

E.D. NO. 41

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF HANOVER

Public Employer

and

Docket No. RO-49

LOCAL 128, P.B.A.

Petitioner

DECISION AND DIRECTION OF ELECTION

Pursuant to a Notice of Hearing to resolve a question concerning the representation of certain employees of the Township of Hanover, a hearing was held on March 12, 1970 and September 1, 1970 before Hearing Officer Howard M. Golob at which all parties were given the opportunity to present evidence, examine and cross-examine witnesses, to argue orally and to submit briefs. Thereafter, on November 16, 1970 the Hearing Officer issued his Report and Recommendations.^{1/} Exceptions to that Report and Recommendations were timely filed by the Township of Hanover, the Public Employer. The undersigned has considered the entire record, the Hearing Officer's Report and Recommendations and the Exceptions and on the facts in this case finds:

1. The Township of Hanover is a public employer within the meaning of the Act and is subject to the provisions thereof.
2. The Public Employer questions the status of Petitioner as a proper employee representative, and further raises a challenge to the appropriateness of the unit petitioned for. Accordingly a question concerning the representation of public employees exists and the matter is properly before the Executive Director for determination.
3. Petitioner seeks to represent a unit of all policemen, excluding only the Chief. The unit petitioned for would include the following: the Deputy Chief, six Sergeants, including a Detective Sergeant, and 17 Patrolmen, including 2 Detectives.^{2/} The Hearing Officer found the Petitioner to be an employee representative within the meaning of the Act and further found that an appropriate unit for collective negotiations should include all patrolmen and sergeants. Excluded from that unit is the Chief and the Deputy Chief. The Hearing Officer came to that unit determination based upon his conclusion that the sergeants were not supervisors within the meaning of the Act, and that the Deputy Chief came within C34:13A-3(d) of the statute which defines public employee

^{1/} Attached hereto and made a part hereof.

^{2/} The record reveals an unfilled position of Captain within the Police Department. No ruling with regard to this position has been sought, and therefore in any election ordered, should the vacancy be filled, the Captain may vote subject to challenge.

and specifically excepts from that definition "heads and deputy heads of departments."

The Employer excepts to the findings of the Hearing Officer as to the appropriate unit, with specific regard to the inclusion of sergeants and patrolmen in a single unit, and also to the finding that Petitioner is an appropriate employee representative.

In the absence of any exception to the finding of the Hearing Officer as to the status of the Deputy Chief as a deputy department head, the undersigned adopts that finding pro forma.

With regard to the sergeants, the Employer contends that these personnel be excluded from the unit based upon their status as either supervisors or managerial executives within the meaning of the Act, or their lack of community of interest with the patrolmen.

By statutory construction a supervisor is one exercising the authority to hire, discharge, discipline or effectively recommend the same. The exercise of any one of these authorities is sufficient to qualify that person as a supervisor within the meaning of the Act.

A review of the record in this case indicates that with regard to the hiring and firing of personnel, the sergeants have neither the power to do so themselves, nor the power to effectively recommend such courses of action. While there is some testimony to the effect that sergeants are on occasion informally requested by the Chief to render a verbal opinion as to the performance of a probationary patrolman, and that such an opinion would be given "serious" consideration, it is clear that the ultimate determination as to the weight to be accorded this opinion, and in fact whether or not the employee is to be retained, remains solely within the discretion of the Chief. The consideration of an opinion which is subject to independent analysis does not constitute the high order of reliance necessary to meet the test of effective recommendation. It is the Chief who makes recommendations to the Township Committee which exercises final authority on permanent appointments.

In the Township of Hanover Police Department an employee may be discharged only after charges are filed and a hearing is held before the Township Committee and only by authority of that body. The Chief has the sole authority to suspend any member of the department pending a hearing, and such suspension may be with or without pay in the discretion of the Chief. While there is testimony that the desk officer might send a patrolman home who was out of uniform or otherwise unable to serve, this action would be immediately reported to the Chief who would make the determination as to whether or not loss of pay should be involved. Additionally it is undisputed in the record that the "desk officer" to whom this responsibility would fall is in fact a patrolman rather than a sergeant approximately 50 per cent of the time during the summer months and 10 per cent of the time during the balance of the year. In any event, it is clear that this emergency action would depend for its disciplinary nature upon the determination of the Chief, and therefore does not demonstrate the disciplinary power of the desk personnel, be they sergeants or patrolmen.

