

P.E.R.C. NO. 87-152

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BAYONNE CITY POLICE DEPART-
MENT,

Public Employer,

-and-

Docket No. RO-86-29

BAYONNE POLICE PROFESSIONALS
ASSOCIATION,

Petitioner.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated by the full Commission, finds that a unit of deputy police chiefs employed by the City of Bayonne is appropriate for collective negotiations. The Chairman, in agreement with a Commission Hearing Officer, finds that the deputy chiefs are not managerial executives.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BAYONNE CITY POLICE DEPART-
MENT,

Public Employer,

-and-

Docket No. RO-86-29

BAYONNE POLICE PROFESSIONALS
ASSOCIATION,

Petitioner.

Appearances:

For the Public Employer, Apruzzese, McDermott, Mastro &
Murphy, Esqs. (Maurice J. Nelligan, of counsel)

For the Petitioner, William F. Warnock, Esquire

DECISION AND ORDER

On September 20, 1985, the Bayonne Police Professionals Association ("Association") filed a Petition for Certification of Public Employee Representative with the Public Employment Relations Commission. The Association seeks to represent all deputy police chiefs employed by the City of Bayonne ("City"). The City objects to this proposed unit, contending that deputy chiefs are "managerial executives" within the meaning of the New Jersey Employer-Employee Relations Act and therefore not eligible for representation.

On October 28, 1985, the Director of Representation issued a Notice of Hearing.

On February 11, April 8, May 6, July 8 and September 9, 1986, Hearing Officer Jonathon Roth conducted a hearing. The parties examined witnesses, introduced exhibits and argued orally. They also filed post-hearing briefs.

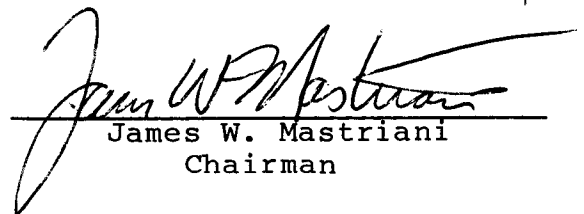
On March 31, 1987, the Hearing Officer issued his report. H.O. 87-11, 13 NJPER ___ (¶ 1987). He concluded that the deputy police chiefs are not managerial executives and that the petitioned-for unit is appropriate.

The Hearing Officer advised the parties that exceptions were due on or before April 13, 1987. Neither party filed exceptions or requested an extension of time.

I have reviewed the record. The Hearing Officer's findings of fact (2-9) are accurate. I adopt and incorporate them here. Under all the circumstances of this case and acting pursuant to authority delegated to me by the full Commission in the absence of exceptions, I also adopt his recommendation that the petitioned-for unit is appropriate and that an election should be directed.

ORDER

The matter is remanded to the Director of Representation for an election.


James W. Mastriani
Chairman

DATED: Trenton, New Jersey
May 28, 1987

H.O. NO. 87-11

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

In the Matter of

BAYONNE CITY POLICE DEPARTMENT,

Public Employer

-and-

DOCKET NO. RO-86-29

BAYONNE POLICE PROFESSIONALS
ASSOCIATION,

Petitioner.

SYNOPSIS

A Hearing Officer of the Public Employment Relations Commission recommends that the Commission find that deputy police chiefs in the City of Bayonne are not "managerial executives" within the meaning of the Act. Accordingly, the Hearing Officer recommends that an election be directed to determine their representational desires.

A Hearing Officer's Report and Recommendations is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Report and Recommendations, any exception 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.

H.O. NO. 87-11

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

In the Matter of

BAYONNE CITY POLICE DEPARTMENT,

Public Employer

-and-

DOCKET NO. RO-86-29

BAYONNE POLICE PROFESSIONALS
ASSOCIATION,

Petitioner.

Appearances:

For the Public Employer
Apruzzese, Mc Dermott, Mastro & Murphy, Esqs.
(Maurice J. Nelligan, of counsel)

For the Petitioner
William F. Warnock, Esq.

