

D.R. NO. 92-3

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

In the Matter of

TOWNSHIP OF MORRIS,

Public Employer,

-and-

Docket No. RO-91-166

MORRIS TOWNSHIP POLICE DEPARTMENT
ADMINISTRATOR'S ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation orders an election among all superior officers employed by Morris Township, Department of Police. The Director finds that the Deputy Chief and the two captains are neither managerial nor confidential employees and are appropriate for inclusion in a bargaining unit with lieutenants.

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Petitioner.

Appearances:

For the Public Employer
Courter, Kobert, Laufer, Purcell & Cohen, attorneys
(Fredric M. Knapp, of counsel)

For the Petitioner
Loccke & Correia, attorneys
(Michael Rappa, of counsel)

DECISION AND DIRECTION OF ELECTION

On April 3, 1991, the Morris Township Police Department Administrator's Association ("Association") filed a timely Petition for Certification of Public Employee Representative, supported by an adequate showing of interest, with the Public Employment Relations Commission ("Commission"). The Association seeks to represent the Deputy Chief, Captains and Lieutenants employed by the Township of Morris Police Department ("Township").

The Township will not consent to an election. It contends that the Deputy Chief and the two captains are inappropriate for inclusion in the proposed unit because they are managerial

executives and/or confidential employees and therefore not entitled to representation under the New Jersey Employer-Employee Relations Act ("Act"), N.J.S.A. 34:13A-1 et seq. The Association argues that these employees are neither managerial executives nor confidential employees.

Based upon our investigation I make the following factual findings.

The Morris Township police force consists of 45 employees: the 8 superior officers in the petitioned-for unit (1 Deputy Chief, 2 captains and 5 lieutenants) and 37 patrolmen and sergeants presently represented by the P.B.A. in a separate unit.

The duties and responsibilities of the Deputy Chief and the captains are set out in the Police Department's recently revised regulations and Standard Operation Procedures ("S.O.P.").

The Deputy Chief is the second level of command and reports directly to the Chief of Police. He is part of the Office of the Chief, the administrative component of the police department. The Deputy Chief is involved in the preparation of the budget, the maintenance of personnel activity records and the implementation of the police department's recruitment plan. He conducts a weekly staff meeting. The Deputy Chief is designated to assume the duties and responsibilities of the Chief whenever the Chief is absent and cannot be reached.

The two captains are also under the immediate direction of the Chief. Each captain commands a division: the uniform patrol

division, with four patrol squads; and the support services division, with the detective and records bureaus.

All daily operational decisions of the two divisions, such as tours of duty, work schedules and overtime authorization are made in accordance with departmental regulations and S.O.P.s, and are submitted to the Chief for his review and approval. A captain may approve a temporary change in the day shift with the Chief's knowledge. The Chief also approves all leaves, such as vacation and personal days, as well as training leaves.

The department's S.O.P. designates the Chief as the ultimate authority over all fiscal matters. The Deputy Chief, as the Fiscal Management Coordinator, performs many administrative duties, such as collecting and compiling budget projections from unit supervisors, and auditing and updating the current budget. He reports to the Chief on a monthly basis. The Deputy Chief keeps computer records on sick and compensatory time usage for a weekly payroll report. He is the coordinator for the expenditure of funds by the Township under the Safe Neighborhood Program. All budget projections and reports are submitted to the Chief, who reviews and completes a final document for distribution to the Township Council.

The Deputy Chief serves on the departmental recruitment committee that interviews candidates and makes hiring recommendations to the Chief who then makes the final decision. The Deputy Chief is responsible for coordinating the recruitment

advertisements and the establishment of the dates and locations of written tests. He prepares a recruitment evaluation report for the Chief. The Deputy Chief neither interviews candidates nor makes any hiring recommendations. He does not represent the department at recruitment programs.

Neither the Deputy Chief nor the captains participate in negotiations with the P.B.A. The Chief is the only representative of the department at the negotiations table. After negotiations are completed, the Township Administrator notifies the Deputy Chief of the amount of salary increases to be calculated into the payroll report prepared by the Deputy Chief.

Any supervisor of the rank of sergeant or above may recommend disciplinary measures; but, except for emergency suspensions, the Chief takes, or approves of all disciplinary actions and determines penalties in all cases. The Chief determines whether a case shall be heard by himself, if requested by the officer charged, the Township Committee or a departmental Trial Board.^{1/} The Deputy Chief and the captains may be appointed by the Chief to prosecute a disciplinary case or to serve as members of a Trial Board to hear the case. The Deputy chief has served on three of the seven Trial Boards convened since 1984. In any disciplinary matter involving the Deputy Chief or the captains, the Chief is solely responsible for any action taken.

^{1/} A Trial Board consists of three to five officers of equal or higher rank than the officer charged.

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....

