

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

In the Matter of:

CITY OF DETROIT,
Public Employer-Petitioner,

Case No. UC07 L-033

-and-

AFSCME COUNCIL 25,
Labor Organization.

APPEARANCES:

Andrew Jarvis, City of Detroit Law Department, for the Public Employer

Miller Cohen, P.L.C., by Richard G. Mack, Jr., for the Labor Organization

**DECISION AND ORDER ON
PETITION FOR UNIT CLARIFICATION**

Pursuant to the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.201 – 423.217, this case was assigned to Administrative Law Judge (ALJ) Doyle O'Connor, of the State Office of Administrative Hearings and Rules, acting on behalf of the Michigan Employment Relations Commission (MERC).

The Petition and Positions of the Parties:

On December 7, 2007, a petition for unit clarification was filed by the City of Detroit (City) seeking the realignment of approximately seven hundred employees in approximately twenty-six different bargaining units, represented by eight different unions. It was asserted that the City had created a new General Services Department at some unspecified point in 2006. The City suggested, in very general terms, that the multiple bargaining units should be re-aligned in order to group the various involved positions in a different manner.

The filing of the unit clarification petition had its genesis in a previously filed unfair labor practice proceeding involving the City and AFSCME Council 25, Case No. C07 B-030, in which it was alleged that the City had refused to enter negotiations for a new Supplemental Agreement covering one of the multiple AFSCME represented bargaining units. The City had asserted, in that unfair labor practice charge case,

defenses appropriate to a unit clarification case and advised the ALJ, David M. Peltz, during a pre-trial conference on August 27, 2007, that the instant unit clarification petition would imminently be filed. On December 17, 2007, ALJ Peltz advised the parties that the unit clarification petition filed by the City did not comport with the representations made in the pre-trial conference and that, therefore, the unit clarification issue would not be consolidated with the pending ULP case and would instead be addressed by the Commission directly.¹

Rule 143 of the General Rules of the Michigan Employment Relations Commission, 2002 AACRS, R 423.143, requires that every unit clarification petition, when initially filed, provide a statement of the reasons for clarification of the unit and include the approximate date that each position was either created or substantially changed. The petition in this matter provided only a listing of a series of job classifications. Despite the failure of the petition in question to provide the minimum information required by the Rules, the petition was accepted and efforts at clarification of the claims were conducted by the Elections Division of the Bureau of Employment Relations.

In a December 18, 2007 letter, the Elections Division advised the City that the filing was inadequate and directed the City to provide significant additional detail in support of the petition, and further, that the City provide a position statement setting forth the details concerning the alleged reorganization and explaining why the City believed that a unit clarification petition was the appropriate method of addressing the issues. After a delay of five months, on May 28, 2008, the City filed a reply which did not address the specific inquiries of when the positions in question had changed, or the question of why the novel effort at realigning multiple bargaining units of long-standing duration was an appropriate use of the unit clarification process.

On review of the City's response, the matter was bifurcated with the questions related to the proposed realignment of only the AFSCME represented bargaining units referred to the Bureau's Mediation Services for an attempt at resolution of the dispute. Efforts at voluntary resolution were unsuccessful; at the February 9, 2009 request of AFSCME, the matter was referred to an ALJ. On April 1, 2009, the ALJ bifurcated the matter for handling, determining that only the AFSCME bargaining unit positions would be initially addressed.² The ALJ directed the City to provide specific information regarding the creation and/or alteration of the positions in question, as well as an explicit description of the precise remedy the City sought. Further, the ALJ issued the following direction to the City regarding its necessary response, noting that he was refraining at that time from addressing the Union's request that the unit clarification petition be summarily dismissed:

¹ That ULP matter is addressed in an ALJ Decision and Recommended Order in Case No. C07 B-030 that is being released contemporaneously with the Decision and Order in this unit clarification matter.

² At that time, the other potentially involved labor organizations were advised that claims regarding positions in their existing units would not be initially addressed. Those unions will be provided copies of this decision.

The City was earlier directed to provide a position statement in support of its petition. One factual issue left unclarified in that position statement is exactly when the General Services Department was created, and if different, when the positions in question were effectively transferred to that Department. I will also need copies of the original certifications, or documents reflecting the voluntary recognition, of each of the involved AFSCME bargaining units, as well as any current recognition agreement language, if different. Additionally, I need the effective dates of the current, or most recently expired, collective bargaining agreement between the City and AFSCME, and when that contract was entered into, if different from the effective date. I will also need the effective dates of any supplemental agreements between the City and AFSCME or its various Local Unions. Finally, MERC's Election Officer had earlier directed the City to provide an explanation of the "precise remedy" sought by the petition, with the City's response offering what it described as "an outline". I will need a more straightforward and explicit response on the question of what exactly does the City propose be done, assuming it prevails on its petition. I will expect all of the above information to be provided by the City in support of its petition.

The City filed a perfunctory one page reply on July 2, 2009, to which was attached a variety of unexplained documents. In a letter of July 14, 2009, the ALJ indicated that the City's response was not adequate, and directed that the City provide specific answers regarding a numbered list of relevant questions, soliciting the information that was expressly required by R 423.143. In an effort to secure compliance, the ALJ gave the City's counsel explicit direction as to what was needed in order to proceed on the City's claims:

In my letter of April 1, I had directed the City to provide further information regarding its claims. The City's response of July 2 is not adequate. I am therefore directing that the City file a pleading which fully, and in a straightforward fashion, addresses the issues raised in the April 1 letter. Those issues are reiterated in numbered fashion below, and the City's response should track that numbering. I will expect the City's response to explain its position or answers and not merely provide me a stack of documents with the expectation that I will sort through them to divine an answer, as was done with the July 2 response.

