

STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMMISSION  
LABOR RELATIONS DIVISION

In the Matter of:

61<sup>st</sup> DISTRICT COURT,  
Public Employer-Petitioner,

Case No. UC16 F-009

-and-

GRAND RAPIDS EMPLOYEES INDEPENDENT UNION (GREIU),  
Labor Organization-Incumbent,

-and-

ASSOCIATION OF PUBLIC ADMINISTRATORS OF GRAND  
RAPIDS (APAGR),  
Labor Organization-Intervenor.

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APPEARANCES:

Mika Meyers, by John H. Gretzinger, for the 61<sup>st</sup> District Court

Kalniz, Iorio & Feldstein Co., L.P.A., by Fillipe S. Iorio, for the Grand Rapids Employees Independent Union

Pinsky, Smith, Fayette & Kennedy, LLP, by Katherine Smith Kennedy, for the Association of Public Administrators of Grand Rapids

**ORDER ON REMAND**

This matter is before the Commission on remand from the Michigan Court of Appeals. The Commission issued a Decision and Order on Petition for Unit Clarification on January 12, 2018, finding that neither the position of Chief Deputy Court Clerk nor the position of Urinalysis Lab Manager was supervisory and that the retention of both positions in the GREIU unit was appropriate.<sup>1</sup>

In a February 26, 2019 unpublished decision, the Michigan Court of Appeals affirmed our Decision and Order in part, vacated it in part, and remanded the matter for further proceedings. The Court of Appeals upheld our finding that the position of Urinalysis Lab Manager is nonsupervisory. However, the Court concluded that the Commission erred by failing to consider whether Petitioner 61<sup>st</sup> District Court had delegated the Clerk of the Court's

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<sup>1</sup> MAHS Hearing Docket No. 16-022980.

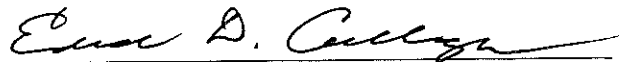
supervisory authority to the Chief Deputy Court Clerk when the Clerk of the Court is absent. Consequently, the Court concluded that further factual determinations concerning the scope of the Chief Deputy Court Clerk's authority when "filling in" for the Clerk of the Court, particularly whether the exercise of that authority involves any exercise of independent judgement, are required.

The Court of Appeals decision is attached hereto and incorporated by reference.

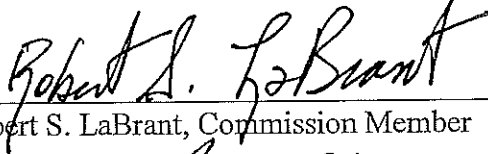
**ORDER**

This matter is hereby referred to an administrative law judge for an expedited evidentiary hearing to reach further factual determinations concerning the scope of the Chief Deputy Court Clerk's authority when "filling in" for the Clerk of the Court.

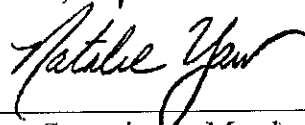
MICHIGAN EMPLOYMENT RELATIONS COMMISSION



Edward D. Callaghan, Commission Chair



Robert S. LaBrant, Commission Member



Natalie P. Yaw, Commission Member

Dated: **MAY 17 2019**

*If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.*

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STATE OF MICHIGAN  
COURT OF APPEALS

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61ST DISTRICT COURT,

Petitioner-Appellant,

and

ASSOCIATION OF PUBLIC  
ADMINISTRATORS OF GRAND RAPIDS,

Intervenor-Appellant,

v

GRAND RAPIDS EMPLOYEES  
INDEPENDENT UNION,

Respondent-Appellee.

UNPUBLISHED  
February 26, 2019

No. 342107

MERC

LC No. 16-022980

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EMPLOYMENT RELATIONS COMMISSION  
DETROIT OFFICE

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Before: M. J. KELLY, P.J., and SERVITTO and BOONSTRA, JJ.

PER CURIAM.

In this bargaining unit clarification proceeding, petitioner appeals by right the Michigan Employment Relations Commission (MERC) decision and order denying petitioner's request to change the bargaining unit with which two employment positions were associated. We affirm in part, vacate in part, and remand for further proceedings.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

Petitioner filed a petition with MERC in June 2016, seeking to remove the positions of Chief Deputy Court Clerk and Urinalysis Laboratory Manager from the bargaining unit of respondent Grand Rapids Employees Independent Union (GREIU) and place them within the bargaining unit of the Association of Public Administrators of Grand Rapids (APAGR), which

represents supervisors employed by petitioner. The petition asserted that the two positions were supervisory in nature. APAGR intervened and agreed with petitioner that the positions at issue were supervisory in nature. A hearing was held before an administrative law judge (ALJ) in November 2017 regarding the nature and responsibilities of both positions.

