

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

In the Matter of:

**CHEBOYGAN COUNTY AND
CHEBOYGAN COUNTY SHERIFF,**
Petitioners-Public Employers

-and-

**Case Nos. UC98 D-22 &
UC98 E-26
(Act 312)**

POLICE OFFICERS LABOR COUNCIL
Labor Organization

APPEARANCES:

For the Petitioners: Steven H. Schwartz, Esq.

For the Labor Organization: Timothy J. Dlugos, Esq.

DECISION AND ORDER

This case was heard at Lansing, Michigan on July 10, 1998, before Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. Pursuant to Section 13 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.213, MSA 17.455(13), and based on the record, including briefs filed by the parties on or before September 9, 1998, the Commission finds as follows:

The Petitions and Positions of the Parties:

The petition in Case No. UC98 D-22 was filed by Cheboygan County and the Cheboygan County Sheriff (the Employers) on April 24, 1998. The Police Officers Labor Council (the Union) represents a bargaining unit consisting of road patrol deputies and other nonsupervisory classifications in the Cheboygan County Sheriff Department. It also represents a bargaining unit consisting of supervisory command officers in this department. In this petition the Employers sought to move the position of corrections sergeant from the nonsupervisory unit to the supervisory unit. At the hearing the parties stipulated to moving the position. There is, therefore, no remaining issue with respect to this petition.

On March 4, 1998, the Union filed petitions for interest arbitration for both units pursuant to 1969 PA Act 312 (Act 312), MCL 423.231, et. seq., MSA 17.455(31), et. seq. (Case Nos. L97 H-

3012 & L97 H-3013). The Employers disputed the Act 312 eligibility of some of the positions named in the Union's petition for the nonsupervisory unit. The petition in Case No. UC98 E-26 was filed by the Employers on May 11, 1998. In this petition, the Employers sought this Commission's determination that certain positions in this unit were not Act 312 eligible. At the hearing, however, the parties stipulated that the positions of secretary/corrections officer, transcriptionist corrections officer, and corrections sergeant were not eligible for arbitration under Act 312. They also stipulated that the position of marine deputy was an eligible position. The only position remaining in dispute was corrections officer/communications officer, hereinafter CO.¹

The Union takes the position that COs are "emergency telephone operators" as those terms are used in Act 312. The Employers disagree, asserting that emergency dispatch is not a significant or regular part of their job. The Employers also maintain that the COs are not eligible for Act 312 arbitration as "policemen" or as "critical service employees."

Facts:

The Cheboygan County Sheriff's Department consists of a detective bureau, a marine division, a road patrol division, an administrative division, and a corrections division. The corrections division is responsible for a 23-bed jail, but at the time of the hearing the Employers were preparing for the opening of a jail addition with 34 more beds. The department is headed by the sheriff and an undersheriff. The administrative division consists of a secretary and a transcriptionist, both of whom have been trained as corrections officers but do not normally work in the jail. The detective bureau is one detective sergeant who is a police officer. There is one full-time deputy in the marine division. Three part-time employees who are not police officers assist him. The road patrol division consists of four road patrol sergeants and eight road patrol deputies, including one deputy who has the title court officer. All sergeants and deputies are required to be certified police officers, i.e., to pass the training course conducted by the Michigan Law Enforcement Officers Training Council (MLEOTC).

At the time of the hearing the corrections division consisted of ten COs and one corrections officer sergeant. The Employers had also hired seven additional COs in anticipation of the opening of the expanded jail. These seven individuals had not yet begun work. COs are not required to be certified police officers, and the Employers do not require CO applicants to have any previous experience or training as law enforcement officers. However, the Employers do require their COs to undergo 160 hours of correction officer training after being hired. Most of this training is conducted by the Employers' own officers. Any CO who wishes to carry a weapon must also take firearms training and maintain firearms certification. One of the Employers' deputies is the certified firearms trainer. Most of the current COs are firearms qualified, although they are permitted to carry weapons only when transporting a prisoner outside the jail.

¹ In the expired contract, this position is called corrections officer/dispatcher. In the negotiations for their new contract, the parties tentatively agreed to retitle the position. As noted above, as of the date of the hearing the parties had not reached agreement on a contract and were involved instead in an Act 312 proceeding for this unit.

The Union's supervisory bargaining unit consists of four road patrol sergeants and the detective sergeant. Pursuant to the parties' stipulation, this unit will now also include the corrections sergeant. The Union's nonsupervisory bargaining unit consists of the road patrol deputies, the court officer, the secretary/corrections officer, the transcriptionist/corrections officer, and the COs.

At one time, full-time dispatchers employed by the sheriff's department handled all emergency dispatch of police, fire, and ambulance services within the county. In 1993, Cheboygan, Charlevoix and Emmet Counties agreed to establish a regional emergency dispatch center. This center, which is located in Emmet County, became operational on June 24, 1996. Since that date, the regional dispatch center has received all emergency calls placed in these three counties via a "911" number, and has been responsible for dispatching all police, fire, and medical emergency vehicles within that area. The regional dispatch center is the only place within this area that the "911" number usually rings.