HEARING OFFICER'S REPORT
AND RECOMMENDED DECISION

On September 20, 1985, the Bayonne Police Professionals Association ("Association") filed a Petition for Certification of Public Employee Representative with the Public Employment Relations Commission. The Association seeks to represent all deputy police chiefs employed by the City of Bayonne ("City"). The City contends that the proposed negotiations unit is inappropriate because the deputy chiefs are "managerial executives" within the meaning of the New Jersey Employer-Employee Relations Act. N.J.S.A. 34:13A-5.3; N.J.S.A. 34:13A-3(f).

On October 28, 1985, the Director issued a Notice of Hearing. After several postponements at the parties' requests, I conducted hearings on February 11, April 8, May 6, July 8 and September 9, 1986. The Parties examined witnesses, introduced evidence and argued orally. The final transcript was received on October 16, 1986 and the record was closed on November 18, 1986.

Findings of Fact

1. The City of Bayonne is a public employer within the meaning of the Act and is subject to its provisions. It is the employer of the employees who are the subject of this representation petition.

2. The Bayonne Police Professionals Association is a public employee representative within the meaning of the Act and is subject to its provisions. The Superior Officers Association ("S.O.A.") represents sergeants, lieutenants and captains. At the time of Hearing, the collective negotiations agreement between the S.O.A. and the City ran from January 1, 1983 - December 31, 1986. Policeman's Benevolent Association, Local #7 ("PBA") represents all patrol officers employed by the City.

3. The City operates under a mayor and city council. The directors of public safety, parks and recreation, law and the city clerk, the business administrator and the director of the library report to the mayor.

4. The police department is composed of a director, a chief of police, three deputy chiefs, and about ten captains, fifteen lieutenants, seventeen sergeants and 149 patrol officers. The deputy chiefs, captains, lieutenants and sergeants all report directly to the Chief. The department is divided into the divisions of Patrol, Investigation and Administration. The Patrol Division includes five patrol platoons, the Traffic Division, the Safe Streets Division and the General Assignment Unit. The Investigation Division includes the Detective Bureau, the Vice Squad, Juvenile Bureau, Alcohol and Beverage Control and Licensing units. The Administration Division is responsible for planning, training and research and oversees the Bureau of Criminal Investigation, Communications and Warrants. Each deputy chief is responsible for the command of a division (R-11). Captains command the departments within each division and are responsible for the day to day supervision of the police officers.

The Patrol Division, commanded by Deputy Chief Lavin, is composed of 120 officers and 50 crossing guards, including six captains, six lieutenants, and ten sergeants. The Investigation Division, commanded by Deputy Chief Visone, is composed of two captains, two lieutenants, two sergeants and approximately 29 detectives. The Administration Division, commanded by Deputy Chief Auriemma, is composed of sixteen police officers and four civilians. The police officers include one captain, three lieutenants, and one sergeant.

5. As a division commander, each deputy chief is responsible for the proper and efficient performance of his division; maintenance of current attendance sheets and vacation schedules without conflict; insuring sufficient manpower; reviewing activities periodically; representing the department or division when so instructed by the Chief and working as acting chief when so instructed in the absence of the Chief (TC 8).^{1/}

Every three weeks the deputy chiefs rotate working the 2 p.m. to 10 p.m. shift (TA 112). On that shift each deputy chief is the ranking officer in the department but he does not issue orders or make changes, absent a unique situation (TA 113, TC 30).

Each deputy chief has been designated acting chief when the Chief is out or on vacation (TA 91). As acting chief, each deputy chief insures the smooth daily operation of the department and follow instructions phoned in daily by the Chief (TA 32).

Auriemma was designated acting chief on two occasions. Each time he was told simply to "mind the store" (TB 8). Lavin has been designated acting chief eight times. Each time he was instructed to see that the department ran smoothly (TA 32). As "acting chief", Lavin approved personnel orders, maintenance contracts, overtime pay and operations orders (TA 93; R-7 (A)-(E).

