

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

In the Matter of:

BLOOMFIELD TOWNSHIP,  
Public Employer,

MERC Case No. R17 A-010

-and-

BLOOMFIELD TOWNSHIP WATER AND  
SEWER UNIT ASSOCIATION,  
Incumbent-Labor Organization,

-and-

AFSCME COUNCIL 25, AFL-CIO,  
Petitioner-Labor Organization.

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**APPEARANCES:**

Giarmarco, Mullins & Horton, P.C., by John C. Clark, for the Public Employer

David Keller, for the Incumbent

Katherine L. DeLong, Staff Attorney, for the Petitioner

**DECISION AND DIRECTION OF ELECTION**

On January 25, 2017, AFSCME Council 25, AFL-CIO (AFSCME or Petitioner), filed a Petition for Representation Proceedings with the Michigan Employment Relations Commission (Commission) pursuant to Section 13 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.213. The case was heard in Detroit, Michigan, on November 15, 2017, by Travis Calderwood, Administrative Law Judge (ALJ) for the Michigan Administrative Hearing System (MAHS), acting on behalf of the Commission.<sup>1</sup> Based on the record, including briefs filed by Bloomfield Township (Employer) on January 16, 2018 and by the Petitioner on January 23, 2018, we find as follows.

**Petition and Procedural History:**

AFSCME, in its Petition, seeks to be certified as the bargaining representative of Maintenance Workers and Crew Leaders in Bloomfield Township's Water and Sewer

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<sup>1</sup> MAHS Hearing Docket No. 17-005138-MERC

Department.<sup>2</sup> At the time the Petition was filed, Maintenance Workers and Crew Leaders in the Water and Sewer Department were represented by the Bloomfield Township Water and Sewer Unit Association (Incumbent), an independent employee association. The Employer does not oppose the Petition as it relates to Maintenance Workers but does claim that inclusion of Crew Leaders into the petitioned for unit would be inappropriate because they are supervisors.

The Commission's Election Officer sought and received position statements from both the Employer and Petitioner. Additionally, the Election Officer conducted at least two conference calls with both the Employer and Petitioner. The Incumbent, despite being provided an opportunity to participate in these proceedings by the Election Officer, did not submit a position statement; nor did it participate in the conference calls.

The Petition was referred to MAHS on March 9, 2017, for an evidentiary hearing on whether Crew Leaders should be excluded from the petitioned for unit and the hearing was initially scheduled for April 24, 2017. Following referral to MAHS, both the Employer and Petitioner requested and were granted several hearing adjournments.

The parties appeared before ALJ Calderwood on November 15, 2017, at the Commission's Detroit offices. At the onset of the hearing, David Keller, a Maintenance Worker and representative of the Incumbent, stated that it was the Incumbent's position that it wished to have the Petitioner take over as the unit's authorized bargaining representative and that, if an election were ordered on the petition, it did not want to be listed as a choice on the ballot.

#### Findings of Fact:

The Bloomfield Township Department of Public Works (Public Works) is comprised of five separate divisions or departments: Road, Fleet, Building Maintenance, Ground Maintenance, and Water and Sewer. Sitting atop each division is either a Foreman or a Manager.

Within Public Works, there are three separate collective bargaining units that cover all the employees of the five divisions: the Water and Sewer unit, inclusive of both Water and Sewer Maintenance Workers and Water and Sewer Crew Leaders; a Foreman's unit comprised of the five divisional heads; and a residual unit comprised of the remaining Public Works staff. The Incumbent has represented Water and Sewer Department employees for at least the last fourteen (14) years. In 2009, the Water and Sewer Department added the position of Crew Leader. As stated above, this position was placed in the Incumbent's unit. At all times relevant to this Petition, Incumbent was comprised of eight (8) Maintenance Workers, of varying levels, and two (2) Crew Leaders. Either some or all of the other divisions within Public Works had Crew Leaders in place prior to 2009. Those Crew Leaders have been included in the residual staff unit and not in the Foreman's unit.

The Employer and Incumbent were both signatories to a collective bargaining agreement identified as an "Employer – Employee Working Agreement." That agreement was effective April, 2011, through March 31, 2017. Listed therein as "Employee Representatives" were Rick Jenkinson, Paul Palace, and David Keller, the Maintenance Worker identified above.

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<sup>2</sup> The Water and Sewer Department is also known as the Water and Sewer Division.

