

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

In the Matter of:

CHARTER TOWNSHIP OF CHESTERFIELD,
Public Employer - Petitioner,

Case No. UC05 D-013

-and-

MICHIGAN AFSCME COUNCIL 25, LOCAL
1917 (UNIT 2),
Labor Organization.

APPEARANCES:

Seibert and Dloski, PLLC, by Robert J. Seibert, Esq., for the Public Employer

Ben K. Frimpong, Esq., for the Labor Organization

DECISION AND ORDER

Pursuant to Section 12 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212, this case was heard in Detroit, Michigan, on August 24, 2005, by Roy L. Roulhac, Administrative Law Judge for the Michigan Employment Relations Commission. Based on the record and briefs filed by October 24, 2005, we find as follows:

The Petition and Positions of the Parties:

After an election held pursuant to a consent agreement, AFSCME Council 25, Local 1917 (Unit 2) (Union) was certified as the exclusive bargaining agent for a bargaining unit consisting of the police chief and fire chief on September 17, 1996. The parties' most recent collective bargaining agreement expired on December 31, 2004. On April 1, 2005, Petitioner Charter Township of Chesterfield filed a unit clarification petition, seeking to have the Commission determine that the police chief and fire chief are executives who are not entitled to collective bargaining under PERA. The Union claims that the chiefs' duties and responsibilities do not qualify them as executives under our definition of that term.

Facts:

The Charter Township of Chesterfield has approximately 45,000 residents and is governed by a seven-member board of trustees. The Township is organized into nine departments: police, fire, building, public works, recreation, auditing, planning, clerk and treasurer.

The Township's police department has sixty-two full-time employees. The police chief is responsible for the department's daily operations, and for making recommendations regarding staffing, and the acquisition of new equipment and facilities. He, like the fire chief, prepares and submits an annual budget to the police and fire administrative board before he presents it to the board of trustees for approval. The department's budget is approximately \$8 million. The police chief also serves as the Township's assistant director of emergency management. In March 2005, after an arbitrator overturned the police chief's termination and he returned to work, the Employer limited some of his duties and responsibilities. For example, his authority to discipline officers, make purchases and change work assignments has been restricted.

The fire department consists of twenty-four firefighters, a deputy fire chief and a fire chief who is responsible for the department's daily operations. The fire chief prepares the department's approximately \$3 million annual budget, which he submits to the police and fire administrative board before he presents it to the board of trustees for approval. The fire chief also makes recommendations regarding equipment purchases, staffing, new facilities acquisition and long-range planning. He serves as the Township's director of emergency management.

Discussion and Conclusions of Law:

In *City of Grandville*, 1997 MERC Lab Op 140, 146, on remand from *Grandville Municipal Executive Ass'n v City of Grandville*, 453 Mich 428 (1996), we reiterated our holding that for reasons of public policy, executives should not have collective bargaining rights under PERA. We also reaffirmed the definition of executive, which we adopted in *City of Detroit (Police Dept)*, 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 of autonomy in carrying out his or her public service 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 policy on an employer-wide basis.

We have consistently found that the positions of police chief and fire chief are executive positions excluded from collective bargaining. See *City of Fenton*, 1999 MERC Lab Op 189, 193; *Village of Chesaning*, 1988 MERC Lab Op 1063, 1065; *City of Taylor*, 1986 MERC Lab Op 884, 886; *City of East Detroit*, 1986 MERC Lab Op 552, 554-555; *City of Roseville*, 1986 MERC Lab Op

419, 423; *City of Ishpeming*, 1985 MERC Lab Op 407, 412-413. Our determination of executive status has been based not only on the responsibilities of the positions, but also because of their uniqueness, the quasi-military nature of the departments, the need for immediate authority in crisis situations and the lack of interchangeability of these positions with other officials or department heads of a municipality. Our uniform exclusion of police and fire chiefs is in contrast to other municipal or county positions, such as department heads where the circumstances of each case and overall complement of excluded individuals is taken into account before finding executive status. *City of Taylor*.

The Union has offered no compelling reason why we should depart from our long-standing precedent. Since the Township's police chief and fire chief are the highest-ranking officials of quasi-military departments, because of the need for immediate authority in crises, and due to the lack of interchangeability of these positions with other officials or department heads, we find that they are executive positions excluded from collective bargaining. We find no significance in the fact that the Township has restricted the current police chief's duties and responsibilities. See, *City of Taylor*, where the police chief's problems with the mayor and the asserted diminishment of his authority did not persuade us to change our decision.

ORDER

Petitioner Charter Township of Chesterfield's request to exclude the police chief and fire chief from collective bargaining as executives is granted.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Nora Lynch, Commission Chairman

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Date: _____