

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

In the Matter of:

DETROIT PUBLIC SCHOOLS,  
Public Employer,

Case No. UC09 C-009

-and-

TEAMSTERS LOCAL 214,  
Labor Organization-Petitioner,

-and-

POLICE OFFICERS LABOR COUNCIL,  
Labor Organization-Interested Party.

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**APPEARANCES:**

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

Wayne A. Rudell, for Petitioner

**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 by 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. Based upon the entire record, including evidence presented at hearings conducted on September 3, October 6, and October 30, 2009, and September 1 and September 8, 2010, and briefs filed by the Employer, Detroit Public Schools, and Petitioner, Teamsters Local 214, on or before February 3, 2010, and on November 3, 2010, the Commission finds as follows.

**The Petition, Background, and Procedural History:**

The above petition for unit clarification was filed on March 20, 2009, by Teamsters Local 214 (Petitioner). At the time the petition was filed, Petitioner represented a bargaining unit of approximately 240 nonsupervisory, school, public safety/security officers employed by

the Detroit Public Schools (the Employer) in its public safety department. Petitioner sought to clarify this unit to include public safety department employees with the title of campus security police officer (CSPO). The CSPO job title was created by the Employer around December 2008; it was placed in a bargaining unit represented by the Police Officers Labor Council (POLC) consisting of approximately fifty-four nonsupervisory police officers and fingerprint technicians in the public safety department. At the time the unit clarification petition was filed, there were approximately ten employees with the CSPO title. When the record in this case closed, there were approximately fifty. The security officers in Petitioner's bargaining unit, however, had been replaced by the employees of a private contractor.

The Employer's 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. The security officers were private unlicensed security guards subject to regulation under the Private Security Business and Security Alarm Act, 1968 PA 330 (Act 330), as amended, MCL 338.1051-338.1092. When the Employer created the CSPO title, it apparently intended the CSPOs to be "private security police officers," a separate category recognized by Act 330. On March 16, 2009, the Employer hired ten CSPOs. At that time, however, the Employer had not met the requirements of Act 330 for employing private security police officers. The newly hired CSPOs were assigned to work as security officers. The CSPOs were still working as security officers on October 30, 2009, when the first round of hearings in this case concluded.

When Petitioner learned that the CSPOs were not to be certified police officers, it objected to the placement of the position in the POLC unit. After the CSPOs were assigned to work as security officers, it filed the instant petition. In addition, on July 10, 2009, Petitioner filed unfair labor practice charges against the Employer (Case No. C09 G-103), and the POLC (Case No. CU09 G-021), challenging the lawfulness under PERA of the Employer's recognition of the POLC as the CSPOs' bargaining agent.<sup>1</sup> The unit clarification petition and charge against the Employer were consolidated for hearing before ALJ Stern, together with a petition for a representation election (Case No. R09 C-047) filed on March 27, 2009, by the Police Officers Association of Michigan (POAM) seeking an election in the unit represented by the POLC.

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 employees with this title were working as security officers, Petitioner's unit should be clarified to include them. She also concluded that the Employer had violated its duty to bargain under Section 10(1)(e) of PERA by conduct which included refusing to recognize Petitioner as the bargaining agent for the CSPOs. However, she recommended that the Commission dismiss allegations that the Employer's recognition of the POLC as bargaining representative constituted unlawful retaliation against members of the security officers' unit in violation of Sections 10(1)(c) and 10(1)(d) of PERA.

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<sup>1</sup> On September 1, 2009, ALJ Stern issued a Decision and Recommended Order on Summary Disposition in Case No. CU09 G-021. She recommended that the charge filed by Local 214 against the POLC be dismissed for failure to state a claim under PERA. This case is currently before the Commission on exceptions.

In July 2010, the Employer terminated the security officers' employment and contracted with a private entity to perform their duties.<sup>2</sup> The Employer continues to employ both CSPOs and certified police officers.

