

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

In the Matter of:

CITY OF DETROIT (FIRE DEPARTMENT),  
Public Employer,

Case No. R04 F-076

-and-

DETROIT FIRE FIGHTERS ASS'N, INTERNATIONAL ASS'N  
OF FIRE FIGHTERS (IAFF), LOCAL 344,  
Labor Organization-Petitioner.

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APPEARANCES:

City of Detroit Law Department, by Dara M. Chenevert, Esq., for the Employer

Helveston & Helveston, P.C., by Ronald R. Helveston, Esq., and Julie A. Petrik, Esq., for the  
Petitioner

**DECISION AND DIRECTION OF ELECTION**

Pursuant to Sections 12 and 13 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212 and 423.213, this case was heard at Detroit, Michigan on November 22, and December 20, 2004, by Administrative Law Judge Julia C. Stern for the Michigan Employment Relations Commission. Based on the record, including briefs filed by the parties on or before March 3, 2005, we find as follows:

The Petition:

The Detroit Fire Fighters Association, International Association of Fire Fighters (IAFF), Local 344, filed this petition for a representation election on June 4, 2004. Petitioner represents a bargaining unit of noncivilian sworn fire fighters and certain civilian classifications employed by the City of Detroit in its fire department. Petitioner seeks to add an existing unrepresented position, supervising medical case manager (SMCM), to its bargaining unit. The Employer opposes the petition on several grounds. The Employer asserts that the SMCM is inappropriately included in the bargaining unit because the position is not eligible for Act 312 compulsory arbitration, and is also supervisory and confidential; for these reasons the Employer argues that the SMCM has no community of interest with the Local 344 bargaining unit.

Facts:

Fire Department Organization/Bargaining Unit Composition

The recognition clause in Petitioner's contract with the Employer describes its unit as all noncivilian employees of the Detroit Fire Department and civilian employees in classifications set forth in schedule II of the contract. There are approximately 1340 employees in the unit. Noncivilian employees are employees who have been trained and certified as fire fighters and who hold a fire fighter rank. Noncivilian employees fight fires and perform a variety of duties within the department that support and assist the department's main function.

There are currently two groups of civilian employees in Petitioner's bargaining unit. The first group consists of certain employees in the apparatus division, including the head of the division.<sup>1</sup> The second group is comprised of employees in the communications division. The parties agree that all noncivilian employees in the department, and the civilian employees in the communications division, are Act 312 eligible. They also agree that civilian employees in the apparatus division are not Act 312 eligible.

An executive fire commissioner and a deputy fire commissioner, who are not in the bargaining unit, head the fire department. The department is divided into nine divisions. The *research and development division* is responsible for the finances and budget of the department. The head of this division is a noncivilian, as are the lieutenants who report to her. As noncivilians, the employees of the research and development division are theoretically required to respond to fire calls in an emergency. In practice, they do not do so. Like all noncivilian positions in the department, the head of the research and development division and her lieutenants are in Petitioner's bargaining unit.

The *fire fighting division* is the largest division. The primary function of employees in the fire fighting division is to respond to fire and other emergencies. All of the employees in this division are noncivilians, including the head of the division and his two deputy chiefs. The *training academy division* conducts twelve to sixteen week training programs for new fire fighters and provides continuing training for other employees in the department. The approximately eight employees of this division, including the head of the division, are noncivilians.

Employees in the *apparatus division* maintain and repair fire fighting equipment and the department's automobiles. The apparatus division includes noncivilian emergency apparatus mechanics who perform emergency repairs in the field and bring additional fuel to fire scenes. It also includes general mechanics who maintain and repair fire department apparatus at fire department garages. The noncivilian emergency apparatus mechanics are in Petitioner's unit. The general mechanics are in a citywide bargaining unit of mechanics represented by a different union. The civilian positions that supervise the mechanics, including the head of the division, are also trained mechanics and are included in Petitioner's unit.

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<sup>1</sup> In *City of Detroit*, 1992 MERC Lab Op 698, aff'd in pertinent part, 204 Mich App 541 (1994), we held that the civilian positions in the Employer's apparatus division were not Act 312 eligible. However, we dismissed the Employer's unit clarification petition seeking to remove these positions from the unit on that basis.

The *community relations division* serves as a liaison between the department and the community. The four employees in this division provide fire awareness and safety programs to schools and community groups. All of the division's employees, including its division head, are noncivilians. The *fire marshal division* performs arson investigations and conducts fire prevention inspections. The division head and all the members of his division are noncivilians.

