

P.E.R.C. NO. 84-96

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF BYRAM,

Public Employer,

-and-

Docket No. RO-83-138

BYRAM TOWNSHIP SUPERIOR  
OFFICERS ASSOCIATION,

Petitioner.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated to him by the full Commission, dismisses a Petition for Certification of Public Employee Representative filed by the Byram Township Superior Officers Association. The Association had sought to represent a unit of the Chief of Police and the Police Lieutenant. Adopting the recommendations of a Commission Hearing Officer, however, the Chairman concludes that the Chief of Police is a managerial executive and that a unit consisting solely of a Lieutenant would be inappropriate.

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Appearances:

For the Public Employer, Aron & Salsberg, Esqs.  
(Stephen R. Fogarty, of Counsel)

For the Petitioner, Loccke & Correia, Esqs.  
(Richard D. Loccke, of Counsel)

DECISION AND ORDER

On January 28, 1983, the Byram Township Superior Officers Association ("Association") filed a Petition for Certification of Public Employee Representative. The Association seeks to represent a two-person unit consisting of the Chief of Police and Police Lieutenant of the Township of Byram ("Township"). The Township contends that the petition should be dismissed because, it asserts, the Chief of Police is a managerial executive and a unit consisting solely of the Police Lieutenant would be inappropriate.

On March 23, 1983, the Director of Representation issued a Notice of Hearing. On May 17 and 24, 1983, Hearing Officer Lawrence Henderson conducted a hearing at which the parties examined witnesses and presented exhibits. The parties filed post-hearing briefs.

On August 18, 1983, the Hearing Officer issued his report and recommended decision. H.O. No. 84-4, 9 NJPER \_\_\_\_ (¶\_\_\_\_ 1983 (copy attached)). He concluded that the petition should be dismissed because the Chief of Police was in fact a managerial executive and a single employee unit would be inappropriate.

On September 14, 1983, the Association filed exceptions asserting that the Chief of Police is not a managerial executive. The Township has filed a brief supporting the recommended decision.

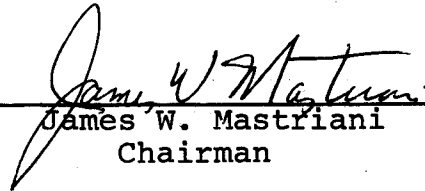
Pursuant to N.J.S.A. 34:13A-6(f), the full Commission<sup>1/</sup> has delegated authority to me to apply well-settled law to this case. I have reviewed the record. The Hearing Officer's findings of fact are accurate and I adopt and incorporate them here. Based on these facts and my review of the record, I agree with the Hearing Officer's conclusion that this Byram Township Chief of Police is a managerial executive under the standards set forth in In re Borough of Montvale, P.E.R.C. No. 81-52, 6 NJPER 507 (¶11259 1980). I further find that a unit consisting solely of the Lieutenant would be inappropriate. See In re Borough of Shrewsbury, P.E.R.C. No. 79-42, 5 NJPER 45 (¶10030 1979), aff'd 174 N.J. Super. 25 (App. Div. 1980), certif. den. 85 N.J. 129 (1980). Accordingly, I dismiss the petition.

<sup>1/</sup> Pursuant to N.J.A.C. 19:11-8.8, the Commission transferred this case to itself for appropriate action.

ORDER

The Petition is dismissed.

BY ORDER OF THE COMMISSION

  
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James W. Mastriani  
Chairman

DATED: Trenton, New Jersey  
January 30, 1984

STATE OF NEW JERSEY  
BEFORE A HEARING OFFICER OF THE  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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TOWNSHIP OF BYRAM,

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- and -

Docket No. R0-83-138

BYRAM TOWNSHIP SUPERIOR  
OFFICERS ASSOCIATION,

Petitioner.

SYNOPSIS

In a Petition for Certification of Employee Representative filed by the Byram Township Superior Officers Association, a Hearing Officer of the Public Employment Relations Commission finds that the Chief of Police of the Township of Byram is a "managerial executive" as that the term is defined by the Act, and is therefore inappropriate for inclusion in the petitioned-for unit. The parties stipulated that the Police Lieutenant, the second member of the petitioned-for negotiations unit, is a supervisor within the meaning of the Act. However, since a negotiations unit consisting of only one person is inappropriate, the Hearing Officer recommends that the Petition be dismissed in its entirety.