After June 1996, all dispatchers employed by the Cheboygan County Sheriff's department who had not been previously trained as corrections officers received this training and began working in the jail. Currently COs work 12-hour shifts. There are usually between two and four COs working on a shift. There is an area in the sheriff's department referred to as the radio or dispatch room. One CO sits at all times in the radio room and answers all calls received by the department. The COs on duty determine how the radio room assignment will be handled. The record indicates that on the evening/night shift, when there are usually only two COs, the COs alternate nights in the jail and in the radio room. During the day shift, when there are more COs on duty, the COs may split their time during a shift.

The CO in the radio room receives calls for the sheriff as well as other employees of the department. The CO transfers the call if the individual is in, and takes a message if the individual is out. The sheriff carries a pager, and the CO may page him or call him on his cell phone. In general, deputies and sergeants pick up their messages when they return to the office. However, the CO can relay an urgent personal message to an officer via radio. COs also assist the deputies in other ways. For example, a road patrol deputy may radio the CO to telephone a resident, tell the resident that the deputy is on his way to see him, and ask the resident to wait for the deputy. The CO in the radio room also runs LEIN checks for deputies. If there is a medical emergency in the jail itself, the CO in the radio room will call 911. If there is trouble with an unruly prisoner in the jail, the CO will telephone the City of Cheboygan police and ask for assistance.

The CO in the radio room also answers calls from the public. During the day shift, the CO may answer about 100 calls in total, and approximately ten to 20 will be calls from the public involving some sort of complaint, either emergency or non-emergency. An emergency is defined as any call asking for a police officer, ambulance, or fire personnel to be sent to the scene. Most emergency calls are made on the 911 line and therefore answered by the regional dispatch. However, although the record does not indicate how often this happens, the department does occasionally get emergency calls on its lines. In this case, written procedure states that the CO in the radio room is to get the caller's name and phone number and then transfer the call to 911. However, a CO testified

that there have been times when she felt that the caller might not be able to stay on the line. In these instances she has taken down the important information and relayed it to the regional dispatch center herself. If a Cheboygan deputy is dispatched by the regional dispatch, a complaint card is made for the incident. The CO in the radio room is responsible for filling out the complaint card with information obtained from the deputy, for calling the regional dispatch to get the complaint numbers, and for logging in the complaint. If the CO receives a call from a resident which does not involve an emergency, the CO may give the caller advice, such as telling the caller to telephone the local animal shelter. If the complaint can be handled internally by the department, the CO makes out a complaint card, logs it in, and passes on the complaint to the appropriate person in the department.

The Cheboygan County Sheriff's Department is the designated backup for the regional dispatch center in case the center's equipment fails. Insofar as the record discloses, the Employers do not handle overflow from the regional center. The Employers have established procedures for handling an equipment failure at the regional center, and these procedures have been distributed to all COs. If the regional dispatch system fails, 911 calls from the system can be automatically switched to the Cheboygan Sheriff's Department. According to procedure, if the regional system fails, COs are to put into operation a special bank of phones, switch the 911 line, and handle all emergency dispatch until dispatchers from the regional center arrive. Under optimum travel conditions, these dispatchers should arrive in Cheboygan in a half hour. The sheriff admitted that he would probably assign someone with dispatch experience to handle the emergency dispatch until the dispatchers from the regional center arrived. However, he opined that he himself, a sergeant, or even a deputy would be capable of handling this task on a temporary basis.

According to the sheriff and the county controller, the regional center's system has not yet failed. According to the testimony of a CO, however, there has been at least one partial system failure, and perhaps one other. She testified that on one occasion the regional center was able to answer its phones, but was not able to dispatch. Moreover, since there was an ice storm, dispatchers from the regional center were not able to travel to Cheboygan. During this period of failure, which lasted for approximately one shift, the regional dispatch center received all 911 calls and then phoned Cheboygan to dispatch responses through its radio.

The sheriff testified that in the event of a strike by the COs, he would immediately call in some road patrol deputies on overtime. These deputies, the undersheriff, and the sheriff himself would man the jail. The current county controller, who is a former police chief, is also qualified to help out in the jail. As his next step, the sheriff would ask the county controller to start calling other counties to make arrangements for transferring prisoners. At the time of the hearing the Employers were renting jail beds from other counties. Therefore, they had existing relationships with jails in approximately eight neighboring counties. The sheriff estimated that the jail could be emptied in about two days. If the county had to use all of its road patrol deputies to keep the jail going over a period of time, the sheriff would notify the Michigan State Police that the county was unable to field any cars, and the State Police would increase their patrols. The record also indicated that at the time of the hearing, the Employers had a list of approximately 100 qualified applicants for CO positions, including 33 individuals who had already taken the test the Employers use to screen and rank

applicants for the position. The sheriff testified that he could hire applicants from this list to replace striking COs simply by making phone calls.

