

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

In the Matter of:

ST. CLAIR COUNTY (FRIEND OF THE COURT),
Public Employer,

Case No. UC03 G-27

-and-

SERVICE EMPLOYEES INTERNATIONAL UNION,
LOCAL 516,
Petitioner-Labor Organization.

APPEARANCES:

Fletcher Clark Tomlinson Fealko & Monaghan, P.C., by Gary A. Fletcher, Esq., for the
Public Employer

Mark H. Cousens, Esq., for the Petitioner

DECISION AND ORDER ON PETITION FOR UNIT CLARIFICATION

This case was heard in Detroit, Michigan, on September 10, 2004, by Roy L. Roulhac, Administrative Law Judge for the Michigan Employment Relations Commission, pursuant to Sections 12 and 13 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212 and 423.213. Based on the record and post-hearing briefs filed by November 18, 2004, we find as follows:

The Petition:

On July 8, 2003, the Service Employees International Union, Local 516 (Local 516 or Petitioner), which represents a bargaining unit of non-supervisory employees of the St. Clair County Friend of the Court, filed a petition seeking clarification of the placement of two newly created positions - judicial service coordinator and accounting supervisor. Petitioner disputes the Employer's designation of the positions as supervisors and objects to the Employer's removal of four employees from its bargaining unit to fill the positions. Local 516 claims that the four persons are not supervisors within the meaning of PERA, and that the Employer's action has resulted in an extraordinarily high ratio of "supervisors" to subordinates.

Facts:

The material facts are undisputed. The Employer is responsible for, among other things, enforcing court orders regarding child support, custody, and parenting time, and making recommendations on such matters to circuit court judges. Until the June 2003 reorganization that is the subject of this dispute, twenty-nine of the forty-three individuals employed by the Friend of the Court were bargaining unit members, including account clerks and judicial service officers. Four employees - the Friend of the Court, her deputy, a mediator, and an office administrator were excluded from the unit as executives. Three attorney referees were excluded from the unit as supervisors of six employees each, including judicial service officers and account clerks.

In June 2003, the Employer created four new positions – 3 judicial service coordinators (JSCs) and an accounting supervisor. Four employees from Local 516's bargaining unit were assigned to fill these positions. The position descriptions for the JSCs and the accounting supervisor provide that they will assign responsibilities and coordinate tasks and work flow to subordinate employees. Additionally, they are responsible for issues such as time management, attendance, work production, and other performance issues. They participate in promotions, hiring, disciplinary action, and other related functions. Each JSC oversees the work of four employees, while the accounting supervisor directs the work of five employees.

The JSCs and the accounting supervisor have interviewed and hired employees. They participate in the discipline of subordinate employees. They are authorized to gather facts and make recommendations about major disciplinary issues involving suspension or discharge, and they are authorized to resolve minor disciplinary actions independently. To date, the Friend of the Court has followed the accounting supervisor's recommendations regarding the discipline of two employees. The JSCs and the accounting supervisor approve or deny employees' requests for time off from work and monitor the quality of employees' work. In summary, they provide the supervision that the attorneys are no longer able to provide.

Conclusions of Law:

Local 516 opposes the Employer's designation of the JSCs and the accounting supervisor as supervisors, claiming that they are work leaders who have never exercised any supervisory authority and are unlikely to ever do so. According to Local 516, the Employer's action has resulted in an extraordinarily high ratio of supervisors to subordinates.

A supervisor is one who possesses authority to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or to effectively recommend such action, as long as this authority requires the use of independent judgment and is not merely routine. *MEA v Clare-Gladwin ISD*, 153 Mich App 792, 796-798 (1996); *City of Holland*, 2002 MERC Lab Op 40, 41; *Village of Paw Paw*, 2000

MERC Lab Op 370. Possession of any of the above powers may confer supervisory status. *Huron Co Medical Care Facility*, 1998 MERC Lab Op 137. An individual is not a supervisor under PERA if his or her authority is limited to the routine direction of the daily work of other employees and/or making work assignments of a routine nature. *Bloomfield Hills Sch Dist*, 2000 MERC Lab Op 363; *Huron Co Medical Care Facility*. Employees who merely assign or oversee the performance of work by others on a routine basis are not supervisors under the above definition. *Kalkaska Co and Sheriff*, 1994 MERC Lab Op 693, 698.

In this case, the evidence demonstrates that the JSCs and the accounting supervisor have been granted authority to do more than merely assign and direct the work of other employees as Local 516 asserts. They have interviewed and hired employees. They are empowered to approve or deny an employee's request for time off from work and they participate in the grievance process from beginning to end. Moreover, the JSCs and the accounting supervisor are authorized to discipline or to effectively recommend that employees be disciplined. We have held that the authority to issue formal discipline, or to effectively recommend such discipline, is an important indicator of supervisory authority, even if that authority is rarely exercised. *Tuscola Intermediate Schs*, 2000 MERC Lab Op 226; *City of Detroit (DPW)*, 1999 MERC Lab Op 283; *City of Detroit*, 1996 MERC Lab Op 282; *Mesick Consolidated Schs*, 1988 MERC Lab Op 838. The evidence establishes that the JSCs and accounting supervisor are supervisory positions that should be excluded from a unit of nonsupervisory employees.

We find no merit to Local 516's argument that the creation of four additional supervisors results in an excessively high ratio of supervisors to nonsupervisors. The ratio of supervisors to subordinates is a relevant question in reviewing a proposed bargaining unit. *Ypsilanti Twp*, 1968 MERC Lab Op 811. Although we have not identified any particular ratio as excessive, we concluded in *City of Hazel Park, Library Bd*, 1996 MERC Lab Op 287, that the exclusion of two of three employees as supervisors would result in an unreasonably high ratio. Compare, *City of Saginaw*, 1995 MERC Lab Op 538 (one supervisor for every three to four nonsupervisory positions not unreasonable where work was highly technical); *Cass Co Pub Health Dep't*, 1989 MERC Lab Op 837 (four supervisors to twenty employees was not unusually large given the Employer's diverse programs and classifications of employees); *70th Dist Ct*, 1982 MERC Lab Op 849 (eleven supervisors for forty-one employees not unreasonable). In this case, considering the Employer's organizational structure, we find that the ratio of supervisors to nonsupervisors is not unreasonable. The JSCs and accounting supervisor are not in addition to existing supervisory positions. Rather, they replace the attorneys who are no longer able to provide supervision.

While Local 516 argues that the Employer's plan to institute an evaluation process ignores its obligation to bargain, Petitioner has not filed a charge on this issue and we decline to address it in this proceeding. We note, however, that the responsibility for preparing written evaluations of an employee's performance can be an important indicator of supervisory status. *Huron Co Medical Care Facility*. Although the Friend of the Court's evaluation process was not expected to begin until January 2005, the JSCs

and the accounting supervisor have commenced the evaluation process by creating, in conjunction with employees they supervise, individual work plans that will form the basis for formal employee evaluations.

We have carefully considered all other arguments advanced by the parties and conclude that they do not warrant a change in the result.

ORDER

Based upon the facts and conclusions of law set forth above, the unit clarification petition is dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Nora Lynch, Commission Chairman

Harry W. Bishop, Commission Member

Nino E. Green, Commission Member

Date: _____