

D.R. NO. 93-25

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

In the Matter of

STATE OF NEW JERSEY
(DEPARTMENT OF LAW & PUBLIC SAFETY),

Public Employer,

-and-

Docket No. CU-92-41

NEW JERSEY LAW ENFORCEMENT
SUPERVISORS ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation dismisses a unit clarification petition filed by the New Jersey Law Enforcement Supervisors Association, seeking to add senior marine police officers to its unit of primary level supervisory law enforcement officers. The Director rejected that NJLESA's claim that the senior marine police officers are supervisors and should be removed from a unit of non-supervisory law enforcement officers represented by NJPBA, Local 105 since 1978. The Director finds that this petition is inappropriate given the long history of this title's inclusion in NJPBA, Local 105's unit, and further, that the title is not supervisory.

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Appearances:

For the Public Employer
Robert J. DelTufo, Attorney General
(Stephan M. Schwartz, Deputy Attorney General)

For the Petitioner
Reed & Scholl, attorneys
(Robert B. Reed, of counsel)

DECISION

The New Jersey Law Enforcement Supervisor's Association, NJLESA, filed a Petition for Clarification of Unit on February 28, 1992, seeking to include approximately 30 senior marine police officers in its collective negotiations unit of primary level supervisory law enforcement officers. Senior marine police officers are currently included in the non-supervisory law enforcement unit represented by the New Jersey State Law Enforcement Conference, NJPBA, Local 105.

The NJLESA argues that senior marine police officers are supervisors within the meaning of the New Jersey Employer-Employee

Relations Act, N.J.S.A. 34:13A-1 et seq., and therefore, should be included in a unit with other supervisors. The State objects to the petition and asserts that the title is not supervisory. It also argues that including the senior marine police officers in the NJLESA unit would put them in conflict with principal marine police officers, who supervise senior marine police officers and are included in the primary level supervisory law enforcement unit. The NJPBA, Local 105, takes no position regarding this petition.

An administrative investigation into the issues raised by this petition has been conducted. There are no substantial and material facts in dispute warranting a hearing. N.J.A.C. 19:11-2.2 and 2.6. These facts appear.

Since 1978, the NJLESA has been the certified majority representative of a broad-based negotiations unit composed of approximately 400 non-trooper police sergeants and other personnel of equal rank, including principal marine police officer, the next-higher title to senior marine police officer. The titles of senior marine police officer and marine police officer have been included in the PBA's non-supervisory law enforcement unit since its certification in 1978 as the majority representative of all non-supervisory law enforcement employees.

All three marine police officer titles are assigned to the Marine Law Enforcement Bureau, Division of Emergency Management, within the Division of State Police. The Bureau is responsible for enforcing the State's criminal, navigational and fishing statutes

and regulations in State controlled waters and on contiguous land areas. It is organized into nine administrative and operations units and nine field stations under the direction of a bureau chief, who is a state police captain.

All but three senior marine police officers are assigned to the nine field stations that serve the State's entire coast line and Lake Hopatcong.^{1/} Each field station is commanded by a state police sergeant first class, who reports directly to the bureau chief. A principal marine police officer reports to the station commander. As the assistant station commander, the principal marine police officer is responsible for making patrol and vessel assignments, preparing the duty roster and evaluating station personnel. The senior marine police officers and the marine police officers report to either the station commander or the assistant station commander. The marine police officers are organized into squads headed by a senior marine police officer.

A senior marine police officer is responsible, in part, for:

Serving as a squad leader and advising and assisting the marine police officers assigned to the squad in the performance of their daily activities, which include repairing, maintaining and operating bureau vessels or equipment, investigating and handling boating accidents or other incidents, and apprehending violators;

^{1/} Neither party has submitted any information concerning the duties of these three senior marine police officers. However, the bureau's table of organization indicates that three senior marine police officers are assigned to the two support units of budget operations and repair. Each support unit is headed by a principal marine police officer. Neither unit appears to have marine police officers assigned to it.

