

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

In the Matter of:

CITY OF MONROE,
Public Employer,

Case No. UC06 A-003

-and-

CITY OF MONROE EMPLOYEES
ASSOCIATION, AFT, AFL-CIO,
Petitioner-Labor Organization.

APPEARANCES:

Keller Thoma, P.C., by Richard W. Fanning, Esq., for the Public Employer

Law Offices of Mark H. Cousens, by John E. Eaton, Esq., 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 heard at Detroit, Michigan on June 29, 2006, before David M. Peltz, Administrative Law Judge for the Michigan Employment Relations Commission. Pursuant to Sections 13 and 14 of PERA, and based upon the entire record, including the transcript of the hearing, exhibits, and post-hearing briefs filed by the parties on or before September 25, 2006, the Commission finds as follows:

The Petition:

On January 17, 2006, the City of Monroe Employees Association, AFT, AFL-CIO (the Union) filed this petition seeking to clarify the bargaining unit status of the position of administrative secretary to the police chief. The administrative secretary position had been included in Petitioner's bargaining unit (COME A Unit I) until August of 2005, when the Employer first designated the position as confidential. The Union claims that the administrative secretary position is not confidential and that the Employer failed to meet its burden of establishing the need for additional exclusions from the unit.

Facts:

The City of Monroe has approximately 250 employees. All but about twenty of these employees are in positions represented by one of six labor organizations, including COMEA, which represents two groups of employees designated as COMEA Units I and II. COMEA Unit I is comprised of clerical, technical, and other nonsupervisory employees of the City of Monroe. Petitioner's members are employed at various locations throughout the City, although a majority of COMEA Unit I positions are located at City Hall.

There are approximately fifty-five full-time employees working in the police department. Petitioner represents six police department employees, including three clerks. Patrol officers are in a separate bargaining unit consisting of approximately thirty-four employees, while the department's ten command officers have their own bargaining unit. There are also a number of positions within the department that are not represented for purposes of collective bargaining, including the chief, the deputy chief, the administrative secretary position, which is the subject of the instant petition, and several part-time employees.

Since 2001, John Michrina has been the City's police chief and responsible for the entire operation of the police department. Chief Michrina is a member of the Employer's bargaining team for contract negotiations between the City and the patrol and command bargaining units and is responsible for generating all of the City's non-economic bargaining proposals with respect to those units. During negotiations on the most recent patrol and command unit contracts in 2005, Michrina presented his bargaining proposals to the city manager, who then presented them to the labor organizations at the bargaining table. With respect to contract negotiations between the City and Petitioner's bargaining unit, Chief Michrina's role is limited to submitting bargaining recommendations to the city manager or, in the future, to the City's human resources director. Michrina did not attend any of the bargaining sessions between Petitioner and the City in 2005, when the most recent contract between the parties was negotiated. Moreover, there were no proposals brought to the table during the 2005 bargaining sessions with COMEA Unit I that specifically related to the police department.

Chief Michrina is involved in assessing discipline to all police department employees, including members of Petitioner's bargaining unit. He is also involved in responding to grievances filed by the patrol, command, and COMEA I units. With respect to Petitioner's unit, the collective bargaining agreement provides that the police chief is responsible for setting up a Step 2 meeting within five working days following the City's receipt of a grievance, and for preparing a written decision no later than five working days after such a meeting. However, only one grievance has been filed by Petitioner since August of 2005. In fact, Michrina was unable to recall during the hearing in this matter whether his role in the COMEA I grievance process was an oral or a written step.

Michrina is assisted in carrying out his duties by the administrative secretary to the police chief. Prior to May of 2005, Beth Eads was employed in that position and was a

member of Petitioner's bargaining unit. The administrative secretary position became vacant when Eads retired in May of 2005. At that time, Eads duties were distributed amongst the COMEA Unit I clerks, including clerk/matron Lynne Scorziello. However, Scorziello was not interested in the job on a permanent basis. In June of 2005, the Employer posted a new position description for the administrative secretary position, adding four responsibilities that had not been included in the prior job description:

10. Conducts research, compiles information, locates background material and prepares reports with respect to collective bargaining proposals. Assists in preparation of negotiation reports and supporting materials.
11. Assists in preparing reports to City Manager with respect to negotiation matters and contract grievances.
12. Conducts research, compiles information, locates background material and prepares reports with respect to contract grievances. Prepares grievance responses and related materials.
13. Assists in gathering and compiling information with respect to Act 312 and/or factfinding proceedings.

In August of 2005, the Employer hired Karen Gamber to fill the vacant administrative secretary position. Prior to taking the job, Gamber was a records clerk for the City of Monroe and a member of Petitioner's bargaining unit. In her capacity as administrative secretary, Gamber reports directly to Chief Michrina. She is responsible for maintaining the department's disciplinary and internal investigation files. These files are kept in the administrative secretary's office and are accessible only to Gamber, the deputy chief, and Michrina. Gamber also maintains personnel records, including documents pertaining to payroll and leave time for all police department employees, and she reports that information to the City's finance department. In addition, she opens Michrina's mail, which may include correspondence from attorneys representing the City on matters involving employment issues.

