

D.R. NO. 91-23

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

In the Matter of

STATE OF NEW JERSEY,

Public Employer,

-and-

Docket No. RO-90-169

SUPERVISING CONSERVATION OFFICERS
ASSOCIATION,

Petitioner.

STATE OF NEW JERSEY,

Public Employer,

-and-

Docket Nos. RO-91-57, CU-91-2

SUPERIOR OFFICERS ASSOCIATION,
CAPTAINS UNIT,

Petitioner.

SYNOPSIS

The Director of Representation orders that a mail ballot election be conducted among the Supervising Conservation Officers employed by the State of New Jersey, Department of Environmental Protection to determine if they wish to be represented by the petitioner Superior Officers Association, Captains Unit for purposes of collective negotiations. The Director rejected the State's contention that the title is managerial executive within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

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Appearances:

For the Public Employer
Robert J. DelTufo, Attorney General
(Michael L. Diller, Deputy Attorney General)

For the Petitioner Supervising Conservation Officers
Association
Greg Huljak, Representative

For the Petitioner Superior Officers Association
Robert Balicki, Representative

DECISION AND DIRECTION OF ELECTION

On June 22, 1990 the Supervising Conservation Officers
Association ("SCOA") filed a petition, docketed as RO-91-169, with
the Public Employment Relations Commission ("Commission"). The SCOA

seeks to represent all Supervising Conservation Officers employed by the State of New Jersey, Department of Environmental Protection, Division of Fish, Game and Wildlife ("State") for the purposes of collective negotiations. On July 3, 1990, the N.J. Superior Officers Law Enforcement Association, Captains' Unit ("Captains' Unit") filed a clarification of unit petition, docketed as CU-91-2, seeking to clarify the title Supervising Conservation Officer into its collective negotiations unit. On October 2, 1990, the Captains' Unit filed a representation petition, docketed as RO-91-57, seeking to accrete the title Supervising Conservation Officer into its unit. The State opposes all three petitions. It alleges the positions in the subject title are managerial-executive within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), and are not appropriate for inclusion in any negotiations unit. The State claims that the clarification petition is inappropriate and should be dismissed. The State further objects to the representation petition, docket RO-90-169 because it would result in unit fragmentation.

Based on our investigation we make the following factual findings.

1. The State and the Captains' Unit are presently negotiating their first agreement. The Commission certified the Captains' Unit on June 5, 1990. The unit includes all corrections captains employed by the State.

2. The Supervising Conservation Officer title was created

in 1985 and was designated an exempt managerial title by the State. There are two Supervising Conservation Officers, Greg Huljak and Robert Winkel. Huljak supervises forty two (42) employees in the following titles:

- 3 Conservation Officers I
- 6 Conservation Officers II
- 28 Conservation Officers III
- 1 Technician, Management Information Systems
- 3 Radio Dispatchers
- 1 Principal Clerk-Typist

Winkel supervises thirteen employees:

- 1 Conservation Officer I
- 6 Conservation Officers II
- 5 Conservation Officers III
- 1 Investigator, DEP

3. Both Huljak and Winkel report to the Chief, Bureau of Law Enforcement in the Division of Fish, Game and Wildlife, Department of Environmental Protection. The Chief reports to the Assistant Director of Operations who reports to the Division Director. The Division Director reports to an Assistant Commissioner. The Division consists of about 300 employees in 10 Bureaus.

4. Supervising Conservation Officers coordinate, direct and supervise the activities of the Bureau which has as its mission wildlife, land, water and marine environmental law enforcement. All of the professional titles in the Bureau are police within the meaning of the Act. The job specification for Supervising Conservation Officer contains, in relevant part:

Under the general direction of the Chief, Bureau of Law Enforcement . . . develops, organizes and supervises

technical and administrative activities of the Bureau of Law Enforcement.

Assists the Chief in the development of bureau . . . work schedules, programs, and procedures.

