

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF REPRESENTATION

In the Matter of

BOROUGH OF LAVALLETTE,

Public Employer,

-and-

DOCKET NO. RO-82-110

SUPERIOR OFFICER'S ASSOCIATION
OF LAVALLETTE,

Petitioner.

SYNOPSIS

The Director of Representation, in agreement with the Hearing Officer, finds that the Borough's Police Chief and Captain are not managerial executives, and may constitute an appropriate unit for collective negotiations. The record established at the investigatory hearing reveals that the Borough Council exercises significant administrative control of the Police Department, and neither of the disputed employees formulate policies and practices or direct the effectuation of management policies and practices.

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Appearances:

For the Public Employer
Sim, Sinn, Gunning & Fitzsimmons, attorneys
(Steven A. Pardes of counsel)

For the Petitioner
Stephen A. Pepe, attorney

DECISION AND DIRECTION OF ELECTION

On November 12, 1981, the Superior Officers Association of Lavallette ("Association") filed a Petition for Certification of Public Employee Representative with the Public Employment Relations Commission ("Commission"), ^{1/} seeking to represent a unit consisting of the Chief of Police and the Captain of Police of the Borough of Lavallette ("Borough"). The Borough disagreed

1/ Although the Hearing Officer indicates that the Petition was filed on November 12, 1981, the only petition contained in the file indicates that it was received on November 3, 1981. The discrepancy appears to be a result of an inadvertent misplacement of the originally filed Petition, and a subsequently filed duplicate.

with the request for a negotiations unit and raised the claim that the employees were managerial executives.

Pursuant to a Notice of Hearing issued December 22, 1981, a hearing was held before Commission Hearing Officer Judith E. Mollinger, on February 10, 1982. At the hearing, all the parties were given an opportunity to examine and cross-examine witnesses, to present evidence and to argue orally. Thereafter, on August 16, 1982, the Hearing Officer issued her Report and Recommendations, finding that the petitioned-for unit is an appropriate collective negotiations unit and recommending that an election be directed to determine whether the petitioned-for employees desire to be represented by the Superior Officers Association of Lavallete. A copy of the Hearing Officers Report and Recommendations is attached hereto and made a part hereof. No exceptions have been filed to the Hearing Officer's Report and Recommendations. The undersigned has considered the entire record herein, including the Hearing Officer's Report and Recommendations, the transcript, and the exhibits, and on the basis thereof finds and determines as follows:

1. The Borough of Lavallete is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), is the employer of the employees who are the subject of this proceeding and is subject to the provisions of the Act.

2. The Superior Officers Association of Lavallete is a public employee representative within the meaning of the Act, and is subject to its provisions.

3. The Association seeks to represent a unit consisting of the Chief of Police and the Police Captain. The Association is neither a recognized nor certified employee representative at the present time. The employees are not currently represented for collective negotiations purposes.

4. The Borough argued before the Hearing Officer against the formation of the proposed unit, contending that both the Chief of Police and Police Captain are managerial executives within the meaning of the Act and therefore not public employees entitled to collective negotiations rights under the Act. Alternatively, the Borough argued that even if only the Chief of Police were found to be a managerial executive, the formation of a unit limited to one employee is prohibited. ^{2/}

5. The Hearing Officer found that the Borough's Mayor and Council are vested with complete authority to hire and fire police employees, set the budget and control the operation of the Borough Police Department. The budget for the Police Department is set by the Borough Police Committee and Council. The Police Chief's duties require him to "carry out policies, procedures, directives, etc., as instructed by the Chairman of the Police Committee or in his absence, the other members of the Police Committee." The Captain position falls immediately below the Chief of Police in the Police Department hierarchy and his duties relate principally to criminal investigations, crime detection and arrest.

^{2/} Neither party disputed the appropriateness of the defined unit in the event that public employee status was found for both the Chief of Police and the Police Captain.

6. N.J.S.A. 34:13A-5.3 excludes managerial executives from the protections and rights afforded by the Act to public employees. Section 13A-3(f) defines managerial executives as:

... persons who formulate policies and practices, and persons who are charged with the responsibility of directing the effectuation of such management policies and practices, except that in a school district this term shall include only the superintendent or other chief administrator, and the assistant superintendent of the district.