A second issue is that of the alleged "managerial executive" status of the sergeants. If, as the Employer urges, sergeants are managerial executives within the meaning of the Act, they must be excluded since the Act provides that the rights accorded public employees do not extend to managerial executives. ^{3/} While the Act does not define a managerial executive, the essential characteristics of the term as utilized in the field of labor relations denote one who determines and executes policy through subordinates in order to achieve the goals of the administrative unit for which he is responsible or for which he shares responsibility. It is the final responsibility to formulate, determine and effectuate policy that distinguishes the managerial executive from other staff or line positions.

In the instant case the facts demonstrate that the sergeants do not formulate or determine policy. Their role is limited to routine assignment of patrolmen to certain patrol areas determined by the Chief and Deputy Chief, and the assignment of police to cover situations called in to the department while they are on desk duty. Even here though, these assignments are made on a rotational system. While the sergeants are required to exercise a certain amount of independent judgment in making these assignments, it is clear that this does not measure up to the high levels of responsibility implicit in the term managerial executive.

The other allegation made by the Employer to bolster its managerial executive argument is that the desk officer is in "full and sole control of the department over 50 per cent of each workday..." While it is undisputed on the record that the desk officer is physically alone in the station from the time the Chief and Deputy Chief leave until they return the following morning, it is equally clear the desk officer has no power to "control" the department beyond the duties already described above. The desk sergeant has already been found to have no power to discipline or effectively recommend same in either the presence or absence of the Chief, his desk duties are pursuant to a routine established by the Chief and Deputy Chief and consist of the same activities whether or not his superior officers are present; finally there is a regulation or memorandum from the Chief ordering that he and the Mayor be notified if certain serious emergencies arise. In view of this regimentation, there is no basis for a finding that the sergeants are managerial executives and that they are thus to be excluded from representation.

The final exception of the Employer going to the merits of the unit determination deals with an alleged lack of community of interest between the sergeants and the patrolmen. In this regard consideration must be given to the guidelines for unit determination laid down by the Supreme Court in Board of Education of the Town of West Orange v. Elizabeth Wilton et al., (1971). ^{3A/} There, the Court in discussing a unit of all supervisory personnel which included the highest ranking supervisor below the Superintendent of Schools, held: "...where a substantial, actual or potential conflict of

^{3/} NJSA 34:13A-5.3

^{3A/} 57 N. J. 404

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 that a unit which undertakes to include all of them is not an appropriate negotiating unit within the intendment of the statute."

In the instant case, while there is no problem with ranks of supervisors within a supervisory unit, nonetheless, it is the opinion of the undersigned that the same fundamental considerations of unit determination must be looked to. If, as the Court found in Wilton, a unit need not be appropriate merely because all employees within it are supervisory, then it would follow that a mere showing that the sergeants are non-supervisory would not in itself demonstrate the appropriateness of a unit consisting of those employees and the rank and file patrolmen absent a showing that no "substantial, actual or potential conflict of interest" exists between the two groups.

In City of Camden, Department of Public Safety, Division of Fire, P.E.R.C. No. 52, the Commission was faced with the question of unit placement of non-supervisory superior officers and in that case determined that by virtue of their responsibility and authority in matters of hiring, probation, and discipline the superior officers were so closely associated and identified with the Employer's interests that a substantial conflict of interest existed with relation to the firemen. 4/ In the instant case, the record does not demonstrate that the sergeants have such authority and responsibility to create a substantial, actual or potential conflict of interest. The sergeants play no role in hiring of personnel, have no unique or significant responsibility in the disciplining of personnel, and with respect to evaluation, are consulted only occasionally on an informal basis by the Chief for an oral statement as to how a new man is doing. In further mitigation of the sergeants' responsibility in this area is the fact that new men are assigned on a buddy system with a veteran patrolman and this man may also be called upon by the Chief to make a similar evaluation.

In summary then, the role of the sergeants in the Hanover Police Department is not such as to constitute them as either supervisory or managerial executives, and while their duty at the desk does place them in a position where they direct the patrolmen from place to place as a dispatcher might, any conflict arising therefrom is considered de minimus and not substantial within the framework of the Court's rationale in the Wilton case.

The Public Employer additionally excepts to the finding that P.B.A., Local 128 is an employee representative within the meaning of the Act. The Employer contends that since the sergeants have only limited voting rights, may attend only open meetings upon invitation, and may not hold office within the P.B.A., "5/the right of the ...Sergeants to participate in the decisions and policy formulations of the Petitioner in relating

4/ A contrast to the instant case is the size of the Camden Fire Department: 68 officers and over 200 firemen spread over nine locations.

to its function as a negotiating representative would be no greater than one who is a non-member. An organization should not be certified as a negotiating representative for persons whose rights of participation in that organization are in effect, non-existent."