Employees in the *communications division* receive information from the Employer's 911 system and relay it to appropriate personnel in the department for emergency response. All communications division employees, including the head of the division, are civilians whose positions are included in Petitioner's unit.

The *emergency medical services (EMS) division* provides emergency medical transport and care in the field to Detroit residents and visitors. Employees in this division are required to have specialized medical training, but are not required to be certified fire fighters. EMS employees are in a bargaining unit represented by an affiliate of the Boiler Operators Union. The head of the division and his assistant are not represented by a union.

The *fire medical division* is a managed care program that provides medical care for noncivilian employees who are injured on the job. It also offers physicals and wellness programs for these employees, and administers the department's drug testing program.

In the chain of command there are three general managers supervising eight of the divisions, each of whom reports to the deputy fire commissioner. The head of the ninth division, the research and development division, reports directly to the executive fire commissioner. Two of the three general managers are noncivilians and members of Petitioner's unit; one oversees the fire fighting division, the training academy division, and the apparatus division, the other general manager oversees the community relations and fire marshal divisions. The third general manager oversees the communications division, the emergency medical services division, and the fire medical division; this position is not included in Petitioner's unit.

#### The Supervising Medical Case Manager (SMCM)

The SMCM heads the fire medical division and reports to a general manager. The Employer contracts with the Detroit Medical Center (DMC) for the services of doctors and nurses who provide medical care to fire fighters at an Employer-leased facility located in the DMC. The offices of the SMCM and her subordinates are in this facility. In addition to the DMC, the Employer contracts with three other medical facilities for specialized care.

The SMCM is responsible for the overall management and the methods, procedures, workflow, and efficient operation of the medical division. The SMCM supervises a staff of six employees, including four case managers who handle the day-to-day administrative work of the division. The case managers are in a bargaining unit represented by the Service Employees International Union (SEIU), which also includes employees outside the fire department. The SMCM also supervises two clerical employees who are in a unit represented by the American Federation of State, County and Municipal Employees (AFSCME). The SMCM has the

authority to discipline her subordinates. She is a member of the Employer's bargaining team during the Employer's contract negotiations with the SEIU, although she does not attend every negotiating session.

The SMCM is responsible for the division's data tracking system. She maintains the confidentiality of patient medical information. She oversees the accounts payable system and works with the department's medical billing review company to ensure that the division's bills are paid. She interviews and makes recommendations regarding the hiring of staff and the selection of preferred providers. The SMCM also meets regularly with representatives of the DMC to discuss problems and review and evaluate the operations of the medical division.

One of the SMCM's responsibilities is to ensure that the division's contract physicians understand and correctly apply department policies and comply with the terms of Petitioner's collective bargaining agreement. The SMCM does not make medical decisions. The division's contract physicians determine whether a fire fighter is disabled or is fit to return to duty, and whether his or her injury is duty-related. Fire fighters may file grievances under the collective bargaining agreement challenging the medical director's determination that their injuries are not duty-related. When these grievances go to arbitration, the SMCM provides attorneys in the Employer's law department with medical records and other information pertinent to the arbitration.

Like other division heads, the SMCM prepares an annual division budget that she submits to the research and development division. She monitors the budget after it is approved and is responsible for ensuring that services are provided in a cost-effective manner. As a division head, she is required to submit an annual report on the accomplishments of the division to the commissioner and to prepare an annual statement of goals for her division.

The SMCM communicates directly with the commissioner at least every week, as do other division heads. Per departmental policy, the commissioner, general managers, and division heads do not have direct contact with the physicians who make medical determinations relating to duty status. Therefore, the commissioner contacts the SMCM when he wants specific information about the injury status of a fire fighter. The SMCM also provides this type of information to the general managers. All division heads attend a monthly meeting to discuss issues in their respective divisions and to collaborate on solutions. The SMCM has assisted the fire division in ensuring compliance with OSHA requirements. She helped the training academy division structure a fitness test for fire fighters seeking to return to work after illness or injury. That division also regularly seeks her advice on medical issues that arise during the training of new hires. The SMCM periodically participates in special programs arranged by the community relations division. Each year, she holds meetings for division heads at the contract clinics to demonstrate the quality care that the clinics provide.

Most employees in the fire fighting division, and the emergency apparatus mechanics, work twenty-four hour shifts. Positions in other divisions, and all division heads, work an eight-hour, five-day week or a ten-hour, four-day week. The SMCM's normal work hours are from 9:00 a.m. to 5:00 p.m. However, like other division heads, the SMCM is required to report for

duty whenever needed; the SMCM carries a Nextel two-way phone in order to be reached when away from her desk, and is issued a department vehicle.