#### A. CHIEF DEPUTY COURT CLERK

The job description for the Chief Deputy Court Clerk Position, last updated in 2015, reads, in pertinent part, as follows:

This position performs advanced supervisory and administrative support work within a division in the District Court of the City of Grand Rapids. The employee is responsible for performing complex clerical work, with a high degree of independent decision making in specified and standardized activity areas. The employee is expected to demonstrate considerable independent judgment and knowledge in their performance of assigned duties. The employee supervises subordinate clerical employees. Work is performed under the general direction of the Clerk of the Court and is evaluated through observation, quality of work analysis. The employee is expected to fill in for the Clerk of the Court in their absence.

Relatedly, the position lists as “work requirements” the “[a]bility to make independent decisions in accordance with laws, regulations, rules, and departmental policies and procedures, and to exercise independent judgment,” “ability to plan, organize, assign, and supervise the work of subordinate employees,” “ability to work independently with minimal supervision,” and “willingness to be trained in advanced management/supervisory methods.”

District Court Administrator Gary Secor<sup>1</sup> testified at the hearing that Sandra Blumke, the previous Chief Deputy Court Clerk, was hired in 2012 and left the position in 2015. The Chief Deputy Court Clerk position was a new position in 2012 and was part of a Reclassification Plan Proposal adopted by the City Commission after an extensive review. Secor testified that Blumke desired to remain in the GREIU “for reasons involving potential impact on retirement and seniority” and did not perform the full range of duties intended for the particular position as part of the reorganization. According to Secor,

[Blumke] did not directly oversee either team leaders, she did not review evaluations, her primary responsibilities only included docketing, scheduling of informal hearings, coordination of those scheduling with the Grand Rapids Police department, she . . . was not directly responsible in, at least in disciplinary or anything else as far as employees were concerned.

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<sup>1</sup> Other than the Chief Judge, Secor is the highest ranking individual in the administration of the 61st District Court.

Notably, while Blumke was the Chief Deputy Court Clerk, she temporarily filled in and performed the duties of the Clerk of the Court when that position became vacant.

In 2015, after Blumke left the position, the District Court took steps to achieve the intended goal of the 2012 restructuring. The job descriptions for several subordinate positions, including Lead Work Assignment Clerk, Deputy Clerk, and Court Compliance Manager, were all amended to reflect that they report to the Chief Deputy Clerk Court and Clerk of the Court positions.

Secor testified that the current Chief Deputy Court Clerk, Amy Sanders, is

responsible for scheduling of all courtrooms and scheduling of all hearings for the six judges and the magistrate. She is also directly responsible for scheduling all work hours and assignments to individual courtrooms for all of the six Court Recorders and the six—and the seven Judicial Assistants that are assigned directly to the courtrooms. She also is responsible for scheduling replacement individuals for Court Recorders and Judicial Assistants by other staff in the clerk's office that are—that have been qualified to substitute in times of vacation and sickness for those particular positions in the courtrooms. She's responsible for reviewing all evaluations that are submitted by the team leaders, Deputy Court Clerk positions; she's responsible for doing the personnel evaluations for team leaders, and also the Compliance Manager in the clerk's office, and she's also involved in day-to-day interpretation of personnel policies and questions that staff bring her pursuant to either the collective bargaining agreement or personnel policies and procedures.

Secor also testified that the Chief Deputy Court Clerk is involved in completing annual performance appraisals and

has day-to-day responsibilities involved in normal discipline, advising individual staff of difficulties with tardiness, being on time, performance issues. If it raises to the level that it needs to be either a verbal written or something that would go in the personnel record, then she consults with her direct supervisor, the Clerk of the Court, and they discuss the matter, and generally then the Clerk of the Court will consult with me and then we'll take action from there.

The heads of the case initiation division, the bench warrant division, the civil division, the criminal division, and the customer service division all report directly to the Chief Deputy Court Clerk. The judicial support division group also reports directly to the Chief Deputy Court Clerk, but does not have a team leader.