On 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 to the ALJ to rule on the motion to reopen 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, 2010 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 and held hearings on the new factual assertions on September 1 and September 8, 2010.

Positions of the Parties on the Unit Clarification Petition:

Petitioner asserts that there are no significant differences between the duties and qualifications of security officers and CSPOs, even if the latter are now considered private security police officers under Act 330. It maintains that the Commission should recognize employees with this title as part of the security officers' unit which it has historically represented. It also argues that even if the CSPO position is considered a new position, the Commission should not defer to the Employer's decision to place this position in the POLC's unit because the decision was not made in good faith. It asserts that the Employer placed the CSPOs in the POLC's unit to retaliate against the security officers for positions taken by their unit at the bargaining table and for filing numerous unfair labor practice charges.<sup>3</sup> According to Petitioner, the Employer's placement of the CSPO position in the POLC's unit is just one of a series of actions taken by the Employer to erode Petitioner's unit.

The Employer maintains that the CSPO is a new position, with qualifications and duties different from those of a security officer. The Employer concedes that the CSPOs perform the essential duties previously performed by security officers, but asserts that they now have additional responsibilities. It also maintains that, as private security police officers under Act 330, the CSPOs have the legal authority to make arrests in circumstances where a security officer cannot do so, and that they can be and are required to carry a firearm while on duty. It asserts that the CSPOs share a community of interest with the certified police officers in the POLC's unit, and that its placement of the position in that unit was made in good faith and was appropriate.

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<sup>2</sup> In a charge still pending, (Case No. C10 G-175), Teamsters 214 alleges that the Employer violated its duty to bargain by unilaterally subcontracting this work and that the decision was unlawfully motivated.

<sup>3</sup> In December 2008, there were five pending unfair labor practice charges filed by Teamsters Local 214 against the Employer.

In December 2008, the POLC signed an agreement with the Employer recognizing it as the bargaining agent for the CSPO classification. The POLC, although given notice, did not participate in the hearings conducted in this case. However, it has never changed its position that the CSPOs belong in its unit.

Findings of Fact:

Security Officers and Police Officers

The Employer has employed security officers in its department of public safety for many decades. In the late 1980s or early 1990s, it began employing certified police officers as well. Security officers and police officers were in the same bargaining unit represented by Petitioner until 1995, when Petitioner agreed to allow the police officers to form a separate unit. In 2006, the Employer was certified as an independent law enforcement agency pursuant to 2004 PA 378, MCL 28.581-28.590

Security officers and certified police officers were both supervised by certified police officers in the same chain of command. The supervisory officers were and are included in supervisory bargaining units that include employees outside the department of public safety.

At the time the unit clarification petition was filed, there were approximately 240 active security officers, while approximately eighty were on layoff. Most of the security officers were assigned to a school building. The security officers assisted administrators in keeping order within the school. Their duties included: patrolling within the school building; clearing hallways; operating metal detectors and searching bags when necessary; monitoring visitors to the school; confiscating prohibited items from students; breaking up fights; and responding to other disturbances or unusual incidents. Security officers were authorized by the Employer to subdue and detain unruly individuals or those who committed crimes in the school building. They carried handcuffs, but had no weapons. Security officers took individuals to the school's security office, patted them down for weapons, and held them there until they were released or picked up by police officers for transport to a police facility, such as a Detroit Police Department precinct house. Security officers frequently took students to the security office and held them there until they were released to their parents.

Security officers were told by the Employer that they had the authority to detain but not to arrest. The extent of the security officers' legal authority, and whether it differed from that of a private security police officer, became an issue at the hearing. Petitioner pointed out that physically preventing someone from leaving a school building, as the security officers regularly did, legally constitutes an arrest. Unlicensed security guards, like other private persons, have the authority to make arrests for felonies under some circumstances. However, they do not have the authority to make misdemeanor arrests. The authority of a "private person" to make an arrest is set out in MCL 764.16:

A private person may make an arrest in the following situations:

- (a) For a felony committed in the private person's presence.

