

D.R. NO. 2015-6

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

In the Matter of

MONMOUTH COUNTY SHERIFF'S OFFICE,

Public Employer,

-and-

Docket No. RO-2014-046

FOP LODGE 121,

Petitioner.

SYNOPSIS

The Director of Representation dismisses an amended representation petition filed by Monmouth County Superior Sheriff's Officers FOP Lodge #121 (FOP) seeking to add captains to its existing unit of sheriff's officer sergeants and sheriff's officer lieutenants. The Director determined that the captains are confidential employees because they possess knowledge that would compromise the County's right to confidentiality, and therefore, are ineligible for inclusion in the FOP's unit. The Director however, rejected the County's argument that the captains are managerial executives and that their inclusion would create a Wilton conflict.

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Appearances:

For the Public Employer,
Steven Kleinman,

For the Petitioner,
Detzky, Hunter & DeFillippo
(David J. DeFillippo, of counsel)

DECISION

On January 17, 2014 and January 28, 2014, the Monmouth County Superior Sheriff's Officers FOP Lodge #121 (FOP) filed a representation petition and an amended petition accompanied by an adequate showing of interest, seeking to add captains to its existing unit of sheriff's officer sergeants and sheriff's officer lieutenants. The County of Monmouth (County) opposes the petition, claiming that the captains are confidential employees and 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 County also asserts that the captains' inclusion would create an impermissible conflict of interest.

On February 28, 2014, we conducted a conference call with the parties. They were unable to reach a voluntary resolution. By letter dated April 10, 2014, we requested both parties to provide certifications or sworn affidavits in support of their respective positions. N.J.A.C. 19:11-2.2.

The County provided the certification of one of its undersheriffs, Michael Donovan. FOP initially submitted a joint certification from Steve R. Ellis and Derek Orgen, the only two captains in the county's sheriff's office. It subsequently submitted an additional certification from Captain Ellis.^{1/}

By letter dated February 27, 2015, I advised the parties of my tentative findings and conclusions, and invited responses. Neither party filed a reply. No disputed, substantial, material facts require the convening of an evidentiary hearing. Based upon our administrative investigation, I find the following facts. N.J.A.C. 19:1-2.6.

On August 6, 1991, we issued a Certification of Representative for the following unit: "all sheriffs lieutenants and sergeants employed by the Monmouth County Sheriff and Monmouth County." The Certification specifically excluded

^{1/} The FOP explained that Captain Orgen was unavailable the week it provided its supplemental response.

undersheriffs and sheriff's captains, among other employees. The most recent collective negotiations agreement extended from January 1, 2010 through December 31, 2013. The parties' recognition clause is consistent with the description in the Certification of Representative. Approximately twelve employees are included in the negotiations unit.

The County is governed by a board of chosen freeholders, which consists of five elected members. An appointed county administrator supervises the daily operations of the county departments. The sheriff's office includes the following three divisions: law enforcement, corrections, and communications. The Sheriff is an elected official and appoints three undersheriffs to oversee the office's divisions. Undersheriff Michael Donovan oversees the law enforcement division, and has been employed with the sheriff's office since September 2008. Besides the three appointed undersheriffs, a chief of staff, contract administrator, public information officer and business administrator all sit directly beneath the Sheriff, according to a February 2014 table of organization provided by the County and FOP.

Captains Derek Orgen and Steve Ellis sit directly beneath Undersheriff Donovan on the table of organization. Captain Orgen supervises the administration and operations unit of the law enforcement division. Administration and operations is comprised

of the administration section and warrant/fugitive section, each of which is headed by a lieutenant. These two sections consist of a number of bureaus and groups relating to the daily operations of the sheriff's office, such as clerical support, special services bureau, criminal investigation bureau, evidence and identification bureau, and records bureau. Captain Ellis supervises court operations and satellite security. Another lieutenant sits directly beneath him on the chart and assists in overseeing that section. It consists of several bureaus involved in security for the court and probation offices, as well as inmate transportation.

Captain Orgen works in the sheriff's office. He shares an office with one of his subordinates, Lieutenant Collins, supervisor of the warrant/fugitive section. This office is situated next to the clerical office area and the sergeant's office. Captain Ellis works on the second floor of the county courthouse. It appears that the courthouse and the sheriff's office are separate buildings.

Administrator Gonzalez certifies that his title, the petitioned-for titles, the Chief of Police, Chief Financial Officer, and the Director of the Department of Community Development, all regularly participate in policy formulation for the Township.

