

D.R. NO. 2023-1

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

In the Matter of

TOWNSHIP OF HOPEWELL,

Public Employer,

-and-

Docket No. RO-2022-036

HOPEWELL TOWNSHIP POLICE SUPERIOR OFFICERS' ASSOCIATION/  
POLICEMEN'S BENEVOLENT ASSOCIATION, LOCAL 342A,

Petitioner.

**SYNOPSIS**

The Director of Representation issues a Certification of Representative on the basis of a card check to the petitioner, Hopewell Township Police Superior Officers' Association/Policemen's Benevolent Association, Local 342A (SOA), adding lieutenants to its existing unit of sergeants employed by the Township of Hopewell (Township). The Township objected to the petition, arguing the lieutenants are managerial executives within the meaning of the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq., and that the lieutenants' inclusion in the SOA would create an impermissible conflict of interest.

The Director determined that lieutenants are not managerial executives because they do not formulate or direct the effectuation of policy. Also, the Director found that any conflict created by adding lieutenants to the existing unit of sergeants would be de minimus.

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Appearances:

For the Public Employer,  
Ruderman & Roth, LLC, attorneys  
(Mark Ruderman, of counsel)

For the Petition,  
Crivelli, Barbati & DeRose, LLC, attorneys  
(Donald C. Barbati, of counsel)

**DECISION**

On March 22, 2022, Hopewell Township Police Superior Officers' Association/Policemen's Benevolent Association, Local 342A (SOA), filed a representation petition seeking a certification of representative by card check to add currently unrepresented lieutenants employed by the Township of Hopewell (Township) to its existing collective negotiations unit of sergeants. The petition was accompanied by an adequate number of cards. N.J.A.C. 19:11-2.6(b). The Township opposes the petition, arguing that the lieutenants are managerial executives within the meaning of the New Jersey Employer-Employee Relations

Act (Act), N.J.S.A. 34:13A-1 et seq., rendering them ineligible for inclusion in any negotiations unit. The Township also asserts that the lieutenants' inclusion in the SOA unit would create an impermissible conflict of interest.

On April 11, 2022, we conducted an investigatory conference call with the parties. They were unable to reach a voluntary resolution. By letter dated April 11, 2022, we requested both parties to provide certifications or sworn affidavits to support their respective positions. N.J.A.C. 19:11-2.2. The letter advised the parties to distinguish, if applicable, the job duties performed by all lieutenants and those duties performed by the lieutenant acting as the "officer in charge".<sup>1/</sup>

On or about May 6, 2022, an additional conference call was convened during which the SOA advised that the Township's civilian Police Director was expected to retire, effective May 13, 2022 and that a new Chief of Police was to be appointed. The parties agreed to delay filing their submissions until the retirement occurred. In an email dated May 31, 2022, the SOA confirmed that the Township's civilian Police Director had retired and that former Lieutenant James J. Rosso was appointed

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<sup>1/</sup> At the time the petition was filed, the Township employed a civilian Police Director, who, limited by his civilian status, was unable to perform certain job duties. At that time, a lieutenant served as officer in charge and performed the duties the civilian Police Director was unable to perform.

as the Township's new Chief of Police. On June 1, 2022, we issued an email to the parties advising them to respond to our April 11<sup>th</sup> solicitation by June 15, 2022. The email indicated that the parties should disregard questions posed about the officer in charge designation because that designation had been eliminated as a consequence of the appointment of a new non-civilian Chief of Police.

On June 13, 2022, the Township filed and served its response, together with a certification and supporting exhibits from George Snyder, Township Administrator/Director of Public Works.<sup>2/</sup>

On June 15, 2022, the SOA filed and served its position along with certifications with supporting exhibits from Lt. William H. Springer, Jr. (Lt. Springer) and Lt. Francis G. Tulko (Lt. Tulko).

On June 27, 2022, we requested additional facts regarding the annual evaluations performed by lieutenants. We again requested that the information be provided in the form of certifications or affidavits of individuals with personal knowledge of the facts described.

On July 5, 2022, the SOA submitted and served a supplemental certification with supporting exhibits from Lt. Tulko.

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<sup>2/</sup> The certification and brief submitted by the Township were dated April 22, 2022, before the new, non-civilian Chief of Police was appointed.

On July 11, 2021, the Township replied, acknowledging that the Chief of Police and the Business Administrator “. . . concur with the information contained in” Lt. Tulko’s certification.

We have conducted an administrative investigation to determine the facts. N.J.A.C. 19:11-2.2. The disposition of the petition is properly based upon our administrative investigation. No substantial or disputed material facts require us to convene an evidentiary hearing. N.J.A.C. 19:11-2.2 and 2.6. I find the following facts.