A Hearing Officer's Report and Recommendations is not a final administrative determination of the Public Employment Relations Commission. The Report is submitted to the Director of Representation who reviews the Report, and exceptions thereto filed by the parties and the record, and issues a decision which may adopt, reject or modify the Hearing Officer's findings of fact and/or conclusions of law. The Director's decision is binding upon the parties unless a request for review is filed before the Commission.

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(Stephen R. Fogarty of counsel)

For the Petitioner  
Loccke & Correia, Esqs.  
(Richard D. Loccke of counsel)

HEARING OFFICER'S  
REPORT AND RECOMMENDATIONS

On January 28, 1983, a Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission ("Commission") by the Byram Township Superior Officer's Association ("Association") seeking a unit comprised of the Police Chief and the Police Lieutenant employed by the Township of Byram ("Township") 1/.

The Township objected to the petitioned-for unit, arguing that the Chief is a managerial executive within the meaning of the New Jersey

1/ On January 15, 1983, the Township filed a Petition for Certification of Public Employee Representative (Docket No. RE-83-2) because the Association had filed a Petition and Notification to commence Interest Arbitration. The RE Petition was withdrawn, however, at the hearing on May 17, 1983.

Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act") and therefore is ineligible for inclusion in any unit. In addition, the Township concluded that since the Police Chief is a managerial executive, a unit consisting solely of the Police Lieutenant would not be an appropriate unit.

Pursuant to a Notice of Hearing issued by the Director of Representation on March 23, 1983, hearings were held on May 17 and 24, 1983, 2/ at which the parties were given the opportunity to examine and cross-examine witnesses and to present evidence. The last transcript of the hearing was received on June 30, 1983. The parties waived their rights to argue orally. The parties filed post-hearing briefs, the last of which was received on August 15, 1983.

#### ISSUE

The issue herein is whether the proposed unit is an appropriate unit within the meaning of the Act.

Based on the entire record in these proceedings, the Hearing Officer makes the following:

#### FINDINGS OF FACT

1. The Township of Byram is a public employer within the meaning of the Act, is subject to its provisions and is the employer of the employees who are the subject of these proceedings.

2. The Byram Township Superior Officers Association is a public employee representative within the meaning of the Act and is subject to its provisions.

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2/ The hearing on May 17, 1983, was transcribed by two court reporters, one in the morning and early afternoon, and the second in the late afternoon. Accordingly, the transcript from the first reporter is indicated as Tr. I, the second as Tr. II and the second day of hearing as Tr. III.

3. The Association asserts that the Chief and Lieutenant are employees within the meaning of the Act and that these titles together constitute an appropriate unit.

4. The Borough disputes the proposed unit, alleging that the Chief is a managerial executive within the meaning of the Act and is therefore inappropriate for inclusion in any unit.

5. The parties stipulated that the Lieutenant is a supervisor within the meaning of the Act. (Tr. II, p. 70).

6. The Township, which has a population of 7,473 <sup>3/</sup> functions under a committee form of government consisting of five elected members all of whom who serve on a part-time basis. The Mayor is selected from among the five members by the Committee. The Committee also appoints members to serve as liaison between each of the Township's departments, including the police department, and the full Committee. (Tr. I, pp. 10,11 and 92). The Police Chief is responsible for submitting an annual report to the Committee which sets forth various goals set by the Chief, including those related to personnel and law enforcement functions. (Exhibit E-2). The Chief is also responsible for promulgating the department's standard operating procedures concerning a whole host of areas, including how to respond to emergency calls, how to handle radio procedures, and how to respond to a fire alarm. (Tr. III, p. 125). In addition, the Chief is responsible for coordinating and supervising the general day-to-day operation of the Township Police Department (Tr. I, pp. 92-93; Tr. II, p. 78), including the training,

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<sup>3/</sup> 1980 census noted in Exhibit E-2, p. 1. Employer exhibits are denoted as "E"; Association Exhibits as "U"; Commission Exhibits as "C"; Joint Exhibits as "J".



deployment, and shift assignment of police officers, (Tr. I, p. 41; Tr. II, p. 51 and 70; Tr. III, p. 78). The Chief is also responsible for scheduling vacations (Tr. II, p. 51), and has the sole power, pursuant to the collective agreement between the Township and the Patrolman's Benevolent Association ("PBA"), to recall police officers from vacation or to grant additional days of bereavement leave (Tr. II, p. 40). The Chief is also responsible for the maintenance of personnel files of department employees. (Tr. III, p. 130).

