

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

In the Matter of:

LAKE COUNTY, AND LAKE COUNTY SHERIFF,  
Public Coemployers

- and -

Case No. UC98 E-26

COMMAND OFFICERS ASSOCIATION OF MICHIGAN (COAM),  
Labor Organization-Petitioner

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APPEARANCES:

Cohl, Stoker & Toskey, P.C., by John R. McGlinchey, Atty, for the Public Coemployers

Patrick J. Spidell, Business Agent, for the Labor Organization-Petitioner

**DECISION AND ORDER**  
**ON**  
**UNIT CLARIFICATION PETITION**

Pursuant to the provisions of Sections 12 and 13 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212, and 423.213, MSA 17.455(12) and (13), and a notice of hearing dated July 24, 1998, an uncontested case, information-type hearing in this matter was held at Lansing, Michigan on September 23, 1998, before James P. Kurtz, Administrative Law Judge for the Michigan Employment Relations Commission. Based upon the entire record, including the transcript, exhibits, and the briefs filed on or before January 8, 1999, this Commission finds:

Petition and Background Matters:

This petition to clarify a bargaining unit composed of supervisory sergeants in the Lake County Sheriff Department, the Employer, was filed by the petitioning Union on May 11, 1998, seeking to add to its unit the newly-created position of chief deputy. The petition also asked for the position of corporal, which was resolved by the parties before hearing by adding the position to the nonsupervisory unit of deputies represented by the Police Officers Association of Michigan (POAM). The existing supervisory unit excludes the sheriff, undersheriff, deputies, corrections officers, dispatchers, animal control officers, marine deputies, cooks, and all other employees. The last contract covering this unit expired on December 31, 1997. The Employer contends that the chief deputy should be excluded as an executive employee, and/or that the position has no community of interest with the sergeants that now make up the supervisory unit.

## Factual Findings:

Lake County, located in the northwest area of Michigan's lower peninsula, has a population of approximately 8,500, and the county seat is located in the Village of Baldwin. The sheriff department supplies corrections officers for both the County jail, and a State facility known as the Technical Rules Violation Center (TRV), which is located approximately a quarter of a mile from the department. The TRV facility houses State inmates serving 90 days for technical parole rule violations. In addition to the sheriff and undersheriff, the supervisory complement of the department is made up of the chief deputy at issue in this case, and the four sergeants that are in Petitioner's supervisory unit. One sergeant is a detective, who was third in command of the department prior to the appointment of the chief deputy, one is in charge of the road patrol, one acts as jail administrator, and one supervises the TRV corrections officers. The TRV facility is headed by a State administrator and employs approximately 15 County corrections officers. In addition, there are approximately 10 road patrol deputies and seven corrections officers at the County jail. A number of dispatching employees were transferred by the Employer to a new central dispatching authority-employer, effective January 1, 1999.

By a notice to all personnel dated November 5, 1997, inspired by a grant from the federal government, the sheriff created a new non-union position of chief deputy to "oversee" the department. The notice gave as the reason for the new position the "change to community policing." Anyone interested in applying for the position was to do so by November 15. The summary of the job description indicated that the chief deputy would be third in command of the department in the absence of the sheriff and the undersheriff, and that the primary responsibility of the position, in addition to assisting the undersheriff in "making authoritative recommendations" to the sheriff, is to serve as commander of the "C.O.P.S. program." The new chief deputy assumed the position effective January 1, 1998.

Under a statute enacted in 1913, MCL 51.261-51.264, MSA 5.901-5.904, the sheriff of any county with a population of 150,000 to 300,000 may appoint a chief deputy sheriff, who "shall perform the like duties and have like power and authority with that of undersheriff of such county." This statute was used as a guide by the County in this case, even though it does not directly apply to a county the size of Lake County. A second Michigan statute using the same population limitations, enacted in 1919, MCL 51.241, MSA 5.891, also provides for the appointment of a chief deputy sheriff "who shall be a competent accountant and shall keep the books of the office, . . . ." The interplay between these two statutes does not appear to have been the subject of any judicial interpretation and, in any event, the statutes have no direct bearing on the decision in this matter.

