

STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMMISSION  
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF BAY CITY,  
Public Employer,

Case No. UC02 E-019

-and-

UTILITY WORKERS UNION OF AMERICA,  
LOCAL 541,  
Labor Organization-Petitioner,

-and-

UTILITY WORKERS UNION OF AMERICA,  
LOCAL 482,  
Labor Organization-Interested Party.

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APPEARANCES:

Dale Bergland, Director of Human Resources, for the Employer

Kim Coonan, President, for the Petitioner-Labor Organization

Mark Stanger, President, for the Labor Organization-Interested Party

DECISION AND ORDER ON PETITION FOR UNIT CLARIFICATION

Pursuant to Sections 12 and 13 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212 and 423.213, this case was heard on November 4, 2002, by Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. Based on the record as a whole, including evidence and arguments presented at the hearing, we find as follows:

The Petition and Positions of the Parties:

The Utility Workers Union of America, Local 541, filed this petition on May 20, 2002. Petitioner represents a bargaining unit of administrative and professional employees employed by the City of Bay City. Petitioner seeks to add a new position, electric systems communications support administrator (hereinafter "support administrator") to this bargaining unit. The Utility Workers Union of America, Local 482, represents a bargaining unit of nonsupervisory

employees in the Employer's electric department. Local 482, appearing as an interested party in this case, maintains that the support administrator belongs in its bargaining unit. Local 482 asserts that by practice and agreement, its unit includes all employees in the electric department, except supervisors and clerical employees. It points out that in 1999, the parties agreed to move the electric communications technician position from Petitioner's unit to Local 482's unit. According to Local 482, this position was a predecessor to the support administrator position; both are responsible for computer-operated systems in the electric department. The Employer initially took the position that the support administrator should be excluded from any bargaining unit as a confidential employee. However, the Employer dropped this contention after the petition was filed. It now agrees with Local 482 that the support administrator belongs in Local 482's unit. The Employer intends to place the position in this unit at the conclusion of this case unless we grant Petitioner's unit clarification request.

Facts:

Since about 1970, Local 482 has been the certified bargaining representative for all employees of the Employer holding positions in its electric department/division, excluding the executives, supervisors and clerical employees.<sup>1</sup> In 1980, Petitioner was certified to represent a citywide bargaining unit of administrative and professional employees of the Employer. It was also certified as the bargaining representative for a citywide unit of supervisory employees. The latter unit included positions in the electric division, but the former did not.

Petitioner's professional and administrative unit includes computer network technicians, lead programmers, and computer operator/programmers who are part of the information services division of the department of power and technology. In 1999, the Employer created a new position in the electric division, electric communications technician (hereinafter "electric technician"). The Employer promoted Greg Merrow, who had been a computer network technician in the information services division, to this position.

The 1999 posting for the electric communications technician summarizes the duties of the position:

This is a highly skilled and complex level work [sic] in the programming and maintenance of all software systems and related equipment for electronic metering, solid state regulator controls, electronic breaker controls, SCADA systems, GIS systems and electric communications systems.

Work includes assisting with the implementation, establishment, installation and maintenance of substation monitoring equipment, GIS systems, dispatching systems, outage management systems, customer metering inquiry systems, and remote field SCADA equipment.

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<sup>1</sup> At the time that this unit was certified, the electric department was a separate department. It is now the electric division of the Employer's power and technology department.

The electric technician had a considerable role in developing and installing new systems in the electric department. As electric technician, Merrow worked with supervisors, installers and technicians in the electric division to program equipment and interface programs for the systems used by the division. For example, in the metering room, Merrow programmed meters and developed software used in the billing process.

The Employer originally assigned the electric technician position to Petitioner's unit. However, after Local 482 objected, the Employer, Petitioner and Local 482 agreed to move the position to Local 482's unit.

In the summer of 2001, the Employer decided to replace the electric technician position. The new positions the Employer intended to create in its place were to have access to information which the Employer considered confidential. The Employer decided, therefore, that the positions should not be in any bargaining unit. The Employer posted the first new position, GIS SCADA administrator, in September 2001. Merrow received the job. Local 482 then filed a grievance asserting that this position should be in its bargaining unit. While this grievance was still pending, and before Petitioner made a demand to include the GIS SCADA administrator in its unit, the Employer abolished the position.

On January 18, 2002, the Employer created the support administrator position. Like the GIS SCADA position, this position was created as a non-union job. Merrow became the new support administrator.

The support administrator oversees and monitors the electric department systems which the electric technician "established, installed and maintained." The support administrator has overall responsibility for programming the systems and managing their databases. Merrow testified that as electric technician, he worked alongside operators, installers, and other technicians. According to Merrow, these employees now mostly do the work themselves. As he did when he was the electric technician, Merrow personally programs and manages the SCADA system. Otherwise, Merrow's job is to help solve problems, answer questions, and give instruction. According to the position's job description, the support administrator is also to be responsible for "future communications projects." On occasion, the support administrator works with the information services division. For example, the support administrator assisted information services personnel in tracking down and eliminating a computer virus. In general, however, the support administrator works only on electric division systems.