(b) If the person to be arrested has committed a felony although not in the private person's presence.

(c) If the private person is summoned by a peace officer to assist the officer in making an arrest.

(d) If the private person is a merchant, an agent of a merchant, an employee of a merchant, or an independent contractor providing security for a merchant of a store and has reasonable cause to believe that the person to be arrested has violated section 356c or 356d of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.356c and 750.356d of the Michigan Compiled Laws, in that store, regardless of whether the violation was committed in the presence of the private person.<sup>4</sup>

Private persons who have made an arrest have the obligation to deliver the arrested person to a peace officer without unnecessary delay. MCL 764.

It is clear from the testimony that, within the public safety department, the term “arrest” is used to refer to situations where an individual, after being detained, is transported for booking to a Detroit Police Department precinct or juvenile facility. That is, the public safety department does not consider individuals to be “arrested” when they are held temporarily and then allowed to leave, as when a juvenile is held until his or her parent arrives.

As certified police officers employed by a police agency, the Employer’s police officers have the authority to arrest individuals for felonies and misdemeanors, both on and off the Employer’s property. The police officers can pursue individuals fleeing from a crime committed on the Employer’s property and can arrest individuals in the vicinity of, even if not on, the Employer’s property. The police officers carry weapons, including guns and pepper spray.

The majority of the Employer’s police officers are assigned to patrol in vehicles outside of a high school, including in the adjoining neighborhoods, and to respond to calls for assistance from security officers or others within school buildings. On an average school day, the Employer has fifteen patrol cars staffed with police officers. When the Employer employed security officers, a security officer at the building usually made the call for a police officer. Sometimes the security officers called police officers to assist with an incident in progress. However, the police officers were often called after the security officers had already detained an individual in the security office. When the police officers arrived at the school, they assisted the security officers and/or investigated the incident leading to the call. The police officers decided whether individuals should be arrested and transported to a City of Detroit police facility or whether some other type of action might be taken, such as writing an appearance ticket for a misdemeanor. The police officers were responsible for transporting

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<sup>4</sup> These sections are concerned with retail fraud.

arrested persons and for completing the necessary paperwork for arrest or detention of a juvenile in a juvenile facility. If the incident involved criminal property damage, the police officers prepared a police report.

Security officers also notified police officers when they confiscated narcotics or other illegal items. The security officers collected contraband and evidence from crimes occurring in their buildings and put these items in a lockbox in the building to maintain a chain of custody until the police officers picked them up. Police officers then took custody of the evidence or contraband and transported it to a police facility.

Security officers interviewed witnesses to crimes and other incidents. They prepared reports on all incidents, whether or not the incident involved a crime, and were required to keep detailed daily logs of their activities. Security officers were sometimes required to testify in court when they had witnessed a crime, although they were not considered to be the arresting officer.

Both security officers and police officers were also assigned to night response patrol. Night patrol officers patrol in vehicles outside school buildings, outside of school hours, and respond to alarms. Pairs of security officers and police officers patrolled at the same time, but not in the same cars. Security officers on night patrol duty were allowed to carry pepper spray; police officers had firearms. If security officers on night patrol found evidence of an attempted break-in, they inspected the area and secured the building. If they spotted an intruder or identified a point of entry, the security officers asked the Employer's dispatcher to send police officers to the scene. The security officers were authorized to handcuff and hold intruders until the Employer's police officers arrived. The police officers transported the arrestees to a police facility and completed the paperwork for the arrest. Insofar as the record indicates, security officers, even those on night patrol, did not accompany police officers to the police precinct.

