

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

In the Matter of:

KENT COUNTY,  
Public Employer in Case No. UC04 H-031,

-and-

KENT COUNTY & 17<sup>th</sup> JUDICIAL CIRCUIT COURT,  
Public Employer in Case No. UC04 H-032,

-and-

COMMUNITY MENTAL HEALTH AND SUBSTANCE  
ABUSE NETWORK,  
Public Employer in Case No. UC04 H-034,

-and-

INTERNATIONAL UNION, UNITED AUTO WORKERS  
AND LOCAL 2600,  
Petitioners-Labor Organizations,  
\_\_\_\_\_ /

APPEARANCES:

Thomas L. Drenth, Esq., for Public Employers Kent County and 17<sup>th</sup> Judicial Circuit Court

Susan Webber, for Public Employer Community Mental Health

Martens, Ice, Klass, Legghio & Israel, PC, by John G. Adams, Esq., for the Labor Organizations

**DECISION AND ORDER**

Pursuant to Section 12 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212, this case was heard in Detroit, Michigan, on May 25, 2005, by Roy L. Roulhac, Administrative Law Judge for the Michigan Employment Relations Commission. Based on the record, including briefs filed by Kent County and the 17<sup>th</sup> Circuit Court, and the International Union, United Auto Workers and Local 2600 on or before July 21, 2005, we find as follows:

### The Petitions and the Positions of the Parties:

International Union, United Auto Workers and Local 2600 (Petitioners), filed the unit clarification petitions in these matters on August 17, 2004. Petitioners represent more than 2,000 employees in bargaining units at Kent County, the 17<sup>th</sup> Judicial Circuit Court, and the Community Mental Health and Substance Abuse Network (CMH). CMH was an agency within Kent County until April 2003, when it became a separate employer. Petitioners seek to clarify their bargaining unit at Kent County by accreting customer service technicians (CST), and their bargaining unit at CMH by adding the help desk clerk position. Petitioners also seek to add to their bargaining unit at the 17<sup>th</sup> Judicial Circuit Court a telecommunications technician jointly employed with Kent County.<sup>1</sup> The Employers claim that the unit clarification petitions are inappropriate because the positions at issue have been historically excluded from the bargaining units and the duties of those positions have not significantly changed.

### Facts:

The facts are essentially undisputed. Petitioners are the exclusive bargaining representatives for all full-time and regular part-time employees employed by Kent County, the 17<sup>th</sup> Judicial Circuit Court, and CMH. The collective bargaining agreements between Petitioners and each Employer provide that all management pay plan employees are excluded from the bargaining unit. The management pay plan is a classification and compensation system for non-bargaining unit employees. The group includes managers, supervisors, and administrative and professional employees. Most, but not all, of these employees are salaried and are exempt from the overtime requirements of the Fair Labor Standards Act (FLSA) of 1938, as amended, 29 USC 201, *et seq.*

The petitioned-for classifications are all employed in the Kent County Information Technology Department, which administers the County's enterprise network. In September 2003, Kent County completed an audit of positions in the information technology department, in order to properly classify positions and reorganize the department. As a result of the audit, it merged the CST I and II positions into a CST I position and replaced the network analyst position with a telecommunications technician position. As part of the audit, Kent County also changed the status of the CST I from salaried, exempt positions, to hourly, nonexempt positions subject to the overtime provision of the FLSA. The CST position jointly employed by Kent County and the 17<sup>th</sup> Judicial Circuit Court and the help desk position at CMH were also reclassified from salaried, exempt to hourly, nonexempt positions. The job responsibilities for these positions remained essentially the same, and they continued to be included in the Employers' management pay plan.

### Discussion and Conclusions of Law:

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<sup>1</sup> During the hearing, Petitioners withdrew petitions filed against the 63<sup>rd</sup> District Court and Kent County Courts in Case Nos. UC04 H-030 and UC04 H-033, respectively. Petitioners also withdrew their request to accrete other positions – applications support, computer operations support specialist, computer operation, database specialist, programmer analyst, senior application support and systems analyst - set forth in Case No. UC04 H-031.

The Employers claim that the unit clarification petitions are inappropriate because all of the positions at issue have been historically excluded from the bargaining units as management pay plan positions. Moreover, Kent County and the 17<sup>th</sup> Judicial Circuit Court contend that there has been no recent, significant change in the duties of the petitioned-for classifications. Petitioners claim that the petitions are appropriate because the reclassification of the positions from salaried, exempt to hourly, non-exempt was a significant change in the nature of the positions. We disagree.

We have held that a unit clarification petition is appropriate where there has been a recent, substantial change in the duties and responsibilities of a position. *Genesee Co*, 1978 MERC Lab Op 552. Other than the change in status from exempt to non-exempt from the FLSA in order to assure compliance under a federal statute, there has been no substantial change in the job duties of the disputed positions. They remain part of the management pay plan, excluded from the bargaining units. Under these circumstances, where employees have historically been excluded from an established bargaining unit, a union seeking these employees must file a representation petition. *City of Lansing*, 1994 MERC Lab Op 261. Accordingly, we find that the unit clarification petitions are inappropriate and must be dismissed.

**ORDER**

It is ordered that the petitions in Case Nos. UC04 H-031, UC04 H-032, and UC04 H-034 be dismissed.

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

Dated: \_\_\_\_\_