

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

In the Matter of:

OAKLAND COUNTY ROAD COMMISSION,
Public Employer,

-and-

ROAD TECHNICIANS ASSOCIATION FOR
OAKLAND COUNTY,
Petitioner in Case No. R16 C-030,

-and-

CLERICAL & TECHNICAL ASSOCIATION
ROAD COMMISSION FOR OAKLAND COUNTY,
Petitioner in Case No. R16 C-033,

-and-

AMERICAN FEDERATION OF STATE, COUNTY &
MUNICIPAL EMPLOYEES, COUNCIL 25, LOCAL 92,
Incumbent Labor Organization in Case No. R16 C-030,

-and-

AMERICAN FEDERATION OF STATE, COUNTY &
MUNICIPAL EMPLOYEES COUNCIL 25, LOCAL 529
Incumbent Labor Organization in Case No. R16 C-033.

APPEARANCES:

Michael R. Kluck & Associates, by Thomas H. Derderian, for the Public Employer

Andary, Andary, Davis & Andary, P.C., by James R. Andary, for the Petitioners

Miller Cohen, P.L.C., by Richard G. Mack, Jr., for the Incumbents

DECISION AND DIRECTION OF ELECTION

On March 7, 2016, the Road Technicians Association for Oakland County filed a petition seeking to represent a bargaining unit of employees of the Oakland County Road Commission. That unit is currently represented for purposes of collective bargaining by the American Federation of State, County & Municipal Employees (AFSCME) Council 25, Local 92. On March 10, 2016, the Clerical & Technical Association Road Commission for Oakland County filed a petition seeking to represent a separate unit of Road Commission employees currently represented by AFSCME Council 25, Local 529.

Background and Procedural History:

Historically, the bargaining unit represented by Local 92 has been made up of hourly employees of the Road Commission, while Local 529 has been comprised of all full-time salaried employees. The recognition clause in the most recent collective bargaining agreement between AFSCME Local 92 and the Road Commission describes the bargaining unit as “[a]ll hourly rated employees, excluding supervision, salaried employees, appointed officials and confidential employees.” The recognition clause in the most recent contract covering Local 529 describes the unit as “[a]ll full-time salaried employees” excluding “appointed officials, supervisors, attorneys, confidential employees, temporary employees and all other employees employed in or through the Road Commission.”

During a conference call with our elections agent, counsel for the Road Commission, Thomas Derderian, asserted that the existing bargaining unit descriptions are out-of-date and no longer accurately reflect the composition of either unit. Mr. Derderian proposed updating the job descriptions by listing each of the specific classifications within each unit as identified in the most recent contracts. Although Petitioners expressed agreement with the Employer’s proposal, Richard Mack Jr., counsel for the Incumbents, indicated that his clients were opposed to any modifications of the unit descriptions.

The cases were assigned to David M. Peltz, Administrative Law Judge of the Michigan Administrative Hearing System, acting on our behalf. On April 4, 2016, Judge Peltz and Bureau Director Ruthanne Okun jointly issued an order directing AFSCME Council 25 to file written objections to the unit descriptions proposed by the Road Commission. AFSCME filed a position statement in opposition to the Employer’s proposals on April 12, 2016. Petitioners and the Employer filed responses to the Incumbents’ position statement on April 19, 2016, and April 21, 2016, respectively. In its response, the Road Commission agreed to withdraw its proposal and expressed its intent to consent to an election using the historical bargaining unit descriptions as set forth in the most recent contracts. By email dated April 29, 2016, Petitioners indicated that they had no objection to proceeding to an immediate election utilizing the existing unit descriptions.

In an email dated April 28, 2016, Director Okun indicated to the parties that the resolution suggested by the Road Commission and agreed to by Petitioners seemed to eliminate all of the concerns previously raised by the Incumbents and “[b]ased on this, it would appear that the parties will now enter into Consent Election Agreements.” However, on or about May 2,

2016, Mr. Mack notified the Bureau Director by email that his clients were now unwilling to agree to an election based on the historical job descriptions. The alleged basis for Mr. Mack's opposition was a concern over possible challenges to the eligibility of individual voters, none of whom were identified by the Incumbents. Following a review of Mr. Mack's objection, Director Okun notified the parties by email that AFSCME had failed to raise any triable issue of fact which would warrant an evidentiary hearing.

By email dated May 4, 2016, our elections agent provided the parties with consent election forms, notices of election, sample ballots and other materials customarily sent out in anticipation of a representation election. The parties were cautioned that if signed consent election forms from each party were not received by the Bureau by 1:00 p.m. on May 6, 2016, the matter would be forwarded to the Commission for the issuance of a direction of election at the Commission's next meeting on May 10, 2016. On May 5, 2016, the Road Commission submitted "Excelsior Lists" stating the names and addresses of employees within both bargaining units. The following day, Mr. Mack indicated in writing that he did not have the authority from his clients to consent to an election in this matter.

Discussion:

The Incumbents seek to have this matter set for an evidentiary hearing. A representation proceeding is investigatory in nature and does not constitute a contested case for purposes of the Administrative Procedures Act, MCL 24.286. This Commission is not required to hold an evidentiary hearing in every matter concerning representation issues. MCL 423.146(1). The decision whether to hold an evidentiary hearing is solely within our discretion. *Washtenaw County*, 22 MPER 24 (2009); *Sault Ste Marie Area Pub Sch v Michigan Ed Ass'n*, 213 Mich App 176 (1995). See also *Oakland Co & Oakland Co Sheriff*, 20 MPER 63 (2007), *aff'd sub nom Oakland Co & Oakland Co Sheriff's Dep't v Oakland Co Deputy Sheriff's Ass'n*, 282 Mich App 266 (2009).

In this case, the Petitioners and the Employer both agree that there are no disputed issues of fact and that this matter should proceed to an immediate election using the historical job descriptions as set forth in the existing contracts. Despite having been given a full and fair opportunity to show the existence of disputed factual issues, the Incumbents were unable to demonstrate that an evidentiary hearing is necessary. In particular, AFSCME Council 25 failed to identify any valid dispute over the unit placement of any individual classification or explain with specificity how an election utilizing the existing unit descriptions would impact the voting eligibility of specific employees. Under such circumstances, we find that an evidentiary hearing would serve no purpose.

We conclude that a question of representation exists within the meaning of Section 12 of the Public Employment Relations Act (PERA), MCL 423.212. Accordingly, we direct an election in the following units:

Unit A

All hourly rated employees, excluding supervision, salaried employees, appointed officials and confidential employees.

Unit B

All full-time salaried employees, excluding appointed officials, supervisors, attorneys, confidential employees, temporary employees and all other employees employed in or through the Road Commission.

The employees in Unit A shall vote pursuant to the attached direction of election whether they wish to be represented by AFSCME Council 25, Local 92, by the Road Technicians Association for Oakland County, or by neither labor organization. The employees in Unit B shall vote pursuant to the attached direction of election whether they wish to be represented by AFSCME Council 25, Local 529, by the Clerical & Technical Association Road Commission for Oakland County, or by neither labor organization.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: May 13, 2016