The duties and responsibilities of the new chief deputy set forth in the Sheriff's job description and in the record are similar to any high-level supervisory employee. Most of the responsibilities of the chief deputy are a combination of duties inherited from the sheriff, the undersheriff, and the four sergeant supervisors. For example, the chief deputy performs at least some of the scheduling, disciplining, authorizing of overtime, reviewing daily reports and logs of road officers, and payroll functions previously done by the sergeants. The chief deputy took over the procuring of equipment

previously performed by the detective sergeant, and he sometimes supervises crime scenes in the place of a sergeant. The chief deputy has also interviewed applicants for hiring and made recommendations to the sheriff, which were adopted by him, and similarly he has recommended discharge of employees on several occasions. He develops departmental policies and procedures with the undersheriff for approval by the sheriff, such as a false alarm policy, the use of video cameras in patrol cars, a training program, a vehicle inspection policy, and a school liaison policy. He also assists the sheriff and undersheriff in preparing budget recommendations, and he has appeared before the governing body of the County. On one occasion, the chief deputy substituted for the sheriff on a County bargaining team.

### Discussion and Conclusions:

The Union contends that the chief deputy is clearly a supervisory employee analogous to the positions of lieutenant, captain, or commander in other law enforcement units, and that the position should be added to its supervisory unit. The Union argues that granting executive status to the nonmandated position of chief deputy would extend such exclusion to a third level supervisor of a small department in violation of Commission precedent, and would override the collective bargaining rights granted by the legislature to the employee when it enacted PERA. The Union cites *Wyoming Police Dep't*, 1985 MERC Lab Op 84, 91, and cases cited therein, where the Commission included the third-level position of captain in a supervisory police unit in a department totaling 72 sworn personnel, where by agreement the chief and deputy chief of police had been already excluded as executive employees. Contrary to the Employer, the Union contends that the Commission's decision in *Detroit Police Dep't*, 1996 MERC Lab Op 84, 103-110, which attempted to reformulate the definition of the executive exclusion for large public employers, is not applicable to the small employer and department at issue in this case.

In addition to its contention that the chief deputy is excludable as an executive employee, the Employer makes a number of other contentions. The Employer argues that the Union has not fulfilled its "burden of showing that an existing bargaining unit should be modified." However, the Union in this case is not attempting to modify or alter its existing supervisory unit by changing its scope, but it is merely attempting to preserve the integrity of the unit by insisting that it represent all supervisory employees, as this Commission has always required. *Marquette Bd of Light and Power*, 1983 MERC Lab Op 814, 818, *aff'd* Mich App No. 74360 (Unpub., 1984); *Sanilac County Road Comm'n*, 1972 MERC Lab Op 785, 787; *City of Hazel Park*, 1970 MERC Lab Op 973, 977. These and subsequent cases hold that supervisory units are expected to be all-inclusive and to include all levels of supervision up to the executive of the Employer. Thus, the cases cited by the Employer, such as *Muskegon County*, 1993 MERC Lab Op 723, 728, and *Macomb County*, 1981 MERC Lab Op 593, 599-601 (change in the comprehensiveness and breadth of the units by severance); or *Lake Shore Public Schools*, 1972 MERC Lab Op 543, 548-549 (unit placement dispute between supervisory and nonsupervisory units), have no application to the issue involved in this case. The issue herein is a basic unit clarification dispute over the placement of a new position created by the Employer, but excluded from the Union's unit.

Further, contrary to a contested, adversary-type proceeding conducted under Chapter 4 of the Administrative Procedures Act, MCL 24.275, MSA 3.560(175), the concept of a party fulfilling its burden of proof has little meaning or application in a nonadversary, information gathering proceeding, such as this representation case. This issue was discussed at length by the Commission in *Univ. of Mich.*, 1970 MERC Lab Op 754, 758-763, where we stressed the investigatory nature of representation-type proceedings. See also *Univ. of Mich.*, 1974 MERC Lab Op 855, 861. If there is any burden to allocate in a case such as this, it must fall upon the party, in this case the Employer, that is attempting to deny the right to be represented for purposes of collective bargaining to a public employee covered by PERA. See also *Antrim Kalkaska Com. Mental Health*, 1998 MERC Lab Op 11, 15.