The Commission was presented with a similar contention based on essentially the same fact situation in Board of Education of the Township of West Milford, P.E.R.C. No. 56. After considering the statutory mandate that a majority representative represent the interests of all unit employees without discrimination and without regard to organization membership,^{5/} and the Supreme Court's comment that exclusive representation carries with it the duty of good faith representation of all unit employees,^{6/} the Commission concluded that the unavailability of full membership for all unit employees does not necessarily disqualify an organization from the opportunity of being designated their exclusive representative. The Commission cautioned, however, that the disability of less than full membership would be a relevant factor in assessing the adequacy of representation given once the organization had acquired status as the exclusive representative. That approach is dispositive of the contention here, with one additional comment. The Employer points to the obstacles confronting the sergeants in their ability to participate in the internal affairs of the organization, and asks that recognition be given to the approach in the private sector under federal regulation wherein participation is considered an essential ingredient. That approach is required by federal statute which makes employee participation the first mentioned element in the definition of "labor organization".^{7/} By comparison the New Jersey statute contains no such requirement in its definition of "representative;" it simply says that the term includes "...any organization...designated by a ... group of public employees ... to act on its behalf and represent it or them."^{8/} Consequently, the federal experience is inapposite and not persuasive here. In view of the controlling statute's language and the Commission's earlier disposition of essentially the same issue, this exception is found to be without merit.

4. Upon consideration of the record, it is found that Policemen's Benevolent Association, Local 128 is an employee representative within the meaning of the Act, and further that the appropriate unit for collective negotiations is "All patrolmen and sergeants employed by the Township of Hanover, but excluding the Chief, Deputy Chief, all supervisors within the meaning of the Act, managerial executives, craft, professional and office clerical employees."
5. It is directed that an election in the unit described above be held within thirty days of the date of this decision. Those eligible to vote shall be those who were employed in the unit above during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation or temporarily laid off, including those in the military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are those who quit or were discharged for cause since

^{5/} N.J.S.A. 34:13A-5.3

^{6/} Lullo v I.A.F.F., Local 1066, 55 N.J. 409 (1970).

^{7/} 29 U.S.C. § 152 (5)

^{8/} N.J.S.A. 34:13A-3(e)

the designated payroll period and who have not been rehired or reinstated before the election date.

Those eligible to vote shall vote on whether or not they wish to be represented for the purpose of collective negotiations by the Policemen's Benevolent Association, Local 128.

The majority representative shall be determined by a majority of the valid votes cast.

The election directed herein shall be conducted in accordance with the provisions of the Commission's Rules and Regulations and Statement of Procedure.


Maurice J. Nelligan, Jr.
Executive Director

DATED: December 23, 1971
Trenton, New Jersey

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF HANOVER

Public Employer

and

Docket No. RO-49

POLICEMEN'S BENEVOLENT ASSOCIATION,
LOCAL NO. 128 a/w NEW JERSEY POLICEMEN'S
BENEVOLENT ASSOCIATION 1/

Petitioner

Appearances:

Carpenter, Bennett and Morrissey
By James J. Crowley, Esquire and
Donald Romano, Esquire for the public employer

Walter C. Morris, Esquire for the petitioner

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

Pursuant to a Notice of Hearing dated February 26, 1970 and an Order Rescheduling Hearing dated March 3, 1970, a hearing was held before the undersigned on March 12 and September 1, 1970. At the hearing all parties were given an opportunity to examine and cross-examine witnesses and to present evidence. Subsequent to the close of hearing, the parties submitted briefs. The Hearing Officer has considered the entire record including the briefs and finds:

The Township of Hanover is a Public Employer located in Morris County in the northern part of New Jersey. It is governed by a five-member township committee, which annually elects one of its members as mayor and appoints the other members to act as liaison with the various departments within the municipality. The member designated to act as

1/ As amended at the hearing.

liaison with the police department is not officially called the Director of Public Safety, Police Commissioner or any other title of that nature. He has no control over the department; just one vote on the committee (Tr. 38). Police matters may also be handled by township committeemen, not designated as the police department liaison (Tr. 39).

The police department is composed of the Chief of Police, Deputy Chief of Police, six sergeants including a detective sergeant, and 17 patrolmen including 2 detectives. The table of organization also provides for a lieutenant; the position at present is vacant.

