

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

In the Matter of:

DETROIT PUBLIC SCHOOLS,  
Public Employer,

Case No: UC04 L-042

-and-

ORGANIZATION OF SCHOOL ADMINISTRATORS  
AND SUPERVISORS (OSAS),  
Labor Organization-Petitioner,

-and-

INTERNATIONAL UNION OF OPERATING ENGINEERS (IUOE), LOCAL 547,  
Labor Organization-Intervenor.

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**APPEARANCES:**

Gordon Anderson, Esq., for the Public Employer

Mark H. Cousens, Esq., for the Petitioner

J. Douglas Korney, Esq., for the Intervenor

**DECISION AND ORDER**  
**ON PETITION FOR UNIT CLARIFICATION**

Pursuant to Section 13 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.213, this case was heard on September 19, 2007, by Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. Based on the entire record, including post-hearing briefs filed by the Petitioner and Intervenor on or before November 30, 2007, we find as follows:

**The Petition and Positions of the Parties:**

Petitioner Organization of School Administrators and Supervisors (OSAS) represents a bargaining unit of supervisory employees of the Detroit Public Schools. On December 9, 2004, Petitioner filed this unit clarification petition seeking to add the position of zone building

supervisor (ZBS) to its unit. The Employer posted the ZBS as a new position in August 2004 and placed it in a supervisory unit represented by the Intervenor, International Union of Operating Engineers (IUOE), Local 547. Intervenor's unit is known as the noninstructional supervisory personnel (NISP) unit.

Petitioner asserts that the ZBS' duties are substantially identical to those of a now-abolished position in Petitioner's unit, physical plant manager (PPM). It maintains that since the position's duties have historically been in Petitioner's bargaining unit, the ZBS should have been placed in its unit. It also asserts that the ZBS position lacks a community of interest with the NISP unit because it supervises other positions within that unit. According to Intervenor, the ZBS position combines the duties of three former positions in the NISP unit, hub supervisor, housekeeping supervisor, and engineering supervisor. Both the Employer and Intervenor assert that the ZBS shares a community of interest with employees in the NISP unit, and that its placement in that unit is appropriate.

#### Findings of Fact:

Petitioner's bargaining unit is described in its contract by reference to a list of classifications. Many of these classifications, including curriculum coordinator, head teacher, and specialist, have responsibilities that are primarily instructional. However, the unit also includes noninstructional positions, including accountants, auditors, and security supervisors. The unit includes a number of positions with the general classification title of program associate.

The NISP unit is also described in its contract by reference to a list of job titles. Included in the unit are more than fifty separate titles, including quality control supervisor, transportation supervisor, food service managers, purchasing department supervisor, warehouse department supervisor, payroll administrative supervisor, and a variety of trades supervisors and foremen. All the positions in the NISP unit have noninstructional responsibilities.

The ZBS is part of the supervisory structure responsible for the maintenance and operation of the district's buildings, including school buildings and other facilities such as warehouses. This structure has been reorganized many times over the years.<sup>1</sup> Between about 1999 and 2004, the period immediately prior to the creation of the ZBS position, the school district was divided into three geographic "hubs." Each hub had several hub supervisors with general responsibility for the cleaning and maintenance of approximately forty buildings. Maintenance employees reported to the hub supervisor through their immediate supervisors, trades foremen. Also reporting to the hub supervisor was a housekeeping supervisor responsible for custodial services. Each hub also had engineering supervisors responsible for the heating, ventilation, and cooling systems in the hub's buildings. The hub supervisor, engineering supervisor, and housekeeping supervisor positions were in the NISP bargaining unit.

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<sup>1</sup> The exhibits introduced at the hearing did not include an organizational chart. Petitioner attached to its post hearing brief a printout from the district's website describing the organizational structure of the district's facilities management function. Petitioner asks that the Commission take judicial notice of this organizational table. Since the printout is undated, it is not clear whether this table represents the organizational structure as of the date of the hearing. We find it unnecessary, therefore, to decide whether it is generally appropriate to take judicial notice of a fact posted by a party on its own website.

In addition to these supervisory positions with responsibility for multiple buildings, each district building had, and has, a facility manager. The facility manager is the chief building engineer. He also opens the building in the morning, makes sure that it is secured at night, and has some responsibility for its cleanliness and operations. The facility manager is included in a nonsupervisory bargaining unit represented by Intervenor. It is unclear from the record whether the facility manager formally supervises either custodial employees or other engineers assigned to his building, but he clearly directs and oversees their work. Prior to the creation of the ZBS position, facility managers reported to an engineering supervisor. Facility managers at school buildings also reported to the principal of the school at which they worked, but not to the hub supervisor. As a result, there was no clear chain of authority over the building custodians who cleaned the school buildings and their immediate supervisors, the head custodians. The custodians reported to the housekeeping supervisor and through him to the hub supervisor. However, the engineers, the custodians, and head custodians were also supervised on a day-to-day basis by the building principal through the facility manager.

In the summer of 2004, the Employer created the ZBS position and another position in the NISP unit, zone custodial supervisor (ZCS). The Employer abolished the housekeeping supervisor position and phased out the hub supervisor position in the summer of 2005. Each ZBS is assigned twelve or thirteen buildings. The ZBS, like the hub supervisor, is responsible for cleaning and maintenance in his zone. Each ZBS has under him a ZCS who, like the housekeeping supervisor, is responsible for custodial services in their zone. However, the facility managers now report to a ZBS instead of an engineering supervisor, and the building principals' responsibility for supervising engineers and custodians has been eliminated. Also, unlike the hub supervisor, the ZBS has no formal supervisory authority over maintenance employees. The trades foremen who supervise maintenance employees now report directly to the ZBS' boss, an area manager.

