

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

In the Matter of:

CITY OF DETROIT (POLICE DEPT),
Public Employer-Petitioner,

Case No. UC06 C-008

-and-

DETROIT POLICE COMMAND OFFICERS
ASSOCIATION,
Labor Organization.

APPEARANCES:

City of Detroit Law Department, by Valerie Colbert-Osamuede, Esq., for the Employer-Petitioner

Sachs Waldman, by Mary Ellen Gurewitz, Esq., for the Labor Organization

DECISION AND ORDER

Pursuant to Sections 12 and 13 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212 and 423.213, this case was heard on September 21 and October 26, 2006, by Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. Based on the record and a post-hearing brief timely filed by the Detroit Police Command Officers Association on February 9, 2007, we find as follows:¹

The Petition and Positions of the Parties:

The City of Detroit (the Employer) filed this petition for unit clarification on March 30, 2006. On April 22, 1996, the Detroit Police Command Officers Association (the Union) was certified as the bargaining representative for a unit consisting of commanders, and one inspector, employed in the Employer's police department. By this petition, the Employer seeks a determination that the commanders are executives and, as a consequence, do not have a right under PERA to participate in collective bargaining. The Union maintains that the commanders are not executives as we define that term, and that the Employer's petition should be dismissed.

¹ The City of Detroit's brief was not considered as it was filed late, on February 16, 2007.

Background:

On March 10, 1994, the Union filed a petition for an election (Case No. R94 C-059) seeking to represent a single bargaining unit of inspectors and commanders employed by the City of Detroit in its police department. At the time of that petition, neither inspectors nor commanders were represented by a union. The Employer maintained that the inspectors and commanders were all confidential and/or executive employees.

Nine days of hearing were held on this petition in 1994. We issued our decision directing an election on February 16, 1996. *City of Detroit (Police Dep't)*, 1996 MERC Lab Op 84. In this decision, at 108, we reformulated our definition of executive 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 provisions, exercises a substantial degree of 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.

In 1994, a few commanders reported directly to the police chief. All the other commanders reported to one of five deputy chiefs. The deputy chiefs reported directly to the police chief. The majority of commanders were in charge of local precincts. The rest headed divisions within the department. Therefore, all the commanders reported directly to the department head, the police chief, or a deputy chief, and all headed a section or division of a major department as provided in part two of our definition.

In addition to looking at the position of the commanders within the organization of the police department in 1994, we reviewed, at 107-108, the factors we had traditionally looked at in making executive determinations, including the extent of the commanders' budget responsibilities, their role in preparing department rules and regulations, the degree of interchangeability of functions between the commanders and their immediate superiors, the degree of their participation in labor relations or formulation of collective bargaining policy, and the extent of their authority and scope of their responsibilities. We concluded that while commanders had little real influence over budget decisions, the chief was the only person who had such influence under the department's budgeting system. We noted that all department rules and regulations were approved and promulgated by either the police chief or the Board of Police Commissioners. We found that while commanders filled in for their superior officers

under certain circumstances, for the most part the commanders exercised responsibilities that were distinct from those of the deputy chiefs. We held that the commanders did not have a significant role in labor negotiations or formulating collective bargaining policy. However, we found that the extent of the commanders' authority and the scope of their responsibilities were very broad. We cited the responsibility of commanders in the Headquarters Bureau to devise strategies for attacking particular crime problems and deciding how personnel under them would be deployed. We pointed to the fact that the commander of the major crimes division had assembled task forces including members of other police agencies. We also noted the setting of priorities for use of his resources by the commander of the narcotics division, as well as the responsibility of precinct commanders to identify crime problems within their precinct and develop strategies for dealing with these problems. Based on these examples, we concluded that the commanders exercised substantial discretion in formulating, determining, and effectuating management policy, and that the types of decisions made by commanders were executive in nature.

In addition to the commanders, we found the inspector heading the internal affairs section of the Internal Controls Bureau, who reported directly to the police chief, to be an executive. We found two commanders and two inspectors to be confidential employees based on their responsibilities for labor relations. We found the other inspectors to be high-level supervisors, not executives.