^{1/} References to the transcripts of proceedings are cited as follows: Transcript of proceedings on February 11, 1986, "TA"; April 8, 1986, "TB"; May 6, 1986, "TC"; July 8, 1986, "TD"; September 9, 1986, "TE".

R-8, R-9, R-10 (A)-(N)). Personnel orders included assignments and requirements for training and promotions (R-7 (A)-(E)). As acting chief, Visone signed overtime forms and issued orders when necessary to respond to spontaneous situations (R-25). For example, Visone, as acting chief, assigned officers to strike detail during a local labor dispute (TC 70).

The Chief has the sole authority to assign officers to a specific shift or task. Deputy chiefs do not have the authority to assign officers. The patrol officers bring scheduling requests to the the deputy chief and he passes them on to the Chief (TA 25). The Chief assigns officers to particular jobs and shifts as he sees fit. Once the schedule is determined, Deputy Chief Lavin informs the captains of their assignments and instructs them about the patrol officer assignments. The captains then inform the patrol officers of their assignments (TA 64).

Deputy chiefs and captains recommend transfers of officers when they believe a change is appropriate (TA 112). Deputy Chief Lavin recommended the transfer of an officer to remedy a personality problem. The recommendation was followed. However, when the Chief wanted to promote officers, he asked Lavin for a list of officers who were performing well. Lavin asked each captain to rank their squad according to performance and passed this information on to the Chief. The Chief promoted from that list (TA 134-137).

The police department's hiring process requires the Chief to attract qualified applicants and oversee the screening process.

The screening process is conducted by a sergeant and lieutenant who administer planning and training in the Administration department. Their job is to process applicants through a battery of tests to insure that they are qualified (TE 26). A list of fully-qualified applicants is submitted to the Director. The Director and the Chief conduct oral interviews and the Director makes all hiring decisions. Deputy Chief Lavin and several captains have attended the oral interviews as "personal favors" to the Director and Chief (TD 9). When they participate in the oral interviews they question the applicants and may make recommendations. When Deputy Chief Auriemma participated in the interviewing process he believed that the candidate had already been hired (TB 8-9).

The captains evaluate officers within their department. Evaluations are passed up the chain of command through the deputy chiefs to the Chief. The deputy chiefs review the evaluations before forwarding them to the Chief (TA 25-26).

Deputy chiefs do not represent the City in labor negotiations. They are not involved in any aspect of the negotiations process. The deputy chiefs have the authority to resolve grievances that do not involve money at the second step of the superior officers' contract (TC 90; J-1).

The deputy chiefs and captains have the authority to issue oral and written reprimands. Deputy chiefs do not need the Chief's approval to issue reprimands, but reprimands by captains must go through the chain of command to the Chief (TA 121). Since captains

perform most of the day-to-day supervision of the officers, captains usually reprimand. The record does include any evidence that deputy chiefs have exercised their authority to reprimand. The Director alone has the power to terminate an officer, but the Chief or a deputy chief acting as his designate, has the authority to impose appropriate discipline when acting as a hearing officer in a disciplinary hearing pursuant to civil service rules.

Deputy Chief Auriemma has acted as a hearing officer in two disciplinary hearings where the officer charged asserted that the Chief may have a conflict of interest. In one hearing the officer received a 20 day suspension and in the other a settlement of a two day suspension was reached (TB 10, 26). The first decision was upheld by a Civil Service Judge (TB 11).

The Director and the Chief have the primary roles in determining policy. The deputy chiefs have the primary responsibility for its implementation. In general, the Director or the Chief will order one of the deputy chiefs to research or investigate an issue to aid the Director in determining a new policy. As deputy chief of the Administration division, Auriemma is responsible for most research necessary for the Director to determine policy. He delegates this responsibility to the appropriate individual within the Administration Division (R-15, R-16 A-B, R-17 A-B). On occasion the Director will simply order an officer in the Administration Division to investigate a policy change and inform Auriemma of his order.

