

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

In the Matter of:

CITY OF DETROIT,
Public Employer,

Case No. RO1 B-029

-and-

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 808-M,
Petitioner-Labor Organization.

APPEARANCES :

City of Detroit Law Department, by Daryl Adams, Esq., for the Public Employer

L. Rodger Webb, P.C., by L. Rodger Webb, Esq., for the Petitioner

DECISION AND DIRECTION OF ELECTION

Pursuant to Section 12 of the Public Employment Relations Act (PERA), 1947 PA 336, as amended, MCL 423.212, this case was heard on July 2, 2001 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 hearing transcript and the briefs filed by the parties on or before December 3, 2001, the Commission finds as follows:

The Petition and Background Matters:

The petition for a representation election was filed by the Service Employees International Union (SEIU), Local 808-M on February 14, 2001. Petitioner represents a bargaining unit of nonsupervisory employees of the City of Detroit, including stock keepers, building institutional attendants, assistant market masters, sanitation control room operators, environmental control inspectors and senior environmental control inspectors. The latter three positions are all part of the City of Detroit's Department of Public Works (DPW). In the petition, the SEIU seeks an election to accrete to this unit the position of Instructor-Public Works Equipment (DPW instructor). The employees sought by Petitioner have never been included in this nonsupervisory unit. The Employer contends that the DPW instructors have no community of interest with Petitioner's unit.

Following the hearing in this matter, the SEIU indicated that it wished to amend the petition to include the position of junior training specialist and reopen the proofs for the purpose of submitting evidence concerning that position. A formal motion to reopen the record was filed by the SEIU on September 18, 2001. On November 2, 2001, the ALJ issued an order denying Petitioner's motion. The ALJ concluded that Petitioner had set forth no explanation as to why the junior training specialist was not included in the original petition and, under such circumstances, there was "no reason to further delay resolution of this matter by reopening the record."

Findings of Fact:

The DPW instructors are part of the training division of the DPW. At the time of the hearing, there were eight instructors employed by the DPW. The duties of the DPW instructors are to train City of Detroit employees, individually or in small groups, in the operation, care and minor maintenance of heavy vehicular and other equipment; to evaluate employee equipment operation skills; and to perform related work as required. The majority of the employees trained by the instructors are from the DPW's solid waste division.

DPW instructors are given assignments on a weekly basis. They are required to prepare a written evaluation of any employee they train. The DPW instructor then submits these evaluations to his or her supervisor, senior training specialist Willie Riley, who, in turn, passes them on to the supervisor of the individual trainee.

DPW instructors report to work at the DPW's Northwest/Davison yard, but spend a good part of their day out in the field. Upon arriving to work, they are required to punch a time card. The instructors generally work from 7:00 a.m. to 3:30 p.m. However, they are also required to work overtime when necessary. Overtime is typically required of the instructors in the winter, when they are needed to assist other DPW employees in cleaning the City streets of snow and ice. Instructors are also required to be available for work in the event of an emergency.

DPW instructors are required to have education equivalent to graduation from high school. According to the most recent job description, the DPW instructors are required to possess the following minimum qualifications:

Education equivalent to graduation from high school; considerable recent experience in operation of heavy refuse collection and other vehicles, reasonable recent experience in instruction and orientation of assigned equipment on regularly scheduled routes; considerable knowledge of the operation, maintenance and construction of refuse collection and other equipment; knowledge of traffic rules and regulations and safe driving practices; knowledge of the location of Detroit streets; thorough familiarity with, and considerable skill in the operation of department heavy vehicular equipment; demonstrated ability to instruct others in the safe operation of heavy equipment and the [sic] conduct training of small groups; ability to communicate effectively; mechanical aptitude; tact, patience and understanding in dealing with others; initiative in determining means to

instruct others in more efficient driving techniques; physically and mentally capable of performing all the duties of the assigned position.

In addition, DPW instructors must possess a valid State of Michigan Chauffeur License with a Group A Designation and Air Brake Endorsement.

Seven of the eight individuals working as DPW instructors at the time of hearing were previously employed by the City as refuse collection packer operators (RCPOs) in the DPW's solid waste division. RCPOs are sanitation workers whose tasks include picking up refuse, clearing vacant lots and sweeping streets. The RCPOs are trained in the use of their heavy equipment by DPW instructors. RCPOs are represented for purposes of collective bargaining by the Teamsters, Local 214.

Petitioner's nonsupervisory unit includes nine control room operators (CROs) who work in the DPW's solid waste division. CROs handle calls from other City employees, as well as from members of the general public, regarding equipment failures, severe weather emergencies, sanitation issues and accidents involving City vehicles. CROs work out of the main control room at the DPW's Russell-Ferry yard. A number of the CROs worked as RCPOs before taking their current positions with the DPW.

Petitioner also represents approximately forty environmental control inspectors (ECIs) employed in the Environmental Control Division of the DPW, approximately thirty of whom previously worked as RCPOs. ECIs enforce all City ordinances pertaining to the environment, such as those dealing with rodent control, litter and debris cleanup, including abandoned vehicles and vacant lots, and hazardous conditions caused by snow and ice, and they have the authority to write tickets for violations of environmental ordinances. ECIs also seek to ensure that all commercial establishments operating within the City of Detroit have garbage collection services, either through City pickup or via a private collection service. ECIs are occasionally alerted to environmental problems by DPW instructors and RCPOs working in the field. In addition, ECIs, instructors and other DPW employees work together on "Angels Night" patrolling the streets in an effort to deter vandalism.

