

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

In the Matter of:

IRON COUNTY AND IRON COUNTY PROSECUTOR,  
Public Employer,

Case No. UC03 L-048

-and-

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

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APPEARANCES:

Nantz, Litowich, Smith & Girard, P.C., by Steven K. Girard, Esq., for the Public Employer

Roger Smith, Staff Specialist, for the Labor Organization

**DECISION AND ORDER ON UNIT CLARIFICATION**

Pursuant to Sections 12 and 13 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCLA 423.212 and 423.213, this case was scheduled to be heard in Lansing, Michigan, on June 14, 2004, by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission. Based on the parties' stipulation of facts and post-hearing briefs filed by August 31, 2004, we find as follows:

The Petition and Positions of the Parties:

On December 23, 2003, Michigan Council 25, AFSCME, filed this petition to clarify the placement of a newly created full-time office manager/crime victim rights coordinator position that the Employer excluded from the bargaining unit as a supervisory employee. Petitioner claims that the office manager/crime victim rights coordinator is not a supervisor because she does not exercise independent judgment in hiring and firing. The parties agreed to stipulate to all relevant facts and submit briefs in lieu of a hearing.

Stipulated Facts:

Iron County and the Iron County Prosecuting Attorney are co-employers and public employers within the meaning of PERA. Council 25, AFSCME is a labor organization, which has represented the nonsupervisory employees of Iron County and the Iron County Prosecuting Attorney's office for many

years. Iron County and Council 25, AFSCME are signatories to a collective bargaining agreement effective from July 1, 2001, through March 30, 2004. The parties are currently engaged in negotiations for a successor agreement.

In June of 2003, the Iron County Prosecuting Attorney's office was comprised of six positions: (1) elected Iron County Prosecuting Attorney, Joseph Sartorelli; (2) Iron County Assistant Prosecuting Attorney, Melissa Weston; (3) administrative assistant/legal secretary (full time), Sandra Toivonen; (4) crime victim rights coordinator (full time), Marlene Mottes; (5) child support clerk (full time), Ramona Hegstrom; and (6) legal secretary/victim advocate (part time/25 hours), Julie Kezerle. The part-time legal secretary/victim advocate and assistant prosecutor positions were added to the Prosecutor's staff within the last year.

On June 19, 2003, Iron County Prosecuting Attorney, Joseph Sartorelli, terminated administrative assistant/legal secretary, Sandra Toivonen, for multiple incidents of misconduct, including failure to advise him of the receipt of an important brief in a criminal case, falsification of a timecard, and failure to file a required report with the State of Michigan. The above events and others caused the Prosecuting Attorney to re-evaluate his support staff needs. He concluded that he needed an individual in the office to supervise support staff on a day-to-day basis since his duties, and those of the assistant prosecutor, kept them in court and out of the office a great deal of the time.

On June 23, 2003, the Iron County Prosecuting Attorney sent correspondence to Shana Harvala, staff representative for Council 25, AFSCME, advising her that he was eliminating the vacant administrative assistant/legal secretary position formerly held by Sandra Toivonen, and the crime victim rights coordinator position held by Marlene Mottes. Harvala was also advised that two new positions were being created: a full-time office manager/victim rights services manager (OMVRSM) position; and a part-time (25 hours) legal secretary position. The Union was further advised that the new office manager/victim rights services manager position would be a supervisory, salaried, exempt position and would not be included in the AFSCME bargaining unit. The new legal secretary position would be included in the unit.

Mottes, who held the eliminated victim rights coordinator position, was promoted to the position of OMVRSM. As further set forth in the correspondence of June 23, 2003, many of the legal secretary duties performed by Toivonen and many of the clerical activities related to crime victim services were assigned to the new part-time legal secretary/crime victim rights position.

