

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

In the Matter of:

CITY OF WARREN,
Public Employer,

-and-

AFSCME COUNCIL 25 AND ITS AFFILIATED LOCAL 1917,
Labor Organizations-Petitioners,

-and-

AFSCME LOCAL 1250,
Labor Organization-Interested Party.

Case No. UC11 I-014
Docket No. 11-000704-MERC

APPEARANCES:

McConaghy & Nyovich, P.L.L.C., by Robert Nyovich, for the Public Employer

Miller Cohen, P.L.C., by Teri Dennings, for the Petitioners

Gary Shimer, Staff Representative, AFSCME Council 25, for AFSCME Local 1250

DECISION AND ORDER ON PETITION FOR UNIT CLARIFICATION

Pursuant to §13 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.213, this case was heard at Detroit, Michigan, on June 21, 2012, by Julia C. Stern, Administrative Law Judge (ALJ) for the Michigan Administrative Hearing System, acting on behalf of the Michigan Employment Relations Commission. Based on the entire record, including post-hearing briefs filed on or before September 7, 2012, we find as follows:

The Petition and Positions of the Parties:

Petitioners, AFSCME Council 25 and its affiliated Local 1917, represent a bargaining unit of supervisory employees employed by the City of Warren. On September 12, 2011, Petitioners filed a unit clarification petition to clarify the unit to include the position senior payroll technician. The senior payroll technician was created in January 2011 to replace a position in Petitioners' unit, payroll supervisor, after the individual holding that position retired.

The Employer placed the senior payroll technician position in a bargaining unit of full-time nonsupervisory employees represented by AFSCME Local 1250.

Petitioners maintain that the senior payroll technician should be included in the supervisory unit because it is a supervisory position, performs the same duties formerly performed by the payroll supervisor, and shares a community of interest with Petitioners' bargaining unit. The Employer denies that the senior payroll technician is a supervisor as the Commission defines that term and asserts that it appropriately placed the position in the nonsupervisory bargaining unit represented by AFSCME Local 1250. Local 1250 appeared at the hearing for the sole purpose of stating that it did not oppose the petition.

Findings of Fact:

From about 1988 until she retired in December 2010, Kathy DeVooght was employed by the Employer as a payroll supervisor. From 2001 until the summer of 2010, the Employer's payroll function was part of its Controller's Office. During that period, DeVooght oversaw the entire payroll process, which included doing billings for health and dental insurance, calculating employees' deductions and transmitting money to employees' 401(k) plans, issuing employee W-2 forms, and doing tax deposits. DeVooght supervised the work of two full-time employees, payroll technician Tina Zumbrunnen and account specialist Rochelle Ovenshire, and a third employee within the Controller's Office who was assigned part-time to assist with payroll. Ovenshire, Zumbrunnen, and the part-time employee inputted hours and other information into the payroll system, calculated and entered out-of-class pay and compensatory time, and ran paychecks. In addition to supervising the work of her subordinates, DeVooght checked and responded to error messages generated by the payroll system, reviewed and signed off on each payroll, manually issued and voided checks when necessary, and handled other payroll problems when they arose. She was responsible for running payroll summaries each pay period and prepared quarterly payroll reports and a variety of other reports, including reports sent to the federal government and to the State Unemployment Insurance Agency. DeVooght also calculated employees' payoffs when they retired or otherwise left their employment and communicated with employees, departments, and outside agencies concerning payroll matters. DeVooght's position was included in Petitioners' supervisory unit. The other payroll positions were part of the unit represented by AFSCME Local 1250.

DeVooght assigned work to the employees under her and oversaw and reviewed their work. She also approved their time off and tracked their attendance. However, she testified that she did not have the authority to issue any type of written discipline. She also testified that when a vacancy arose in a payroll position the Controller consulted her, but that the Controller made the final decision as to who would be assigned to the job.

In July 2010, the Employer, as part of a downsizing move, created a Human Resources Department that incorporated its payroll, labor relations, risk management, and personnel functions. The employees responsible for payroll were physically relocated to share office space with other employees of the new department. DeVooght continued to perform her same duties as payroll supervisor, as did the payroll technician. However, the account specialist position and the part-time payroll position were eliminated. The account specialist, Ovenshire, bumped into

another position within the Human Resources Department, administrative clerical technician. This position has a more generic job description than her former position. For three weeks after the reorganization took effect, Ovenshire split her time between payroll duties and other duties within the Human Resources Department.