At the time we issued our decision in *City of Detroit (Police Dep't)*, the Court of Appeals had issued two opinions holding that we lacked authority under PERA to exclude executives from participating in collective bargaining. In *Muskegon Co Prof'l Command Ass'n v Muskegon Co (Sheriff's Dep't)*, 186 Mich App 365 (1990), and *City of Grandville v Grandville Municipal Executive Ass'n*, 213 Mich App 586 (1995), the Court held that PERA gave executives a statutory right to engage in collective bargaining. The Court concluded that we could not refuse to certify bargaining units of executive employees, although PERA precluded us from including them in the same bargaining with other supervisory employees. In accord with these decisions, we directed elections in two separate units in *City of Detroit (Police Dep't)*. One unit consisted of the commanders and the inspector we found to be an executive. The other unit consisted of the remaining inspectors. Excluded from these units were the commanders and inspectors we found to be confidential employees. As noted above, the Union was subsequently certified as the bargaining agent for both units.

In *City of Grandville v Grandville Municipal Executive Ass'n*, 453 Mich 428 (1996), the Supreme Court reversed the Court of Appeals and upheld our authority to exclude executives from collective bargaining under PERA on public policy grounds. The Supreme Court remanded for a finding on whether the employees in that case were executives under our current definition of that term. In our decision on remand, *City of Grandville*, 1997 MERC Lab Op 140, we stated our intention to resume our previous policy of dismissing petitions seeking bargaining units comprised of executives.

The City of Detroit, however, continued to recognize the Detroit Police Command

Officers Association as the bargaining representative for both inspectors and commanders. In 1998, the parties entered into a collective bargaining agreement that covered both units for the term July 1, 1996 through June 30, 2001. The agreement was then extended through June 30, 2004. In addition to the positions we found to be confidential in our 1996 decision, the parties have subsequently agreed to exclude four commanders from the bargaining unit. Three of these commanders report directly to the police chief - the chief of staff and the commanders heading the offices of force investigation and internal affairs. The parties have also agreed to exclude the commander in charge of legal affairs.

Findings of Fact:

Organizational Hierarchy of the Police Department

The City of Detroit Police Department is a paramilitary organization with a system of ranks and a strict hierarchical reporting structure. The chief of police, at this time Ella M. Bully-Cummings, is the chief executive officer of the police department. The police chief reports to the Board of Police Commissioners, a body appointed by the mayor, and also to the mayor himself.

During the twelve years between 1994 and the hearing on the instant petition in 2006, the police department underwent numerous organizational changes. In the late 1990s, the department added an assistant chief directly under the police chief. For several years, all the deputy chiefs reported to that assistant chief. In about 2002, under then-police chief Jerry Oliver, the department added two additional assistant chiefs, each of whom was given a “portfolio.” All deputy chiefs now report to one of the three assistant chiefs. Most recently, in September 2005, the department consolidated its thirteen precincts into six districts and eliminated the position of precinct commander. A deputy chief was put in charge of each district, with either two or three commanders reporting to that deputy chief.

At the time of this hearing in 2006, the department had roughly 3,300 budgeted positions. Three assistant chiefs report directly to the police chief. One assistant chief oversees the Administrative Portfolio, one the Investigative Portfolio, and the third is in charge of the Operations Portfolio. There are eleven deputy chiefs, most of whom head bureaus. Three deputy chiefs, plus the civilian employee who heads the Human Resources Bureau, report to the assistant chief in charge of the Administrative Portfolio.² Two deputy chiefs, one with the title homeland security coordinator, report to the assistant chief overseeing the Investigative Portfolio. The Operations Portfolio consists of the local districts. The six deputy chiefs who head districts report to the assistant chief in charge of the Operations Portfolio.