The Chief is the executive officer of the police department. The Deputy assists the Chief in its administration and performs such duties as may from time to time be assigned to him by the Chief. When the Chief is not present, the Deputy is in charge. There are certain statutory duties though he may not assume or be delegated (Tr. 144).

The Deputy prepares the duty schedule, monthly reports covering police department activities and the special duty assignments. He is in charge of police car maintenance and the annual dog and cat census, and arranges for the police department fire arms instruction. He is in charge of the desk sergeant, desk officers and the police personnel.

It is his task to schedule the patrolmen so that all shifts are covered. (This is done by seniority.) He also approves time off and the switching of shifts. He assists in preparation of the budget as does one of the sergeants (Tr. 151) and the "additional duty assignment" chart. Though the Chief has asked opinions of other members of the department in certain instances, in the preparation of additional duty assignment job descriptions, he consulted solely with the Deputy.

The Deputy Police Chief is also in charge of all school crossing guards. There is, though, a member of the school crossing guards who is more or less in direct charge of this group. It is still his responsibility though (Tr. 93 et seq).

The Deputy has no power to hire or to effectively recommend the same. He has never interviewed applicants by himself nor is there a regular evaluation of present members of the department or probationary employees (Tr. 194). He has no power to suspend or to discipline in any manner (Tr. 197 et seq) or to effectively recommend the same. If something out of the ordinary occurs, all he can do and all he does do is write a report for the Chief who in turn would make his own recommendation to the township committee.

The Deputy Chief as well as the Chief, the sergeants or the patrolmen on the force may pledge the credit of the township for minor matters on a emergency basis.

When neither the Chief nor the Deputy Chief are on duty, 2/ the desk officer is in charge. 3/ The main duties of the desk officer is to take charge of the desk in police headquarters, where he directs the work of the patrolmen and assigns them to the various tasks, most of which

2/ The Chief or the Deputy are off on different days. Police operation, though, are an around the clock affair and neither is on duty during the late evening or early morning shift.

3/ Though the employer contends senior patrolmen are only infrequently used to replace sergeants at the desk, the evidence indicates that this occurs 50% of the time during the summer months and 10% of the time during the balance of the year (Tr. 200). It is also noted that on the "additional duty assignments" while there is a listing for desk officers, there is no listing for desk sergeants as a class. Furthermore, the Chief in his testimony used the term desk officer and desk sergeants interchangeably (Tr. 132).

are of a routine predetermined nature. He can order off-duty patrolmen to duty if for some reason a shift is uncovered and can tell a patrolmen not to report to duty if he feels that the employee is not fit for duty. If the latter occurs, a factual report is transmitted to the Chief. No recommendations are made as to whether the patrolman should or should not be disciplined (Tr. 131).

There is no evidence in the record that anyone other than the Chief of Police has effectively recommended to the town committee the discharging or hiring of any applicant. There is evidence that the sergeants as well as patrolmen informally report to the Chief as to how a probationary patrolman is doing, (Tr. 161, 171).

There is a standard instruction for the desk officer albeit a sergeant, patrolmen or the Deputy to call the Chief if certain contingencies occur.

The sergeants and the patrolmen share the same vacation problems, holidays, shift work, locker room and dangers. They all perform similar duties, are supervised by the Chief and receive the same fringe benefits from the employer.

The Chief, the Deputy, the sergeants and the patrolmen are members of the Policemen's Benevolent Association and as such share the same life insurance, death and pension benefits that accrue from membership. The "superior officers", i.e. the Chief, Deputy and sergeants have limited voting power in the Association and may not hold office. The Deputy and sergeants did vote upon the choice of the attorney to handle negotiations and the negotiating demands of the Local (Tr. 228).

In the past, the township has recognized the PBA as spokesmen of the police department employees. It has requested the PBA to present its position concerning wages and terms and conditions of employment. On some

occasions, the PBA or at least the leadership on PBA stationery presented its "demands". In other years it did not do so. There is no evidence during this past history of give and take negotiations. More times than not, it was a presentation of facts and requests by the PBA and then the unilateral act of the township committee (Tr. 287). With regard to possible negotiations in 1968, the record does not indicate that there was any give and take negotiations for this year either. A township committeeman testified that in 1968, the town committee met with the policemen, that they questioned the leadership concerning clarification of their demands, and that they tried to avoid a dialogue. He states further that, though, he does not recall the details of the meeting, he believes it lasted 1/2 hour (Tr. 50).