While other employees within the power and technology department report to a division director, the support administrator reports directly to the director of the power and technology department. Even though the support administrator has no supervisory authority over employees, the support administrator is required to attend the department's regular weekly staff meeting of supervisors and division directors.

On January 30, 2002, Petitioner sent the Employer a demand to bargain over the inclusion of the support administrator position in its unit. Sometime between January and the filing of the instant petition in May, Local 482 and the Employer began negotiating their new

collective bargaining agreement. At this time, Local 482 presented the Employer with a proposal to include the support administrator in its unit.

#### Discussion and Conclusions of Law:

In determining whether a new position shares a community of interest with an existing bargaining unit, we consider a number of factors, including similarities in duties, skills and working conditions, similarities in wages and employee benefits, the amount of day-to-day contact between the position and positions in the bargaining unit, whether the position's function is integrated with that of the bargaining unit, and common promotion ladders and/or common supervision. *Grosse Pointe Public Library*, 1999 MERC Lab Op 151; *Covert Public Schools*, 1997 MERC Lab Op 594; *Saginaw Valley State College*, 1988 MERC Lab Op 533.

When a union files a unit clarification petition seeking to add a new position to its unit, no other union claims the position, and the employer does not assert that the position is executive, confidential or supervisory, the issue is generally whether the new position shares a community of interest with petitioner's existing unit. See, e.g., *Detroit Judicial Council*, 2000 MERC Lab Op 7; *Lansing Community College*, 2000 MERC Lab Op 99. However, we do not determine relative degrees of community of interest. See, *Henry Ford Community College*, 1996 MERC Lab Op 372, 379-380; *Saginaw Valley State College*. When two unions claim a new position, we will defer to an employer's reasonable decision to place the position in one of their units if the evidence indicates that the position shares a community of interest this unit or with both units. See *Swartz Creek Community Schools*, 2001 MERC Lab Op 372

In *Swartz Creek Community Schools*, we dismissed a petition filed by a union representing a residual unit of six secretarial positions, all of which worked in the employer's central business office. Petitioner sought to add to this unit a new position, single records data secretary. The union that represented all other support employees, including clerical employees, also claimed the position. The employer placed it in the support unit. We held that the position shared a community of interest with employees in petitioner's unit because they performed clerical functions, worked in the central office, had day-to-day contact, and were supervised by the superintendent or assistant superintendent. However, we also found a community of interest between the new position and the intervener's unit, based on similarities in the type of work performed, integration of function with clerical employees in that unit, and regular contact between the new position and members of that unit. Based on these findings, we deferred to the employer's unit placement decision and dismissed the petition. See also, *Royal Oak Public Schools*, 1984 MERC Lab Op 922 (Commission deferred to employer's reasonable decision to place a new position which handled money in school lunchrooms in the unit that represented food service employees rather than petitioner's clerical unit, since position arguably shared community of interest with both units); *Lakeview Schools*, 1988 MERC Lab Op 424.

We find that the support administrator shares a community of interest with Petitioner's bargaining unit. Like the computer network technicians, lead programmers, and computer operator/programmers in Petitioner's unit, the support administrator performs duties of a technical nature requiring information technology skills. In addition, the support administrator's job description, and the fact that he attends management meetings, suggests that he has or will

have some administrative duties. The support administrator also has some contact with information services personnel.

We also find that the support administrator shares a community of interest with Local 482's bargaining unit. The skills and duties of the support administrator position are similar to, although not the same as, the duties of the abolished electric technician position. The support administrator works almost exclusively within the electric division. His function is closely integrated with the functions of other electric division employees, and he has daily contact with these employees.

Petitioner argues that because Local 482 did not file a unit clarification petition seeking to represent the support administrator, Local 482 acquiesced to the placement of the position in Petitioner's unit. We do not agree. Petitioner made a demand for recognition in January 2002. Before this petition was filed in May 2002, Local 482 had demanded to represent the position in the form of a proposal to the Employer in their contract negotiations. The facts do not indicate that Local 482 agreed or acquiesced to the placement of the support administrator in Petitioner's unit.

Local 482's unit has historically included all electric department employees except supervisors and clericals. It included the abolished information systems position, electric technician. We find that the Employer's desire to place the support administrator in Local 482's unit is reasonable. Therefore, we will defer to the Employer's unit placement decision. In accord with the findings of fact, discussion, and conclusions of law above, we issue the following order.

ORDER

The petition for unit clarification is hereby dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Maris Stella Swift, Commission Chair

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Harry Bishop, Commission Member

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C. Barry Ott, Commission Member

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