The SMCM's fringe benefits are the same as those of similar unrepresented classifications within the Employer's civil service system, and different from those provided in Petitioner's contract. As a civilian, the SMCM is not eligible for certain medical benefits mandated for fire fighters under the City charter. Noncivilian employees of the department are members of the Detroit Police and Fire Retirement system. The SMCM, like other civilian employees, is a member of the City's General Retirement system. The SMCM is on a different compensation scale than members of the bargaining unit. At the time of the hearing, the SMCM was paid less than any other division head.

#### Discussion and Conclusions of Law:

In determining appropriate bargaining units, the Commission seeks to find the largest unit which, under the circumstances of a particular case, is most compatible with the purposes of the Act and includes in a single unit all employees who share a community of interest. *Hotel Olds v State Labor Mediation Bd*, 333 Mich 382 (1952). 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; the amount of interchange or transfer between groups of employees; the amount of day to day contact between the position and positions in the bargaining unit; centralization of the employer's administrative and managerial functions; the degree of central control of labor relations; common promotion ladders; and common supervision. *City of Bay City*, 16 MPER 31 (2003); *Dearborn Pub Schs*, 2002 MERC Lab Op 287, 291-292; *Covert Pub Schs*, 1997 MERC Lab Op 594, 601. For reasons discussed below, we find that the SMCM shares a community of interest with Petitioner's bargaining unit and is appropriately included in that unit.

The existing bargaining unit includes a diverse range of positions demanding a variety of skills. Most of the positions in Petitioner's bargaining unit require training and certification as a fire fighter. However, the unit includes mechanics and communications operators who are not required to be certified fire fighters. Some noncivilian positions, including the employees in the research and development division, are rarely, if ever, called to a fire scene. The unit includes both civilian and noncivilian division heads with managerial or administrative responsibilities similar to the SMCM.

While fire fighters assigned to fire stations work twenty-four hour shifts, noncivilian and civilian division heads in the bargaining unit, like the SMCM, work regular eight or ten hour shifts. With other division heads in the bargaining unit, the SMCM is on call at all hours to respond to emergencies and is assigned a phone and a car. The offices of the SMCM are in the DMC, not in the fire department headquarters. However, the SMCM has regular contact with fire fighters who visit the medical division's clinics. She also meets with the other division heads at least monthly, and provides the general managers with information about duty-disabled employees. The fire medical division is integrated into the department's organizational structure; the SMCM, like most of the other division heads, reports to a general manager who reports to the deputy fire commissioner.

The SMCM is a member of the Employer's general pension fund, like civilian employees in the bargaining unit. As with the unit's civilian employees, she is not covered by special provisions in the City charter pertaining to fire fighters. Certain of the SMCM's other benefits differ from those of bargaining unit members, and she is on a lower salary scale than other division heads. However, while differences in wages and benefits are an important factor to be considered in determining community of interest, we generally give this factor less weight when some of the employees are already represented by a collective bargaining representative and receive wages and benefits pursuant to a collective bargaining agreement. *Taylor Bd of Ed*, 1986 MERC Lab Op 779, 785.

In summary, the record establishes that the SMCM has duties, skills, and working conditions similar to others in the bargaining unit, particularly the division heads. The SMCM also fits into the Employer's departmental organizational scheme with other division heads. The position performs duties supportive of positions in the bargaining unit by working to advance their medical needs and well being, and has close contacts and interaction with them. We find that these factors establish that the SMCM shares a community of interest with Petitioner's bargaining unit. The fact that employees in a bargaining unit have diverse job duties does not destroy their community of interest, particularly where all work together to support a particular function such as law enforcement or fire fighting. *Wayne Co (Airport Police Dep't)*, 2001 MERC Lab Op 163; See also *Michigan Ed Ass'n v Alpena Cmty College*, 457 Mich 300 (1998); *Genesee Co Cmty Mental Health Services*, 18 MPER \_\_\_ (Case No, UC03 C-13, issued May 3, 2005).

We also find that the Employer has not demonstrated any other overriding reason to exclude the SMCM from the unit. The Employer asserts that the SMCM does not have a community of interest with Petitioner's unit because she is not eligible for Act 312 compulsory arbitration, 1969 PA 312 (Act 312), MCL 423.231 *et seq.*,<sup>2</sup> while the majority of positions in Petitioner's unit are Act 312 eligible.

