

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

In the Matter of:

LAPEER COUNTY,
Public Employer,

-and-

Case No. UC03 D-16

TEAMSTERS LOCAL 214,
Labor Organization-Petitioner.

APPEARANCES:

Howard L. Shifman, P.C., by Howard L. Shifman, Esq., for the Public Employer

Rudell & O'Neill, P.C., by Wayne A. Rudell, Esq., for the Labor Organization

DECISION AND ORDER ON UNIT CLARIFICATION

Pursuant to Section 12 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212, this matter was heard in Detroit, Michigan, on July 28, 2004, before D. Lynn Morison, Administrative Law Judge for the Michigan Employment Relations Commission. Based on the record, including the briefs filed by the parties on or before December 1, 2004, the Commission finds as follows:

The Petition and Positions of the Parties:

On April 14, 2003, Teamsters Local 214 (Petitioner) filed a petition seeking to clarify its bargaining unit of nonsupervisory employees by adding the position of soil erosion and sedimentation control supervisor (SESCS). The Employer argues that the position is supervisory and has administrative responsibilities unlike those of any bargaining unit position, and therefore, does not share a community of interest with the bargaining unit represented by Petitioner. The Employer further contends that the duties assigned to the position had traditionally belonged to a non-union part-time position in a "special fund" department and, therefore, the petition is inappropriate.

Facts:

Lapeer County has approximately 500 employees, of whom between 310 and 320 work full time in the County's various departments. Some departments are funded from the County's general operating funds; others are "special fund" departments, whose funding has a specific origin, such as a millage or grant that can only be used for specified purposes. The community development department, in which the position at issue is located, is a "special fund" department.

The Employer and Petitioner are parties to a collective bargaining agreement, which was initially effective January 1, 2003 to December 31, 2003, and is renewed from year to year thereafter unless one of the parties gives timely notice of termination. The recognition clause of that contract describes the bargaining unit as follows:

All employees of Cooperative Extension Service, County Clerk, Drain Commissioner, Tax Equalization, Prosecuting Attorney, Register of Deeds, County Treasurer, Animal Control Shelter, Veterans Affairs, Computer Department, Criminal Justice, County Jail Cook, County Parks and Recreation, Building and Grounds (including County Garage), Accounting, Planning Commission, Postal, BUT, excluding the Chief Deputy County Clerk and one designated confidential employee of the Lapeer County Board of Commissioners Office and excluding all confidential employees and supervisors of the above mentioned departments.

The recognition clause further provides that “persons employed by the County under a temporary or part-time and seasonal and temporary (sic) basis shall be specifically excluded under the terms of this Agreement.” Petitioner’s unit is comprised of about forty-five employees in thirty-two different positions from various general fund departments. The majority of the positions are secretarial or clerical. The minimum educational or training requirements for most of these positions are high school diplomas or the equivalent, with some experience relevant to the position. Other positions must have college or technical training, or must have state certification of the skills required for their position. While most of the bargaining unit employees work in offices, some are required to travel around the County or to work outside in varying weather conditions. Some bargaining unit employees are responsible for directing, overseeing, training, and/or assigning work to others. While most have duties related to the administration of the laws within their departments’ purview, the animal control officer has specific investigation and enforcement responsibilities.

All positions within the unit are hourly employees whose wages are based on their pay grade and years of employment. For the period of January 4, 2003, through January 2, 2004, wages ranged from \$9.56 per hour for a new employee in pay grade 2, to \$19.45 per hour for an employee with three years of service in pay grade 9. There are more employees and more positions in the bargaining unit in pay grade 6 than in any other pay grade. New bargaining unit employees in pay grade 6 earned \$12.35 per hour in 2003. Bargaining unit employees also receive health, vision, and dental insurance, as well as paid vacation and sick leave.

The Community Development Department

The community development department includes the Employer’s housing program and the soil erosion and sedimentation control program. The community development director, the SESCS, and a temporary clerical employee in the soil erosion and sedimentation control program are the only employees in the community development department.