The Maintenance Worker classification has three different levels, I, II, and III. Maintenance Worker III is the entry and most junior level within the classification while Maintenance Worker I is the most senior level. The Maintenance Worker I level is more highly-trained and certified in certain aspects of the Employer's water system. The more senior levels oversee the work of the more junior levels. The record establishes that the Maintenance Workers in the unit each have their own "niche" or area of responsibility. For example, Keller, a Maintenance Worker I, leads the sewer cleaning operation while Rick Jenkinson, another Maintenance Worker I, does meter work. The Maintenance Workers work together in pairs.

The Maintenance Worker I Position Description provides under the heading "General Responsibilities":

Perform skilled and semi-skilled work associated with the repair, construction, maintenance and operation of the Township's water distribution and sewer systems. May also perform manual labor and/or supervise others. Work special hours as required.

Under the heading on "Supervision Exercised Over" the Position Description states:

Supervision is exercised over Maintenance Workers II, III, and part time employees or others, including outside contractors, assigned to assist the Water & Sewer Department. May also supervise over other Maintenance Workers I as directed by the Foreman or Superintendent.

The foremost duty listed under the heading of "Essential Job Functions" states "[p]articipate in the construction, maintenance and repairs of the Township's water distribution and sewer systems."

As stated above, the Crew Leader classification was added to the Water and Sewer Department at the suggestion of the department's Foreman in 2009. Thomas Trice, the Director of Public Works, testified that the Employer, prior to the present proceeding, never sought to exclude or remove Crew Leaders from the Incumbent's bargaining unit. When asked why no such action had been undertaken previously, Trice replied, "it's a very loose association and, you know, we've always bargained with them and kept everything on the up and up."

The Crew Leader Position Description provides under the heading "General Responsibilities":

To be responsible for assigning work and supervising a small group of employees involved in the repair, maintenance, operation and construction of the Township water distribution and sewer systems, and perform related work as required. Assumes the General Foreman's responsibilities in his/her absence. Work special hours as required.

The heading entitled "Supervision Exercised Over" in the Position Description lists the following:

Maintenance Technicians, Maintenance Workers I, II & III, meter readers, part time employees and all others, including outside contractors, assigned to give assistance to the Water & Sewer Department.

Under the “Essential Job Functions” heading, this Position Description includes the following duties:

Supervise and coordinate the field activities of a group of employees engaged in construction, maintenance, operation and repairs of the Township's water distribution and sewer systems.

Make inspections of and supervise maintenance, construction and repair projects in progress and upon their completion.

\* \* \*

Assist in preparing work schedules and outlining work assignments; prepare work records and reports.

\* \* \*

Prepare records and reports as required, review time sheets and other records for completeness and accuracy.

According to testimony provided by Trice, the Crew Leaders “supervise and coordinate the field work” and have the ability to issue “informal” discipline as well as recommend “formal” discipline.<sup>3</sup> The Director did not provide any testimony regarding an example of a Crew Leader recommending discipline, nor did he indicate how the division’s foreman or other positions within the Employer’s administration would react to such a recommendation. Trice also claimed that the Crew Leaders were involved in the hiring process and that “[t]hey do sit in on the final interview process.” Regarding work assignments, Trice claimed Crew Leaders “make the assignments” and “schedule” on a daily basis.

Craig Lewis, one of the two current Crew Leaders, was the first person to assume the position within the Water and Sewer Department, having been promoted from Maintenance Worker I in 2009. Lewis, when describing the process by which work is assigned, testified that each morning he would arrive fifteen (15) minutes earlier than the Maintenance Workers and meet with the department’s foreman. During that time, according to Lewis, the foreman would determine the work assignments and pairings for the day and then tell Lewis of the same. Next, the foreman and Lewis would split the assignments in half and each would type their half before both went to a room where the Maintenance Workers would be waiting. Then the Foreman would “[hand] out the assignments.”<sup>4</sup> Lewis did claim that, when filling in for the Foreman, he would sometimes decide assignments on his own. At other times, however, the foreman would have assignments done in advance of an expected absence. Regarding his participation in the hiring process, Lewis described the situation differently than Trice. According to Lewis, approximately two years ago, two new employees were hired into the Water and Sewer

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<sup>3</sup> Trice, when describing “informal” discipline stated “they would give direction on the job. If somebody’s slacking or whatever . . . they are going to bust his chops.”

<sup>4</sup> Keller, in his testimony corroborated Lewis’s claims and testified that his day-to-day assignments were “provided by [his] foreman.” Keller did concede that in the case of an emergency, i.e., water on the road, a Crew Leader could give him instructions that were contrary to those given to him earlier by the Foreman.