With respect to grievance processing, Gamber conducts research for Chief Michrina, which may include examining information from personnel files as well as documents relating to prior grievance proceedings involving the police department. She is also responsible for proofreading the police chief's written grievance response if that response is lengthy. There were two grievances filed during the six months preceding the hearing in this matter, both of which involved the patrol bargaining unit.

According to Chief Michrina, Gamber has "assisted" the police department in conducting internal investigations of its employees. On one occasion, she took the initial call from the complainant, wrote down the information, and presented it to the deputy chief. Another time, Gamber contacted a retail store to determine whether a refund had been issued to a patrol officer in connection with an investigation into allegations that the officer had

committed a violation of the department's uniform reimbursement policy. Gamber then presented her findings to Chief Michrina. Gamber has also made recommendations concerning discipline involving the three clerical employees who work in the department and report directly to her.

As administrative secretary, Gamber assists Chief Michrina in preparing the police department's annual budget, and she is responsible for monitoring the current budget to ensure that the department's accounts remain solvent. She also reviews the department's expenditures and makes recommendations for changes in the following year's budget. Although no contract negotiations have occurred since Gamber took the administrative secretary position, she is expected to assist Michrina when bargaining on successor contracts for the patrol, command, and COMEA I units begins in 2008. Gamber will be responsible for conducting background research on bargaining issues and will prepare Michrina's notes and other documentation. Should either the patrol or command units proceed to compulsory arbitration under Act 312, 1969 PA 312, Gamber will be required to conduct research and prepare documents for use by Michrina during the proceedings.

In addition to the administrative secretary, three other positions have been excluded from the COMEA Unit I bargaining unit as confidential: (1) the secretary to the city attorney; (2) a secretary shared by the city manager and the mayor; and (3) a secretary employed in the City's human resources department. All of those confidential clerical employees work in City Hall, which is at 120 East First Street. The police department is located within the Law Enforcement Building at 100 East Second Street. Employees of the police department routinely travel back and forth between the two buildings, which are between one block and one hundred yards apart. The trip takes approximately two minutes on foot.

Before Gamber was hired to fill the administrative secretary position, the City attempted to move the city attorney to the Law Enforcement Building so that the attorney and the police chief could share one confidential secretary. That experiment lasted less than a week, and the city attorney was moved back to City Hall. Chief Michrina believes that there was too much work in City Hall for the attorney to move and that it was impractical for the confidential secretary to work from both locations.

Discussion and Conclusions of Law:

The City contends that the administrative secretary to the police chief has been properly excluded from Petitioner's bargaining unit as a confidential employee. Although PERA itself does not include a definition of a confidential employee, we have defined that term as one who formulates, determines, and effectuates management policy with regard to labor relations, or who assists in a confidential capacity to such a person. *St Clair Co Cmty Coll*, 2002 MERC Lab Op 406, 408; *Riverview Cmty Sch*, 1968 MERC Lab Op 419. In considering confidential status, we must balance the employer's need for a confidential employee against the employee's right to representation. The confidential exclusion is applied cautiously to fulfill PERA's purpose of providing employees with an opportunity to be represented and bargain collectively. *Pontiac Sch Dist*, 1997 MERC Lab Op 173; *City of*

Saginaw (City Attorney), 1991 MERC Lab Op 253; *City of Detroit*, 1969 MERC Lab Op 187, 193-194.

To allow public employers to have an employee available to directly assist in the preparation and handling of bargaining proposals during negotiations, we have always permitted employers to exclude one employee as confidential without a specific showing of necessity. *River Valley Sch Dist*, 17 MPER 39 (2004); *Monroe Co Opportunity Program*, 2000 MERC Lab Op 289, 294. However, the employer bears the burden of showing justification for any additional exclusions. *City of Saginaw (City Attorney)*; *Monroe Co Probate Ct*, 1990 MERC Lab Op 880, 884. It is well-established that an employer's administrative convenience alone cannot justify the exclusion. *Williamston Sch*, 1994 MERC Lab Op 1062; *City of Saginaw*, 1994 MERC Lab Op 988; *City of River Rouge*, 1971 MERC Lab Op 603. Rather, we limit the number of confidential exclusions to employees who are an integral and necessary part of the collective bargaining process. *Saginaw Co Rd Comm*, 1993 MERC Lab Op 227; *Swartz Creek Cmty Sch*, 1988 MERC Lab Op 848. See also *Marquette Pub Sch*, 1981 MERC Lab Op 896 (a confidential employee is one that is intrinsically involved in labor negotiations).