Recommends changes . . . to the State Game Code, the State Fish Code, law revisions, new legislation and special permits.

Coordinates and prepares the Bureau's annual budget request and administers all purchasing and allocating of funds and activities for the Bureau.

Responsible for developing and executing new conservation enforcement programs as assigned by the Chief (emphasis added);

As directed by the Chief of the Bureau, oversees the planning and coordinating of wildlife resource protection and regulatory programs.

Plans, directs and coordinates the activities of subordinate officers assigned to water pollution and marine law enforcement.

5. The Bureau uses a manual of standard operating procedures. Huljak and Winkel play a role in developing and recommending new and modified procedures. Neither appears to have sole authority to implement such procedures. Rather, as one of the procedures indicatés, "All procedural orders are issued by direction of the Chief, Bureau of Law Enforcement with the approval of the Assistant Director of Operations." Further, none of the evidence submitted indicates that these procedures are policy equivalents.

6. Winkel was appointed Principal Emergency Response Coordinator. This entails responding to wildlife emergencies, which include large scale mortality of wildlife or situations which are life threatening to endangered or other wild species. Winkel has

the authority at such times to mobilize and deploy department personnel, including higher ranking staff. No evidence was presented about the frequency of such occurrences.

7. Both Winkel and Huljak play a limited role in developing the Bureau's budget. While they prepare reports, their authority and discretion to spend funds and their ability to acquire additional resources is highly circumscribed by higher managerial approval and choice among competing needs within the Division.

8. Huljak and Winkel provide technical support to Marine Fisheries and Shellfish Councils; their authority to determine the policies of those councils is subordinate to other council members and to the Director of the Fish, Game and Wildlife Division and the Commissioner of the department.

ANALYSIS

As to the clarification petition and the representation petition which seeks a unit of two Supervising Conservation Officers, I find that these are inappropriate and dismiss both of them. A clarification petition which seeks to enlarge the scope of a unit is inappropriate. See Wayne Bd. of Ed., D.R. No. 80-6, 5 NJPER 422 (¶10221 1979), aff'd. P.E.R.C. No. 80-94, 6 NJPER 54 (¶11028 1980) (Clarification petition held inappropriate where petitioner seeks to include a title which was in existence at the time the unit was formed and knowingly not then placed in the unit) As to the representation petition, I agree with the State that such a unit unduely fragments the employers bargaining unit structure and

is impermissibly organized along a single job title. The Commission favors structuring negotiations units along broad-based, functional lines and has been reluctant to find appropriate units structured along occupational or departmental lines. See State v. Professional Association of N.J. Dept. of Ed., 64 N.J. 231 (1974); State of New Jersey, P.E.R.C. No. 68; Piscataway Tp. Bd. of Ed., P.E.R.C. No. 88-124, 10 NJPER 272 (¶15134 1984)

The Captain unit seeks to add the Supervising Conservation Officers to its unit of Corrections Department Captains. The State objects because it claims these positions are managerial executives. Under the Act managerial executives do not have the statutory right to organize. N.J.S.A. 34:13A-5.3 states:

...provided, however, that this right shall not extend to elected officials, members of boards or commissions, managerial executives or confidential employees

The statutory definition of managerial executive is:

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....
N.J.S.A. 34:13A-3(f)

This definition was applied initially in Borough of Avon, P.E.R.C. No. 78-21, 3 NJPER 373 (1977). There, a lifeguard captain was found not to be a managerial executive although he prepared the beach operations budget, authorized and modified rules and regulations, created the disciplinary system, authorized changes in the workweek, added guards to the payroll in emergencies, participated in management meetings, influenced the Borough's and

Mayor's policies, trained and scheduled all guards, managed the beach and supervised guards on a day-to-day basis. The Commission stated:

[T]he term "managerial executive" shall be narrowly construed, and...the relevant National Labor Relations Board precedent...indicates that a wider range of discretion than that possessed by [the lifeguard captain] is needed. [He] was clearly a supervisor and in that capacity could be said to be effectuating management policy, but the Act clearly distinguishes managerial executives --excluded from coverage-- from supervisors--eligible to be represented in appropriate units.