Under Part 91, Soil Erosion and Sedimentation Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451 as amended, MCL 324.9101 et seq. (hereinafter Part 91) each county is required to designate a county enforcing agency that is responsible for

monitoring and regulating land use to prevent soil and sedimentation from being washed into waterways. From the late 1980's to 2000 or 2001, Lapeer County employed a part-time employee in the nonunion position of soil erosion and sedimentation control agent to fulfill the County's responsibilities under Part 91. This employee did not work a regular schedule; his hours varied based on the number of permit requests, the requirements for processing those requests, and the follow-up fieldwork. When the part-time employee left, Lapeer County transferred the soil erosion and sedimentation control program to the county road commission, which already had its own program in place. The road commission fulfilled Lapeer County's Part 91 responsibilities for almost two years until the County brought the program back in-house. In September 2002, the County entered into a consent agreement with the Michigan Department of Environmental Quality (DEQ) that required the County to take certain additional steps to fulfill its responsibilities under Part 91. On April 3, 2003, the County Commissioners designated the soil and sedimentation control division within the County's Office of Community Development as the agency responsible for administering and enforcing Part 91 and authorized the community development director to hire a soil erosion and sedimentation control supervisor on a full-time basis.

The SESCS is responsible for reviewing construction permit applications, site plans, and construction schedules to determine whether they comply with the requirements of Part 91. If the requirements are met, the SESCS determines the fees based on projects' acreage, sets bonds based on an estimate of the cost to restore the site to an acceptable condition if the permit holder fails to do so, and, thereafter, issues a permit. The SESCS is required to oversee any earth change of one acre or more, or which is located within 500 feet of a wetland, lake, stream, pond or county drain and makes periodic inspections of the construction sites. The SESCS also receives and accounts for the fees and bonds, forwards receipts to the treasurer's office, mails permits, and maintains permit files. The SESCS spends about forty percent of his time in the office assisting customers with permit applications, providing general information on obtaining permits, and doing the paperwork associated with processing applications and permits. He spends the remainder of his time in the field on inspections and enforcement duties. Pursuant to the consent agreement with the DEQ, the SESCS's work is audited by the DEQ every couple of months to ensure that the plans he approves and the construction sites he inspects comply with Part 91.

In mid-July 2004, the Employer hired a temporary clerical employee to do data entry and other tasks within the office to allow the SESCS more time to perform the onsite inspections required under Part 91. The SESCS was involved in the process for hiring the clerical employee and is responsible for training her and for evaluating her performance. If the SESCS is dissatisfied with the clerical employee's performance or concludes that she should be disciplined, he must consult with the community development director before any action may be taken.

The minimum educational requirements for the SESCS are a high school diploma or equivalent with college level course work in surveying, drafting, construction, or civil engineering. The SESCS must also have DEQ certification in soil erosion and sedimentation control. It is an hourly position in pay grade 6 earning \$12.35 per hour. The SESCS receives the same health insurance, vacation, and life insurance benefits as all regular full-time County employees.

Discussion and Conclusions of Law:

A unit clarification petition is appropriate to determine the bargaining unit status of a newly created position or a position that has undergone significant changes. *Big Bay De Noc Sch Dist*, 17 MPER 81 (2004); *Jackson Cmty College*, 2001 MERC Lab Op 179, 184. We have held that a change in hours may be a sufficiently significant alteration in a position to make a unit clarification petition appropriate. *Riverview Cmty Schs*, 16 MPER 51 (2003); *Washtenaw Intermediate Sch Dist*, 1993 MERC Lab Op 555, 558. In this case, the change from the part-time soil erosion and sedimentation control agent position to the full-time SESCS is significant enough to make a unit clarification petition appropriate. See *City of Manistee*, 1990 MERC Lab Op 477, 478.

