

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

In the Matter of:

CARMAN-AINSWORTH COMMUNITY SCHOOLS,
Public Employer-Petitioner,

Case No. UC02 A-001

-and-

CARMAN-AINSWORTH ASSOCIATION OF
SCHOOL ADMINISTRATORS,
Labor Organization.

APPEARANCES:

Thrun, Maatsch and Nordberg, by Joe D. Mosier, Esq., for the Employer

Bart Zachrich, President, for the Labor Organization

DECISION AND ORDER ON PETITION FOR UNIT CLARIFICATION

Pursuant to Sections 12 and 13 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212 and 423.213, this case was heard on September 20, 2002, by Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. Based on the record and post-hearing briefs filed on November 4, 2002, we find as follows:

The Petition:

The Carman-Ainsworth Community Schools (the Employer) filed this petition on January 8, 2002. The Carman-Ainsworth Association of School Administrators (the Union) represents a bargaining unit of administrators employed by the Employer. The director of business is included in this bargaining unit. The Employer maintains that the director of business should be removed from the unit because the position is executive and because it has confidential labor relations responsibilities.

Facts:

The Employer is a K-12 school district with approximately 1200 employees. In 1990, after an election conducted pursuant to a consent election agreement, the Union was certified as representative for a unit described as all administrators below the level of superintendent, excluding the superintendent, assistant superintendent and director of labor relations. The

director of business, then called director of finance, was included in this unit along with several other positions with director as part of their titles. In negotiations for the parties' most recent collective bargaining agreement, Respondent proposed to remove the director of business from the unit. The parties agreed to have this Commission determine whether the position should be removed from the unit.

The essential duties of the director of business are the same as they were in 1990. The director of business serves as the Employer's chief financial officer and supervises the management of the financial affairs of the District. The director of business is responsible for all accounting operations and the budget control system. The director of business oversees the preparation of the annual budget. After consultation with the superintendent and the executive committee, she presents the proposed budget and all subsequent amendments to the Employer's Board of Education and the Board's Finance Committee. The director of business meets regularly with the Finance Committee and the Board. The director of business monitors expenditures throughout the year. The director of business approves all purchases over \$50. The director of business monitors the District's cash flow, and determines whether the District needs to borrow between state aid payments. She is responsible for investing District funds. She oversees the District's bond issues. She monitors grants. The director of business oversees the preparation of monthly financial reports for the Board, annual cost reports and financial reports submitted to the state, and monthly and annual financial reports required by state and federal grants. The director of business keeps the superintendent and the Board apprised of the District's financial situation. When the Employer must reduce spending because revenue has not met projections, the director of business recommends programs and/or services to cut to bring the budget into balance.

The director of business's office is physically located in the Employer's central administration building. She supervises a business office staff of five employees, including an accountant, purchasing analyst, and accounting and payroll clerks. In 1990, the director of business/finance reported to the assistant superintendent. Since 2000, however, the director of business has reported directly to the superintendent. At about that time, the superintendent formed an executive committee consisting of the superintendent and the four employees who report directly to him. In addition to the director of business, these are the two assistant superintendents and the director of human resources and labor relations. The executive committee meets periodically to discuss issues arising within the District. The executive committee goes over the proposed budget in detail before it is sent to the Finance Committee, reviews grant applications, and discusses how budgeted monies should be spent. The executive committee also discusses personnel issues with financial implications. For example, the executive committee discussed the comparative performance of several administrators in the Union's unit when it had to decide which position to eliminate for financial reasons. In addition to participating in executive committee deliberations, the director of business meets with the director of human resources and labor relations whenever he is negotiating settlements that might require the District to pay out funds. These include grievance settlements, worker's compensation settlements, and insurance settlements.

The Employer has five bargaining units: teachers and professional employees; clericals, maintenance employees, office personnel and paraprofessionals; food service employees;

transportation employees; and administrative employees. Because the director of business is a member of the administrative unit, her participation in contract negotiations for that unit has been limited. She provides both sides with financial data and occasionally costs proposals. For the other four units, the director of business is a member of the Employer's bargaining team. Before the beginning of negotiations, the director of business and the director of labor relations meet to map out bargaining strategy. The director of business prepares cost estimates for a variety of different bargaining scenarios, and she and the director of human resources and labor relations meet with the Board in executive session to set the parameters for bargaining. As negotiations progress, the director of business participates in confidential management caucuses. She gives the Board and the director of human resources and labor relations her opinion as to what the District can afford to give in negotiations, and is privy to discussions of negotiating strategy. The director of business is responsible for making sure that the Employer's entire bargaining team and Board understand the entire financial cost of a package proposal. She also evaluates proposed contract language.