After a new policy is ordered, the deputy chiefs are responsible for its implementation. For example, the Director determined that a computer system should be purchased. He delegated investigation of the purchase to Auriemma. Auriemma consulted with other police departments about their systems and received information from several computer companies. He enlisted the aid of a firefighter with knowledge of computers to help him determine the best system (TE 34-41). Auriemma submitted a preliminary report, received comments and submitted a final report (TC 42-43). The Director also asked the deputy chiefs to submit procedures manuals for the departments under their command. In response to that order, Auriemma ordered each captain in charge of a department to specify in writing their functions and how they performed their duties. The captain commanding each section filed a report with the deputy chief commanding their division. These reports were compiled in a manual. The Chief gave the manual back to Auriemma several times with oral or written comments. Auriemma was also ordered to investigate the formation of a maternity leave policy for the department (R-32A), to oversee the taking of a dog census, and to investigate the procurement of a new towing contractor.

Lavin does not plan municipal police work. The shifts and staffing allocations are the same every day (TA 61). Deputy chiefs are responsible for insuring that shifts are covered when they are in command after the Chief leaves on the 2 p.m. to 10 p.m. shift (TA 112). Lavin reviewed the new procedures manuals with respect to

patrol procedures as a step on the chain of command, but did not make recommendations for new patrol procedures or policies. He delegates schedules and assignments from the Chief down the chain of command to the captains who assign work to the patrol platoons. He insures that procedures are followed.

The deputy chiefs are not involved in the budgetary process. Ninety-eight percent of the budget is devoted to salaries and most of the remaining amount is for equipment (TD 17). Any officer, including the deputy chief may recommend the purchase of new equipment. If there is money for the purchase in the budget, it is likely that the director will approve the purchase. Anyone can make an informal, or verbal recommendation for a purchase under \$1,000. Formal recommendations for more expensive purchases must be written and must go through the chain of command. Everyone in the chain of command, including deputy chiefs, can recommend against a purchase. Deputy chiefs have never exercised that authority (TD 35).

The deputy chiefs identify training needs but the chief determines who will receive training. Captains tell the deputy chief of training problems and they make verbal recommendations to the Chief. Some recommendations are followed.

Analysis

The sole issue is whether the Bayonne Deputy Police Chiefs are "managerial executives" within the meaning of the Act. If they

are, the Petition for Certification must be dismissed since such employees are not public employees under the Act. City of Jersey City, P.E.R.C. No. 86-12, 11 NJPER 459, (¶16163 1985), N.J.S.A. 34:13A-5.3.^{2/} The appropriate standard is found in N.J.S.A. 34:13A-3(f) which provides:

"Managerial executives" of a public employer means persons who formulate 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.

This definition was initially applied in Borough of Avon, P.E.R.C. No. 78-21, 3 NJPER 373 (1977). There, a life guard 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 point system, authorized changes in the work week, added guards to the payroll in emergencies, participated in management meetings, influenced the Borough and Mayor's policies, trained and scheduled all guards and managed the beach and supervised guards daily. The Commission stated:

The term "managerial executive" shall be narrowly construed and that 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

^{2/} N.J.S.A. 34:13A-5.3 provides in part that the statutory right to organize "shall not extend to elected officials, members of boards or commissions, managerial executives, or confidential employees".

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.

In Borough of Montvale, P.E.R.C. 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 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.

Id. at 509.

In Montvale, the Commission found the Borough's police chief was not a managerial executive.^{3/} The Borough's Mayor and commissioners had almost complete control over the department. The

^{3/} The Legislature later amended N.J.S.A. 40A:14-118 to broaden the powers and duties of police chiefs. The Commission then held that police chiefs are, as a matter of law, managerial executives. Egg Harbor Tp., P.E.R.C. No. 85-46, 10 NJPER 632 (¶15304 1984); Jersey City, D.R. No. 85-22, 11 NJPER 341 (¶16124 1985).

