teams, including a hazardous materials team and a bio-terrorism response team.

A director and assistant director head the department. Three full-time EMS supervisors oversee the department's forty-two full-time nonsupervisory paramedics, including two shift coordinators. The business manager supervises four clerical employees. The EMS supervisors report to the assistant director, while the business manager reports to the director. Since about 1974, AFSCME has represented a bargaining unit consisting of the nonsupervisory paramedics. None of the other employees of the department are represented by a union.

The department provides services around the clock, seven days per week. Most paramedics work 24-hour shifts, from 7:00 am to 7:00 am the following day. EMS supervisors work 12-hour days, 7:00 am to 7:00 pm. At least one EMS supervisor is on duty every day. The director, assistant director, business manager, and clerical employees typically work Monday through Friday, 8:00 am to 5:00 pm. All the department's supervisors, including the business manager, carry pagers when off duty.

The department's main station and ambulance garage is located in Howell, Michigan. It has five satellite stations throughout the county. The business manager and the clerical employees whom she supervises work at the main station. The EMS supervisors also have offices in the main station and report to work there each day. They attend meetings and perform other work at the main station, but also visit the satellite stations and travel around to emergency sites within the county.

The position of EMS supervisor requires paramedic training equivalent to one to two years of college level course work, plus at least two years of experience as an emergency medical technician/paramedic. The EMS supervisors must maintain their paramedic licenses and certain additional certifications, including advanced cardiac life support (ACLS) and hazardous materials (HAZMAT).

The EMS supervisors go on ambulance runs only as needed, i.e. when the paramedics on a particular run need additional help or have a problem. The EMS supervisors monitor the radio, ensure that paramedics and ambulances are getting to where they need to be with the proper equipment, and troubleshoot problems. They enforce department policies and procedures, ensure that proper staffing levels are maintained, and call in additional paramedics as necessary. The EMS supervisors oversee and evaluate the work of the paramedics. They have the authority to issue written disciplinary warnings and to effectively recommend discipline up to and including discharge.

In addition to these basic duties, each of the three EMS supervisors has other assigned responsibilities that take up a substantial part of his or her time. One EMS supervisor is responsible for quality control. This supervisor reviews all charts to ensure that the paramedics

are properly recording and documenting each medical procedure they perform, and that they are providing quality care within department protocols. She spends about half of her time on this function. Another EMS supervisor is primarily responsible for training. This supervisor also handles emergency and disaster planning, serves as liaison with the Employer's 911 dispatch center, and is on a team that performs safety inspections of County buildings. The third supervisor spends more than half of his time overseeing the maintenance of field stations, vehicles and communications equipment, and recovering equipment from employees who have left the department's employment. He also handles public relations and coordinates personnel for special events.

The business manager position requires the equivalent of an associate's degree in business or accounting and a minimum of two years full-time medical billing experience. The current business manager is a registered nurse. Although a nursing degree is not a formal requirement for the position, her degree was a factor in the department's decision to hire her.

The business manager assigns work to the four clerical employees, monitors and evaluates the performance of the clerical staff, interviews clerical applicants and hires or effectively recommends who will be hired for the clerical positions. She has the authority to issue written warnings and to effectively recommend discipline up to and including discharge. The business manager's most significant responsibility is billing and reimbursement. Medicare, Medicaid, and private insurance companies require detailed and accurate information about the services being billed before they will reimburse the department for its services. The business manager is responsible for ensuring that the proper documentation is submitted. She is expected to keep current with applicable state, federal, and commercial insurance company reimbursement policies, including what constitutes "medical necessity" for a particular service. With the department director, the business manager develops billing and documentation procedures that comply with these policies. The business manager trains her staff in appropriate billing practices. In addition, she instructs paramedics on how to properly document the care that they provide for billing purposes. If a paramedic consistently fails to comply with documentation procedures, the business manager is expected to report this conduct to the EMS supervisor.

