

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

In the Matter of:

WEXFORD COUNTY,  
Public Employer,

Case No. R06 D-055

-and-

TECHNICAL, PROFESSIONAL AND  
OFFICEWORKERS ASSOCIATION OF MICHIGAN,  
Labor Organization-Petitioner.

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APPEARANCES:

Cohl, Stoker, Toskey & McGlinchey, P.C., by Bonnie L. Toskey, Esq., for the Employer

Patrick J. Spidell, Business Agent, for Petitioner

**DECISION AND ORDER DISMISSING  
PETITION FOR REPRESENTATION ELECTION**

Pursuant to Section 12 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212, this case was heard at Lansing, Michigan on August 28, 2006, before Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. Pursuant to Sections 13 and 14 of PERA and based on the record, including briefs filed by the parties on or before October 17, 2006, the Commission finds as follows:

The Petition and Positions of the Parties:

On April 28, 2006, the Technical, Professional and Officeworkers Association of Michigan filed this petition for a representation election. Petitioner represents a bargaining unit of supervisory employees of Wexford County, including employees in the following classifications: maintenance supervisor, accounting supervisor, community corrections coordinator, community corrections senior officer, director of planning and building, building inspector, electrical inspector, plumbing and mechanical inspector, civic center general manager, and civic center assistant manager. Petitioner seeks to add the position of director of public works (DPW director) to this unit. The Employer contends that the DPW director cannot be

properly included in any collective bargaining unit because he is an executive as we define that term.

Findings of Fact:

Wexford County has a population of approximately 32,000 and has approximately 165 employees. Cynthia Stambaugh is the County administrator. Except for the department of public works (DPW), all County departments are headed either by positions in Petitioner's bargaining unit or by elected officials.<sup>1</sup> The DPW director position has never been part of a bargaining unit.

The County's Board of Public Works (BPW), a three-member appointed body, and its DPW director oversee the operations of the County's three small water facilities, its wastewater collection systems, its recycling center, and its large sanitary landfill. This landfill accepts both trash originating within the County and trash from sources outside the County. The DPW has only eleven full-time employees, approximately six of whom are employed at the landfill. However, the DPW's annual budget of approximately 8.5 million dollars accounts for approximately forty-three percent of the County's twenty million dollar general fund budget. The majority of this money is attributable to the landfill operation. The County maintains several separate enterprise funds for its water, wastewater collection, and landfill operations. However, in 2005, the operating expenses for the landfill exceeded its revenues by about three million dollars.

According to his job description, the DPW director reports to the County Board of Commissioners (Board) and also to the BPW with respect to matters under its oversight. The DPW director manages the day-to-day operations of the water and wastewater systems and landfill, including supervising the landfill manager and the certified operators at each of the three water treatment facilities.<sup>2</sup> The DPW director normally prepares the agenda for regular meetings of the BPW. He also normally represents the BPW at meetings of the Board. In conjunction with the BPW, the DPW director develops the strategic plan for the DPW and plans and administers capital improvements and special projects. He formulates long-term plans for the landfill as required by the State Department of Environmental Quality (DEQ). The DPW director, in conjunction with the BPW, also formulates the DPW's annual budget. The DPW director and the BPW make recommendations to the Board regarding the setting of landfill fees, an important and controversial policy issue in the County, and the Board engages in extensive discussions with the DPW director before it approves new rates. The DPW director also works with the County treasurer to monitor the County's investments for its enterprise funds. In 2006, the DPW director initiated discussions with a major national bank to secure letters of credit to support a bond issue for the landfill.

The DPW director is responsible for bringing the County's landfill into compliance with the mandates of the DEQ. The landfill's compliance with DEQ regulations is an ongoing issue

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<sup>1</sup> In *Wexford Co*, 2000 MERC Lab Op 214, we dismissed a petition by the Employer to remove two department heads, the civic center general manager and planning and building director, from Petitioner's unit. We held that these positions were not executives.

<sup>2</sup> The landfill manager has an individual contract with the County and is not a member of Petitioner's unit.

of major importance to the County. As long ago as 1989, the landfill was identified as a source of contaminants leaching into the water supply. Since that time, the County has been forced to spend large sums on studies and construction at its landfill and on adjacent private properties. In 2006, the County spent over 1.2 million dollars on contracts to halt and cleanup leachates from the landfill. The DPW director is the contact person between the County and the principal contractor on the cleanup project. He is also the contact between the DEQ and the County. He meets regularly with DEQ representatives and replies to official communications from that agency. The DPW director also represents the County at numerous other types of meetings, including meetings with township and city officials, meetings with drain commissioners, meetings with representatives of the district health department, and public meetings called to provide the citizenry with information about the landfill situation. He is quoted frequently in the local press.