² “Civilian” is a term used in the department to refer to employees that are not sworn police officers. In addition to the head of the Human Resources Bureau, there are civilian “second assistant deputy chief” and “third assistant deputy chief” positions in the department that perform managerial duties. The civilian positions have never been part of a bargaining unit and their status is not at issue in this case.

There are thirty-two commander positions, approximately twenty-seven of which are filled. Three commanders report directly to the police chief. These are the chief of staff and the commanders in charge of force investigation and internal affairs. As discussed above, these commanders have been excluded from the existing bargaining unit by agreement of the parties.

Within the Administrative Portfolio are the Risk Management, Fiscal Management, and Technical Services Bureaus, each headed by a deputy chief. The six or seven commanders within the Administrative Portfolio,³ all head an administrative subdivision within a bureau, and all report to one of the three deputy chiefs in charge of these bureaus.⁴ Two commanders report to the deputy chief in charge of the Risk Management Bureau. One commander is in charge of legal affairs. The other commander heads the office of civil rights. This office includes the planning and accreditation section, currently headed by a lieutenant. The role of the office of civil rights and its planning and accreditation section in the promulgation of formal policy is discussed separately below. The Technical Services Bureau has three commanders. These commanders head the emergency communications, resource management, and technical support sections of this bureau.

The Investigations Portfolio consists of the Criminal Investigations Bureau and office of the homeland security coordinator. The Criminal Investigations Bureau, headed by a deputy chief, has three commanders, each of whom heads an administrative subdivision of the bureau. One commander is in charge of major crimes - encompassing investigation of homicides, sex crimes and narcotics. One heads investigative operations, which is responsible for all other criminal investigations. Detectives physically located in the districts report to this commander. The third commander in the Criminal Investigations Bureau is in charge of organized crime investigations. The deputy chief who is the Homeland Security Coordinator has one commander, in charge of incident response, reporting to him.

There are thirteen commanders within the Operations Portfolio. As noted above, in September 2005, the thirteen local precincts were combined into six large districts. The largest district, the northeastern, has a larger population than Michigan's second largest city, Grand Rapids, and has almost as many police officers assigned to it. Five of the six districts are assigned two commanders each. The central district, which contains the City's casinos and its other major entertainment venues, has three commanders. There is no organizational division of responsibilities between the commanders in a district. The commanders assigned to the district, along with their deputy chief, decide how work will be divided between them. In most of the six districts, the deputy chief and the commanders now work in the same building.

³ The department no longer consistently uses the term "division" to refer to an administrative subdivision headed by a commander.

⁴ A September 2006 report on deployment within the department shows a commander position within the Fiscal Management Bureau. However, this position is not on the 2006 organizational chart, there was no testimony on the record regarding this position, and it is not clear whether it is currently filled.

Budgetary and Formal Policy-Making Responsibilities

Commanders in charge of divisions or other administrative subdivisions of the department have budgets. These commanders are given the opportunity annually to request more equipment or manpower. They meet annually with civilian employees from the Fiscal Management Bureau to discuss and justify their budget requests. Commanders also meet with their own deputy chiefs to defend their budgets against reductions and to argue for filling vacant positions when someone under their command retires. Commanders have to monitor their budgets and ensure that they stay within the amounts provided for by the line items in these budgets.

The Board of Police Commissioners is ultimately responsible under the Detroit City Charter for establishing policy for the police department. The charter also requires the department to adopt and maintain a manual setting forth the rules, regulations, policies and procedures governing the department, as well as detailing the organizational structure of the department. In keeping with the paramilitary nature of the department, the policies contained in the manual are very detailed. In 2006, the manual was over one thousand pages long and contained hundreds of separate directives. It is available to members of the department on a compact disc and also appears in full on the department's website.

The planning and accreditation section within the office of civil rights is responsible for additions and modifications to the manual, and for the preparation of special orders. Special orders are written policies that expire after one year; they are sometimes later incorporated into the manual. In about 2002, at the request of then-police chief Oliver, the planning and accreditation section completely revised the manual. Currently, the section receives suggestions for policy changes from officers in the department and also reviews all existing policies on a regular schedule to ensure that they remain current. The planning and accreditation section has contacts with other police departments throughout the country and regularly receives copies of "best practices" adopted in other departments. In addition, the planning and accreditation section administers the interim management awareness system, a management tool which provides the department with early warnings of problems that could lead to accidents, lawsuits or other undesirable results.

