

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

In the Matter of:

TUSCOLA COUNTY ROAD COMMISSION,  
Public Employer,

-and-

TEAMSTERS LOCAL 214,  
Petitioner-Labor Organization.

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Case No. UC13 H-012  
Docket No. 13-013013-MERC

**APPEARANCES:**

Michael F. Ward, for the Public Employer

Michael Landsiedel, Business Representative, for the Petitioner

**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 assigned to David M. Peltz, Administrative Law Judge (ALJ) for the Michigan Administrative Hearing System (MAHS), acting on behalf of the Michigan Employment Relations Commission (MERC). Based on the entire record, including the position statements filed by the parties and the transcript of the oral argument held on February 25, 2014, the Commission finds as follows:

**The Petition and Positions of the Parties:**

On August 30, 2013, Teamsters Local 214 filed a petition to clarify its bargaining unit by adding a highway maintenance foreman position, which it claims was created on or around June 10, 2013. The Employer, Tuscola County Road Commission, asserts that the unit clarification petition is inappropriate because the highway maintenance foreman is not a new or recently changed position. Rather, the Employer argues that it is merely a renamed supervisory position that has historically been excluded from Petitioner's non-supervisory bargaining unit. According to the Employer, the title of the position was changed from state highway foreman to highway maintenance foreman, but the duties, responsibilities, and working conditions have remained the same.

### Background and Factual Findings:

Petitioner, Teamsters Local 214, represents a bargaining unit consisting of nonsupervisory employees of the Tuscola County Road Commission. Foreman positions, including the position of state highway foreman, have been historically excluded from Petitioner's bargaining unit. The recognition clause of the most recent collective bargaining agreement between the parties contains language specifically excluding supervisors and working foreman positions from the unit.

The state highway foreman position was responsible for performing work on state-funded projects and local county projects. On or before June 10, 2013, the Employer changed the name of the state highway foreman position to highway maintenance foreman. The title change was made at the request of the Michigan Department of Transportation.

Teamsters Local 214 filed the instant petition on August 20, 2013. The Employer opposed the petition based, in part, upon its claim that the highway maintenance foreman position is not new, has been historically excluded from Petitioner's bargaining unit, and has not undergone any recent significant changes in job duties.

At the direction of the Commission's elections officer, the parties filed position statements on or before June 30, 2013. In its position statement, the Union did not dispute the Employer's contention that the duties and responsibilities of the highway maintenance foreman are the same as the former state highway foreman position. Rather, the Union asserted that accretion was appropriate because the highway maintenance foreman shares a community of interest with the positions within its bargaining unit and is not a supervisor as the Commission has defined that term. The Union took essentially the same position during the oral argument conducted by ALJ Peltz on February 25, 2014.

### Discussion and Conclusions of Law:

A representation proceeding is investigatory in nature and does not constitute a contested case for purposes of the Administrative Procedures Act, MCL 24.286. It is well established that we have discretion to determine whether good cause exists to hold a hearing on a representation question. *Sault Ste Marie Area Pub Sch v MEA*, 213 Mich App 176, 182 (1995); *Michigan Ass'n of Pub Employees v MERC*, 153 Mich App 536, 549 (1986). In this case, the parties were given the opportunity to show the existence of disputed factual issues that required an evidentiary hearing. Based upon the arguments set forth by the parties in their respective position statements and at oral argument, we find that an evidentiary hearing would serve no purpose and, therefore, issue the following decision on summary disposition. See *Oakland Co & Oakland Co Sheriff*, 20 MPER 63 (2007); *aff'd* 282 Mich App 266 (2009), *lv den*, 483 Mich 1133 (2009). See also *Swickard v Wayne Co Medical Examiner*, 184 Mich App 662 (1990).

Petitioner contends that the petition for unit clarification should be granted because the highway maintenance foreman is a nonsupervisory position that shares a community of interest with the positions within its bargaining unit. However, the Union has failed to make any factually supported allegation, which if true, would establish that the highway maintenance

foreman is a new or substantially changed position. While there is no dispute that the name of the position was changed from state highway foreman to highway maintenance foreman sometime during the summer of 2013, the Union concedes that it has no evidence to refute the Employer's contention that the highway maintenance foreman performs the same duties and responsibilities as the former state highway foreman.

The unit clarification process is used to resolve ambiguities concerning unit placement of individuals in newly created classifications and in situations where there is ambiguity due to recent substantial changes in existing job classifications so as to raise a question as to appropriate bargaining unit placement. *City of Grand Rapids*, 19 MPER 43 (2006); *Lapeer Co*, 1993 MERC Lab Op 649; *Washtenaw Cmty Coll*, 1993 MERC Lab Op 781; *Port Huron Area Sch Dist*, 1989 MERC Lab Op 763; *Genesee Co*, 1978 MERC Lab Op 552, 556. Unit clarification may also be used where a question arises as to whether a position should be excluded from a non-supervisory bargaining unit because of supervisory status. *City of Marshall*, 1989 MERC Lab Op 1017; *Riverview Cmty Sch Dist*, 16 MPER 51 (2003). It is well settled that a unit clarification petition is not appropriate to move established positions in or out of bargaining units contrary to bargaining history. In order to determine the unit placement of a position that has been historically excluded from the bargaining unit, a labor organization must file a petition for representation election. *City of Marshall*; *Blackman Twp*, 1988 MERC Lab Op 419; *Genesee Co*, 1978 MERC Lab Op 552.

Given that the highway maintenance foreman position has historically been excluded from Petitioner's bargaining unit and there is no evidence of any recent substantial change in job duties, responsibilities, or working conditions, we find that the unit clarification petition filed by Teamsters Local 214 in this matter is inappropriate. Accordingly, we hereby issue the order set forth below:

**ORDER**

The petition for unit clarification filed by Teamsters Local 214 is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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/s/  
Edward D. Callaghan, Commission Chair

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/s/  
Robert S. LaBrant, Commission Member

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/s/  
Natalie P. Yaw, Commission Member

Dated: April 22, 2014