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. *Lenawee Intermediate Sch Dist*, 16 MPER 48 (2003); *Grand Rapids Pub Schs*, 1997 MERC Lab Op 98, 106. However, the fact that employees have different job duties or functions does not necessarily mean that they lack a community of interest. *Michigan Ed Ass'n v Alpena Cmty College*, 457 Mich 300, 306 (1998); *Genesee Co Cmty Mental Health Services*, 18 MPER 29 (2005); *Covert Pub Schs*, 1997 MERC Lab Op 594, 602. We have also found that the mere presence of separate funding sources does not destroy community of interest. See *Hesperia Cmty Schs*, 1994 MERC Lab Op 972, 977-978; *Beecher Cmty Schs*, 1989 MERC Lab Op 311, 317; *City of Detroit, Health Dep't*, 1985 MERC Lab Op 920, 924.

It is evident that there is a community of interest between the SESCS and the positions in Petitioner's bargaining unit. The wages paid to the SESCS are the same as those paid to bargaining unit positions in pay grade 6. Comparison of the job descriptions of bargaining unit positions with that of the SESCS also shows substantial similarities in levels of education, working conditions, and duties. Like several bargaining unit positions, the SESCS must have training beyond high school, as well as State certification that he possesses the knowledge or skills required for the position. The SESCS, as well as several unit positions, must travel throughout the County to perform his duties and may be required to work outside in varying weather conditions. Like most of the bargaining unit positions, the SESCS spends considerable time in a County office where he provides customer service. As with the animal control officer, the duties of the SESCS include working with the public to ensure compliance with the laws within his purview, as well as investigating and seeking enforcement of those laws when he believes they have been violated. As with several bargaining unit positions, the SESCS's duties also include training and assigning work to others. (However, for reasons discussed below, these responsibilities do not qualify the SESCS as a supervisor.) While there are clearly differences between the duties, skills and working conditions of the SESCS and some bargaining unit positions, these differences do not destroy the community of interest. See e.g., *Genesee Co Cmty Mental Health Services*.

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, *City of Grand Rapids Police Dep't*, 2000 MERC Lab Op 384. To qualify as a

supervisor under PERA, an individual's responsibility to exercise authority in the foregoing functions must involve the use of independent judgment, including effective authority in personnel matters, with the power to evaluate employees and recommend discipline. *Butman Twp*, 2000 MERC Lab Op 13, 16-17. Effective authority in personnel matters means that the employee's superiors generally accept his or her recommendation without an independent investigation. *Butman Twp* at 16. See also *Village of Paw Paw*, 2000 MERC Lab Op 370, 373. Employees who merely assign or oversee the performance of work by others on a routine basis are not supervisors under the above definition. *Kalkaska Co and Sheriff*, 1994 MERC Lab Op 693, 698. A position that possesses supervisory authority over only nonunit employees is not excluded from a nonsupervisory bargaining unit on the basis of that supervisory authority. See *Glen Oaks Cmty College*, 16 MPER 72 (2003); *City of Midland (Police Dep't)*, 1993 MERC Lab Op 601, 607.

Based on the record we find that the SESCO does not possess sufficient authority to be considered a supervisor. There has been no showing that he does anything more than provide routine assignments of work to the clerical employee. Although the SESCO participated in the interviews and discussed the candidates with his supervisor, he had no authority to hire or to effectively recommend hiring. Nor can he effectively recommend discipline, as he must consult with his supervisor before taking any action. However, even if we were to find that the SESCO has supervisory authority over the temporary clerical employee, such authority could not serve as the basis for excluding the SESCO from Petitioner's unit since temporary employees are not included in the bargaining unit. See *Glen Oaks Cmty College*.

Accordingly, we find that the SESCO shares a community of interest with the nonsupervisory bargaining unit represented by Petitioner and must be included therein.

ORDER CLARIFYING UNIT

Based upon the above findings and conclusions, the petition filed by the Teamsters Local 214 is granted and the bargaining unit is clarified to include the position of Soil Erosion and Sedimentation Control Supervisor.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Nora Lynch, Commission Chairman

Nino E. Green, Commission Member

Date: _____