1. The City was earlier directed to provide a position statement in support of its petition. One factual issue left unclarified in that position statement is exactly when the General Services Department was created, and if different, when each of the positions in question were effectively transferred to that Department.

2. I will also need copies of the original certifications, or documents reflecting the voluntary recognition, of each of the involved AFSCME

bargaining units, as well as any current recognition agreement language, if different.

3. Additionally, I need the effective dates of the current, or most recently expired, collective bargaining agreement between the City and AFSCME, and when that contract was entered into, if different from the effective date. I will also need the effective dates of any supplemental agreements between the City and AFSCME or its various Local Unions.

4. Finally, MERC's Election Officer had earlier directed the City to provide an explanation of the "precise remedy" sought by the petition, with the City's response offering what it described as "an outline". I will need a more straightforward and explicit response on the question of what exactly does the City propose be done, assuming it prevails on its petition.

The City never responded to the ALJ's July 14, 2009 order. On December 8, 2009, AFSCME again sought the dismissal of the unit clarification petition, asserting that the petition was improper, and, further, that it should be dismissed for failure to respond to the July 14, 2009 order. In that request, AFSCME asserted that the City had utilized the pendency of the unit clarification petition as an excuse, or explanation, for various unilateral changes in conditions of employment, and in particular, as a defense in the pending ULP charge in Case No. C07 B-030 and as the basis for the City's refusal to meet with the Union to negotiate Supplemental Agreements related to the several separate AFSCME bargaining units. The ongoing dispute led to the filing of another charge in Case No. C09 L-241. The City never responded to the Union's December 8, 2009, request that the ALJ summarily dismiss the unit clarification petition.

Discussion and Conclusions of Law:

In designating a unit as appropriate for collective bargaining under Section 13 of PERA, a primary objective is to constitute the largest unit that, in the circumstances of the particular case, is most compatible with the effectuation of the purposes of the law and that includes within a single unit all employees sharing a community of interest. *South Lyon Cmty Sch*, 19 MPER 33 (2006); *Hotel Olds v State Labor Mediation Bd*, 333 Mich 382 (1952).

The Commission Rules and its case law regarding unit clarification petitions are both well settled. We have long followed the holding of the National Labor Relations Board in *Union Electric Co*, 217 NLRB 666, 667 (1975), which we adopted in *Genesee Co*, 1978 MERC Lab Op 552, 556, and more recently restated in *Jackson Pub Sch*, 1997 MERC Lab Op 290, 298-299:

Unit clarification, as the term itself implies, is appropriate for resolving ambiguities concerning the unit placement of individuals who, for example, come within a newly established classification of disputed unit placement or within an existing classification which has undergone recent, substantial

changes in the duties and responsibilities of the employees in it so as to created a real doubt as to whether the individuals in such classification continue to fall within the category--excluded or included--that they occupied in the past. Clarification is not appropriate, however, for upsetting an agreement of a union and employer or an established practice of such parties concerning the unit placement of various individuals even if the agreement was entered into by one of the parties for what it claims to be mistaken reasons or the practice has become established by acquiescence and not by express consent.

Here, the petition was first filed in 2007. It sought to set aside years, if not decades, of established unit structures. The Petition sought such extraordinary relief notwithstanding the practical effect of the fact that, while AFSCME represents some dozen separate bargaining units of City employees, they are covered by a single Master Agreement with the City, with Supplemental Agreements negotiated to address parochial concerns of particular units. The petition did not provide the minimum information required by the Commission Rules. Although the City's claim was novel, the Commission was prepared to provide it with substantive review. In December 2007, the Election Officer directed the City to provide the basic information necessary to assess the merits of the City's claims. In late May 2008, after a delay of five months, the City filed an inadequate response.

On April 1, 2009, the assigned ALJ properly and similarly directed the City to provide the basic information necessary to allow for the litigation of the dispute, and specifically, to facilitate the holding of a pretrial conference. After an unexplained delay of three months, on July 2, 2009, the City filed a perfunctory one-page response, with various unexplained documents attached. On July 14, 2009, the ALJ advised the City that its response was inadequate and specifically directed the City to respond to multiple basic questions regarding the nature and purpose of its petition. The City filed no further response, thereby, abandoning any claims it might have had and warranting dismissal of the petition. *Oakland Co & Oakland Co Sheriff*, 20 MPER 63 (2007); *aff'd* 282 Mich App 266 (2009), *lv den'd*, 483 Mich 1133 (2009); *Washtenaw Co*, 22 MPER 24 (2009) *reconsideration den'd* 22 MPER 76 (2009). The City's failure to respond to the Union's several requests that the petition be dismissed similarly evidences an intent to abandon whatever claims it may have had.

The initial petition failed to meet the minimum standards of Commission Rule 143. The City failed to assert facts that, if proven, would establish that the positions in question were newly created or recently changed as required by that rule. The City failed to respond, or responded in a perfunctory manner to several efforts to secure more information regarding its claims. Therefore, the petition was subject to dismissal as defective from the outset.

The failure of the City to prosecute its claims in this unit clarification matter provides support for AFSCME's assertion that the filing of the unit clarification was improperly utilized to avoid the City's existing bargaining obligations with AFSCME and

its various Local Unions. However, such issues are more properly addressed in the separate unfair labor practice charge proceeding(s).

ORDER REGARDING UNIT CLARIFICATION

The petition filed by the City of Detroit is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Christine A. Derdarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____