

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

In the Matter of:

DETROIT PUBLIC SCHOOLS,
Public Employer,

Case No. R09 C-047

-and-

POLICE OFFICERS ASSOCIATION OF MICHIGAN,
Labor Organization-Petitioner,

-and-

POLICE OFFICERS LABOR COUNCIL,
Labor Organization- Incumbent.

APPEARANCES:

Daryl Adams, Assistant Director, Office of Labor Relations, for the Public Employer

Ed Jacques, Director of Member Services, for the Petitioner Police Officers Association of Michigan

Brendan Canfield, for the Incumbent Police Officers Labor Council

DECISION AND DIRECTION OF ELECTION

On March 27, 2009, the Police Officers Association of Michigan (POAM or Petitioner) filed the above petition for a representation election among employees of the Detroit Public Schools (the Employer) pursuant to Section 12 of the Public Employment Relations Act (PERA), MCL 423.212. The petition seeks an election in a bargaining unit currently represented by the Police Officers Labor Council (POLC or Incumbent Union). The petition was assigned for hearing to Julia C. Stern, Administrative Law Judge (ALJ) for the State Office of Administrative Hearings and Rules, acting on behalf of the Michigan Employment Relations Commission. The petition was originally consolidated with a unit clarification petition (Case No. UC09 C-009) filed by Teamsters Local 214, a labor organization representing a different bargaining unit of the Employer's employees, and with an unfair labor practice charge (Case No. C09 G-103) filed by Teamsters Local 214 against the Employer. Hearings on the consolidated cases were conducted by the ALJ on September 3, October 6, and October 30, 2009, and September 1, and September

8, 2010. Pursuant to Sections 13 and 14 of PERA, and based upon the evidence presented at these hearings and on findings made by us in a separate decision on the unit clarification petition, *Detroit Pub Sch*, 23 MPER _____ (2010), the Commission finds as follows:

The Petition, Background and Procedural History:

The petition seeks an election in an existing unit described in the petition as “all police officers employed by the Detroit Public Schools Department of Public Safety.” Historically, this unit has consisted of nonsupervisory fingerprint technicians and police officers employed in the Employer’s department of public safety. The police officers are required to be police officers certified by the Michigan Commission on Law Enforcement Standards (MCOLES), a division of the Michigan State Police. In early 2009, the unit was represented by the Incumbent POLC and consisted of approximately fifty-five certified police officers. Teamsters Local 214 represented another bargaining unit consisting of nonsupervisory security officers in the Employer’s Department of Public Safety.

In December 2008, the Incumbent POLC and the Employer signed an agreement to add a new classification, campus security police officer (CSPO) to the Incumbent’s unit. The Employer apparently intended the CSPOs to be “private security police officers,” a category of public safety officer recognized under the Private Security Business and Security Alarm Act, 1968 PA 330 (Act 330), as amended, MCL 338.1051-338.1092. Private security police officers are not certified police officers. The Employer posted the CSPO position in January 2009, and hired ten CSPOs on March 16, 2009. However, Act 330 imposes certain requirements on employers before they can employ private security police officers. Since the Employer had not met these requirements, the newly-hired CSPOs were assigned to work as security officers. The CSPOs continued to work as security officers until about December 12, 2009. On March 20, 2009, Teamsters Local 214 filed the unit clarification petition seeking to clarify its unit to include the CSPOs. In July 2009, Teamsters Local 214 filed unfair labor practice charges against the Incumbent and the Employer based on the Employer’s recognition of the Incumbent as the bargaining representative for the position.

When the representation petition was filed, the Incumbent and the Employer contended that the petitioned-for unit included the CSPOs. The Petitioner, the Incumbent, and the Employer agreed that an election should not be held on the petition until the Commission determined whether the CSPOs were properly included in Incumbent’s unit and, therefore, eligible to vote in the representation election. Accordingly, the representation petition was consolidated for hearing before the ALJ with the unit clarification petition and the unfair labor practice charge against the Employer.¹

Neither the Petitioner nor the Incumbent participated in the hearings conducted by the ALJ. On April 30, 2010, after three days of hearing, the ALJ issued a Decision and Recommended Order in the consolidated cases. The ALJ found that the Employer had not established the CSPO as a new position with defined job duties. She concluded that since

¹ The ALJ issued a Decision and Recommended Order recommending that the charge against the Incumbent, Case No. CU09 G-021, be dismissed on September 1, 2009. The case is currently pending before the Commission on exceptions.

employees with this title were working as security officers, the unit represented by Teamsters Local 214 should be clarified to include them. She also recommended that the Commission direct an election pursuant to the representation petition in a unit excluding the CSPOs.

On June 11, 2010, Petitioner POAM submitted a letter to the Director of the Bureau of Employment Relations asking that the cases be separated and an election be directed immediately in a unit excluding the CSPOs. In July 1, 2010, the Employer filed both exceptions to the Decision and Recommended Order and a motion to reopen the record to admit new evidence. The Employer asserted that, after the close of the record before the ALJ, it became qualified under Act 330 to employ private security police officers, the CSPOs completed the training required by that statute, and the Employer assigned them new duties. On July 15, 2010, we issued an order remanding this case to the ALJ to rule on the motion to reopen the record and, if she determined it appropriate, to conduct a hearing on the new evidence. The ALJ was further directed, when the record was again closed, to issue a separate supplemental decision and recommended order in Case No. C09 G-103. We indicated in our July 15 order that we would issue separate decisions in Case Nos. UC09 C-009 and R09 C-047. On August 13, 2010, the ALJ issued an order granting the motion to reopen the record. On September 1 and September 8, 2010, she held hearings on the new evidence. Although the Incumbent and the Petitioner were served with copies of the orders and notices of hearing, they did not participate in these hearings.