Where an employer has already been granted an executive and/or confidential exclusion, and seeks a further exclusion, as in this case, the mere fact that the employee has been delegated certain executive or confidential functions does not, standing alone, meet the burden of showing the necessity of another exclusion from the unit involved. *Wyandotte Public Schools*, 1990 MERC Lab Op 425, 428, *aff'd* Mich App No. 130022 (Unpub., 12-2-92). As noted in *Ingham County Road Comm'n*, 1995 MERC Lab Op 306, 312, spreading executive or confidential duties among a number of employees will not have the effect of increasing the number of excluded employees. The Commission's policy of limiting exclusions from bargaining units fulfills the purpose of PERA, which is to provide employees with the opportunity to be represented by a labor organization and to participate in a collective bargaining relationship, while at the same time the public employer has available to it a limited number of exempt employees to administer legislative and labor relations policies. See *City of Detroit*, 1969 MERC Lab Op 187, 193-194.

The above precedent that a broad, all-inclusive unit of supervisory employees is presumptively appropriate under PERA, renders without merit the Employer's contention that the chief deputy has no community of interest with the other supervisory employees of the sheriff department. See also *MEA v Alpena Community College*, 457 Mich 300, 303-307 (1998), *aff'g* 1994 MERC Lab Op 955. Also, our *Wyoming* decision, *supra*, and the cases noted therein, effectively precludes a finding of executive status on the part of the chief deputy classification. As we noted in *City of Grandville*, 1997 MERC Lab Op 140, 147, our decision in *Detroit Police*, *supra*, was not a repudiation or reversal of our prior holdings, or that of the courts, relative to finding executive status. Given the size of the Employer in this case and the departmental-level responsibilities at issue, we do not find that the third level position of chief deputy qualifies for exclusion from the supervisory unit as an executive employee.

In a recent decision applying our *Detroit Police* decision, *Shelby Township*, 1997 MERC Lab Op 469, 473, we restated that, "As a general rule, chief deputies or assistants to department heads do not qualify as executives." In addition to the cases cited therein, see also *Saginaw Police Dep't*, 1989 MERC Lab Op 447, 450 (residual unit of three deputy police chiefs appropriate in a department of approximately 128 employees); *Ann Arbor (Police Dep't)*, 1988 MERC Lab Op 649, 651-655 (three deputy chiefs not executives in a department of 181 employees, excluding crossing guards and auxiliary personnel), *aff'd* Mich App No.110663 (Unpub., 12-13-89); *City of St. Ignace (Clerk's*

*Office*), 1985 MERC Lab Op 735, 738-740 (deputy city clerk held not to be executive or confidential employee); *Saline Police Dep't*, 1982 MERC Lab Op 1699, 1702-1703 (second-in-command lieutenant in small department not found to be an executive), *aff'd* Mich App No. 69123 (Unpub., 10-6-83); *Ingham County Sheriff*, 1982 MERC Lab Op 1526, 1530-1531 (two captains in a department of approximately 154 employees held not executives), *aff'd* Mich App No. 68312 (Unpub., 10-19-83). We further concluded in *Shelby Twp* that the policy making aspect of the definition of an executive did not apply to a departmental deputy position, but relates to positions formulating, determining, and effectuating management policy on an employer-wide basis.

Accordingly, based on the above findings, we will grant the Union's request to include the chief deputy position in its supervisory bargaining unit, and we enter the following order:

**ORDER CLARIFYING BARGAINING UNIT**

The supervisory bargaining unit represented by the Command Officers Association of Michigan (COAM) is clarified to include the newly-created position of chief deputy in the County of Lake Sheriff Department.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Maris Stella Swift, Commission Chairman

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Harry W. Bishop, Commission Member

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C. Barry Ott, Commission Member

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