

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

In the Matter of:

TUSCOLA COUNTY and
TUSCOLA COUNTY SHERIFF,
Public Employer

- and -

Case No. UC02 E-015
(Act 312 Eligibility)

POLICE OFFICERS LABOR COUNCIL
Labor Organization-Petitioner.

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APPEARANCES:

Nantz, Litowich, Smith & Girard, by John H. Gretzinger, Esq., for the Public Employer

Peter P. Sudnick, Esq., John A. Lyons, P.C., for the Labor Organization

DECISION AND ORDER

Pursuant to the provisions of the Public Employment Relations Act (PERA), 1947 PA 336, as amended by 1965 PA 379, MCL 423.201-217, and Act 312 of 1969, as amended by Act 203 of 1976 and Act 303 of 1977, 423.231-247, this case was heard in Detroit, Michigan on August 29, 2002, before Roy Roulhac, Administrative Law Judge for the Michigan Employment Relations Commission. Based upon the entire record, including the transcript of hearing and briefs filed by the parties on or before January 31, 2003, the Commission finds as follows:

The Petition:

On January 8, 2002, the Police Officers Labor Council (Union or Labor Organization) filed a Petition for Arbitration under PA 312 of 1969 for a unit of employees of Tuscola County and the Sheriff of Tuscola County (Employer). The unit was described in the petition as: "All Act 312 eligible employees included in the unit described as 'detective-sergeants, sergeants, lieutenants, corrections corporals, jail administrators and secretary to the Sheriff'." On January 22, 2002, the Employer filed a Motion to Partially Dismiss the Petition for Act 312 Arbitration. The motion described the unit more specifically as follows:

All detective-sergeants, sergeants, lieutenants, corrections corporals, jail administrators and secretary to the Sheriff.

EXCLUDING: All elected or appointed officials, all part-time employees, all employees below the rank of corrections corporals, all other employees employed in or through the Sheriff Department, and all other employees employed in or by the County of Tuscola.

The motion specifically objected to the inclusion within the Act 312 arbitration of the positions of lieutenant/jail administrator, corrections corporals, and secretary to the Sheriff. Subsequently, the labor organization agreed that the secretary to the Sheriff is not eligible for Act 312 arbitration, and agreed to dismiss the petition as to that classification.

The Dispute:

The dispute as to the Act 312 eligibility of the remaining two classifications was docketed as Case No. UCO2 E-015 and scheduled for hearing before an Administrative Law Judge. The Employer maintains that both the lieutenant/jail administrator and the corrections corporals are not subject to the hazards of police work and, therefore, not within the scope of Act 312. The Union contends that the lieutenant/jail administrator is a sworn police officer and part of the chain of command of the Sheriff's Department and therefore eligible for Act 312 arbitration. The Union contends that the corrections corporals are dual function employees with law enforcement and police duties as well as corrections duties.

Facts:

The evidence in this matter consists of the testimony of Under-Sheriff James Jashinske and stipulated exhibits. The Sheriff's Department of Tuscola County is headed by a Sheriff and Under-Sheriff who are excluded from the bargaining unit. The bargaining unit consists of one road patrol lieutenant, one lieutenant/jail administrator, six sergeants, one detective sergeant, two corrections corporals, and one secretary to the Sheriff. Non-supervisory deputies and corrections officers are not part of the unit in question. The non-supervisory employees are organized in separate bargaining units. One includes the certified deputies and the second unit consists of the non-certified employees, including the corrections officers, cooks, and other courthouse employees.

In the overall structure of the Department, road patrol and corrections are administered separately. The road patrol deputies, detectives, and detective-sergeants report to the lieutenant/uniformed commander or road patrol lieutenant. Corrections officers report to the corrections corporals who in turn report to the lieutenant/jail administrator. In the official chain of command, the road patrol lieutenant is third in line and the lieutenant/jail administrator is fourth. While the corrections corporals have a higher rank than the deputies, they normally provide no supervision to the deputies. They would have command status in the absence of other supervisors, but under normal circumstances, there are always other command officers on duty. The lieutenant/jail administrator is assigned to a day shift when other command officers are on duty. He could take command of the Department in the absence of other supervisors, but this has never occurred.

