

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

In the Matter of:

61ST 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.

APPEARANCES:

Mika Meyers, by John H. Gretzinger, for the 61st 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

**DECISION AND ORDER
ON PETITION FOR UNIT CLARIFICATION**

On June 10, 2016, the 61st District Court (Petitioner or Court) filed a petition for unit clarification with the Michigan Employment Relations Commission (the Commission) pursuant to Section 13 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.213. The parties appeared for a hearing on the petition on November 9, 2016, before Administrative Law Judge Travis Calderwood of the Michigan Administrative Hearing System.¹ Based on the entire record, including the transcripts, exhibits, and post-hearing briefs filed by the parties on January 31, 2017, the Commission finds as follows:

¹ MAHS Hearing Docket No. 16-022980

The Petition and Positions of the Parties:

Petitioner seeks an order removing the positions of Chief Deputy Court Clerk and Urinalysis Laboratory Manager from the bargaining unit represented by the Grand Rapids Employees Independent Union (GREIU) on the basis that the two positions are supervisory.

The Association of Public Administrators of Grand Rapids (APAGR) was permitted to intervene in these proceedings as it is the authorized bargaining representative of supervisors at the Court. Intervenor APAGR concurs with the Court's identification of the positions as supervisory and therefore claims the positions would be properly placed within its unit.

The Incumbent, GREIU, objects to the removal of the positions from its bargaining unit claiming that neither position rises to the level of supervisor as that term has been defined by Commission case law.

Findings of Fact:

The 61st Court is governed by the State Court Administrative Policies and the Michigan Court Rules. Pursuant to MCR 8.110, the Chief Judge acts in the role of the Court's chief executive authority. Directly reporting to the Chief Judge is the Court Administrator who governs the day-to-day administration of the Court. Beginning sometime in 2011, and at all times relevant to these proceedings, Gary P. Secor held the position of Court Administrator. Secor testified that he is the ultimate authority as it relates to personnel matters, subject to the Chief Judge's authority.

The Court recognizes the APAGR as the bargaining representative for its supervisory/managerial employees and the GREIU as the bargaining representative for its non-supervisory employees.

The recognition clause of the Court's 2014-2016 contract with the APAGR describes, in Section 1.0, the bargaining unit as:

All full time and regular part time administrative and supervisory employees of the Court (Clerk of the Court, Chief Probation Officer, Court Information Systems Manager, Community Service Work Program Supervisor, Assignment Clerk/Deputy Clerk Supervisor, Deputy Clerk Supervisor, Court Administrative Assistant [effective 7/2010 to 10/2011], Probation Officer I, Probation Officer II, Alternative Sentencing Coordinator, Court Administrative Assistant-Administration [effective 10/2011], Court Administrative Assistant-Finance [effective 10/2011], Victim Service Counselor, Community Intervention Coordinator/Pre-trial Officer, DART/VIP Coordinator, and Clinical Social Worker) but excluding Judges and Magistrates, executive employees (Court Administrator), non-supervisory employees, confidential employees, temporary employees, seasonal employees and all other employees.

The Court's contract with the GREIU, effective 2016-2019, provides in Section 1.0 of that contract:

The bargaining unit consists of all employees, except those designated as excluded, holding positions in the classifications shown in Appendix A or which hereafter may be added thereto or changed as hereinafter provided.

Appendix A of that contract lists thirteen classifications, including Chief Deputy Court Clerk and Urinalysis Laboratory Manager. That appendix further identifies the GREIU bargaining unit as:

All regular full time and regular part-time employees of the 61st District Court, excluding all supervisory, confidential, professional, and seasonal employees, all elected officials, all employees who work less than 12 hours per week, and all other employees.

Following a reorganization study completed in 2010, the Court began a lengthy reorganization process that same year. On February 4, 2011, the Court filed a unit clarification petition, Case No. UC11 B-004, seeking to have the positions of Lead Work Crew Supervisor and Deputy Clerk IV removed from the GREIU bargaining unit on the grounds that both positions had become supervisors. Eventually a settlement was reached with the GREIU whereby the parties agreed that the Lead Work Crew Supervisor, subsequently retitled to Community Service Work Program Supervisor, would be excluded from the GREIU bargaining unit and placed in the APAGR bargaining unit and that the Court would withdraw its petition thereby ensuring that the Deputy Clerk IV position would remain in the GREIU unit. As explained below, the Deputy Clerk IV position would eventually be retitled Chief Deputy Court Clerk.

