

D.R. NO. 94-9

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

In the Matter of

TOWNSHIP OF HOLMDEL,

Public Employer,

-and-

Docket No. RO-93-137

HOLMDEL TOWNSHIP SUPERIOR OFFICERS
ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation orders an election for a unit of two police lieutenants employed by the Township of Holmdel. The Director rejects the Township's objections that the lieutenants are managerial executives and finds that the petitioned-for unit is appropriate.

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Appearances:

For the Public Employer
Apruzzese, McDermott, Mastro & Murphy, attorneys
(James L. Plosia, Jr., of counsel)

For the Petitioner
Balk, Oxfeld, Mandell & Cohen, attorneys
(Sanford R. Oxfeld, of counsel)

DECISION AND DIRECTION OF ELECTION

On March 2, 1993, the Holmdel Township Superior Officer's Association filed a representation petition with the Public Employment Relations Commission, seeking to represent a unit of two lieutenants employed by the Township. The petition is supported by an adequate showing of interest. The Township refuses to consent to an election, asserting that both lieutenants are managerial executives and are, therefore, excluded from representation rights under the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").

An administrative investigation based upon the parties' submissions reveal the following facts. N.J.A.C. 19:11-2.6.

The Township police department consists of approximately 27 employees: A chief, two lieutenants -- Wilson and Witting -- five sergeants, one detective sergeant, two detectives and 17 police officers. The police officers and detectives are represented by the PBA. The sergeants are represented by a Sergeant's Association in a separate unit.

The Chief is responsible for the day-to-day operation of the department. However, the Township Committee or its representative, the Township Administrator, is directly involved in certain administrative functions such as major disciplinary actions, personnel decisions and budgetary requests. Because there is no deputy chief or captain, the two lieutenants are the second level of command reporting directly to the Chief. Each lieutenant heads a division. Lieutenant Wilson commands the patrol division and Lieutenant Witting commands the administrative (or support services) division. Lieutenant Wilson has four patrol sergeants and a traffic sergeant reporting directly to him. Under these sergeants are 16 patrol officers who work rotating shifts. Lieutenant Wilson works 7 am to 3 pm. Lieutenant Witting supervises a detective sergeant and two detectives. He works 12 pm to 8 am and is on call 24 hours. The Chief works a regular 8 to 4 work day.

The Township recently commissioned a study of the police department in which the lieutenants reported that they were responsible for the proper day-to-day operation and function of their divisions. They schedule shift coverage and assign daily

duties. However, only the chief deploys personnel, makes permanent assignments or transfers officers. For example, the Chief reassigned a patrolman from patrol duty to a narcotics unit.^{1/} The lieutenants conduct staff inspections and periodic reviews of activities, hold staff meetings, delegate specific assignments and maintain personnel and other records. In addition, they are responsible to the Chief for submitting monthly and annual reports, preparing their division's budget and reporting significant or unusual events.

Although any officer in the department may requisition equipment or supplies, the lieutenants initiate most of the requests for materiel. It is their responsibility as division commanders to ensure that requisitions are within their division's budget. All requisitions totaling \$500 or less are submitted to the Township Administrator for final approval. Requisitions for more than \$500 must be approved by the Township Committee.

Lieutenant Witting collects budget requests and projections from unit supervisors. He compiles a proposed departmental budget which is submitted to the Township Committee by the Chief. The Township provided minutes from the Township Committee's budget meeting, showing that both lieutenants were in attendance with the Chief and provided information on certain budgetary items concerning

^{1/} The Township Committee exercises some oversight in this area also. In February 1993, it apparently considered establishing rotating shifts for the Chief and the lieutenants.

their divisions. The Township Committee then determines the final budget.

The lieutenants may approve minor disciplines - disciplines of five days or less - of subordinates within their command. Any recommendations for major discipline are submitted to the Chief for his approval. Under a recently revised departmental ordinance, the Chief recommends major disciplinary cases to the Township Committee, who, rather than the Chief, hears all disciplinary appeals. Internal investigations are ordered by the Chief and conducted by Lieutenant Witting and his staff. In addition, the Township Committee must be notified of any citizen complaint before an internal investigation is begun.