In In re Borough of Montvale, P.E.R.C. No. 81-52, 6 NJPER 507 (¶ 11259 1980), aff'g D.R. No. 80-32, 6 NJPER 198 (¶ 11097 1980), the Commission endorsed certain guidelines for determining whether an employee is a managerial executive within the meaning of the above definition. The Commission stated:

A person formulates policies when he develops a particular set of objectives designed to further the mission of the governmental unit and when he selects a course of action from among available alternatives. A person directs the effectuation of policy when he is charged with developing the methods, means, and extent of reaching a policy objective and thus oversees or coordinates policy implementation by line supervisors. Simply put, a managerial executive must possess and exercise a level of authority and independent judgment sufficient to affect broadly the organization's purpose or its means of effectuation of these purposes. Whether or not an employee possesses this level of authority may generally be determined by focusing on the interplay of three factors: (1) the hierarchy; (2) his functions and responsibilities; and (3) the extent of discretion he exercises.

6 NJPER at 508, 509.

Based upon an application of the above principles, the Commission concluded in Montvale that the chief of police was a supervisor but not a managerial executive within the meaning of the Act. This result was based on the finding that formulation and implementation of policy for the police department was essentially exercised by the police committee.

In accordance with Montvale, the undersigned focuses primarily upon "(1) the relative position of [the] employee in his employer's hierarchy; (2) his functions and responsibilities; and (3) the extent of discretion he exercises," in determining whether the questioned employee "possess[es] and exercise[s] a level of authority and independent judgment sufficient to affect broadly the organization's purposes or its means of effectuation of these purposes." In re City of Jersey City, D.R. NO. 80-36, 6 NJPER 278 (¶ 11132 1980); In re Essex Cty. Welfare Bd., D.R. No. 81-5, 6 NJPER 424 (¶ 11213 1980); In re City of Newark, D.R. No. 82-18, 7 NJPER 640 (¶ 12288 1981).

In this case, the record reveals that under the hierarchy of the Borough, the Chief of Police and the Police Captain are exceeded by the Mayor, the Borough Council and the Police Committee. The Chief's duties relate primarily to the police functions of crime detection, apprehension and arrest of wanted persons, investigation of complaints and other related duties. The Captain's duties relate to criminal investigations, crime detection and arrests. The Mayor and Council retain complete authority to hire

and fire employees, set and control the operation of the Borough Police Department. Neither the Police Chief nor the Captain participate in any labor negotiations. Police Department expenditures are strictly monitored by the Council Finance Committee. The power to discipline Police Department personnel rests exclusively with the Borough Council. The Police Committee has control and responsibility for the day-to-day direction of police personnel, shift assignments, the number of men assigned per shift, lunch and breaktime rules, work hours, vacation schedules, overtime schedules and approval of bulk overtime, assignment of police vehicles to police officers and civilians, and maintenance of personnel files. Although the Chief of Police functions as the third step of the grievance procedure contained in the rank-and-file (PBA) contract, the record indicates that the Chief has never resolved disputes without consultation with the Police Committee and/or the Borough Council.

Given the above, the undersigned cannot conclude that the Chief of Police and the Police Captain exercise a level of authority and independent judgment sufficient to affect broadly the Police Department's purposes or its means of effectuating these purposes. Accordingly, the undersigned adopts the Hearing Officer's recommendation that the Chief of Police and the Police Captain are not managerial executives but rather are public employees who may constitute a separate and appropriate negotiations unit. Therefore, the undersigned finds that the appropriate unit for collective negotiations is: The Chief of Police and Police

Captain, excluding managerial executives, confidential employees, craft employees, professional employees, supervisors within the meaning of the Act.

Pursuant to N.J.A.C. 19:11-2.6(b)(3), the undersigned directs that the election shall be conducted by mail ballot. The election shall be commenced no later than thirty (30) days from the date set forth below.

Those eligible to vote are the employees set forth above who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation, or temporarily laid off, including those in military service. Ineligible to vote are employees who resigned or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

Pursuant to N.J.A.C. 19:11-9.6, the Borough is directed to file with the undersigned and with the Superior Officers Association of Lavallette, an eligibility list consisting of an alphabetical listing of the names of all eligible voters together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by the undersigned no later than ten (10) days prior to the date established for ballot issuance. A copy of the eligibility list shall be simultaneously filed with the Superior Officers Association of Lavallette with statements of service to the undersigned. The

undersigned shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

Those eligible to vote shall vote on whether they wish to be represented for purposes of collective negotiations by the Superior Officers Association of Lavallette.

