

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

In the Matter of:

CITY OF FENTON,  
Public Employer,

-and-

Case No. UC98 A-3

CITY OF FENTON EMPLOYEES UNION, UNIT I,  
Labor Organization-Petitioner.

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**APPEARANCES:**

Masud, Gilbert & Patterson, P.C., by Gary D. Patterson, Esq., for the Employer

Leslie Bland, Union President, for the Petitioner

**DECISION AND ORDER  
ON UNIT CLARIFICATION PETITION**

Pursuant to Sections 12 and 13 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCLA 423.212 and 423.213, MSA 17.455(12) and (13), this case was heard in Detroit, Michigan, on January 22, 1999, by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission. Based on the record, including post hearing briefs filed on or before March 3, 1998, we find as follows:

**The Petition and Issues Presented:**

In its January 14, 1998, petition, the City of Fenton seeks unit clarification of a supervisory bargaining unit represented by the City of Fenton Employees Union, Unit I. The bargaining unit is defined as "all full-time administrative and supervisory personnel, excluding clerks, police dispatchers, inspection personnel, city clerk, administrative assistant and all other employees." The City contends that six employees - police chief, fire chief, director of the department of public works, assessor, treasurer, and building and zoning administrator - are executives and should be excluded from the unit. The Union claims that the City's unit clarification petition is a union busting tactic and that the disputed classifications have never been considered policy making personnel.

**Facts and Conclusions of Law:**

The City of Fenton is a full service community which covers a seven square mile area. It has a population of approximately 10,000 people. The City has an \$8.6 million budget, 50 full-time employees, and 10 to 20 seasonal employees. The city manager is responsible for the day-to-day operations of the city, implements policies of the city council, and directs the work of department heads. The treasurer, assessor, chief of police and fire chief are full-time positions listed in the city charter who perform duties and responsibilities traditionally associated with those positions.

The director of public works heads a major department and is listed in the city charter as an administrative officer of the City. The director is responsible for directing the daily activities of a deputy director, eleven full-time employees, ten-twelve seasonal employees and a budget of \$3.7 million, which he prepares for the approval of the city manager. The director has authority to hire, discipline, suspend and discharge employees, and respond to grievances, subject to the city manager's approval. He also plans work schedules and assignments. With the city manager's approval, the director of public works develops policies regarding snow removal and infrastructure improvements to the water, sewer, road and sidewalk system. The director handles citizen complaints regarding water bills, potholes, and frozen water lines. The director attends city council meetings when requested by the city manager to respond to questions which the manager is unable to answer. The director works as a liaison between the council and the local development finance authority and the park and cemetery boards.

The building and zoning administrator is responsible for administering the building department's \$160,000 budget and supervising the daily activities of a full-time inspector and a part-time code enforcement officer. The building and zoning administrator does not have direct influence on or direct access to the city's governing body and attends city council meeting to respond to questions which the city manager is unable to answer. The position is responsible for zoning, land use, code enforcement and serves as a liaison between the city and the planning commission and zoning board of appeals.

#### Conclusions of Law:

In *City of Grandville*, 1997 MERC Lab Op 140, 146, on remand from *Grandville Municipal Executive Association v City of Grandville*, 453 Mich 428 (1996), we reaffirmed the definition of executive which we adopted in *City of Detroit Police Department*, 1996 MERC Lab Op 84, 106, as follows:

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 provision, exercises a substantial degree or 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.

We also reaffirmed our position that in determining executive status, we would continue to look at factors such as the number of executive positions relative to the size of the organization, the extent of budget responsibilities, responsibility for preparation of departmental rules and regulations, the degree of interchangeability of functions between the employee and his immediate supervisor, and the degree of participation in labor relations or formulation of collective bargaining policy. See *City of Detroit Police Department, supra* at 106.