Security officers performed a variety of other duties. They guarded vacant school buildings to protect them from vandalism. They provided security for community functions and after-school events. Some security officers served as dispatchers in the public safety department's communication control center. Security officers provided security in the Employer's central administrative offices, including the school district's Welcome Center. There were security officers assigned to the department's substations who performed semi-clerical functions, including timekeeping and the preparation of various reports. Several security officers also worked as guards/drivers for executive-level officials.

In addition to patrolling and responding to alarms, police officers performed a variety of duties where a show of force was necessary. They assisted in crowd control. At some schools, police officers regularly stood outside the building while school was letting out each day.

Security officers were not required to have previous experience or education other than a high school diploma or GED certificate. However, security officers received considerable training. New security officers were required to complete a formal off-site

training course which included courses taught by police officers. The length of the training was not clear from the record; different witnesses recalled their initial training as lasting from one week to four months. The Employer also regularly provided refresher training for its security officers. Subjects in which the security officers were trained at different times include: crimes and offenses, juvenile laws, procedures for confronting and detaining unruly persons, defensive techniques, securing evidence, radio communication, report writing, dealing with explosive devices, first aid and CPR, and crowd control. Security officers also received bonus pay for having college degrees in certain disciplines, including criminal justice and psychology.

As noted above, the Employer's police officers are required to be certified as police officers by MCOLES. To be hired by the Employer as a police officer, an individual must present evidence of current certification or a pre-certification certificate showing completion of all the training necessary to become a certified officer. Certification requires completion of at least 594 hours of MCOLES-approved training, and there is a continuing education requirement. There is some overlap between the training required to become a certified police officer and the training the Employer provided to its security officers. However, the training required to become a certified police officer is much more extensive and police officers are trained on topics which were not included in the training the Employer provided to security officers.

#### Creation of the CSPO Position

In addition to regulating private security guards and security guard agencies, Act 330 allows any "person, firm, limited liability company, business organization, educational institution or corporation maintaining a private security police organization" to apply to become a "private security police agency" employing "private security police officers." Pursuant to Section 30 of Act 330, MCL 338.1080, private security police officers have the authority of a "peace officer as provided in MCL 764.15," to arrest persons without warrants when those persons are on their employer's premises, if the arrest is made during the private security police officer's hours of work and the private security police officer is wearing the full uniform of the employer. That is, with some exceptions, such as violations of the motor vehicle code, private security police officers have the same authority as certified police officers for both misdemeanors and felonies as long as they are on their employers' properties. Private security police officers clearly have the authority to make misdemeanor arrests, although their authority to write "appearance tickets" for misdemeanors in lieu of an arrest is in dispute. According to MCOLES representative John Steele, however, some courts enforce such tickets. Private security police officers, unlike private persons, also have the authority to arrest for felonies committed out of their presence if they reasonably believe the arrestee has committed the offense.

Act 330 authorizes private security police officers who do not have individual firearms licenses to carry firearms while protecting the property of their employers. Even private unlicensed security guards, however, can carry firearms on the job if they are individually licensed to do so. In practice, employers of both unlicensed security guards and private

security police officers who require their employees to carry firearms usually require them to obtain individual concealed weapons (CCW) permits<sup>5</sup>.

In order to become a private security police agency, the educational institution or other employer must apply for and receive a private security police agency license from the Michigan State Police. To obtain the license, the employer must designate a representative to be the license holder, purchase a surety bond, and meet other requirements. The license application must be approved by the prosecutor of the county and either the county sheriff or chief of police in whose jurisdiction the private security police agency is to operate.

Each private security police officer employed by a licensed private security police agency must complete a course of training approved by MCOLES specifically for licensed private security police officers. This course consists of a minimum of 90 to 120 hours of training, including classes in criminal law and procedure; civil law and diversity; CPR/first aid; non-violent intervention; emergency preparedness; subject control without the use of a firearm; and patrol operations. If the private security police officer is to carry a firearm, additional hours of training are required in firearms familiarization or proficiency. Private security police officers are also required to attend annual MCOLES' approved refresher training.

