

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

In the Matter of:

CHARTER TOWNSHIP OF FLINT,
Petitioner-Public Employer,

Case No. UC05 G-022
(Act 312)

-and-

TEAMSTERS LOCAL 214,
Labor Organization.

APPEARANCES:

Luce, Basil & Collins, Inc. by Thomas A. Basil, Sr., for the Public Employer

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

DECISION AND ORDER

Pursuant to the provisions of the Public Employment Relations Act (PERA), 1947 PA 336, as amended by 1965 PA 379, MCL 423.201-217, and pursuant to Act 312 of 1969, as amended by Act 203 of 1976 and Act 303 of 1977, MCL 423.231-247, this matter was heard in Detroit, Michigan, on November 18, 2005, by Roy L. Roulhac, Administrative Law Judge for the Michigan Employment Relations Commission. Based on the record, including briefs filed by the parties on or before December 28, 2005, we find as follows:

The Petition:

On May 27, 2005, Teamsters Local 214 filed a petition for Act 312 compulsory arbitration, Docket No. L04 J-8008, to resolve a contract dispute involving its bargaining unit of communications operators. Thereafter, on June 14, 2005, via correspondence to the Bureau Director, the Charter Township of Flint filed a challenge to the appropriateness of the Act 312 petition, asserting that the communications operators represented by Local 214 were not eligible for Act 312 arbitration "due to an essential change in the nature of the position." In *Flint Twp*, 1995 MERC Lab Op 50, a case involving the same parties in which the Employer also challenged the appropriateness of an Act 312 arbitration petition, we determined that communications system operators employed by the Township's police department were Act 312 eligible. In that case, the record demonstrated that the position, which functioned as both clerk and dispatcher, was trained in emergency dispatch procedures and dispatched emergency calls to police on more than an occasional basis.

Facts:

Teamsters Local 214 represents a bargaining unit consisting of seven communications operators who work in the Township's police department. In January 2005, a new police chief instituted certain changes in the department. The job description for communications operators was revised and updated. Under the category of typical duties, Item 5 was changed from "operate police radio" to "operate a police radio in a non-emergency, non-dispatch role." A telephone answering machine was also installed to screen incoming calls to the police department with the following pre-recorded message:

You have reached the Flint Township Police Department. If this is an emergency or if you would like a police officer dispatched to your location, please hang up and dial 911. Otherwise, stay on the line and an operator will be with you shortly. If you know your party's extension number you may dial it now.

If a caller remains on the line, a communications operator or a record clerk, who is on duty between 8:00 a.m. and 5:00 p.m., will answer the phone.

Communications operators are expected to forward any emergency calls to 911 central dispatch. The telephone training manual for new employees has a section on emergency calls, which provides that if an emergency call is received, the communications operator should determine the caller's name and number, the nature of the emergency, and whether the caller has time to call 911. If the caller is unable to dial 911, the communications operators are instructed to contact 911 on another line while speaking to the caller. No evidence was presented regarding any recent dispatch or relay of an emergency call by a communications operator.

Communications operators use their radios to communicate with police officers on non-emergency matters; for example, if an officer needs a complaint number, a tow truck, a paper copy of a lien check or license plate check. They may also have a police officer dispatched to a location on a non-emergency basis. If an officer is faced with an emergency, the officer radios central dispatch at 911 for backup assistance.

Discussion and Conclusions of Law:

The Union argues that the Employer's challenge to the Act 312 petition is untimely. In addition, according to the Union, there has been no recent significant change in the communications operators' duties. The Union also claims that the Employer is effectively asking us to reverse our 1995 decision in *Flint Twp* and asserts that the Employer failed to meet its burden of demonstrating why that decision should not control. According to the Union, simply changing a job description or instituting a recorded phone message cannot undo what communications operators have been trained to do or change their "natural moral inclination" to assist those in need. As discussed below, we find that these arguments are without merit.

Initially, we find that the Employer's objection to Act 312 eligibility is timely. Challenges to Act 312 petitions may arise after a union files for compulsory arbitration, and the Employer objects to the Act 312 eligibility of certain classifications in the bargaining unit. *Macomb Co*, 1991 MERC Lab Op 542, 544 n1; *Detroit (Airport Police)*, 2002 MERC Lab Op

43, 44 n1. We have found that an employer’s challenge to an Act 312 petition is timely if it is filed prior to the commencement of arbitration proceedings. *Oakland Co*, 1983 MERC Lab Op 181. In this case, the Employer’s challenge is timely since it was filed on June 14, 2005, before the arbitration hearing began.

Pursuant to Section 2(2) of Act 312, emergency telephone operators are persons “employed by a police or fire department for the purpose of relaying emergency calls to police, fire, or emergency medical office personnel.” As noted above, in the earlier *Flint Twp* case, we found that the communications system operators were Act 312 eligible because they continued to be trained in emergency dispatch procedures and dispatched emergency calls to police on more than an occasional basis. Here, however, the Employer has a policy that emergency calls are to be handled by 911 central dispatch. The communications operator position description has been modified to specifically provide that they operate a police radio only in a non-emergency, non-dispatch role. The record in this case also demonstrates that although new employees continue to receive limited training in emergency telephone call handling procedures, the communications operators do not relay emergency calls to police or other personnel on even an occasional basis. Accordingly, based upon this record, we find that the communications operators do not qualify as emergency telephone operators within the purview of Act 312 and, therefore, are not eligible for Act 312 arbitration. See *Genesee Twp*, 1994 MERC Lab Op 210.

ORDER

Based on the foregoing, it is hereby ordered that the Act 312 petition in Docket No. L04 J-8008 be dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Nora Lynch, Commission Chairman

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Date: _____