

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

In the Matter of:

MARQUETTE COUNTY,
Public Employer-Petitioner,

Case No. UC06 B-005

-and-

AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES, COUNCIL 25,
AND ITS AFFILIATED LOCAL 2914,
Labor Organization,

-and-

WISCONSIN PROFESSIONAL POLICE ASSOCIATION,
Labor Organization.

APPEARANCES:

Office of the Marquette County Prosecuting Attorney, by Cheryl Hill, Esq., for the Petitioner

Peter J. Dompierre, Staff Specialist, for AFSCME Council 25

**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 Lansing, Michigan on April 4, 2007, by Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. Based on the entire record, including post-hearing briefs filed by Marquette County and by AFSCME Council 25 on or before May 7, 2007, we find as follows:

The Petition and Positions of the Parties:

Marquette County (hereinafter the Employer) filed this petition for unit clarification on February 27, 2006. The Employer seeks clarification of the bargaining unit status of a position now titled corrections sergeant (jail classification/inmate programs officer). The Wisconsin Professional Police Association (hereinafter WPPA) represents a bargaining unit of road patrol and corrections deputies, corporals, and sergeants employed by the Employer and the Marquette County Sheriff. AFSCME Council 25 and its affiliated Local 2914 (hereinafter AFSCME) represent a bargaining

unit of nonsupervisory full-time and part-time employees of the Employer and employees of certain courts within the County. Included in this unit was a position titled jail services officer (JSO). The Employer asserts that in December 2005, it eliminated the JSO position and created a new corrections sergeant position. According to the Employer, the new position performs duties normally performed by a corrections sergeant in addition to the work formerly done by the JSO. The Employer maintains that as a corrections officer, the new position shares a community of interest with the WPPA unit. AFSCME contends that the Employer did not create a new position, but merely added some minor new duties to the JSO job description. AFSCME argues that as the JSO position has not undergone any recent significant change in job duties, the position should remain in its unit. The WPPA did not appear at the hearing, but submitted a letter stating that it agreed with the Employer that the new position belonged in the WPPA unit.

Findings of Fact:

The Employer and the WPPA are parties to a collective bargaining agreement covering the period of January 1, 2006 through December 31, 2008. In that agreement, the Employer recognizes the WPPA as the exclusive representative of “All full-time and part-time Deputies, Corporals, Sergeants, [sic] excluding Sheriff, Undersheriff, Captains, Lieutenants, temporary employees, non-deputized employees, and all others.”

The Employer and AFSCME are parties to a collective bargaining agreement that covered the period January 1, 2002 through December 31, 2005. The parties subsequently negotiated a successor agreement, which became effective January 1, 2006 and continues through December 31, 2008. The recognition clause in both those contracts describes the bargaining unit as including:

All full-time and regular part-time employees of the Marquette County Board of Commissioners, the Probate Court, 96th District Court, 25th Circuit Court, Marquette County Clerk, Marquette County Prosecuting Attorney, Marquette County Register of Deeds, Marquette County Sheriff, and Marquette County Treasurer, excluding supervisors, executive employees, irregular part-time employees, temporary employees, and all others.

The Employer created the JSO position in 1986. When it was first created, the position was funded entirely by grant funds and was not in a bargaining unit. The JSO has been part of the AFSCME unit since about 1998.

Susan Gagnon held the JSO position from its creation until she retired in December 2005. The JSO worked in the jail and reported directly to the captain in charge of jail administration. The JSO set up and managed the day parole program, under which selected inmates of the county jail are released into the community for the day for school or work and return to the jail in the evening. Inmates incarcerated for misdemeanors who successfully complete the day parole program may have their sentences reduced. The JSO's responsibilities for the day parole program included arranging employment for inmates with local employers and checking with those employers periodically to ensure that the inmates were showing up and performing their jobs without problems. She also administered standardized math and reading tests to inmates and helped them apply to various educational programs. The JSO arranged for teachers to come into the jail and hold GED preparation classes and, at certain times of the year, conducted these classes herself. The JSO set up daily release and return schedules for inmates on day parole, and supervised the periodic

drug screening of female parolees. Male corrections officers supervised the drug screening of male inmates. The JSO was also responsible for investigating possible parole violations by inmates on day parole. If she believed a violation had occurred, she reported the results of her investigation to her supervisor and prepared a report for the court. Inmates on day parole have money deposited into their accounts, and must pay a fee for participating in the program. The JSO was responsible for ensuring that these fees were collected. In addition to her day parole program duties, the JSO set up medical and dental appointments for inmates outside the jail when necessary. She was also responsible for interviewing inmates to determine whether they should be referred to community substance abuse or mental health programs and arranging for their participation in these programs when appropriate. Finally, the JSO monitored inmates' eligibility for early release and processed the paperwork for eligible inmates.

The education and experience requirements for the JSO position, as listed in its job description, were similar to those of a corrections officer. However, the Employer requires its corrections officers to complete 160 hours of training conducted by the Michigan Sheriff's Training Council Corrections Academy. While the JSO job description stated that the position was required to have the "ability to obtain certification as a corrections officer," Gagnon was never trained or certified as a corrections officer. The JSO wore the uniform of a corrections officer, had an office within the jail, and was fully trained in the jail's key system. She was often required to retrieve inmates from the cell blocks and bring them to her office, locking and unlocking the several doors that separated the cell blocks from the office area. The JSO escorted inmates by herself, but, because she was not a corrections officer, she was not allowed to search them. Although the JSO was responsible for checking inmates into the facility as they returned to the jail in the evening, she could not perform the strip searches that were required before an inmate on day parole was allowed back into the jail. The JSO's job duties brought her in constant contact with corrections officers as she sought information from them or tried to schedule programs for inmates. Corrections officers sometimes filled in for the JSO when she went on vacation, but Gagnon found that they were often reluctant to do so because they perceived the work to be outside their job description. Gagnon believed that the fact that she was not a corrections officer made her job harder because she did not get the respect and cooperation that she needed from jail staff.

