

P.E.R.C. NO. 86-140

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Respondent,

-and-

Docket No. CU-83-50

NEWARK SUPERIOR OFFICERS ASSOCIATION,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission dismisses a Clarification of Unit petition filed by the Newark Superior Officers Association which sought to include deputy chiefs of police employed by the City of Newark in a unit represented by the Association which currently includes all superior officers except the chief and deputy chiefs of police. The Commission holds that the inclusion of deputy chiefs in this unit would present potential conflicts of interest between the deputy chiefs and other members of the superior officers' unit. The Commission further holds, however, that the deputy chiefs are not "managerial executives" and may pursue representation in a separate negotiating unit.

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Appearances:

For the Respondent, Rosalind L. Bressler, Esq., Corporation Council (Lucille La Costa-Davino, Esq., Assistant Corporation Council)

For the Petitioner, Whipple, Ross & Hirsh, Esqs. (Lawrence A. Whipple, Jr., Of Counsel)

DECISION AND ORDER

On January 20, 1983, the Newark Superior Officers Association ("Association") filed a Clarification of Unit Petition ("CU"). It seeks to include the title of deputy chief(s) of police, employed by the City of Newark ("City"), in the unit represented by the Association. That unit currently includes all superior officers except the chief and deputy chiefs of police.

In a case decided November 2, 1981, the Director of Representation adopted the recommendation of a Hearing Officer that Newark's chief of police and deputy chiefs of police are managerial executives within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act") and removed them from the Association's unit. City of Newark, D.R. No. 82-21, 7

NJPER 644 (¶12291 1981). The Hearing Officer's decision was based on the testimony of only the Chief. The Association did not present any witnesses or file a post-hearing brief. Neither party filed exceptions. The Association then filed a request for review before the Commission pursuant to N.J.A.C. 19:11-8.2(a)(2) which was denied. City of Newark, P.E.R.C. No. 82-97, 8 NJPER 298 (¶13131 1982). On June 18, 1982, the Association filed a Notice of Appeal with the Appellate Division. On December 20, 1982, the appeal was dismissed for failure to prosecute.

In the current petition, the Association contends that changed circumstances within the Police Department warrant reconsideration of this issue. The City maintains that the deputy chiefs remain managerial executives and that the Commission's original determination is still valid.

On May 2, 1984, the Administrator of Representation determined that substantial and material disputed factual issues warranted an evidentiary hearing. On June 15, July 6, 19, September 24, and October 24, 1984 and January 22, 23 and 29, 1985, hearings were conducted by Hearing Officer Mark A. Rosenbaum. On April 25 and 26, 1985, hearings were conducted by Hearing Officer Stuart Reichman.<sup>1/</sup> The parties examined witnesses and introduced exhibits. Pursuant to N.J.A.C. 19:11-6.7(c), the parties waived a

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<sup>1/</sup> The matter was transferred to the new Hearing Officer pursuant to N.J.A.C. 19:11-6.4 after the original Hearing Officer took a leave of absence from the Commission.

Hearing Officer's report and recommendation and agreed to submit the matter directly to the Commission. Both parties filed post-hearing briefs and replies and on April 18, 1986, argued before the Commission.

#### Findings of Fact

The City of Newark is a public employer within the meaning of the Act. It employs the seven deputy chiefs of police who are the subject of these petitions.

The Newark Superior Officers' Association is an employee representative within the meaning of the Act. It represents approximately 244 superior officers of the Newark police department.

The Newark police department is composed of approximately 1300 members. It is a paramilitary organization headed by a police director. Eleven superior officers and four civilian employees are assigned to the Director's office. Directly under the Director's command are the Intelligence Unit, Internal Affairs Bureau, Crime Prevention Unit, Business Office, Office of Management Improvement and Professional Development, Vehicle Maintenance Unit, Legal Analyst Office, Command and Control Center and Public Information Unit. Forty-three superior officers head the various units, offices and bureaus that constitute the Director's staff. From January 1981 until March 1984, there was no deputy chief in the Director's office. The various unit, office and bureau heads reported directly to the Director. Since March 1984, some heads report to the deputy chief, others still report directly to the Director.

The rest of the department consists of the following four divisions: Patrol, Records and Communications, Special Operations and Detective. Each division is headed by a deputy chief who reports to the chief. The chief is responsible for the department's daily operations. There are seven deputy chiefs with these responsibilities.

#### Identity of Deputy Chiefs

##### 1. Chief of Staff of Director's Office

This deputy chief was assigned to the Director's office in March 1984 after a vacancy of over three years. He has two inspectors and five captains as subordinates. The chief of staff serves on a number of committees and considers himself an administrative assistant to the Director. He has no power to make personnel changes within the office without the Director's approval.

##### 2. Chief of Staff of Chief's Office

This deputy chief coordinates the activities of the other deputy chiefs. There are one lieutenant, five police officers and two civilian employees under this deputy chief's command, all assigned to the office by the Chief. The deputy chief reviews the Chief's mail; serves as Acting Chief when the Chief is away; sometimes ghost-writes orders over the Chief's signature and gives orders on routine matters without advance notice to the Chief. If a matter affects another division, he discusses it with the Chief before taking action.

### 3. Commander of the Patrol Division

This deputy chief has approximately 536 police officers under his command. The division includes four district (precinct) stations and the prisoner detention bureau (cell block). Within the deputy chief's office, there is one inspector, one captain, two lieutenants, one sergeant and four police officers.

### 4. Commander of Detective Division

This division contains three bureaus - Youth and Community Services, Major Crimes and Narcotics; and three units - police Property Room, Chem Lab, and Ballistics Lab. There are four officers on the deputy chief's office staff. The division is made up of approximately 200 people. Property and Youth and Community Services were formerly divisions headed by a deputy chief.