In addition, the Chief is responsible for determining which type of uniform, if any, either he or subordinate officers will wear, (Tr. III, pp. 82-3; Tr. III, p. 126), he establishes lunch and break periods, and he determines which police officer rides in which cars and in which patrol areas (Tr. III, p. 127). 4/

The Association presented testimony and introduced exhibits indicating that the Township Committee, the Business Administrator and the Police Commissioner may have had operational control of the police department. For example, in 1974 the Chief of Police complained to the Sussex County Prosecutor's office about the involvement of municipal officials in the day-to-day operation of the police department. (Tr. I, p. 93; Tr. III, pp. 50-51). The prosecutor thereupon requested a grand jury investigation of the Chief's allegations. (Exhibit E-4). The grand jury found that a certain Committee member had become actively involved in the operations of the police department. (Exhibit E-4, pp. 4-10). An example of such involvement occurred where the Committee

4/ While the record indicates that the Lieutenant assigns officers to particular cars in particular patrol areas, and participates in other aspects of the running of the department, given the hierarchy of the department, it is clear that the Chief is ultimately responsible for the operation of the department.

member serving, as Police Commissioner, directed the Police Chief to enforce the speed limit only in instances where the driver exceeded sixty miles per hour rather than the fifty mile per hour speed set forth in the state statute. (Exhibit E-4, p. 8). The grand jury, upon completion of its investigation, concluded inter alia that the Township Committee had "become too involved in the everyday operation" of the police department (Exhibit E-4, p. 10). In addition, the grand jury found that "[c]ertain members of the Township Committee through the use of directives have attempted to assume the role of Police Chief." (Exhibit E-4, p. 11). Included in its many recommendations was that the titles of "Police Commissioner" and "Deputy Police Commissioner" should be abolished. (Exhibit E-4, p. 12). The grand jury also recommend that municipal officials not become involved in everyday police department operations.

The record indicates that subsequent to the grand jury's presentment municipal officials did involve themselves in various aspects of the operation of the department. For example, in 1979, the Township Administrator reprimanded a police sergeant concerning outside employment. In addition, the Administrator in 1978 and 1980 involved himself in the assignment of police officers to the detective bureau. (Tr. I, p. 119; Exhibits U-9, 18 and 36). However, the Township abolished the position of business administrator in February, 1983. (Tr. I, p. 15). In addition, Committee member Matthews, who has been the police liaison for the past three years, is not involved in the day-to-day operation of the police department. <sup>5/</sup> For example, Matthews testified that during his tenure as police liaison he has not made recommendations to the Chief concerning the hiring, firing or deployment of police officers.

<sup>5/</sup> It is unclear from the record whether this lack of involvement is the result of the grand jury's recommendation that the titles of Police Commissioner and Deputy Police Commissioner be abolished.

(Tr. I, pp. 60-61). In addition the Chief, rather than Matthews, sets annual goals for the department and determines whether such goals have been achieved (Tr. I, p. 62). Therefore, the undersigned cannot credit the evidence concerning abolished or essentially unfilled positions. Rather, the evidence concerning the more recent events is credited. In that regard it is noted that the Chief of Police testified that since January, 1983, the Township Committee has not told him how to run the police department. <sup>5/</sup> (Tr. III, p. 83). In this regard the Chief testified that he has not sought a second grand jury investigation into the Committee's involvement in the day-to-day operation of the department subsequent to 1974 because whatever actions the Committee has taken were permissible under applicable statutes or ordinances (Tr. III, p. 52). In addition, the Chief testified that since the abolition of the business administrator's position in February, 1983, he (the Chief) has assumed additional responsibilities, including those pertaining to personnel (Tr. III, p. 104).