ECIs work regularly scheduled shifts from 8:00 a.m. to 4:30 p.m. Approximately sixteen or seventeen ECIs are assigned to the Northwest/Davison yard. Those employees are required to punch a time card on the same machine used by the DPW instructors. The remaining ECIs work out of the Southfield and Russell-Ferry yards. ECIs typically spend about two hours per day at the yard and six hours working in the field. In the event a vehicle break down or other emergency, ECIs may contact the CROs for assistance. ECIs may be required to work overtime, but they are rarely called upon to do so. ECIs are governed by the same work rules and disciplinary guidelines as the DPW instructors, and they receive identical fringe benefits and substantially similar wages. One of the eight individuals currently employed as a DPW instructor formerly worked for the City as an ECI.

ECIs report to James Bledsoe, interim supervisor for the Environmental Control Division of the DPW. On occasion, Bledsoe has signed time cards for instructors and other DPW employees stationed at the Northwest/Davison facility. Bledsoe does this as a courtesy when

another supervisor is absent. Other high-ranking supervisors within the DPW have the same authority.

Discussion and Conclusions of Law:

Petitioner contends that the DPW instructors share a sufficient community of interest with other positions within the unit to warrant the direction of an accretion election. The Employer asserts that an election should not be granted because the DPW instructors have different supervisors than positions within Petitioner's unit, and because there is no interchange and little, if any transfer, between the instructors and members of this unit. In addition, the City argues that there are "no known impediments to other Unions such as the AFSMCE and SAAA from representing the instructors."

A primary objective of the Commission is to constitute the largest unit which, in the circumstances of the particular case, is most compatible with the effectuation of the purposes of the law, and which includes within a single unit all employees sharing a community of interest. *Hotel Olds v State Labor Mediation Bd*, 333 Mich 382 (1952). 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. See e.g. *Covert Public Schools*, 1997 MERC Lab Op 594, 601; *Grand Rapids Public Schools*, 1997 MERC Lab Op 98, 106.

In the instant case, the record establishes that all of the DPW instructors and sixteen or seventeen of the forty ECIs work out of the same facility, the Northwest/Davison yard. Those employees all use the same time clock and, on occasion, have their time cards signed by the same supervisor. The working conditions of the DPW instructors and ECIs are similar in that both spend a good portion of their day out in the field. Both positions are involved in keeping the City streets free of ice and snow, and DPW instructors and ECIs work together as part of the City's Angel's Night project. Although the instructors and ECIs are in different divisions and, thus, operate under the direct supervision of different individuals, all division directors within the DPW ultimately report to DPW director Stephanie Green. DPW instructors and ECIs work similar hours, are governed by the same personnel policies, have the same fringe benefits, and make substantially similar wages. Individuals working in both positions may be required to work overtime. While there is no formal interchange between DPW instructors and the positions within Petitioner's unit, the individuals currently employed as DPW instructors have employment backgrounds similar to the ECIs and CROs. The record indicates that seven of the eight DPW instructors, approximately thirty of the forty ECIs and a number of the CROs worked as RCPOs before taking their current positions within the DPW. One former RCPO went on to work both as an ECI and a DPW instructor. This suggests a similarity in skills required for each of these positions.

Although the DPW instructors and ECIs have different duties and limited contact with each other, we do not find these factors to be a sufficient basis for denying the petition and leaving the DPW instructors unrepresented. Absent a showing of extreme divergence of community of interest between an existing unit and a residuum of unrepresented employees, our

policy has been to allow accretion, rather than leave the unrepresented employees without collective bargaining representation. See e.g. *Chelsea School District*, 1994 MERC Lab Op 268, 276. While the Employer hypothesizes in its post-hearing brief that other labor organizations may be willing to take the DPW instructors, the City did not propose any alternative appropriate unit to which the instructors should be attached. We find nothing in the record which would suggest that accreting the DPW instructors to Petitioner's bargaining unit would be inconsistent with our objective to avoid fractionalization or multiplicity of bargaining units. See *Michigan Ass'n of Public Employees v AFSCME Council 125*, 172 Mich App 761, 765 (1988). Therefore, finding sufficient community of interest, we shall grant the petition and direct an election among the DPW instructors involved in this matter.

ORDER

Based upon the above findings, we conclude that a question of representation exists herein under Section 12 of PERA, and that the following employees constitute a residual group of employees who may vote to be represented by Petitioner as part of its larger unit of nonsupervisory employees of the DPW:

All DPW Instructors employed by the City of Detroit, Department of Public Works, excluding supervisors and all other employees.

Pursuant to the attached Direction of Election the aforesaid employees will vote on whether or not they wish to be represented for purposes of collective bargaining by the Service Employees International Union, Local 808-M. If the employees vote to be represented by Petitioner, they will be considered to have voted to be added to its existing unit of nonsupervisory employees as described above, and the notice of election will so indicate.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Dated: _____