The lieutenant/jail administrator is responsible for the overall coordination and supervision of jail activities, physical security of the facility, the rights and welfare of inmates and coordination of rehabilitation services. According to the job description for the position, the lieutenant/jail administrator is required to have certification both as a law enforcement and MDOC (Michigan Department of Corrections) certified corrections officer and is expected to have specialized training in police science, supervision and administration, including certification. The lieutenant/uniform commander is required to have the same specialized training and certification as a MLEOTC (Michigan Law Enforcement Officers Training Council) certified police officer.

As stated above, the lieutenant/jail administrator is assigned to a five-day-a-week day shift. The road patrol lieutenant is scheduled for the same time. If the road patrol lieutenant is not present, the lieutenant/jail administrator takes over some of his duties involving paperwork for arrests and necessary contacts with the prosecutor's office. The lieutenant/jail administrator has never been assigned to work on road patrol, at least during the six years that the Under-Sheriff has been employed. Because of his place in the chain of command, if the jail administrator/lieutenant were called upon to take command he would have the full authority of the Sheriff over all personnel. He also could be involved in police work if an escape should take place within the jail. If he were called to a crime scene, he might be required to carry his gun and bulletproof vest. Both the jail administrator and corrections corporals could be called upon in emergencies. This occurred at least once, during a mass demonstration in a nearby city. In practice, however, in the absence of the road patrol lieutenant, the jail administrator handles warrant requests and other paperwork, whereas other road patrol command officers are always on duty and are responsible for the supervision of the deputies in the road patrol division.

Corrections corporals oversee the care, custody, and health of jail inmates; they are responsible for supervising corrections officers on their shifts. They cover two shifts - a day shift and an afternoon or evening shift. They may assist, as does the lieutenant/jail administrator, in the Department lobby functions when the clerical employees are not able to answer questions involving the jail. Corrections corporals also work with the courts in assuring inmates are prepared for court appearances. Corrections corporals may, from time to time, carry guns when transporting prisoners locally but are generally not assigned to long-distance transfers of the prisoners. Courthouse security is provided by specially assigned officers although the corrections corporals could be called upon to assist in an emergency. Promotion to corrections corporal is from the rank of corrections officer.

The job description for corrections corporal lists as a requirement "completion of, or the ability to complete the training, courses for correction officers leading to MDOC certification." Both of the current corrections corporals are certified law enforcement officers, but neither has worked as a road patrol officer since assignment to this position. They are assigned weapons, as well as bulletproof vests, but do not wear the weapons or the vests while on duty. Other supervisors in the road patrol division do not wear their bulletproof vests when not working on the road.

Discussion and Conclusions of Law

Both parties recognize that this Commission has consistently found that corrections officers are not within the scope of Act 312 arbitration. See for example, *Presque Isle County* 1993 MERC Lab Op 669; *City of Detroit, Police Dep't* 1992 MERC Lab Op 76; and *County of Macomb, Sheriff's Department*, 1991 MERC Lab Op 542. The Union, however, relies on our decision in *City of Detroit and Detroit Fire Fighters Ass'n, Local 344, IAFF*, 1992 MERC Lab Op 698, 705, (*aff'd in part on other grounds, rev'd in part on other grounds, and vacated in part on other grounds*, 204 Mich App 541) in which we held that “all positions within a public fire department which the employer requires be filled with sworn uniformed fire fighters are engaged in fire fighting” and are eligible for Act 312 coverage. The Union brief acknowledges that our subsequent cases have not included within Act 312 coverage, individual police officers who were sworn and certified whose position did not *require* a certified officer although the individuals had that status. The Union points out that the lieutenant/jail administrator in this matter is required to be MLEOTC certified as well as a MDOC certified correction officer and argues that under *City of Detroit*, the lieutenant/jail administrator is *per se* Act 312 eligible. In addition, the Union asserts that the lieutenant/jail administrator is issued a weapon and required to be trained, and is fourth in the Department chain of command. Although he has never been called upon to assume that command, the Union argues that the duties actually performed are immaterial if the employee “is engaged as a law enforcement officer by the employer and required by the employer to be certified.”