The exclusive representative, if any shall be determined by the majority of valid ballots cast by the employees voting in the election. The election shall be conducted in accordance with the provisions of the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: October 13, 1982
Trenton, New Jersey

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SYNOPSIS

A Hearing Officer of the Public Employment Relations Commission recommends that a representation election be held in a unit comprised of the Lavallette Chief of Police and Captain. Citing In re Montvale, D.R. No. 82-32, 6 NJPER 198 (¶ 11097 1980), she concludes that the Chief and Captain are not managerial executives within the meaning of the New Jersey Employer-Employee Relations Act, and constitute an appropriate unit.

A Hearing Officer's Report and Recommendations is not a final administrative determination of the Public Employment Relations Commission. The report is submitted to the Director of Representation who reviews the Report, any exceptions thereto filed by the parties and the record, and issues a decision which may adopt, reject or modify the Hearing Officer's findings of fact and/or conclusions of law. The Director's decision is binding upon the parties unless a request for review is filed before the Commission.

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For the Public Employer
Sim, Sinn, Gunning & Fitzsimmons, Esqs.
(Steven A. Pardes, of Counsel)

For the Petitioner
Stephen A. Pepe, Esq.

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

On November 12, 1981, a Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission ("Commission") by the Superior Officers Association of Lavallette ("Association") seeking a unit comprised of the Police Chief and the Police Captain employed by the Borough of Lavallette ("Borough") (C-1). ^{1/}

In its response filed November 23, 1981, the Borough objected to the unit comprised of the Police Chief and Captain as they are managerial executives as defined by the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act") and therefore are excluded from its protections and benefits. In the alternative, the

^{1/} Commission exhibits will be designated as "(C-)", Joint exhibits "(J-)", Association exhibits "(P-)", and Employer exhibits "(E-)".

Borough contends that if the Captain is found not to be a managerial executive, a unit of one would not be an appropriate unit.

Pursuant to a Notice of Hearing issued December 22, 1981, by the Director of Representation, a hearing was held February 10, 1982, at which the parties were given the opportunity to examine and cross-examine witnesses and to present evidence. The parties waived their rights to argue orally and to file post-hearing briefs. The record was closed at the end of the hearing, February 10, 1982.

The issue is whether the proposed unit is an appropriate unit within the meaning of the Act.

FINDINGS OF FACT

Based on the entire record in these proceedings, the Hearing Officer makes the following findings of fact:

1. The Borough of Lavallette is a public employer within the meaning of the Act, is subject to its provisions and is the employer of the employees who are the subject of this proceeding (TR 5). ^{2/}

2. The Superior Officers Association of Lavallette is a public employee organization within the meaning of the Act and is subject to its provisions.

3. The Association asserts that the Chief and Captain are employees within the meaning of the Act and these titles together constitute an appropriate unit.

4. The Borough disputes the proposed unit because the employees are managerial executives within the meaning of the Act and therefore the proposed unit is inappropriate.

2/ Transcript references to February 10, 1982 are indicated as "(TR)".

5. The Borough (population of approximately 2100) functions under a Mayor and Council form of government, all elected officials who serve on a part-time basis. Council members serve for a three-year term during which each may be appointed by the Mayor to one of several committees for a one-year term as a member or as a chairperson (TR 117). Committee Chairpersons serve as liaison between the Mayor and Council and the various Borough departments which they oversee. The Police Committee oversees the general operation of the Borough Police Department, setting the budget, establishing policy, and promulgating rules and regulations (TR 8). The Police Committee Chairperson meets regularly, often weekly, with the Police Chief or Captain to discuss department operations, problems, the budget and planning (TR 8). Charles Kogge, who was the Committee Chairman during 1981, is currently serving as Co-Chairman with Harold Paul in a one-year term which began January 1, 1982 (TR 8).

6. Pursuant to the Borough ordinance which establishes the Police Department (J-1), the Police Chief is designated "as the active executive officer of the Police department" (J-1, section 57-2); the Captain is designated therein as the "Assistant to the Chief of Police" and serves "as the active executive officer" in the Chief's absence (J-1, section 52-3).

The department consists of 14 sworn police officers including the Chief, the Captain and 4 Sergeants (TR 117). Other Borough employees serve as dispatchers, part-time matrons, crossing guards and special officers within the Police Department.

7. The Mayor and Council are vested with complete authority to hire and fire employees, set the budget and control the operation of the Borough Police Department (TR 15). The Police Committee Chairperson takes a regular and active role in the daily operation of the police dispatch activities (TR 13, 192; P-53).

