

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

In the Matter of:

CITY OF GRAND RAPIDS (POLICE DEPT),  
Public Employer,

Case No. R03 H-114

-and-

COMMAND OFFICERS ASSOCIATION OF MICHIGAN,  
Labor Organization-Petitioner,

-and-

GRAND RAPIDS POLICE OFFICERS LABOR COUNCIL,  
Labor Organization-Incumbent Union,

-and-

POLICE OFFICERS LABOR COUNCIL,  
Labor Organization-Intervenor.

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**APPEARANCES:**

Nantz, Litowich, Smith & Girard, by John H. Gretzinger, Esq., for the Employer

Peter H. Cravens, Esq., Assistant General Counsel, for the Petitioner

John H. Lyons, P.C., by Mark P. Douma, Esq., for the Incumbent Grand Rapids Police Officers Labor Council and the Intervenor Police Officers Labor Council

**DECISION AND ORDER DISMISSING  
PETITION FOR REPRESENTATION ELECTION**

Pursuant to Sections 12 and 13 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212 and MCL 423.213, this case was heard in Lansing, Michigan on January 7, 2004, before D. Lynn Morison, Administrative Law Judge for the Michigan Employment Relations Commission. Based on the record, including briefs filed by the Employer and by the Petitioner on or before February 24, 2004, the Commission finds as follows:

### The Petition and Positions of the Parties:

The Command Officers Association of Michigan filed this petition on August 18, 2003. Petitioner seeks to represent a bargaining unit of sergeants employed by the City of Grand Rapids in its police department. The sergeants covered by the petition are currently part of a bargaining unit of nonsupervisory sworn officers represented by the Grand Rapids Police Officers Labor Council (GRPOLC) and have been part of that unit since 1968. The GRPOLC unit also includes police recruits, police officers, and detectives. Petitioner maintains that the sergeants should be removed from the GRPOLC unit and permitted to form a separate unit because they are supervisors as this Commission has defined that term. The Employer's position is that the sergeants are not supervisors and should remain in the GRPOLC unit.

The GRPOLC is not interested in representing the sergeants in a separate bargaining unit. Intervenor Police Officers Labor Council (POLC) provides representation services for the bargaining unit under a service agreement with the GRPOLC. Like the GRPOLC, the POLC takes no position on the issue of whether the sergeants are supervisors. However, the POLC seeks to appear on the ballot if this Commission directs an election pursuant to the petition. The Grand Rapids Police Command Officers Association (GRPCA) represents command officers in the police department above the rank of sergeant. The GRPCA is not interested in representing the sergeants and declined to intervene in this proceeding.

### Facts:

The Grand Rapids Police Department employs approximately 340 sworn officers, including a chief, a deputy chief, 8 captains, 16 lieutenants, and about 49 sergeants. The chief of police is responsible for the overall operation of the department. The internal affairs unit, which reports directly to the chief, is headed by a lieutenant and has one sergeant assigned to it.

The department has four divisions – patrol, investigations, support services, and a special response team (SRT). The patrol division is divided into six geographic service areas. Each service area has one captain and one administrative lieutenant. Approximately thirty-five sergeants are assigned to the patrol division. Sergeants in the patrol division work under the immediate supervision of the administrative lieutenant assigned to their service area. Each sergeant heads a team consisting of between four and nine police officers. For example, a captain and a lieutenant, both of whom work the day shift, supervise the west service area. The west service area has two day shift teams, two afternoon shift teams, and two night shift teams, each overseen by a sergeant. There is also a sergeant in charge of special events, with no assigned subordinates, who reports to the captain in charge of the central service area.

The investigations division is headed by a captain. It consists of a vice unit and a detective unit, each supervised by an administrative lieutenant. Nine sergeants are assigned to the investigations division. Sergeants in this division each oversee the work of seven or eight detectives or police officers. There is also a case management sergeant, a light duty position with no assigned subordinates. The vice unit has one day shift sergeant and one night shift sergeant. The vice unit's responsibilities include enforcement of liquor and illegal drug laws. The day shift vice unit takes complaints, interviews witnesses, obtains warrants, and processes liquor

licenses, while the night shift is generally responsible for conducting investigations and generating information for search warrants and arrests. Each of the six sergeants in the detective unit oversees one or more teams of detectives assigned to work on different types of investigations, including major crimes and financial crimes.