In the past, we have consistently excluded four of the disputed classifications - fire chief, police chief, assessor, and treasurer - from supervisory bargaining units where the evidence reveals that they are appointed full-time positions under the city charter and perform duties and responsibilities normally accorded those offices. In *City of East Detroit*, 1986 MERC Lab Op 552, 555, we stated the following with regard to fire and police chiefs:

This Commission has consistently held that the highest ranking supervisory employees in police and fire departments may be excluded as an executive due to the paramilitary structure of the departments and the critical nature of the functions the chiefs perform. Therefore, based on the need for immediate on-site authority in emergencies, police and fire chiefs are excluded from supervisory bargaining units.

We continue to adhere to our past precedent here. The fire and police chiefs employed by the City of Fenton are the highest ranking officials in their departments and do not report to a safety director, board or commission. See *City of St. Clair Shores*, 1987 MERC Lab Op 426, 432; *City of Taylor*, 1986 MERC Lab Op 884.

Similarly, in *Sterling Heights*, 1986 MERC Lab Op 763, we excluded, as a matter of policy, full-time assessors and treasurers from supervisory units because of the statutory nature of their functions and the high-level responsibilities expected of these positions. In the instant case, both the assessor and the treasurer perform duties traditionally associated with such positions and, therefore, we exclude both positions from the unit.

The Employer asserts that the director of public works is an executive because that employee is the policy making head of a major department and is listed in the city charter as an administrative officer of the City. It notes that the director is responsible for directing the daily activities of a deputy director, eleven full-time employees, ten to twelve seasonal employees and a billing clerk. According to the Employer, the public works director has substantial labor relations responsibilities because under the city charter he has the authority to hire, discipline, suspend and discharge employees, subject to the city manager's approval, and also plans work schedules and assignments, and implements union contracts. The Employer also claims that the director is an executive because he prepares and administers a \$3.7 million annual budget for the public works department and is charged

with significant policy making responsibilities with regard to snow removal and infrastructure improvements to the water, sewer, road and sidewalk systems. According to the Employer, the policy making authority of the position is further demonstrated by the fact that the director handles citizen complaints regarding water bills, potholes, frozen water lines and is also involved in long-range infrastructure planning. Finally, the Employer argues that the director attends numerous city council meetings, his recommendations are adopted 90 to 95% of the time, and he works as a liaison between the council and the local development finance authority and the park and cemetery boards.

The record, however, establishes that the director of public works is not an executive as that term has been defined recently. Although the director of public works' position is set forth in the city charter, the director has not been given the wide-ranging authority and discretion to formulate policies on an employer-wide basis as were the public works directors whom we found to be executives in *City of Ishpeming*, 1982 MERC Lab Op 933, 366 and *City of St. Clair Shores, supra*. See also *City of Warren*, 1970 MERC Lab Op 211, and *Village of Elk Rapids*, 1978 MERC Lab Op 1184, where the record established that public works director exercised a substantial degree of discretion in a policy making role. In the instant case, the director does not present policies to the city council, the governing body of the city, without the approval and scrutiny of the city manager and, therefore, does not have direct access to or direct influence upon the governing body. The director's attendance at city council meetings is at the city manager's request, and only to respond to questions which the manager cannot answer. Although the director has discretion to resolve day-to-day issues regarding employees under his jurisdiction, the city manager must approve policies regarding major issues. There is nothing on the record which demonstrates that the public works director plays a major role in the formulation of collective bargaining policy.

Similarly, we do not consider the building and zoning administrator to be an executive. The budget for which the administrator is responsible is small, the position is not created pursuant to the city charter, and the administrator is only responsible for supervising the daily activities of a full-time inspector and a part-time code enforcement officer. Like the public works director, the building and zoning administrator does not have direct access to the city's governing body. Moreover, given the size of the Employer and the limited policy making role exercised by the building and zoning administrator, and based on the definition of executive set forth in *Grandville, supra*, we do not find that this position qualifies for exclusion from the supervisory unit as an executive employee.

**ORDER**

Petitioner City of Fenton's request to clarify the supervisory bargaining unit represented by the City of Fenton Employees Union, Unit I is granted, in part. The police chief, fire chief, assessor, and treasurer are hereby removed from this unit.

**MICHIGAN EMPLOYMENT RELATIONS COMMISSION**

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Maris Stella Swift, Commission Chair

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Harry W. Bishop, Commission Member

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C. Barry Ott, Commission Member

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