

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

MECOSTA COUNTY and MECOSTA
COUNTY SHERIFF,
Public Employers,

MERC Case No. R18 G-050

-and-

POLICE OFFICERS LABOR COUNCIL,
Labor Organization-Petitioner.

APPEARANCES:

Cohl, Stoker & Toskey, P.C., by David G. Stoker, for the Public Employers

Brendan J. Canfield, Attorney for Police Officers Labor Council, for the Labor Organization-Petitioner

DECISION AND DIRECTION OF ELECTION

On July 9, 2018, the Police Officers Labor Council (Petitioner or POLC) filed a petition for representation election with the Michigan Employment Relations Commission (Commission) pursuant to Section 13 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.213. An evidentiary hearing was held on November 20, 2018, in Lansing, Michigan, before Administrative Law Judge Travis Calderwood of the Michigan Office of Administrative Hearings and Rules (MOAHR), formerly the Michigan Administrative Hearing System.¹ Based on the entire record, including the post-hearing briefs filed by the parties on or before January 29, 2019, we find as follows:

The Petition:

The POLC filed the present petition seeking to establish and represent a unit comprised of the Corrections Lieutenant and Corrections Captain. The Employers maintain that the position of Corrections Captain is the County's Jail Administrator and that in that role, the position is precluded from collective bargaining under the Act because it is executive in nature. With respect to the Lieutenant position, the Employers would concede to the accretion of that position into the existing corrections command unit represented by the Police Officers Association of Michigan

¹ MOAHR Docket No. 18-017582

(POAM) if that union, or any successor union, were to seek to represent the position.² However, as discussed below, the POAM and the Employers have agreed to exclude captains and lieutenants from the corrections command unit. Presently, each of the two positions sought by Petitioner is occupied by a single individual. Accordingly, if we determine that the Corrections Captain is an executive position, the petition must be dismissed because we do not recognize a one-person unit.

Findings of Fact:

Mecosta County (County) consists of approximately 43,500 residents. The County employs approximately 175 full-time employees, 20 part-time employees, and 50 seasonal employees throughout its various departments, which include, but are not limited to, the Courts, County Clerk, and Sheriff's Department. The County and the Sheriff's Department (Department) are co-employers (collectively the Employers) of all the employees that work within the Department. The record indicates that the Department has the largest number of employees and budgetary share of all the County's various departments.

The Sheriff's Department consists of two divisions, the Road Division and the Corrections Division. The Department's command structure begins with the Sheriff followed by the Undersheriff. The Road Division is made up of two detective sergeants, four road sergeants, and 14 road deputies.³ The Corrections Division is headed by Corrections Captain Kevin Woods, who is also identified by the Employers as the Department's Jail Administrator. Directly subordinate to Captain Woods is Corrections Lieutenant Megan Erickson. These two positions supervise four corrections sergeants and approximately 20 corrections officers, four of which are designated transport officers. Three and a half administrative positions round out the Department's workforce.

All of the Department's employees, except for the Sheriff, Undersheriff, Captain Woods and Lieutenant Erickson, are spread out among four separate bargaining units: a corrections, clerical, and animal control unit; a corrections command unit; a law enforcement unit; and a law enforcement command unit. Each of the four units is represented by the POAM. At the time of the hearing, the POAM corrections command unit was operating under a contract effective January 1, 2015 through December 31, 2018. Article 2, the contract's recognition clause, provides the following description of that unit:

All full time Mecosta County Sheriff's Department employees who are in the following classifications: Corrections Sergeants, and excluding Sheriff, Undersheriff, Captains, Lieutenants, Corrections Officers, Animal Control Officer, Secretaries, Deputies, Road Sergeants and Detectives, and all other employees.

² At one point during the hearing, the Employers' Attorney stated that the Employers "stipulate the Lieutenant is a high-level supervisor."

³ Previously, the Road Division also had a detective captain and road lieutenant position, but those positions were eliminated.

Sheriff Todd Purcell testified that Captain Woods was third in the line of command after himself and the Undersheriff. The record does not indicate, however, whether this is the case because of Captain Woods' rank or his position as the Jail Administrator. The Sheriff was unable to point to a time when control of the Department fell upon the Jail Administrator because either he or the Undersheriff were unavailable.

