

D.R. NO. 89-9

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

In the Matter of

BOROUGH OF RIVERDALE,

Public Employer,

-and-

Docket No. RO-89-20

RIVERDALE SUPERIOR OFFICERS' ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation directs an election among the police captains and lieutenants employed by the Borough of Riverdale. The Director did not find, as the Borough contended, that the captain was a managerial executive employee within the meaning of the New Jersey Public Employer-Employee Relations Act.

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Appearances:

For the Public Employer
D'Angelo & Clemack, Esqs.
(Richard J. Clemack, of counsel)

For the Petitioner
Rick A. Garcia, Esq.

DECISION AND DIRECTION OF ELECTION

On September 8, 1988, the Riverdale Superior Officer's Association ("S.O.A.") filed a Petition for Certification of Public Employee Representative (Docket No. RO-89-20), supported by an adequate showing of interest, with the Public Employment Relations Commission ("Commission"). The S.O.A. seeks to represent all police Captains and Lieutenants employed by the Borough of Riverdale

("Borough").^{1/} The Borough does not consent to the conduct of a secret ballot election because it alleges that the Captain is a managerial executive within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), and may not, therefore, be included in a unit with the Lieutenant.

On September 30, 1988, a Commission staff agent conducted an informal investigatory conference pursuant to N.J.A.C. 19:11-2.2 and 2.6 in order to determine the relevant facts. It appears that there are no substantial and material factual issues which may more appropriately be resolved through the conduct of a formal hearing. See N.J.A.C. 19:11-2.6(b). Accordingly, the disposition of the Petition is properly based upon our administrative investigation. To date, the following facts appear.

The Riverdale police department consists of the Chief, the Captain, the Lieutenant, and 9 Sergeants and Patrol Officers. The Captain and Lieutenant are presently unrepresented. The Chief is the commander of the department, makes departmental policy and creates the department work schedule. The Captain also supervises the Detective Bureau, investigates crimes, and makes arrests. The

^{1/} On the Petition, the Riverdale Police Association was identified as the current majority representative. We notified the Riverdale Police Association of the filing of the Petition and of the scheduled investigatory conference. To date, we have received no correspondence from this organization nor did it send a representative to the conference. Based on this, we presume that the Riverdale Police Association has no interest in representing the employees who are the subject of this Petition.

Captain performs no administrative functions and does not effectuate policy. He does serve as acting chief in the Chief's absence.

ANALYSIS AND RECOMMENDATION

The Borough contends that the Captain is a managerial executive. Managerial executives do not have representation rights under the Act and may not be included in any unit for the purposes of collective negotiations.

The Act defines managerial executives as:

persons who formulate management policies and practices and persons who are charged with responsibility of directing the effectuation of such management policies and practices

N.J.S.A. 34:13A-3

In City of Jersey City, D.R. No. 85-22, 11 NJPER 341 (¶16124 1985), the Director of Representation held that a managerial executive does not have rights to organize, negotiate or have a majority representative negotiate on his or her behalf.

In Borough of Montvale, P.E.R.C. No. 81-52, 6 NJPER 507, 508-509 (¶11259 1980), 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 judgement 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 the employee in his employer's hierarchy; (2) his functions and responsibilities; and (3) the extent of discretion he exercises. 6 NJPER at 508, 509.

Thus, a managerial executive must be allowed to exercise substantial discretion independent of the employer's established policies and procedures.

In Bloomfield Township, P.E.R.C. No. 86-104, 12 NJPER 237 (¶17098 1986), the Commission found that managerial executives are employees primarily involved in the formulation of policy, as it pertains to developing objectives designed to further the governmental unit's mission.

Here, we find that the Captain is not a managerial executive. The Borough stated that the Captain does not formulate management policies and practices. Only the Chief possesses the policy making and implementing authority in the Borough's police department. It appears this authority is reserved exclusively to the Chief.

Although the Captain may use independent judgment in carrying out his responsibilities, the exercise of such independent judgment does not amount to policy formulation. The Borough argues that the Captain serves as Chief in the Chief's absence. However, in this capacity, his responsibilities are limited to enforcing the policies already formulated by the Chief. The Captain, when he is "acting" Chief, is not empowered to create new policy or to change how established policy is carried out.

Based on the foregoing, we find that the Borough's contention that the Captain is a managerial executive is not supported by the Captain's regular duties, responsibilities, or delegated authority. The facts support a finding that the Captain does not formulate management policies and practices and that the limited discretion he exercises in implementing department policies does not justify his exclusion from coverage under the Act. Accordingly, we direct that an election be conducted among the captains and lieutenants employed by the Riverdale Police Department.

We direct that an election be conducted among the employees described above, pursuant to N.J.A.C. 19:11-2.6(b)(3). The election shall be conducted 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 of this decision, including employees who did not work during that period because they were out ill, on vacation, temporarily laid off, or in military service. 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 are ineligible to vote.

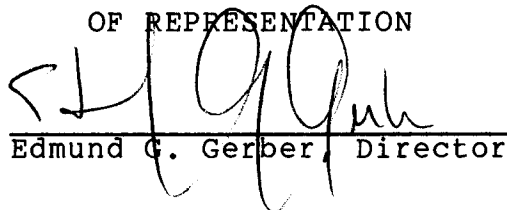
We direct the Public Employer to simultaneously file with us and with the Riverdale Superior Officers' Association an eligibility list consisting of an alphabetical listing of the names of all eligible voters together with their last known mailing addresses and job titles, pursuant to N.J.A.C. 19:11-9.6. The Public Employer shall

also file with me an accompanying proof of service. We must receive the eligibility list no later than ten (10) days prior to the date of the election. We 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 the purpose of collective negotiations by the Riverdale Superior Officers' Association, or no union.

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 Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Edmund G. Gerber, Director

DATED: December 29, 1988
Trenton, New Jersey