Police officers at all levels submit suggestions for new or amended policies to the planning and accreditation section. However, these suggestions come most frequently from commanders. The planning and accreditation section also seeks out advice on policy issues from officers at all ranks, but most often, its contacts are with commanders. Police chief Bully-Cummings explained that it is the role of a commander to formulate or recommend a change in policy or a new policy because a commander is at the appropriate level to see what needs to be changed. She testified that the department expects commanders to be proactive in making changes that improve the way the department operates.

All changes and additions to the manual must be approved by the Board of Police

Commissioners. Recommendations for changes to the manual go up from the planning and accreditation section through the chain of command to the Board. Special orders go through the chain of command to the chief. As with other actions that go through the chain of command, new policies must be “endorsed” at each level, i.e., the commander, deputy chief, assistant chief, and chief must indicate that they have reviewed the policy and whether they agree or disagree with it. Actual changes to the manual normally occur only about once a year.

In addition to providing input into manual changes and special orders, commanders are responsible for drafting standard operating procedures (SOPs), written documents which describe the specific duties of officers under their command. The SOPs go up through the chain of command to the chief in the same way as other written policies before they are promulgated.

Every other Monday, the police chief holds a management meeting with all commanders and assistant and deputy chiefs. On the alternate Mondays, she has “senior management meetings” with the assistant and deputy chiefs. A “daily crime briefing” is held on Tuesdays, Wednesdays, and Thursdays to update command officers on crime trends. Commanders, along with lieutenants in the investigative operations division of the Criminal Investigations Bureau, are required to attend these meetings. Command officers above the level of commander do not normally attend the daily crime briefings. Commanders within the Operations Portfolio also meet regularly once a week with their assistant chief. The assistant chief meets separately with the deputy chiefs under his command.

Commanders sit on department-wide management committees. For example, there is a standing committee that makes recommendations regarding changes to the uniform. The committee that formulated the restructuring plan implemented in September 2005 also included a number of commanders.

Commanders and the 2003 Consent Decree

In July 2003, the City entered into a federal court consent decree with the United States Department of Justice (DOJ) to settle lawsuits brought against the police department. The first part of the decree covers the conditions of confinement of prisoners kept in the department’s holding cells. The second part covers the use of force by police officers and the department’s arrest, investigatory stop, and witness questioning and detention policies. The consent decree, a sixty-page document, explicitly requires the department to promulgate new policies, to revise existing policies, to train its personnel in these policies, and to devise and implement systems for monitoring its compliance with these policies. In 2006, the department was still deeply involved in the effort to reform its practices to bring them into compliance with the consent decree. The federal court, through an appointed independent monitor and her staff, oversees the department’s efforts. The commander in charge of the office of civil rights, of which the planning and accreditation section is a part, is the DOJ compliance coordinator for this consent decree.

The consent decree places certain specific responsibilities for monitoring compliance on commanders. Other sections of the consent decree explicitly require action by “command-level” officers, which the department interprets as commanders or above. The consent decree specifically mentions commanders, in part, because commanders were in charge of precincts at the time the decree was drafted and, therefore, were the highest ranking officers with physical proximity to most of the department’s holding cells. The commanders, however, continued to have these responsibilities after the 2005 reorganization consolidated the precincts into districts headed by deputy chiefs. By order of the chief, a commander is notified every time the federal monitor or her staff comes to a district office, even though the monitor’s staff does not need permission or an escort to enter the premises or inspect the holding cell area.

