

**STATE OF MICHIGAN
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS**

**MACOMB COUNTY, PROSECUTING
ATTORNEY PUBLIC EMPLOYEE**

Respondent, Public Employer

-and-

UAW LOCAL 412 UNIT 75 UNION

Petitioner, Labor Organization

MERC CASE NO. 22-H-1750-CB

RECEIVED
STATE OF MICHIGAN
August 22, 2023
Employment Relations
Commission
Detroit Office

FACT FINDER'S REPORT

Pursuant to Michigan Labor Mediation Act (PA 176 of 1939, as amended)
[MCL 423.11, et seq] and

Public Employment Relations Act (PA 336 of 1947, as amended)
[MCL 423.201, et seq]

**Fact Finder
Eugene Lumberg**

**ADVOCATES
Brandon Fournier, Attorney for Public Employer
Ava Barbour, Attorney for UAW Local 412, Unit 75 Union**

PETITION FILED: December 29, 2022

FACT FINDER APPOINTED: February 2, 2023

SCHEDULING CONFERENCE HELD: February 27, 2023

HEARING DATE: May 8, 2023

POST HEARING BRIEFS RECEIVED: June 26, 2023

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Fact Finder

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WITNESS LIST:

The parties at this hearing informed the Fact Finder that this matter would be submitted via exhibits and briefs. The exhibits are incorporated into this decision and all are admitted.

ALSO IN ATTENDANCE

Brandon Fournier, Attorney for Public Employer
Ava Barbour, Attorney for UAW Local 412, Unit 75 Union

1. ISSUE FOR FACT FINDER:

The Macomb County Prosecutor is proposing that all bargaining unit members Promoted or hired after 1/1/23 shall serve in the position of Chief in the bargaining unit at the will of the prosecutor subject to the following:

International Promotions: Existing Prosecuting Attorneys who are promoted into A UAW represented "Chief" position and become a member of UAW 412 Unit 75 Shall serve in the UAW Chief position at the will of the Prosecutor of the Member during the duration of their appointment. In the event the Prosecutor or the Member makes the decision to end their appointment to a Chief position he/she must be returned to a classification not less than the classification they held prior to their promotion and a salary equal to the present level of that classification. Bargaining unit members subject to this provision shall only be returned to the Assistant Prosecutors Association (not other bargaining unit positions), if they are removed at will.

This provision shall not apply in the event a bargaining unit member is terminated because of discipline based upon just cause.

External Hires: Outside applicants that are hired into a UAW represented "Chief" position that were not existing employees in the Prosecuting Attorney's Office when they applied for the position shall serve in the UAW Chief position at the will of the Prosecutor or the Member.

UAW Local 412 objects to the Macomb County Prosecutor's proposal, and seeks to maintain just cause protection and access to the grievance and arbitration procedure in the event of a removal, for all bargaining unit positions.

2. STATUTORY AUTHORITY

This fact finding was held pursuant to the Michigan Labor Mediation Act – PA 176 of 1939,

As amended [MCL 423.1, et seq] and the Public Employment Relations Act (PA 336 of 1947, as amended [MCL 423.201, et seq].

The purpose of fact finding is to provide factual findings and conclusions and to submit recommendations to assist the parties in reaching a contract settlement. Neither of the above statutes provides guidance on the criteria or factors to be utilized by a fact finder in making such recommendations. However, many fact finders routinely find guidance in the statutory criteria set forth in Act 312 arbitrations.

3. STIPULATIONS AND PRELIMINARY RULINGS

There are no Stipulation or Preliminary Rulings other than the submission of this matter through Exhibits and Briefs without a hearing.

4. COMPARABLES

Genesee County

Oakland County

Wayne County

St. Clair County

Kent County

Monroe County

5. INTRODUCTION AND BACKGROUND

UAW Local 412 Unit 75 represents the Macomb County Chief Prosecutor (4) positions in the Macomb County Prosecuting Attorney's office. The Macomb County Prosecutor's office is represented by its County Attorneys. The County Prosecutor is the co-employer of the Assistant County Prosecutors. Pursuant to State Statute (MCL 49.41-49.43, an Assistant Prosecuting Attorney shall "hold his office during the pleasure of a Prosecuting Attorney appointing him." The Prosecuting Attorney has an obligation to bargain collectively under PERA. The UAW's position is to maintain the wishes to make into status quo as to the employment rights of the Chief Assistant Prosecutors. The Prosecuting Attorney purposes that an individual appointed to a Chief Assistant Prosecutor position after January 1, 2023 shall be subject to the following provisions:

"Internal Promotions: Existing Assistant Prosecuting Attorneys who are promoted into a UAW represented 'Chief' and become a member of UAW 412 Unit 75 shall serve in the UAW Chief position at the will of the Prosecutor or the member during the duration of their appointment."