Secor stated that he considered the Chief Deputy Court Clerk position to be that of a supervisor because

she performs a number of supervisory functions for the court. I mean she does evaluations, she approves and does evaluations, she approves and/or disproves leave and work slips, she assigns staff to certain areas of responsibility, whether it

be courtroom or work responsibilities. If there are issues with any of the divisions of the—any particular division with the clerk’s office, she consults with the team leader and apprises them of what she’s become aware of and asks them to rectify the problem, and if not, then she personally gets involved, and I think all of those are supervisory functions.

Secor admitted that the Chief Deputy Court Clerk is not responsible for issuing written discipline. However, he testified that he always followed her recommendation.

Tanya Todd, the current Clerk of the Court, testified that she delegates “[a] lot” to the Chief Deputy Court Clerk and that they engage in joint decision-making, which she relies on Sanders to execute. Todd testified that she has discussed disciplinary decisions with Sanders and has asked for her opinion on disciplinary matters. Sanders makes the weekly schedule and assigns judicial staff for coverage, although Todd does this role when Sanders is absent. Todd testified that Sanders is closely involved in and responsible for the evaluation of the team leaders, and reviews and signs off on the team leaders’ reviews of their teams before those evaluations are given to the Court Administrator.

Todd testified that Sanders’s duties and responsibilities as Chief Deputy Court Clerk were as different as “night and day” from when Blumke served in the role. While Blumke “was very reserved with her responsibilities,” which were “quite limited,” Todd described Sanders as “my confidant, my go-to person, we interact all day long and discuss different problems, issues, policies, procedures” and “usually come to some sort of a resolution.” When the decision is made, Sanders “implements it.” When asked whether she considered Sanders to be a supervisor, Todd said “absolutely.” She explained:

Based on the testimony that I’ve given, based on our everyday procedures, based on how staff I feel perceive her, and based on, I don’t know, she’s my right-hand person, she fills in for me if I’m gone, and she’s not—I don’t know, if she’s not considered a supervisor, I guess I’m confused on what a supervisor is. Staff go to her before they go to me for the most part.

Sanders also testified about her job responsibilities. She admitted that Todd was ultimately responsible for formal discipline of employees but detailed how she discusses disciplinary issues regularly with Todd. She described herself as “fairly indifferent” to whether she was in the GREIU or the APAGR.

## B. URINALYSIS LABORATORY MANAGER POSITION

The job description for Urinalysis Laboratory Manager also changed in 2012 as part of the organizational overhaul. The job position description, in pertinent part, reads:

This position performs supervisory and administrative support work within a division in the court. Employee in this class performs specialized duties in urinalysis testing, maintenance of chain of custody, equipment calibration, and supervision of urinalysis technicians. Work is performed under the supervision of

the Chief probation officer and checked through the review of reports and observation of results achieved.

Four Urinalysis Technicians and a part-time Urinalysis Assistant Lab Manager report to the Urinalysis Laboratory Manager.

Secor testified that the Urinalysis Laboratory Manager's responsibilities

are to oversee one of only two drug court labs assigned—operated by courts in the State of Michigan. We provide drug lab testing services for not only our own probation department, our drug and sobriety courts, but also for upwards of 30 plus courts, not only in Kent County, but around the State of Michigan, drug testing for the Michigan Department of Corrections, Probation and Parole Department, and she's responsible for scheduling drug lab hours and overseeing, she's specially trained to run all the extensive Urinalysis testing equipment there, she does all the scheduling for the lab technicians, she's responsible for their day-to-day supervision and any disciplinary matters along with the contractual manager, she also is responsible for working with the facility management staff at 82 Ionia with regards to any issues regarding facilities there, and she is also responsible for approving or disapproving drug testing services to other courts, in other words, contractual services that we are involved in with other courts.

Further, evaluations of lab technicians are seldom performed, but the Urinalysis Laboratory Manager is responsible “[i]f and when they're done.” Secor testified that the position is “involved in day-to-day disciplinary matters” and is also “involved if anything raises [sic] to a level that requires anything that may be in a personnel file, to work with the Chief Probation Officer.” He further testified that Catherine Boland, the current Urinalysis Laboratory Manager, usually consults with the Chief Probation Officer before terminating employees, and that “she has terminated employees in the past” and has authority to accept resignation letters. On one occasion, Boland personally rescinded a job offer to a candidate who did not timely fill out the proper paperwork. Secor considered Boland to be a supervisor because

she has direct responsibility for supervision of employees that are assigned to her, she has responsibilities for management and oversight of the over \$5,000 worth of equipment, she has responsibilities for ordering supplies necessary to maintain and operate the lab, she has responsibilities for interviewing and hiring of staff, of scheduling staff, she has responsibilities for pretty much overall management as it relates to the facilities there, and yes, I would consider all those supervisory responsibilities.

