

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

In the Matter of:

BUTMAN TOWNSHIP,
Petitioner-Public Employer,

-and-

Case No. UC98 J-39

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
COUNCIL 25,
Labor Organization.

APPEARANCES:

James M. Hammond, Esq., for the Public Employer

Kevin Bramlet, Michigan Council 25 AFSCME, for the Labor Organization

DECISION AND ORDER
ON
PETITION FOR UNIT CLARIFICATION

Pursuant to the provisions of Section 13 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.213, MSA 17.455(13), this matter came on for hearing at Detroit, Michigan, on February 2, 1999, before Nora Lynch, Administrative Law Judge for the Michigan Employment Relations Commission. Based upon the entire record, including briefs filed by the parties on or before April 7, 1999, the Commission finds as follows:

The Petition:

In the petition filed on October 8, 1998, the Employer seeks to exclude the position of working superintendent from a bargaining unit of township employees. The Employer maintains that this position is an executive or supervisory employee, not properly included in the bargaining unit with nonsupervisory employees.

Facts:

Butman Township is governed by a five-member Board, which includes the township supervisor, clerk, treasurer, and two trustees. The Township employs four full-time employees who are assigned to the Department of Public Works: one clerical employee, two maintenance employees, and one working superintendent. In 1996, the Township granted voluntary recognition to AFSCME Council 25, Local 1855, as the representative of these employees. At the time of hearing, the parties were bargaining a successor contract to the 1996-1998 collective bargaining agreement.

The DPW is responsible for wastewater collection and treatment systems, the township boat launch, and the cemetery. Thomas Ponzetti currently serves as the DPW working superintendent. He has worked in the department for eight years, initially as a maintenance worker. Ponzetti sets the schedule and assigns the work to be done each day. This includes assigning employees to work in the field, inspecting sewers, working on the lift stations, and maintaining vehicles and equipment and the like. At Ponzetti's suggestion, one of the maintenance workers was designated as crew leader by the Board to enable him to sign confined space forms in Ponzetti's absence. Ponzetti works side by side with the other maintenance workers, generally spending five to six hours a day, or 30 hours a week, performing these functions. The remainder of the time he spends in the office completing assigned administrative duties. The amount of administrative work may vary depending on what projects are ongoing.

Ponzetti submits monthly reports to update the Board on what is happening in the department. He is also responsible for submitting a yearly budget proposal and recommendations to the Board; the Board may accept the budget as written or make changes as it sees fit. Ponzetti is authorized to make purchases of up to \$500 without Board approval. For expenditures beyond this amount, he submits a recommendation to the Board, which they usually approve. Ponzetti prepares and files reports pertaining to wastewater operations required under state and federal regulations. It is his responsibility to monitor compliance with MIOSHA health and safety procedures, as well as federal or state environmental laws, rules, or regulations pertaining to the wastewater operation. Ponzetti may recommend policies or guidelines for the Board to adopt, review, or change, such as requiring that all employees obtain a commercial driver's license so that they could operate the sewer cleaning truck. He may advise the Board about contractual services available and obtain proposals from engineering firms for projects needed. Ponzetti generally attends Township Board meetings, although he is not required to do so. The Township supervisor may request that he attend a particular meeting, depending on the agenda. Ponzetti has 24-hour use of the Township pick-up truck.

Ponzetti is responsible for initialing employees' time cards. At one time, Ponzetti authorized flex time; it had been a practice in the department that employees who came in late could make up the time at the end of the day. When the Board became aware of this practice, it was discontinued. Ponzetti also approves and coordinates vacation time, sick time, and personal time off. He may also authorize overtime when necessary. When Ponzetti recommended that a clerical employee be hired, the Board requested that he conduct interviews to screen the candidates. He did so and submitted four resumes for their consideration. When the Township supervisor requested that performance

appraisals be on file, Ponzetti conducted them for two employees. He has requested that the supervisor or a Board member assist him in appraisals, but to date this has not occurred. Ponzetti has not been involved in disciplining employees. When the Board issued a three-day suspension to the accounts clerk, he did not make a recommendation to the Board and the resulting grievance was not presented to him. The contractual grievance procedure provides that at Step 1, the grievance is presented to the immediate supervisor; Step 2, to the Department Head, and Step 3 to the supervisor of the Township Board. In practice, the union steward presents the grievance to Ponzetti to forward to the Township supervisor.

In May of 1998, the Board passed a resolution to hire a DPW manager. The Union was informed of this decision at a bargaining session held on June 30, 1998. At that time, the following letter signed by the Township supervisor was presented to the AFSCME business representative:

Please consider this our Letter of Intent, presented at this time of Union Negotiations to avoid any future misunderstandings regarding the responsibilities of the Working Superintendent of the Butman Township DPW Department.

