STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF DETROIT (FIRE DEP'T)
Public Employer,

Case No. UC06 E-015

-and-

DETROIT FIRE FIGHTERS ASSOCIATION,
Labor Organization-Petitioner.
_____/

APPEARANCES:

City of Detroit Law Department, by Andrew R. Jarvis, Esq., for the Employer

Helveston & Helveston, PC, by Ronald R. Helveston, Esq., for Petitioner

DECISION AND ORDER ON PETITION FOR UNIT CLARIFICATION

Pursuant to Section 12 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212, this case was heard on March 7, 2007, by Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. Based on the entire record, including post-hearing briefs filed on or before April 18, 2007, we find as follows:

The Petition and Positions of the Parties:

The unit clarification petition in this case was filed by the Detroit Fire Fighters Association (Petitioner) on May 21, 2006. Petitioner represents a bargaining unit consisting of all noncivilian and certain civilian employees of the City of Detroit (Employer) in its fire department. On October 24, 2005, Petitioner was certified as the bargaining representative for the position of supervising medical case manager (SMCM) held by Linda Olivache (formerly Buchanan). Sometime thereafter, the position was renamed as manager II – fire. Petitioner seeks an order declaring that the position of manager II – fire, is part of its bargaining unit. The parties stipulated that Olivache's current job duties and responsibilities as manager II – fire are the same as her duties and responsibilities as SMCM. However, the Employer maintains that Olivache's position is a new position and that the new position is not appropriate for accretion to Petitioner's bargaining unit.

Findings of Fact:

Background

In 2003, Olivache filed a lawsuit against the Employer alleging, among other claims, that she was suffering pay discrimination due to her gender. On June 4, 2004, while Olivache's lawsuit was pending, Petitioner filed a petition for representation election (Case No. R04 F-076) seeking to add the SMCM position to its bargaining unit. Olivache, the head of the medical division of the Employer's fire department, was the only employee with that job title and the sole employee within the SMCM classification under the Employer's civil service system. On June 29, 2005, we issued a decision and direction of election, holding that the SMCM shared a community of interest with Petitioner's unit and that the fact that the SMCM was not eligible for compulsory arbitration under Act 312, 1969 PA 312, MCL 423.231 et seq, was not a reason to exclude the position from the unit. We further held that the SMCM's supervisory status did not preclude the position from being included in the unit, and that the Employer had not demonstrated that the SMCM should be excluded as a confidential employee. *City of Detroit*, 18 MPER 43 (2005). The Employer filed an appeal of our decision with the Court of Appeals.

On August 26, 2005, Olivache and the Employer entered into a written agreement settling Olivache's discrimination lawsuit. As part of the settlement, the Employer agreed to reclassify Olivache's position to manager II, an existing classification within the Employer's civil service system with a substantially higher pay range, and to increase Olivache's salary. Per the settlement agreement, SMCM was to be "vacated," or abolished, as a civil service classification and title. Sometime between the date of this agreement and the filing of the instant petition, the reclassification was approved and Olivache received her new job title. Petitioner was not a party to the lawsuit or the settlement agreement.

In September 2005, while the appeal in Case No. R04 F-076 was pending before the Court of Appeals, we conducted an election and certified Petitioner as the bargaining representative for the SMCM position. In April 2006, the Employer and Petitioner stipulated to the dismissal of the Employer's appeal of our decision in Case No. R04 F-076.

On January 6, 2006, Petitioner wrote to the Employer stating that the SMCM had been accreted to Petitioner's unit and demanding that the position be given all the benefits provided for in the parties' collective bargaining agreement. On March 13, 2006, the Employer agreed to meet with Petitioner to bargain over Olivache's terms and conditions of employment. However, before the parties met, the Employer told Petitioner that the SMCM position had been eliminated and that it did not recognize Petitioner as Olivache's bargaining representative.

Job Duties of the Manager II - Fire

The parties stipulated at the hearing as follows:

The parties agree that the current job duties and responsibilities of Linda

> Olivache, manager II in the medical division of the Fire Department, are the same as the job duties and responsibilities of the supervisor [sic] medical case manager set out in the record in Case No. R04 F-076 and found by the Commission in Case No. R04 F-076.

The parties agreed to admit into the record the transcripts of the hearings conducted in Case No. R04 F-076, the exhibits in that case, and the complete transcript of the testimony of Fire Commissioner Tyrone Scott in a deposition held on May 19, 2004. An excerpt from Scott's testimony at this deposition was admitted into the record in Case No. R04 F-076. No other evidence was introduced regarding Olivache's current job duties.

Discussion and Conclusions of Law:

It is well established that an employer cannot eliminate an existing classification in a recognized bargaining unit, create a new position with a new title, assign it to do the same work done by the eliminated classification, and then refuse to bargain relative to the wages, hours, and terms and conditions of employment of the new position. *Lake Superior State Univ*, 17 MPER 9 (2004); *City of Kalamazoo (Police Dep't)*, 1976 MERC Lab Op 854 (no exceptions). When an employer reclassifies an existing position, the only issue is whether there have been changes in job duties that have affected the community of interest between the position and the bargaining unit so that placement of the position in its original unit is no longer appropriate. If the changes have not affected the community of interest, the employer has an obligation to bargain over terms and conditions of employment of the reclassified position. *Ingham Co*, 1993 MERC Lab Op 808, 812-813. See also *Northern Michigan Univ*, 1989 MERC Lab Op 139 (employer violated its duty to bargain when it eliminated unit positions, created new positions with different titles doing the same work, and recognized a second union as the bargaining representative for the "new" positions).

In this case, the parties stipulated that the duties and responsibilities currently performed by Olivache as manager II – fire are the same as her duties and responsibilities as SMCM as set out in the record in Case No. R04 F-076. There is no evidence of any change affecting the position's community of interest with Petitioner's unit. Moreover, the Employer's arguments in support of its refusal to recognize the manager II – fire as part of Petitioner's bargaining unit are the same arguments it made in Case No. R04 F-076 to support its claim that the petition in that case should be dismissed. These arguments were addressed in our earlier decision. We conclude that it is neither necessary nor appropriate to revisit these arguments.

At the hearing, although not in its brief, the Employer argued that the unit clarification petition was not timely because it was filed more than six months after Olivache's August 26, 2005 settlement agreement with the Employer.[1] Petitioner was not a party to the August 26, 2005 settlement agreement, which does not address Olivache's collective bargaining status. Here, the Employer failed to tell Petitioner that it was not going to recognize the manager II – fire position as part of its bargaining unit until sometime after March 13, 2006. The petition

[1] Although a six month limitation period applies to unfair labor practice charges, PERA does not provide a specific time limit for unit clarification. See Wayne Co Cmty College Dist, 19 MPER 72 (2006); *Port Huron Area Sch Dist*, 1989 MERC Lab Op 763.

was filed promptly thereafter, on May 21, 2006. We find that Petitioner did not explicitly agree to or acquiesce in the position's exclusion from its unit.

ORDER

The bargaining unit represented by Petitioner is clarified to include the position manager II – fire, formerly supervising medical case manager, in the medical division of the City of Detroit Fire Department.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Christine A. Derdarian, Commission Chair

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

Dated: _____