8. The budget for the police department is set by the Police Committee and Council (TR 15). Each year, the Chief submits to the Police Committee Chairperson, a detailed budget request form which outlines the anticipated expenses for the coming year (TR 26). This initial budget proposal is reviewed by the Committee Chairperson who has authority to reject, accept or revise the entire proposal or any substantial part, without consulting the Police Chief (TR 56, 126, 175). For fiscal year 81-82, the police budget was cut by Borough Council without discussion with the Police Committee or the Chief (TR 127).

9. Police Officers and Sergeants are included within a collective negotiations unit represented by the Policemen's Benevolent Association ("PBA") (TR 114). Borough Council is represented during collective negotiations with the PBA by a negotiating team comprised of several Council members. Neither the Police Chief nor the Captain are members of this negotiating team nor do they participate in any team meetings concerning contract negotiations (TR 44). On one occasion during the period of contract negotiations with the PBA, Council asked the Captain to supply it with information regarding Police Officers salaries and years of service and to cost out, for the one-year period,

the PBA proposed raises (TR 153). This task amounted to a simple procedure of adding together for each officer the base salary and longevity raise to determine a final salary amount (TR 154). On one other occasion the Captain was asked by the Council whether a certain proposal would require overtime expenditures (TR 154).

10. Expenditures in all Borough departments are strictly monitored by the Finance Department and Councilman Jerry Skinner of the Council Finance Committee (TR 126). Purchases by any department for service, supplies or equipment in excess of \$25 must be preauthorized by securing a signed purchased order from the respective Committee Chairperson (TR 57, 130). For purchases up to and including \$25, which do not require preauthorization, Council imposes other limits on expenditures by restricting employee discretion and allowing only purchases for "line items" already approved in the departments' budget for the year (TR 57).

Both the Police Chief and Captain are strictly held to these procedures by the Police Committee (TR 57; P-23A, P-24); little discretion is allowed for expenditures necessary to the operation of the department including these expenses necessary for car repairs (P-28), equipment (TR 63), or office supplies, including typewriter ribbons at \$1.83 each (TR 161). Failure by the Captain to follow these procedures for an emergency purchase of tires for the department jeep, resulted in his oral discipline at a public Council meeting (TR 161).

11. Regular and special police and other personnel in the police department are hired by the Borough Council or Police Committee

Chairperson (TR 13, 46-47; P-6) without input from the Chief or Captain (TR 147) and sometimes contrary to recommendations they may have made (TR 17, 147). The Chief has no power to hire or promote or fill existing vacancies (TR 47-49).

Applicants for current or future department openings are requested to complete an application form and are then interviewed by either the Chief or Captain (TR 14, 179). All applications are retained in department files for review if job openings occur. When Council determines a position is to be filled (TR 181), the Chief or Captain review all applications of eligibles (those whose application forms indicate the candidate meets the minimum job requirements and is currently available for employment) and then forwards them to the Police Committee Chairperson and Council for review (TR 182). When the hiring decision is made by Borough Council (TR 183), the Committee Chairperson notifies both the Police Chief and Borough Treasurer (TR 46; P-46); the Chief then contacts the person, tells them of their selection and elicits the person's acceptance or rejection of the job offer (TR 138). This procedure is followed for hiring all Police department, civilian and sworn personnel (TR 47-53; P-17).

The number and identification of individuals to be promoted are determined exclusively by Borough Council without input or recommendation from the Police Chief (TR 46; P-6). This is clearly illustrated by the recent Council decision to appoint a fourth Sergeant in the department and subsequent notification to the Police Chief of the person selected to fill this position (TR 17, 47, 142, 178).

12. The power to discipline police department personnel rests solely with Council. The Chief has been and may be required to investigate personnel activities at the Council's request and make periodic reports (TR 10-12, 37; P-9) but he is not authorized to impose discipline for rule infractions without conferring with the Police Committee (TR 37, 177-178, 187; P-11) except to orally reprimand Police Officers for rule infractions committed in the performance in their duties connected with criminal investigations (TR 167-170). In one recent incident, the Chief attempted to recommend the dismissal of a Police Officer for a serious rule infraction (TR 171, 187). This recommendation is pending Council action. Additionally, neither the Chief nor Captain have any training or evaluative functions vis-a-vis the job performance of Police Officers.

