

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

In the Matter of:

MACOMB COUNTY,
Public Employer,

MERC Case No. UC15 D-011
Hearing Docket No. 15-040857

-and-

POLICE OFFICERS ASSOCIATION OF MICHIGAN,
Labor Organization-Petitioner,

-and-

UAW LOCAL 412, UNIT 75,
Labor Organization-Intervenor.

APPEARANCES:

Keller Thoma, P.C., by Catherine Heitchue Reed, for the Employer

Martha M. Champine, for the Petitioner

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

On April 23, 2015, the Police Officers Association of Michigan filed a petition for unit clarification with the Michigan Employment Relations Commission (the Commission) pursuant to §13 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.213. A hearing was conducted on the petition on July 31, 2015, by Julia C. Stern, Administrative Law Judge (ALJ) for the Michigan Administrative Hearing System. Based on the entire record, including post-hearing briefs filed by Macomb County (the Employer) and the Petitioner on or before October 21, 2015, the Commission finds as follows.

The Petition and Positions of the Parties:

Petitioner represents a bargaining unit of nonsupervisory employees, including Youth Specialists, employed by the Employer at its Juvenile Justice Center (JJC). The JJC is a detention and residential treatment facility for young people, operated by the Employer under license from the State of Michigan. Petitioner seeks to add a new position, Training and Safety Coordinator, to its bargaining unit of JJC employees.

The Employer placed the position in an Employer-wide bargaining unit of its supervisory employees represented by UAW Local 412, Unit 75 (the Intervenor).

According to the Employer, the new Training and Safety Coordinator position combines the duties of two now-abolished positions at the JJC. One of these positions, Coordinator of Security, was in Petitioner's bargaining unit. The other, Training Coordinator, was in Intervenor's supervisory bargaining unit. The Employer contends that the Training and Safety Coordinator is a supervisor and that the Employer reasonably placed the position in the Intervenor's bargaining unit. Petitioner asserts that the Training and Safety Coordinator does not meet the Commission's definition of a supervisor, that it performs essentially the same duties as the abolished Coordinator of Security position, and that it shares a community of interest with Petitioner's unit.

Intervenor did not appear at the hearing. However, it notified the ALJ in advance of the hearing date that it agrees with the Employer that the Training and Safety Coordinator position is supervisory and that it was properly placed in Intervenor's bargaining unit.

Findings of Fact:

At the end of 2014, the Employer abolished the positions Coordinator of Security and Training Coordinator after the individual in the Training Coordinator position left to take a job with another employer. The Employer created the new position Training and Safety Coordinator and promoted the former Coordinator of Security, Joseph Mallory, to the new position in January 2015. Mallory held the position of Coordinator of Security for eight years prior to his promotion, and worked with the former Training Coordinator. Mallory, who was the only witness at the hearing, testified regarding his current job duties and how they differed from those of his former position.

As he did as Coordinator of Security, Mallory works a regular 40-hour, Monday-Friday work schedule but is on-call for emergencies on a 24-hour basis. Mallory has his own office, the same office he had as Coordinator of Security, in the administrative wing of the JJC. As he did as Coordinator of Security, he reports directly to the Assistant Director of the JJC, Robert Whitehead.

Mallory testified that as Training and Safety Coordinator, he performs almost all the duties he had as Coordinator of Security. First, he monitors and maintains the equipment in the JJC's central control room. The central control room, which is staffed by Youth Specialists, contains the monitors for video cameras placed throughout the facility, its door control monitors, and monitors for its fire detection equipment. In addition to ensuring that the monitors in the control room are functioning properly, Mallory does rounds to check the security equipment located throughout the facility. If a piece of security equipment anywhere within the facility malfunctions, he either fixes it himself or arranges for a contractor to do so. According to Mallory, in the first few years after he became Coordinator of Security, he spent a lot of his time ensuring that the

facility's fire and security systems remained functional while the building was undergoing construction. Since the building renovations were completed, however, he has spent less time on this part of his job.

Mallory also schedules and supervises the periodic emergency drills that the JJC must conduct under the terms of its license.

The job descriptions for the Coordinator of Security and now the Training and Safety Coordinator include responsibility for "maintaining inventory of equipment, including restraints, radios, keys, and locks." Mallory oversees all security-related equipment within the facility. For example, when Youth Specialists begin their shifts, they enter a four-digit code into a key control box that allows them to retrieve a set of keys, which they retain for the duration of that shift. Mallory keeps the list of codes and maintains the control box.

As Coordinator of Security, Mallory was responsible for ordering and inventory control for most items used in the facility, including furniture, hygiene items, and clothing used by the residents. As Safety and Training Coordinator, he no longer orders resident hygiene and clothing items. However, he still orders "big ticket" items. As he did when he was Coordinator of Security, Mallory oversees the general maintenance of the building. This includes putting in work orders for minor maintenance issues such as broken doors and burned out lightbulbs and dealing with outside contractors for major building repairs. He also assigns work to the custodial staff. Mallory, however, has no formal supervisory authority over maintenance or custodial employees.

Other duties that Mallory performs as Training and Safety Coordinator, which he formerly performed as Coordinator of Security, include consulting with staff on security issues, coordinating and assisting in building-wide searches for contraband, and investigating and preparing reports on incidents involving possible breaches of security within the facility.

Mallory confirmed that when he became Training and Safety Coordinator, he assumed all the responsibilities for training Youth Specialists that were formerly assigned to the Training Coordinator. Mallory testified that while he did some training as Coordinator of Security, he now oversees the entire training process.

Training at the JJC has two components. When a new Youth Specialist is hired, he or she undergoes between two and four weeks of on-the-job training. During this period, the new Youth Specialist shadows other employees on the job and receives instruction on certain topics. The second component is ongoing training of Youth Specialists and their supervisors. The JJC is required by its license to provide all Youth Specialists and their supervisors with a certain number of hours of training per year; a full-time Youth Specialist must have twenty-five hours of formal training annually. The JJC employs approximately ninety Youth Specialists.

As Coordinator of Security, Mallory, under the oversight of the Training Coordinator, taught classes for current employees on security-related topics. These topics included the facility's code alert system, how to perform room and other contraband searches, and the use of mechanical restraints. Mallory also assumed responsibility for educating new employees on these topics. Mallory testified that when he was Coordinator of Security and noted deficiencies in a new employee's performance during training, he would talk to the Training Coordinator and make recommendations for correcting those deficiencies.

Mallory continues to teach classes and provide instruction to new employees on security-related topics. However, he now has overall responsibility for both the training provided to new employees and the annual training required for existing staff. While training on some topics is mandatory, Mallory decides what other training topics should be offered and selects the instructors for the subjects he does not himself teach. For example, senior Youth Specialists do training on "group-guided-assistance" and CPR, while a psychologist conducts classes on suicide prevention. Other outside contractors provide instruction on other topics. Mallory schedules all training, assigns Youth Specialists to attend specific classes, and works with their supervisors to rearrange work schedules so that they can attend on the Employer's time. Mallory keeps records on the amount and types of training each Youth Specialist has received to ensure that the Youth Specialists receive the training they need to maintain their certifications. Mallory usually shows up at the beginning of each class that he does not teach to ensure that all the equipment is working properly and that everyone assigned to the class is present.

Mallory is also responsible for evaluating the effectiveness of training programs and editing and reworking training materials. Since becoming Training and Safety Coordinator, Mallory has revamped some of the training materials and has made some changes in the personnel assigned to oversee the on-the-job training of new Youth Specialists.

The job description for the Training and Safety Coordinator, like the job description for the former Training Coordinator position, states that the position is responsible for "evaluat(ing) staff effectiveness and abilities based on training outcomes." Mallory described these responsibilities, as he understood them, as follows. The completion of a new Youth Specialist's on-the-job training is referred to at the JJC as "being keyed," because at the completion of training the new Youth Specialist is assigned a pin to open the key control box. According to Mallory, a new Youth Specialist cannot be "keyed" until the Training Coordinator, now the Training and Safety Coordinator, certifies that the new Youth Specialist has passed the training. Mallory testified that if, after completion of an initial training period, he believes that a new staff member needs more time to complete the on-the-job training, he makes that recommendation to Assistant Director Whitehead, and the new staff member is given more time.

Mallory also testified that if he concludes that new employees will not be able to handle the job after receiving additional training, then these new employees would be dismissed. In that case, he testified, his recommendation to Whitehead will go to the

Director for approval. It was unclear from Mallory's testimony whether he had the occasion himself to recommend that a new staff member be dismissed. At one point in his testimony, he appeared to testify that he had recommended that one or more new employees should not be keyed and that these employees had been dismissed. Later, however, he appeared to retract his earlier statement, testifying that "recommending that somebody be dismissed . . . has not come up for me." He said that if it did, he would meet with Whitehead, show him supporting documentation, and explain the reasons why the employee should be dismissed.

Mallory does not direct or monitor the day-to-day work of Youth Specialists who have passed their initial training. Mallory testified that if a Youth Specialist fails to show up to an assigned training class, it is Mallory's responsibility to report this to the Assistant Director. However, Mallory does not discipline or recommend that employees be disciplined for this infraction. He also testified that since he became Training and Safety Coordinator, no Youth Specialist has failed a training class that was part of his or her annual training. Mallory testified that if this occurred, he would report this to the Assistant Director, but that he was not sure whether he would have any further responsibility in that situation.

Discussion and Conclusions of Law:

Section 13 of PERA, which incorporates §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). Therefore, if the Training and Safety Coordinator is a supervisor, his inclusion in Petitioner's unit would be inappropriate.

In *East Detroit School Dist*, 1966 MERC Lab Op 60, we adopted the definition of a supervisor contained in § 2(11) of the National Labor Relations Act, 29 USC 152(11):

The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly 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 use of independent judgment.

Possession of any of the above powers may confer supervisory status, and it is the possession of the power, and not the exercise of the power, that is determinative. *East Detroit School Dist.*, at 64. 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.

As Petitioner points out, however, an employee who possesses only routine responsibility to direct and/or assign work is not a supervisor under the Act. *Detroit Parks and Recreation*, 1969 MERC Lab Op 661, 666-668. An employee who is in

charge of a group of employees is generally not found to be a supervisor unless the employee has an effective role in discipline or recommending discipline. *City of Detroit*, 1996 MERC Lab Op 282, 285-286; *Michigan State Univ*, 1999 MERC Lab Op 42; *City of Grand Rapids*, 19 MPER 69 (2006). The 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. *City of Grand Rapids, supra*; *Saginaw Valley State College*, 1988 MERC Lab Op 533, 536.

We find that the new Training and Safety Coordinator position combines most of the duties of the former Coordinator of Security position with all the duties and authority of the former Training Coordinator position. The fact that the Training and Safety Coordinator gives directions to Youth Specialists on security issues and has the authority to assign them to attend a training class, is not sufficient, by itself, to make him a supervisor.

There is no evidence that the Training and Safety Coordinator has the authority to discipline or effectively recommend that an employee be disciplined. However, in this particular case, the Employer has delegated to the Training and Safety Coordinator the authority to determine whether newly hired Youth Specialists have passed their initial training and are qualified to become permanent employees. Whether or not Mallory has ever exercised this authority, we conclude that the Employer has given the Training and Safety Coordinator the authority to effectively recommend that Youth Specialists who have not yet been “keyed” be discharged because they are not capable of doing the job even after the Employer has trained them.

Like the asbestos inspectors that we found to be supervisors in *Livonia Pub Schs*, 1991 MERC Lab Op 517, the Training and Safety Coordinator is not a supervisor in the traditional sense because he does not regularly direct the work of or oversee subordinates. However, in *Livonia*, we found that the authority of the asbestos inspectors to effectively recommend that employees be disciplined for acts or omissions that jeopardized safety or interfered with the asbestos abatement process, together with their authority to schedule and direct the work of employees involved in this process, indicated supervisory status. We also noted in that case that while an employer’s unit assignment is not determinative of supervisory status, it may be accorded weight in so-called “borderline” supervisory situations.

We note that the Training Coordinator, a position historically included in Intervenor’s supervisory unit, also possessed the authority to decide whether a new Youth Specialist had passed the training necessary to become a permanent employee, and to effectively recommend that a Youth Specialist who had been unable to pass be terminated. We conclude that this authority, together with the Training and Safety Coordinator’s limited authority to direct Youth Specialists, is sufficient to make the position a supervisor under our definition. We also note, as we did in *Livonia*, that while an employer’s unit assignment is not determinative of supervisory status, it may be given weight in cases of so-called “borderline” supervisors such as the asbestos inspectors in

