

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

In the Matter of:

CITY OF BAY CITY,
Public Employer,

Case No. UC00 J-41

-and-

UTILITY WORKERS UNION OF AMERICA,
LOCAL 541,
Petitioner.

APPEARANCES:

William W. Allsopp, Esq., Allsopp, Kolka, & Wackerly, P.C., for the Employer

Ronald E. LaForest, Regional Director, Utility Workers Union of America, for the Petitioner

DECISION AND ORDER ON UNIT CLARIFICATION

Pursuant to the provisions of Section 12 of the Public Employment Relations Act (PERA), 1947 PA 336, as amended by 1965 PA 379 and 1973 PA 25, MCL 423.212, this matter came on for hearing at Detroit, Michigan, on February 1, 2001, 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 March 12, 2001, the Commission finds as follows:

The Petition:

In the petition filed on October 24, 2000, Utility Workers Union of America, Local 541, seeks to clarify the bargaining unit status of the position of planning division manager. This classification replaced the former position of city planner, which had been included in Local 541's bargaining unit. The Employer maintains that the new position of planning division manager has added responsibilities and no longer shares a community of interest with Local 541 since division managers have never been included in the bargaining unit.

Facts:

The City of Bay City employs approximately 450 full-time employees, organized into six unions and one non-union group. Utility Workers Local 541 represents a bargaining unit consisting of approximately 40 employees who are generally classified as first-line supervisory

and professional staff. The City and Local 541 are parties to a collective bargaining agreement for this unit which covers the period July 1, 1998 to June 30, 2002. The recognition clause of this agreement indicates that Local 541 is the exclusive representative for employees listed on Appendix A; no exclusions from the unit are enumerated in the contract. Appendix A lists approximately 35 classifications, including titles such as sewer maintenance foreman, computer network technician, property appraiser, and chief plant operator. The Commission certification in Case No. R80 G-240, dated July 14, 1980, lists departmental directors and assistant departmental directors among the exclusions from the bargaining unit.

The planning division manager works in the Development Services Department, which is headed by director Robert Anderson. Anderson began this assignment in May of 1999. At that time the department included three general areas or divisions: (1) community development; (2) economic development and marketing; and (3) planning. After Anderson was hired, a fourth area was added: building and code enforcement. The addition of this area significantly increased the workload of the department.

Anderson was asked to review the organization of the department and make suggestions. At that time, the planning division included the following positions: planning and development specialist, community development planner, city planner, and secretary. In examining the planning division, Anderson found that although the city planner had general oversight duties, there was no one totally accountable for the division. Anderson determined that a division manager was needed to assume some of the administrative duties which Anderson was performing. These responsibilities included directing and coordinating the work force, disciplining staff, approving time off, monitoring and administering contracts with consultants, and being responsible for the payroll and budget for the division. Anderson initially expanded the responsibilities of the city planner by adding these duties.

On June 17, 1999, Anderson wrote a memo to the city manager, with copies to the planning division staff, informing them of organizational changes to the planning division as follows:

Beginning July 1, 1999, Dan Reed A.I.C.P. as City Planner, will have the responsibility to supervise all staff in the Planning Division. Therefore, all Planning Division staff will report to the City Planner, who will have the duty to delegate tasks, assignments, and responsibilities among the Planning Staff to assure the efficient operation of the Planning Division. All other responsibilities in the job description prior to June 17, 1999 are still relevant and appropriate.

Similarly, as a result of recent organizational changes by the City Manager's office, the City Planner position now reports to, and receives guidance from the Development Services Department Director.

In a memorandum dated June 17, 1999 to Sarah Lodewyk, changes to the City Planner job description have been requested to coincide with the above changes in responsibilities. I am also requesting your assistance with discussing

the possibility of removing the City Planner position from the union. If you have any questions or concerns I am available at your convenience.

Shortly thereafter, in July of 1999, a new position of zoning enforcement officer was created in the division and placed in the Local 541 bargaining unit. Approximately 80% of the city planner's former responsibilities were assigned to the zoning enforcement officer; other responsibilities were redistributed to the division staff.

During contract negotiations, the parties discussed the changes made to the city planner position. At that time, management representatives indicated their desire that the position be non-union. The parties did not reach agreement on this issue. On May 11, 2000, the human resources director wrote the following memo to Local 541 President Danny Schaefer:

This is to notify you that the City Planner position previously held by Mr. Dan Reed is being eliminated by the administration as part of the reorganization of the Development Services Department. We are replacing this position with the title of Planning Division Administrator involved in the management of this department. However, I am eager to discuss this matter so it can be implemented in a way that does not impact the membership of Local #541. We are willing to listen to your suggestions so we can work toward the good of your Local, the employees, and the administration.

Please contact my office at your earliest convenience to schedule a meeting regarding this matter.

Anderson and the human resources director created a job description for the position of planning division manager to reflect the higher level of authority and accountability of the new position. This job description lists many job duties and responsibilities which are similar to the former city planner with respect to the field of urban planning and zoning, but also indicates that the planning division manager is responsible for managing the division, performs work without direct supervision, and enjoys a high level of discretion and autonomy. The job description for the former city planner position stated that the city planner worked under the general direction of an administrative superior in administering the City's planning and zoning programs. Both positions required a bachelor's degree with major course work in urban planning. The job description for the planning division manager also indicates that a master's degree is preferred or five years of management experience in the field. An additional requirement for the planning division manager is a minimum of two years of supervisory experience.

