

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

In the Matter of:

CITY OF HAZEL PARK,
Public Employer - Petitioner,

Case No. UC06 B-004

-and-

AFSCME COUNCIL 25,
Labor Organization.

APPEARANCES:

Hardy, Lewis & Page, P.C., by Robert Nyovich, Esq., for the Petitioner

Ben K. Frimpong, Esq., Staff Attorney, for the Labor Organization

DECISION AND ORDER
ON PETITION FOR UNIT CLARIFICATION

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 February 5, 2007 before David M. Peltz, Administrative Law Judge for the State Office of Administrative Hearings and Rules, acting on behalf of the Michigan Employment Relations Commission. Pursuant to Sections 13 and 14 of PERA, and based upon the entire record, including the transcript of the hearing, exhibits and post-hearing briefs filed by the parties on or before March 20, 2007, the Commission finds as follows:

The Petition:

On February 14, 2006, the City of Hazel Park filed this petition seeking to clarify the bargaining unit status of the position of administrative secretary to the chief of police. The administrative secretary position is currently included within a bargaining unit of nonsupervisory employees represented by AFSCME Council 25 (Union). Petitioner asserts that the disputed position should be excluded from the AFSCME bargaining unit as confidential because the position is needed to assist the police chief with duties related to labor relations and collective bargaining. The Union contends that the position at issue is not confidential, that the City already has one confidential position, and that Petitioner failed to meet its burden of establishing the need for an additional exclusion.

Facts:

The City of Hazel Park has approximately one hundred employees, ninety-three of whom are in positions represented by one of eight separate labor organizations. The police department has the largest number of unionized employees. Of the forty-three employees in the police department, only the chief of police is not represented for purposes of collective bargaining. Employees of the police department are organized in four bargaining units, three of which are represented by the Police Officers Labor Council (POLC).¹ The fourth bargaining unit consisting of police department employees is represented by AFSCME Council 25.

Edward Klobucher has been the city manager in Hazel Park since 2002. Klobucher is responsible for all labor relations and human resource functions within the City, including the negotiation and administration of collective bargaining agreements and grievance processing. Klobucher receives assistance in this regard from the department heads, including the police and fire chiefs, as well as the assistant city manager and the newly hired city attorney. In addition, the City has previously utilized outside counsel to assist Klobucher in the negotiation of contracts.

The City currently has one confidential office clerical employee, the secretary to the city manager. This individual not only assists the city manager, but also performs clerical work relating to labor relations and collective bargaining matters for the city attorney and the police chief. However, she is frequently too busy with her other responsibilities to keep up with the labor relations workload. In such situations, the city manager, city attorney, and police chief must perform their own clerical work.

David Niedermeier has been the City's chief of police since around 1998. He is responsible for the entire operation of the police department, including personnel matters and certain labor relations functions. Niedermeier makes recommendations to the city manager regarding the hiring and firing of police department employees. He also interprets contractual provisions, investigates grievances filed by the four labor organizations representing police department employees, advises the city manager with respect to the resolution of those grievances, and participates in arbitration hearings.

Niedermeier's role in the collective bargaining process has varied over time, largely depending on the desires of the city manager. He has assisted in the drafting of bargaining proposals and the evaluation of union contract offers, and he has served as a member of the City's bargaining team during negotiations with the POLC. However, he was not at the bargaining table during negotiations on the most recent contracts involving the POLC and AFSCME. Although Niedermeier testified that he made recommendations to the city manager during those negotiations, he was unable to recall any specifics and referred to his discussions with Klobucher concerning such matters as "potentially hypothetical."

¹ The POLC unit consisting of dispatchers was recently certified and, at the time of the hearing in this matter, was without a collective bargaining agreement.

While the level of Niedermeier's involvement in the collective bargaining process has fluctuated, his other responsibilities with respect to labor relations have remained constant. Niedermeier admitted that he has been able to function over the past five years without a confidential clerical employee specifically assigned to the police department.

Kimberly DuBerg has worked for the City as administrative secretary to the police chief for approximately five years. Other than handling personnel files, DuBerg currently does not perform any work relating to labor relations or collective bargaining. According to the city manager, DuBerg will be assigned to assist Niedermeier "in his role with respect to labor relations" if the instant petition is granted. The city manager testified that DuBerg's duties would likely include "handling and processing contracts, amendments, disciplinary procedures, things of that nature."

Discussion and Conclusions of Law:

Petitioner contends that the administrative secretary to the police chief should be excluded as a confidential employee due to the number of bargaining units within the City of Hazel Park and the number of organized City employees, and because of the overburdened schedule of the existing confidential employee, the secretary to the city manager. Although PERA itself does not include a definition of a confidential employee, we have defined that term as one who formulates, determines, and effectuates management policy with regard to labor relations, or who assists in a confidential capacity to such a person. *St Clair Co Cmty Coll*, 2002 MERC Lab Op 406, 408; *Riverview Cmty Sch*, 1968 MERC Lab Op 419. In considering confidential status, we must balance the employer's need for a confidential employee against the employee's right to representation. The confidential exclusion is applied cautiously so as to fulfill PERA's purpose of providing employees with an opportunity to be represented and to bargain collectively. *Pontiac Sch Dist*, 1997 MERC Lab Op 173; *City of Saginaw (City Attorney)*, 1991 MERC Lab Op 253; *City of Detroit*, 1969 MERC Lab Op 187, 193-194. We do not assume that because an employee is included in a bargaining unit, that the employee will breach his or her employer's confidence or misuse sensitive information. *Lapeer Co & 40th Judicial Circuit Ct*, 1998 MERC Lab Op 611, 620; *City of Riverview*, 1983 MERC Lab Op 400.