The Employer engaged in internal discussions regarding the creation of a classification of private security police officers in 2004 or 2005 and again in 2007. On December 17, 2008, the Employer and the POLC signed a letter of agreement recognizing the POLC as the bargaining agent for a CSPO position, modifying their collective bargaining agreement to include the position, and providing separate seniority lists for police officers and CSPOs. The Employer was not a licensed private security police agency at that time.

On January 6, 2009, the Employer posted the CSPO position and invited applications. The position required only a high school diploma or GED. However, the posting stated:

Selected candidate must complete a basic Security-Police Training Course as required by the Michigan Commission on Law Enforcement Standards. Please see Michigan.gov for details regarding MCOLES.

Service as a campus security police officer will be considered in selecting future public safety police officers.

According to the posting, the salary range for the position was to be \$15.58 to \$17.55 per hour. The record does not indicate what police officers or security officers were paid at that time. Witnesses testified that the wage rate of the CSPO was either \$0.15 or \$0.80 more per hour than that of a security officer. Security officers at the top of their pay scale who interviewed for the CSPO position were assured that they would not suffer a drop in pay.

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<sup>5</sup> At one time, security guards could not carry concealed weapons on the premises of schools and other selected locations, even if the employees had CCW permits. However, MCL 28.425o(4)(b) now exempts those employed to provide security services from this prohibition. In other words, in 2010, a school district such as the Employer can employ armed security guards who are not private security police officers if it chooses to do so.



From the responses it received to the posting, the Employer selected ten individuals for the CSPO position. Nine of the ten had been working as security officers for the Employer. An orientation meeting was held for the new CSPOs on March 16, 2009. At this meeting, the Employer explained to the CSPOs that after they received additional training, they would have arrest authority and would carry a weapon. They were told that they would go to court as the arresting officer and that this would free up police officers for other duties. The employees received their new job titles and a new pay rate effective March 16, 2009. The Employer began deducting dues from the paychecks of CSPOs and transmitting them to the POLC in the pay period following March 16, 2009. However, the CSPOs were given security officer uniforms and assigned to work in school buildings as security officers. Between March and the end of October 2009, the CSPOs were assigned to ride along with police officers and received some training in how to fill out arrest reports. However, they continued to work as security officers.

Between March 2009 and December 2009, the Employer entered into a contract or contracts with a third party to provide security services at selected schools. During that period, additional security officers were laid off. The layoffs did not include any employee with a CSPO title. The Employer did not fill security officer vacancies created by the promotion of security officers to CSPO. Consequently, the total number of security officers decreased during this period.

Roderick Grimes became chief of the public safety department on June 18, 2009. Either shortly before or shortly after he became chief, he was told by the former deputy chief that the department had hired CSPOs to be Act 330 private security police officers, but was waiting for approval from Kym Worthy, the Wayne County Prosecutor. Grimes was not aware, at that time, that Worthy's approval was part of the licensing process, although he was aware that the Employer would have to send the CSPOs to specialized training. In early July 2009, Grimes learned from Worthy that she had serious reservations about the Employer's plan to put private security police officers in the schools and that she was not going to approve giving the employees the additional authority. On August 14, 2009, Grimes' supervisor, John Bell, sent an email to Worthy asking her to approve the Act 330 request "in view of the new leadership at DPS and Public Safety." The email also referred to the scheduled hearing on the unit clarification petition. Bell represented to Worthy that the CSPOs had been moved to a supervisory unit in anticipation of receiving management responsibilities, but that "Teamsters Local 214 is attempting to get them back." Worthy replied in an August 16 email that "with some trepidation" she was approving Bell's request to create a classification of private security police officers, but that she, Bell, and Grimes still needed to meet.

When the initial hearings in this case concluded on October 30, 2009, the Employer had entered into an agreement with Schoolcraft College to provide Act 330 training for the CSPOs, but had not yet set a date for the training. It had also reached an agreement with Worthy under which the prosecutor's office would provide some additional training to the CSPOs. The Employer had not yet filed its license application with MCOLES.