The ZBS coordinates, directs, and evaluates the work of the engineers and custodial employees assigned to buildings in his zone. He has the authority to discipline them up to the level of a suspension, and makes recommendations for more serious discipline. The ZBS contracts with vendors to conduct training programs for engineers and custodial employees, and ensures that his employees are informed of district standards and operating procedures. The ZBS receives and reviews regular reports from the ZCS regarding the cleanliness of the zone's buildings. The ZBS plans and schedules cleaning projects so that the school buildings are ready to open when scheduled. The ZBS also plans and oversees the maintenance work done by trades employees in his zone. This includes coordinating, scheduling, and monitoring preventive maintenance programs; overseeing the performance of maintenance work to ensure that it gets done on schedule; inspecting completed repairs; and performing regular safety inspections. All requests for repair and maintenance work to be done in his zone come to the ZBS. He is responsible for verifying that the work is necessary, determining what type or types of trades employees are needed for a particular project, assigning the work, and giving it a priority. He makes sure that the proper permits are obtained for each project. He also communicates with the building principals about maintenance issues, e.g., if the need for a repair creates a safety hazard, the ZBS is responsible for informing the principal. The ZBS approves vacation requests for engineers and custodians, and his is the last signature on the form approving overtime of ten

hours or less per week.

The physical plant manager, or PPM, was a position in Petitioner's unit from at least 1986 until 1999, when it was abolished. The PPM's classification title was program associate. Donnie Knight, a ZBS, was a PPM at the time the position was abolished. Like ZBS and hub supervisors, PPMs were assigned a certain number of buildings within a particular geographic area and were responsible for maintenance and custodial services in these buildings. As a PPM, Knight was responsible for about sixty-five buildings. The PPMs supervised the head custodians and custodians in their buildings. The PPMs did not formally supervise the facility managers/engineers or other engineers or maintenance employees. However, the PPMs had general oversight over the engineers and also over the maintenance work performed by trades employees in these buildings. Knight testified that his duties as a ZBS were not materially different from his former duties as a PPM. According to Knight, he did not approve overtime as a PPM; this was the only difference in the responsibilities of the two positions that he could identify.

#### Discussion and Conclusions of Law:

It is well established that an employer cannot eliminate an existing classification in an established 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. *City of Detroit (Fire Dep't)*, 20 MPER 79 (2007); *Lake Superior State Univ*, 17 MPER 9 (2004). However, this is not what happened when the Employer created the ZBS position in 2004. The duties of the ZBS are similar to those performed by the PPM position prior to 1999. The PPM, however, was responsible for five times as many buildings. The ZBS also has supervisory authority over facility managers and engineers while the PPM did not. In addition, the ZBS has a ZCS who is responsible for custodial services within their zone, something the PPM did not have. Moreover, the Employer did not merely replace the PPM with a ZBS. Between 1999 and 2004, a hub supervisor performed many of the same duties as both the PPM and the ZBS, although a hub supervisor had formal supervisory authority over different classes of employees and was responsible for fewer buildings than a PPM. We find that PPM, hub supervisor, and ZBS are not merely three titles for the same position; these are three related but separate positions with different scopes of responsibility.

In determining whether a new position shares a community of interest with an existing bargaining unit, we consider a number of factors, including: similarities in duties, skills, and working conditions; similarities in wages and employee benefits; the amount of day-to-day contact between the position and positions in the bargaining unit; whether the position's function is integrated with that of the bargaining unit; common promotion ladders; and common supervision. *Grosse Pointe Pub Library*, 1999 MERC Lab Op 151; *Covert Pub Sch*, 1997 MERC Lab Op 594; *Saginaw Valley State Coll*, 1988 MERC Lab Op 533. When a union files a unit clarification petition seeking to add a new position to its unit and no other union claims the position, the issue is generally whether the new position shares a community of interest with the petitioner's existing unit. See, e. g., *Detroit Judicial Council*, 2000 MERC Lab Op 7; *Lansing Cmty Coll*, 2000 MERC Lab Op 99. However, we do not determine relative degrees of

community of interest. *Henry Ford Cmty Coll*, 1996 MERC Lab Op 372, 379-380; *Saginaw Valley State Coll*. When two unions claim a new position, we will defer to an employer's reasonable decision to place the position in one of their units if the evidence indicates that the position shares a community of interest with this unit or with both units. *City of Bay City*, 16 MPER 31 (2003); *Swartz Creek Cmty Sch*, 2001 MERC Lab Op 372; *City of Lansing*, 2000 MERC Lab Op 380; *Genesee Co (Friend of the Court)*, 1995 MERC Lab Op 223.

In this case, both Petitioner and Intervenor represent supervisory units historically defined by classification or position title. Both units include positions without instructional responsibilities. The hub supervisor position, which the ZBS partially replaced, was part of the NISP unit. Petitioner argues that the ZBS lacks a community of interest with the NISP unit because the ZBS supervises the ZCS. However, we have consistently held that units including different levels of supervision are appropriate under PERA, even though some members of the unit exercise supervisory authority over other members of the unit. *City of Bay City*, 2001 MERC Lab Op 250, 254; *City of Birmingham*, 1970 MERC Lab Op 422, 426. We find that the ZBS shares a community of interest with the NISP unit into which it was placed by the Employer. We conclude, therefore, that the Employer's placement of the position in this unit should not be disturbed.

**ORDER**

Based on the above findings of fact and conclusions of law, the petition for unit clarification is hereby dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Christine A. Dardarian, Commission Chair

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

Dated: \_\_\_\_\_