13. The Police Committee, through its Chairperson, has control and responsibility for the day-to-day direction of Police personnel, including the Chief and Captain (TR 44; P-40), for all matters including the following: shift assignments (TR 20, 22; P-1-E, J); the number of men assigned per shift (TR 23, 30; P-5); daily duty assignments (TR 27), including the direction to the Captain to conduct dog canvas (P-4); lunch and break time rules (TR 53; P-7); where and when breaks and lunch may be taken (TR 72; P-30); work hours (TR 72; P-3); vacation schedules (TR 25; P-1, P-8B); overtime schedules and approval of overtime (TR 17, 25, 26, 166; P-2); assignment of police vehicles to Police Officers and civilians (TR 32, 33, 73, 86, 96; P-6, P-34, P-36, P-41, P-46); and maintenance of personnel files (TR 87; P-13).

The Police Committee monitors arrest and summons activity by requiring monthly reports from the Chief (P-39, P-42; TR 87) and immediate personal telephone calls to Council in the event of an emergency or major disturbance (TR 92; P-50).

14. Criminal apprehension and law enforcement procedures have been promulgated by the Police Committee (TR 92; P-50), including periodic reports reporting investigations initiated by the Committee, or Borough Council (TR 99-103; P-46), and those initiated as the result of matters reported by individual citizens. Investigations of intra-department matters are monitored by the Committee and Council regularly (TR 105-107).

15. Work rules established by the Police Training Commission (TR 41), as modified by the Chief for local use, have not been implemented pending approval and adoption by Council (TR 16, 37). Department rules and regulations established by the Police Committee (TR 13) currently include detailed guidelines for a dress code (TR 8, 41, 66, 76; P-11), and rules governing establishments approved for lunch and breaks for Police Officers (TR 114-117, 133-139; P-33).

In a 1981 memo (P-52) the then Police Committee Chairman Kogge, outlined the duties of the Chief which require him to "carry out policies, procedures, directives, etc., as instructed by the Chairman of the Police Committee or in his absence, the other member of the Police Committee" (P-52).

16. Included in the contract between the PBA and the Borough, is a grievance procedure. At the third step of this procedure, the Chief is vested with responsibility to attempt to resolve disputes but has not done so without consultation with the Police Committee and/or

Council (TR 107).

17. The Chief's duties relate primarily to the police functions of crime detection, apprehension and arrest of wanted persons, investigation of complaints and other related duties (TR 185). The Captain's duties relate to criminal investigations, crime detection and arrests (TR 141).

ANALYSIS

I - Managerial Executives

N.J.S.A. 34:13A-5.3 excludes managerial executives from the protections and rights afforded by the Act to public employees. Section 13A-3(f), added in 1974, defines managerial executives as those "persons who formulate management policies and practices, and persons who are charged with the responsibility of directing the effectuation of such management policies and practices, except that in any school district this term shall include only the superintendent or other chief administrator, and the assistant superintendent of the district." ^{3/}

The Director of Representation applied this definition of managerial executive in In re Borough of Montvale, D.R. No. 82-32, 6 NJPER 198 (¶ 11097 1980), affm'd P.E.R.C. No. 81-52, 6 NJPER 507 (¶ 11259 1980) where he established guidelines for determining whether an employee is a managerial executive within the meaning of the Act. In affirming the Director, the Commission determined that an employee is a managerial executive when he/she formulates policy or directs its

^{3/} The Act, as amended, Law 1968, Chap. 303 §4 effective July 1, 1968; Law 1974, § 123, subsection 2.

effectuation. The Commission held that

A person formulates policies when he develops a particular set of objectives designed to further the mission of the governmental unit and when he selects a course of action from among available alternatives. A person directs the effectuation of policy when he is charged with developing the methods, means, and extent of reaching a policy objective and thus oversees or coordinates policy implementation by line supervisors. Simply put, a managerial executive must possess and exercise a level of authority and independent judgment sufficient to affect broadly the organization's purposes or its means of effectuation of these purposes. Whether or not an employee possesses this level of authority may generally be determined by focusing on the interplay of three factors: (1) the relative position of that employee in his employer's hierarchy; (2) his functions and responsibilities; and (3) the extent of discretion he exercises.
6 NJPER at 508-509.

In Montvale, supra, the Director of Representation and the Commission found that the Chief of Police was a supervisor who performed a wide range of duties, but the Mayor and the Commissioner of Police exercised almost complete control over the Chief in the daily operation of the department. The Chief's recommendations in a variety of matters were not followed; he could not deploy personnel, plan duty or vacation schedules, assign overtime, conduct discipline investigations or discipline personnel. He played no role in formulation of policy.

Similarly, In re Borough of Avon, P.E.R.C. No. 78-21, 3 NJPER 373 (1977), the lifeguard captain was found to be a supervisor notwithstanding his responsibility to prepare the budget, promulgate certain rules and regulations, change work schedules, direct work on a day-to-day basis and in an emergency, hire additional guards. The Commission

in affirming the Hearing Examiner, said:

We agree that the term 'managerial executive' shall be narrowly construed and that the relevant National Labor Relations Board precedent as cited by the Hearing Examiner indicates that a wider range of discretion than that possessed by [captain] is needed. [He] was clearly a supervisor and in that capacity could be said to be effectuating management policy, but the Act clearly distinguishes managerial executives - excluded from coverage - from supervisors - eligible to be represented in an appropriate unit. At page 374.

In Avon, supra, the Hearing Examiner noted at Footnote 7 that the holding in Montvale, supra, did not require an employee to have final responsibility for decisions but that the title must meet the criteria established in Montvale, supra. ^{4/}

Following Montvale, supra, the Director consistently applied the same standards in similar situations. ^{5/}

The Commission, in Montvale, supra, Footnote 8, has indicated that good policy reasons generally exist for considering the chief law enforcement officer an essential member of the employer's management team; however, where a dispute exists as to who actually bears primary

^{4/} See State of New Jersey and Council of New Jersey State College Locals, D.R. No. 82-35, 8 NJPER 87 (¶ 13036 1982).

^{5/} See also City of Newark and Newark Superior Officers Association, D.R. No. 82-21, 7 NJPER 644 (¶ 12291 1981), in which the Director of Representation, in adopting the Hearing Officer's recommendations found that deputy chiefs in the Newark Fire Department were managerial executives because the size of the City's department dictated a need for various levels of managerial authority and the deputy chief closely exercised a level of authority and independent judgment with respect to policy formulation and effectuation distinguishable from the level of authority exercised by the lifeguard captain in Avon, supra, and the police chief in Montvale, supra. The Newark department consisted of 839 uniformed employees, 748 of which were actively engaged in fire fighting, plus 1 fire director, 1 fire chief, and 14 deputy chiefs, 6 of whom had administrative duties and 8 who acted as firefighters. Cf. East Brunswick and East Brunswick Policeman's Benevolent Association, Local 145, D.R. No. 82-42, 8 NJPER 187 (¶ 13080 1982).

responsibility for the employer's development of the means to accomplish the governmental mission, the Director of Representation and the Commission must examine the functional responsibilities of the disputed position very closely. Merely designating someone as Chief would not automatically result in a finding of managerial status. A case-by-case examination of the individual's actual role and functional responsibilities in the formulation of policy or the direction of its effectuation must be made before determining whether the position is managerial. Montvale, supra, at page 8.

These standards, established in Montvale, supra, apply to the instant dispute and require an examination of:

1. the specific functions and responsibilities of the Chief and Captain;
2. the relative position of these titles in the employer's organizational hierarchy; and
3. the extent of discretion accorded to the individuals in their employment.

As in Montvale, supra, neither the Chief nor the Captain in Lavallette formulate management policies or objectives and neither direct the effectuation of these policies in the Police Department. Neither participate in Department budget determinations or collective negotiations with the PBA. Neither has authority or discretion to deploy police officers, special officers, matrons or dispatchers; to purchase equipment except for a line item costing \$25 or less; to make duty assignments, shift assignments, vacation schedules; to promulgate work rules; to discipline employees or effectively recommend the same or to hire employees.

The Chief is directly subordinate to the Chairman of the Borough Council Police Committee, the Mayor and the Borough Council members, all of whom are part-time elected officials. The Chief, although involved in some capacity with several functions in the operation of the department, has very limited discretion, if any, in the functions of hiring, discipline, personnel assignment and deployment, promulgation of rules and the daily activities of the department. Any discretion he has is limited by the strict reporting procedures imposed by the Police Committee and Council and their high degree of involvement. Therefore, his role is ministerial and routine.

The Police Committee Chairman, the Mayor and other Council members, are intimately involved in the daily activities of the department concerning employee relations and police work. As evidenced in the record, Borough officials take an extensive role in the affairs of the department to the exclusion of the Chief.

The Chief does not participate directly or indirectly in the development of department objectives designed to further the mission of the department. He has no discretion in the effectuation of policy. These functions and responsibilities are vested primarily in the Police Committee and its Chairperson who gives direct orders and instructions to the Chief, closely scrutinizes any decisions of the Chief and often countermands or changes the Chief's recommendations. Any discretion the Chief has in the exercise of his duties relates to the police functions of criminal detection but it is also limited by Council through its detailed policies and procedures for arrests and summons, and by requirements for detailed reports and telephone calls regarding criminal investigations and emergency situations. As in Montvale, supra,

the Lavallette Police Chief's duties are routine and ministerial in nature. Therefore, I find that this position is not managerial.

The Captain, who is the Chief's subordinate, has even less responsibility than the Chief for policy determinations and the exercise of discretion in employee relations. Therefore, it follows, that this position is not managerial.

II - Conflict of Interest

In deciding the appropriateness of the unit proposed by the Association, it is necessary to determine whether a conflict of interest exists between the Chief and Captain which would dictate against the inclusion of both in the same collective negotiations unit.

The New Jersey Supreme Court in Board of Education of West Orange v Wilton, 57 N.J. 404 (1971) established the following principles for examining the nature of a conflict.

If performance of the obligations or powers delegated by the employer to a supervisory employee whose membership in the unit is sought creates an actual or potential substantial conflict between the interests of a particular supervisor and the other included employees, the community of interest required for inclusion of such supervisor is not present. 57 N.J. at 425.

* * *

While a conflict of interest which is de minimus or peripheral may in certain circumstances be tolerable, any conflict of greater substance must be deemed opposed to the public interest. 57 N.J. at 425-426. (emphasis in the original)

The Commission has adopted a policy with respect to quasi-military structures such as exists in the Borough of Lavallette Police

Department which provides that patrolmen and superiors be placed in separate units except in very small departments where the conflict of interest, if any, is de minimus.^{6/}

Applying these principles to the instant dispute, there is ample record evidence to demonstrate that there is no conflict of interest between the Chief and the Captain.

The Captain, although subordinate to the Chief in the department hierarchy, acts in the Chief's absence as the titular head of the department. The Captain has no greater authority than the Chief.

The Chief has no evaluative or other supervisory functions vis-a-vis the Captain. He does not have authority to hire, fire or discipline him; he has some limited authority within the detailed directives promulgated by the Police Committee to make duty assignments relating to police functions, i.e., arrests and criminal investigations.

The Captain, on occasion, receives direct orders from the Police Committee and Council members and is required to make reports directly to them.

Both the Chief and the Captain are authorized to implement these detailed directives and orders as they relate to Police Officers and Sergeants and are without discretion to modify orders. Neither has authority to hire, fire, discipline, deploy or schedule officers and sergeants.

It is evident that there is little, if any, conflict of interest between the Chief and the Captain which would dictate against

^{6/} In re City of Paterson, D.R. No. 78-23, 3 NJPER 385 (1977); In re Borough of South Plainfield, D.R. No. 78-18, 3 NJPER 349 (1977); In re City of Elizabeth, P.E.R.C. No. 71 (1972); In re City of Union City, P.E.R.C. No. 70 (1972); and In re City of Camden, P.E.R.C. No. 52 (1971).

a collective negotiations unit comprised of both positions.

Based on the foregoing, I find the proposed unit to be appropriate.

RECOMMENDATION

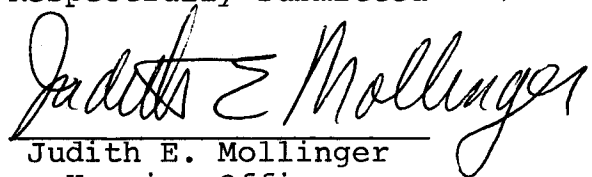
Based on the foregoing discussion, I recommend the following:

1. The positions of Chief of Police and Captain of Police in the Borough of Lavallette are not managerial executives within the meaning of the Act.

2. That the petitioned-for unit is an appropriate collective negotiations unit.

3. And that a yes/no secret ballot election be directed in the following negotiations unit wherein eligible voters shall vote as to whether they wish to be represented by the Petitioner. The appropriate unit shall be: The police Chief and the Captain excluding all other employees of the Borough of Lavallette.

Respectfully submitted ,


Judith E. Mollinger
Hearing Officer

DATED: August 16, 1982
Trenton, New Jersey