Where an employer has already been granted a confidential exclusion and seeks a further exclusion, as in this case, the mere fact that the employee has been delegated certain confidential functions does not, standing alone, meet the burden of showing the necessity of another exclusion from the bargaining unit. *Lake Co & Lake Co Sheriff*, 1999 MERC Lab Op 107; *Wyandotte Pub Sch*, 1990 MERC Lab Op 425, aff'd sub nom *Wyandotte Pub Sch v Wyandotte Admin Ass'n*, unpublished opinion of the Court of Appeals, issued December 2, 1992 (Docket No. 130022). The employer must show that the confidential work cannot feasibly be reassigned to minimize the number of employees excluded. *Shelby Charter Twp*, 2001 MERC Lab Op 84; *Lapeer Co*, 1998 MERC Lab Op 611.

In the instant case, some of the duties that the police chief has assigned or intends to assign to the administrative secretary are clearly not confidential in nature. For example, it is well-established that an employee who merely types or reads answers to grievances is not performing confidential work, nor can an employee be excluded from a bargaining unit as a confidential because she handles information involving lawsuits, evaluations, or employee discipline. See e.g. *Lansing Cmty Coll*, 2000 MERC Lab Op 99; *St Clair Co Cmty Coll*. Similarly, mere access to records not generally available to other employees, the union, or the public, such as personnel records or financial information, is not sufficient to make an employee confidential. See e.g. *City of Saginaw*, 1994 MERC Lab Op 988; *Riverview Cmty Sch*, 1968 MERC Lab Op 419; *L'Anse Creuse Sch*, 1972 MERC Lab Op 868. The act of assisting the employer in compiling wage data or costing out bargaining proposals is also insufficient to establish that an employee is performing a function with a critical nexus to labor relations negotiations. *River Valley Sch Dist*; *City of Riverview*, 1986 MERC Lab Op 400.

In support of its assertion that a fourth confidential exclusion from Petitioner's bargaining unit is necessary, the Employer relies upon our decision in *City of Dearborn*

Heights, 2000 MERC Lab Op 218. In that case, we held that the employer had satisfied its burden with respect to establishing the confidential status of an executive secretary in the police department. Although at least three employees had already been excluded from the bargaining unit as confidential, we held that the collective bargaining workload of the executive secretary justified an additional exclusion. Our finding was based, in part, on the fact that there were no confidential employees available to provide clerical assistance to the police chief and deputy chief in performing their assigned duties, which included the formulation and effectuation of management polices governing the police department's 112 employees and collective bargaining with the department's four units. In so holding, we noted that it would be inefficient for the police chief to continue to take confidential documents to the mayor's office for typing once the police department began a planned move to a new location "some distance" from the mayor's office.

In the instant case, there are three bargaining units in the police department and approximately fifty-five full-time employees. Although the administrative secretary will assist the police chief in negotiations when the contacts covering these bargaining units expire in 2008, the record indicates that the police chief's actual involvement in collective bargaining is quite limited and not sufficient to justify a fourth full-time exclusion from Petitioner's bargaining unit. See e.g. *Shelby Charter Twp*, 2001 MERC Lab Op 84, in which we found that the employer had not demonstrated the necessity for two confidential positions, despite the fact that its confidential workload could be heavy at times due to the simultaneous expiration of most of the employer's contracts. In so holding, we note that Chief Michrina plays virtually no role in bargaining the COMEA Unit I contract. The chief did not attend any of the bargaining sessions between Petitioner and the City concerning the unit in 2005, and during those negotiations, there were no proposals brought to the table that specifically related to the police department.

The City contends that it would not be practical for the police chief to utilize one or more of the three existing confidential secretaries to assist him with bargaining and other arguably confidential duties because those secretaries do not work at a location near the police department. However, the record indicates that the distance between City Hall and the Law Enforcement Building is between one block and one hundred yards. While it might be administratively convenient for the City to assign certain duties to the police chief's secretary, rather than utilizing one of the existing confidential secretaries, the Employer has failed to demonstrate that it would not be feasible to distribute that work amongst the three clerical employees already excluded from Petitioner's bargaining unit as confidentials. Accordingly, we find that the administrative secretary position should be included in Petitioner's bargaining unit.

Petitioner asserts that as a remedy in this matter, we should order the Employer to restore the status quo ante and require the City to post the administrative secretary position for competitive bidding pursuant to the terms of the COMEA Unit I collective bargaining agreement. Although we have the authority under Section 16(b) of PERA to fashion remedies for unfair labor practices that effectuate the policies of the Act, the instant case is

before us on a petition for unit clarification, not an unfair labor practice charge. It would be inappropriate to order remedial relief in a representation proceeding of this nature.

ORDER

Based upon the above findings of fact and conclusions of law, the petition for unit clarification is hereby granted and the COMEA Unit I bargaining unit is clarified to include the administrative secretary to the police chief.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Christine A. Dardarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____