The Union filed a grievance on May 15, 2000, stating that the Employer's reassessment of the city planner position and its decision to fill it as a non-union position was a violation of the recognition clause of the contract. The City denied the grievance, with the following response to the third step meeting held on July 6, 2000:

The Union's position is that they want the City Planner position to remain in Local #541 and to modify the duties, if the city chooses, and to agree on a wage that is acceptable to both parties. The City of Bay City has and will continue to

recognize the Union as the bargaining representative for the supervisors and administrative employees listed in Appendix A of Local #541 contract. However, Local #541 has not been certified for, and does not represent, managers. The City of Bay City has decided to re-create a Division Head position with all the responsibilities that go with a management position. Division heads, whether managers or executives, are not part of the Local #541 bargaining unit. The re-creation of this Division Head position is comparable to what existed several years ago but with an even higher level of responsibility. The City of Bay City has no duty to bargain with your Union over including managers or executives in your bargaining unit.

The organizational chart for the City of Bay City indicates that there are eight City departments reporting to the city manager: engineering and public infrastructure; power and technology; clerk; development services; human resources; fire; police; and fiscal services. Each of these departments is headed by a director or supervisor/executive, which are non-union positions. In addition, each department has subdivisions headed by a manager, administrator or superintendent; these positions are also non-union. In the Development Services Department, the manager of the economic development division and the administrator of the building and code enforcement division are non-union. The departmental organizational chart reveals that these positions are on the same level as the new planning division manager. Anderson conducts management meetings with these division heads twice monthly. Excluding police and fire, there are approximately 17 non-union positions in the various departments at the manager or superintendent level which have never been included in the Local 541 bargaining unit since the original certification of the unit.

Discussion and Conclusions:

The Petitioner maintains that the classification of planning division manager is simply a new title for the former position of city planner, and that the minimal change in duties does not provide a sufficient basis for removal of the position from Local 541. The Employer takes the position that to include the planning division manager in the Local 541 bargaining unit would be inconsistent with the overall management structure of the City. The Employer asserts that as a “manager,” this position does not share a community of interest with first-line supervisors comprising the bargaining unit.

There is no question that a unit which includes both supervisory and nonsupervisory employees is, by statute, inappropriate. See MCL 423.213 and MCL 423.9(e). We have stated, however, that this principle does not apply to different levels of supervision within the same unit, and have found that upper level supervisors will not be denied rights under PERA, or placed in separate units because of intra-unit relationships between levels of supervision. *Birmingham School Dist*, 1970 MERC Lab Op 422; *Grosse Pointes-Clinton Refuse Disposal Authority*, 1978 MERC Lab Op 246; *Northern Michigan University*, 1982 MERC Lab Op 1496. Further, we do not recognize “managerial” employees as having a separate community of interest under PERA. *Comstock Park Pub Sch*, 1986 MERC Lab Op, 639, 643; *Ogemaw County & Ogemaw County Sheriff*, 1997 MERC Lab Op 58.

The above precedent applies when we are initially configuring bargaining units. In the instant case, however, there is an existing bargaining unit from which higher level supervisors have been excluded by practice of the parties since the Commission certification in 1980. Excluded are those positions which the Employer designates managerial, that is, directors, division managers, and administrators. The record reflects that the position of planning division manager functions at this higher level. As reflected in the job description, the planning division manager was given additional management responsibilities and possesses a higher level of authority than the former city planner. He is responsible for overseeing and coordinating the work of the staff, all personnel actions in the division, including discipline, and the payroll and budget for the division. Along with other division heads, the planning division manager attends monthly management meetings with the director of the department. We find that these substantial changes in job duties and level of authority align this position with the excluded classifications.

In *Ferris State Univ*, 1996 MERC Lab Op 16, 21-22, a unit clarification petition was filed to include a newly created position in a non-faculty unit. The contract between the parties excluded “administrative” employees. We stated that although we did not recognize such a category of employees as having a separate community of interest, because the parties had contractually excluded such employees from the unit, we found it appropriate to exclude the newly created position which we determined to be administrative in nature. Similarly, in the instant case the parties have an established practice excluding “managerial” employees from the unit. Again, although we do not recognize such a category under PERA, because the newly created position of planning division manager functions at this level, we find that it is not appropriately included in the Local 541 bargaining unit, but rather is part of a residual unit created by the practice of the parties. Where classifications have been historically omitted from a bargaining unit forming a residual unit, their collective bargaining representative must be determined by a representation election. *Hurley Medical Ctr*, 1981 MERC Lab Op 241, 248-249; *Grand Rapids Public Schools*, 1979 MERC Lab Op 864, 869. Accordingly, we will dismiss the unit clarification petition filed by Utility Workers Union of America, Local 541.

ORDER

Based upon the findings and conclusions set forth above, the unit clarification petition filed herein is dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Dated: _____