

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

In the Matter of:

CITY OF GROSSE POINTE FARMS
(DEPARTMENT OF PUBLIC SAFETY),
Public Employer,

Case No. R00 G-90

-and-

POLICE OFFICERS LABOR COUNCIL,
Petitioner-Labor Organization,

-and-

POLICE OFFICERS ASSOCIATION OF MICHIGAN,
Incumbent-Labor Organization.

APPEARANCES:

Dickinson Wright PLLC, by Timothy H. Howlett, Esq., for the Public Employer

John A. Lyons, P.C., by Mark P. Douma, Esq., for the Petitioner

William Birdseye and Frank A. Guido, Esq., for the Incumbent

DECISION AND ORDER DISMISSING PETITION

Pursuant to Section 12 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212, this matter was assigned to James P. Kurtz, Administrative Law Judge for the Michigan Employment Relations Commission. Based upon the stipulation of facts, and on exhibits and briefs submitted by both parties on or before January 16, 2001, the Commission finds as follows:

The Petition and Positions of the Parties:

In the petition for representation election filed on July 27, 2001, the Police Officers Labor Council (POLC) seeks to accrete to its supervisory bargaining unit three sergeants employed by the City of Grosse Pointe Farms. The sergeants are currently in a unit of public safety officers represented for purposes of collective bargaining by the Police Officers Association of Michigan (POAM). The most recent contract between the City and the POAM expired on June 30, 2000.

Petitioner argues that the sergeants are command officers who have no community of interest with the regular patrol officers in the POAM unit. According to Petitioner, a bargaining unit consisting entirely of supervisory employees would better represent the interests of the sergeants. The POAM contends that the petition should be dismissed because supervisory authority is not a valid consideration for unit placement with respect to a public safety department, and because of the well-established bargaining history of its unit.

Facts:

At a hearing on November 1, 2000, the parties agreed to waive an evidentiary hearing and instead entered into the following stipulation of facts:

1. There are three sergeants within the POAM bargaining unit, two of whom desire to move to the command bargaining unit represented by the POLC.
2. The three sergeants have supervisory or command authority and exercise that authority.
3. Historically, the three sergeants, formerly known as corporals, have been in the same public safety unit as the regular patrol officers.
4. The department is a public safety department with all employees at issue cross-trained as police officers and firefighters and performing the duties of both positions.

Discussion and Conclusions of Law:

Supervisory employees are generally not included in the same bargaining unit as nonsupervisory personnel. MCL 423.9e. See also *United Auto Workers v Sterling Heights*, 176 Mich App 123, 125-127 (1989); *Dearborn School District v Labor Mediation Bd*, 22 Mich App 222, 226 (1970). However, an exception has been created for fire fighters. Section 13 of PERA provides:

The commission shall decide in each case, to insure public employees the full benefit of their right to self-organization, to collective bargaining and otherwise to effectuate the policies of this act, the unit appropriate for the purposes of collective bargaining as provided in section 9e of Act No. 176 of the Public Acts of 1939, as amended, being section 423.9e of the Michigan Compiled Laws: *Provided, That in any fire department, or any department in whole or in part engaged in, or having the responsibility of, fire fighting, no person subordinate to a fire commission, fire commissioner, safety director, or other similar administrative agency or administrator, shall be deemed to be a supervisor.* [Emphasis added.]

Section 13 has been found to be applicable to a public safety department in which police and fire protection functions have been combined. *Michigan Fraternal Order of Police v Emmett Twp*, 182 Mich App 516, 518 (1990).

While the POLC does not dispute that Section 13 of PERA allows public safety employees with supervisory status to be included in the same bargaining unit as employees who lack supervisory authority, Petitioner argues that community of interest factors in this case dictate that the three sergeants be removed from the POAM unit and placed with the lieutenants in its command unit. A primary objective of the Commission is to constitute the largest unit which in the circumstances of the particular case is most compatible with the effectuation of the purposes of the law, and to include in a single unit all common interests. *Hotel Olds v State Labor Mediation Bd*, 333 Mich 382 (1952). At the same time, this Commission has a “strong and often overriding policy prohibiting the fragmentation or fractionalization of existing bargaining units absent some extreme divergence in the interest of the employees making up the historical unit.” *Dearborn Public Schools*, 1990 MERC Lab Op 513, 517. See also *Kent County Community Hosp*, 1989 MERC Lab Op 1105; *Lansing School Dist, Paraprofessional Unit*, 1989 MERC Lab Op 160, 166-167. This policy is designed to encourage the stability of established bargaining relationships and established bargaining units. *Dearborn Public Schools, supra*; *Lathrup Public Schools*, 1972 MERC Lab Op 543, 458.

In the instant case, there is nothing in the record suggesting that the three sergeants have such a dissimilar community of interest with the regular patrol officers so as to warrant removing them from this well-established, stable bargaining unit. Although the POLC argues that the sergeants and patrol officers have different skills, duties and responsibilities which make their inclusion in a combined unit inappropriate, Petitioner failed to introduce any evidence to support this contention. The fact that the sergeants possess supervisory status, whereas the patrol officers lack such authority, does not alone justify their removal from the POAM unit. In a prior case involving this same department, we held, and the Court of Appeals agreed, that supervisory status alone is not a permissible basis for exclusion from a fire or public safety department bargaining unit. *City of Grosse Pointe Farms*, 1990 MERC Lab Op 589, *aff'd* in part sub nom *Police Officers Ass'n of Michigan v City of Grosse Pointe Farms*, 197 Mich App 730 (1993). While a unit consisting solely of supervisory sergeants and lieutenants might have been appropriate had it originally been the subject of a petition for representation, that is not the issue before us today. Given the historical nature of the POAM bargaining unit and the lack of evidence indicating any extreme divergence of community of interest between the sergeants and the patrol officers, we issue the following order:

ORDER

The petition for representation election filed by the Police Officers Labor Council in this matter is hereby dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Dated: _____