The support services division is also headed by a captain. The training unit within this division is responsible for conducting formal training, including firearms training. The division's only lieutenant is in charge of this unit, and supervises one of the division's two sergeants, as well as four training officers and 27 police interns. The other sergeant in the support services division oversees the special services unit, which includes auto accident investigations, the property management unit and other miscellaneous functions. Nine police officers and six civilian employees report to this sergeant. Also included in this division is a unit of four youth commonwealth officers. The other units in the support services division are manned and supervised by civilian personnel.

The fourth division, SRT, is responsible for handling crisis situations, such as the taking of hostages, and executing search warrants. This division is headed by a lieutenant. Each of the two sergeants assigned to the SRT oversees a team of eight police officers.

A watch commander (also referred to as watch lieutenant) is on duty twenty-four hours per day, seven days per week. The watch lieutenant serves as the overall supervisor of operations in all service areas and divisions during the course of a shift. Five lieutenants share this position. The watch lieutenant on duty is always available and can be reached by cell phone if he or she leaves the desk. Although watch lieutenants do not formally supervise sergeants, sergeants take direction from and report certain activities to the watch lieutenant on duty during their shift.

All sergeants who have assigned subordinates are also responsible for the work of officers or detectives under their command. Sergeants provide direction to their subordinates, monitor their work performance, and provide assistance when needed. Patrol sergeants, for example, spend much of their time providing backup to their officers on calls, doing breathalyzers on traffic stops made by their officers, assisting with arrests, and helping their officers prepare search warrants. Patrol sergeants regularly review their officers' daily activity logs and reports. SRT sergeants execute search warrants with their teams. Detective sergeants provide direction to investigators, monitor the progress of cases through the criminal justice system, ensure investigators are following through on their assigned cases, and identify situations where the department might be proactive. A sergeant serves as the incident commander at any scene until relieved by a higher-ranking officer.

Sergeants conduct a line-up at the beginning of each shift where they inform officers of directives from the lieutenant or the department, and brief them on activities from the previous shift. Sergeants have the authority to assign duties to an officer or change his or her daily assignment, subject to directives from either the administrative lieutenant or the watch lieutenant. The watch lieutenant must approve requests for temporary assignment of personnel between divisions. For example, if the vice unit wants SRT officers to execute a search warrant on a drug house on that shift, it notifies the watch commander. The watch commander also decides

whether an SRT team should be called to a critical incident, or whether detectives should be assigned to a case on the request of a patrol sergeant.

Each officer in the department receives an annual formal written evaluation. Probationary employees are evaluated more frequently. This evaluation is used for determining eligibility for merit and step increases, and for identifying employees who are performing unsatisfactorily. A sergeant fills out an evaluation form for each of his or her subordinates. The administrative lieutenant completes an identical form, as does the captain. The sergeant and lieutenant perform their evaluations independently, while the captain generally reviews the sergeant's and lieutenant's evaluation forms before he completes his evaluation. The evaluation forms are sent to an outside consulting firm that gives each employee a score based on points assigned to the evaluation criteria. If an employee under his command receives an unsatisfactory score, the captain is notified and is expected to take corrective action.

The annual evaluations are not used for determining eligibility for promotion. When an officer applies for promotion to sergeant, the officer's administrative lieutenant and captain complete a performance appraisal. If the performance appraisal is satisfactory, the officer can proceed through the steps of the promotional process, including a written test and oral interview board. The captain in charge of the unit where a vacancy exists makes the effective decision as to who will be promoted to fill the vacancy.

Sergeants have no authority to send an officer home in the middle of his shift for disciplinary reasons; the watch lieutenant makes this decision. Sergeants cannot issue formal discipline, which includes written verbal warnings, written warnings, suspensions and discharges. Only the police chief has the authority to issue a written warning, and suspensions and discharges must be approved by the Employer's city manager. Sergeants regularly discuss the conduct of their subordinates with their administrative lieutenants. Sergeants have the authority to verbally coach or counsel their subordinates, and to issue written counseling. A written counseling is a memorandum of a discussion between the sergeant and his subordinate. In July 2000, the GPOLC and the Employer entered into a letter of understanding affirming that the parties did not consider a written counseling to be discipline.