The Employer contends that the fact that corrections officers are sworn deputy sheriffs has been rejected as a basis for creating Act 312 eligibility, citing *Jackson County Deputies Association v Jackson County*, unpublished opinion per curiam of the Court of Appeals, decided July 9, 1996 (Docket No. 174820). As an unpublished decision of the Court of Appeals, this decision is not precedentially binding. We note, however, that in affirming our decision (*Jackson County Sheriff's Dept*, 1994 MERC Lab Op 278), the Court of Appeals stated that rather than focusing on the literal status of the corrections officers as “deputy sheriffs” it believed the proper analysis was that expressed by the Michigan Supreme Court in *Metropolitan Council No 23, AFSCME v Oakland County Prosecutor*, 409 Mich 299 (1980). The Court in that case rejected an analysis focusing only on the literal status of either the employer or employee when determining Act 312 coverage. In subsequent cases involving corrections officers and corrections supervisors, we have followed this approach. That is, rather than focusing on certification, we have looked at the actual duties involved to determine to what extent they include law enforcement functions or policing activities so as to make these employees “critical service employees” whose strike would threaten community safety. In *Capitol City Lodge No 141, Fraternal Order of Police v Ingham Co Bd of Comm'rs*, 155 Mich App 116, (1986), the Court of Appeals used a similar analysis in finding that jail security officers were not subject to Act 312 arbitration.

In this case, the lieutenant/jail administrator, although required to be law enforcement certified, has never been called upon to exercise authority beyond matters directly or, at most, indirectly related to the jail functioning, arrests paperwork, and the corrections officers. The structure of the department clearly distinguishes the road patrol officers from the corrections officers. The promotional ladder is separate, and the potential exercise of administrative control by the lieutenant/jail administrator, which has never been implemented, is insufficient to remove

the lieutenant/jail administrator from the long line of cases that have found corrections officers not to be eligible for Act 312 arbitration.

In regard to the corrections corporals, the Union brief recognizes the governing cases, but argues that those cases apply only to employees whose sole function is corrections officer. The Union argues that these employees have a dual function as police officers. We find that the record does not support this contention. Such a finding must be based on performance of law enforcement duties that are regular and a continual part of the employees' duties. The testimony indicates that the corrections corporals could be involved in making arrests or in capturing escaped prisoners and have performed some duties for road patrol officers. However, these have been infrequent and occasional experiences rather than a regular part of the work. In *County and Sheriff of Montcalm*, 1997 MERC Lab Op 157, *aff'd* 235 Mich App 580 (1999) we concluded that although corrections officers assisted emergency dispatchers on the evening shift, these duties were not a significant or regular part of their job so as to make them Act 312 eligible. We reached a similar conclusion in *Cheboygan County and Cheboygan County Sheriff*, 1998 MERC Lab Op 647 and *City of Detroit Police Department*, 2000 MERC Lab Op 83, with respect to emergency dispatch operators; we found no dual status where the duties were not "daily," "regular," or "continual." The facts do not support any such finding here. We find that the record does not support a dual function status and the corrections corporals are not eligible for Act 312 arbitration.

For the reasons set forth above, we find that the positions of lieutenant/jail administrator and corrections corporal are not eligible for arbitration under Act 312.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Nora Lynch, Commission Chair

Maris Stella Swift, Commission Member

Harry W. Bishop, Commission Member

Dated: _____