The new Human Resources Department consisted of nine employees. Denise Williams headed the department as the Director of Human Resources. DeVooght and Sandra Jones, whose title was personnel analyst, were in Local 1917's supervisory unit. Three positions: an administrative clerical technician, a payroll technician, and a position titled senior risk management technician, were in Local 1250's bargaining unit. Another employee, Mark Simlar, was included in a bargaining unit of professional employees represented by another union. The other two employees in the department were unrepresented.

Three weeks after the 2010 reorganization, Ovenshire, the administrative clerical technician, went on a medical leave. In December 2010, while Ovenshire was still on leave, DeVooght announced her retirement. DeVooght's last day of work was December 13, 2010. In early January 2011, after DeVooght's departure, the Employer eliminated the payroll supervisor position. It created a new position, senior payroll technician, and placed it in Local 1250's bargaining unit. Zumbrunnen, the former payroll technician, was awarded the new position, while the payroll technician position was left vacant.

The new senior payroll technician position was initially assigned most of the duties formerly performed by DeVooght. However, Human Resources Director Williams decided not to give the new position supervisory responsibilities because, in her judgment, the Human Resources Department did not need a separate supervisor for payroll employees. Personnel analyst Sandra Jones was given the authority to supervise all employees in Local 1250's unit, including the senior payroll technician, for purposes of monitoring attendance, approving time off, and enforcing work rules. Jones, in addition to Williams herself, was given the authority to issue discipline to these employees. According to Williams, after the departure of DeVooght, Williams and Jones were the only individuals within the Human Resources Department with the authority to issue written discipline. Jones also took over the responsibility for preparing reports on and tracking vacations and sick leave use for all department employees, a function DeVooght performed for payroll employees before she retired.

On January 3, 2011, Ovenshire returned from medical leave. Ovenshire was not promoted to the vacant payroll technician position and continued to be paid as an administrative clerical technician. However, after her return from leave, Ovenshire spent all of her time performing payroll work under the direction of the senior payroll technician, Zumbrunnen.

In late January, Petitioners demanded that the Employer place the senior payroll technician in the supervisory unit and requested a special conference to discuss its unit placement. After the Employer failed to respond to the request, Petitioners filed several grievances that the parties agreed to hold in abeyance pending a decision on this unit clarification petition.

In late March 2011, Zumbrunnen went on a medical leave from which, at the time of the hearing in June 2012, she had not yet returned. Ovenshire assumed most of the duties of the senior payroll technician and began receiving out-of-class pay for that job.

Some of the tasks previously performed by payroll employees were distributed to other employees in the Human Resources Department either immediately after DeVooght left, or later, after Zumbrunnen went on medical leave. Director Williams took over calculating final payoffs for departing employees and assumed responsibility for overseeing and reviewing all payroll reports before they were issued. The responsibility for auditing and reconciling monthly health and dental insurance statements, formerly a responsibility of payroll, was split between Director Williams and the benefits administrator. The benefits administrator also took over responsibility for auditing and reconciling monthly life and short-term disability insurance payment statements. In addition, Williams directed staff members to come to her if someone asked for specialty reports run from the payroll system, whereas formerly such requests had been directed to DeVooght. These included reports requested by accounting and by other Respondent departments, such as information on that department's overtime use.

In August 2011, the Employer, at Ovenshire's request, agreed to hire a part-time employee to assist Ovenshire with payroll. Part-time employees are excluded from Local 1250's bargaining unit. Lisa Lage, who was working as a part-time employee in another department, applied for the position. Williams and Ovenshire mutually agreed that Lage was the best candidate because she had previous payroll experience. Ovenshire trained Lage. She also trained three other employees within the Human Resources Department, the senior risk management technician, the assistant director of personnel, and the benefits administrator, to help with specific payroll functions on an as-needed basis. In January 2012, the Employer hired a temporary employee to prepare its W-2 forms for the tax year, and Ovenshire trained her and supervised her work.

As of the date of the hearing, Ovenshire was in charge of preparing the payroll and handling problems as they arose. However, she submitted the payroll and all reports to Williams for review and approval. Ovenshire directed, assigned, and reviewed Lage's work. Ovenshire was also authorized to ask the other Human Resources Department employees whom she trained in payroll for help when she needed it and to direct and review their payroll work. Williams testified, without contradiction that she and Ovenshire spoke about payroll matters almost on a daily basis. However, Ovenshire testified, also without contradiction, that no one regularly reviewed her work and that Jones did not have enough payroll experience to supervise payroll work. Ovenshire also testified that she understood that as a member of Local 1250's bargaining unit, she did not have authority to terminate or discipline any employee. She testified that she understood that if she had problems with any employee whose work she oversaw, she was to bring this to Williams' attention.