In late 2005, Gagnon retired as JSO. The Employer's undersheriff, Jack Schneider, was under instruction to review all vacant positions to determine whether they needed to be filled. Schneider was aware of Gagnon's complaints about lack of cooperation from corrections officers. After reviewing the JSO's job duties, Schneider concluded that the duties of the position could be combined with those of a corrections officer. The Employer decided to create a new corrections sergeant position that would take over all the duties of the JSO and also assume responsibility for classifying inmates by risk as they came into the jail, a function that had been performed by corrections officers. As a corrections officer, the new position could also search day parolees as they returned to the jail. In addition, as a corrections sergeant, the new position could issue orders to other corrections officers and obtain their assistance when needed, and could fill in for the regular corrections sergeant when required. Finally, the new sergeant could be assigned to perform other corrections officer duties if necessary, including booking and fingerprinting. In December 2005, the Employer added the following paragraph to the corrections sergeant job description:

May be assigned the responsibilities as the jail classification/inmate programs officer. [sic] A general summary of this assignment includes monitoring/updating all inmates classification [sic], per department policy and coordinating jail day parole

and educational, substance abuse, mental health and other programs for eligible inmates. This sergeant/corrections will also make recommendations as to the jail administrator for early release and sentence violations of inmates.

Shortly thereafter, the Employer filled the new sergeant position and assigned it the duties listed above. After AFSCME objected to the removal of the JSO position from its unit, the Employer filed the instant petition.

At the time of the hearing, the corrections sergeant spent most of his time performing duties previously done by the JSO. He spent less than one hour per day classifying inmates. However, he was doing more day-to-day corrections officer work than the Employer had anticipated because the number of misdemeanor offenders in the jail fell after 2005 and only those inmates are eligible for day parole.

Discussion and Conclusions of Law:

AFSCME contends that the unit clarification petition should be barred by its collective bargaining agreement with the Employer that became effective January 1, 2006. However, because neither the JSO nor the corrections sergeant (jail classification/inmate programs) is identified in that contract, it does not address the issue of whether the position is included in the bargaining unit. Furthermore, the recognition clause in AFSCME's contract with the Employer is an anachronism since it purports to include all nonsupervisory full-time and regular part-time employees of the Marquette County Sheriff. It is undisputed that the Sheriff's road patrol and corrections deputies, corporals, and sergeants are represented by the WPPA, not by AFSCME.

Nevertheless, the JSO was covered under AFSCME's contract with the Employer. AFSCME also argues, therefore, that unit clarification is not appropriate here. We agree that unit clarification is not appropriate for upsetting an agreement or an established practice regarding the unit placement of an existing position. *Lansing Sch Dist*, 20 MPER 3 (2007); *Wayne Co Risk Mgmt Div*, 1996 MERC Lab Op 243; *Lansing Pub Sch*, 1994 MERC Lab Op 128; *Genesee Co*, 1978 MERC Lab Op 552, 556. However, unit clarification is appropriate to determine the bargaining unit status of a newly created position or a position that has recently undergone significant changes. *Lapeer Co*, 18 MPER 70 (2005); *Big Bay De Noc Sch Dist*, 17 MPER 81 (2004).

In December 2005, the Employer eliminated the JSO position, created an additional corrections sergeant position and assigned the work formerly performed by the JSO to that sergeant. Thereafter, jail classification/inmate programs became a special assignment for a corrections sergeant. The corrections sergeant with this assignment spends the majority of his time on duties formerly performed by the JSO, but he regularly performs certain other work only done by certified corrections officers, including inmate searches. In addition, as a certified corrections officer with the rank of sergeant, the corrections sergeant can be assigned to fill in for other corrections officers and can issue orders to them. We disagree with AFSCME's contention that the JSO position has not undergone any significant change in its job duties. We find that the addition of duties that can only be performed by a certified corrections officer substantially changed the nature of the position, even if the corrections sergeant spends the majority of his time performing work formerly done by the JSO.

When deciding whether to clarify a unit to add a new or substantially changed position, the Commission determines whether the position shares a community of interest with that unit. *Lenawee Intermediate Sch Dist*, 16 MPER 48 (2003); *Kalamazoo Co Probate Ct*, 1994 MERC Lab Op 980; *Port Huron Area Sch Dist*, 1989 MERC Lab Op 763. Community of interest is determined by examining a number of factors, including: similarities in duties, skills, and working conditions; similarities in wages and employee benefits; amount of interchange or transfer between groups of employees; centralization of the employer's administrative and managerial functions; degree of central control of labor relations; common promotion ladders and common supervision. *Wayne Co Cmty Coll Dist*, 19 MPER 72 (2006); *Covert Pub Sch*, 1997 MERC Lab Op 594. The corrections sergeant (jail classification/inmate programs) position requires training, certification, and experience as a corrections officer, skills that are possessed by members of the WPPA unit but not by AFSCME unit members. In addition, because it requires certification as a corrections officer, the new position is a promotional position for corrections deputies but not for members of the AFSCME unit. We conclude that the position corrections sergeant (jail classification/inmate programs) shares a community of interest with the WPPA unit and that the Employer's placement of the position in that unit was appropriate. Accordingly, we issue the following order.

ORDER

Based upon the above findings of fact and conclusions of law, the Employer's petition is granted. The bargaining unit of patrol and corrections deputies, corporals, and sergeants employed by the Employer and represented by the WPPA is clarified to include the position corrections sergeant (jail classification/inmate programs).

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Christine A. Derdarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____