7. Pursuant to the Township ordinance which establishes the Police Department (Exhibit J-2), the Police Chief is designated as the "executive head of the police department..." (Exhibit J-2, section 2:5-1).

6/ The undersigned acknowledges that the Association introduced evidence indicating that subsequent to January, 1983 the Township Clerk and the Deputy Township Clerk, had sent memoranda to the Chief and other department heads concerning a number of issues, including the closing of municipal tennis courts by the police, insurance cards for police vehicles, the dangers of carbon monoxide poisoning, ordering of supplies, advance approval to attend luncheons and National Secretaries Week. (Exhibits U-5,6,7 and 8). With the possible exception of the closing of municipal tennis courts, which at most indicates a de minimis involvement of municipal officials in the operation of the duties of the police department, the memoranda are of a routine informational nature and in no way indicate that the Township Clerk or Deputy Township Clerk have control over how the police department operates.

In addition, the undersigned acknowledges that Township Ordinances 4-3 and 4-4 (Exhibit J-2) give the Police Commissioner and the Township Committee the power to administer the police department and to establish, amend and repeal department regulations. However, as noted in this (Continues)

The department consists of twelve sworn police officers including the Chief, and Lieutenant, one sergeant and nine police officers. (Tr. I, p. 5). Two other civilian Township employees work within the department. (Tr. I, p. 6).

8. The Township Committee, subject to Civil Service law, is vested with ultimate authority to hire and fire employees. (Tr. I, pp. 39-41 and 71-72). While the Chief is not the final hearing authority, he does make recommendations concerning hiring and firing. (Tr. I, p. 41). In that regard, the Township has never hired any police department employees who were not recommended by the Chief. (Tr. III, p. 99).

9. Each year the Chief submits a budget to the Township Committee which outlines the anticipated expenses for the coming year. (Tr. I, p. 63). In January, 1983, the Chief's budget proposal was reviewed by the Committee with the Chief. (Tr. III, pp. 134-136). During this review the Committee informed the Chief that because of a cut-back in state funding, approximately \$5,000 would have to be cut from the police budget. (Tr. III, p. 135). The Chief was then given the discretion to make the necessary adjustments in his department's budget. (Tr. III, pp. 135-136; Tr. II, p. 49).

10. The police sergeant and police officers are included within a collective negotiations unit represented by the Patrolmen's Benevolent Association as reflected in the current collective negotiations agreement between the PBA and the Township (Exhibit J-1). Neither the Chief nor the Lieutenant are members of this negotiations unit (Tr. II, p. 3) nor do they participate in any contract negotiations on behalf of the Township with the PBA. (Tr. III, p. 43).

6/ (Continues)....report, the position of Police Commissioner is essentially unfilled and that the present police liaison and the Township Committee do not involve themselves in the operation of the department. Given the actual roles of the Committee, the police liaison and the Chief, the undersigned cannot give as much weight to the cited ordinance as they might otherwise merit.

11. Included in the contract between the PBA and the Township is a grievance procedure. At the first step of this procedure, the Chief is vested with responsibility to attempt to resolve the grievance. However, the Chief could not recall any instances where he had occasion to make recommendations with regard to grievances. (Tr. III, p. 123).

12. The Chief stated that his duties relate primarily to "coordinating and supervising the day-to-day activities of the department. (Tr. II, p. 78). 7/

#### ANALYSIS

N.J.S.A. 34:13A-5.3 excludes managerial executives from the protections and rights afforded by the Act to other public employees. Section 13A-3(f), added in 1974, 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, except that in any school district this term shall include only the superintendent or other chief administrator, and the assistant superintendent of the district.

The Director of Representation applied this definition of managerial executive in In re Borough of Montvale, D.R. No. 82-32, 6 NJPER 198 (¶ 11098 1980), affm'd P.E.R.C. No. 81-52, 6 NJPER 507 (¶ 11259 1980), where he established guidelines for determining whether an employee is a managerial executive within the meaning of the Act. In affirming the Director, the Commission determined that an employee is a managerial

7/ The Chief also testified that he spends approximately one third of his time in police patrol and investigations, (Tr. I, p. 78), however, the undersigned does not give any credence to the Chief's assertion that his role in the department is not dissimilar to that of the newest police officer. (Tr. III, p. 49).

executive when he/she formulates policy or directs its effectuation.