Neither the Chief nor the lieutenants participate in the actual negotiations with the PBA. The Township is represented in collective negotiations by the Township Administrator and a member of the Township Committee. The role of the Chief and the lieutenants is limited as to negotiations preparations. The Township Committee may ask the Chief and the lieutenants to comment on the operational impacts of certain non-economic proposals for the PBA negotiations unit. The Chief is the first step for grievances emanating from the non-supervisory negotiations unit and the sergeants' negotiations unit.

In the Chief's absence, the lieutenants assume his duties. The Association claims that this rarely happens because the Chief neither takes vacations nor attends conventions. The Township

asserts that the Chief was absent for a total of 46 days in 1992. However, neither party submitted any information concerning the delegation of the Chief's authority during his absence.

The Township argues that the lieutenants make policy by providing information to the Township Committee. It submitted a 1991 memo written by Lieutenant Witting to the Township attorney, advising him that the current departmental rules apparently lacked the appropriate Township Council authorization. In addition, the Township submitted a recent response, from Lieutenant Wilson to the Township Administrator, commenting on a proposal claiming to offer lower purchase prices for new patrol cars.

The Association denies that the lieutenants may independently create and/or implement departmental policies. It argues that only the Chief or the Township Committee have this authority. It does agree that the lieutenants play a role in developing departmental policies. However, their responsibility is shared with other members of the department who serve on a Police Relations Committee. The Committee, made up of officers from both departmental divisions and a representative from the PBA, reviews and comments on those directives and policies issued by the Chief that he deems appropriate for their review.

The issue for determination here is whether the two lieutenants are managerial executives within the meaning of the Act. 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 policy when he is charged with developing the method, 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. Borough of Avalon, P.E.R.C. No. 78-21, 3 NJPER 373 (1977).

Because there are no other superior officer titles between the rank of lieutenant and the Chief, the two lieutenants perform some of the functions performed by captains or deputy chiefs in other municipalities. Tp. of Morris; D.R. No. 92-3, 17 NJPER 462

(¶22219 1991). However, based upon the facts in this record, I cannot conclude that they are managerial executives.

The Holmdel police department is small -- approximately 27 employees -- including the Chief. Here, it appears that the Township Committee has assumed direct supervision over certain departmental functions, such as disciplinary appeals and budgetary formulation and expenditures. The Chief and each lieutenant function primarily as advisors to the Township Committee, making recommendations or providing comments when requested. However, the Township Committee does not automatically follow the recommendations, for example, Lieutenant Witting advised the Township attorney concerning the department's rules and Lieutenant Wilson provided information concerning the purchase of new police vehicles. In other instances, the lieutenants only provide input into policies promulgated by the Chief.

The lieutenants are primarily responsible for the administrative and supervisory functions involved in operating their respective divisions. They make daily assignments and ensure shift coverage, but they can not permanently assign or transfer or deploy the officers under their command. They may mete out discipline of less than five days, but only the Chief may recommend major discipline to the Township Committee. They merely offer suggestions to the Township Committee on the budget. Although they may requisition supplies and equipment, all requisitions (particularly large ones) are subject to review and approval by the Township

Committee. Finally, they are only tangentially involved in the negotiations process. The lieutenants' authority is limited by the scope of their responsibilities and the control exercised by the Chief and the Township Council. See City of Newark, P.E.R.C. No. 92-116, 18 NJPER 300 (¶23128 1992); City of Bayonne, P.E.R.C. No. 87-152, 13 NJPER 541 (¶18199 1987); State of New Jersey, D.R. No. 91-23, 17 NJPER 167 (¶22069 1991). Accordingly, the responsibilities and duties of the lieutenants do not make them managerial executives and the lieutenants are public employees within the meaning of the Act.

I find the petitioned-for unit of police lieutenants is appropriate for collective negotiations and I direct that a secret ballot election be conducted among employees in the petitioned-for unit, as follows:

Included: All police lieutenants employed by the Township of Holmdel.

Excluded: All police officers, police sergeants, non-police employees, non-supervisory employees, managerial executives, confidential employees, professional employees, craft employees and all other employees employed by the Township of Holmdel.

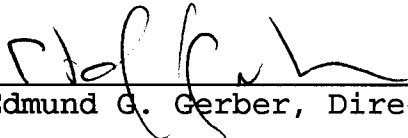
The election shall be conducted no later than thirty (30) days from the date of this decision. The employees will vote by mail ballot. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, including those in the

military service. 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 15, 1993
Trenton, New Jersey