Secor also described an incident in which Boland suspected that someone was embezzling from the drug lab and helped to organize a “sting operation” to catch the individual in the act. Secor stated that he has always followed Boland's recommendations about discipline.

Boland testified that she manages “the day-to-day operation of the drug lab,” and specifically that she process[es] the urine specimens collected, . . . monitor[s] drop lab—drop tech staff, phones, might have conversations with other probation officers regarding testing

results or setting up a client to be on a random call in, processing cash payments, making weekly deposits.” Boland also testified that she schedules working hours for the four technicians and the lab assistant, and hires the college students who serve as lab technicians. Although she reports to the Chief Probation Officer, she only speaks with him once a week; he only visits the facility once a year. Boland testified that while she participates in interviewing and hiring decisions, actual job offers are made by the Chief Probation Officer. With respect to discipline, Boland testified that she enforces general decorum in the lab, tells her staff that they cannot be on their cell phones, and verbally reprimands inappropriate behavior at the client window. Boland testified that she considered herself a supervisor, stating:

I’m off site supervising four part-time employees plus a contractual, I’m the only person there day to day. Those drop techs look at me as [if] I’m their supervisor. They don’t really have any contact with [the Chief Probation Officer] after they’ve been hired other than if there were to be a discipline problem.

Boland testified that because of the high rate of turnover for her lab technician staff, she does not do any written evaluations.

### C. MERC DECISION

Regarding the Chief Deputy Court Clerk position, MERC concluded that

the record clearly establishes that this position’s “supervisory” authority is routine and administrative in nature. The position’s role with respect to schedules, room assignments, time off requests and approval of timesheets, for the most part, is governed by pre-set routines or policies, and there is little to no exercise of independent judgment. The fact that this position evaluates the four Lead Clerks and the Compliance Manager, as well as reviews those individual’s evaluations of their subordinate staff, does not elevate it to supervisory status. Additionally, this position has only been delegated the authority to issue “day-to-day discipline” (such as employee counseling) and the record does not support a finding that it possesses the effective authority to recommend the actual assessment of discipline. Additionally, there is no evidence that the position’s recommendations, when and if made, would be followed without independent investigation. On the contrary, [the Clerk of the Court] testified that both she and [the Chief Deputy Court Clerk] “would discuss different points of view, maybe different avenues of how we want to proceed.” At no point did [the Clerk of the Court] admit to ceding or bestowing any actionable or real disciplinary authority to [the Chief Deputy Court Clerk].

Regarding the Urinalysis Laboratory Manager position, MERC concluded

like the Chief Deputy Court Clerk position, the record indicates that much of the position’s “supervisory” authority over its subordinates is routine, e.g., scheduling the Techs simply involves making sure the appropriate Tech is on duty depending on what the Lab’s testing needs are for any given period. Additionally, there is no indication that the position possesses effective authority to make



recommendations to [the Chief Probation Officer], the Lab Manager's direct supervisor, in matters related to hiring, firing, or discipline, or that those recommendations would be accepted without independent investigation.

Accordingly, MERC determined that the classification of both positions as nonsupervisory and therefore their inclusion within the GREIU bargaining unit remained appropriate.

This appeal followed.

## II. STANDARD OF REVIEW

“In a case on appeal from the MERC, the MERC's factual findings are conclusive if supported by competent, material, and substantial evidence on the whole record. Legal questions, which include questions of statutory interpretation and questions of contract interpretation, are reviewed de novo. As a result, an administrative agency's legal rulings are set aside if they are in violation of the constitution or a statute, or affected by a substantial and material error of law.” [AFSCME Council 25 v Faust Pub Library, 311 Mich App 449, 452; 875 NW2d 254 (2015), quoting Macomb Co v AFSCME Council 25, 494 Mich 65, 77; 833 NW2d 225 (2013).]

Competent, material, and substantial evidence is “equal to ‘the amount of evidence that a reasonable mind would accept as sufficient to support a conclusion. While it consists of more than a scintilla of evidence, it may be substantially less than a preponderance.’” *St Clair Co Intermediate Sch Dist v St Clair Co Ed Ass'n*, 245 Mich App 498, 512-513; 630 NW2d 909 (2001), quoting *In re Payne*, 444 Mich 679, 692; 514 NW2d 121 (1994).