In the event that the Prosecutor or the Member makes the decision to end their appointment to a Chief position he/she must be returned to a classification not less than the classification they held prior to their promotion and a salary equal to the present level of that classification. Bargaining unit members subject to this provision shall not only be returned to the Assistant Prosecutors Association (not other bargaining unit positions), if they are removed at-will.

This provision shall not apply in the event a bargaining member is terminated because of discipline based upon just cause.

"External Hires: Outside applicants that are hired into a UAW represented 'Chief' position that were not existing employees in the Prosecuting Attorney's Office when they applied for the position shall serve in the UAW Chief position at the will of the Prosecutor or the Member. In the event the prosecutor or the Member makes the decision to end their appointment he/she shall not be automatically afforded the ability to go into a lower classification if they are

un-appointed from the UAW Chief position.

However, should this occur the bargaining unit member may be Permitted to apply for and be considered for hire as an Assistant Prosecuting Attorney. If this does not occur, the member shall be separated from the employment with the County.

Currently, there are seven (7) supervisory employees represented by UAW Local 412 in Unit 75. Four (4) Attorneys are Chiefs, specifically the Chief Appellate lawyer, Chief of Operations, Chief of Special Prosecutions and Chief Trial lawyer. In addition to the four(4) lawyers, there are three (3) non-lawyers being the Office Manager, Chief Investigator and Victim Witness Coordinator. The issue only pertains to the Attorney Chiefs hired after January 1, 2023. Those Chiefs per the employers proposal that are internally promoted into a Chief position maybe be demoted to a lower position while those externally hired into a Chief position shall serve solely at the will of the Prosecuting Attorney. The proposal by the Prosecutor would not affect any current members of the bargaining unit.

Macomb County is located in southeast Michigan is the Third largest County in the State. The population of the County is approximately 900,000.00 residents.

The Office of County Prosecutor in the State of Michigan is governed by Statute and the Michigan Constitution. The County Prosecutor is empowered to appoint Assistant Prosecuting Attorneys to his or her staff and any such Assistant Prosecuting Attorneys shall hold his or her office during the pleasure of the Prosecuting Attorney appointing said Assistant Prosecutors subject to provisions of any collective bargaining agreement in force.

In the 1980's the Macomb County Assistant Prosecutors petitioned MERC and were certified as a bargaining unit. (See, Union Exhibit 18, which provided for the establishment of just cause employment). At some point, the Assistant Prosecutors formed a separate bargaining unit distinct from the Chief Assistant Prosecutors for bargaining unit purposes. Presently, the

Assistant Prosecutors in Macomb County are split into two (2) groups, the full supervisory level Assistant Prosecutors are represented by the UAW and the remainder of the Assistant Prosecutors are represented by the POAM.

The County Prosecutor in order to run an effective office to protect the public and prosecute criminals must have some control over his Chief Assistants. There is no question that the control over the regular Assistant Prosecutors is in their hiring and their contract provides for removal by just cause only.

The Prosecutor in this instance is asking that he have the right to remove any Chief Assistant hired after January 1, 2023 at his discretion. Again, the Prosecuting Attorney must be able to rely on his staff and particularly on his Chiefs to run an effective office. (Employer Exhibit 10 provides that per the Michigan Constitution and Statutory Authority, Assistant Prosecutors shall serve at the pleasure of the County Prosecutor with caveat that where there is a collective bargaining agreement that would control). Macomb has recognized PERA and has negotiated contracts with the Assistant Prosecutors and the Chiefs in the past.

According to the documents submitted as Exhibits, it is plain that each County decides whether or not they have contracts with their Assistant Prosecutors per collective bargaining.

It is the employer's position that even where the County has collective bargaining unit agreements there are at-will dismissal rights in those contracts.

