

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF LIVONIA,
Public Employer,

Case No. R06 G-075

-and-

MICHIGAN AFSCME COUNCIL 25,
Labor Organization-Petitioner.

APPEARANCES:

Roumell, Lange and Cholack, PLC, by Gregory T. Schultz, Esq., and Kelly A. Walters, Esq., for the Public Employer

Miller Cohen, PLC, by Eric Frankie, Esq., and Bruce Miller, Esq., for the Petitioner

DECISION AND DIRECTION OF ELECTION

Pursuant to Section 12 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212, this case was heard at Detroit, Michigan on November 13, December 21, and December 22, 2006, and January 19, 2007, before Administrative Law Judge Julia C. Stern for the Michigan Employment Relations Commission. Pursuant to Section 13 and 14 of PERA, and based on the record, including briefs filed by the parties on or before April 30, 2007, the Commission finds as follows:

The Petition and Positions of the Parties:

On July 10, 2006, AFSCME Council 25 filed this petition seeking a representation election in a residual unit of part-time and seasonal employees in the City of Livonia's (the City or the Employer) parks and recreation department, excluding casual employees, supervisors and all other employees. Between July 2005 and July 2006, the City employed approximately 300 individuals in positions covered by the petition. Petitioner proposes a voting eligibility formula that would exclude all employees who worked fewer than 200 hours during the calendar year

immediately preceding the payroll period for eligibility.¹ Approximately 200 employees would be eligible to vote under Petitioner's formula.

The City maintains that all of the employees in the positions covered by the petition are casual or irregular part-time employees with no continuing interest in the conditions of their employment. It asserts that because the employees: (1) have a limited expectancy of continued employment; (2) work intermittently; and (3) have a high turnover rate, the proposed unit would be highly unstable. The City also argues that employees in the proposed unit do not share a community of interest because of the variety of jobs they perform and their differing work schedules. It contends the petition should be dismissed because the unit sought by Petitioner is not an appropriate unit for collective bargaining. The City objects to Petitioner's proposed eligibility formula, arguing it would grant the right to vote to employees who work, sporadically, less than half the year, while disenfranchising other employees who work a small number of hours consistently each week.

Findings of Fact:

Introduction

The City of Livonia Parks and Recreation Department ("Department") offers approximately 350 classes, programs, and special activities throughout the year. The Department operates a multi-story community recreation center, which is open year-round.

The City designates all of its positions as either permanent full-time, permanent part-time, temporary full-time or temporary part-time. The petition in this case covers more than thirty-five separate positions in the Department, which have been designated by the City as temporary part-time.² Many employees work in more than one temporary part-time position within the Department.³ Some positions are filled only during the summer. The Department also more than doubles the number of lifeguards and pool supervisors it employs during the summer, when its three outdoor pools are open. However, many employees who work in these positions in the summer also work in other temporary part-time parks and recreation positions during the rest of the year.

Michigan AFSCME Council 25 represents a bargaining unit of regular full-time and part-time non-supervisory employees of the City. Temporary part-time and seasonal employees are excluded from this unit. The Department has employed temporary part-time employees in seasonal positions at City parks since at least 1965. However, the number of temporary part-time parks and recreation employees increased substantially after the City opened its recreation center in April 2003. The recreation center is staffed primarily with temporary part-time employees. Most of the employees within the proposed bargaining unit work, at least some of the time, at the recreation center.

¹ In a Commission-directed election, the payroll period for eligibility is the last full payroll period preceding the date the decision directing an election is issued.

² In its brief, the Employer contends that there are fifty-one separate assignments.

³ For convenience, in this decision, we refer to these positions as temporary part-time.