Sergeants may counsel or coach on their own initiative, or in response to a complaint forwarded to them from the internal affairs unit. When internal affairs receives a complaint against an officer from the public or another officer, it classifies it as formal or informal based on the seriousness of the alleged misconduct. Informal complaints concerning an officer or detective are sent to the sergeant to investigate. The sergeant notifies internal affairs either that he has found the complaint to be without merit, or that he has coached the employee. Internal affairs officers usually investigate formal complaints, and the lieutenant in charge of internal affairs makes recommendations on these complaints. Sergeants are occasionally assigned to investigate the facts behind a formal complaint.

Sergeants' responsibilities include identifying officers who need additional job training. Sergeants may provide this training themselves or assign another team member to provide it. A sergeant may also send an officer to the firing range or other formal training after receiving approval from the watch lieutenant. New recruits are assigned to another team member,

designated as field training officer, for one-on-one training. The sergeant oversees this training and the performance of the field training officer.

Sergeants have limited authority to approve requests for time off. Vacations are scheduled in advance, in accord with a process set out in the GRPOLC contract. Sergeants may grant an officer's request to use a single day of vacation or compensatory time if the officer's absence would not bring the team below minimum staffing guidelines, although the sergeant must notify the watch lieutenant of the officer's absence. Except in the event of an emergency, the watch lieutenant must approve a leave request if it would cause the team to fall below minimum staffing. Only the watch lieutenant has the authority to order that an off-duty officer be called in. The watch lieutenant must also approve all overtime requests.

Sergeants attend regular meetings with their captain and/or lieutenant where they are asked for their input on policies affecting the unit and are encouraged to make policy recommendations for the unit or department. Sergeants do not issue written policy directives.

#### Discussion and Conclusions of Law:

In accord with our policy of refusing to disturb established bargaining relationships, we have consistently refused to allow groups of employees to sever from an historical unit unless this unit violates some broader policy of the Commission, or the petitioner establishes that there is an extreme divergence in community of interest between the employees seeking to sever and the existing unit. *Wayne Co (Airport Police Dep't)*, 2001 MERC Lab Op 163; *Dearborn Pub Schs*, 1990 MERC Lab Op 513. However, PERA prohibits supervisors from being included in the same bargaining unit with the employees they supervise. *City of Detroit (DPW)*, 1999 MERC Lab Op 283; *City of Mt Pleasant (Pub Safety Dep't)*, 1996 MERC Lab Op 424. Accordingly, if the sergeants in this case are found to be supervisors they are entitled to sever from the unit represented by the GRPOLC and form their own unit.

A supervisor, as we define that term under PERA, is an individual with the authority to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or to effectively recommend such action, as long as this authority requires the use of independent judgment and is not merely routine. *MEA v Clare-Gladwin ISD*, 153 Mich App 792, 796-798 (1986). "Effectively recommend" means that the employee's superiors generally accept his or her recommendation without an independent investigation. *Bloomfield Hills Sch Dist*, 2000 MERC Lab Op 363, 365-366; *Bronson Methodist Hosp*, 1973 MERC Lab Op 946, 953. Possession of any of the above powers may confer supervisory status. *City of Adrian*, 2003 MERC Lab Op \_\_\_\_ (Case No. R03 A-05, decided November 17, 2003); *Huron Co Medical Care Facility*, 1998 MERC Lab Op 137. An individual is not a supervisor under PERA if his or her authority is limited to the routine direction of the daily work of other employees and/or making work assignments of a routine nature. *City of Detroit*, 1996 MERC Lab Op 285; *Detroit Dep't of Parks and Recreation*, 1966 MERC Lab Op 661.