In the hearings held during September 2010, it was established that the Employer hired ten CSPOs in March 2009. Between March 2009 and September 2010, the Employer hired approximately forty additional CSPOs. In *Detroit Pub Sch*, 23 MPER _____ (2010), we concluded that that the CSPO was created as a new position in December 2009. We found that the new position shared a community of interest with both the Incumbent's unit and the unit represented by Teamsters Local 214, and that the Employer's placement of the position in the Incumbent's unit was reasonable. We concluded, therefore, that the unit clarification petition should be denied.

Discussion and Conclusions of Law:

As discussed above, the parties to this case agreed that an election should not be held on the petition until we determined whether the CSPOs were appropriately included in the unit covered by the petition. In our Decision and Order in Case No. UC09 C-009, we determined that they are appropriately part of this unit. Since the parties also agreed that there were no other issues to be determined by the Commission, we will direct an election in a unit including the CSPO classification, subject to the Petitioner POAM establishing a showing of interest in this unit. Since the unit in which we are directing an election is substantially larger than the unit named in the petition, Petitioner shall be given a reasonable time to supply an additional showing of interest sufficient to support its participation in an election in this unit. See *Hastings Area Sch Dist*, 17 MPER 55 (2004); *City of Southfield*, 1989 MERC Lab Op 684. As indicated in the attached direction of election, the Employer shall prepare a list of the employees in the bargaining unit, including CSPOs, as of the date of this decision and shall provide the list to the Commission's election officer, the Petitioner, and the Incumbent within ten working days of the date of this decision. Petitioner POAM shall have ten working days from the date it receives this list to supply additional showing of interest cards to support its participation in an election for the

expanded unit. See *City of Wayne v Michigan Council 25, AFSCME, AFL-CIO, Local 290, Wayne Chapter*, 166 Mich App 207 (1987), aff'g *City of Wayne*, 1986 MERC Lab Op 674. If Petitioner fails to establish an adequate showing of interest in this expanded unit, its petition shall be dismissed. If an adequate showing of interest is established, an election shall be directed as follows:

ORDER DIRECTING ELECTION

We conclude that a question concerning representation exists within the meaning of Section 12 of PERA. If the Police Officers Association of Michigan indicates that it is interested in representing the expanded unit, including the campus security police officers, and makes an adequate showing of interest within ten working days of the date of its receipt of the list of employees eligible for inclusion in the expanded unit, we will direct an election in the following unit:

All full-time and regular part-time police officers, campus security police officers, and fingerprint technicians employed by the Detroit Public Schools in its department of public safety, but excluding supervisors and all other employees.

Pursuant to the attached Direction of Election, employees in the above unit shall vote whether they wish to be represented by the Police Officers Association of Michigan, by the Police Officers Labor Council, or by neither labor organization.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Christine A. Dardarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

DIRECTION OF ELECTION

IT IS HEREBY ORDERED THAT AN ELECTION BY SECRET BALLOT SHALL BE CONDUCTED AMONG THE EMPLOYEES WITHIN THE UNIT OR UNITS FOUND TO BE APPROPRIATE IN THE COMMISSION'S DECISION ON THIS MATTER. THE CHOICES ON THE BALLOTS SHALL BE AS SET FORTH IN THE COMMISSION'S DECISION.

ELIGIBLE TO VOTE ARE THOSE EMPLOYEES DESIGNATED IN THE ORDER DIRECTING ELECTION.

INELIGIBLE TO VOTE ARE EMPLOYEES WHO HAVE QUIT OR BEEN DISCHARGED FOR CAUSE, AND WHO HAVE NOT BEEN REHIRED OR REINSTATED BEFORE THE ELECTION DATE.

IT IS FURTHER ORDERED THAT THE EMPLOYER SHALL PREPARE AN ELIGIBILITY LIST IN ALPHABETICAL ORDER, CONTAINING ELIGIBLE VOTERS' NAMES AND ADDRESSES IN ACCORDANCE WITH THE ABOVE DESCRIPTION AND SUBMIT COPIES OF SUCH LIST TO THE EMPLOYMENT RELATIONS COMMISSION AND TO THE OTHER PARTIES WITHIN TEN WORKING DAYS OF THE DATE OF THE COMMISSION'S DECISION.

IT IS FURTHER ORDERED THAT THE ELECTION SHALL BE CONDUCTED AT SUCH TIME AND DATE AS A COMMISSION AGENT SHALL DETERMINE AFTER CONSULTATION WITH THE PARTIES.

IT IS FURTHER ORDERED THAT THE EMPLOYER SHALL CAUSE TO BE POSTED IN PROMINENT PLACES IN AND ABOUT THE PREMISES, SAMPLE BALLOTS AND NOTICES OF ELECTION (FURNISHED BY THE COMMISSION), SETTING FORTH THE TIME, DATE, AND PLACE OF THE ELECTION AT LEAST FIVE (5) DAYS PRIOR TO SAID ELECTION.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION