

**STATE OF MICHIGAN  
BUREAU OF EMPLOYMENT RELATIONS  
LABOR RELATIONS DIVISIONS**

In the Matter of:

CITY OF BURTON,  
Public Employer,

Case No. R05 K-142

-and-

TEAMSTERS LOCAL 214,  
Petitioner-Labor Organization.

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**APPEARANCES:**

Keller Thoma, P.C., by Richard W. Fanning, Jr., Esq., for the Public Employer

Joseph Valenti, for the Petitioner

**DECISION AND DIRECTION OF ELECTION**

Pursuant to Sections 12 and 13 of the Public Employment Relations Act, 1965 PA 379 as amended, MCL 423.212 and 423.213, this case was heard in Detroit, Michigan on March 6, 2006, by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission. Based on the entire record, including the brief filed by the City of Burton (the Employer or the City) on April 19, 2006, the Commission finds as follows:

**The Petition and Positions of the Parties:**

On November 4, 2005, Teamsters Local 214 (Petitioner or the Union) filed a petition seeking an election to represent all administrative and supervisory employees within the City of Burton. The City contends that two of the positions sought by Petitioner, the department of public works director and the controller should be excluded from the proposed unit because they are executive employees. The Union responds that the Employer has the burden of showing that the positions should be excluded from the unit as executives.

**Facts:**

The City of Burton has a population of 30,300. The City Charter provides for an elected city council and mayor, and for the appointment of a clerk, treasurer, attorney, assessor, police chief, fire chief, and board of review. The City has approximately 104 employees. The American Federation of State, County and Municipal Employees (AFSCME) represents its clerical staff and non-supervisory DPW employees. The Service Employees International Union

(SEIU) represents supervisory personnel, including deputies of the various City departments. The Police Officers' Association of Michigan and the Command Officers' Association of Michigan represent officers in the City's police department. The United Auto Workers represents members of the City's volunteer fire department.

Petitioner is seeking to represent all administrative and supervisory employees who are not represented by another union and who do not occupy a position established by the City's charter. The positions sought by Petitioner include the City's DPW director, executive benefit representative, controller, senior citizen director, deputy DPW director, assistant fire chief, purchasing agent, executive assistant, and information technology director.

#### Controller

The position of controller, which was created approximately two years ago, is responsible for certain duties formerly performed by the City's treasurer. There are now two positions, treasurer and controller, where previously there was only the treasurer. Karen Foster occupies the position of controller. Foster is responsible for payroll, accounts payable, the maintenance of accounting records and budget preparation. She exercises supervisory authority with regard to employees in her department, but does not have similar authority regarding employees in other departments. Although she has the authority to discipline, she has never exercised that authority.

In relation to budget preparation, Foster makes recommendations to the Mayor and they meet together to review the recommendations with the City's various department heads. Foster bases her recommendations upon historical information and requests from department heads. She prepares spreadsheets showing budgets for the previous two years, recommendations made by department heads, and her own recommendations. The spreadsheets also provide a column for the Mayor's recommendations. The Mayor adds his own recommendations and presents a proposed budget to the City Council. When the Government Finance Officers' Association recommends a new policy relating to financial transactions, Foster communicates the recommendation to the Mayor who then determines whether it should be presented to the City Council for adoption.

Foster reviews the general ledger each month to ensure that transactions are recorded in accordance with generally accepted accounting principals for municipalities. Once each year, she meets with the City's auditors. On a monthly basis, she monitors the City's budget and makes recommendations to the Mayor for the transfer of funds to facilitate purchases that have not been budgeted. The Mayor submits these recommendations to the City Council for final approval. Foster has record keeping responsibilities with regard to the City's pension plan and special assessments. She monitors the City's investments and is able to move City funds between banks and financial institutions within Genesee County.

#### DPW Director:

The City's DPW director is Charles Abbey. His department is comprised of a deputy DPW director, superintendents and forepersons represented by the SEIU, and various classifications beneath them that are in AFSCME's bargaining unit. Although Abbey can

discipline employees, all hiring and firing is done through the Mayor's office. Although Abbey makes recommendations to the Mayor regarding capital improvements, his recommendations are limited to his department. He also serves as Act 51 Administrator and, as such, is involved in setting road improvement spending priorities for gas and weight tax revenues received from the state.

Abbey receives budget recommendations from his superintendents and forepersons with whom he meets before presenting recommendations to the Mayor. He has no spending authority outside of the budget and requires the Mayor's approval for expenditures exceeding \$500.00. His involvement in formulating department policies is limited to matters of procedure and is subject to the Mayor's approval. By way of example, he recommended that all DPW employees be allowed to work a 6:00 a.m. to 3:30 p.m. shift during the summer months, but the Mayor insisted that there be at least one employee at work until 5:00 p.m.

#### Discussion and Conclusions of Law:

In *City of Grandville*, 1997 MERC Lab Op 140, 146, on remand from *Grandville Municipal Executive Ass'n v City of Grandville*, 453 Mich 428 (1996), we reviewed the history of our rule of excluding executives from collective bargaining on a public policy basis. We indicated that we would continue to apply the following definition of executive as initially set forth in *City of Detroit (Police Dept)*, 1996 MERC Lab Op 84, 106:

An executive means an employee who (1) is a policy-making head of a major department of a public employer; or (2) in the case of employers with 1,000 or more employees, is a chief deputy to a department head, or is the head of a section or division of a major department who reports directly to a chief deputy and who exercises substantial discretion in formulating, determining, and effectuating management policy; or (3) pursuant to statutory or charter provisions, exercises a substantial degree of autonomy in carrying out his or her public services and who has direct access to or direct influence upon the governing body of a public employer in a policy making role; or (4) formulates, determines, and effectuates management policy on an employer-wide basis.

The most significant factors in determining whether a position qualifies as an executive are the scope of its responsibilities, the extent of its authority, and the interchangeability of its function with other executives. *UAW v Sterling Heights*, 163 Mich App 8 (1987). Within these categories, we also consider: degree of responsibility for developing the budget, role in preparing department rules and regulations, the number of executive positions relative to the size of the organization, direct access to the public employer's governing body, and degree of participation in labor negotiations or formulation of collective bargaining policy. *Muskegon Co Prof'l Command Ass'n v Muskegon*, 186 Mich App 365, 371-372 (1990); *Detroit v Foreman's Ass'n*, 109 Mich App 141, 143-144 (1981), lv denied, 413 Mich 902 (1982); *Detroit Bd of Ed v Local 28, OSAS*, 106 Mich App 438, 444 (1981).

Here, neither the controller nor the DPW director plays a major role in formulating policy. Their recommendations are subject to approval by the Mayor and the City Council,

which receives their recommendations through the Mayor. The DPW director has no authority with regard to other City departments. Although the controller deals with the City's budget on an employer-wide basis, she acts in an advisory role rather than in a policy-making capacity.

The City of Burton is a relatively small community with an elected City Council and Mayor and a half dozen appointed executive positions established by its Charter. The controller and DPW director are not Charter-created positions. They lack autonomy and direct access to the City Council and have not been shown to have a significant role in formulating policy or significant authority over the expenditure of City funds. Consequently, we hold that the controller and DPW director should be included in the bargaining unit sought by the Petitioner.

**ORDER DIRECTING ELECTION**

Based on the findings of fact and conclusions of law above, we find that a question concerning representation exists under Section 12 of PERA. We direct an election in the following unit, which we find appropriate under Section 13 of PERA:

A residual unit of all full-time and part-time administrative and supervisory employees of the City of Burton including DPW director, executive benefit representative, controller, senior citizen director, deputy DPW director, assistant fire chief, purchasing agent, executive assistant, and information technology director, and excluding all positions included in another bargaining unit and all positions established by the City Charter.

Pursuant to the attached Direction of Election, the aforesaid employees will vote on whether they wish to be represented for purposes of collective bargaining by Petitioner Teamsters Local 214.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Nora Lynch, Commission Chairman

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

Date: \_\_\_\_\_