Sometime between September 3 and November 5, 2009, the Employer posted the CSPO position again and selected fifteen additional CSPOs. This time the position was open only to internal candidates, and all fifteen candidates selected worked for the Employer as security officers. Sometime after October 30, 2009, the Employer's designee submitted his application for a private security police agency license to MCOLES. Between November 5 and December 9, 2009, twenty-five CSPOs, including those hired in March 2009, attended 167 hours of Act 330 training at Schoolcraft College. The training covered all the core subjects required by MCOLES, including 36 hours of legal training, critical incident management, and report writing, plus firearms training, risk management, and techniques for physically subduing resistant subjects without using firearms. The curriculum also included nineteen hours of nonmandatory training in subjects such as management and supervision, gang recognition, narcotics, and reporting crimes in schools. At the end of the course, the CSPOs were required to take an examination. All twenty-five passed the course. At a graduation ceremony held on December 9, 2009, they were given a certificate/identification card from MCOLES. On the same date, the Employer's designee received the Employer's private security police agency license from MCOLES.

In early 2010, the Employer posted the CSPO position for the third time and hired twenty-five new CSPOs, all of whom formerly worked for the Employer as security officers. Between March 5 and April 12, 2010, the new CSPOs attended the same 167 hour Act 330 training course at Schoolcraft College. They received their private security police officer certificates on April 12, 2010.

As noted above, all but one of the now fifty CSPOs were formerly employed by the Employer as security officers. The Employer did not recall any laid off security officers to fill the vacancies created by their hire. In July 2010, the remaining security officers were terminated after their work was subcontracted.

#### Current Job Duties of the CSPOs

Beginning with the next working day following their completion of Act 330 training, all the CSPOs in the December 2009 class were assigned to high schools. Some of the CSPOs in the second class were assigned to high schools and others to buildings housing kindergarten through eighth grade classes. Like security officers and police officers, CSPOs are supervised by police officers with a supervisory rank.

Like the security officers, CSPOs patrol halls, monitor visitors, and, in general, maintain order in the school building to which they are assigned. Since December 2009, however, each CSPO assigned to a building has been the leader of a team, first of security officers and then of security guards employed by the contractor. As team leaders, CSPOs provide assistance and direction to the security guards on their team. As one CSPO testified, this responsibility became more significant after the Employer replaced its security officers with contracted employees. Prior to the subcontracting, the CSPOs made up lunch schedules for their team and assigned security officers to specific locations within the building; they now assist the contractor's supervisors with these tasks. As team leaders, the CSPOs are responsible for checking all the security equipment in the building and insuring that reports

and other types of paperwork are completed and properly submitted. They also meet with building principals to devise security plans for their buildings.

At about the same time that the CSPOs received their Act 330 training, the Employer also trained them to prepare and submit arrest and other types of reports electronically through the Detroit Police Department's CRISNET system, as the police officers had been doing. As a result, the CSPOs do not fill out paper incident reports as the security officers did, but submit reports through the CRISNET system. Some of the high schools to which the CSPOs are assigned have CRISNET terminals, and the public safety department also has a CRISNET terminal at its headquarters.

Currently, when an individual is arrested and transported to a police facility, an arrest report is prepared and submitted through the CRISNET system either by a police officer or by a CSPO. The prosecutor's office, among others, has access to this arrest report. Whoever fills out this report becomes the arresting officer responsible for, among other things, appearing in court if it is necessary to testify about the circumstances of the arrest. Police officers, of course, also continue to make arrests, and when both police officers and CSPOs are involved in an incident that results in an arrest, either a police officer or a CSPO may be the arresting officer. CSPOs are authorized to transport arrested persons to police facilities. However, CSPOs assigned to school buildings are not assigned vehicles. The record indicates that currently only police officers transport arrested persons and evidence from school buildings to police facilities.

