

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

In the Matter of:

WATERSMEET TOWNSHIP,
Public Employer-Petitioner,

Case No. UC04 B-006

-and-

AFSCME COUNCIL 25, LOCAL NO. 992,
Labor Organization.

APPEARANCES:

Dean & Pope, P.C., by Michael K. Pope, Esq., for the Public Employer

Roger Smith, Staff Representative, for the Labor Organization

DECISION AND ORDER ON UNIT CLARIFICATION

Pursuant to Section 13 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, being MCL 423.213, this matter was assigned to Roy L. Roulhac, Administrative Law Judge for the Michigan Employment Relations Commission. The parties agreed to a stipulation of facts in lieu of a formal hearing in this matter. Based upon the entire record, including the parties' stipulation and post-hearing briefs filed by June 17, 2005, the Commission finds as follows:

Petition and Positions of the Parties:

On February 6, 2004, Watersmeet Township filed a petition to clarify the nonsupervisory bargaining unit represented by AFSCME Council 25, Local 992 (Union). The Employer claims that the position of foreman should be excluded from the unit as a supervisory or confidential employee. The Union contends that the foreman is neither supervisory nor confidential.

Facts:

The parties stipulated to the following facts:

1. Watersmeet Township has five elected officials – a supervisor, clerk, treasurer and two

trustees. It also has a deputy clerk and a deputy treasurer who work as needed. The Township also has four full-time employees – a secretary, a transfer station attendant, a custodian/laborer and a foreman – who are represented by AFSCME, Local No. 992. The Township also employs a part-time water treatment plant operator who is excluded from the bargaining unit. The parties' latest collective bargaining agreement covers the period January 1, 2004 to December 31, 2006.

2. The foreman is responsible for directing the day-to-day duties and determining the break schedules of the custodian/laborer and any summer help that may be employed. If the transfer station attendant and the water treatment plant operator are needed for a project, the foreman assists and determines their duties. The foreman does not direct the work of any other employee.

3. If a resident or the tribal police contact the foreman at his home, the foreman is responsible for calling employees to work overtime to make emergency repairs (water line breaks, sewer back-ups, wastewater problems, etc.). He exercises independent judgment to determine whether the Township is responsible and if so, how to handle the situation. He also exercises independent judgment to determine if minor repairs to Township vehicles and machinery are needed, or if major repairs need to be contracted out. According to Township policy, no official or employee may make purchases over \$100.00.

4. The foreman does not hire or fire employees, nor does he recommend their hiring or firing. However, in 2003, he recommended the hiring of a summer helper from a list generated by the Employer because he personally knew all three applicants. The foreman does not schedule or approve employees' vacation, sick, or personal leave requests. He submits them to the clerk's office with his plan to cover the position during the scheduled time off.

5. The foreman makes budget recommendations for such items as normal maintenance costs, costs for projects, tools, and equipment, and he makes a wish list request. He also determines training needs and costs.

6. The foreman has never disciplined or recommended that any employee be disciplined. On one occasion, he independently addressed a resident's complaint with a union employee.

7. The foreman does not participate in establishing policies or work rules. He prioritizes work to be done and reports to the Township clerk and/or supervisor about the work planned.

8. The foreman has been the local Union president since the Union was formed in 2001 and has participated in all collective bargaining negotiations. However, before the last series of negotiations, the Township requested that the foreman not serve as the negotiator because of the pending unit clarification petition.

Conclusions of Law:

The Employer claims that the foreman should be excluded from the bargaining unit as a supervisory employee, because he is authorized to direct and recommend action concerning employees; formulates department policy and budgets; effectively recommended the hiring of an employee; manages an employee's working hours, including scheduling breaks; schedules and approves leaves of absences; directs employees' day-to-day work; in special circumstances, makes decisions on major repairs; and has spoken to another employee regarding a complaint on his own initiative.

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, 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); *City of Holland*, 2002 MERC Lab Op 40, 41; *Village of Paw Paw*, 2000 MERC Lab Op 370. 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. *Bloomfield Hills Sch Dist*, 2000 MERC Lab Op 363. 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.

In this case, we agree with the Union's argument that the foreman is no more than a lead worker and is not a supervisor. The stipulated facts in this case make clear that the foreman does not possess the authority to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or to effectively recommend such action. Although he once recommended the hiring of a summer employee, that activity is insufficient to qualify him as a supervisor. A supervisor's authority must be actual and real, and more than merely routine and sporadic. *Genesee Co Sheriff Dep't*, 1975 MERC Lab Op 152, 154-155.

We also conclude that the foreman is not a confidential employee. We have defined a confidential employee as one who formulates, determines, and effectuates management policy with regard to labor relations, or who assists and acts in a confidential capacity to such a person. *St Clair Co Cmty College*, 2002 MERC Lab Op 406, 408. It has been our policy to strictly limit the confidential exclusion so as to fulfill PERA's purpose of providing employees with an opportunity to be represented and bargain collectively. See e.g., *City of Saginaw*, 1991 MERC Lab Op 253. A position that an employer seeks to exclude as confidential must be an integral and necessary part of the collective bargaining process. *Williamston Schs*, 1994 MERC Lab Op 1062. Although we have held that an employer is entitled to designate one employee as a confidential, it is the employee's assigned duties that determine confidential status. *Lakeview Pub Schs*, 1982 MERC Lab Op 1654, 1657. See also *Dickinson Co Road Comm*, 1973 MERC Lab Op 745. As demonstrated by the parties' stipulation, the foreman has no current or planned responsibilities with respect to labor relations on behalf of the Employer. To exclude this position as a confidential would be contrary to our policy to strictly limit that exclusion to those employees directly involved in collective bargaining on behalf of the Employer, or their assistants. *Pontiac School Dist*, 1997 MERC Lab Op 173, 180-181.

For the reasons set forth above, the petition to clarify the Union's bargaining unit to exclude the

foreman position as a supervisor or confidential employee is hereby denied.

ORDER

The unit clarification petition is denied.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Nora Lynch, Commission Chairman

Nino E. Green, Commission Member

Date: _____