

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

In the Matter of:

CITY OF NOVI,
Public Employer,

-and-

MERC Case No. UC15 G-013
Hearing Docket No. 15-056381

MICHIGAN ASSOCIATION OF PUBLIC EMPLOYEES,
Labor Organization-Petitioner.

APPEARANCES:

Keller Thoma, P.C., by Catherine Heitchue Reed, for the Public Employer

Pierce, Farrell, Tafelski and Wells, PLC, by M. Catherine Farrell, for the Labor Organization

DECISION AND ORDER
ON PETITION FOR UNIT CLARIFICATION

On July 31, 2015, the Michigan Association of Public Employees (Petitioner or MAPE), filed the present petition for unit clarification with the Michigan Employment Relations Commission (Commission) pursuant to § 13 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.213. An evidentiary hearing was held on December 14, 2015, in Detroit, Michigan, before Administrative Law Judge Travis Calderwood of the Michigan Administrative Hearing System. Based on the entire record, including the post-hearing briefs filed by the parties on or before February 24, 2016, we find as follows.

The Petition and Positions of the Parties:

MAPE filed the present petition seeking to clarify its bargaining unit to include the position of Geographic Information Science/Novi Enterprise Asset Management Systems technician (GIS/NEAMS technician). The City objects to the inclusion of the GIS/NEAMS technician in Petitioner's unit and claims that the position is not a newly-created position because the position has been in existence since at least 2001, was last filled in 2005, and has been historically excluded from representation. The Employer further claims that regardless of the historical exclusion of the position, there is no community of interest between the GIS/NEAMS technician and the members of Petitioner's unit. MAPE contends that the position cannot be historically excluded as it neither agreed to nor acquiesced in the exclusion of the position from the bargaining unit. MAPE asserts that there is a community of interest between the GIS/NEAMS technician and bargaining unit positions as the position comes within the broad scope of the recognition clause agreed upon in the parties' collective bargaining agreement.

Facts:

The City employs approximately 250 full-time employees, 61 of whom are not represented by a labor organization. The represented positions are spread out among five different unions, which include the Petitioner, the police officer's union, the command officer's union, the fire clerks and police dispatchers union, the full-time firefighters union, and the separate part-time firefighters union. With the exception of the part-time firefighters, all represented employees are full-time. The full-time employees who are not represented by a union are salaried, and the Employer considers them to be exempt from laws requiring payment for overtime work. The Employer has included directors, managers, supervisors and some secretaries in that group.

Petitioner and the City are parties to a collective bargaining agreement effective from July 1, 2013, through June 30, 2017. Article I of that contract contains the recognition clause, which states that Petitioner is the authorized bargaining representative for:

All non-supervisory employees, but excluding confidential employees and supervisors.

The contract includes a salary and wage schedule for the position classifications that are part of the unit. Those classifications are divided into two groups, clerical and non-clerical or "field employees," and include such varied classifications as customer service rep, planning assistant, payroll coordinator, building inspector, electrical inspector, plumbing inspector, commercial and industrial inspector, mechanic, heavy equipment operator, park maintenance employee, resident appraiser, plan examiner, work leader, and various clerical positions.

All classifications are paid on an hourly basis, and no position requires formal education beyond a high school diploma, although the job descriptions for a select few positions indicate that an associate's degree is preferred. Several classifications require skill in operating computers using Microsoft Office and other job specific applications. Several classifications require specialized training including: code compliance officer, head mechanic, lead mechanic, plan examiner, resident appraiser, and plumbing, mechanical, and electrical inspectors. Additionally specialized state certification or licensing is required for the code compliance officer, the head mechanic, the lead mechanic, the building inspector, the electrical inspector, the mechanical inspector, the plumbing inspector, the plan examiner, the water and sewage technician, the resident appraiser, and the work leader.

The bargaining unit classifications work under the direction of managers and department directors, as well as certain bargaining unit members with limited authority. The account clerks are supervised by the director of the account clerk's respective department. The building inspector, the building permit coordinator, the electrical inspector, the mechanical inspector, and the plumbing inspector are supervised by the building official. The plan examiner works under the general supervision of the building official, but also has considerable independence in regard to technical interpretative decisions necessary to perform the work. The code compliance officer is supervised by the community development director. The planning assistant is supervised by the deputy director of community development. The customer service rep and senior customer service rep are supervised by the director of the customer service rep's respective department. The head mechanic, the lead mechanic, and the mechanic are supervised by the fleet asset manager/analyst planner. The heavy equipment operator and the sign technician are supervised by the roadway asset manager. The light equipment operator reports to the work leader. The parks maintenance employees are supervised by

the parks and forestry asset manager. The payroll coordinator is supervised by the director of human resources. The resident appraiser receives assignments and guidance from the city assessor, though the employee in that classification performs most duties and appraisal projects independently. The water and sewer maintenance employee and the water and sewer technician report to the work leader. The work leader is supervised by the division manager.