The Court's reorganization continued and was, for the most part, completed in June of 2012. As part of the reorganization the Court created several positions, including the Chief Deputy Court Clerk and Chief Compliance Manager. The Court also retitled and reclassified the position of Lab Manager to Urinalysis Laboratory Manager. Each of the three new positions was filled with existing Court employees from the Deputy Clerk IV and Deputy Clerk III positions. Former Deputy Clerk IV Sandra Blumke moved into the Chief Deputy Court Clerk position while two former Deputy Clerk III's, Wanda Yancy and Catherine Boland, moved into the positions of Court Compliance Manager and Urinalysis Laboratory Manager, respectively.

At the time of the hearing, the Court's management structure, in addition to the Chief Judge and the Court Administrator, included the Court Clerk, the Chief Probation Officer, the Community Services Work Crew Supervisor, and the IT Director. Each of the positions is an APAGR bargaining unit position reporting directly to Secor. Other members of the APAGR unit include two administrative assistants who also report directly to Secor, probation officers and other professional employees – some of which do not have any true supervisory authority or direct reports.

Chief Deputy Court Clerk

Secor testified that the Chief Deputy Court Clerk position was created in 2012 with the intention of using Blumke, a long time Court employee, to fill the position. According to Secor, Blumke had previously applied for the Clerk of the Court position, but was unsuccessful. Blumke held the position of Chief Deputy Court Clerk from 2012 through October 2015. Secor testified that while it was the Court's intention that the Chief Deputy Court Clerk position was to directly supervise team leaders, review evaluations, and engage in disciplinary matters, Blumke, while serving in that position, was not delegated, nor did she perform, any of those functions.

After Blumke retired in late 2015, the Court posted the Chief Deputy Court Clerk position and Amy Sanders, another internal Court employee, was selected for the position. As currently structured, four Lead Work Assignment Clerks ("Lead Clerks"), the Court Compliance Manager ("Compliance Manager"), and thirteen other judicial staff positions, including judicial clerks and court reporters, directly report to the Chief Deputy Court Clerk. The Lead Clerks and Compliance Manager positions all have several of their own direct reports. Secor testified that Blumke, during her time as Chief Deputy Court Clerk, did not have any direct reports.

The position's most current Job Description provides the following:

This position performs advanced supervisory and administrative support work within a division of 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.

Testimony provided by Secor and Tanya Todd, the current Court Clerk, establishes that Sanders, in her position as Chief Deputy Court Clerk, can issue "day-to-day" or informal discipline. That is, discipline that does not rise to the level of inclusion in an employee's personnel file. Secor listed "advising individual staff of difficulties with tardiness, being on time, performance issues" as examples of the position's disciplinary authority. Secor claimed that Sanders had made at least one recommendation to Todd regarding discipline above what she, Sanders, could do on her own.² The preceding notwithstanding, Secor, when asked to identify any written discipline issued by Sanders, answered, "It is not part of her job responsibilities."

Todd testified that in her time as Court Clerk, she has issued written discipline to GREIU members on two or three occasions. Todd claimed, that in the "rare" situation that discipline is

² According to Secor, while Todd does have authority to issue formal discipline above what Sanders can issue, Todd would always consult with him first if the potential discipline could result in something being placed within an individual employee's personnel file.

necessary, she and Sanders “would discuss different points of views, maybe different avenues of how we want to proceed.” Todd further testified that the reason Sanders does not issue written discipline is because she, Sanders, is a member of the GREIU.³

Additionally, Sanders has scheduling responsibilities relating to the courtrooms, both in assignment of the rooms and in the scheduling of Court Reporters and Judicial Clerks. Other duties assigned to Sanders include: review of evaluations completed by the Lead Clerks and the Compliance Manager of their respective direct reports; evaluating Lead Clerks and the Compliance Manager; time sheet approval of her direct reports and their respective subordinates; approval of sick leave and vacation time. In creating the schedules, Sanders adheres to a previously created algorithm that governs how much staff is needed for given scenarios. Additionally, when assigning court rooms, the record indicated that Sanders simply follows a pre-set routine of which judge is in which room for that given day. Lastly, when Sanders approves or denies time off requests, the record indicates that much of that decision is based contractually on seniority and that she would only deny requests if there was not enough staff to cover a requested time off.⁴

There was no testimony establishing that Sanders either had, or exercised, the authority to hire, terminate, promote, demote, and/or transfer individuals between different classifications.