Acting as officer-in-charge of a bureau patrol vessel when on patrol;

Commanding the scene of a boating accident or other incidents to direct assistance or medical aid and supervise traffic control;

Investigating and reporting any suspicious activity and apprehending any violator.

The bureau operates three shifts per day, seven days per week. Each shift or tour of duty is commanded by a shift supervisor appointed by the station commander. The shift supervisor is the most senior member of the highest rank then on-duty. He is responsible for a) conducting a briefing at the start of each shift; b) assigning duties and equipment to the squad; c) inspecting the squad's vessels and equipment; d) reviewing squad members' memos and reports before they are submitted to the principal marine police officer; e) submitting weekly progress reports to the station commander; and f) approving squad members' vacation and personal leave requests. A senior marine police officer routinely serves as shift supervisor.^{2/}

The shift supervisor is not authorized to handle extraordinary situations outside the field station's standard operating procedure. Incidents such as the occurrence of a serious crime, a serious injury to or an assault upon a marine police officer or a request for services from another law enforcement agency requiring overtime must be referred to either the station commander

^{2/} If there are no higher ranking officers available, a marine police officer may be appointed as shift supervisor.

or the assistant station commander. If neither are available, then the shift supervisor must contact the duty officer.^{3/}

The NJLESA asserts that senior marine police officers evaluate marine police officers. It submitted documents to show: (1) that in September 1991, certain senior marine police officers were trained to use the State Department of Personnel's Performance Assessment Review (PAR) evaluation procedure; and (2) that from September 1991 to March 1992, when the unit was disbanded, a senior marine police officer completed PAR evaluations of marine police officers assigned to the central tactical patrol unit.

The NJLESA also asserts that senior marine police officers are appointed to act as "coaches" to marine police officer recruits. The coaches can recommend retention, additional training or termination at the end of the recruits' two-week training period. However, this assertion was not supported by any submissions from the NJLESA.

The State admits that before October 1991, senior marine police officers were given PAR training. However, it states that it trained only those senior marine police officers who were to be promoted to principal marine officer. The State also acknowledges that because of a shortage of superior officers, senior marine police officers at certain field stations did complete PAR

^{3/} The duty officer is an officer of the rank of principal marine police officer or higher and is on-call during weekdays (from 5 pm to 8 am) weekends and holidays.

evaluations of marine police officers assigned to their squads. It asserts that this practice ceased on or before October 2, 1991, when Office of Employee Relations Deputy Director John Koerwer, notified the NJLESA representative that the State no longer planned to involve senior marine police officers in PAR evaluations. The single exception to this policy occurred in the tactical patrol unit. In October 1991, the staff of this unit was reduced to a two-man operation consisting of a senior marine police officer and a marine police officer. The State agrees that in March 1992, the senior marine police officer did an interim (six month) PAR evaluation of the marine police officer. However, the supervising sergeant first class signed the evaluation as the rater. Further, this situation will not reoccur for the unit was disbanded in March 1992.

The NJLESA also submitted affidavits from three senior marine police officers who stated that they were appointed periodically to fill in for their station commanders between March 1989 to October 1991.^{4/} The NJLESA cites two recent instances of senior marine police officers attending station commander meetings as representatives of their field stations.

The State asserts that since October 1991, no senior marine police officer has acted as a field station commander or assistant

^{4/} Other documents submitted by the NJLESA in support of this assertion are not relevant. They date from 1983, before the State Police began appointing station commanders.

commander. It further asserts that station commander meetings are merely informational and that personnel decisions are not discussed.

The NJLESA argues that senior marine police officers are involved in the hiring and disciplining of marine police officers. It alleges that senior marine police officers serve on the bureau's "oral board" that interviews marine police officer candidates and makes recommendations on hiring. However, the State asserts that the oral board recommendations are not final; its recommendations are subject to further review. Moreover, senior marine police officers have not served on the board since 1988.