Two (2) lieutenants are currently employed by the Township<sup>3/</sup> (Lt. Springer certification). Lieutenants are not currently represented by any collective negotiations representative. The petitioner currently represents 5 sergeants for purposes of collective negotiations and has represented them through several collective negotiations agreements over the years. About twenty rank and file police officers employed by the Township are represented for purposes of negotiations by Hopewell Township PBA, Local 342.

Article I(B) (3) of the most recent negotiations agreement between the Township and the SOA extending from January 1, 2019 through December 31, 2021, provides:

[Any] Sergeants promoted to Lieutenant while

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<sup>3/</sup> At the time the petition was filed, there were 3 lieutenants employed by the Township. However, Lt. Rosso was appointed Chief of Police on May 16, 2022.

this contract is in effect will carry with them the benefits of this contract to their new position of Lieutenant.

    On or about November 12, 2020, the Township appointed a civilian Police Director. As a civilian, the Police Director did not have the authority to hire, discipline, and/or discharge a Township law enforcement officer. The Police Director also did not have authority to implement certain policies because his was a civilian. At that time, Lt. Springer served as the "officer in charge", the highest-ranking law enforcement officer in the Department. As officer in charge, Lt. Springer had the authority to hire, discipline, and/or discharge Township law enforcement officers, including members of the SOA. Also, as officer in charge, Lt. Springer was responsible for implementing certain policies. The civilian Police Director retired effective May 13, 2022. On May 16, 2022, Lt. Rosso was appointed as Township Chief of Police, now the highest-ranking officer in the department. Springer's designation as "officer in charge" was eliminated.

    Synder certifies that lieutenants are responsible for conducting internal affairs and A.B.C. (alcohol beverage control) investigations; preparing work schedules; scheduling annual leave time; and maintaining attendance records.

    Lt. Tulko certifies that he is the internal affairs officer for the department and is assigned to "investigate allegations of officer misconduct, impropriety, and/or various complaints

against officers of the department," including SOA unit members. Tulko certifies that he determines whether the allegations he is investigating should be sustained, but does not advise whether discipline should be imposed, nor what type of discipline should be imposed.

Lieutenants write annual reviews of SOA unit members under their purview, pursuant to the department's Standard Operating Procedure (SOP) for Performance Evaluations. The evaluations are used to assess possible promotional opportunities. Lt. Tulko certifies that "the evaluations and/or reviews will be reviewed as part of the peer-review portion of the promotional process. The peer-review process is one part of the promotional process, which also includes a written examination and interview." Evaluations are not used to bring disciplinary charges against an employee.

### ANALYSIS

#### Managerial Executive Status

The Township contends that the lieutenants are managerial executives. The Township submits that the officer in charge is the highest-ranking sworn law enforcement officer and is responsible for "administering and enforcing rules and regulations and any special emergency directives for the disposition and discipline of the agency and its members. . . ." The Township argues that ". . . while there is currently one

acting officer in charge, the Township may rotate the lieutenants, and thus each lieutenant may assume responsibility as the officer in charge.<sup>4/</sup>"

The SOA disputes that the lieutenants are managerial executives. It contends that the lieutenant serving as the officer in charge was responsible for implementing the Township policies for a certain period because the Police Director, as a civilian, was unable to do so. And when new Chief of Police was appointed, the officer in charge designation was eliminated.

N.J.S.A. 34:13A-5.3 grants public employees the right to organize and collectively negotiate. N.J.S.A. 34:13A-3(f) specifically exempts managerial executives from that right and defines managerial executives of any public employers other than the State of New Jersey 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. . . .

"A managerial executive need not formulate policies and practices and be responsible for directing the effectuation of policies and practices. One or the other is sufficient." New Jersey Turnpike Auth., 289 N.J. Super. 23, 36 (App. Div. 1996), aff'd as mod. 150

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<sup>4/</sup> Although we provided the parties with additional time to respond to our April 11, 2022 to account for elimination of the officer in charge designation, the Township provided a response that was dated prior to the elimination of that designation.



N.J. 331 (1997).

New Jersey Turnpike Auth. sets forth the following test to determine managerial authority:

A person formulates policies when he develops a particular set of objectives designed to further the mission of a segment 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. 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. [Id. at 150 N.J. 356]

Our Supreme Court derived this test by modifying the Commission's decision in Montvale Bor., P.E.R.C. No. 81-52, 6 NJPER 507, 509 (¶11259 1980). Specifically, it eliminated as too restrictive the requirement set forth in Montvale Bor. that managerial executives be able "to affect broadly the organization's purposes or its means of effectuation of these purposes." N.J. Turnpike Auth., 150 N.J. at 356. It explained that ". . . the requirement that a managerial employee be one who broadly affects the agency's mission should not be a condition of exclusion, but merely an example of a manager who should be excluded." Id.