Undersheriff Donovan certifies that both captains are involved in contract administration, grievance administration and preparation for grievance processing. He certifies that both captains regularly administer the contract provisions covering the superior officers and the rank and file. The County attached as an exhibit two grievances filed by the rank and file unit that proceeded to arbitration in which a captain (now retired) was the County's designee at the first step of the grievance procedure. These grievances involved college tuition reimbursement and call-in compensation. Undersheriff Donovan certifies that the captains would work with county labor counsel to respond to grievances and prepare for arbitration, and consequently have advance knowledge of the sheriff's litigation strategies. Under the parties' contractual grievance procedure, Undersheriff Donovan is the designee at the first step, while the Sheriff and the County's Director of Human Resources are the designees for the second and third steps, respectively. While the captains no longer serve as the employer's representative at the first step of the parties' grievance procedure, Undersheriff Donovan certifies that he would seek the captains' advice or testimony in grievance proceedings, if needed.

The captains, however, certify that they administer the rank and file unit's contract occasionally, for such matters as overtime policies and procedures. Captain Orgen certifies that

he has not been involved with any grievances or arbitrations. He certifies that the administrative lieutenant is responsible for handling grievances arising in his sections. Captain Ellis certifies that he handled one grievance that was filed by the majority representative of the rank and file unit. This grievance, attached by the FOP as an exhibit, involved Captain Ellis' denial of an officer's family medical leave back in February 2013, which was subsequently appealed to the Sheriff.

Undersheriff Donovan certifies that both captains are also involved in contract negotiations and preparation. He certifies that at least one captain attends negotiations sessions on behalf of management, and that he encourages the captains to speak during those sessions, particularly with respect to daily operations. The County attached as an exhibit, three sign-in sheets from recent negotiations sessions with the FOP. Captain Ellis' name appears on one sign-in sheet dated December 17, 2013, while Captain Orgen's name appears on the other two, dated January 28 and May 29, 2014. Undersheriff Donovan certifies that the captains have full knowledge of the Sheriff Office's negotiations priorities, financial considerations and potential areas of concession. The captains can recommend to management proposals that should be presented at the table and counter-proposals. As an example, Undersheriff Donovan certifies that Captain Orgen has been instrumental in responding to the rank and

file unit's proposal regarding new rules for departmental internal investigations.

Captain Orgen has attended most of the negotiations sessions, approximately five to six since November 2013. Captain Ellis attended only one session with the rank and file unit and one session with the FOP while filling in for Captain Orgen. Captain Orgen certifies that his role was to provide historical background of the contracts and identify potential contractual pitfalls. He maintains that he had no input regarding monetary issues, and he only learned of the County's position right before negotiations meetings. Captain Ellis certifies that the County never sought and that he never provided any input during the contract negotiations he attended. At the one FOP session that Captain Ellis attended, he arrived ten minutes before the scheduled meeting and listened while county counsel described its negotiations position to Undersheriff Donovan. He maintains that the County has not treated him as a full member of its negotiations team. Captain Orgen certifies that he assisted Undersheriff Donovan with preparations for negotiations, while Captain Ellis certifies that he had no such role. Captain Orgen certifies that the County provided him with a copy of its proposals and the union's proposals for negotiations. He certifies that he had minimal input in the creation of those

documents. Captain Ellis certifies that he had no access to any materials regarding the county's position in negotiations.

Undersheriff Donovan certifies that the Sheriff determines policy for his office, but the captains work in close cooperation with management. Specifically, Undersheriff Donovan certifies that when the Sheriff implemented the County's decision to close its youth detention center as part of a shared service agreement with another county, the captains were responsible for developing the policy and procedures for the transportation issues arising from that decision. Undersheriff Donovan also certifies that the captains exercise discretion in effectuating the Sheriff's policies on a daily basis. He cites Captain Ellis' authority, as the supervisor of security at the county courthouse, to recommend to the assignment judge evacuations or other safety measures should Captain Ellis perceive a security risk. Undersheriff Donovan certifies that although both captains and lower-ranking law enforcement division members can provide input regarding purchases, the Sheriff, who has final decision-making authority, typically affords greater weight to the captains' recommendations. He notes that the captains participated in determining whether the Sheriff should invest in a particular type of expensive, semi-automatic weapon, the quantity to be purchased, and to whom they should be assigned. The captains'

purchasing recommendations are communicated to Undersheriff Donovan, who then communicates them to the Sheriff.

However, Captain Ellis certifies that he has retained or continues to perform many of the same job duties and authority as when he was a lieutenant. He certifies that supervisors have the authority to approve leave time, give budgetary input, and authorize overtime assignments for their respective subordinates. For example, he notes that lieutenants also supervise the performance of sergeants, their fellow unit members, without an impermissible conflict of interest. Captain Ellis certifies that all officers, of any rank, can testify at disciplinary proceedings, as necessary.

