

D.R. NO. 92-16

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

In the Matter of

TOWNSHIP OF WILLINGBORO,

Public Employer,

-and-

Docket No. RO-92-46

LAW ENFORCEMENT SUPERVISORS'
ASSOCIATION (LESA),

Petitioner.

SYNOPSIS

The Director of Representation orders an election among police captains employed by the Township of Willingboro. The Director determines that the captains are eligible for inclusion in the existing unit of police sergeants and lieutenants represented by the Law Enforcement Supervisors Association.

The Director finds that the captains are not managerial executives within the meaning of the Act and that the Township had not provided enough facts showing that a "conflict of interest" exists in the petitioned-for unit, as described in Bd. of Ed. of West Orange v. Wilton, 57 N.J. 504 (1971).

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Appearances:

For the Public Employer
Kearns & Kearns, attorneys
(William John Kearns, Jr. of counsel)

For the Petitioner
Duane Sears, President

DECISION AND DIRECTION OF ELECTION

On September 17, 1991, the Law Enforcement Supervisors' Association ("LESA") filed a Petition for Certification of Public Employee Representative seeking to represent two police captains of the Township of Willingboro police department ("Township"). LESA later amended the petition to add the captains to an existing negotiations unit of police sergeants and lieutenants. The petition was accompanied by an adequate showing of interest. N.J.A.C. 19:11-1.2(8).

The Township opposes the petition. It asserts that the captains are "managerial executives" within the meaning of the Act and cannot be included in any negotiations unit. It also asserts

that if they are not managerial executives, a conflict of interest exists between the captains and other supervisory police officers, making their inclusion in the petitioned-for unit inappropriate.

On October 10, 1991, we mailed the parties a letter, asking about the asserted "managerial" responsibilities of the captains and about the conflict of interest they purportedly have with other superior officers.

On November 6 and 12, 1991, the parties filed responses.

Our investigation of the matters raised by the petition reveals these facts:

1. The Township and LESA have a collective negotiations agreement extending from January 1, 1988 to December 31, 1991. The recognition clause describes LESA as the exclusive representative for all "full-time sworn police sergeants or [sic] lieutenants...", and excluding, "the Chief of police, captains, police officers, special officers, dispatchers, animal control officers, school traffic guards and all other employees of the Township."

2. Section 5.4 of the negotiated grievance procedure in the LESA contract states that the "aggrieved person" shall verbally present the grievance to the "Division Commander" who "shall attempt to adjust the matter within three days...and shall render a decision in writing with copies to the Chief of Police and president of LESA."

If the grievant is dissatisfied with the "Division Commander" (no one disputes that it is a captain) decision, the

officer may pursue the grievance to the Chief, then to the Township manager, and ultimately, to binding arbitration.

3. The police department organizational chart shows that a patrol division captain and a criminal division captain report directly to the Chief. The six lieutenants report to the patrol division captain and the criminal division captain has charge of the detectives, evidence and property, the narcotics unit and internal affairs. The Township also employs about nine sergeants and fifty patrol officers.

4. On or about October 8, 1991, the petitioning captains issued their job descriptions to the Chief. The patrol captain, "subject to direction from a higher command...has direct control over all members and employees within his command, [including] patrol officers, special officers, traffic guards and animal control." The patrol captain is also responsible for the "direction and control of personnel...", and for "maintenance and discipline and moral [sic]...." "Where department discipline is necessary, a recommendation will be forwarded to the Chief of police."

The criminal division captain maintains records of his command, monitors use and maintenance of equipment, recommends disciplinary action to the Chief, prepares a budget "relative to the command", etc.

5. The captains substitute for the Chief when he is on vacation (for five weeks annually) or sick. The captains recently substituted for the Chief when he had knee surgery.

6. Substantive managerial decisions, like a change from fixed to rotating shifts, are made by the Chief after discussion with the Township manager. Policy and procedure changes are made in a like manner.

7. The captains, "do not have authority to make significant purchases." Purchases require approval of the Township manager and Township council.

8. Captains "may be called upon to provide the negotiating team with information needed to conduct negotiations." The Township manager normally conducts negotiations with the Solicitor's assistance.

The captains recently answered questions about staffing and assignment of traffic guards (who have a separate unit) in the Chief's absence.

One captain informed the traffic guards that an emergency communication system ("phonetree") "shall be maintained" and if the guards refused, they are subject to "disciplinary action." The Township maintains that the captain's directive is a "significant managerial decision."

9. The Township asserts that "ultimate responsibility in the police department is with the Chief of Police." Captains are "senior management" acting most like "deputy chiefs."

10. Captains may approve time off and compensatory time off, and authorize "corrections" in compensation of unit employee salaries.

11. The Chief "confers" with both captains on hiring, promotions, discipline and discharge. The criminal division captain reviews the files of candidates for promotion and recommends a candidate(s) to the Chief. The Township manager is the chief executive officer in this council-manager form of government and he or she makes the final employment decisions. Disciplinary measures are approved by the Chief.

12. The Township asserts that the captains supervise the lieutenants and sergeants and their inclusion in that unit "would destroy independent command responsibility."

On January 9, 1992, we issued a letter tentatively finding that the captains are not managerial executives, no conflict of interest warrants their exclusion from a superior officer unit, and the petitioned-for unit is appropriate. No responses were filed.

N.J.S.A. 34:13A-3(f) defines managerial executives as:

...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....

Managerial executives do not have the right to form, join or assist a majority representative, pursuant to N.J.S.A. 34:13A-5.3. City of Jersey City, D.R. No. 85-22, 11 NJPER 341 (¶16124 1985).

In Borough of Montvale, P.E.R.C. No. 81-52, 6 NJPER 507 (¶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 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 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).

The Commission narrowly construes the term "managerial executive" and determinations of managerial status are made on a case-by-case basis. Bor. of Avalon, P.E.R.C. No. 78-21, 3 NJPER 373 (1977).

The captains use independent judgment in carrying out their responsibilities, but they do not formulate policy. Although the captains substitute for the Chief, they are typically limited to the enforcement of the Chief's extant policies. Furthermore, the Township has asserted that substantive managerial decisions are made by the Chief after consulting the Township manager. The captains do not create new policy. See Bor. of Riverdale, D.R. No. 89-9, 15 NJPER 82 (¶20034 1988).

Captains do not have authority to make purchases and have little discretion in hiring, promotions and budgetary matters. Their role in the grievance process precedes both the Chief's and Township Manager's determinations and later, binding arbitration. At best, these responsibilities connote an attenuated managerial

position and fall short of our definition of a managerial executive. See Tp. of Morris, D.R. No. 92-3, 17 NJPER 462 (¶22219 1991).

Nor are captains directly involved with contract negotiations. That they "may" be called upon to provide information does not meet our need for specific facts illustrating their asserted contract responsibilities. See Tp. of Kearny, P.E.R.C. No. 89-55, 15 NJPER 10 (¶20002 1988).

Finally, I am not convinced that the captain's order regarding use of the "phonetree" is an exercise of managerial responsibility under the statutory definition. Much of the order seems to be a "re-assertion" of an existing order and demonstrates that the captains, as supervisors, would enforce that order.

In Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404, (1971), the Supreme Court announced the applicable standard to supervisory conflicts of interest:

[W]here a substantial actual or potential conflict of interest exists among supervisors with respect to their duties and obligations to the employer in relation to each other, the requisite community of interest among them is lacking, and...a unit which undertakes to include all of them is not an appropriate negotiating unit within the intendment of the statute.
Wilton at 427.

The Township has not provided enough facts suggesting that a sufficient "conflict" exists to warrant the formation of a separate negotiations unit for captains. Their decisions in the grievance procedure may be reversed by the Chief and then by the

Township manager. The Township has not provided additional facts about unit grievances to which the captains responded and the ultimate resolution of those grievances by the Chief and Township manager.

Accordingly, I determine that the captains are not managerial executives, that there is no sufficient conflict which warrants their exclusion from the superiors' unit and that the petitioned-for unit is appropriate. I therefore direct an election among the captains in this proposed unit:

Included: All captains employed by the Township of Willingboro to be added to the existing unit of sergeants and lieutenants.

Excluded: The Chief of Police, all patrol officers, non-police employees, non-supervisory employees, managerial executives, confidential employees, craft employees and professional employees within the meaning of the Act.

The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, including those in the military service. The election shall be conducted by mail ballot. 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 public employer is directed to file with us an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the units, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by us no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously provided to the employee organization with a statement of service filed with us. We shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

The exclusive representative, if any, shall be determined by a majority of the valid votes cast 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: February 6, 1992
Trenton, New Jersey