Discussion and Conclusions of Law:

Under Sections 2 & 3 of Act 312, MCL 423.232, 233, MSA 17.455(32) & (33), disputes involving an “emergency telephone operator” employed by a police or fire department may be submitted to binding interest arbitration. Section 2(2) defines an emergency telephone operator:

Emergency telephone operator for the purposes of this act includes a person employed by a police or fire department for the purpose of relaying emergency calls to police, fire or emergency medical service personnel.

In *City of Grosse Pointe Farms*, 1979 MERC Lab Op 488, we held that the percentage of an employee’s time spent in performing emergency dispatch functions was not determinative of his or her status as an emergency telephone operator under the Act. We held that a clerk-dispatcher who performed clerical and other miscellaneous duties, answered the phone, and dispatched police cars was an emergency telephone operator even though she spent less than 10% of her time dispatching, since dispatch was a “continual,” part of her duties. By contrast, corrections officers who occasionally assisted dispatchers, usually on the evening shift when there was only one dispatcher on duty and for periods of 30-45 minutes at a time, were held not to be emergency telephone operators within the meaning of Act 312 in *Montcalm Co. and Sheriff*, 1997 MERC Lab Op 157. We held that in that case that dispatching was not a “significant” or “regular” part of the corrections officers’ jobs, and that therefore they were not dual-function employees.

We have held that employees whose jobs required them to answer occasional emergency calls, but who transferred these calls to emergency operators and did not themselves dispatch police, fire or emergency medical service personnel were not emergency telephone operators within the meaning of the Act. In *City of Lansing*, 1985 MERC Lab Op 93, we held that a switchboard operator in a police department was not Act 312 eligible, where she transferred all emergency calls she received to an emergency operator. In *County of Ingham*, 1987 MERC Lab Op 326, communication officers in a county sheriff’s department were held not to be emergency telephone operators within the meaning of the Act. In that case, the City of Lansing provided 911 service to the entire county. However, calls of an emergency nature occasionally came in on a sheriff’s department line and were answered by the communications officers. The communications officers took the necessary information from the caller and conveyed this information to the 911 operators, who dispatched the appropriate vehicle. See also *City of Wyandotte*, 1993 MERC Lab Op 234.

In *City of Flint*, 1995 MERC Lab Op 50, a case cited by the Union, communications system operators were found to be eligible for Act 312 arbitration, even though the area had a central dispatch manned by 911 operators, because communications officers were responsible for handling all emergency dispatch whenever the 911 center was closed. This frequently occurred between the hours of 3:00 a.m and 11:00 a.m.. Moreover, even when the dispatch center was open,

communications systems officers routinely dispatched a police officer whenever they received an emergency call, after first telling the caller to hang up and dial 911. Communications officers were an essential part of the employer's emergency dispatch system, as confirmed by the fact that they received training in emergency dispatch procedures and by the fact that their job description included "answering emergency calls for assistance and contacting or dispatching police, fire and medical personnel and equipment."

In the instant case, COs answer emergency calls that come in on the sheriff's department lines instead of 911. In most cases, the CO gets the caller's name and phone number and then transfers the call to the regional dispatch center. At times, if it appears that the caller may not be able to stay on the line, a CO may take down the pertinent information and relay it to the regional dispatch center. As far as this record discloses, COs never dispatch police, fire or medical service personnel in response to these calls. We conclude that the COs' responsibilities for those emergency calls that come into the sheriff's department do not in this case qualify them as emergency telephone operators under Act 312.

The Cheboygan County Sheriff's Department is the designated backup for the regional dispatch center. In *County of Ingham, supra*, the sheriff's department communications officers were held not to be Act 312 eligible where they were the designated backup for the City's 911 operators, but had never been required to perform this function. In the instant case, the Employers' procedures provide that in the case of an equipment failure at the regional dispatch center, 911 calls are to be switched to the Cheboygan County Sheriff's Department and that dispatchers from the regional dispatch center are to travel to Cheboygan to handle the emergency dispatch from there. COs would be expected to handle emergency dispatch until the dispatchers arrived, although the sheriff, undersheriff and other personnel from the department would also be able to take on this task. The record indicates that in the approximately two years since the regional dispatch center opened, there has been one or two equipment failures at the dispatch center, and that in at least one case the dispatchers from the center were prevented by weather from coming to Cheboygan. Despite this evidence, we conclude emergency telephone operator duties have not become a "continual" or "regular" part of the job of the COs in the Cheboygan County Sheriff Department.

The Employers submitted evidence to support their position that the COs, as corrections officers, were not eligible for Act 312 arbitration as "critical service" employees. The Union, however, has not argued that the COs are eligible for Act 312 arbitration even if they are not emergency telephone operators. We conclude that it is unnecessary, therefore, to make a finding on whether the COs are eligible for Act 312 arbitration under any other part of that statute.

For reasons set forth above, we find that the position of corrections officer/communications officer, also known as corrections officer/dispatcher, in the Cheboygan County Sheriff's Department is not eligible for arbitration under Act 312.

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Dated: _____