Sheriff Purcell claimed that neither he nor his Undersheriff have very much experience with respect to the corrections work and that he relies heavily on Captain Woods, as the Jail Administrator, for all matters relating to the Jail. As such, Captain Woods, as the Jail Administrator, has been delegated significant management authority as it relates to the jail. The record indicates that the Jail Administrator supervises the jail staff almost completely independent of the Sheriff's oversight. Despite this, everyone agreed that the Sheriff had ultimate authority over the jail.

The Jail Administrator is the person primarily responsible for researching and developing policies for the jail. Captain Woods testified that he does not write policies that affect and/or impact the Road Patrol Division. The preceding notwithstanding, Sheriff Purcell did claim that Captain Woods did in fact draft two policies that have Department-wide effect: the policies on infectious disease and work-related injuries. Regardless of whether Captain Woods did author the infectious disease and/or work-related injury policies, he did not sign those policies or any others he might have drafted as the record indicates that ultimate approval of policies rests with the Sheriff. When discussing the issuance of policies, the Sheriff testified that, while he was a Sergeant in Road Patrol, he authored and/or revised policies impacting that Division, including the general conduct policy and the Department's firearm policy.

Both Sheriff Purcell and the Jail Administrator sit on the County's Jail Committee along with Paul Bullock, the County's Controller Administrator, and three of the County's Commissioners. According to testimony provided at the hearing, the Jail Administrator presents reports regarding the status of the jail and also makes recommendations and/or funding requests for additional equipment needed within the jail. Regarding funding requests, the record reveals that the Jail Committee's Commissioners decide whether to support a recommendation and, if so, bring the matter to the full Board. Captain Woods testified that, while he does not regularly attend full Board meetings, he did attend one meeting recently to provide a presentation regarding the jail's need for a new control board. Bullock testified that he could not recall any time that a funding request made by Captain Woods was not approved by the Jail Committee.

Captain Woods, as the Jail Administrator, also handles contracts with the two vendors that provide contracted services for the jail – the medical provider and the food services provider. The record shows that the drafting of bids and/or requests for proposals to provide services to the jail is done by the Jail Administrator; however, the approval of vendors and/or vendor contracts proceeds in the same fashion as other requests for funding regarding the jail.

Regarding approvals of expenditures, while Captain Woods indicated that he could not approve expenditures, Sheriff Purcell indicated that Captain Woods could order equipment and

supplies if funds for those items were already in the budget. Sheriff Purcell also claimed that he would not get involved in that process until the purchase amount was close to the County's budgetary limit.

Captain Woods, in discussing his role as it relates to funding requests and the vendor contracts, stressed that he does not develop or assist in developing the County's budget. Moreover, Captain Woods stated that he has never given a budget presentation at any Board meeting. Witness testimony clearly indicates that the Sheriff has the final say as it relates to the Department's budget and that the Undersheriff "deals" with the budget.

Captain Woods also testified that he has no role or responsibility as it relates to collective bargaining for the County and the Employers did not present any evidence or testimony to the contrary. However, the Jail Administrator admitted that he has on occasion answered employee grievances at the first step at the direction of the Sheriff.

Discussion and Conclusions of Law:

Among the many rights guaranteed to public employees by Section 9 of PERA, is the right to bargain collectively with their public employers through representatives of their own free choice. Accordingly, as we so often state in representation cases, our starting premise of any decision in a representation proceeding must be the reaffirmation that the fundamental function of the adoption of PERA in 1965 was to recognize and codify the right of public employees to designate an exclusive bargaining agent through which their employer must deal with the workforce collectively, rather than individually. See *Three Rivers Community Schools*, 28 MPER 65 (2015); *City of Detroit*, 23 MPER 94 (2010); See also MCL 423.209 & 423.211. This Commission is "the state agency specially empowered to protect employees' rights." *Ottawa Co v Jaklinski*, 423 Mich 1, 24 n 10 (1985). We acknowledge and accept that PERA, as adopted, did not codify rights of employers or of labor unions, other than as derivative of employee rights. Rather, the Act placed restrictions on the conduct of employers and unions in furtherance of the paramount statutory right of employees to collectively designate an exclusive bargaining agent. *Leelanau Co*, 24 MPER 18 (2011); *City of Detroit*, 23 MPER 94 (2010); *Oakland Co & Oakland Co Sheriff*, 20 MPER 63 (2007); *aff'd* 282 Mich App 266 (2009), *lv den* 483 Mich 1133 (2009).