The captains are not subject to evaluations. Captains annually evaluate lieutenants, while lieutenants annually evaluate sergeants. Undersheriff Donovan certifies that the captains review all evaluations for lieutenants and sergeants.

The interview process for titles held by unit members involves a recommendation to the Sheriff, provided by a panel of several participants on behalf of management. For promotions to lieutenant, the panel typically consists of the captains and Undersheriff Donovan. With promotions to sergeant, the panel typically consists of at least one captain, at least one lieutenant, and Undersheriff Donovan. The Sheriff has final decision-making authority.

The captains can review the discretionary judgments of lieutenants and sergeants and recommend discipline. However, Undersheriff Donovan must approve the formal filing of a disciplinary charge. Neither the County nor the FOP could recall any specific instances where disciplinary charges were filed against any employees represented by the FOP.

ANALYSIS

Confidential Employee Status

The County contends that both captains are confidential employees because of their direct involvement in negotiations on behalf of management. It explains that since captains are the senior sworn officers in the law enforcement division of the sheriff's office, they serve as the division's primary advisors regarding operational issues that may be addressed in negotiations. The County asserts that if the captains were included in the FOP unit, there would be no other qualified employee in the law enforcement division from whom Undersheriff Donovan could seek confidential advice regarding union proposals with potential consequences for the division's operations. The Township analogizes the instant petition to Ramsey Bor., D.R. No. 2006-19, 32 NJPER 155 (¶67 2006), where the Director of Representation found a public works manager to be a confidential employee because the manager was directly involved in negotiations

and had advance knowledge of the Borough's negotiations strategies and proposals.

The FOP denies that the captains are confidential employees. It contends that the captains have a minimal role with respect to contract administration and the negotiations process. The FOP asserts that the representational rights of the captains and the FOP should not be disregarded because the sheriff appointed an undersheriff from outside the law enforcement division, who therefore lacked the captains' knowledge of past practices and daily operations, derived from years of experience within the department at various ranks.

I find that both captains are confidential, and therefore, inappropriate for inclusion in a collective negotiations unit. N.J.S.A. 34:13A-3(g) defines confidential employees of public employers, other than the State, as those:

whose functional responsibilities or knowledge in connection with issues involved in the collective negotiations process would make their membership in any appropriate negotiations unit incompatible with their official duties.^{2/}

2/ Effective January 18, 2010, the New Jersey legislature modified the statutory definition of confidential employee for State of New Jersey employees only by creating a more stringent test to establish confidential status. That modification does not apply here because the employee at issue is not a State employee.

In State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507, 510 (¶16179 1985), recon. den. P.E.R.C. No. 86-59, 11 NJPER 714 (¶16249 1985), the Commission explained the approach taken in determining whether an employee is confidential:

[W]e scrutinize the facts of each case to find for whom each employee works, what [the employee] does, and what [the employee] knows about collective negotiations issues. Finally, we determine whether the responsibilities or knowledge of each employee would compromise the employer's right to confidentiality concerning the collective negotiations process if the employee was included in a negotiating unit.

Essentially, "[t]he key to finding confidential status is the employee's knowledge of materials used in the labor relations process, including contract negotiations, contract administration, grievance handling and preparation for these processes." Pompton Lakes Bd. of Ed., D.R. No. 2005-16, 31 NJPER 73 (¶33 2005); see also State of New Jersey (Div. of State Police), D.R. No. 84-9, 9 NJPER 613 (¶14262 1983).

We will find confidential status where it is clear an employee actively participates in collective negotiations on behalf of management. For example, in Springfield Tp., P.E.R.C. No. 85-88, 11 NJPER 138 (¶16061 1985), the Commission clarified a superior officers' unit to exclude a captain as a confidential employee because he had been on the Township's negotiations team for four years, formulated and evaluated negotiations proposals

and assisted the Township in developing confidential labor relations material. See also Ramsey Bor., D.R. No. 2006-19, 32 NJPER 155 (¶67 2006).

However, I find that the petitioned-for captains have a minimal role in negotiations based on the certifications provided by the County and the FOP. Undersheriff Donovan's certification regarding Captain Orgen's instrumental role in responding to the rank and file unit's proposal regarding new rules for departmental internal investigations is the only specific example that the County offers to demonstrate his participation in negotiations. And although Undersheriff Donovan certifies that the captains are empowered to speak at the table on behalf of management, the County did not identify instances where the captains exercised that authority. Therefore, there are insufficient facts to support a finding of confidential status based upon their participation in negotiations.