The Commission held that:

A person formulates policies when he develops a particular set of objectives designed to further the mission of the of the government 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. 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 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.

In Montvale, supra, the Director of Representation and the Commission found that the Chief of Police was a supervisor who performed a wide range of duties, but the Mayor and the Commissioner of Police exercised almost complete control over the Chief in the daily operation of the department. The Chief's recommendations in a variety of matters were not followed; he could not deploy personnel, plan duty or vacation schedules, assign overtime, conduct discipline investigations or discipline personnel. He played no role in formulation of policy objectives.

Following Montvale, supra, the Director has applied the same standards in a similar situation. 8/

8/ See In re Borough of Lavallette, D.R. No. 83-17, 8 NJPER 617 (¶ 13293 1982).

The Commission, in Montvale, supra, note 7, indicates that good policy reasons generally exist for considering the chief law enforcement officer an essential member of the employer's management team; however, where a dispute exists as to who actually bears primary responsibility for the employer's development of the means of accomplishing the governmental mission, the Director of Representation and the Commission must examine the functional responsibilities of the disputed position very closely. As further established in Montvale, supra, merely designating someone as Chief would not automatically result in a finding of managerial status. A case-by-case examination of the individual's actual role and functional responsibilities in the formulation of policy or the direction of its effectuation must be made before determining whether the position is managerial.

The standards established in Montvale, supra, apply to the instant dispute and require an examination of:

1. the specific functions and responsibilities of the Chief and Lieutenant;
2. the relative position of these titles in the employer's organizational hierarchy; and
3. the extent of discretion accorded to the individuals in their employment.

In the instant case, unlike Montvale, the Chief does formulate management policies or objectives and directs the effectuation of these policies in the police department. The Chief also has the power to deploy police officers, to make duty assignments, shift assignments and vacation schedules. In addition, the Chief promulgates the department's standard operating procedures.

The Township Committee and the police liaison are not intimately involved in the daily activities of the department.

While the Township Committee is ultimately responsible for all expenditures of funds, the Chief does draft the police department's budget and has the discretion to apportion committee-mandated budget cuts within the department.

Accordingly, for the foregoing reasons the undersigned finds that the position of Chief of Police is managerial and that the petitioned-for unit of the Police Chief and Lieutenant is therefore inappropriate. <sup>9/</sup>

In addition, given that a negotiations unit of one employee is not appropriate, <sup>10/</sup> the undersigned finds that a unit consisting solely of the Lieutenant is also inappropriate.

<sup>9/</sup> The undersigned, in reaching the decision here, is not unmindful of the evidence and testimony indicating that the position of Chief of Police prior to 1983 was, in all likelihood, not managerial in that day-to-day control of the department, its budget, personnel and operations was in the hands of the Township Committee, the business administrator or the Police Commissioner. However, the record also reveals that at the time of the hearing the situation in the Township had changed considerably, thereby making the Chief a managerial executive. Should the situation again change at some time in the future and the Association believes that the Chief is no longer managerial, it may file an appropriate petition seeking a superior officers unit.

In addition, the Association presented testimony and documentary evidence concerning an alleged negotiations relationship between the Township and both the Chief and Lieutenant. However, given the undersigned's findings, especially with regard to the managerial executive status of the Chief, the Association's evidence concerning an alleged negotiations relationship is of no consequence.

<sup>10/</sup> In re Borough of Shrewsbury, P.E.R.C. No. 79-42, 5 NJPER 45 (¶ 10030 1979), affm'd 174 N.J. Super 25 (App. Div. 1980), petition for certification denied 85 N.J. 129 (1980).




RECOMMENDATIONS

Based on the foregoing discussion the undersigned recommends the following:

1. The position of Chief of Police in the Township of Byram is a managerial executive within the meaning of the Act and inappropriate for inclusion in any negotiations unit.

2. That since only one employee is eligible for the petitioned for unit, and since one person units are inappropriate per se, the instant Petition should be dismissed in its entirety.

Respectfully Submitted

  
Lawrence Henderson  
Hearing Officer

Dated: August 18, 1983  
Trenton, New Jersey