Id. at 374. (Emphasis added).

In Borough of Montvale, P.E.R.C. No. 81-52, 6 NJPER 507, 508-09 (¶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 methods, means and extent for 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 purposes or 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.

Id. at 509. (Emphasis added)

In Bergen Pines Cty. Hosp. and Council No. 5, NJCSA, D.R. No. 83-8, 8 NJPER 525 (¶13245 1982), three titles were found not to be managerial although they were in the fourth step of the chain of

command. The positions only had department-wide, not hospital-wide authority. Here, the Department of Environmental Protection is headed by a Commissioner and Supervising Conservation Officers are six levels beneath him. The Supervising Conservation Officers' authority is not department-wide but is limited to a single bureau, where they are second or third in the chain of command with respect to policy determination. I conclude that Winkel and Huljak do not have authority sufficient to affect broadly the organization's purposes.

Law enforcement rules and procedures are recommended by the Supervising Conservation Officers and approved by their bureau and division superiors. Many of the State's documentary exhibits highlight the responsibilities of Steve Herb, the Chief of the Bureau of Law Enforcement, rather than those of the Supervising Conservation Officers. Supervising Conservation Officers assist the Chief by recommending procedures and enforcing the bureau's policies. They do not unilaterally determine how policies will be implemented, but rather ensure that standard operating procedures are followed. Accordingly, I find that Supervising Conservation Officers do not formulate policy.

The Supervising Conservation Officers' duties involve primarily administrative and supervisory responsibilities. As higher level supervisors, they have discretion in responding to day to day situations. The State avers that these Officers handle grievances at such an extent and level to be in the managerial

executive category. No evidence was submitted as to the extent of the officers' authority to resolve grievances or at which step(s) they represent the Department. I conclude that the Supervising Conservation Officers' discretion in handling grievances does not rise to the level of a managerial employee. No evidence was offered regarding the Supervising Conservation Officers' role in collective negotiations.

The State has made generalized claims about the managerial nature of these positions duties but the evidence it provided does not support these general claims. These employees are higher level supervisory law enforcement employees. The fact that they supervise two levels of supervisors is of little relevance to the issue of their managerial status. The role that Winkel plays as emergency response coordinator is also irrelevant. The duties assumed by police (para-military) personnel during emergencies does not determine their overall status as managers. The positions' role in preparing the Bureau's budget is ministerial and advisory in nature rather than one effectively controlling the allocation of limited resources among competing demands affecting the agency's overall mission. Significantly, these positions are subordinate to a Bureau Chief, Assistant Director and Director. Much of the evidence provided highlights that the Bureau Chief and Assistant Director must sign off or approve Huljak and Winkel's submissions and recommendations.

I find that these positions are not managerial executive as

defined by the Act and to order an election determine whether these employees wish to be represented by the Captains' unit for purposes of collective negotiations.

Accordingly, I find that the petitioned-for unit is appropriate and direct that an election be conducted among employees in the following unit:

Included: All Supervising Conservation Officers employed by the State of New Jersey to be added to the Superior Officers Association, Captains Unit.

Excluded: All other employees, all non-supervisory employees, non-police employees, managerial executives, confidential employees, craft employees, non-professional employees, and firefighters and all employees represented in other negotiations units.

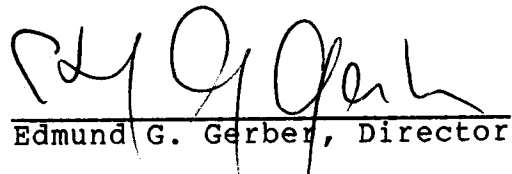
The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation 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 of the election. 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: February 28, 1991
Trenton, New Jersey