My conclusion that both captains are confidential employees within the meaning of the Act is instead driven by facts indicating that the captains possess knowledge that would compromise the County's right to confidentiality. Both captains acknowledge that they had brief meetings with the undersheriff and county counsel just prior to the negotiations sessions. Captain Orgen assisted with negotiations preparation. Additionally, it is undisputed that the captains have attended

contract negotiations on behalf of management on multiple occasions. I can infer that the captains became privy to confidential labor relations material from Captain Orgen's attendance at roughly five negotiations sessions and Captain Ellis' attendance at two negotiations sessions since 2013, as well as their attendance at private meetings before negotiations.

Therefore, the instant petition is more appropriately analogized to cases where we have found confidential status among support staff whose exposure to certain labor relations information rendered them ineligible for inclusion in any unit, despite their lack of participation or input on behalf of management. See e.g., City of Ventnor City, D.R. No. 2014-9, 40 NJPER 269 (¶40 2013) (finding the secretary to the mayor to be a confidential employee where she copied confidential negotiations-related documents); Glassboro Bor., D.R. No. 2008-12, 34 NJPER 127 (¶55 2008) (finding confidential status where deputy clerk's prospective duties included typing of closed session council minutes where confidential labor negotiations information is discussed).

Even accepting the FOP's assertion that the captains are not treated as full-fledged members of the County's negotiations team, the cited cases show that full participation is not a requirement for a finding of confidential status. Moreover, the County has a managerial prerogative to determine duties to meet

operational needs, and is therefore entitled to determine that the captains should assist the undersheriff and county counsel during negotiations. See Piscataway Twp. Bd. of Ed. v. Piscataway Twp. Principals and Supv. Ass'n, H.E. No. 87-63, 13 NJPER 419, 421(¶18163 1987) (citing Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Ass'n, 78 N.J. 144, 284 (1978)); Ramapo-Indian Hills Ed. Ass'n v. Ramapo-Indian Hills Reg. H.S. Dist. Bd. of Ed., 176 N.J. Super. 35, 43 (App. Div. 1980)). In the event new facts suggest that the captains have only a superficial exposure to confidential labor relations information, the clarification of unit petition remains available to clarify the FOP's unit at any time. See Ringwood Bd. of Education v. Ringwood Ed. Office Personnel Ass'n, P.E.R.C. No. 87-148, 13 NJPER 503 (¶18186 1987), aff'd NJPER Supp.2d 186 (¶165 1988).

Managerial Executive Status

The County contends that the captains are managerial executives. The County submits that the captains are the highest-ranking sworn law enforcement officers, who must exercise a significant degree of professional judgment, independence and responsibility. It asserts that the captains regularly make unsupervised determinations, including personnel and contractual matters, such as discipline, promotions, job assignments, overtime, vacations and scheduling. The County acknowledges that the captains are part of a policy-making team in the sheriff's

office, but explains that the captains' long experience gives their opinions particular weight.

The FOP disputes that the captains are managerial executives. It contends that the captains wield discretion in determining how policies are effectuated, like any other supervisor in the Sheriff's office.

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." In re New Jersey Turnpike Auth., 289 N.J. Super. 23, 36 (App. Div. 1996), aff'd as mod. in 150 N.J. 331 (1997).

In re New Jersey Turnpike Auth., 150 N.J. 331 (1997), sets forth the following test adopted by our Supreme Court 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 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 captains are not managerial executives. Many of the captains' duties, such as such as discipline, promotions, job assignments, overtime, vacations and scheduling appear to be indicative of supervisory status. Further, while the captains must regularly use their professional discretion, as the County's example of Captain Ellis' authority to respond to courthouse security risks demonstrates, it remains unclear precisely how the discretion any trained police officer employs in addressing a particular public safety threat is evidence of the formulation or direction of management policies. It does appear from Undersheriff Donovan's certifications regarding the office's purchase of expensive semi-automatic weapons that the captains provide input, which carries more weight given their years of experience. But we have previously recognized that an employee's ability to give recommendations and opinions is not a defining characteristic of managerial executives. Camden Housing Auth., D.R. No. 2014-7, 40 NJPER 219 (¶84 2013) (citing Hopewell Tp., D.R. No. 2011-14, 38 NJPER 165 (¶48 2011) and State of New

Jersey, P.E.R.C. No. 99-59, 25 NJPER 48 (¶30021 1998), recon. den. P.E.R.C. No. 2000-34, 25 NJPER 461 (¶30200 1999)).