Department. Lewis claims that the foreman came to him and said, “we have selected two people and we would like you to meet them at a restaurant for lunch.” Lewis did meet with them at lunch and later, when asked whether he liked them, said “they seem nice.”

Lewis also testified that, on a day-to-day basis, he is working alongside one of the Maintenance Workers, with such assignment varying depending on what the foreman has assigned him. Lewis indicated that he, as the more senior person, would take responsibility for the job.<sup>5</sup>

#### Discussion and Conclusions of Law:

Among the many rights guaranteed to public employees by Section 9 of PERA, is the right to bargain collectively with their public employers through representatives of their own free choice. Our starting premise in any decision in a representation proceeding must be the reaffirmation that the fundamental function of the adoption of PERA in 1965 was to recognize and codify the right of public employees to collectively designate an exclusive bargaining agent through which their employer must deal with the workforce collectively, rather than individually. See *Three Rivers Community Schools*, 28 MPER 65 (2015); See also MCL 423.209 & 423.211.

While a representation matter is treated as a non-adversarial proceeding, to the extent that there is a burden of proof, it falls upon the party that is attempting to deny the right to be represented for purposes of collective bargaining to a public employee covered by PERA. It is up to that party, in this case the Employer, to present evidence that inclusion of the position would be improper under the Act. *Lake Co & Lake Co Sheriff*, 1999 MERC Lab Op 107; *Antrim Kalkaska Cmty Mental Health*, 1998 MERC Lab Op 11, 15.

As we consistently have held, the primary objective of this Commission, when making representation determinations, 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). Part of our rationale in applying the aforementioned principle is to minimize the fragmentation of units and to prevent units that are based on the extent of organization. *Bay Area Transportation Auth*, 1995 MERC Lab Op 154, 158. Additionally, our continued adherence to the *Hotel Olds* policy serves to maximize the size of the unit and avoid multiplicity of bargaining units. *Port Huron Sch Dist*, 1995 MERC Lab Op 314.

We determine whether a community of interest exists 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 promotional ladders; and common supervision. See e.g. *Covert Pub Sch*, 1997 MERC Lab Op 594, 601; *Grand Rapids Pub Sch*, 1997 MERC Lab Op 98,

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<sup>5</sup> Lewis testified that when he is paired with Jenkinson, who has more time in service than Lewis, Jenkinson nonetheless defers to Lewis despite being more senior because Lewis is paid more than Jenkinson.

106. Here the record clearly indicates that Water and Sewer Department Crew Leaders and Maintenance Workers, regardless of level, share a community of interest.

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, the question of the Crew Leaders' status as supervisors is determinative as to whether their inclusion into the petitioned for unit is appropriate, regardless of the community of interest shared between them and the Maintenance Workers.

As we previously stated 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. See also *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. The preceding notwithstanding, 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*, 2000 MERC Lab Op 13, 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).

Here, the Employer, the party seeking to exclude Crew Leaders from the petitioned unit, has failed to establish that Crew Leaders have exercised any of the above supervisory powers. While Trice did testify that the Crew Leaders were involved in the "final interview process" for the last two hires of the Water and Sewer Department, Lewis's testimony, which the ALJ credited, further described the situation as one in which the Employer, through the foreman, indicated that two individuals had already been selected, but that it still wished the Crew Leaders to have lunch with them. Accepting Trice's claims regarding the Crew Leaders' participation in the process would require us to find that the Employer made its final hiring decision based on the opinion that the two applicants "seem nice." Moreover, the record clearly establishes that the Crew Leader's participation in the assignment of day-to-day duties is administrative in nature, i.e., Lewis merely reduces the foreman's decisions to writing and then delivers the decision to

Maintenance Workers. Lastly, to the extent that Trice claims that the Crew Leaders issue “informal” discipline, his description of such “busting of chops” falls markedly short of the authority we require to make a finding of supervisory status.

**ORDER DIRECTING ELECTION**

We hereby direct an election in the bargaining unit of employees, including Maintenance Workers and Crew Leaders, as to whether they wish to be represented by AFSCME Council 25 or by no labor organization.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

\_\_\_\_\_/s/\_\_\_\_\_  
Edward D. Callaghan, Commission Chair

\_\_\_\_\_/s/\_\_\_\_\_  
Robert S. LaBrant, Commission Member

\_\_\_\_\_/s/\_\_\_\_\_  
Natalie P. Yaw, Commission Member

Dated: August 24, 2018