To allow public employers to have an employee available to directly assist in the preparation and handling of bargaining proposals during negotiations, we have always permitted employers to exclude one employee as confidential without a specific showing of necessity. *River Valley Sch Dist*, 17 MPER 39 (2004); *Monroe Co Opportunity Program*, 2000 MERC Lab Op 289, 294. However, the employer bears the burden of showing justification for any additional exclusion. *City of Saginaw (City Attorney)*; *Monroe Co Probate Ct*, 1990 MERC Lab Op 880, 884. It is well established that an employer's administrative convenience alone cannot justify an additional exclusion. *Williamston Sch*, 1994 MERC Lab Op 1062; *City of Saginaw*, 1994 MERC Lab Op 988; *City of River Rouge*, 1971 MERC Lab Op 603. Rather, we limit the number of confidential exclusions to employees who are an integral and necessary part of the collective bargaining process. *Saginaw Co Rd Comm*, 1993 MERC Lab Op 227; *Swartz Creek Cmty Sch*, 1988 MERC Lab Op 848. See also *Marquette Pub Sch*, 1981 MERC Lab Op 896 (a confidential employee is one that is intrinsically involved in labor negotiations).

Where an employer has already been granted a confidential exclusion and seeks a further exclusion, as in this case, the mere fact that the employee has been or will be delegated certain confidential functions does not, standing alone, meet the burden of showing the necessity of another exclusion from the bargaining unit. *Lake Co & Lake Co Sheriff*, 1999 MERC Lab Op 107; *Wyandotte Pub Sch*, 1990 MERC Lab Op 425, aff'd sub nom *Wyandotte Pub Sch v Wyandotte Administrative Ass'n*, unpublished opinion of the Court of Appeals, issued December 2, 1992 (Docket No. 130022). The employer must show that the confidential work cannot feasibly be reassigned to minimize the number of employees excluded. *Shelby Charter Twp*, 2001 MERC Lab Op 84; *Lapeer Co & 40th Judicial Circuit Ct*.

We have carefully reviewed the record in this matter and have determined that Petitioner has not met its burden of establishing the confidential status of the administrative secretary to the police chief. None of the City's witnesses were able to articulate with any specificity what confidential tasks the position at issue would perform if we were to grant the instant petition. The vague assertion that the disputed position would assist the police chief with respect to labor relations and collective bargaining is insufficient to establish that the position would actually be assigned work of a confidential nature, as there are many duties that may involve labor relations matters but are not considered an integral and necessary part of the collective bargaining process. For example, we have held that typing answers to grievances, accessing personnel records or financial information, assisting in the compiling of wage data, costing out bargaining proposals, and handling information involving lawsuits, evaluations, and discipline are not functions with a critical nexus to labor relations negotiations so as to justify the need for an additional exclusion. See e.g. *Lansing Cmty Coll*, 2000 MERC Lab Op 99; *St Clair Co Cmty Coll*, 2002 MERC Lab Op 406; *River Valley Sch Dist*, 17 MPER 39 (2004); *City of Riverview*, 1983 MERC Lab Op 400.

Even assuming that the responsibilities Petitioner intends to assign to the disputed position are confidential as we have defined that term, Petitioner has nevertheless failed to establish its need for another confidential exclusion. The City has only about one hundred employees in total, ninety-three of whom are represented for purposes of collective bargaining. Although there are four bargaining units representing the police department's forty-three employees, the police chief's actual involvement in collective bargaining is limited and does not justify another full-time exclusion. In fact, Niedermeier played no significant role in the negotiation of the most recent contracts between the City and its police unions. Moreover, his responsibilities with respect to grievances and other labor relations matters have remained constant throughout the past five years, a period during which Niedermeier has been able to function without the assistance of a dedicated confidential employee.

Petitioner contends that an additional exclusion is necessary because the existing confidential employee, the city manager's secretary, is so overburdened that she cannot perform all the confidential duties assigned to her. However, Petitioner has failed to demonstrate that it would not be feasible to take some of the non-confidential duties currently performed by the city manager's secretary and reassign them to the police chief's administrative secretary or other clerical employees, at least on a temporary basis when the secretary's confidential workload is particularly heavy. At best, the record suggests only that it

would be administratively convenient for the police chief's secretary to be excluded from the AFSCME bargaining unit.

For the reasons set forth above, we conclude that the City of Hazel Park has not demonstrated the necessity for an additional confidential exclusion in this matter. Accordingly, we enter the following order:

ORDER

Based upon the above findings of fact and conclusions of law, the petition for unit clarification is hereby denied.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION²

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

² Commission Chair Christine A. Derdarian was unable to participate in the decision in this matter.