Consistent with both the consent decree and their general managerial responsibilities, commanders are also involved in formulating the new policies necessary to achieve compliance. The commander/compliance coordinator chairs the committee responsible for drafting policies to bring the department into compliance with the “conditions of confinement” section of the decree. Technically, deputy chiefs sit on this committee, but in practice, the committee is comprised of commanders from the districts and those in charge of certain other administrative subdivisions, including the commander in charge of the medical section in the Human Resources Bureau. There are also members of the fire and health departments on this committee. The committee’s goal is to formulate policies detailed enough so that the treatment of prisoners is as uniform as possible throughout the department. These policies cover a great range of subjects – they have included new forms to be filled out when a prisoner is admitted to a holding cell, policies covering the temperature of the refrigerators containing food for prisoners in the cells, policies dealing with the placement of equipment in the holding cell areas, and even a policy dictating when a district is to reorder its supply of “suicide smocks” provided to prisoners in its cells. Sometimes the content of a policy is suggested by the monitor. The committee also utilizes the expertise of the commander/coordinator and the staff of the planning and accreditation section in drafting and researching the best practices of other departments. However, the commanders, because of their experience and familiarity with actual practice, formulate many of these policies and approve all of them. There are also subcommittees made up of commanders who draft policies to implement the other portions of the consent decree. As with other policies, those formulated by the committees required by the consent decree go up through the chain of command and are approved by the Board of Police Commissioners and/or the chief.

The consent decree also requires the department to conduct twenty-nine annual performance audits of areas covered by the decree. Eighteen of these audits involve holding cells. Each audit is conducted by a team headed by a different commander. The team consists of specially trained auditors supervised by the commander/coordinator and other officers appointed by the team head. Commanders do not audit areas under their own command. The office of civil rights drafts the audit reports, which are sent to all commanders and above, and synopses sent to commanders tailored to their specific commands. If an audit shows something that needs to be corrected, the commander/coordinator prepares a non-disciplinary corrective action report which is sent

to the assistant chief in charge of the command unit where the deficiency has been noted. That command unit – not necessarily a unit headed by a commander - has ten days to prepare a corrective action plan. The unit submits its plan to its assistant chief. The office of civil rights then follows up to ensure that this plan is carried out.

Commanders' Disciplinary Authority

Disciplinary investigations may be initiated by supervisory officers at all ranks. Supervisory recommendations for discipline of officers below the rank of inspector are sent to commanders for action. The commander has the authority to issue discipline up to and including three-day suspensions, although a disciplinary action is not effective until the commander's deputy chief approves it. Alternatively, the commander may recommend that the case be sent to a trial board for hearing. Whether a commander consults with his or her deputy chief before issuing a disciplinary action is a matter to be decided by that deputy chief. Consultation on all discipline is the practice in several of the districts, but it is not universal throughout the department. If a commander issues a disciplinary action and the deputy chief disagrees with it, the deputy chief endorses it by stating his or her objections. In these cases, the assistant chief resolves the dispute.

Cases involving more serious offenses, as well as any case the commander and deputy chief believe should be handled this way, are sent to a trial board for hearing. Trial board hearings for nonsupervisory officers are conducted by a deputy chief and two commanders. The collective bargaining agreement covering lieutenants and sergeants states that a trial board will be made up of a commander and two inspectors, but there have been no trial board hearings for lieutenants or sergeants since September 2005. Trial boards primarily decide disputed questions of fact, as the appropriate discipline for almost all offenses is set by policy and/or union contract.

Duties of District Commanders

Prior to the September 2005 reorganization, precinct commanders supervised patrol and investigative functions within their precincts and coordinated these activities with those of other precincts. The commanders also served as the contact between the precinct and the community, meeting with citizen and community groups and listening to their suggestions and complaints. The commanders were responsible for coming up with initiatives to reduce crime in their district, e.g., a liaison with the Bureau of Alcohol, Tobacco and Firearms to identify and arrest illegal gun dealers in the precinct, or a coordinated focus of personnel on robberies of particular types of stores. They were also responsible for initiatives to improve relations between the department and the community, e.g. sponsoring a basketball league or coordinating with businesses to provide free school supplies. Precinct commanders were not usually required to obtain the approval of their deputy chief in advance unless the initiative involved crossing precinct boundaries.