Urinalysis Lab Manager

The Court’s Urinalysis Lab (“Lab”) is located at a separate location apart from the Courthouse and is one of only two such labs operated by a Michigan Court. The Lab performs drug testing for not only the Court’s probation department but also for 30 or more other courts throughout Kent County and other areas of the state. The Lab also handles drug testing for the Department of Corrections and the Probation and Parole Departments.

Since at least 2008, the Lab has been overseen by Catherine Boland, first in the position of Lab Manager and then as Urinalysis Lab Manager after the 2012 reorganization, which in part resulted in the position’s retitling and increase in salary.

Boland’s position reports directly to the Chief Probation Officer, Joseph Berlin, and oversees up to five part-time lab employees: four Urinalysis Tech (“Tech”) positions also represented by the GREIU and a contracted Urinalysis Drug Lab Assistant (“Lab Assistant”) that is grant-funded and not represented.⁵ The four Tech positions are typically filled by college students and are split evenly between males and females.⁶ According to Boland, turnover of the Techs is common. Because of this turnover, evaluations which would be the responsibility of

³ Further explaining this, Todd stated, “It just seems odd that one union member would formally write up another union member, because if there was a disagreement, how would that union member file a grievance against someone else.”

⁴ Section 8.2 of the GREIU Agreement provides that vacation requests are approved “with due regard for seniority, employee preference and needs of the [Court].”

⁵ Unlike Todd, the Chief Deputy Court Clerk’s direct supervisor, Berlin, did not testify at the hearing.

⁶ The gender split is necessary because the Tech’s duties include witnessing the submission of urine for purposes of drug testing.

Boland, rarely, if ever, occur. In fact, Boland was unable to recall any specific evaluation she had done of one of the Lab's Techs.⁷

Boland's duties, as they relate to the Lab, in addition to processing the urine specimens, include overseeing the Lab staff, communicating with probation officers, setting the monthly random drop-in drug testing schedule and processing cash payments for testing.

With respect to the Lab's staff, Boland is responsible for scheduling the four Techs and Lab Assistant according to the Lab's needs as they relate to the monthly drop-in schedule. The Techs, who by contract are not eligible for paid time off, work with her to schedule time off in advance, but she does have the authority to grant a request for time off if made after the schedule has been created.

Boland testified that both she and Berlin review applicants for the Tech positions when open and that both participate in the interviews. However, according to Boland, Berlin is the one who calls and provides job offers to successful applicants. Boland claimed that she had, in the past, accepted the resignation of one Tech.⁸ Boland further testified as to an instance where, because an applicant had failed to complete the necessary drug screening, she notified the appropriate internal Court staff member that the offer was "rescinded." Boland explained that the reason why she sent the email was "because he was going to be my employee... I'm to monitor that type of thing, [Berlin] does not monitor that type of thing." On cross examination in response to questions regarding the job offer rescission, Boland admitted that Berlin followed up with the actual applicant with a phone call.

Like Sanders, Boland has the sort of "day-to-day" disciplinary authority described by Secor in the previous section. That is, any discipline that presumably would result in something being placed in an employee's personnel file is outside of her authority to issue. Boland testified that, in the past, she has dealt with issues over cell phone use as well as general decorum in the lab, although how she dealt with those issues appears to have been limited to informal counseling. In one instance recounted by Boland, she had suspected an employee of embezzling from the Lab. After discussing her suspicions with Berlin and possibly Secor, Boland requested that surveillance be used to try and catch the suspected embezzler. Eventually a camera was set up and it "caught things." From there, however, one of the Court's Judges stepped in and questioned the Tech and ultimately ended up terminating the individual.

Discussion and Conclusions of Law:

Section 13 of PERA, which incorporates Section 9e of the Labor Mediation Act, MCL 423.9e, precludes supervisors from being included in the same unit with the employees they supervise. *School Dist of City of Dearborn v Labor Mediation Bd*, 22 Mich App 222 (1970). Accordingly, if either the Chief Deputy Court Clerk or Urinalysis Lab Manager are supervisors, the position's inclusion in the GREIU bargaining unit would be inappropriate.