In addition to her new duties as OMVRSM, Mottes continued to perform some of the same crime victim rights duties she performed in her previous position. She also was assigned some clerical duties formerly performed by Sandra Toivonen. In her new position, Mottes has been delegated, and has exercised, the authority set forth in her job description. She has been specifically advised by Sartorelli that she has the authority to issue verbal and written reprimands to employees and may make recommendations with respect to suspension and discharge of employees. Mottes has no independent authority to discharge employees. She has used her independent judgment and discretion to issue verbal and written discipline to bargaining unit employees and has recommended to Prosecutor Sartorelli that, because of performance

issues, a probationary bargaining unit employee be terminated. Her recommendation was followed and the employee was terminated.

Mottes has recommended that the employment of new employees be continued after conclusion of their probationary periods and her recommendations have been followed. Mottes has attended the ongoing collective bargaining negotiation sessions with Council 25, AFSCME for a successor agreement, as a member of the Employer's bargaining team, as the representative of the co-employer. On March 3, 2004, she prepared and presented the Employer's case at an unemployment hearing involving former bargaining unit employee, Sandra Toivonen. Mottes has been authorized and has many times exercised independent authority to contact the County's outside labor attorney to discuss employee discipline, contract interpretation, and AFSCME union negotiation issues.

In filling vacancies in the bargaining unit in the Prosecutor's office, Mottes has prepared and run advertisements in the newspapers, reviewed resumes, conducted interviews and tested applicants for employment. Candidates must pass through this initial process before they can reach the final round of three candidates presented to Sartorelli. Mottes' recommendation for final hiring was forwarded to Sartorelli, who has in all cases hired the individual recommended. Mottes independently schedules all staff, approves all requests for sick leave, vacation and personal days, and has been authorized to resolve all scheduling conflicts. She signs all leave request forms and time cards and has been delegated and exercises authority to plan, schedule and organize all weekly staff meetings and to assign work and projects to staff. Mottes attends periodic management meetings, has attended management-training seminars, and has attended executive closed sessions of the Iron County Board of Commissioners involving employee issues, proposed employee discipline, and AFSCME bargaining unit contract negotiations. Sartorelli has advised the office staff that Mottes is their direct supervisor, that he expects the office staff to follow her direction, and that they may be disciplined for refusal to follow her direction.

#### Conclusions of Law:

A supervisor, as we define that term under PERA, is an individual with the authority to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or to effectively recommend such action, as long as this authority requires the use of independent judgment and is not merely routine. *MEA v Clare-Gladwin ISD*, 153 Mich App 792, 796-798 (1986). "Effectively recommend" means that the employee's superiors generally accept his or her recommendation without an independent investigation. *Bloomfield Hills Sch Dist*, 2000 MERC Lab Op 363, 365-366; *Bronson Methodist Hosp*, 1973 MERC Lab Op 946, 953. Possession of any of the above powers may confer supervisory status. *Huron Co Medical Care Facility*, 1998 MERC Lab Op 137. An individual is not a supervisor under PERA if his or her authority is limited to the routine direction of the daily work of other employees and/or making work assignments of a routine nature. *City of Detroit*, 1996 MERC Lab Op 282, 285; *Detroit Dep't of Parks and Recreation*, 1966 MERC Lab Op 661.

The parties' stipulation of facts contains sufficient indicia of supervisory authority for us to conclude that the newly created OMVRSM is a supervisor within the meaning of PERA and, therefore, should not be

included in Petitioner's bargaining unit. She has used her independent judgment and discretion to issue verbal and written discipline to bargaining unit employees and has effectively recommended that a probationary bargaining unit employee be terminated. She has also effectively recommended that the employment of new employees be continued after their probationary periods. Moreover, the OMVRSM has interviewed and tested candidates for employment and the prosecutor has always hired the individual whom she recommended.

We have considered all other arguments advanced by Petitioner, including its claim that the OMVRSM does not exercise independent judgment, and conclude that they do not warrant a change in the result.

ORDER DISMISSING PETITION

Based upon the facts and conclusions of law set forth above, the unit clarification petition is dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Nora Lynch, Commission Chairman

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Harry W. Bishop, Commission Member

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Nino E. Green, Commission Member

Date: \_\_\_\_\_