From 2001 through 2005, Bill Burdleman held the position of GIS technician¹, which at that time was not a bargaining unit position. The Teamsters Local 214 represented the bargaining unit currently represented by Petitioner before Burdleman began working in the position in 2001. Commission records reflect that when the Teamsters Local 214 was certified as the representative of the bargaining unit on August 6, 1973, the unit was described as "all non-supervisory employees, but excluding confidential employees and supervisors." After Burdleman left the position, the Employer hired two hourly part-time employees to perform the responsibilities of the GIS technician. They were not represented by a union. The position of GIS technician remained vacant from 2005 until July of 2015.

On May 1, 2009, MAPE became the bargaining representative of the unit. Fred Timpner, Petitioner's executive director, was directly involved in both Petitioner's organizational campaign in 2009 and in negotiating the first agreement between the parties. At that time, Timpner relied on the previous unit certification and the collective bargaining agreement between the Employer and Teamsters Local 214 for the description of the unit and the classifications contained therein. Neither of those documents indicated the existence of the GIS technician position or that the position was excluded from the bargaining unit. Before the Employer posted the notice of the GIS/NEAMS technician vacancy in May or June of 2015, the Employer never informed Timpner or anyone else associated with MAPE that there was a vacant GIS technician position. Petitioner learned of the existence of the position when one of its stewards saw the posting. Petitioner contacted the Employer to find out why the position was not being included in its bargaining unit. The parties briefly corresponded over the issue and, subsequently, held a meeting to discuss the unit placement of the position. They were unable to reach agreement on the position's unit placement. On July 31, 2015, MAPE petitioned MERC to clarify its unit to include the position of GIS/NEAMS technician.

The GIS/NEAMS technician position is currently in the Information Technology Department (IT Department) and is salaried. The GIS/NEAMS technician works independently under the direction of the geospatial applications services manager, who works under the direction of the chief information officer. The IT Department is presently comprised of the chief information officer, the GIS manager², two data technicians, a forestry intern, and the GIS/NEAMS technician. None of the IT Department employees are included in a bargaining unit. The GIS/NEAMS technician's main duties involve maintaining maps of the City's assets, i.e., sewer lines, water lines, roads, fire hydrants, and sidewalks. The purpose of the maps is to provide individuals in the field with information necessary to repair and maintain the assets. No other employees in the information technology department besides the GIS/NEAMS technician and the geospatial applications services manager perform mapping functions.

¹ The job description for the disputed position lists its name as GIS/NEAMS technician. The job description for the position that was occupied by Burdleman lists its name as GIS technician. Therefore, when referring to the position as it was occupied by Burdleman, we will refer to it as the GIS technician and when referring to the disputed position we will refer to it as the GIS/NEAMS technician.

² This position is also referred to as the geospatial applications services manager.

As part of the GIS/NEAMS technician's work in mapping sewer and water lines, the GIS/NEAMS technician may have interaction with water and sewer maintenance employees, who are in Petitioner's bargaining unit. However, the GIS/NEAMS technician would probably have more interaction with the water and sewer manager to help the manager determine where repairs might need to be done to the water and sewer lines that make up part of the City's infrastructure. Fifty percent of the position's duties require the GIS/NEAMS technician to enter and manage data within the Novi enterprise asset management system (NEAMS). Thirty percent of the position's duties require the GIS/NEAMS technician to perform GIS analysis and GIS product development. Ten percent of the GIS/NEAMS technician duties include performing data conversion of utility features using ArcGIS for desktop, and the remaining ten percent of the position's duties require the GIS/NEAMS technician to provide field data acquisition support using City GPS equipment.

Under the current job description, placement in the position requires a bachelor's degree in geographic information science, engineering, public administration, or a related field of study, as well as a minimum of three years of experience in GIS data management. The position also requires intermediate to advanced experience using certain Esri software products, strong proficiency using the Microsoft Office suite of applications, and experience using Autodesk design products.

When Burdleman was the GIS technician, the position was part of the IT Department, and the position was salaried. The job description for the GIS Technician required a bachelor's degree but did not expressly require the three years of experience required in the current GIS/NEAMS technician's job description. The prior job description listed the primary duties as data entry and maintenance of various GIS data themes as required, defining and building ArcView layouts, processing requests for cartographic production, and using a GPS unit to collect data in the field. The earlier GIS technician description did not quantify the different segments of the position's responsibilities. Also, it did not expressly mention the Novi enterprise asset management system, which is related to fifty percent of the current duties of the GIS/NEAMS technician.