Based on a recommendation of the time study performed by Facilities Management, 209 Avon Street, Flint, Michigan and dated June, 1998, we are reorganizing the DPW operations and will be hiring a DPW Manager who will be outside of the Bargaining Unit. This individual will report directly to the Butman Township Board of Trustees.

Based on the analysis of Facilities Management, the Working Superintendent is not technically a Supervisor but actually a lead worker who leads himself, two maintenance workers and one accounts clerk. Henceforth, the Working Superintendent will be the lead worker over the two maintenance workers. The accounts clerk, along with the Working Superintendent, will report directly to the Manager of the DPW Operations.

The Manager of DPW Operations will be responsible for all management functions of this operation; including labor relations, time management, job assignments, departmental budgets, approval of purchase orders, filing of forms/reports to governmental authorities, bid solicitation for major equipment purchases, major repairs and improvements, safety, and finally, total responsibility for the cost effectiveness of the DPW operation.

We have attached the job description of Tom Ponzetti, Working Superintendent, which is on file at the township offices; as well as the job description he provided to Facilities Management. Any and all

authority assumed by Mr. Ponzetti, is hereby the responsibility of the DPW Manager and is not a part of the Bargaining Unit.

The hiring of the manager is in process and Mr. Ponzetti may apply for this position, as well as any other current employees, providing they have the ability, skills and/or education as outlined in the job description. The job description is the property of Butman Township, however, copies of same may be obtained by candidates interested in this position.

After examining the documents, Union representatives conferred and indicated to the Township representatives that the responsibilities in the job description were already being performed by Ponzetti. On July 14, 1998, Ponzetti filed a grievance objecting to the Township hiring a manager when in fact the job duties and responsibilities were his. The Union steward forwarded the grievance to the Township supervisor asserting that the responsibilities of the manager position were long established bargaining unit work. To resolve the grievance, the Township withdrew its proposal to hire a DPW department manager.

Discussion and Conclusions:

Petitioner maintains that the working superintendent is a supervisor with the general authority and responsibility of a department superintendent and is not properly placed in the nonsupervisory bargaining unit. The Union argues that the working superintendent has limited power and authority and must seek Board approval in most matters; therefore, this position is nonsupervisory and appropriately included in the AFSCME bargaining unit.

To qualify as a supervisor under PERA, an individual's responsibilities must involve the use of independent judgment, including effective authority in personnel matters, with the power to evaluate employees and recommend discipline. Assigning and directing the work of other employees and exercising discretion in routine matters under existing policies will not establish supervisory status. *City of Detroit*, 1996 MERC Lab Op 282; *Berrien County Sheriff*, 1999 MERC Lab Op 177.

In *Village of Port Austin*, 1991 MERC Lab Op 346, we considered the issue of whether a DPW superintendent who had been included in a bargaining unit of utility and water employees should be removed due to alleged supervisory status. In that case, we found that the superintendent exercised only limited independent judgment in determining how the work would be done, assigning employees to it, and overseeing the work; for other than routine matters, council approval was necessary. We also found that the superintendent had no role in hiring or in recommending discipline or discharge. Because he had no authority in these matters, we found no justification for removing him from the unit based on supervisory status. Similarly in *Village of Birch Run*, 1990 MERC Lab Op 482, we found that the DPW superintendent was not a supervisor, as he was required to seek the approval of the village council in any significant matter, and his authority was limited to routine matters within predetermined bounds. See also *City of Detroit*, 1997 MERC Lab OP 346, 349-50.

In the instant case, the working superintendent has certain administrative responsibilities with respect to the budget, record keeping, and policy making. However, for those activities that are not of a routine nature, he must consult with the Board and receive its consent. For example, he may not make purchases over \$500 without Board approval. His authority in personnel matters is similarly limited. He has participated in interviews and screened candidates for hire, but the final decision was left to the Board. Ponzietti had authorized flex time in accordance with past practice, but it was the Board's decision to discontinue it. Although the contract suggests that Ponzetti would have a role in the grievance procedure, in actual practice, he simply forwards grievances to the Township supervisor. There is no evidence that he has hired, fired, or issued discipline to any employee. The suspension of the clerk was by Board action and Ponzetti had no input into the matter. In his memo regarding the proposed creation of a DPW Manager, the Township supervisor acknowledged that the working superintendent was a lead worker, and not technically a supervisor.

Based on a careful review of the record, we find insufficient evidence of authority possessed or exercised by the working superintendent to qualify that position as supervisory under PERA. Accordingly, we issue the following order:

ORDER

The unit clarification petition is hereby dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

DATED _____