The Union seeks to have the status quo preserved for all Chief Assistant County Prosecutors hired or promoted after January 1, 2023. This issue is non-economic. The employer states that its proposal is a balance between the State statute and his obligation under PERA. As well as being more consistent to the comparable communities. This Fact Finder agrees that his decision should be based upon the lawful authority of the employer. The Assistant Prosecuting

attorneys should hold their office at the pleasure of the prosecuting attorney who appointed them, subject to any collective bargaining agreement. (See, Employer Exhibit 10). The Michigan Constitution and the Statutory Authority support the employers position that all Assistant Prosecutors be appointed at the pleasure of the elected County Prosecutor. It should be pointed out that in this instance there is a collective bargaining agreement that affords the appointed Assistant County Prosecutors a measure of protection in that the County Prosecutor can only dismiss them upon just cause.

Once again in this case, the County Prosecutor does not seek to take away the rights of the Assistant Prosecutors that are under a collection bargaining agreement but only proposes that the Chief Assistant Prosecutors hired or promoted after January 1, 2023 would be affected. Further, that any Chiefs promoted internally from the staff could return to the POAM bargaining unit.

The Macomb County Prosecutor's office has in excess of 150 employees with four (4) Chief Prosecutors who earn approximately \$10,000.00 more than the Prosecutor's in the POAM Unit. The employer argues that these four (4) Chief positions are critically important for the management of the Prosecutor's office. Further, a Chief who is hired from outside of the Office would have a right to apply for a lower level assistant position and be hired if the County Prosecutor so elects.

The employer introduced Exhibits 13, 14 and 15 which provides a comparison of like County Prosecutors offices in the State of Michigan. All but one of the offices submitted possess' just cause employment status exclusively for management level Assistant Prosecutors. (See, Genesee County Exhibit). The Union cites Section 9 of Act 312 (1969) as to "conditions of employment of other employees of the unit or government outside the bargaining unit

question.” However, in the case of Berrien and Teamsters Local 214, 198, the commission observed the unique authority of a County Prosecutor. An elected County Prosecutor has a greater level of authority than other elected officials. Fact Finders should take into consideration other factors that are normally or traditionally taken into consideration in determining wages, hours, and conditions of employment. (See Section 9(i).) In this instance the County Prosecutor seeks to balance his legal rights and his obligations under PERA.

The Chiefs in the Prosecutors Office must be able to work closely with the elected Prosecutor in order to be effective. This Fact Finder recommends: That the position as set forth by the employer/County/Elected County Prosecutor should be included in the Chief Assistant’s collective bargaining agreement. The provisions stated should apply only to any Chief Assistant hired after January 1, 2023. It is assumed that there have been no hires in the Chief Assistant’s position since January 1, 2023. Anyone hired in the Chief’s position going forward would be made aware of the terms and conditions of their employment as a Chief Assistant and what the rights were if they were hired from outside the ranks of the Assistant Prosecutors or from within the ranks of the Assistant Prosecutors.

6. RECOMMENDATION OF FACT FINDER

The Fact Finder recommends that the language as proposed by the County and Prosecuting Attorney of Macomb County be included in the collective bargaining agreement for the Chief Assistant Prosecutors represented by the UAW.

Said language to be included as follows:

“Internal Promotions: Existing Assistant Prosecuting Attorneys who are promoted into a UAW represented ‘Chief’ and become a member of UAW 412 Unit 75 shall serve in the UAW Chief position at the will of the Prosecutor or the member during the duration of their appointment.”

In the event that the Prosecutor or the Member makes the decision to end their appointment to a Chief position he/she must be returned to a classification not less than the classification they held prior to their promotion and a salary equal to the present level of that classification. Bargaining unit members subject to this provision shall not only be returned to the Assistant Prosecutors Association (not other bargaining unit positions), if they are removed at-will.

This provision shall not apply in the event a bargaining member is terminated because of discipline based upon just cause.

“External Hires: Outside applicants that are hired into a UAW represented ‘Chief’ position that were not existing employees in the Prosecuting Attorney’s Office when they applied for the position shall serve in the UAW Chief position at the will of the Prosecutor or the Member. In the event the prosecutor or the Member makes the decision to end their appointment he/she shall not be automatically afforded the ability to go into a lower classification if they are un-appointed from the UAW Chief position.

However, should this occur the bargaining unit member may be Permitted to apply for and be considered for hire as an Assistant Prosecuting Attorney. If this does not occur, the member shall be separated from the employment with the County.



EUGENE LUMBERG
FACT FINDER

Dated: August 1, 2023.