MERC's classification of an employee as supervisory or nonsupervisory involves findings of fact. Findings of fact by [MERC] are conclusive if supported by competent, material, and substantial evidence on the whole record. This Court will reverse a MERC determination of an appropriate bargaining unit only upon a clear showing of error.” [*Faust Pub Library*, 311 Mich App at 452-453 (quotation marks and citation omitted; alteration in original).]

We review an ALJ's decision to admit evidence for an abuse of discretion. See *Becker-Witt v Bd of Examiners of Social Workers*, 256 Mich App 359, 365; 663 NW2d 514 (2003).

## III. ANALYSIS

Petitioner and APAGR argue that MERC erred by determining that both positions were nonsupervisory. We disagree with respect to the Urinalysis Laboratory Manager position, but conclude that MERC failed to consider whether petitioner had delegated supervisory authority to the Chief Deputy Court Clerk position, and that remand is required to resolve this issue.

“The Legislature has segregated supervisory and executive personnel from other personnel for purposes of collective bargaining.” *Id.* at 453 (quotation marks and citation omitted); see also MCL 423.9e. Accordingly, an employee with supervisory authority cannot remain in the same bargaining unit as the employees whom he or she supervises. See *id.*; see

also *Dearborn Sch Dist v Labor Mediation Bd*, 22 Mich App 222, 228; 177 NW2d 196 (1970) (concluding that although employees in supervisory positions are not prohibited from organizing, “they shall not be included in a bargaining unit containing employees in the same plant or business enterprise”).<sup>2</sup> The rationale for separation is the concern “that fraternal union feelings would impair a supervisor’s ability to apply his employer’s policy to subordinates according to the employer’s best interest.” *Police Officers Ass’n of Mich v Fraternal Order of Police, Montcalm Co Lodge*, 149, 235 Mich App 580, 588; 599 NW2d 504 (1999) (quotation marks and citation omitted).

The term “supervisor” is not defined by the public employment relations act (PERA), MCL 423.201 *et seq.*, but has been interpreted by this Court to mean any individual with the authority

to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. The existence of any one of these powers, regardless of the frequency of its exercise, is sufficient to confer supervisory status on an employee, as long as the power is real, rather than theoretical. In other words, it is not the exercise of authority, but the delegation of authority, which is indicative of the attributes of a “supervisor.” [*Faust Pub Library*, 311 Mich App at 453-454 (quotation marks and citations omitted).]

Therefore, if petitioner had delegated supervisory authority to either the Chief Deputy Court Clerk or the Urinalysis Laboratory Manager positions, such that those positions were able to exercise independent judgment in connection with the exercise of that authority, then those positions would be considered supervisory even if that authority was not, or was infrequently, exercised. *Id.*

#### A. CHIEF DEPUTY COURT CLERK

MERC concluded that the Chief Deputy Court Clerk’s various responsibilities respecting scheduling, room assignments, time off requests, and approval of timesheets, “for the most part, is governed by pre-set routines or policies, and there is little to no exercise of independent judgment.” This conclusion is supported by the record, and is consistent with MERC’s prior decisions. However, our review of the record leads us to conclude that MERC erred by failing to consider whether petitioner had delegated the Clerk of the Court’s supervisory authority to the Chief Deputy Court Clerk when the Clerk of the Court is absent.

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<sup>2</sup> “Although cases decided before November 1, 1990, are not binding precedent, MCR 7.215(J)(1), they nevertheless can be considered persuasive authority.” *In re Stillwell Trust*, 299 Mich App 289, 299 n 1; 829 NW2d 353 (2012).

Again, “it is not the exercise of authority, *but the delegation of authority*, which is indicative of the attributes of a ‘supervisor.’ ” *Id.* at 453-454 (emphasis added). In this case, there is no dispute that the Clerk of the Court position is supervisory; therefore, the delegation of the powers of the Clerk of the Court to the Chief Deputy Clerk, even if such power was only to be exercised in the Clerk of the Court’s absence, could render the Chief Deputy Clerk Court position “supervisory” for the purposes of determining the appropriate bargaining unit. *Id.* Notably, the position description expressly states that “[t]he employee is expected to fill in for the Clerk of the Court in their absence.” The Clerk of the Court also testified that the Chief Deputy Court Clerk “fills in for [her] if she’s gone.” The record reflects that the prior holder of the Chief Deputy Court Clerk position did in fact serve as Clerk of the Court for an extended period of time after the previous occupant of that position left petitioner’s employ. Although it appears that the Chief Deputy Court Clerk has, at least sometimes, been delegated all of the powers of the Clerk of the Court, MERC did not address this apparent delegation of power.