Instead, the captains are high-level supervisors, whose authority is fairly limited by their superiors. The captains' recommendations regarding purchases are subject to two additional layers of authority in the form of the undersheriff and sheriff. Undersheriff Donovan must approve the captains' discipline recommendations. There are two other undersheriffs, a chief of staff, a warden and business administrator, who all sit above the captains in the Sheriff's Office. The County's example of the captains' role in the closing of the county's youth detention center reinforces my conclusion; the County's officials made the policy decision to close the center, the Sheriff directed the implementation of that policy decision and, in turn, tasked the captains with implementing a particular component (i.e., transportation) of that policy decision.

Conflict of Interest

Lastly, the County contends that the captains' inclusion in the FOP unit is inappropriate because it would create a conflict of interest. Although it recognizes that many superior officer units include captains, it maintains that such configurations almost always occur where there is a sworn chief or deputy chief who ranks higher in the chain of command. It cites Atlantic City, D.R. 98-16, 24 NJPER 393 (¶29179 1998) as an example where

police captains have been severed from a unit of lower-ranking personnel. It asserts that the captains' inclusion would jeopardize their ability to fairly and effectively wield their significant authority over their subordinates.

The FOP disputes the captains' inclusion would create an impermissible conflict of interest. It counters that the lieutenants have the same level of authority in supervising the sergeants as the captains have in supervising the lieutenants. It also points out that the captains are already members of the FOP.

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 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.]

To determine whether such conflicts exist, we must examine the facts of each particular case. Id. Any conflicts greater than peripheral or *de minimis*, are against the public interest. Id. An employee's role in evaluations or grievance procedures is a significant factor in determining whether an actual or potential substantial conflict exists. Id. at 423. See also Somerset Cty. Library Comm'n, D.R. 96-18, 22 NJPER 189, 190 (¶27098 1996). Our case law requires evaluations to be closely connected to personnel actions. See e.g., Roselle Park Bd. of Ed., P.E.R.C. No. 87-80, 13 NJPER 73 (¶18033 1986); Atlantic Cty. Welfare Div., D.R. No. 94-2, 19 NJPER 408 (¶24179 1993). Another consideration in determining if an actual or potential substantial conflict exists is whether the historical relationship between the supervisor and other included employees reveals compromised interests or rights. See West Paterson Bd. of Ed., P.E.R.C. No. 77 (explaining "where past experience exists, such can obviously be a more accurate gauge of probabilities than mere speculation not benefitted by hindsight.")

There are insufficient facts to support a finding that the inclusion of the captains in the FOP's unit would create an actual or potential substantial conflict of interest. The

captains currently have no formal role in the grievance procedure. Although Undersheriff Donovan certifies that he may consult with the captains as necessary to respond or have the captains respond on his behalf, the County did not identify any specific examples of Captain Ellis or Captain Orgen responding to a grievance on the Undersheriff's behalf. The captains evaluate lieutenants, but the evaluations appear to have no direct ties to personnel actions, such as increments. The Undersheriff must approve the filing of disciplinary charges. Additionally, much of the authority wielded by the captains over their subordinates appears to be similar to the level of authority that lieutenants and sergeants wield over their respective subordinates, such as evaluating subordinates, testifying against them in disciplinary proceedings, approving their leave time, authorizing overtime assignments and participating as part of a panel for promotions. These facts do not indicate that the captains' inclusion would create anything more than a *de minimis* conflict.

The County correctly notes that in cases like Atlantic City, D.R. 98-16, 24 NJPER 393 (¶29179 1998), we have previously clarified units to exclude captains. However, our cases typically involved "broad-based" police units that combined superior officers with patrol officers. See e.g., Park Ridge Bor., D.R. No. 2006-8, 32 NJPER 23 (¶12 2006) (excluding captains from broad-based unit); Atlantic City, 24 NJPER at 395 (excluding

captains from unit comprised of sergeants, detective and patrol officers). These cases reflect our well-established view that such unit configurations generally present an intolerable conflict of interest under our Act. West New York, P.E.R.C. No. 87-114, 13 NJPER 277 (¶18115 1987). Therefore, they have little bearing upon the instant matter, which involves a superior officers' unit.

Accordingly, I find that both petitioned-for captains are ineligible for inclusion in the FOP's unit, based upon their confidential status. The County has provided sufficient facts to find that captains are confidential within the meaning of the Act.

ORDER

The FOP's petition is dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION

/s/Gayl R. Mazuco
Director of Representation

DATE: March 23, 2015
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 April 1, 2015.