We have repeatedly stated our preference for separate units of Act 312 eligible employees based on their separate community of interest. However, we have also emphasized that mixed units, i.e. those that include both Act 312 eligible and noneligible positions, are neither illegal nor *per se* inappropriate. In *Wayne Co (Airport Police Dep't)*, 2001 MERC Lab Op 163, we rejected a petitioner's claim that the Act 312 eligibility of a group of airport police officers created an extreme divergence in community of interest between them and a mixed unit of Act 312 eligible and noneligible positions. We held that even if the airport police officers were Act 312 eligible, this did not justify allowing them to sever from a unit with a long bargaining history that included other Act 312 eligible positions. Our decision was affirmed in *Wayne Co Police Ass'n v Wayne Co*, unpublished memorandum opinion of the Court of Appeals, issued February 24, 2003 (Docket No. 235669). We conclude that the SMCM's position is not precluded from having a community of interest with Petitioner's mixed unit simply because the position is not Act 312 eligible.

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<sup>2</sup> Act 312 gives covered employees a right to compulsory arbitration of their employment disputes, except disputes involving contract interpretation. Act 312-eligible employees are employees employed by a police or fire department who are engaged as policemen or in fire fighting or subject to the hazards thereof, emergency medical service personnel, and emergency telephone operators. MCL 423.232.

The Employer also maintains that the SMCM should not be included in Petitioner's unit because of her supervisory status. While a unit which includes both supervisors and nonsupervisors is inappropriate under Section 9e of the Labor Relations and Mediation Act, MCL 423.9e, and Section 13 of PERA, a different rule applies in fire departments, as set forth in Section 13:

In any fire department, or any department in whole or part engaged in, or having the responsibility of, fire fighting, no person subordinate to a fire commission, fire commissioner, safety director, or other similar administrative agency or administrator, shall be deemed to be a supervisor.

Because the SMCM is employed in a fire department, we are not precluded from including this position in a bargaining unit with nonsupervisory employees if we find that the position otherwise shares a community of interest with the unit. We also note that the SMCM does not supervise any positions in Petitioner's unit, and other positions in Petitioner's unit, such as division heads, also possess supervisory authority.

Finally, the Employer asserts that the SMCM is a confidential employee based on her participation in negotiations involving employees outside of Petitioner's bargaining unit, her role in the arbitration of grievances filed by Petitioner, and her access to confidential attorney-client communications.

We have defined a confidential employee as one who formulates, determines, and effectuates management policy with regard to labor relations and collective bargaining, as well as an individual who assists and acts in a confidential capacity to such a person. *River Valley Sch Dist*, 17 MPER 39 (2004); *St Clair Co Cmty College*, 2002 MERC Lab Op 406, 408. Confidential labor relations work is work involving information relating to the collective bargaining process to which the union should not have access. *Lapeer Co*, 1998 MERC Lab Op 611, 620. Mere access to records not generally available to other employees or the union, such as personnel records or financial information, is not sufficient to make an employee confidential. *City of Saginaw*, 1994 MERC Lab Op 988; *Riverview Cmty Schs*, 1968 MERC Lab Op 419.

The SMCM sits on the Employer's bargaining team when the Employer is negotiating contracts covering the case managers who are her subordinates. The case managers are not part of Petitioner's unit, however, and there is no indication that the SMCM's role in these negotiations makes her privy to information to which Petitioner should not have access. Likewise, the SMCM's access to employees' medical records does not make her a confidential employee within our definition, nor does the fact that the SMCM provides the Employer's attorneys with information and documents supporting decisions made by medical personnel when grievances are pursued to arbitration. We conclude that the Employer has not demonstrated that the SMCM should be excluded from Petitioner's unit as a confidential employee.

Based on the factors discussed above, we find that the SMCM shares a community of interest with employees in Petitioner's unit and is appropriately included in the bargaining unit.

We find that a question concerning representation exists under Section 12 of PERA, and we issue the following order.

**ORDER DIRECTING ELECTION**

Since the petition here involves only one employee, the Employer will be given the opportunity to voluntarily accrete the supervising medical case manager position to Petitioner's bargaining unit. If the Employer does not agree to accrete this position to the unit, an election will be directed in which the supervising medical case manager shall vote, pursuant to the attached direction of election, whether she wishes to be represented for purposes of collective bargaining by the Detroit Fire Fighters Association, International Association of Fire Fighters (IAFF), Local 344.

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: \_\_\_\_\_