After the September 2005 reorganization, precincts were replaced by districts. District commanders do not head administrative subdivisions of the department. Except

for the central district, each district has two commanders assigned to it. The deputy chief is in charge of overall operations within the district. The deputy chief is primarily responsible for interaction with community and business leaders, while the commanders oversee day-to-day operations and divide the supervision of patrol functions between themselves. The deputy chief, with his or her commanders, determines what the responsibilities of the commanders in the district will be. In the central district, one commander is assigned to patrol functions, one to the gaming industry, and one to special events. In the eastern district, the commanders split responsibilities based on hours; one handles the paperwork for the two afternoon patrols, and the other handles the paperwork for the others. In all the districts, at least one of the district commanders must be on call at all times.

District commanders manage major crime scenes. They have the authority to contact commanders in other districts directly to ask for assistance in emergencies. They are expected to notify their deputy chief immediately when an extraordinary event, such as a death in a cell block or an injury to an officer occurs, and to advise the deputy chief of anything that may attract press attention. A district commander can authorize overtime. However, both the deputy chief and the district commanders are responsible for staying within budget and if the district exceeds its overtime budget, the deputy chief must take some action. A commander can change the shift assignment of an individual officer, subject to the requirements of the union contract. Commanders can also change officers' work assignments, e.g., change the distribution of officers between foot and road patrol. Commanders may also recommend that the hours of officers be changed to conform to crime patterns or to supply more manpower for special events, e.g., high school football games in the district. However, these changes must be approved by the deputy chief.

Commanders have a role in initiatives to reduce crime in their districts. Because deputy chiefs are responsible for interacting with community and business groups, deputy chiefs often provide the impetus for such initiatives. However, commanders are also expected to suggest initiatives. The record indicates that the district commanders' role in formulating and implementing crime initiatives depends, in part, on how their deputy chief views his or her own role. Some district deputy chiefs view themselves and their commanders as a team, and they and their commanders work together to formulate and implement initiatives. Other deputy chiefs direct their commanders to come up with plans, for example, a plan to increase gun confiscations in the district. These deputy chiefs expect their commanders to formulate the plan to achieve the objective. However, the commanders in these districts report to their deputy chiefs on the details of a plan before it is implemented and also give them periodic reports on how the plans are working.

Duties of Commanders in Charge of Administrative Subdivisions

Most of the commanders within the Administrative and Investigations Portfolios continue to head divisions or subdivisions of a bureau called by some other name. The commander in charge of investigative operations within the Criminal Investigations

Bureau testified regarding his duties, to illustrate the responsibilities of a commander heading an administrative subdivision. This commander supervises the investigation of all crimes except homicides, sex crimes, and narcotics. Detectives (a generic term encompassing different ranks) under this commander's supervision are assigned to each of the six districts. The commander also supervises detectives assigned to a number of special units, including auto-theft, insurance fraud, bank robberies, non-fatal shootings, serial robberies, and youth crime. In addition, he supervises the apprehension team that hunts down and arrests those accused of serious felonies after a warrant is issued and apprehends parole absconders. The commander has the effective authority to temporarily reassign detectives within his division to help manage the workload, including assigning detectives in special units to work in a district and vice-versa. He can also change the working hours of individual detectives and move personnel between shifts, subject to the provisions of the union contract. The commander in charge of investigations can determine whether individual detectives should be in uniform or in plain clothes. The commander testified that he has the responsibility to develop initiatives to reduce crime. Initiatives the commander has developed include the creation of a permanent intelligence unit to chart crime patterns and another permanent unit to investigate armed robberies. The commander has developed numerous operations targeted at specific crimes, including one to combat commercial tow-trucks stealing cars off the street and another targeting copper thefts from buildings and utilities. The commander also works with commanders and deputy chiefs in the districts to develop initiatives aimed at crimes occurring in their specific districts, e.g., an auto theft ring operating in the western district. The commander keeps his deputy chief "in the loop," on all initiatives. On occasion, the deputy chief has told him to hold off implementing an initiative because of something else going on in the department. However, the commander does not have to obtain his deputy chief's permission to implement an initiative.