Discussion and Conclusions of Law:

First, we must determine whether unit clarification is appropriate in this case. A unit clarification petition is appropriate for resolving ambiguities in unit placement caused by the creation of a new position or by recent substantial changes in the job duties of existing classifications. *Tuscola Co Rd Comm*, 27 MPER 57 (2014); *Big Bay De Noc Sch Dist*, 17 MPER 81 (2004); *Genesee Co*, 1978 MERC Lab Op 552. A unit clarification petition is not appropriate to accrete positions historically excluded from the bargaining unit whether that exclusion was by express agreement or acquiescence, unless the employer substantially changed the duties and responsibilities or hours of work of the position in question. *Grosse Pointe Pub Library*, 19 MPER 32 (2006); *Port Huron Area Sch Dist*, 1989 MERC Lab Op 763, 766; *City of St Clair Shores*, 1988 MERC Lab Op 485.

This Commission has long relied on the holding of the National Labor Relations Board in *Union Electric Co*, 217 NLRB 666, 67; 89 LRRM 1535 (1975) which we adopted in *Genesee Co*, 1978 MERC Lab Op 552, 556:

Clarification is not appropriate, however, for *upsetting an agreement of a union and employer or an established practice of such parties* concerning the unit placement of various individuals, even if the agreement was entered into by one of the parties for what it claims to be mistaken reasons *or the practice has become established by acquiescence and not express consent.* (Emphasis added.)

In the matter before us, the Employer contends that the position of GIS/NEAMS technician has been historically excluded from the bargaining unit. In support of this contention, the Employer relies on the fact that between 2001 and 2005, substantially the same services were performed by the GIS technician, a position that was not included in the bargaining unit. At that time, the bargaining unit was represented by Teamsters Local 214. Inasmuch as the record reflects that the GIS technician was not expressly excluded from the bargaining unit, it is apparent that Teamsters Local 214 acquiesced in its exclusion. The position became vacant in 2005 and remained vacant throughout the remainder of the time that the Teamsters served as the bargaining representative for the unit.

The Teamsters' representation of the bargaining unit ended in 2009, when the bargaining unit members elected MAPE as their bargaining representative. The GIS technician position was vacant at that point and remained vacant until July 2015. There was nothing in the Teamsters' certification as the unit's representative or in the final collective bargaining agreement between the Teamsters and the Employer that would have alerted Petitioner to the existence of the vacant GIS technician position or its exclusion from the bargaining unit. The record reflects that Petitioner did not learn of the existence of the position until sometime after the Employer posted the notice to fill the vacancy.

As indicated in *Genesee Co.* and the long list of Commission cases that follow it, a position is historically excluded from a bargaining unit only when the employer and the union representing the bargaining unit expressly agree to its exclusion, or when they acquiesce in its exclusion. See, for example, *Jackson Pub Sch*, 23 MPER 97 (2010); *Grosse Pointe Pub Library*, 1999 MERC Lab Op 151; 12 MPER 30032; *Jackson Pub Sch*, 1997 MERC Lab Op 290, 299-300; 10 MPER 28042. A party cannot acquiesce in a position's unit placement if it does not know that the position exists.

Here it is clear that MAPE did not expressly agree to exclude the GIS/NEAMS technician from the bargaining unit. MAPE could not agree to or object to the position's exclusion from the unit until it learned of the position's existence. Petitioner promptly objected to the Employer's decision to exclude the GIS\NEAMS technician from the bargaining unit. MAPE filed its petition to have its unit clarified to include the GIS/NEAMS technician within a couple months of learning of the position's existence. Given the short period of time between Petitioner learning of the position and filing its unit clarification petition, MAPE cannot be said to have acquiesced in the Employer's decision to exclude the position from its bargaining unit. See, for example, *Reese Pub Sch*, 30 MPER 8 (2016), (we concluded that the union had not acquiesced in the employer's failure to place the position in the union's bargaining unit when the union filed its unit clarification petition about five months after the employer posted the job). See also *City of Muskegon*, 1996 MERC Lab Op 64, 70; 9 MPER 27040. Therefore, we cannot conclude that this position has been historically excluded from the bargaining unit. Accordingly, we find that unit clarification is appropriate under these circumstances.