As we recognized in *Faust Pub Library*, any delegated supervisory power to “fill in” for the Clerk of the Court must be more real than theoretical. See *id.* at 453. We therefore conclude that further factual determinations concerning the scope of the Chief Deputy Court Clerk’s authority when “filling in” for the Clerk of the Court, particularly whether the exercise of that authority involves any exercise of independent judgment, are required. Accordingly, we vacate MERC’s decision with respect to the Chief Deputy Court Clerk position and remand for further proceedings consistent with this opinion.

#### B. URINALYSIS LABORATORY MANAGER

Our review of the record leads us to conclude that competent, material, and substantial evidence supported MERC’s determination that the Urinalysis Laboratory Manager was not delegated supervisory powers and, therefore, that its placement within the GREIU bargaining unit remains appropriate. See *id.* at 452. Petitioner does not directly refute any of the factual findings contained in MERC’s decision and order. Rather, on appeal, it argues more generally that MERC erred when it concluded that “*much* of the position’s ‘supervisory’ authority is routine” because this implicitly recognizes that at least “*some*” of the duties are non-routine, require independent judgment, and are therefore supervisory under the disjunctive test for classifying supervisors. This over-parsing of the wording of MERC’s decision does not create the clear error necessary for reversal. *Id.* at 453.

While the record shows that the Urinalysis Laboratory Manager has some day-to-day control over scheduling, discipline, and general lab decorum, nothing in the record suggests that the position possesses or was delegated any specific authority “to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action,” as required. See *id.* MERC noted that the Chief Probation Officer, the Urinalysis Laboratory Manager’s direct superior, did not testify at the hearing, but that the record adequately supported the conclusion that he maintained direct oversight and independent control of supervisory decisions. Although Secor and Boland testified that Boland was responsible for hiring and firing lab technicians, Boland also testified that she consulted with the Chief Probation Officer regarding these issues before acting. The record supports MERC’s conclusion that the Chief Probation Officer is ultimately responsible for the exercise of independent judgment and supervisory

authority, and that the Urinalysis Laboratory Manager's role in those decisions is advisory. We discern no error in MERC's conclusion that the Urinalysis Laboratory Manager's position, while no doubt important to petitioner's operations, is nonsupervisory for the purposes of determining the proper bargaining unit to which it belongs. Reasonable minds could accept that the Urinalysis Laboratory Manager was not delegated true supervisory powers and that the GREIU remains the appropriate bargaining unit representative for the position. See *St Clair Co Intermediate Sch Dis*, 245 Mich App at 512-513. The record adequately supported MERC's decision on this question and our standard of review does not permit us to second-guess absent clear legal error. See *Faust Pub Library*, 311 Mich App at 452-453.

### C. ADMISSION OF EVIDENCE

Petitioner also argues that the ALJ erred at the hearing on the petition by refusing to admit two job description questionnaires as exhibits. We disagree. The exhibits in question were job questionnaires filled out by the current Chief Deputy Court Clerk and the Urinalysis Laboratory Manager describing how those two individuals perceived their job responsibilities. Petitioner argues that the administrative law judge should have admitted these proposed exhibits as prior consistent statements. We disagree. A necessary element for the admission of a prior consistent statement is "an express or implied charge of recent fabrication or improper influence or motive of the declarant's testimony." See, e.g., *People v Jones*, 240 Mich App 704, 711; 613 NW2d 411 (2000) (quotation marks and citation omitted). Petitioner does not cite where in the record such a charge was made or implied, nor has our review of the record uncovered such a charge.

Moreover, because the Chief Deputy Court Clerk and the Urinalysis Laboratory Manager both testified at the evidentiary hearing, petitioner was able to elicit by way of direct testimony any of the information contained in the two proposed exhibits. Therefore, even if the ALJ abused its discretion by not admitting the job questionnaires, any such error was harmless. See *Lewis v LeGrow*, 258 Mich App 175, 200; 670 NW2d 675 (2003) (noting that evidentiary error is generally grounds for appellate relief only if a party was substantially prejudiced by the error).

We affirm in part, vacate in part, and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Kelly  
/s/ Deborah A. Servitto  
/s/ Mark T. Boonstra