All temporary part-time positions in the Department are within one of nine job classifications. In ascending order by pay rate, they are: (1) recreation aide; (2) assistant recreation leader; (3) recreation leader; (4) recreation specialist; (5) program specialist; (6) junior instructor; (7) program instructor; (8) senior program instructor; and (9) program coordinator. There are two pay rates for each classification. When an employee is first hired, he or she is paid at the first step rate for that classification. After the employee's one-year anniversary date in that classification, regardless of how many hours he or she has worked, the employee is paid at the step two rate. An employee who works in more than one classification is paid the applicable rate for the hours worked in each classification.

Employees may move into higher paid classifications as they gain more experience and take on more responsibilities. For example, an aquatic instructor may progress from aquatic supervisor (junior instructor) to aquatic supervisor II (program instructor) to aquatic supervisor III (senior program instructor) as he or she gains more experience and is assigned to teach classes that are more advanced. In 2006, pay for the Department's temporary part-time employees ranged from \$6.95 per hour, for the beginning recreation aide classification, to \$18.25 per hour, for the program coordinator classification at the second step.

About forty-seven of the temporary part-time employees who worked for the Department between July 2005 and July 2006 were high school students. Many high school students work for the Department in the summer and during the school year, scheduling their work around school and extracurricular commitments. The Department does not keep records on the number of college students it employs. However, at least half of the Department's temporary part-time employees are individuals of typical college age; i.e. between about eighteen and twenty-five. The large percentage of college and high school students contributes to a high turnover rate, as students leave to pursue their education or to take full-time jobs.⁴

Except for employees who work only as substitutes, all temporary part-time employees in the Department work scheduled hours. Supervisors prepare work schedules covering periods from two weeks to three months, depending on the position and time of year. Before preparing the work schedules, supervisors ask their employees when they can or cannot work. Employees are never scheduled to work except when they have indicated that they are available. Therefore, an employee who generally works Saturdays, but knows that he cannot work on a specific Saturday, will indicate this on his request for hours and will not be scheduled to work that day. As a result of these scheduling practices, the number of hours many employees work fluctuates widely from week to week. This fluctuation in work hours is characteristic, even of employees who work year-round. Supervisors give some preference in assigning hours to employees who are willing to work consistently, particularly employees who work mornings or other times when many employees are not available. Conversely, supervisors also try to spread available hours among as many employees as possible. All other things being equal, a supervisor will not schedule an employee to work twenty-five hours per week, even if he wishes to work that many

⁴ In its brief, the Employer calculated the turnover rate from employee payroll records admitted into the record. Of the 110 employees hired between July 2004 and July 2005, seventy-eight remained employed in July 2006. Of the ninety-one employees hired during the previous year, fifty-seven were still employed in July 2006.

hours, if it means that other employees who want to work receive no hours at all. An employee who does not submit a request for hours will not be put on the work schedule.

Hours Worked by Temporary Part-time Employees in 2005-2006

The City's records indicate that more than 300 individuals worked as temporary part-time employees in the Parks and Recreation Department between July 1, 2005 and July 1, 2006. Approximately 200 worked at least 200 hours during that year. A little over half of the 200 worked between 200 and 500 hours; approximately sixty-five worked between 500 and 1,000 hours; approximately twenty-five worked between 1,000 and 2,000 hours, and three worked more than 2,000 hours. About 115 of the 200 had hire dates before July 1, 2004. Eleven of the twenty-five who worked more than 1,000 hours between July 1, 2005 and July 1, 2006 also worked more than 1,000 hours between July 1, 2004 and July 1, 2005. Of the forty-seven high school students employed between July 1, 2005 and July 1, 2006, twenty-seven worked more than 200 hours during that year. This group includes high school students who worked during the school year in addition to working during the summer.

Other Facts Common to All Temporary Part-time Positions

Hiring and Filling of Positions

Applicants for temporary part-time employment are given job descriptions listing the qualifications for each position and fill out an application, checking all positions in which they are interested. Applicants not hired within six months are purged from the applicant list.

At the time of initial hire, the City requires temporary part-time employees to sign a document acknowledging that they are at-will employees. They are also told that they have no guaranteed number of hours or term of employment, and, as part-time employees, they cannot work more than a total of thirty-five hours per week.