Thus, the determination of whether the position of GIS/NEAMS technician should be included in Petitioner's bargaining unit rests on whether the position shares a community of interest with the unit positions. 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. *Delhi Charter Twp*, 27 MPER 28 (2013); *Lapeer Co*, 18 MPER 70 (2005); *Covert Pub Sch*, 1997 MERC Lab Op 594, 601; 11 MPER 29016. However, the fact that employees have different job duties or functions does not necessarily mean that they lack a community of interest. *Michigan Ed Ass'n v Alpena Cmty Coll*, 457 Mich 300, 306 (1998); *Jackson*

Pub Sch, 23 MPER 97 (2010); *Covert Pub Sch*, 1997 MERC Lab Op 594, 602; *Washtenaw Cmty Coll*, 1993 MERC Lab Op 781, 790-791; 6 MPER 24128. Even where a position in dispute may share a community of interest with employees in a residual group, the Commission does not determine relative degrees of community of interest. *Washtenaw Cmty Coll*, 17 MPER 29 (2004). The touchstone of an appropriate bargaining unit is a common interest of all of its members in the terms and conditions of their employment that warrants inclusion in a single bargaining unit and the choosing of a bargaining agent. *Michigan Ed Ass'n v Alpena Cmty Coll*, at 304-305.

The recognition clause in the collective bargaining agreement between the Employer and MAPE provides that Petitioner's unit includes "All non-supervisory employees, but excluding confidential employees and supervisors." The GIS/NEAMS technician is clearly not a confidential employee, and the Employer has offered no evidence to indicate that the GIS/NEAMS technician has supervisory responsibilities or authority.

We note that there are several differences between the GIS/NEAMS technician position and several of the bargaining unit positions. Such variances are not unusual in a broad unit of this type. See, for example, *Washtenaw Cmty Coll*, 1993 MERC Lab Op 781, 790-791; 6 MPER 24128 (the Commission clarified the petitioner's bargaining unit of office professional, technical and childcare employees to include the positions of collections analyst and admissions specialist. Although both the collections analyst and the admissions specialist positions required bachelor's degrees, neither bachelor's nor associate's degrees were required for any of the other bargaining unit positions). We also note that the current bargaining unit positions are paid on an hourly basis, whereas the GIS/NEAMS technician is paid a salary. However, as we have held in the past, the fact that a position is hourly as opposed to salaried is a matter that is subject to bargaining and is "present in countless other bargaining units throughout the public sector." See *Reese Pub Sch*, 30 MPER 8 (2016).

However, there are also a number of similarities between the GIS/NEAMS technician and many of the bargaining unit positions. The GIS/NEAMS technician works in the City Hall like most of the clerical positions in the bargaining unit. Similar to most of the clerical positions, the GIS/NEAMS technician is required to use a computer and must be able to use Microsoft Office and job specific software applications. As with other members of the bargaining unit, such as the code compliance officer, the head mechanic, the lead mechanic, the plan examiner, the resident appraiser, and the plumbing, mechanical, and electrical inspectors, the GIS/NEAMS technician has specialized training. Additionally, specialized state certification or licensing is required for several bargaining unit positions, including the code compliance officer, the head mechanic, the lead mechanic, the building inspector, the electrical inspector, the mechanical inspector, the plumbing inspector, the plan examiner, the water and sewage technician, the resident appraiser, and the work leader. Moreover, similar to the plan examiner and the resident appraiser, the GIS/NEAMS technician has considerable independence in making work-related decisions. Also, like many members of the bargaining unit, the GIS/NEAMS technician reports directly to one of several middle managers. We find that there is sufficient similarity between the GIS/NEAMS technician and positions in the Petitioner's bargaining unit with respect to community of interest factors. For the foregoing reasons, we find that the GIS/NEAMS technician has a sufficient community of interest with the bargaining unit to be included therein.

In making unit determinations, our primary objective is to constitute the largest bargaining unit which, in the circumstances of the particular case, is the most compatible with the effectuation of the purposes of the law, and which includes within a single unit all employees sharing a community of interest. *Hotel Olds v State Labor Mediation Bd*, 333 Mich 382, 387 (1952); *Macomb Co*, 17

MPER 35 (2004); *Univ of Michigan*, 2001 MERC Lab Op 6, 8; 14 MPER 32015. It is our policy to require, whenever possible, that units be comprehensive in order to avoid fragmentation and the eventual formation of residual units. *Genesee Co Cmty Mental Health Services*, 18 MPER 29 (2005). See also *Michigan Ass'n of Pub Employees v AFSCME Council 125*, 172 Mich App 761, 765 (1988). It is also our policy, whenever possible, to avoid leaving positions unrepresented, especially isolated ones. *Charlotte Pub Sch*, 1999 MERC Lab Op 68; 12 MPER 30022; *City of Muskegon*, 1996 MERC Lab Op 64, 70; 9 MPER 27040. 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; 1 MPER 19110.

We have considered all other arguments put forth by the parties and hold that they do not warrant any change in our conclusions. In accordance with our findings, we issue the following order:

ORDER

The Michigan Association of Public Employees' request to clarify its bargaining unit to include the position of GIS/NEAMS technician is hereby granted.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: December 22, 2016