While a representation matter is treated as a non-adversarial proceeding, to the extent that there is a burden of proof, it falls upon the party that is attempting to deny the right to be represented for purposes of collective bargaining to an employee covered by PERA. It is up to that party, in this case the Employer, to present evidence that inclusion of the position would be improper under the Act. *Lake Co and Lake Co Sheriff*, 1999 MERC Lab Op 107; *Antrim Kalkaska Cmty Mental Health*, 1998 MERC Lab Op 11, 15.

Presently, the Sheriff's Department has four individuals that are unrepresented for purposes of collective bargaining: the Sheriff, the Undersheriff, the Jail Administrator and the Jail Lieutenant. With the exception of the Jail Lieutenant, the other three positions are either executive or claimed as executive by the Employers. The Employers do not contest that there exists a

community of interest between the two petitioned for positions. Rather, as stated above, the Employers argue that, should we determine that the Jail Administrator is exempt from collective bargaining because it is an executive position, this petition must then be dismissed because the Commission does not recognize a one-person bargaining unit. *Village of Centreville*, 1993 MERC Lab Op 71.

It has long been our approach when dealing with supervisory units to consider those units all-inclusive and to include all levels of supervision up to the employer's executive positions. See *Lake Co and Lake Co Sheriff*, supra. While we have long recognized the right of supervisors to organize, we also understand that there is a "level at which organization must end." See *Hillsdale Cmty Sch*, 1968 MERC Lab Op 859, enf'd 24 Mich 36 (1970). In affirmation of that understanding, the Supreme Court, in *Grandville Mun Exec Ass'n v Grandville*, 453 Mich 428, 439-440 (1996), approved our longstanding policy of excluding from collective bargaining as "executives" those managerial employees in the public sector whose responsibilities are so intrinsically connected to the determination of their employer's policies that including them in collective bargaining units would impede, rather than further, the purposes of PERA.

On remand, in *City of Grandville*, 1997 MERC Lab Op 140, we reaffirmed the following definition of an executive that we had initially set forth in *City of Detroit (Police Dep't)*, 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 a statutory or charter provision, 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.

Here, the Employers argue that the Jail Administrator is the policy making head of a major department and/or is an executive position pursuant to state statute.

When faced with the question whether a particular position is an executive, we are concerned with the scope of its responsibilities, the extent of its authority, and the interchangeability of its functions with other executives. *Carman-Ainsworth Cmty Sch*, 16 MPER 28 (2003). Within these categories, we consider factors such as the number of executive positions relative to the size of the organization, the extent of budget responsibilities, responsibility for preparation of departmental rules and regulations, the degree of interchangeability of functions between the employee and his or her immediate supervisor, and the degree of participation in labor relations or the formulation of collective bargaining policy. *Muskegon Co Prof'l Command Ass'n v Muskegon Co (Sheriffs Dep't)*, 186 Mich App 365 (1990); *Detroit v Foreman's Ass'n*, 109 Mich

App 141 (1981); *Arenac Co*, 2001 MERC Lab 208; *City of Detroit (Police Dep't)*, 1996 MERC Lab Op 84.

We apply the executive exclusion cautiously so as to fulfill PERA's purpose of providing employees with an opportunity to be represented and bargain collectively. *Lansing Cmty Coll*, 2000 MERC Lab Op 99, 103. See also *Pontiac Sch Dist*, 1997 MERC Lab Op 173; *City of Saginaw (City Attorney)*, 1991 MERC Lab Op 253. It is well established that simply delegating executive level duties among various employees will not mandate that we find additional exclusions from a bargaining unit to be justified. *Lake Co & Lake Co Sheriff*, supra; *Ingham Co Rd Comm*, 1995 MERC Lab Op 306, 312; *Monroe Co Probate Ct*, 1990 MERC Lab Op 880, 884.