After an applicant is hired to fill a temporary part-time position, his or her name is entered into the City's database. As long as an employee's name appears in the database, he or she can be hired to work in any other temporary part-time position in the Department without filling out a new application. If a temporary part-time employee is fired or quits, the employee's name is removed from the database. However, employees' names often remain in the database when they are not actually working, in the expectation that they may come back to work at another time. The City periodically purges the names of employees who have not worked at all for a period of time.

It is routine for temporary part-time employees, including those in positions not considered seasonal, to return after not working for the Department for a period of time. It is also common for employees to work in more than one temporary part-time position at the same time in order to get more hours, or to move back and forth between positions. As an example, in 2006, one temporary part-time employee worked twenty-five hours per week as a playground assistant in the summer, then worked as a scorekeeper in the men's basketball league for four hours per week for seven weeks in the fall, and averaged ten hours per week the rest of the year as a facility attendant.

Substitutes

Temporary part-time employees are generally required to find their own substitutes. As long as they find substitutes, they are not penalized for poor attendance. At any given time, many of the employees working are doing so as substitutes. Most are employees with scheduled hours seeking additional work or trading hours with another employee. There are approximately twenty substitute lifeguards and pool attendants on a substitute-only list who do not work scheduled hours. Some do this by choice, while others do not have scheduled hours because the Employer does not have hours to give them. There was no mention in the testimony of substitute-only lists for other positions, although there are scattered references in the record to employees in other positions who, at the time of the hearing, were working only as substitutes.

Benefits

Temporary part-time employees at the recreation center punch a time clock. Employees working in more than one position are required to keep track of the hours they work in each position. Frequently, employees are paid at more than one pay rate within the same pay period because they have performed work in more than one classification.

Temporary part-time employees of the Parks and Recreation Department receive no fringe benefits and no paid leave. However, the Department has a program, known as "crazy cash," to encourage employees to work more hours. Under this program, employees receive one crazy cash point, worth about one dollar, for every ten hours they work. Crazy cash points can be used for memberships, classes, and day passes at the recreation center. Parks and Recreation Department employees also receive discounts on recreation center classes.

Discipline and Termination

Temporary part-time employees receive "write-ups" for various infractions without being terminated. The Department's policy provides for four steps of progressive discipline prior to termination, but this is not always followed. Except for lifeguards, temporary part-time employees are rarely formally terminated, but an unsatisfactory employee may not be offered hours or the opportunity to work in other temporary part-time positions. Except for employees in the aquatic division, temporary part-time employees do not receive formal written evaluations.

Positions within the Proposed Bargaining Unit

Positions Outside the Community Recreation Center

The Parks and Recreation Department is divided into six divisions: (1) golf; (2) parks; (3) athletics; (4) community recreation center; (5) aquatics; and (6) leisure services. The athletics, community recreation center, aquatics, and leisure services divisions employ temporary part-time employees.

Lyle Trudell, a full-time employee, heads the athletic division. This division encompasses athletic activities at locations other than the recreation center, and employs fifteen to twenty seasonal temporary part-time employees. These include field supervisors and scorekeepers for the adult and youth baseball and softball leagues sponsored by the City during

the summer and park attendants who oversee activities at City parks during busy periods, coordinate picnic pavilion rentals, and make sure the comfort stations are serviced. These positions fall within the classification titles program specialist, recreation specialist, and recreation aide. The athletic division also employs figure skating instructors who work at the City's ice arenas in all seasons of the year except summer.