Pursuant to N.J.S.A. 34:13A-5.3, managerial executives do not have the right to form, join or assist a majority representative. 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 police when he is charged with developing the 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. Borough of Avalon, P.E.R.C. No. 78-21, 3 NJPER 373 (1977).

The Deputy Chief as second in command, assumes the duties of Chief in his absence when he cannot be reached. The Chief has

always arranged for radio or telephone access whenever he is away for any period of time. All matters are conveyed to the Chief for his decision or are deferred until his return. Therefore, since the current Chief's appointment in 1984, the Deputy Chief has never been designated as acting chief nor authorized to perform certain statutory duties in the Chief's absence, such as issue firearm permits or handicapped parking permits. The Deputy Chief does not have plenary authority when substituting for the Chief. Instead he acts as a caretaker in the absence of the Chief.

The Deputy Chief is out of the chain of command regarding the operational decisions. Captains report directly to the Chief on all matters other than those decisions governed by departmental regulations and S.O.P.s or controlled by the P.B.A. contract. The Deputy Chief has no input into the day-to-day formulation of the department's policy.

The Deputy Chief is primarily responsible for the administrative duties involving the implementation of the department's policies. His efforts in connection with the budget and recruitment are ministerial and not discretionary. At the weekly staff meeting conducted by the Deputy Chief, it is the Chief who gives directives. Thus, the Deputy Chief's efforts go to supporting the ultimate decision making authority of the Chief. The Deputy Chief does not have the authority to make purchases. The Deputy Chief's actions do not make him a managerial employee.

The captains' duties involve primarily administrative and supervisory responsibilities, such as approving employee leave time and scheduling, and making promotional recommendations when involved in recruitment. Captains may recommend discipline, but only the Chief may approve it. Similarly, they make recommendations to the Chief about equipment; however, the Chief makes the final determination. The captains insure compliance with the department's regulations and S.O.P.s but have no input into policy determinations.

As with the Deputy Chiefs, the captains do not have the authority to make purchases. Although the captains may offer suggestions for the budget, they do not prepare it. Tp. of Kearny, P.E.R.C. No. 89-55, 15 NJPER 10 (¶20002 1988). The captains are not managerial employees.

N.J.S.A. 34:13A-3(g) defines confidential employees as:

...employees whose functional responsibilities or knowledge in connection with the issue involved in the collective negotiations process would make their membership in any appropriate negotiating unit incompatible with their official duties.

It is the policy of the Commission to narrowly construe the term "confidential employee." Brookdale Community College, D.R. No. 78-20, 4 NJPER 32 (¶4018 1977); State of New Jersey, P.E.R.C. No. 86018, 11 NJPER 507 (¶16179 1985), mot. to reopen den. P.E.R.C. No. 86-59, 99 NJPER 714 (¶16249 1985); Cliffside Park Bd. of Ed., P.E.R.C. No. 88-108, 14 NJPER 339 (¶19128 1988). In State of New Jersey, the Commission explained its approach in determining whether an employee is confidential:

We scrutinize the facts of each case to find for whom each employee works, what he does, and what he knows about collective negotiations issues. Finally, we determine whether the responsibilities or knowledge of each employee would compromise the employer's right to confidentiality concerning the collective negotiations process if the employee was included in a negotiating unit. [Id. at 510]

See also Ringwood Bd. of Ed., P.E.R.C. No. 87-148, 13 NJPER 503 (¶18186 1987), aff'd App. Div. Dkt. No. A-4740-86T7 (2/18/88).

The Township has argued that the Deputy Chief and the captains are involved in contract negotiations with the P.B.A. and therefore should be excluded from the unit as managerial and/or confidential employees. However, neither the Deputy Chief nor the captains directly assist in the preparation for or conduct of collective negotiations. See Tp. of Kearny and State of New Jersey.

Based upon all of the foregoing, I find that the Deputy Chief and the captains do not have the requisite level of discretion to support a determination of managerial status. I also find that these employees do not have the responsibilities or knowledge that would compromise the collective negotiations process of the employer if they were included in the negotiations unit. Therefore, I conclude that the Deputy Chief and the captains are appropriate for inclusion in the petitioned-for unit and I direct an election be conducted among employees in the unit described as follows:

Included: All Deputy Chiefs, captains and lieutenants employed by the Township of Morris Police Department.

Excluded: All sergeants, patrolmen, non-police employees, non-supervisory employees, managerial executives,

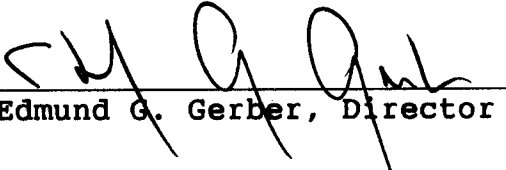
confidential employees, craft employees and professional employees within the meaning of the Act.

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. Employees will vote 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 on which the ballots will be mailed. 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: September 11, 1991
Trenton, New Jersey