A witness for petitioner could only testify as to purported give and take concerning holidays. He states that the peitioner requested an increase from six to eleven but that they settled on only ten. It is noted that if the parties did in fact agree, it was not reduced in writing in a negotiations agreement.

There are five issues before the Hearing Officer:

1. Whether petitioner is an employee representative within the meaning of the Act, as certain of its membership has limited voting rights within the organization?
2. Whether the "superior officers", i.e. sergeants and above, are supervisors or managerial executives within the meaning of the Act?
3. Whether the Deputy Chief of Police is a managerial executive or a supervisor?
4. Is there established practice or special circumstances to include the superior officers and/or the Deputy Police Chief, in the unit with non-supervisor personnel?

5. Is there a community of interest among the patrolmen and/or sergeants and/or Deputy Chief of Police to include them in one negotiating unit?

EMPLOYEE REPRESENTATIVE

With regard to the question of whether petitioner is an employee representative within the meaning of the Act, the facts are not in dispute.

Petitioner argues that 34:13A-3(e) 4/ NJSA defines the term employee representative without setting forth any special standards or qualifications and citing Barnhard v. UAW 79A 2nd 88, 12 NJ Super 147 (1951) and Dragwaz v. Federal Labor Union No. 23070, 41 A2d 32, 136 NJ Eq 172, (1945), contends that the employer has no standing to raise the issue of voting and other matters of the representative, as it is strictly an internal matter among the employees. It argues further that the testimony indicates that the men voted and designated the PBA to act on their behalf and represent them.

The employer takes the position that based upon the constitution of the International and by the by-laws of petitioner that petitioner exists solely for the benefit of rank and file patrolmen and that membership for policemen above the rank of patrolmen is essentially no more than an honorable membership. Citing International Organization of Masters Mates and Pilots of America, Inc. v. N.L.R.B. 351 U.S. 771 (1965) affirming 146 NLRB 116, the employer argues that the petitioner may not properly

4/ Section 34:13A-3(e) reads as follows: "The term "representative" is not limited to individuals but shall include labor organizations, and individual representatives need not themselves be employed by, and the labor organization serving as a representative need not be limited in membership to the employees of, the employer whose employees are represented. This term shall include any organization, agency or person authorized or designated by a public employer, public employee, group of public employees, or public employee association to act on its behalf and represent it or them. "

function as negotiating representative as its members are not accorded substantial and meaningful participation which would include the right to vote on all matters including the election of officers.

The term "representative" as used in the New Jersey Employer-Employee Relations Act is much broader than the term "labor organization", as defined in Section 2(5) of the National Labor Relations Act, as amended, relied upon by the employer. In the instant case, the employees in question have authorized petitioner to act on its behalf and represent them. Its willingness to represent employees rather than the eligibility of the employees to membership in that organization is the controlling factor. The fact that some members have limited membership is immaterial. Accordingly, I find that petitioner is an employee representative within the meaning of the Act.

STATUS OF SERGEANTS

The employer argues that as for most of the working day from the time the Chief goes off duty at night and the Deputy Chief comes on in the morning, the desk sergeant is in actual charge and control of the department and by virtue of this fact has the authority and responsibility to discipline patrolmen when the occasion arises and thus is a supervisor and a managerial executive. 5/ The employer also argues that the sergeants can send a patrolman home whose performance or appearance does not come up to standard; that they must exercise independent judgement in maintaining adequate shift staffing and in assigning and

5/ Section 34:13A-5.3 reads in part: "Except as hereinafter provided, public employees shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity; provided however, that this right shall not extend to any managerial executive...except where established practice, prior agreement or special circumstances, dictate the contrary, shall any supervisor having the power to hire, discharge, discipline or to effectively recommend the same, have the right to be represented in collective negotiations by an employee organization that admits non-supervisory personnel to membership..."

reassigning patrolmen during a shift; and that they must evaluate the job performance of probationary employees.

The facts do not support the employer arguments. First, it does not follow per se that the person "minding the store" is a managerial executive or has the power to hire, discharge or discipline or effectively recommend the same. Moreover, the evidence did show that the desk officers not solely the desk sergeants direct police personnel on their respective shifts but in doing so they have no power to hire, fire or discipline or effectively recommend the same. In practice, if an infraction of policy occurred, the desk officer would write a memorandum to the Chief as to the relevant facts without making a recommendation. Also, when certain contingencies occur the Chief must be notified immediately. There is no evidence that the desk officers made policy, one of the criteria of a management employee. Accordingly, I conclude that sergeants are not managerial executives or supervisors within the meaning of the Act.