While we have on occasion had the opportunity to consider a jail administrator's coverage under the Act as well as its proper placement in a particular unit, we have never found the position of jail administrator to be an executive and, therefore, exempt from collective bargaining.⁴ In *Clinton County Board of Supervisors (County Sheriff)*, 1986 MERC Lab Op 139, we found that the employer committed an unfair labor practice when it refused to bargain with the union representing the supervisory unit over the jail administrator's wages, hours, and employment conditions. Faced with a factual situation similar to the present, we concluded that the position's duties and responsibilities did not exclude the position from the unit as an executive. In *County of Muskegon (Sheriff Department)*, 1989 MERC Lab Op 74, we ordered an election for a unit comprised of two captains, one in charge of enforcement and operations and the other in the position of jail administrator. In *Huron County* 1996 MERC Lab Op 62, we granted the union's request to create a separate supervisory unit consisting of sergeants and the jail administrator. In *Ogemaw Co and Ogemaw Co Sheriff*, 1997 MERC Lab Op 58, we granted an employer's unit clarification petition to remove a jail administrator from a nonsupervisory unit based on the position's supervisory status, despite a long history of including the position in the unit.

Addressing the Employers' argument that the Jail Administrator is the policy making head of a major department, we do not dispute that the County and the Sheriff are co-employers. It is from this starting point that the Employers argue that the Jail Division is a major department of the Sheriff's Department by nature of the size of its budget and number of employees relative to the Department and the County as a whole. While it is undisputed that the Jail Administrator exercises great control over the Jail Division and that the Sheriff has delegated the same to him, the record clearly indicates that the Jail Administrator's actions are still subject to the ultimate approval of the Sheriff and/or the Undersheriff. Moreover, while we do not dispute the Jail Division's size relative to the Department, we cannot ignore the fact that the Department as a whole, inclusive of the Corrections Division, is still a small department consisting of approximately fifty (50) or so employees, including the Sheriff, Undersheriff, and the two positions at issue in this petition. The Employers already have two executive positions and now seeks to add a third. In *Lake Co & Lake Co Sheriff*, supra, we declined to extend to the employer

⁴ We must note that, despite this declaration, there is one representation proceeding, *Wayne County Sheriff Department*, 1972 MERC Lab Op 103, where, in a situation not relevant to resolution of the petition, we accepted the parties stipulation that the Jail Administrator and several other positions, including various other sub-department directors, were excluded from the unit as executive employees.

a third executive position in addition to the sheriff and undersheriff in a department that was comprised of almost 40 employees. See also *Wyoming Police Dept*, 1985 MERC Lab Op 84 (third-level position of captain was included in a supervisory police unit in a department totaling 72 sworn personnel, where the chief and deputy chief of police had been already excluded as executive employees). Here, given the total size of the Department and the scope of the Jail Administrator's responsibilities relative to the oversight and ultimate control of the Sheriff, we do not find that the Jail Administrator position, as the head of the Jail Division, qualifies as an additional excluded executive employee.

The Employers, in support of their position that the Jail Administrator is an executive position pursuant to state statute, point to the State's Corrections Code, Public Act 232 of 1953 (Act 232), explaining in its post-hearing brief:

Operating a County Jail is a statutorily mandated function of the elected County Sheriff co-Employer... By statute such County Jails are also subject to regulation by the State of Michigan Department of Corrections... This law expressly provides that both the Sheriff and "the jail administrator" are subject to the supervision and inspection of the State Department of Corrections' standards and as to record-keeping obligations required by the State, and these statutes also provide criminal misdemeanor sanctions for violations.

The Employers proceed to list several direct obligations for the Jail Administrator set forth under the Administrative Rules promulgated by the State Department of Corrections under authority granted by Act 232. Moreover, further buttressing their argument, the Employers assert that the Jail Administrator has direct access to the Sheriff and the County's Board of Commissioners and further, that the Jail Administrator does not need to "go through the Undersheriff or any other person as to his Division's [Jail Division] policies and issues." Likewise, the Employers also stress the Jail Administrator's duty to make presentations to the County's Jail Commission regarding the jail's status as well as requests for funding.

The preceding notwithstanding, and in consideration of the fact that we have never found a Jail Administrator to be an executive before, a review of Act 232 and the various rules cited by the Employers does not convince us that Act 232 should be the basis on which to conclude that the Jail Administrator is an executive position. In our opinion, Act 232 and those rules do not bestow upon the Jail Administrator a sufficient degree of autonomy similar to the level found in the positions of sheriff, undersheriff, city assessor, city treasurer, city clerk, or any of the other myriad of positions that we consider as executive positions by nature of statute or charter. Furthermore, we note that the Jail Administrator does not have direct access to and/or the ability to influence the County's governing body. While the record indicates that the Jail Administrator has direct access to the Jail Committee, this access is direct only in so far as he reports on the status of the jail and is allowed to make budgetary requests only after approval of the Sheriff and/or Undersheriff.

