

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

In the Matter of:

THIRTY-THIRD DISTRICT COURT,  
Public Employer,

Case No. R06 B-013

-and-

MICHIGAN ASSOCIATION OF PUBLIC EMPLOYEES,  
Labor Organization-Petitioner.

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**APPEARANCES:**

Keller Thoma, PC, by Richard W. Fanning, Jr., Esq., for the Public Employer

Pierce, Duke, Farrell & Tafelski, PLC, by M. Catherine Farrell, Esq., for the Petitioner

**DECISION AND ORDER DISMISSING  
PETITION FOR REPRESENTATION ELECTION**

Pursuant to Section 12 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212, this case was heard at Detroit, Michigan, on May 8, 2006, by Administrative Law Judge Julia C. Stern for the Michigan Employment Relations Commission. Based on the entire record, including briefs filed by the parties on July 19, 2006, the Commission finds as follows:

**The Petition and Positions of the Parties:**

The Michigan Association of Public Employees filed this petition for a representation election on February 3, 2006. Petitioner represents a bargaining unit of nonsupervisory employees of the 33<sup>rd</sup> District Court. The position of administrative secretary to the court administrator has been excluded from this unit as a confidential employee. Petitioner seeks to include the position in its bargaining unit on the ground that it no longer performs confidential labor relations work.

The Employer disputes Petitioner's claim that the administrative secretary no longer has confidential labor relations duties. It also maintains that even if the administrative secretary does not currently perform confidential work, it is entitled to exclude the position from the unit under Commission precedent holding that an employer is entitled to exclude one clerical employee as a

confidential. Petitioner argues that this rule no longer makes sense in the modern work environment where executives and labor relations representatives often prepare their own correspondence and other confidential documents without the assistance of a clerical employee. It urges us to limit the confidential clerical exclusion to employees who actually perform confidential work.

Facts:

The Employer, a district court, has three judges, a court administrator, thirty other full-time employees and two part-time employees. In January 2005, Petitioner replaced the Police Officers Association of Michigan (POAM) as the bargaining agent for the Employer's nonsupervisory employees. The POAM continues to represent the Employer's supervisors. In December 2005, Petitioner and the Employer entered into their first collective bargaining agreement. The administrative secretary to the court administrator was excluded from the unit of nonsupervisory employees as confidential when it was represented by the POAM. The position is explicitly excluded from Petitioner's unit under the title "confidential secretary" in the current contract between Petitioner and the Employer.<sup>1</sup>

Margaret Krizan has been the Employer's court administrator since May 2003. The court administrator, under the direction of the chief judge, manages all administrative functions of the Court, including personnel management, fiscal management, caseload management, jury utilization, research and planning, and facilities management. Krizan supervises all employees of the court and handles employee discipline and grievances. Krizan's job description states that she is responsible for the labor relations functions of the Court, including negotiating and administering collective bargaining agreements, subject to the approval of the chief judge. Krizan meets with employees informally at the first step of the contractual grievance procedure and answers written grievances at the second step. The chief judge is the third step. The Employer employs outside labor counsel to conduct contract negotiations with its unions, although Krizan is part of the bargaining team for both units. The outside counsel drafts the Employer's bargaining proposals. Krizan consults frequently with the outside counsel during negotiations and on other labor relations issues.

Cathy Kenna has been the administrative secretary to the court administrator since shortly after being hired by the Court in 1987, and served as secretary to two court administrators before Krizan's appointment. The administrative secretary has no formal job description. Kenna answers the telephone, types and files. She orders supplies, prepares bills for Krizan's signature, keeps files of invoices, and deals with vendors. At Krizan's direction, Kenna calls and schedules visiting judges when they are needed. She maintains the Court's personnel files. She processes employee benefit plan changes and assists employees with benefit issues. For security reasons, two employees, including Kenna, open the Court's mail together in a separate room designated

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<sup>1</sup> Secretary/court recorders are also excluded from Petitioner's unit. Secretary/court recorders are present in a judge's courtroom whenever the judge is hearing cases. They also answer the judges' phones, keep their calendars and prepare communications from the judges to defendants. There is no explanation in the record for the secretary/court recorders' exclusion from the unit. However, Petitioner has not argued that the administrative secretary should be included in its unit because the secretary/court recorders would be available to do confidential labor relations work.

for this purpose. Kenna time-stamps and distributes the mail after it is opened. She also posts the Court's outgoing mail twice a day.

Krizan prepares most of her own financial documents, correspondence, and memos, including grievance answers, using word processing and spreadsheet programs. However, she often gives Kenna letters to format and fill in the addresses before they are sent out. Also, Krizan sometimes tells Kenna what to write or gives her brief written notes from which Kenna prepares memos or letters for Krizan's or the chief judge's signature. Much of Krizan's communication with the Employer's labor counsel is by e-mail. However, Kenna occasionally types, formats, or drafts correspondence between Krizan and the Employer's labor counsel. It is unclear whether this correspondence ever includes discussion of bargaining proposals or strategy on the merits of grievances. The only example of this correspondence entered into the record was a cover letter transmitting a copy of an employee's personnel file. Krizan also types, formats and sometimes drafts grievance answers. As an example of the latter, in February 2006, Krizan gave Kenna an e-mail from the Employer's labor counsel setting out the substance of a third-step answer to a grievance filed by Petitioner and asked Kenna to put it in letter format for the chief judge's signature. Kenna keeps a folder of correspondence and other documents entitled "Union" on her computer, and Krizan sometimes accesses these documents. Kenna has never typed bargaining proposals.