ESTABLISHED PRACTICE

Petitioner argues that based upon past practice, special community of interest, and the small size of the proposed unit, a special exception should be made and sergeants should be included with patrolmen.

The term "established practice" is intended to mean a relationship in the negotiating sense where two parties, one representing the employees and the other representing the employer, meet and a give and take of negotiations in a bilateral relationship occurs rather than an unilateral establishment of terms and conditions of employment by the Employer such as that which occurred in this case. See Middlesex County College Board of Trustees and Middlesex County College Faculty Organization, Local 1940 AFT P.E.R.C. No. 29. Assuming arguendo that a bilateral relationship existed

in 1958 and 1968, this, too does not indicate "established practice" as a hiatus existed between 1958 and 1968 and such a relationship must be continued. See Willingboro Board of Education and Willingboro Education Association, E.D. No. 3.

The fact that employees may have been paid by the Township to attend conventions as P.B.A. representatives is immaterial.

Concerning petitioner's argument of special community of interest this shall be considered infra. The Pleasant Beach Police case cited by the petitioner is not controlling. It was closed without a decision rendered by either the Executive Director or the Commission, when the Executive Director approved petitioner's request to withdraw its petition.

Concerning the contention that special circumstances exist by virtue of the small numbers involved, I reject this argument. The question of how effective an organization may be, I do not believe is controlling. Also as pointed out by the employer, there is a superior officer's association. Accordingly, I conclude that there is no established practice, prior agreement or special circumstances to allow supervisors if they are so to be included with non-supervisors.

STATUS OF DEPUTY CHIEF

The employer argues that the Deputy Chief of Police should be excluded from the unit, because he is a deputy head within the meaning of 34:13A-3(d) of the Act, 6/ a supervisor 7/ and a managerial executive.

6/ Section 34:13A-3(d) reads as follows: "...This term shall include public employee, i.e. any person holding a position, by appointment or contract, or employment in the service of a public employer, except elected officials, heads and deputy heads of departments and agencies, and members of boards and commissions,..."

7/ I reject the definition of "discipline" proposed by the employer. I do not believe that the Legislature intended for it to mean in a employer-employee relationship to train and instruct.

Petitioner takes the position that the recent promotion of deputy chief from captain without a change in duties or salary was solely a subterfuge on the part of the employer to remove him from the unit. 8/

The testimony at the hearing indicated that the department head of the police department is the Police Chief and the Deputy Police Chief the deputy head of the department. The record further indicates that he helped to formulate department policy by assisting in the preparation of the additional duty assignment designations and has the responsibility for the school crossing guards.

Accordingly, as the Act specifically provides that a deputy head of a department is not an "employee" and as in practice the deputy is part of the management team with the chief which formulates operating policy, and as such a managerial executive without the right to join an employee organization for collective negotiations, I recommend that the Deputy Chief be excluded from the unit.

The City of Elizabeth case, P.E.R.C. No. 36 is distinguishable as in that case, a Director of Law and Public Safety exists where it does not occur in Hanover Township and in Elizabeth there were many more deputies. The Town Committee-Police Department liaison is not similar to the system in Elizabeth.

COMMUNITY OF INTEREST

The record indicates that all members of the department, sergeants or patrolmen, perform similar duties requiring identical skills under the same working conditions. The record also indicates that all personnel

8/ I will make no recommendation as to this allegation. The matter before the Commission is one of representation nature, not a purported unfair labor practice, which the Commission has no right to adjudicate.

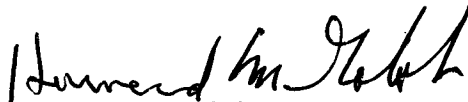
receive the same benefits, interchange with each other and have common supervision. Also, intergration of the employer's physical operations and a high degree of central control of operation, including labor relations exist. Based upon the foregoing I conclude that a community of interest exists among the sergeants and patrolmen.

RECOMMENDATION

Based upon the foregoing, I recommend that an election be held in the following unit.

All full-time policemen employed by the Township of Hanover, Morris County, New Jersey, but excluding officer clerical, craft and professional employees, managerial executives, the police chief, the deputy police chief and supervisors within the meaning of the Act.

RESPECTFULLY SUBMITTED


Howard M. Golob
Hearing Officer

DATED: November 16, 1970
Trenton, New Jersey