Discussion and Conclusions of Law:

In making executive determinations, we consider the size of the employer's workforce and a position's place in the employer's organizational hierarchy. See e.g., *Detroit Bd of Ed v Local 28, Organization of School Administrators and Sup'rs*, 106 Mich App 438, 444, (1981). Our *City of Detroit (Police Dep't)* definition did this more explicitly. Under this definition, approved by the Michigan Supreme Court in *City of Grandville v Grandville Municipal Executive Ass'n*, at 924, policy-making heads of major departments of an employer are executives.

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 provisions, exercises a substantial degree of 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.

Under part two of our definition of an executive, an employee who is the third level of management within a major department in a large employer may be an executive if the evidence shows that he or she exercises substantial discretion in formulating, determining, and effectuating management policy. However, our definition does not provide for the exclusion of employees below the third level of management in a major department of a large employer.

The City of Detroit has more than one thousand employees, and its police department is a major department. However, the commanders do not qualify as executives under part two of our definition because they do not report to a “chief deputy to a department head.” Rather, the commanders report to deputy chiefs, who report to assistant chiefs, who report to the police chief. The commanders are the fourth level in the supervisory hierarchy of the police department. In addition, more than half of the commanders – those assigned to districts – do not fit the definition because they do not head sections or divisions. Commanders do not qualify as executives under part three or four of our definition because they do not exercise authority pursuant to statutory or charter provisions or have direct influence upon the Detroit City Council, and their authority to formulate, determine, and effectuate policy is limited to the police department.

As we discussed in *Detroit Bd of Ed*, 1978 MERC Lab Op 575, 580, determining the “level at which organization must end” may require us to apply the executive exclusion differently to large employers. We noted that it is not possible to draw a consistent equation between the size of the employer and the number of its executives. For example, it does not follow that simply because one employer has twenty times more employees than another, that the first employer necessarily has twenty times more employees making executive-level policy decisions. In reformulating the definition of an executive for large employers in *City of Detroit (Police Dep’t)*, 1996 MERC Lab Op 84, we explicitly recognized, at 106, that a large public employer may have more executives than a small one and also that executive duties may extend further down into the organizational structure when there are a large number of employees. We acknowledged that in large employers the executive exclusion cannot reasonably be limited to heads of major departments and managers with the authority to make policies that apply outside of their departments. However, our definition foreclosed large employers from arguing that managers below the third level of the organizational chart in a department were responsible for formulating, effectuating, and determining “high-level” policy.

The record in the instant case indicates that the commanders who head administrative subdivisions of the department have a role in the budget process. However, they do not have effective authority over how the department spends its money. Commanders, as front-line managers, also play an important role in formulating formal policies within the department, including SOPs, special orders, and changes to the manual. However, these policies are subject to the approval of their deputy chiefs,

assistant chiefs, the police chief, and, in some cases, the Board of Police Commissioners. As front-line managers, the commanders also formulate and effectuate informal policies, including crime fighting initiatives, make managerial decisions regarding the assignment of their staff, and have responsibility for the performance of the officers under them. Their decisions, however, are reviewed by the executives above them in the departmental hierarchy. The commanders play a critical role in the functioning of the police department, and a commander's failure to carry out the substantial responsibilities that his or her job requires undermines the ability of the department to carry out its mission. However, their authority is limited by their place in the organizational hierarchy of the department. We conclude that the commanders, while clearly "managerial" employees, do not make the type of executive decisions that require their exclusion from collective bargaining.

We find that the commanders in the City of Detroit are not executives who should be excluded from collective bargaining under PERA. The facts of this case, therefore, do not demonstrate a need to reconsider our definition of executive as expressed in *City of Detroit (Police Dep't)*.

ORDER

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

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Christine A. Derdarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____