The DPW director and the Board's chairperson sign the County's annual landfill license application. The DPW director is responsible for enforcing training and certification requirements for the landfill and water treatment employees, and for formulating operational procedures. The DEQ has, on occasion, cited the landfill for operational defects. In these cases, the DPW director was responsible for taking corrective action to ensure that landfill employees complied with DEQ requirements.

The DPW director appears at almost all of the Board's twice-monthly regular meetings to recommend Board action and report on ongoing issues relating to the landfill. He has also called special meetings of the Board to discuss issues relating to the landfill. On occasion, he communicates directly with the Board's chair between meetings. The DPW director makes recommendations on all projects undertaken and services purchased by the County in connection with the landfill. The DPW director negotiated a contract for the purchase of additional property for the landfill and a contract with the City of Cadillac for the disposal of landfill leachate through its water system. All construction contracts and contracts for specialized services for the landfill are approved by the Board on the DPW director's recommendation. The DPW director communicates directly with the County's legal counsel on issues relating to these contracts. For example, in 2006 the DPW director obtained a legal opinion from counsel that the County could reject a contractor's low bid because the contractor did not want to perform all the work the County needed done. He then recommended to the Board that it reject that bid and accept that of another contractor. According to minutes of the Board meetings held between July 2004 and July 2006, the DPW director made over fifty formal recommendations for Board action during this period. Of these recommendations, only two or three were rejected.

The DPW director receives the same fringe benefits as other nonrepresented County employees, including the County administrator. In 2002, the County and the DPW director entered into an individual employment contract pursuant to which the DPW director was paid \$48,000 per year. This contract expired in 2003, and since that time he has been an at-will employee. The record does not indicate what the DPW director was paid in 2006. Salaries for employees in Petitioner's bargaining unit in 2006 began at \$26,011 and topped out at \$51,406 for an employee with five year's experience.

## Discussion and Conclusions of Law:

In *Hillsdale Cmty Schs*, 1968 MERC Lab Op 859, enf'd 24 Mich App 36 (1970) we held that supervisors have a right to organize under PERA. At the same time, however, we noted that there is a "level at which organization must end." In *Grandville Exec Ass'n v Grandville*, 453 Mich 428, 439-440 (1996), the Supreme Court approved our longstanding policy of excluding from collective bargaining as "executives" those managerial employees in the public sector whose responsibilities are so intrinsically connected to the determination of their employer's policies that including them in collective bargaining units would impede, rather than further, the purposes of PERA. On remand, in *City of Grandville*, 1997 MERC Lab Op 140, we reaffirmed the definition of an executive which we adopted in *City of Detroit (Police Dept)*, 1996 MERC Lab Op 84, 106:

An executive means an employee who (1) is a policy making head of a major department of a public employer; or (2) in the case of employers with 1,000 or more employees, is a chief deputy to a department head, or is the head of a section or division of a major department who reports directly to a chief deputy and who exercises substantial discretion in formulating, determining and effectuating management policy; or (3) pursuant to statutory or charter provision, exercises a substantial degree of autonomy in carrying out his or her public services and who has direct access to or direct influence upon the governing body of a public employer in a policy making role; or (4) formulates, determines and effectuates management policy on an employer-wide basis.

See also *City of Ann Arbor*, 16 MPER 17 (2003); *Carman Ainsworth Cmty Schs*, 16 MPER 28 (2003).

The DPW director's powers do not derive from statute or a city charter, and there is no evidence that his authority or responsibilities extend beyond the DPW. The County of Wexford is not an employer with one thousand or more employees. The issue in this case, therefore, is whether the DPW director is "a policy making head of a major department of a public employer." Based on the evidence in this case, we find that he is. Wexford County is a small county. In many such counties, the department of public works might not qualify as a "major department." Here, however, largely because of the landfill, the DPW director oversees a major portion of the County's budget. The services provided by the DPW in Wexford County are among the most important the County provides to its citizens. Moreover, the landfill and its problems require constant attention from the County's policy makers. The DPW director himself is clearly a "policy maker" who formulates and determines, as well as effectuates, policy. The DPW director represents the County in its dealings with the DEQ and other public bodies. He formulates the operational procedures and oversees the contracts required to bring the landfill into compliance with DEQ regulations. The DPW director reports directly to the Board and BPW, and regularly discusses policy issues with them. The County enters into contracts representing a significant portion of its budget on the DPW director's effective recommendation. He plays a critical role in the setting of landfill rates. We conclude that the DPW director is the policy making head of a major department of Wexford County and, as such, should continue to

be excluded from participating in collective bargaining as an executive employee. In accordance with this finding, we issue the following order.

**ORDER DISMISSING PETITION**

The petition for a representation election is hereby dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Christine A. Derdarian, Commission Chair

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

Dated: \_\_\_\_\_