

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

In the Matter of:

DELHI CHARTER TOWNSHIP  
Public Employer,

Case No. UC11 J-018

-and-

DELHI TOWNSHIP FIRE FIGHTERS,  
IAFF LOCAL 5359,  
Petitioner-Labor Organization.

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**APPEARANCES:**

Cohl, Stoker, & Toskey, P.C., by Sherry L. Hedrington, for the Public Employer

Michael L. O'Hearon PLC, by Michael L. O'Hearon, for the Petitioner-Labor Organization

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

Pursuant to the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.201-423.217, this case was assigned to Doyle O'Connor, Administrative Law Judge for the Michigan Administrative Hearing System, acting on behalf of the Employment Relations Commission. Based upon the entire record, including the transcript of an evidentiary hearing and briefs filed by both parties, the Commission finds as follows:

**The Petition and the Proceedings:**

Delhi Township operates a fire department that has fifteen full-time employees. The twelve full-time fire fighters are represented by Petitioner Local 5359 of the International Association of Fire Fighters. The only excluded full-time employees are the fire chief and fire marshal. The Township also employs part-time paid on-call volunteer fire fighters who are unrepresented. In July 2011, the Township received funding for a new full-time position of "recruitment and retention coordinator." The new position has firefighting duties; however, its primary function is the recruitment and training of the part-time paid on-call volunteer fire fighters. The position was filled by the transfer of an existing bargaining unit full-time fire fighter. In October 2011, the Union petitioned for the inclusion of the newly created position in its unit of all full-time fire fighters. No other unit seeks the inclusion of the position and the Employer has not proposed placement in another unit.

Based on the position statements of the parties, it appeared that there were likely no material disputes of fact warranting an evidentiary hearing. After briefing by the parties on that question, an evidentiary hearing was held, at which joint exhibits were introduced, and the testimony of the incumbent employee was taken.

#### Position of the Parties:

The Union asserts that the position shares a community of interest with the other full-time fire fighter positions. Moreover, the Union notes that there is no other unit which exists or which seeks inclusion of the position.

The Employer opposes inclusion of the position. The Employer does not seek to place the position in any other unit, there being none. The Employer does not assert that the position should be excluded from the bargaining unit because it is supervisory or confidential. Rather, the Employer seeks exclusion because it believes that the duties of the position are inconsistent with policy positions taken by the Petitioner's parent labor organization, the International Association of Fire Fighters (IAFF).

The IAFF, for both stated safety and institutional interests, opposes having its full-time fire fighters also serving as paid part-time volunteer fire fighters. The Employer asserts that the policy level opposition of the IAFF to certain uses of part-time fire fighters would place the recruitment and retention coordinator in an untenable position of conflict between his obligations to the Employer and his obligations or loyalties to the Union that seeks to represent the position he holds. Further, the Employer postulates that volunteer fire fighters, who might be aware of the IAFF opposition to certain uses of such part-timers, would not trust or feel comfortable relying on a recruitment coordinator who was in a bargaining unit represented by the IAFF, with such mistrust diminishing the usefulness of the position.

The Employer also initially asserted that it wanted the coordinator position to be full-time salaried and with a flexible schedule, unlike the hourly full-time fire fighters; however, that assertion was not pursued.

#### Findings of Fact:

The coordinator position is newly created and is not presently in a represented bargaining unit. The position reports to the fire chief and works out of the same location as the other fire fighters. The position is not supervisory and it is not assigned confidential labor relations functions. The Employer does not propose placing the position in another unit, and no other appropriate unit exists.

The position was created to foster the recruitment, training, and retention of part-time volunteer fire fighters. The Employer-promulgated job description assigned the primary function of the position as providing support to existing part-time on-call staff and new recruits; coordinating participation in education and training; conducting new hire orientations; conducting public relations efforts to support fire and EMS operations; and to serve as needed as a fire fighter or emergency medical technician.

The job description, under “Essential Functions,” paragraph 8, expressly provides that the coordinator: “Provides both fire/rescue & EMS support at incident scenes as may be required.” The job description also included the following employment qualifications:

**Education:** . . . Licensed by the State of Michigan as a Paramedic minimum. Certified by the State of Michigan as a Firefighter I and Firefighter II. State of Michigan certification at the Hazardous Materials Operations level

**Experience:** Minimum of 3 years of experience as a firefighter/paramedic in the fire services with supervisory experience preferred.