Chief had no discretion to hire, assign overtime, promulgate policies or plan schedules. He also had no effective control over the budget and deployment and discipline of personnel. The Commission concluded that the Chief played no role in the formulation of policy and little role in directing its effectuation in any but routine matters.

In City of Newark, P.E.R.C. No. 86-140, 12 NJPER 513 (¶17192 1986), the Commission found the Newark deputy chiefs were not managerial executives and would most appropriately be represented in a unit separate from the other superior officers. The Newark deputy chiefs provided information necessary to permit the Director to make policy decisions, had minimal input into the budget or negotiations, had no discretion regarding overtime, vacations permanent transfers or assignments. Since the Director controlled both personnel and policy decisions in Newark's police department, the Commission found the deputy police chiefs' limited discretion to effectuate policy did not warrant a finding that they were managerial executives and thus excluded from coverage by the Act.

Applying these principles, I conclude that the Bayonne deputy police chiefs are not managerial executives, and therefore the petitioned-for unit is appropriate.

Initially, deputy chiefs do not "formulate management policies and practices." The Director and the Chief determine policy. There are no examples of policy decisions made by anyone

other than the Director or the Chief. Policy decisions made by the Director or the Chief are discussed throughout the record. These decisions were based upon information gathered either directly by the deputy chiefs or at their direction.

As commander of the Administration Division, Auriemma has the greatest involvement in policy formulation. Typically, he is instructed to gather information on a particular issue and submit a report. In the cases of maternity policy, towing contracts and the planned purchase of a computer, Auriemma submitted a report to the Chief and the Director, received their comments and amended the report. The Director then made a policy determination.

Even when the deputy chiefs function as "acting chiefs" they are instructed by the Chief who phones in daily. The deputy chiefs issue orders as "acting chiefs" based upon his instructions. Issuing pre-ordained orders as "acting chief" does not rise to the level of formulating policy. City of Orange Twp. D.R. No. 85-23, 9 NJPER 317 (¶16115 1985).

Additionally, the deputy chiefs do not have the authority to hire or promote. The extent of their involvement in promotions is exemplified by Lavin's passing of evaluations and a list of exemplary employees from the captains to the Chief for use in promotions. Captains and deputy chiefs have the right to recommend transfers. Recommendations by deputy chiefs have been followed. While that authority is supervisory, it does not rise to the level of "managerial". Deputy chiefs have the authority to issue oral and

written reprimands but not to suspend terminate an officer. Only the Director has that authority. Deputy Chief Auriemma has acted as a hearing examiner in disciplinary hearings, where there was a concern that the Chief, who usually hears these cases, may be biased. In both cases, Auriemma's recommendations were followed.

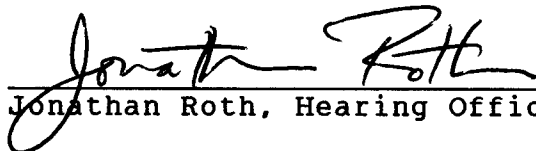
Deputy chiefs are not involved in the budgetary and collective negotiations processes. Deputy chiefs have authority to resolve grievances not concerning money at the second step. While their authority is supervisory, the extent of their discretion is minimal.

The deputy chiefs control vacation schedules with an eye toward insuring that each shift is filled. Their primary responsibility is to insure that the division under their command runs smoothly.

While the deputy chiefs are near the top of the organizational hierarchy, the police department of the City of Bayonne, like the City of Newark, is controlled by the Director of Police Services. Like the Newark deputy chiefs, the Bayonne deputy chiefs provide information necessary to permit the Director to make policy decisions, have minimal input into the budget or negotiations, and have little discretion with respect to hiring, firing, disciplining or discharging of personnel.

RECOMMENDATION

I recommend that the Commission find that deputy police chiefs in the City of Bayonne are not "managerial executive employees" within the meaning of the Act, that the petitioned-for unit is appropriate and that an election should be directed.


Jonathan Roth, Hearing Officer

DATED: March 31, 1987
Trenton, New Jersey