Discussion and Conclusions of Law:

In *Hillsdale Community Schs*, 1968 MERC Lab Op 859, *enf'd* 24 Mich App 36 (1970), we held that, under PERA, supervisors have a right to organize. At the same time, however, we noted that there is a "level at which organization must end." We concluded that public employers have the right to exclude "executive" employees from participating in collective bargaining.

Since *Hillsdale*, we have used several definitions of an "executive." Compare, *Wayne Co Sheriff's Dep't* 1972 MERC Lab Op 103, and *City of Grand Rapids*, 1979 MERC Lab Op 198. In *City of Detroit Police Dep't*, 1996 MERC Lab Op 84, we defined an executive as:

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.

The most significant factors in determining whether an employee is an executive are the scope of his or her responsibilities, the extent of his authority, and the interchangeability of his function with other executives. *UAW v City of Sterling Heights*, 163 Mich App 8 (1987). Within these categories, we also consider: degree of responsibility for developing the budget, role in preparing department rules and regulations, the number of executive positions relative to the size of the organization, autonomy granted by statutory or charter provisions, direct access to the public employer's governing body, and degree of participation in labor negotiations or formulation of collective bargaining policy. *Muskegon Co Professional Command Ass'n v*

Muskegon, 186 Mich App 365, 374 (1990); *Detroit v Foreman's Ass'n*, 109 Mich App 141, 143-144 (1981), *lv denied*, 413 Mich 902 (1982); *Detroit Bd of Educ v Local 28, OSAS*, 106 Mich App 438, 444 (1981).

We have repeatedly found individuals who have overall responsibility for a public employer's financial affairs to be executives, especially when they have a significant role in formulating collective bargaining policy. See, *City of St Clair Shores*, 1987 MERC Lab Op 426, (finance director); *City of Bay City*, 1986 MERC Lab Op 206, (city's finance director/comptroller); *Howell Pub Schs*, 1983 MERC Lab Op 277, (director of business/comptroller); and *Muskegon Heights Schs*, 1977 MERC Lab Op 807 (business manager of a school district). Applying the definition formulated in *City of Detroit Police Dep't*, we found the county's finance director to be an executive in *Bay County*, 1997 MERC Lab Op 327. The finance director managed systems through which county budget was formulated and monitored, managed the county's revenue disbursement system, and had a significant role in determining county's overall final budget and bargaining policies. Moreover, the county board of commissioners relied on the director's judgment in making financial policy decisions. We concluded that the finance department was a major department of the county, and that the finance director made policy.

We find the director of business in this case to be an executive. The director of business has broad responsibility for the management of the Employer's financial affairs. This includes primary responsibility for developing the Employer's overall budget. She has direct access to the Employer's Board. She plays an important role in determining both whether positions need to be eliminated, and which positions will be cut. The director of business also participates extensively in collective bargaining and in formulating the Employer's bargaining proposals and strategy. The director of business has responsibilities equivalent to the head of a major department. She also regularly formulates, determines and effectuates management policy, including collective bargaining policy, on an employer-wide basis.

The Union argues that the Employer has not demonstrated that it has suffered any harm from the inclusion of the director of business in the bargaining unit. However, actual harm to the employer is not a factor in a determination of executive status. The Union also argues that the bargaining history should preclude removing the director of business from its unit. Executive employees are excluded from the protections of PERA, and a bargaining unit including executives is per se inappropriate. *City of Flint*, 1983 MERC Lab Op 566. Therefore, we will exclude a position found to be executive from a bargaining unit of supervisory employees, despite bargaining history or an existing contract covering the position. *Village of Chesaning*, 1988 MERC Lab Op 1063.

Based on the findings of fact, discussion and conclusions of law above, we find the director of business to be an executive.¹ We conclude that the Employer's petition to remove this position from the existing unit of administrators represented by the Union should be granted on this basis.

¹ Since we find that the director of business is an executive, we need not reach the issue of whether she is a confidential employee.

ORDER

We hereby grant the request of Petitioner Carman-Ainsworth Community Schools to exclude the director of business from the bargaining unit represented by the Carman-Ainsworth Association of School Administrators.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chair

Harry Bishop, Commission Member

C. Barry Ott, Commission Member

Dated: _____