**Physical Requirements:**

Ability to walk over rough terrain.  
Ability to climb stairs and ladders.  
Bending, stooping, lifting, and carrying of a person or equipment.  
Operating rescue vehicles and related equipment

**Working conditions**

Works both indoors and outdoors in extreme temperatures.  
Works in enclosed, confined spaces.  
Exposure to hazardous materials, including odors of paint, vapors and gases.  
Exposure to fire, heat, smoke and fumes.  
Exposure to contagious diseases.  
Works in areas with loud noise.  
Works within the restrictions of personal protective equipment (self-contained breathing apparatus, fire fighter turnout clothing, hearing and eye protection, encapsulated suits etc.)

An incumbent experienced full-time fire fighter from the bargaining unit, Jeff Butcher, was offered and accepted the position. Butcher testified that he was concerned that some part-time on-call fire fighters would perceive him as unsupportive if he were seen by them as supporting the IAFF institutional position. Butcher also testified forthrightly that he has always carried out his duties as assigned by the Employer, regardless of any potential conflict with policy positions taken by the IAFF.

There were no questions of credibility to resolve and, no genuine disputes of material fact.

Discussion and Conclusions of Law:

As we held in *City of Detroit*, 23 MPER 94 (2010):

The starting premise of any decision on a representation case must be a reaffirmation that the fundamental function of the adoption of PERA in 1965 was to recognize and codify the right of public employees to collectively designate an

exclusive bargaining agent and to then compel their employer to deal with the workforce through the employees' collectively "designated or selected" representative, rather than individually. See MCL 423.209 & 423.211. PERA was enacted at the specific command of the people of Michigan, acting through their Constitutional Convention to adopt Const 1963, art 4, § 48. The statute was described by the Legislature as intended to "declare and protect the rights and privileges of public employees," with the fundamental Section 9 right being the right of employees to act through "representatives of their own free choice." MERC is "the state agency specially empowered to protect employees' rights." *Ottawa Co v Jaklinski*, 423 Mich 1, 24 n.10 (1985). The statute, as adopted, did not codify rights of employers or of labor unions, other than as derivative of employee rights. Rather, the statute placed restrictions on the conduct of employers and unions.

While a representation matter is treated as a non-adversarial proceeding, to the extent that there is a burden of proof, it falls upon the party that is attempting to deny the right to be represented for purposes of collective bargaining to a public employee covered by PERA. It is up to that party, in this case the Employer, to present evidence that inclusion of the position would be improper under the Act. *Lake Co & Lake Co Sheriff*, 1999 MERC Lab Op 107; 12 MPER 30028 (1999); *Antrim Kalkaska Cmty Mental Health*, 1998 MERC Lab Op 11, 15.

In designating a unit as appropriate for collective bargaining under § 13 of PERA, a primary objective is to constitute an appropriate unit that, in the circumstances of the particular case, is most compatible with the effectuation of the purposes of the law and that includes within a single unit all employees sharing a community of interest. *South Lyon Cmty Sch*, 19 MPER 33 (2006); *Hotel Olds v State Labor Mediation Bd*, 333 Mich 382 (1952). Community of interest is determined by examining a number of factors, including similarities in duties, skills, and working conditions, similarities in wages and employee benefits, amount of interchange or transfer between groups of employees, centralization of the employer's administrative and managerial functions, degree of central control of labor relations, common promotion ladders, and common supervision. *Saginaw Valley State Univ*, 19 MPER 36 (2006); *Covert Pub Sch*, 1997 MERC Lab Op 594, 601; *Grand Rapids Pub Sch*, 1997 MERC Lab Op 98, 106. Unit clarification is appropriate regarding a new position or where there has been a recent and significant change in duties assigned to an existing position. *Macomb Co Cmty Coll*, 2000 MERC Lab Op 165.

Further, it is Commission policy, whenever possible, to avoid leaving positions unrepresented, especially isolated ones. *Charlotte Pub Sch*, 1999 MERC Lab Op 68; *City of Muskegon*, 1996 MERC Lab Op 64, 70. Therefore, when a newly created position shares a community of interest with the unit that seeks to include it, we will accrete the position to the existing unit rather than leave it with a residual group of unrepresented employees. *Lake Superior State Univ*, 17 MPER 9 (2004); *Saginaw Valley State Coll*, 1988 MERC Lab Op 533, 538. Here, there is no other unit that seeks the position, nor does the Employer propose an alternative unit placement.