As noted above, as private security police officers under Act 330, CSPOs have the authority to arrest for misdemeanors. Some CSPOs also have been given ticket books to write misdemeanor appearance tickets, although it is unclear whether any have started issuing them.

Beginning in April 2010, some CSPOs were assigned to night response patrol. CSPOs gradually replaced security officers. Currently, night patrol consists of teams of CSPOs and teams of police officers patrolling in separate cars. As when security officers patrolled, when CSPOs on night patrol discover an intruder in a building, they detain/arrest the intruder until police officers arrive, and the police officers transport the intruders to a police precinct. Unlike the security officers, however, the CSPOs sometimes follow the police officers to the police precinct to complete the arrest report.

After completing their Act 330 training, the CSPOs were given a security belt with a baton and chemical spray, as well as handcuffs. At some point, the CSPOs were also assigned firearms to carry while on duty. Before they could receive one, however, the Employer required them to obtain individual CCW permits. Some of the CSPOs already had CCW permits, and others obtained them. When the hearing closed, between five and seven CSPOs had not yet obtained CCW permits. These CSPOs were not carrying firearms on the job. Eventually, however, all CSPOs will be required to have CCW permits and carry firearms.

Dispatching duties in the public safety department, formerly performed by security officers, are now done by clerical employees. It is unclear from the record whether CSPOs

guard vacant buildings, provide security at the Welcome Center, or perform the other miscellaneous tasks that security officers once did.

Discussion and Conclusions of Law:

It is well established that an employer cannot lawfully remove a position from its existing unit simply by changing its title. *City of St Clair Shores*, 1988 MERC Lab Op 485, 490. An employer does not have the right to reclassify a position and unilaterally remove it from its bargaining unit without a change in its job duties. *Ingham Co*, 1993 MERC Lab Op 808, 812. Moreover, an employer violates its duty to bargain if it removes a position from a bargaining unit without the union's agreement or an order from the Commission. *City of Grand Rapids*, 19 MPER 69 (2006); *Livonia Pub Sch*, 1996 MERC Lab Op 479, 483; *Northern Mich Univ*, 1989 MERC Lab Op 139, 148.

At the time this petition was filed in March 2009 and in October 2009 when the first round of hearings ended, the CSPOs had no duties other than those of a security officer. The CSPOs continue to perform the work of a security officer. Since December 2009, however, the CSPOs have had additional responsibilities. They serve as work leaders for teams of security officers/guards, help make work assignments, provide assistance and advice, and make sure that reports are properly submitted. As the record indicates, while the security officers regularly detained individuals, they had no more authority to arrest than a private person. As private security police officers, the authority of the CSPOs to detain and arrest suspects for both misdemeanors and felonies is much better defined. As a consequence, they now fill out and submit arrest reports for individuals who are transported to police facilities for booking. When they do so, the CSPOs become the arresting officers in place of the police officers. At least some CSPOs have also been given books to write misdemeanor appearance tickets. Finally, the CSPOs have weapons, including pepper spray and batons, and all will eventually carry firearms. With weapons, CSPOs are now qualified to perform those duties, formerly restricted to police officers, where a show of force is necessary.

The current qualifications for the CSPO position are also different from those of a security officer. The security officers received a substantial amount of training, perhaps equivalent to that required of a private security police officer. However, the CSPOs are required to complete a course of training specifically approved by MCOLES and to pass a test at the completion of this training. We find that in December 2009, the Employer created the CSPO as a new position with job duties and qualifications different from those of the security officers.