In *Berrien Co and Berrien Co Sheriff*, 1999 MERC Lab Op 177, 186, we noted that it is often difficult to determine whether a position has effective supervisory authority in a law

enforcement department organized along paramilitary lines, since under this organizational system each rank exercises authority over lower ranks. We have repeatedly been required to determine whether sergeants in such organizations are supervisors within the definition set out above. The determination of sergeants' supervisory status must be made on a case-by-case basis based on an analysis of the actual authority granted to the sergeants by their department. *Oakland Co and Oakland Co Sheriff*, 1980 MERC Lab Op 1123, 1132-1133.

The sergeants here oversee the work of their subordinates, make assignments, utilize their experience to provide their subordinates with assistance and advice, and monitor their subordinates' performance. We have always recognized, however, that neither these duties nor the authority of a sergeant to give orders is sufficient to make him or her a supervisor. *Kalkaska Co and Kalkaska Co Sheriff*, 1994 MERC Lab Op 693, 698; *Genesee Co (Sheriffs Dep't)*, 1975 MERC Lab Op 152, 154-155.

Responsibility for preparing written evaluations is often an indication that an employee possesses the effective authority to reward, promote, or discipline employees under his direction. *Police Officers Ass'n v Montcalm Co*, 234 Mich App 580 (1999). This may not be the case, however, if the employee's supervisors do not effectively rely on those evaluations in making personnel decisions. *Riverview Community Schs*, 2003 MERC Lab Op \_\_\_\_ (Case No, UC99 J-038, issued October 8, 2003); *Saginaw Co Probate Court*, 1983 MERC Lab Op 954, 957. See also *Berrien Co and Berrien Co Sheriff*, 1999 MERC Lab Op 177, and *Delta Co*, 1996 MERC Lab Op 552. Here, the sergeants complete written evaluations of their subordinates that are used to determine employees' eligibility for wage increases and to identify employees performing below standard. However, the sergeants' lieutenants also independently evaluate the sergeants' subordinates. We conclude that the fact that the sergeants evaluate their subordinates does not establish in this case that they have supervisory authority.

An individual who is "in charge of" a group of employees is generally not found to be a supervisor unless he or she issues or effectively recommends discipline. *Riverview Community Schs; City of Detroit*, 1996 MERC Lab Op 282, 286. In this case, sergeants have no authority to discharge employees or to issue what the Employer considers formal discipline, and the record does not establish that they effectively recommend such discipline. Sergeants can issue written counselings that are placed in the employee's personnel file. However, since a written counseling has no immediate effect on an employee's pay or status, and formal discipline is never based, even in part, on the existence of a written counseling in an employee's file, we conclude that the sergeants' authority to issue written counselings does not qualify them as supervisors.

The record indicates that the sergeants have no role in hiring. They have only limited authority to authorize time off and cannot authorize overtime. They do not have the authority to transfer employees, even temporarily. Even when the sergeants' immediate supervisors, their administrative lieutenants, are not on duty, the sergeants report to and take direction from a watch lieutenant. Petitioner points out that if the sergeants are not deemed supervisors, the watch lieutenant would be often the only supervisor for approximately 35 to 40 officers on duty. This is not an unrealistic ratio since the watch lieutenants are responsible only for supervising operations during their shifts; the administrative lieutenants and captains handle other

supervisory responsibilities, including discipline and the evaluation of personnel. Moreover, contrary to Petitioner's argument, we conclude that the Employer's overall ratio of one supervisor for every 12 or 13 officers is not unreasonable.

We also note that sergeants have been part of the GRPOLC bargaining unit since 1968. We have held that bargaining history is an important factor to be considered, even in the context of possible supervisory status, and we will not needlessly alter a bargaining unit with an extensive bargaining history. *City of Novi*, 1978 MERC Lab Op 436, 444.

For reasons discussed above, we conclude that sergeants in the Employer's police department are not supervisors. We find no justification for permitting the sergeants to sever from their existing bargaining unit of nonsupervisory sworn officers. We, therefore, issue the order set forth below:

**ORDER**

Based on the above findings of fact and conclusions of law, the petition is hereby dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Nora Lynch, Commission Chairman

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Harry W. Bishop, Commission Member

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Nino E. Green, Commission Member

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