Community Recreation Center Division Positions

The community recreation center offers a wide variety of fitness and recreational classes, sports instruction and leagues, and special activities and events including a summer day camp, Camp Swoosh. It has an indoor leisure pool with a water slide and a "lazy river" area with water currents, an Olympic-size indoor lap pool, and an outdoor pool. It offers swimming and diving instruction, competitive swimming, and water exercise classes. The recreation center has two gyms, a specialized aerobics room, a gymnastic area, an indoor running track, and a fitness center, called the "fit hub." It has a billiard room for senior citizens, several lounges, multiple multi-purpose rooms and a concession area. There is a multi-story children's play area with a tree fort, and a drop-in child care center for parents using the facility called Kid Quarters. Outside the recreation center there is an in-line skating rink and a skateboard park, as well as a jogging path and volleyball fields. Classes at the recreation center are scheduled throughout the year in sessions of six or seven weeks in length. Four times a year, the Department publishes a brochure covering two class sessions and listing the classes and activities taking place during that quarter.

Tom Murphy is the facility manager for the recreation center and is the supervisor of all recreation center staff. About forty temporary part-time employees at the recreation center report directly to Murphy. These include building supervisors (program specialist classification). Building supervisors are present during all hours when the recreation center is open. They open and close the building, check to make sure that all part-time staff have arrived on time and are working at their stations, and find a substitute if an employee has failed to do so. Most employees selected to be recreation center building supervisors have worked for the department as temporary part-time employees for several years. At the time of the hearing, there were seven building supervisors. Three consistently worked between twenty and thirty hours per week all year long, one consistently worked about fifteen hours per week, and the other three averaged ten to fifteen hours per week over the year, but worked widely varying hours from month to month.

Murphy also supervises approximately eight temporary part-time concessions employees (recreation aide classification) and approximately twenty-four to twenty-six front desk attendants (assistant recreation leader and recreation leader classifications). The recreation center's concession stand operates from 3:00 pm to 9:00 pm on weekdays. Concessions employees sell food items, operate the cash register, and do light cleaning inside the stand and in the adjacent eating area. Concessions employees average fifteen to eighteen hours per week and are typically high school students. In 2006, four of the eight concessions employees had worked for the Employer for over one year. Front desk attendants answer the recreation center's phones, respond to customer inquiries, sell memberships, register members for classes, and collect money for fees and services. Front desk attendants typically average from eight to twenty-five hours per week and are typically a mix of high school students, college students, and adults. In 2006, sixteen of the front desk attendants had worked for the Employer for over one year.

Murphy schedules all building supervisors, concessions employees, and front desk attendants by asking employees to submit monthly calendars three weeks before the month begins. If an employee does not turn in a calendar, he or she is not put on the work schedule for that month. Murphy gives preference to employees who work consistently throughout the year. However, Murphy testified that there is so much turnover and fluctuation in requests for hours among concessions employees and front desk attendants that employees who have not turned in a calendar for one month can usually get back on the schedule the next month, although they may not get as many hours.

Jason Sturos, the recreation center's full-time marketing coordinator, is in charge of birthday parties and other facility rental events. He has four temporary part-time employees reporting directly to him. One is a coordinator who handles party bookings and arrangements and works year-round from ten to thirty-five hours per week, depending on the demand for her services. The other three temporary part-time employees work during parties, primarily children's birthday parties, from four to twelve hours per week, depending on demand. Sturos did not testify at the hearing, and the record does not indicate how Sturos schedules these positions.

Assistant recreation facility manager Barb Gamber, a full-time employee, is the direct supervisor of twenty to forty temporary part-time employees, depending on the season. Ten of these employees have worked consistently in programs under Gamber's supervision for at least three years.

Gamber supervises approximately twelve temporary part-time employees who staff the Kid Quarters, the center's drop-in child care center. They include the child care coordinator who works an average of ten to twenty hours per week and is responsible for supervising the program and scheduling the other employees. Other Kid Quarters employees generally average from six to over twenty hours per week, although many also work in other positions at the recreation center. In 2006, five of the twelve Kid Quarters employees had worked there for at least three years. The Kid Quarters operates year-round. The record does not indicate how scheduling for the Kid Quarters is handled.

