

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

In the Matter of:

COUNTY OF SANILAC,
Public Employer-Petitioner,

Case No. UC07 D-016

-and-

TECHNICAL, PROFESSIONAL AND
OFFICEWORKERS ASSOCIATION OF MICHIGAN,
Labor Organization.

APPEARANCES:

Cohl, Stoker, Toskey & McGlinchey, P.C., by Bonnie G. Toskey, Esq., for the Public Employer

Martha A. Champine, Esq., Assistant General Counsel, Police Officers Association of Michigan, for the Labor Organization

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

On April 30, 2007, the County of Sanilac filed this petition seeking to clarify the bargaining unit status of the position of payroll clerk, which is currently included within a bargaining unit of nonsupervisory employees represented by the Technical, Professional and Officerworkers Association of Michigan (TPOAM or Union). In the Petition, the County asserts that the payroll clerk should be excluded from the TPOAM bargaining unit as a confidential employee. Pursuant to Section 12 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212, this case was assigned to David M. Peltz, Administrative Law Judge for the State Office of Administrative Hearings and Rules, acting on behalf of the Michigan Employment Relations Commission.

On June 9, 2008, the ALJ held a telephone conference call with the parties during which it was agreed that both the County and the Union would file position statements concerning whether the payroll clerk constitutes a confidential position as we have defined that term under PERA. The County filed its position statement on August 12, 2008. The TPOAM filed a response and summary of argument on September 15, 2008. In its response, the Union contends that the payroll clerk position is not confidential; the County already has numerous confidential positions, and Petitioner failed to meet its burden of establishing the need for any additional confidential exclusions.

Based upon the petition and the position statements filed by the parties in this matter, we find that an evidentiary hearing is not necessary. *Sault Ste Marie Area Pub Sch v Michigan Ed Ass'n*, 213 Mich App 176, 182 (1995); *Washtenaw Co*, 22 MPER 24 (2009). See also *MAPE v MERC*, 153 Mich App 536, 549 (1986). Accepting as true all the assertions of fact set forth by the County, we conclude that the duties of the payroll clerk are not an integral and necessary part of the collective bargaining process; therefore, the petition for unit clarification should be dismissed without a hearing.

Facts:

The County of Sanilac has six bargaining units and approximately 155 employees. The TPOAM bargaining unit includes full time and regular part time nonsupervisory employees in various departments throughout the County: including, building inspection, the clerk's office, payroll, general services, housing, the prosecutor's office, public works, register of deeds, sheriff's department, and the treasurer's office. According to Petitioner, one County position, the secretary to the board of commissioners, is currently excluded from collective bargaining as a confidential.¹ That employee works side-by-side with the payroll clerk.

In its position statement, the County summarizes the duties of the payroll clerk position as follows:

1. Serves as a liaison to all County Departments and Offices and Courts processing employee transactions. Provides training and direction to all County Departments and Offices on utilization of the personnel action request (par) [sic] system for maintenance on new hires, transfers, terminations, retirements, and other related payroll functions. The Payroll Clerk explains the County's payroll and fringe benefit policies and procedures for implementation to users.
2. Serves as liaison for employee transactions for agencies outside of the County, including third party administrator accounts, retirement and deferred compensation representatives, and hardware and software providers. Coordinates transactions and the provisions of employee information to such agencies.
3. Coordinates changes to the County's automated payroll system for all County positions ensuring that all personnel/payroll information is current and accurate. Finalizes PAR transactions by inputting data into the County system. Determines appropriate pension codes, assesses eligibility for union dues, instructs and determines eligibility for payoffs in compliance with the County's collective bargaining agreements. Inputs appropriate codes to ensure accurate processing of all step increases consist [sic] with the County's

¹ The Union asserts that in addition to the secretary to the board of commissioners, the "County Clerk, the County Treasurer, the Circuit Court Judge, the District Court Judge, the Probate Court Judge and the Friend of the Court all have confidential employees within their offices." Given our conclusion that Petitioner has failed to set forth any facts that would establish that the payroll clerk should be excluded as a confidential, it is not necessary that we resolve this dispute of fact.