The Court, however, rejected broader interpretations of the managerial executive definition. It explained that during the course of amending the Act, the Legislature had rejected a managerial executive definition that would have excluded persons "effectuating and making operative" management policies and practices and had instead confined that part of the exclusion to persons "directing the effectuation" of such "policies and practices." Id. at 347-48. The Court concluded that "directing the effectuation" connotes a higher level of authority than does "effectuating and making operative." Id. at 355.

I find that the lieutenants are not managerial executives within the meaning of the Act. The Township's arguments rely on the fact that it had employed a civilian Police Director, the consequence of which was that the "officer in charge" performed certain job duties of a police chief. Those duties included administering and enforcing the rules and regulations of the department. But, the Township no longer employs a civilian Police Director and the officer in charge designation has been eliminated. The officer in charge, who was a lieutenant, is no longer responsible for formulating or directing the effectuation of policy. Those duties are now performed by the Police Chief. Accordingly, I find that lieutenants are not managerial executives because they neither formulate nor direct the effectuation of policy.

**Conflict of Interest**

Our Act generally affords public employees, both supervisors and non-supervisors, the right to form, join and assist employee organizations. N.J.S.A. 34:13A-5.3. Other than in very limited circumstances, the Act expressly prohibits supervisors and non-supervisors from being represented in one and the same collective negotiations unit. N.J.S.A. 34:13A-5.3. However, a proposed unit comprised solely of a public employer's supervisors does not necessarily establish an appropriate unit with the requisite community of interest. West Orange Bd. of Ed. v. Wilton, 57 N.J. 417, 425-26 (1971). As our Supreme Court in Wilton explained:

If performance of the obligations or powers delegated by the employer to a supervisory employee whose membership in the unit is sought creates an actual or potential substantial conflict between the interests of a particular supervisor and the other included employees, the community of interest required for inclusion of such supervisor is not present. [Id. at 426.]

An employee's role in the evaluation and/or grievance process is a significant factor in ascertaining whether an actual or potential substantial conflict exists. Monmouth Cty. Sheriff, D.R. No. 2015-6, 41 NJPER 508 (¶159 2015); Wilton, 57 N.J. at 423; Somerset Cty. Library Comm'n, D.R. No. 96-18, 22 NJPER 189 (¶27098 1996). We have consistently held that a supervisor's evaluations must be closely tied to a personnel action or disciplinary decision in order to find a Wilton conflict.

Watchung Hills Bd. of Ed., P.E.R.C. No. 85-116, 11 NJPER 368 (¶16130 1985); Westfield Bd. of Ed., P.E.R.C. No. 88-3, 13 NJPER 635 (¶18237 1987); Burlington Cty. Bd. of Social Services, D.R. No. 96-15, 22 NJPER 180 (¶27095 1996); Somerset Cty. Library Comm'n; Monmouth Cty. Sheriff. Where no evidence indicates that an evaluation has led to a personnel action or disciplinary determination, we have declined to find a Wilton conflict. Monmouth Cty. Sheriff (finding the inclusion of captains in a unit of sergeants and lieutenants did not create a conflict of interest, since captains' evaluations of unit employees did not result in personnel actions); Burlington Cty. Bd. of Social Services (Director finds that a assistant training supervisor's evaluations of unit employees did not generate a conflict of interest, since the evaluations were not used in personnel action); Westfield Bd. of Ed., 13 NJPER at 637 (Commission emphasizes that "evaluations alone do not necessarily create a conflict of interest sufficient to exclude the evaluator from the unit" and that the Commission has looked to whether the evaluation "relates to other actions such as renewal, tenure, promotion or salary").

Even where a department head recommends the hiring, firing or discipline of a unit employee, we will not find a Wilton conflict if no facts suggest that the employer is bound by or has followed those recommendations. Id. In Teaneck, the Director

found no conflict where the record evidence indicated the township manager, and not the township's department heads, had "final discretion" over hiring, firing and disciplinary decisions. Id.