Discussion and Conclusions of Law:

Supervisory employees are permitted to organize under PERA. However, we are prohibited by §13 of PERA and §9(e) of the Labor Relations and Mediation Act (LMA), MCL 423.9(e) from including supervisors and nonsupervisors in the same bargaining unit. *Dearborn*

Sch Dist v Labor Mediation Bd, 22 Mich App 222, 226 (1970). See also *City of Grand Rapids (Police Dep't)*, 17 MPER 56 (2004) and cases cited therein. As a result, employees with supervisory authority are placed in separate bargaining units from their subordinates, even though their day-to-day job duties may be substantially similar. *City of Detroit (DPW)*, 1999 MERC Lab Op 283, 287; *City of Mt Pleasant (Pub Safety Dep't)*, 1996 MERC Lab Op 425, 429.

PERA contains no definition of the term “supervisor.” In *East Detroit Sch Dist*, 1966 MERC Lab Op 60, we adopted the definition contained in §2(11) of the National Labor Relations Act, 29 USC §152(11):

The term “supervisor” means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature but requires use of independent judgment.

To qualify as a supervisor under PERA, an individual's responsibility to exercise authority with respect to the functions set forth above must involve the use of independent judgment, including effective authority in personnel matters, with the power to evaluate employees and recommend discipline. *City of Grand Rapids*, 19 MPER 69 (2006); *Lapeer Co*, 18 MPER 70 (2005), *Butman Twp*, 2000 MERC Lab Op 13, 16-17. It is the delegation of this authority, and not its exercise, which is indicative of a supervisor. *Mich Ed Ass'n v Clare-Gladwin Intermediate Sch Dist*, 153 Mich App 792, 797 (1986). Effective authority in personnel matters means that the employee's superiors generally accept his or her recommendation without an independent investigation. *Butman Twp* at 16; *Village of Paw Paw*, 2000 MERC Lab Op 370, 373. Employees who merely assign or oversee the performance of work by others on a routine basis are not supervisors under our definition. *Kalkaska Co and Sheriff*, 1994 MERC Lab Op 693, 698; *Berrien Co Sheriff*, 1999 MERC Lab Op 177, 187. An individual in charge of a particular project or function who determines how the work will be completed, decides which employees will do it, and ensures that it is completed properly, is not a supervisor unless the employee has an effective role in discipline and personnel matters. *Michigan Cmty Services, Inc*, 1994 MERC Lab Op 1055; *City of Grand Rapids (Police Dept)*, 17 MPER 56 (2004).

After the former payroll supervisor retired, some of her duties were reassigned to employees within the Human Resources Department other than the senior payroll technician. The senior payroll technician position is not, we find, simply the payroll supervisor position with a different title. However, the senior payroll technician is the only full-time employee within the Department with payroll expertise and continues to perform essential functions of the abolished payroll supervisor position.

Supervisory status is based not on the importance of the employee's role in the organization, but on the employee's authority in personnel matters. At the time of the hearing, the senior payroll technician, whose duties were being performed on an interim basis by Ovenshire, assigned payroll duties on a daily basis to a part-time employee and oversaw and reviewed her work and the work of other Human Resources Department employees assisting in

payroll. However, there is no evidence that she had the authority to hire, discharge, discipline, transfer, evaluate, or reward any employee or to effectively recommend any of these actions. As Ovenshire testified, if she has a problem with the work performed by Lage or the other employees in the Human Resources Department, she has been instructed to bring the problem to Williams' attention. Although Williams consulted with Ovenshire before selecting Lage to fill the part-time payroll position, the record does not indicate that Ovenshire effectively hired Lage. We find that the senior payroll technician position is not a supervisor as we define that term. Because Petitioners concede that their bargaining unit includes supervisors, we conclude that the Employer appropriately placed the newly-created senior payroll technician position in the bargaining unit of nonsupervisory employees represented by AFSCME Local 1250 rather than in the unit represented by Petitioners.¹

ORDER

Based upon the findings of fact and conclusions of law set forth above, the unit clarification petition filed by Petitioners, AFSCME Council 25 and its affiliated Local 1917, is hereby dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Edward D. Callaghan, Commission Chair

Nino E. Green, Commission Member

Robert S. LaBrant, Commission Member

Dated: _____

¹ We note that whether DeVoght was actually a supervisor and appropriately included in Petitioners' unit is not relevant to the question of the new position's unit placement.