

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

In the Matter of:

BAY COUNTY,
Public Employer - Respondent,

Case No. C05 G-156

-and-

UNITED STEEL WORKERS OF AMERICA, LOCAL 15157,
Labor Organization - Charging Party,

-and-

BAY COUNTY ASSOCIATION OF MANAGERS, PROFESSIONALS AND SUPERVISORS,
Labor Organization - An Interested Party.

APPEARANCES:

Cohl, Stoker, Toskey & McGlinchey, P.C., by John R. McGlinchey, Esq., for the Public Employer

Miller Cohen P.L.C., by Eric I. Frankie, Esq., for the Charging Party

Gilbert, Smith & Borrello, P.C., by André R. Borello, Esq., for the Interested Party

DECISION AND ORDER

On April 25, 2007, Administrative Law Judge Doyle O'Connor issued his Decision and Recommended Order in the above matter finding that Respondent has not engaged in and was not engaging in certain unfair labor practices, and recommending that the Commission dismiss the charges and complaint as being without merit.

The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of the Act.

The parties have had an opportunity to review the Decision and Recommended Order for a period of at least 20 days from the date of service and no exceptions have been filed by any of the parties.

ORDER

Pursuant to Section 16 of the Act, the Commission adopts the recommended order of the Administrative Law Judge as its final order.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Christine A. Dardarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

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BAY COUNTY ASSOCIATION OF MANAGERS, PROFESSIONALS AND
SUPERVISORS,
An Interested Party-Labor Organization.

APPEARANCES:

Eric I. Frankie, for the Charging Party

John R. McGlinchey, for the Public Employer

Andre R. Borello, for the Interested Party

DECISION AND RECOMMENDED ORDER ON SUMMARY DISPOSITION

Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, this case was assigned for hearing to Doyle O'Connor, Administrative Law Judge (ALJ), acting on behalf of the Michigan Employment Relations Commission.¹

The Unfair Labor Practice Charge and Proceedings:

On July 27, 2005, Local 15157 filed a charge in this matter, which specifically sought as relief an order clarifying its unit to include the classification of staff accountant. The Employer Bay County's answer to the charge asserted that the classification of staff accountant is, and has been since 1981, in a recognized bargaining unit represented by the

¹ The matter was initially assigned to Administrative Law Judge Roy Roulhac, reassigned upon his retirement to Administrative Law Judge Julia Stern, and then reassigned on September 25, 2006, to Administrative Law Judge Doyle O'Connor.

Bay County Association of Managers and Professional Supervisors (the BCAMPS/Interested Party). The Interested Party was added to the proceedings at the direction of the ALJ.

Pursuant to R 423.165 of the General Rules and Regulations of the Employment Relations Commission, on January 8, 2007, the Charging Party was ordered to withdraw the charge or file a response to the Employer's request that the charge be dismissed, with copies to the other two parties. The order noted that, absent a legitimate dispute of fact regarding the Employer's defense that the disputed classification is already in an existing unit, the relief sought by Local 15157 would be barred. *City of Ann Arbor –and- American Federation of State, County and Municipal Employees, Council 25*, 19 MPER 54 (2006). The Charging Party was directed to confer with the representatives of the Employer and the Interested Party prior to filing its response to this Order. Replies, if any, to the response of Local 15157 to the order, were to be filed within twenty-one (21) days of service of Local 15157's response. The Charging Party filed a timely response on January 29, 2007, with the Employer and the Interested Party filing timely replies.²

The dispute involves the propriety of the promotion of an individual from a position as account clerk, in Charging Party's unit, to the position of staff accountant, which beyond dispute is and has long been in the Interested Party's unit. The Charging Party's response to the order fails to assert or establish that the work in question was ever the exclusive province of either unit. Additionally, the Charging Party's response fails to establish any lawful basis on which the Commission could consider the primary relief sought, that is, the clarification of the Charging Party's unit to include the position of staff accountant. The Charging Party's brief asserts that the work was purportedly removed from the unit without bargaining, but fails to assert or establish that a duty to bargain ever existed or that a demand for bargaining was made.

The Employer's reply includes an affidavit, the several certifications of representative by the Commission, and relevant job descriptions, all of which establish that the position in dispute is an existing classification in the BCAMPS bargaining unit. The Employer's response also establishes that the change in title was a promotion sought by the incumbent employee from one existing classification to another higher paid existing classification. The reply by the Interested Party provided relevant job descriptions and argued that the Commission should not disturb an existing unit placement.

Discussion and Conclusions of Law:

All three parties agree that there are two separate bargaining units, one that includes the classification of account clerk, and another unit that includes the clearly related, but higher ranked, position of staff accountant. The charge seeks as its primary relief a unit clarification order moving the long-established staff accountant classification out of one

² The Interested Party asserts, without apparent opposition, that the Charging Party improperly failed to confer with the it despite being directed to do so prior to filing its response, and additionally, that Charging Party failed to serve its response on the Interested Party.

established bargaining unit and into another. There is no legitimate dispute of fact that precludes dismissal of the charge. The relief sought by Charging Party is barred. *City of Ann Arbor –and- American Federation of State, County and Municipal Employees, Council 25*, 19 MPER 54 (2006).

The Charging Party additionally asserts that the Employer failed to bargain over the supposed transfer of work from the Steelworkers unit into the BCAMPS unit. There is no assertion, either in the charge or in the response to the order to show cause, that a demand to bargain was made and, therefore, there was no duty to do so. *City of Southfield*, 1993 MERC Lab OP 376. There is no assertion that Steelworkers unit employees suffered any, much less a significant, adverse impact as a result of the supposed transfer of work. For these additional reasons, there was no duty to bargain over the claimed transfer of work attendant to the promotion of one individual between related classifications. *City of Southfield, supra*.

RECOMMENDED ORDER

The charge in this matter is dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Doyle O'Connor
Administrative Law Judge

Dated: _____