- labor agreements, reviews all negotiation results to ensure accurate rate adjustments, step increases, and other charges are properly made for processes [sic]. New and ongoing changes to existing withholdings which include direct deposits, deferred compensation, savings bonds, and various other payroll withholdings. Calculates cumulative totals for year to date deduction and payroll deduction start and ending dates based on payroll endings.
4. Processes sick leave application [sic] including obtaining authorization from Department Heads and Elected Officials and processes accordingly.
 5. Processes various retirement forms, deferred status, refunds, and address/name/beneficiary change forms. Processes various unemployment forms, and runs an employee history report for gross wages and worker's compensation.
 6. Responsible for processing of accounts payable and receivable for payroll, verifying authorization, supporting documentation, and processes followed. Runs monthly budget reports for all payroll expenditures including wages and fringe benefits.
 7. Verifies for accuracy and completes biweekly payroll reports for employee accumulations, direct deposits, and for other adjustments made in the payroll system.
 8. Initiates and updates appropriate tables to implement changes within collective bargaining agreements for successor and new labor groups, including salary grids, taxable and pre-taxed tables, union dues, and job titles/position control directory.
 9. Explains the County's fringe benefits and policies and responds to all inquiries from employees and Department Heads.
 10. Runs vacation, personal leave, past days, and other programs to credit employees with leave time pursuant to collective bargaining agreements.
 11. Performs all retirement counseling and advising of options which is confidential in nature.
 12. Prepares all cost projections for collective bargaining proposals being offered by management and the union.
 13. Supervises the submission of all IRS required reports and state of Michigan payroll reports.
 14. Determines the accuracy and verifiability of payroll challenges [sic] including wages, longevity, and sick leave.
 15. Provides the County Administrator and the Board of Commissioners with ongoing expense calculations for budget monitoring purposes.
 16. Participates in collective bargaining on an indirect basis by being the sole source of all data regarding costing of wages and fringe benefits. Same is responsible for assisting in budget preparation. Reports directly to the County Clerk, the County Administrator, and the Board of Commissioners.

Discussion and Conclusions of Law:

Although PERA itself does not include a definition of a confidential employee, we have defined that term as one who formulates, determines, and effectuates management policy with

regard to labor relations, or an individual who assists in a confidential capacity to such a person. *St Clair Co Cmty Coll*, 2002 MERC Lab Op 406, 408; *Riverview Cmty Sch*, 1968 MERC Lab Op 419. In considering confidential status, we must balance the employer's need for a confidential employee against the employee's right to representation. The confidential exclusion is applied cautiously so as to fulfill PERA's purpose of providing employees with an opportunity to be represented and bargain collectively. *Pontiac Sch Dist*, 1997 MERC Lab Op 173; *City of Saginaw (City Attorney)*, 1991 MERC Lab Op 253; *City of Detroit*, 1969 MERC Lab Op 187, 193-194. We do not assume that because an employee is included in a bargaining unit, that the individual will breach his or her employer's confidence or misuse sensitive information. *City of Hazel Park*, 21 MPER 40 (2008); *Lapeer Co & 40th Judicial Circuit Ct*, 1998 MERC Lab Op 611, 620.

To allow public employers to have an employee available to directly assist in the preparation and handling of bargaining proposals during negotiations, we have permitted employers to exclude one employee as confidential without a specific showing of necessity. *River Valley Sch Dist*, 17 MPER 39 (2004); *Monroe Co Opportunity Program*, 2000 MERC Lab Op 289, 294. See also *Van Buren Co*, 2000 MERC Lab Op 328, 330 (where litigated, the exclusion is generally limited to one employee of an average size public employer). The employer bears the burden of showing justification for any additional exclusion. *City of Saginaw (City Attorney)*, 1991 MERC Lab Op 253; *Monroe Co Probate Ct*, 1990 MERC Lab Op 880, 884. It is well established that an employer's administrative convenience alone does not justify the exclusion of additional employees. *Williamston Sch*, 1994 MERC Lab Op 1062; *City of Saginaw*, 1994 MERC Lab Op 988; *City of River Rouge*, 1971 MERC Lab Op 603, 605. Rather, we limit the number of confidential exclusions to employees who are an integral and necessary part of the collective bargaining process. *Saginaw Co Rd Comm*, 1993 MERC Lab Op 227; *Swartz Creek Cmty Sch*, 1988 MERC Lab Op 848. See also *Marquette Pub Sch*, 1981 MERC Lab Op 896 (a confidential employee is one who is intrinsically involved in labor negotiations). The result of this limitation is that a public employer must often choose the individual who will be designated as confidential from a larger group of employees who perform confidential work. *City of Romulus*, 1971 MERC Lab Op 206, 208-209.