No facts support a finding that the inclusion of lieutenants in the petitioned-for unit will create a Wilton conflict. The Township has not provided any examples in which the Township Administrator or Police Director have relied on an evaluation or recommendation by lieutenant(s) in rendering a disciplinary decision or implementing a personnel action. That lieutenants perform annual evaluations of unit employees does not, by itself, create a Wilton conflict. Westfield Bd. of Ed.; Burlington Cty. Bd. of Social Services. Also, nothing provided suggests that the lieutenants review or decide grievances filed by unit employees.

Acting in a lead capacity; assigning, scheduling, guiding, directing, and overseeing the work of others; authorizing payments and performing administrative functions; and submitting reports of work completed or evaluations of others without effective recommendations for or close ties to personnel actions do not implicate supervisory status under the Act nor a substantial conflict of interest. City of Linden, D.R. No. 2011-12, 38 NJPER 159, 160 (¶46 2011); Academy Urban Leadership Charter High School, D.R. No. 2018-16, 44 NJPER 253 (¶72 2018); State of New Jersey (Dept. of Law and Public Safety), D.R. No.

93-25, 19 NJPER 385 (¶24169 1993); Jackson Tp., D.R. No. 2020-6, 46 NJPER 133 (¶30 2019).

In Monmouth Cty. Sheriff, no substantial potential supervisory conflict of interest was found between captains and the existing unit of lieutenants and sergeants. The employer did not provide any examples of captains responding to grievances on the employer's behalf; evaluations were not directly tied to personnel actions; and disciplinary charges could only be filed with the approval of the undersheriff. The Director found that the authority of captains over their subordinates was similar to the authority that lieutenants and sergeants wielded over their respective subordinates, such as evaluating, testifying against them in disciplinary proceedings, approving their leave time, authorizing overtime assignments, and participating as part of a panel for promotions. The Director found that these facts did not indicate that the captains' inclusion would create anything more than a de minimis conflict, and distinguished as having "little bearing" those cases involving rank and file patrol officers, that would presume an intolerable conflict of interest.

In this case, analogous to the circumstances of Monmouth Cty. Sheriff, any conflict created by adding lieutenants to the existing unit of sergeants would be de minimus. Although lieutenants are responsible for all internal affairs and A.B.C. investigations, preparing work schedules, scheduling annual leave

time and maintaining attendance records, such duties are not enough to create a impermissible conflict of interest.

Relying on County of Somerset, D.R. No 2018-10, 44 NJPER 155 (¶45 2017), the Township argues that lieutenants have supervisory and command authority over sergeants in the negotiations unit they are seeking to join and therefore, a potential for conflicts of interest arise so that lieutenants should be excluded from the unit. County of Somerset involved the clarification of a unit of rank-and-file officers, corporals and sergeants. The Director found that the existing unit must be clarified to remove the sergeant title because sergeants possessed enough supervisory and command authority over rank-and-file officers to create a substantial, potential conflict of interest between the sergeants and the corporals and rank-and-file corrections officers. This case however, concerns an extant unit of superior officers that excludes rank-and-file police officers. There is a "presumed community of interest" among the superior officers. City of Burlington. As discussed above, the only duties specifically identified by Township are those related to investigations and evaluations; preparing work schedules; scheduling annual leave time; and maintaining attendance records. A recitation of titles and generalized written duties in a job description or personnel manual can't substitute for a proffer of specific actual and regularly-performed duties; and, of the duties specifically

identified, a showing of how they are tied to personnel actions. In the absence of such a proffer, I cannot detect a substantial conflict of interest. Monmouth Cty. Sheriff's Office; City of Linden; Academy Urban Leadership Charter High School, State of New Jersey (Dept. of Law and Public Safety); Jackson Tp.

Accordingly, I do not find that the inclusion of lieutenants in the SOA's unit would create a impermissible conflict of interest.

#### **CONCLUSION**

Based on the forgoing, I find the following unit is appropriate for collective negotiations.

Included: All regularly employed police lieutenants of the Township of Hopewell added to the existing unit of all regularly employed police sergeants employed by the Township of Hopewell.

Excluded: Managerial executives, confidential employees, and non-supervisors within the meaning of the Act; craft employees, professional employees, non-police, casual employees; chief of police, patrol officers, dispatchers, school crossing guards and special officers; and all other employees of the Township of Hopewell.



ORDER

I certify Hopewell Township Superior Officers' Association/Policemen's Benevolent Association Local 342A as the exclusive majority representative of the unit described above, based upon its authorization cards.<sup>5/</sup>

/s/Jonathan Roth  
Jonathan Roth  
Director of Representation

DATED: July 28, 2022  
Trenton, New Jersey

**A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3.**

**Any request for review is due by August 8, 2022.**

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<sup>5/</sup> A Certification of Representative will issue with this decision.