The Employer contends, in essence, that it prefers to treat the position as an exempt member of management. PERA, at MCL 423.213, precludes MERC from treating as a supervisor, and thereby exempting from a bargaining unit, any individual who is engaged in fire fighting functions and, as here, is subordinate to a fire commission, fire commissioner, safety director, or other similar administrative agency or administrator.

The coordinator position is a full-time employee required to have a fire fighting background and capability and to actually engage in fire fighting activities. The position is subject to the hazards of fire fighting, and like the rest of the unit, is therefore subject to Act 312, such that placement in the unit would not be inappropriate.

While the Employer did not ultimately press the issue related to the asserted difference in hours and compensation, such concerns would not preclude the requested unit clarification. Merely placing a new position within an existing bargaining unit does not determine all of the working conditions to be applied to that position, nor do incidental differences in modes of compensation preclude a finding of a community of interest. In *Delta Twp*, 24 MPER 4 (2011), we ordered the inclusion of a fire inspector in the unit even though that position worked a different schedule and had a different benefit package and earnings. Those differences are all mandatory bargaining subjects to be addressed by the parties.

We turn now to the gravamen of the Employer's objection to the inclusion of the recruitment and retention coordinator position in the bargaining unit. The Employer expresses concern that the incumbent would feel constrained by his loyalty to the Union or conflicted regarding the demands of his position, which arguably conflict with some policy positions of the Union. First, the argument conflates our placement of a position within a bargaining unit with a subsequent decision by an employee to join or not join a labor organization. Placement of a position in an appropriate unit fulfills the statutory mandate and promotes stable labor relations. Nothing about our decision whether to place a particular position in an appropriate unit is driven by an individual employee's hypothetical later decision on whether or not to join a union. Each individual employee makes the later decision of their own unfettered volition. Moreover, it is speculation to presume that an individual who chooses to join a particular union will then feel bound to any degree to agree with or carry out a particular policy position promoted by that union.

We are not unaccustomed to the issue of some members of a bargaining unit potentially having duties which could, or do, place them in conflict with the interests or views of other members of the bargaining unit. In an even sharper context of actual conflict between the interests of different members of a unit, we have indicated that we will not exclude from bargaining units employees who investigate activities of their coworkers, nor will we expand the definition of confidential or executive employee to cover such positions. *City of Detroit*, 1980 MERC Lab Op 182, 188.

The Employer additionally argues that the effectiveness of the position would be diminished by the perception of part-time on-call fire fighters, or potential recruits for such positions, that Butcher's attitudes toward them would be tainted by any association with the IAFF. First of course, that argument relies on the speculation that Butcher would voluntarily

associate with the IAFF. Next, it requires speculation that it would be publicly known that he associated with the IAFF and that he shared its views on a particular topic. This argument, in essence, asserts that the mere perceived association of the recruitment coordinator with a particular Union would be viewed unfavorably by the relevant public. While such subjective concerns may have some grounding in fact, in *University of Michigan*, 25 MPER 48 (2011), this Commission rejected a similar argument that the unionization of a particular portion of a university's workforce would "negatively affect" the university's reputation and competitiveness. We held that it would be improper to even consider speculation on the impact on an employer of its employees exercising their statutory rights.

To even engage in such vetting of a particular union's policy positions would engender unacceptable intrusion and instability. The IAFF policy at issue is an internal union policy that has no bearing on whether the newly created position of recruitment and retention coordinator has a community of interest with Petitioner's bargaining unit. Although the Employer may anticipate a conflict between IAFF policy and the duties of the recruitment and retention coordinator, it is for the Employer to set those policy choices that are a part of the job duties to be carried out by its employees in the workplace. It is the obligation of employees, while on the job, to carry out the Employer's policies, notwithstanding any possible personal disagreement as to such policy choices.

We find no statutory basis for excluding the newly created position of recruitment and retention coordinator from the only existing and appropriate bargaining unit.

**ORDER CLARIFYING UNIT**

The petition filed by Local 5359 of the International Association of Fire Fighters is granted. The bargaining unit is clarified to include the newly created position of recruitment and retention coordinator.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Edward D. Callaghan, Commission Chair

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Robert S. LaBrant, Commission Member

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Natalie P. Yaw, Commission Member

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