Having carefully reviewed the record in this matter, we find that Petitioner has not set forth facts which, if true, would establish the confidential status of the payroll clerk. The duties of the payroll clerk, which include personnel and contract administration functions typical of unionized clerical employees in the public sector, are not the kind of tasks that this Commission considers confidential labor relations duties sufficient to warrant the exclusion of an employee from the protection of PERA. See generally *Saginaw Administrative Services Dep't*, 1983 MERC Lab Op 505, 509; *Bloomfield Hills Pub Sch Dist*, 1983 MERC Lab Op 718, 724-726; *Detroit Central City Cmty Mental Health, Inc*, 1981 MERC Lab Op 620, 628-631. For example, we have consistently held that mere access to records not generally available to other employees, the union, or the public, such as personnel records or financial information, is not sufficient to make an employee confidential. See e.g. *City of Saginaw*, 1994 MERC Lab Op 988; *Riverview Cmty Sch*, 1968 MERC Lab Op 419; *L'Anse Creuse Sch*, 1972 MERC Lab Op 868. The act of assisting the employer in compiling wage data or costing out bargaining proposals is also insufficient to establish that an employee is performing a function with a critical nexus to labor relations negotiations. *River Valley Sch Dist*, 17 MPER

39 (2004); *City of Riverview*, 1983 MERC Lab Op 400. Accepting Petitioner’s assertions of fact as true, we conclude that none of the functions of the payroll clerk can be considered an integral and necessary part of the collective bargaining process so as to warrant exclusion of the position as a confidential employee.

Even assuming *arguendo* that some or even all of the duties performed by the payroll clerk were confidential, as we have defined that term, dismissal of the petition would nonetheless be warranted in this matter. The record establishes that the County has only about 155 employees and that one such employee, the secretary to the board of commissioners, has already been excluded from collective bargaining as a confidential. Where an employer has already been granted a confidential exclusion and seeks a further exclusion, the mere fact that an employee has been delegated certain confidential functions does not, standing alone, show the necessity of another exclusion from the bargaining unit. *Lake Co & Lake Co Sheriff*, 1999 MERC Lab Op 107, 113; *Wyandotte Pub Sch*, 1990 MERC Lab Op 425, aff’d sub nom *Wyandotte Pub Sch v Wyandotte Admin Ass’n*, unpublished opinion of the Court of Appeals, issued December 2, 1992 (Docket No. 130022). The employer must show that the confidential work cannot feasibly be reassigned to minimize the number of employees excluded. *Shelby Charter Twp*, 2001 MERC Lab Op 84; *Lapeer Co & 40th Judicial Circuit Ct*, 1998 MERC Lab Op 611. Here, the County has failed to set forth any facts that would demonstrate its need for more than one confidential exclusion. Compare *City of Dearborn Heights*, 2000 MERC Lab Op 218, in which we concluded that the employer had satisfied its burden by demonstrating that the collective bargaining workload of the confidential employees justified an additional exclusion from the unit.

We have carefully considered the remaining arguments of the parties, including Petitioner’s assertion that the continued inclusion of the payroll clerk in the TPOAM bargaining unit will create a “conflict of interest” for the individual currently holding that position, and conclude that they do not warrant a change in the result. For the reasons set forth above, we dismiss the petition for unit clarification.

ORDER

The petition for unit clarification filed by the County of Sanilac is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Christine A. Dardarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____