Under the facts before us in this matter and for the reasons set forth above, we reject the Employers' argument that the position of Jail Administrator is an executive position that should be precluded from collective bargaining under the Act. We recognize that, in making this decision, we are ordering that an election be held that could result in the formation of a fifth bargaining unit within an already small department. Also, we note that if this issue were before us under different circumstances, i.e., whether this position and the Lieutenant's position were sought for inclusion in the already existing command officers' unit, we might prefer the positions' inclusion in that unit. This is so given our rationale in applying the long-standing principle of *Hotel Olds*, 333 Mich 382 (1952), to constitute the largest unit of employees sharing a community of interest to minimize the fragmentation of units. Although the POAM corrections command unit might be the most appropriate unit in which to include these positions, POAM and the Employers have both agreed to exclude captains and lieutenants. Accordingly, and as we restated in *Wayne Co Cmty Coll Dist*, 19 MPER 72 (2006), it is our policy, whenever possible, to avoid leaving positions unrepresented, especially isolated ones.

We have considered all other arguments put forth by the parties and conclude that they do not warrant any change in our conclusions. In accord with our findings, we issue the following order:

ORDER DIRECTING ELECTION

We hereby direct an election in the unit identified in the petition as "Corrections Lieutenant and Captain", which we find appropriate for collective bargaining purposes within the meaning of Section 13 of PERA.

The employees actively employed in the above classifications as of the date of this Order may vote pursuant to the attached Direction of Election on whether they wish to be represented for purposes of collective bargaining by the Police Officers Labor Council or by no union.

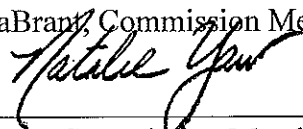
MICHIGAN EMPLOYMENT RELATIONS COMMISSION



Edward D. Callaghan, Commission Chair



Robert S. LaBrant, Commission Member



Natalie P. Yaw, Commission Member

Issued: **JUN 07 2019**

DIRECTION OF ELECTION

IT IS HEREBY ORDERED THAT AN ELECTION BY SECRET BALLOT SHALL BE CONDUCTED AMONG THE EMPLOYEES WITHIN THE UNIT OR UNITS FOUND TO BE APPROPRIATE IN THE COMMISSION'S DECISION ON THIS MATTER. THE CHOICES ON THE BALLOTS SHALL BE AS SET FORTH IN THE COMMISSION'S DECISION.

ELIGIBLE TO VOTE ARE THOSE EMPLOYEES DESIGNATED IN THE ORDER DIRECTING ELECTION.

INELIGIBLE TO VOTE ARE EMPLOYEES WHO HAVE QUIT OR BEEN DISCHARGED FOR CAUSE, AND WHO HAVE NOT BEEN REHIRED OR REINSTATED BEFORE THE ELECTION DATE.

IT IS FURTHER ORDERED THAT THE EMPLOYER SHALL PREPARE AN ELIGIBILITY LIST IN ALPHABETICAL ORDER, CONTAINING ELIGIBLE VOTERS' NAMES AND ADDRESSES IN ACCORDANCE WITH THE ABOVE DESCRIPTION AND SUBMIT COPIES OF SUCH LIST FORTHWITH TO THE EMPLOYMENT RELATIONS COMMISSION AND TO THE OTHER PARTIES.

IT IS FURTHER ORDERED THAT THE ELECTION SHALL BE CONDUCTED BY MAIL BALLOT AT SUCH TIME AND DATE AS A COMMISSION AGENT SHALL DETERMINE.

IT IS FURTHER ORDERED THAT THE EMPLOYER SHALL CAUSE TO BE POSTED IN PROMINENT PLACES IN AND ABOUT THE PREMISES, SAMPLE BALLOTS AND NOTICES OF ELECTION (FURNISHED BY THE COMMISSION), SETTING FORTH THE TIME, DATE, AND PLACE OF THE ELECTION AT LEAST FIVE (5) DAYS PRIOR TO SAID ELECTION.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION