

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

In the Matter of

HUDSON COUNTY BOARD OF CHOSEN  
FREEHOLDERS,

Public Employer,

-and-

Docket No. CU-76-17

FRATERNAL ORDER OF POLICE, LODGES  
36A and 36B,

Petitioner.

SYNOPSIS

The Director of Representation clarifies a negotiations unit consisting of county court attendants, sheriff's officers, and process servers as including the Chief Court Attendant, and directs further investigation as to whether the title Chief Clerk - Supervisor of Writs is included or excluded from the unit. The Director finds that when the unit was first formed, both the County and the Employee Representative intended to include the Chief Court Attendant, who was then the Supervising Court Attendant. Based upon the record, the Director determines that the Chief Court Attendant's duties under the past title and under the new title remain substantially similar, and that there has not been any change in duties to warrant a change in the unit placement. As to the Chief Clerk - Supervisor of Writs, the Director finds that the factual record stipulated by the parties and the information available to the Commission is insufficient to render a determination. Therefore, a further investigation, limited to the areas still in question, is directed.

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Appearances:

For the Public Employer, Murray, Meagher &  
Granello, Esqs.  
(Robert E. Murray, of Counsel)

For the Petitioner, Miller, Hochman, Meyerson &  
Schaeffer, Esqs.  
(Michael H. Hochman, of Counsel)

DECISION

On October 14, 1975, a Petition for Clarification of Unit was filed with the Public Employment Relations Commission (the "Commission") by Fraternal Order of Police, Lodges 36A and 36B (the "Petitioner"), Docket No. CU-76-17, seeking a clarification regarding the composition of a unit of employees represented by the Petitioner and employed by the Hudson County Board of Chosen Freeholders (the "County"). The parties on March 22, 1976, and again effective January 20, 1977, executed Stipulations of Fact, have waived their right to a hearing in the above-captioned matter as well as to any Hearing Officer's Report and Recommendation, and have requested that the matter be resolved directly by a

decision of the Director of Representation Proceedings.<sup>1/</sup> Pursuant to N.J.A.C. 19:14A-3.4, the Director of Representation Proceedings may accept an agreed statement of facts in order to render a decision without a hearing. Subsequent to the submission herein of the second stipulation of facts, the parties submitted briefs in support of their respective positions. The undersigned has considered the entire record in this proceeding including the stipulations of facts, the briefs of the parties, other material received by the Commission and made a part of the record, and has taken administrative notice of certain relevant matters, and on the basis of the stipulated facts and the record in this case, finds:

1. The Hudson County Board of Chosen Freeholders is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (the "Act") and is subject to its provisions.

2. The Fraternal Order of Police, Lodges 36A and 36B, is an employee representative within the meaning of the Act and is subject to its provisions.

3. The Petitioner claims that the titles of Chief Clerk Supervisor of West Passaic Chief Court Attendant and its titles which are appropriately placed in the unit. The Petitioner argues that the titles are not supervisors within the meaning of the Act and are therefore properly included in the unit.<sup>2/</sup> On the other hand, the County argues that the two employees occupying the titles are

<sup>1/</sup> This case was not submitted to the undersigned for a decision until after April 23, 1977, when the final briefs and statements of the parties were due. The long delay in this case occurred between March 22, 1976, the time the first stipulations were prepared, and January 20, 1977, the time the second stipulations became effective, and involved the preparation and approval of those stipulations by the parties.

<sup>2/</sup> The filing of the instant Petition was occasioned by the fact that the Employer refused to give the two employees whose titles are in question, certain pay increases because they allegedly were supervisors and thus not represented in the instant negotiations unit. Therefore, the Petitioner filed this petition to resolve the supervisory question and essentially to determine whether these titles are appropriately within the unit.

supervisors within the meaning of the Act, but that even if they are not found to be supervisors, that a serious conflict of interest exists between these employees and the other employees in the unit to render their inclusion in the unit inappropriate. Therefore, there is a question regarding the composition of a negotiating unit and the matter is appropriately before the undersigned for determination.

4. The undersigned has taken administrative notice of the representation proceedings in Commission Docket No. RO-422 and finds that based upon a Petition for Certification of Public Employee Representative filed on February 23, 1972, elections pursuant to Agreements for Consent Election were conducted by a representative of this Commission on April 19, 1972. On April 28, 1972, Certifications of Representative were issued.<sup>3/</sup>

5. The record reflects that the Petitioner and the County, notwithstanding the two separate certifications, entered into a collective negotiations agreement effective from June 15, 1974 through December 31, 1975, covering both the Hudson County Court Attendants and the Sheriff's Officers and Process Servers.

The positions of the parties in the instant matter are as follows. The Petitioner argues that based upon the second stipulation of facts, neither Stephen Gregg, the Chief Court Attendant, nor John Meagher, the Chief Clerk - Supervisor of Writs, have the authority "...to hire, fire, suspend or discipline other employees in the sheriff's department," and therefore neither is a supervisor or

<sup>3/</sup> FOP Lodge #36A, Sheriff's Officers was certified as the exclusive representative of all employees in a unit described as: "Included: Sheriff's Officers employed by the Hudson County Board of Chosen Freeholders. Excluded: Court Attendants, Process Servers, superior officers, managerial executives and supervisors as defined in the Act and all other employees."

FOP, Sheriff's Department of Hudson County, Court Attendants Lodge #36B was certified as the exclusive representative of all employees in a unit described as: "Included: Court Attendants, Process Servers, employed by the Hudson County Board of Chosen Freeholders. Excluded: Sheriff's officers, superior officers, managerial executives and supervisors as defined in the Act and all other employees."

managerial executive within the meaning of the Act.<sup>4/</sup> The Petitioner further argues that, contrary to the Employer's position, no conflict of interest exists between the duties that these employees perform and the duties of the employees they supervise. Regarding Gregg's duties, the Petitioner states that they are mostly routine and clerical in nature, that they do not involve the use of independent judgment, and that he does not have a voice in matters of discipline.

Regarding Meagher's duties, the Petitioner states that he performs highly responsible clerical type work but that his duties are essentially no different from those performed by the employees he supervises, and that he has no authority to initiate disciplinary proceedings or participate in negotiations.

The County argues, however, that even though neither Gregg nor Meagher can "...hire, fire, suspend or discipline other employees...", that a potential conflict of interest exists between their positions and the employees they supervise because their job functions entail the control of the work output and discipline of their fellow employees, inasmuch as they supervise their work. Moreover, the County argues that the overall responsibilities that these two employees exercise involve para-military type functions that would inevitably require the exercise of disciplinary authority over the employees they supervise, and a conflict of interest must therefore, of necessity, exist.

The undersigned has carefully considered the arguments advanced by the parties concerning the job functions encompassed by the disputed titles. However, an analysis of the issues posed herein initially requires an examination of the original intent of the parties with regard to the disposition of the titles

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<sup>4/</sup> A supervisor as defined in the Act is an employee "...having the power to hire, discharge, discipline or to effectively recommend the same..." See N.J.S.A. 34:13A-5.3.

Managerial executives are defined at N.J.S.A. 34:13A-3(f) 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, except that in any school district this term shall include only the superintendent or other chief administrator, and the assistant superintendent of the district.

in question. This can be accomplished by reviewing the initial placement of these titles in the above-mentioned election and certification proceedings.

The certification for Lodge No. 36A defined a unit which included sheriff's officers but excluded court attendants, process servers, superior officers, managerial executives, and supervisors. The certification for Lodge No. 36B defined a unit which included court attendants and process servers but excluded sheriff's officers, superior officers, managerial executives, and supervisors. Accordingly, any employee falling within the meaning of a superior officer, supervisor or managerial executive is excluded from the certified units.

An examination of the representation proceeding reveals that the voter eligibility list provided by the County included the name of Stephen Gregg as "Sup. Ct. Attdt.," that he did vote in the election, and was not challenged. The eligibility list did not include the name of John Meagher, nor did that list include the title of Chief Clerk - Supervisor of Writs. The record further reveals that John Meagher appeared at the election, identified himself as a "supervisor," and was permitted to vote a challenged ballot. Although Meagher's ballot, along with several other ballots, was challenged, the challenges were not resolved inasmuch as they were not determinative of the outcome of the election.

In regard to the Chief Court Attendant Stephen Gregg, the undersigned finds on the basis of the history of the representation matter that the parties had intended to include this title in the court attendant's unit and that neither party had sought to exclude this title as a superior officer, supervisor, or managerial executive. Further, even had any conflict of interest then existed between the Supervising Court Attendant and the remaining members of the unit, apparently such conflict or the potential for such conflict was considered de minimis by the parties and not of sufficient magnitude as to warrant exclusion from the

unit. The record, which has been stipulated by the parties to be complete, does not in any way indicate that a substantial actual conflict has occurred or that there has been a change in circumstances that would raise the potential of a substantial conflict of interest. The undersigned has examined the current duties of chief court attendant as set forth in the instant stipulations and finds that they are substantially similar to the 1972 job description of supervising court attendant, the title held by Gregg at the time of the election. Upon examination of Gregg's stipulated duties, the undersigned finds that he is neither a supervisor as defined by the Act or a managerial executive and that there has not been a change in Gregg's duties to warrant a change in his unit placement. Therefore, on the basis of the history of the parties' intent with regard to this title and on the basis of the undersigned's independent analysis of Gregg's job functions, the undersigned concludes that the title Chief Court Attendant is appropriately included in the unit.<sup>5/</sup>

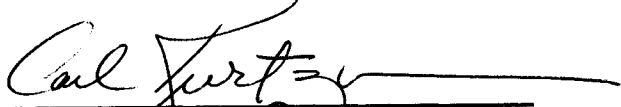
In regard to John Meagher, the Chief Clerk - Supervisor of Writs, the undersigned finds that the parties had not agreed to include this title in the unit defined in their Agreement for Consent Election. On the other hand, it cannot be found from the record that the parties agreed to exclude this title. The duties that Meagher exercises, as set forth in the stipulations, are substantially similar to the duties in the job description of Chief Clerk, Sheriff's and Supervisor of Writs, which presumably was the title held by Meagher at the time of the election and is included in the record herein. The undersigned cannot determine from the record, however, whether the job responsibilities of

<sup>5/</sup> It is noted that the Petition in this case refers to Gregg's position as Chief Court Attendant, the stipulations refer to it as Chief of Court Officers, and the 1972 job description refers to it as the Supervising Court Attendant. A comparison of the stipulated duties with the duties in the job description reveals that the duties are substantially similar, and the undersigned therefore finds that these titles essentially describe the same positions.

the Chief Clerk - Supervisor of Writs are those of a superior officer.<sup>6/</sup> Accordingly, the undersigned shall direct a further investigation and an investigatory hearing, if necessary, in order to complete the record on the limited issue of whether the Chief Clerk - Supervisor of Writs is a superior officer or was intended to be excluded from the unit by the parties by their initial agreement.

5. Accordingly, based upon the above, the undersigned issues the instant clarification that the Chief Court Attendant is included in the unit and orders further investigation with respect to the title Chief Clerk - Supervisor of Writs. The investigation is hereby assigned to staff member Arnold Zudick, who shall forthwith convene an investigatory conference among the parties and who shall report the results thereof to the undersigned. The undersigned shall thereafter take the appropriate administrative action which may include a supplementary decision or the issuance of a notice of hearing.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
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Carl Kurtzman, Director of  
Representation

DATED: July 21, 1977  
Trenton, New Jersey

<sup>6/</sup> Superior officers, as previously stated, were excluded by the parties from the units certified by the Commission.