The business manager and her staff are also responsible for maintaining patient records, ensuring their confidentiality in compliance with federal law, and responding appropriately to subpoenas, billing inquiries, and other requests for patient information. The business manager also creates and maintains the department's purchasing policy, and her clerical staff handles the department's accounts payable and payroll.

The business manager position is at level 11 of the Employer's salary schedule, while the EMS supervisor position is at level 14. This represents a difference of about \$7,000 per year at the first step of the salary schedule to about \$15,000 per year at the top step. The business manager and the EMS supervisors have the same benefits as other employees of the Employer not represented by a union, including health, dental, vision, and long-term disability insurance, sick and vacation time, and retirement benefits.

## Discussion and Conclusions of Law:

The Employer maintains that Petitioner seeks an inappropriate unit because the business manager, a supervisory position sharing a community of interest with the other supervisors, has been excluded from the proposed unit. For reasons discussed below, we agree that the business manager shares a community of interest with the EMS supervisors and should be included in the bargaining unit.

A primary objective of the Commission is to constitute the largest unit which, in the circumstances of the particular case, is 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); *Hastings Area Sch Dist*, 17 MPER ¶ 55 (2004). 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, common promotional ladders and common supervision. *Macomb Co*, 17 MPER ¶ 35 (2004); *Lenawee Intermediate Sch Dist*, 16 MPER ¶ 48 (2003); *Grand Rapids Pub Schs*, 1997 MERC Lab Op 98, 106. We have found an overriding factor in determining community of interest to be supervisory status and have consistently held that a unit that includes all supervisors is presumptively appropriate. *Lake Co and Sheriff*, 1999 MERC Lab Op 107; *South Haven Cmty Hosp*, 1981 MERC Lab Op 30; *Macomb Co Road Comm*, 1978 MERC Lab Op 848.

We agree with the Employer that the responsibilities of the business manager, including the exercise of independent judgment and disciplinary authority over department personnel, qualify her as a supervisor under the Act. The EMS supervisors and the business manager are all first-level supervisors in a small department under the same director. They work out of the same office and have regular contact with each other. The business manager also has regular contact with the paramedics who are the EMS supervisors' subordinates. Apart from their supervisory duties, the EMS supervisors and the business manager have distinctly different responsibilities. However, this does not necessarily mean that they lack a community of interest within the meaning of Section 13 of PERA. *Covert Pub Schs*, 1997 MERC Lab Op 594. Although the EMS supervisor and business manager positions require different skills, both positions require employees to have some specific post-high school education and to keep current in their respective fields. The EMS supervisors' skills may command a higher salary, especially with more experience, but the differences in salary are not so great as to indicate that the positions lack a community of interest. We conclude that the differences between the EMS supervisors and the business manager are not sufficient to overcome the presumption of a community of interest based on their status as supervisors.

Petitioner argues that the EMS supervisors do not share a community of interest with the business manager because the EMS supervisors are professional employees. We generally allow nonsupervisory professional employees to form separate bargaining units. See *Shiawasee Co Mental Health Services Bd*, 1987 MERC Lab Op 247 and 496. However, when separate units would result in undue fragmentation of bargaining units, we include professional and nonprofessional supervisors in the same unit. *Detroit Sch Bd*, 1980 MERC Lab Op 182, 189. We conclude that the EMS supervisors would share a community of interest with the business

manager, based on the factors discussed above, even if the EMS supervisors were held to be professional employees.

Accordingly, we conclude that the EMS supervisors and the business manager share a community of interest. We will, therefore, modify the unit set out in the petition to include the business manager and direct an election in this unit. *Marquette Co (Acocks Medical Facility)*, 1988 MERC Lab Op 310.

**ORDER DIRECTING ELECTION**

Based on the above findings of fact and conclusions of law, we conclude that a question concerning representation exists within the meaning of Section 12 of PERA. We direct an election in the following unit:

All EMS supervisors and the business managers employed by Livingston County in its Emergency Medical Services Department, but excluding the director, assistant director, and all other employees.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Nora Lynch, Commission Chairman

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Harry Bishop, Commission Member

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Nino E. Green, Commission Member

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