In determining whether a new position shares a community of interest with an existing bargaining unit, the Commission considers 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, the amount of interchange or transfer, whether the position's function is integrated with that of the bargaining unit, and common promotion ladders and/or common supervision. *Grosse Pointe Pub Library*, 1999 MERC Lab Op 151, 156; *Covert Pub Sch*, 1997 MERC Lab Op 594, 601; *Saginaw Valley State Coll*, 1988 MERC Lab Op 533, 538. However, we do not determine

relative degrees of community of interest or attempt to find the "optimum" or "most" appropriate unit. *Lansing Sch Dist*, 22 MPER 96 (2009); *City of Lansing, Bd of Water & Light*, 2001 MERC Lab Op 13, 16; *Henry Ford Cmty Coll*, 1996 MERC Lab Op 374, 380. When two unions claim a position, we defer to an employer's reasonable decision to place the position in one of the units, provided that the position shares a community of interest with that unit so that the unit is appropriate for collective bargaining. *City of Bay City*, 16 MPER 31 (2003); *Swartz Creek Cmty Sch*, 2001 MERC Lab Op 372, 375.

Since the early days of PERA, we have consistently held that units consisting of only public safety employees are appropriate. In *City of Escanaba*, 1966 MERC Lab Op 451, the public safety employees were certified police officers. However, in *Huron-Clinton Metro Auth*, 1972 MERC Lab Op 769, we concluded that a unit of park rangers, ranger aides, and dispatchers employed by a park authority formed a separate appropriate unit based on their law enforcement responsibilities. In *Grand Valley State Coll*, 1978 MERC Lab Op 629, we found appropriate a unit consisting of five sworn campus safety and security officers, rejecting the employer's argument that they should be included in the same unit with clerical and technical employees. In *Henry Ford Hosp*, 1973 MERC Lab Op 78, we held that armed, uniformed hospital security guards employed by a hospital constituted a separate appropriate unit. In *Detroit Bd of Ed*, 1973 MERC Lab Op 471, we held that the Employer's security officers, before the Employer began employing certified police officers, constituted an appropriate unit based on the police training the security officers received and the police duties they performed.

In this case, the police officers, the CSPOs, and the security officers within the Employer's department of public safety shared responsibility for protecting the safety of individuals and property on the Employer's premises. They often worked together, their functions were integrated, and they had regular daily contact. They had common supervision. Although the Employer's police officers, as employees of a school district rather than a city, county, village, or township, are not subject to interest arbitration under section two of 1968 PA 312 (Act 312) MCL 423.232, they are required to have the same training required of other certified police officers. However, the other two classifications also received significant amounts of training in some of the same subjects. The duties and qualifications of the police officers, CSPOs, and security officers were not identical, and they had different wage scales. Their interests, accordingly, were not identical. We conclude, however, that based on their common function as public safety officers and the other factors noted above, the security officers, CSPOs, and police officers shared a community of interest. Accordingly, we find that the CSPOs share a community of interest with the unit of police officers in which they were placed by the Employer.

We also conclude that the Employer's placement of the CSPO position in the police officers' bargaining unit was reasonable. The CSPOs, like the police officers, have well-defined police powers, even though the CSPOs' exercise of these powers is limited to the Employer's premises. The CSPOs, like the police officers, are armed. The CSPOs, like the police officers, must meet standards set by MCOLES.

Petitioner asserts that we should not defer to the Employer's decision to place the CSPOs in the police officers' unit because this decision was made in bad faith and for discriminatory reasons. This claim has also been made in an unfair labor practice charge, Case No. C09 G-103. We do not normally adjudicate unfair labor practices in a representation proceeding. We find that the issue of the Employer's motive should be adjudicated as part of the charge, and we will not address it here.

For reasons discussed above, we conclude that the CSPOs share a community of interest with the bargaining unit represented by the POLC in which they were placed by the Employer, and that their placement in this unit was appropriate.

**ORDER**

Based upon the above findings of fact and conclusions of law, the petition filed by Teamsters Local 214 to clarify its bargaining unit of security officers to include the classification campus security police officer is hereby denied.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

\_\_\_\_\_  
Christine A. Derdarian, Commission Chair

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

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