⁷ There was no indication that Boland was to do, or had done, evaluations of the Lab Assistant position.

⁸ There is no indication in the testimony provided as to what would have happened if Boland had not accepted the resignation.

As we recently restated in *Faust Public Library*, 30 MPER 23 (2016), on remand from the Michigan Court of Appeals, 311 Mich App 449 (2015), a supervisor is an employee who has authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, direct, reward, or discipline employees, to adjust their grievances, or to effectively recommend any of those actions, if the exercise of that authority is not of a merely routine or clerical nature, but requires the consistent use of independent judgment. *MEA v Clare-Gladwin ISD*, 153 Mich App 792, 796-798 (1986); *City of Holland*, 2002 MERC Lab Op 40, 41; *Village of Paw Paw*, 2000 MERC Lab Op 370.

We do not require the actual exercise of any of the above powers to be determinative of supervisory status; rather, we have consistently held that it is the possession of any of the above powers that may confer supervisory status. See *East Detroit Sch Dist*, 1966 MERC Lab Op 60, at 64; See also *St Clair Co*, 18 MPER 45 (2005); *Macomb Co*, 29 MPER 68 (2016). For that reason, we give considerable weight to an employer's statement that it has delegated supervisory authority to a position. *Montcalm Co and Sheriff*, 1997 MERC Lab Op 157, 167.

To meet the criteria to be a supervisor under PERA, an individual's exercise of authority in these functions must involve the use of independent judgment, including effective authority in personnel matters, with the power to evaluate employees and recommend discipline. *Butman Twp*, 2000 MERC Lab Op 13, 16-17. The mere fact that an employee has input into or makes recommendations concerning personnel decisions does not necessarily mean that the employee has effective authority to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees and is insufficient to establish supervisory authority. *Saginaw Valley State College*, 1988 MERC Lab Op 533, 536. Effective authority in personnel matters means that the employee's superiors generally accept his or her recommendation without an independent investigation. *Butman Twp*, at 16. See also *Village of Port Austin*, 1991 MERC Lab Op 346, 348.

However, an individual is not a supervisor under PERA if the delegated authority is limited to the routine direction of the daily work of other employees and/or making work assignments of a routine nature. *Bloomfield Hills Sch Dist*, 2000 MERC Lab Op 363. Furthermore, the fact that an employee merely assigns or oversees the performance of work by others on a routine basis is not enough to confer supervisory status. *Kalkaska Co and Sheriff*, 1994 MERC Lab Op 693, 698. Furthermore, responsibilities such as maintaining time cards, and granting time off, are insufficient to establish supervisory status. *Village of Ortonville*, 17 MPER 46 (2004).

In the case of Chief Deputy Court Clerk, 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. See *Charter Township of Clinton*, 19 MPER 23 (2006). 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, Todd testified that both she and Sanders "would discuss different points of views, maybe different avenues of how we want to proceed." At no point did Todd admit to ceding or bestowing any actionable or real disciplinary authority to Sanders.⁹

As such, we find that the position of Chief Deputy Court Clerk is not supervisory and that its inclusion in the GREIU unit remains appropriate.

With respect to the position of Urinalysis Lab Manager, like the Chief Deputy Court Clerk position, the record indicates that much of this 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 Berlin, the Lab Manager's direct supervisor, in matters related to hiring, firing, or discipline, or that those recommendations would be accepted without independent investigation. For these reasons, we conclude that the position of Urinalysis Lab Manager does not meet the definition of a supervisor under PERA and that its inclusion in the GREIU unit remains appropriate.

We have also considered all other arguments submitted by the parties and conclude that they would not change the result in this case. For the reasons set forth above, we issue the following order.

ORDER

The Employer's petition to clarify the GREIU bargaining unit to exclude, as supervisory, the Chief Deputy Court Clerk and Urinalysis Lab Manager positions is denied.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: January 12, 2018

⁹ Todd did claim that a reason why Sanders did not issue discipline to members of the GREIU was because Sanders was a member of that unit. While one may speculate that if Sanders were removed from the GREIU unit she would then be able to issue discipline, that speculation does not move us to remove her position from her current unit.