Gamber also supervises approximately sixteen to twenty temporary part-time Camp Swoosh staff members. Camp Swoosh runs all day for a ten-week period in the summer. Approximately sixteen to twenty temporary part-time employees work at Camp Swoosh each summer. Since attendance at the camp fluctuates, not all Camp Swoosh employees work every week. During the weeks they work, Camp Swoosh employees work a regular schedule of thirty to thirty five hours per week. In the spring, Gamber sends letters or otherwise makes contact with the employees who worked at Camp Swoosh the previous summer. If Gamber was dissatisfied with an employee's performance, she would not send that employee a letter. Other employees are given the opportunity to return if they wish. Usually, about half the Camp Swoosh staff returns each year, although the average Camp Swoosh employee works only two summers. Camp Swoosh's director, Candace Tartarian, is also a temporary part-time employee. Tartarian, a teacher during the school year, works for the City only in the summer. Except for Tartarian, all the temporary part-time employees who worked at Camp Swoosh during the summer of 2006 worked at the recreation center in some other capacity during the previous nine months.

At any given time, Gamber supervises four to ten temporary part-time employees working in sports programs at the recreation center, including: adult volleyball leagues in the winter and summer; a youth inline hockey league in the winter and fall; adult and youth basketball leagues all year long; a variety of youth sports instructional classes held throughout the school year; and sports clinics lasting one or two days held throughout the year. Temporary part-time employees work as coordinators for individual sports programs, officiate for the sports leagues, and teach classes. Sports instructional classes and leagues, like other recreation center classes, are scheduled for seasons of twelve to fourteen weeks in length, divided into two sessions. Recreation center members can register for one or both sessions, but instructors and officials commit to work and are scheduled for the full twelve to fourteen week season. Some sports instructional classes are held during only one season of the year, while others run all year except the summer. An instructor's class will be cancelled if enrollment is not sufficient. However, an instructor hired to teach a particular class will usually continue to teach that class from year to year as long as members enroll. Some temporary part-time employees work in more than one sports program, while others do not.

Gamber also supervises from three to ten temporary part-time employees who work in leisure classes and programs. These include preschool exercise classes, ballet lessons, and creative drawing. Like other classes at the recreation center, leisure classes are scheduled for quarters, or seasons, of twelve to fourteen weeks in length, and instructors commit to teach for the length of the season. Most of the leisure classes and programs run all year long, although some are not held in the summer. Leisure program employees include employees who teach classes, as well as one temporary part-time employee who works approximately thirty hours per week all year long supervising a children's play area. Several employees who work in leisure programs also work in the Kid Quarters.

Fitness and Wellness Positions

Scott Spahr, the fitness and wellness coordinator, oversees adult and teen fitness activities at the recreation center. These include the fitness center, or "fit hub," the rock-climbing wall, group exercise classes, and the services of certified personal trainers and registered dieticians. The City pays the trainers and dieticians a percentage of the fee charged by the recreation center rather than an hourly rate and considers them independent contractors.

Excluding individuals who work only as personal trainers and dieticians, Spahr supervises about thirty-five temporary part-time employees, including fit hub attendants, climbing wall employees, and fitness instructors. Fit hub attendants supervise the fit hub, show residents how to use the equipment, conduct fitness assessments, and do simple cleaning. The fit hub is open from 5:00 am to 11:00 pm on weekdays, 5:00 am to 6:00 pm on Saturday, and 7:00 am to 5:00 pm on Sundays. Most fit hub attendants work the same hours every week. For example, one works every weekday morning from 7:30 am to 10:00 am, while another works Sundays from 7:00 am to 5:00 pm. The number of hours per week that fit hub attendants work varies, but all work at least four hours per week. Spahr prefers to hire fit hub attendants who are certified personal trainers, and most fit hub attendants also work as personal trainers at the center. According to the Employer's payroll records, in 2006, all the fit hub attendants had some other temporary part-time employment in the recreation center.