Krizan and the Court's three judges meet periodically with the Court's management council, which consists of the mayors of the seven communities that comprise the Court's funding unit. Kenna prepares packets for the management council meetings, takes minutes of the meetings, and transcribes them. During contract negotiations, the Employer's bargaining team reports to the management council concerning the progress of negotiations. During the summer of 2004, the POAM asked Krizan to exclude Kenna from these discussions because it believed she was leaking information to employees that the Employer and the POAM had agreed to keep confidential. Since that time, Kenna has been excluded from all executive sessions of the management council where labor negotiations are discussed.

In the 1990s, Kenna collected data about the wages and benefits paid in neighboring communities for use in collective bargaining. She has not done this since Krizan became the court administrator. Before the Employer's recent contract negotiations with Petitioner, Krizan assigned Kenna to prepare a chart for the Employer's team to use, listing all members of Petitioner's bargaining unit, their date of birth, hire date, job title, salary, and insurance coverages, and a separate chart showing their accumulated sick leave. When Petitioner requested information about employee benefits and salaries from the Employer to prepare for negotiations, Krizan assigned Kenna to collect some of this information. Kenna also collected unit members' time cards to respond to another information request and sent copies to the individual employees involved.

#### Discussion and Conclusions of Law:

A confidential employee is an employee who formulates, determines, or effectuates management policy with regard to labor relations and collective bargaining or an individual who assists and acts in a confidential capacity to such a person. *Watersmeet Twp*, 18 MPER 71

(2005); *River Valley Sch Dist*, 17 MPER 39 (2004). Confidential labor relations work is work involving information relating to the collective bargaining process to which the union should not have access. *City of Detroit (Fire Dep't)*, 18 MPER 43 (2005); *Lapeer Co*, 1998 MERC Lab Op 611, 620, rev'd on other grounds 1999 MERC Lab Op 146. Typing grievance answers to be given to the union is not confidential work. *Watersmeet Twp; Lansing Cmty College*, 2000 MERC Lab Op 99, 102; *City of Saginaw*, 1991 MERC Lab Op 253. Mere access to records not generally available to other employees or the union, such as personnel records or financial information, is also not sufficient to make an employee confidential. *City of Saginaw*, 1994 MERC Lab Op 988; *Riverview Cmty Schs*, 1968 MERC Lab Op 419.

The confidential exclusion is applied cautiously so as not to deprive employees of their right to be represented by a union, and the number of exclusions is generally limited to those employees necessary to perform required confidential duties. *River Valley Sch Dist; Shelby Charter Twp*, 2001 MERC Lab Op 84, 85. However, we permit a public employer to designate one clerical employee as a confidential so that the employer may have available an employee that can directly assist in the preparation and handling of bargaining proposals during negotiations. *City of Bay City*, 1966 MERC Lab Op 271, 278-79. An employer is entitled to exclude that employee from participating in collective bargaining even if that employee has never performed any confidential labor relations work. *Dickinson Co Rd Comm*, 1973 MERC Lab Op 745; *Carsonville-Port Sanilac Schs*, 1982 MERC Lab Op 1075; *Village of Kalkaska*, 1997 MERC Lab Op 481. We have held that an employer may exclude one clerical employee as confidential even though it has had a longstanding bargaining relationship with a union and never previously designated a clerical employee to do confidential work. *Lakeview Pub Schs*, 1982 MERC Lab Op 1654. We have also held that an employer's employment of an outside labor consultant does not eliminate the employer's right to exclude a clerical employee as confidential unless the record shows that all confidential clerical work is or will be performed by the consultant at his or her office. *Pentwater Pub Schs*, 1978 MERC Lab Op 389.

We agree with Petitioner that the Employer's administrative secretary performs little or no confidential labor relations work. As noted above, typing grievance answers in the form they are to be given to the union is not confidential work. The information Kenna was assigned to gather for the recent negotiations was personnel and wage and salary information about unit members which the union either received or would have been entitled to see had it asked. None of the documents typed, formatted or drafted by Kenna that the Employer offered into evidence contain any confidential labor relations information, and there was no testimony indicating that Kenna types, formats, or drafts any confidential communications.

Petitioner maintains that we should abandon our policy of allowing an employer to designate one clerical employee as confidential and exclude him or her from bargaining even if the employee currently performs no confidential labor relations work. It notes that in a modern office, executives and labor relations representatives often have the capacity to prepare confidential documents without the assistance of a clerical. According to Petitioner, the Employer has no need for a confidential secretary because Krizan can prepare her own confidential materials, and Kenna's current job duties illustrate this point. We agree that communications advances are part of the reason that the Employer no longer assigns confidential duties to Kenna. Krizan and the Employer's labor counsel now communicate by e-mail where

they might once have exchanged letters that needed to be typed, and Krizan has the ability to prepare her own confidential documents with the assistance of a computer. However, there is at least one confidential duty – taking notes during court management council discussions of the negotiations – which Kenna is no longer assigned because the Employer does not have confidence in her ability to keep its information confidential. In addition to taking notes at management council meetings when bargaining issues are discussed, there may be other confidential work, including collecting data for negotiations, which the Employer might assign to the administrative secretary. We are unwilling to say that the Employer has no need for a confidential clerical employee simply because the court administrator can e-mail and use a word processor. We believe that our policy of allowing an employer to exclude one clerical employee as a confidential remains viable even with modern technology. Since the parties agree that the administrative secretary to the court administrator is the clerical employee designated by the Employer as confidential, we conclude that the position should remain excluded from Petitioner’s bargaining unit.

**ORDER**

Based upon the above findings of fact and conclusions of law, the petition for a representation election is dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Christine A. Dardarian, Commission Chair

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

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