Finally, the NJLESA claims that senior marine police officers may initiate disciplinary complaints against marine police officers. The State asserts that all disciplinary recommendations go to the station commander for review, and are then sent to the bureau chief for approval.^{5/}

ANALYSIS

The NJLESA argues that senior marine police officers are supervisors within the meaning of the Act and should be included in its existing unit. Here, the title of senior marine police officer has been included in the PBA's non-supervisory law enforcement unit

^{5/} In addition, the NJLESA asserts that senior marine police officers serve on an accident review board which can recommend discipline against an employee who negligently caused an accident. However, no evidence has been submitted in support of this claim.

since 1970 when the PBA was certified as the majority representative of that unit. Given this long history, it is not appropriate to remove these employees from one unit and place them into another unit through a clarification of unit petition. 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). We will not process a clarification petition that seeks to clarify a unit to include a title that historically was not included in the parties' contract unit, absent a showing of a change in circumstances or a significant change in a title's duties. Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977); Bergen Pines Hospital, D.R. 80-20, 6 NJPER 61 (¶11034 1980).

Further, N.J.S.A 34:13A-5.3 states, in relevant part, that supervisors having the power to hire, discharge, discipline or to effectively recommend the same do not have the right to be represented in a collective negotiations unit by an employee organization that admits non-supervisory personnel to membership. The Commission has interpreted the statutory definition of supervisor to mean those employees having the authority to hire, discharge, discipline or effectively recommend those actions. Cherry Hill Department of Public Works, P.E.R.C. No. 30 (1970). In order to establish supervisory status, it must be shown that the supervisory authority claimed to be possessed is exercised with some regularity. The Commission will look beyond the title or the job description in order to ascertain the nature of the authority that

the employee actually exercises. Somerset Cty. Guidance Center, D.R. No. 77-4, 2 NJPER 358 (1976).

The facts in this record do not indicate that senior marine police officers possess supervisory authority. Senior marine police officers are not involved in hiring, firing or disciplining marine police officers, nor do they regularly effectively recommend such actions. Senior marine police officers have not been involved in hiring for at least the past four years. Any previous participation was limited to making recommendations subject to review by superiors. Senior marine police officers have not been involved in the discipline process. They have no role in the grievance process. Although the NJLESA asserts that senior marine police officers may initiate disciplinary complaints, it has not supported this claim with actual incidents of effective recommendations for discipline.

The NJLESA argues that because senior marine police officers are squad leaders and coaches, they supervise marine police officers. However, the record here does not support this assertion. Acting in a lead capacity, overseeing and directing the work of other employees does not make an employee a supervisor within the meaning of the Act. Hackensack Bd. of Ed., P.E.R.C. No. 85-59, 11 NJPER 21 (¶16010 1985); Union Cty. Bd. of Social Services, D.R. No. 87-29, 13 NJPER 509 (¶18190 1987); Ewing Tp. Bd. of Ed., D.R. No. 87-22, 13 NJPER 195 (¶18083 1987).

Similarly, the NJLESA argues that senior marine police officers have a conflict of interest with marine police officers

when the former serve as shift supervisors. However, it has not provided any evidence of actual conflict. Shift supervisors are limited in the scope of their authority to merely directing routine duties and performing administrative functions. Therefore, I find no impermissible conflict. Little Egg Harbor Tp., D.R. No. 93-14, 19 NJPER 130 (¶24063 1993).

Before the October 2, 1991 letter from the Office of Employee Relations, some senior marine police officers were involved in performing PAR evaluations of marine police officers. While evaluation alone is not one of the statutory criteria for determining supervisory status, I have looked to it and its relationship to other actions such as renewal, tenure, promotion and salary as indicia of supervisory status and conflict of interest. Westfield Bd. of Ed., P.E.R.C. No. 88-3, 13 NJPER 635 (¶18237 1998). Except for an isolated instance in a unit now disbanded, the practice of involving senior marine police officers in evaluating marine police officers ceased soon after October 1991.

Based on the foregoing, I find that the NJLESA's unit clarification petition is inappropriate and that senior marine police officers are not supervisory employees. Therefore, I dismiss the petition.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: June 18, 1993
Trenton, New Jersey