### 5. Commander of Special Operations Division

This division includes approximately 130 people and is responsible for non-traditional patrol functions. It includes the Emergency Services, Tactical, Traffic, and Housing Units. One lieutenant, one police officer and a civilian clerk work in the deputy chief's office. This deputy chief was formerly deputy chief of Youth and Community Services, which was reduced to a bureau after a departmental reorganization. This new division was created without any notice to the deputy chief.

### 6. Commander of Records and Communications Division

This division includes approximately 58 people and is made up of the Records, Identification and Communications Bureaus. Nine are superior officers.

### 7. Commander of Central Command Center

This is a relatively new division which includes the deputy chief, two captains and an inspector. It was established as the command post to oversee the police department when the regular command officers are off duty.

#### Responsibilities of Deputy Chiefs

The police department is a highly structured organization. Most day-to-day decisions are guided by at least one of a number of different kinds of orders. They include (1) general orders - major policy expressions issued by the director to the entire department; (2) special orders - issued by the Chief regarding particular problems or procedures; (3) policy statements - interpreting previously issued general or special orders; (4) police director's memos - orders issued to either individual units or the entire department; and (5) personnel orders - issued by the director dealing with matters such as transfers, assignments, duties, leaves of absence, discipline, termination, retirements or resignations. In addition, there are Rules and Regulations promulgated by the Director covering most areas of police operations or procedures. Within these guidelines issued by the Director, the divisional, district and unit commanders develop their own ways of running their areas of responsibility and issue memos accordingly.

The different areas of deputy chief responsibility include:

A. Assignments, Transfers and Deployment

Personnel are transferred in and out of the divisions via the Director's personnel orders. Nearly all assignments, including those to district captain, are made without prior notice to the deputy chief. Permanent transfers between divisions are also made by the Director. Deputy chiefs sometimes make requests or recommendations, but the ultimate decision rests with the Director. The Chief can temporarily transfer personnel between divisions. Some deputy chiefs testified they can temporarily transfer personnel within their divisions. Others testified that only the Chief or the Director could make even temporary transfers. Deployment decisions in the Patrol Division, such as who will be assigned to a particular patrol car, or where an officer will stand, are made by the assignment lieutenant. He can also move cars between districts on a temporary basis if officers are absent.

B. Overtime

Most overtime decisions and procedures are controlled by General Orders and the collective negotiations agreements. Within the last few years, the Department has set minimum staffing levels in the Patrol Division. If a district falls below four cars, overtime is automatically authorized. If an arrest is made just prior to a shift change, a lieutenant authorizes the overtime required to complete the arrest. For special events such as parades, requests are submitted in advance to the Director.



### C. Discipline

Every superior officer, regardless of rank, is required to monitor the conduct of his subordinates and has the power to recommend disciplinary action. Formal discipline such as suspensions, firings, or withholdings of pay can be imposed only after investigation by the Internal Affairs Bureau and a departmental hearing. Only the Director can direct referral of a matter to that Bureau. Every superior officer can issue oral reprimands, warning slips or commendations. They can also recommend formal commendations to the next superior officer who can refuse to recommend issuance.

### D. Vacation

The number of vacation days each officer gets is set by the collective negotiations agreements. A General Order specifies vacation procedures. Schedules are set at the bureau level and sent up through the ranks. Seniority and a "10% at one time" cap limit most discretion in vacation assignments.

### E. Personal Days and Leaves of Absence

Up to two personal days can be approved by the next superior commanding officer. Deputy chiefs do not have the authority to grant longer leaves of absence.

### F. Budget & Purchasing

Each year, budget request sheets are distributed from the Director's office. The completed requests originate at the bureau or unit level and go up through the deputy chiefs and the Chief to the Director. An administrative officer then collates the requests

from approximately 20 areas. The Director and administrative officer attend budget hearings subsequently held by the City. During the 1984 budget process, the administrative officer met with nine superior officers, including three deputy chiefs to discuss and then recommend ways to best implement a City mandate to reduce the department's budget request. Some deputy chiefs spend as little as 1/2 hour per year on budget matters, merely concurring in recommendations made below and passing it up to the Chief. Deputy chiefs do not monitor their own budget. The administrative officer makes determinations as to whether funds are available. All purchases of equipment and supplies are made by submission of requests to the department's business office.

#### Meetings

The City argues that the deputy chiefs are in charge of decisions and participate in policy formulation. They assert that there has been far more, not less participatory management since the deputy chiefs were removed from the unit and give three examples.

The first example is the fairly regular Monday meetings of the "Executive Command Staff" made up of the Director, Chief, six of the seven deputy chiefs, the commander of the Office of Management Improvement and Professional Development (inspector), the commander of the Internal Affairs Bureau (captain) and the department's Legal Analyst. Various other members of the Director's staff sometimes attend. There is no agenda distributed beforehand. The Director makes some opening remarks and the deputy chiefs then report on

important issues of the past week and on significant events that occurred over the weekend. In addition, the Director often circulates draft orders before promulgation. He requests comments on the new policies, specifically as to the operational impact of the policies on the deputy chief's respective divisions. Sometimes, the Director asks for input in writing. The Director testified that a consensus is reached before directives are issued. The deputy chiefs testified that after their comments are submitted, all final decisions are made by the Director. The Director testified that these meetings give the deputy chiefs a broad picture of the relationship of the department to the city's policies.

The second example of participation is a command retreat held in 1983. The Director testified that the major purpose of the retreat was to have the deputy chiefs help select alternatives regarding the effective use of resources. In attendance were all deputy chiefs except Records and Communications, the four precinct captains and at least three other superior officers. A departmental reorganization plan of approximately 75 pages, drafted by members of the Director's staff, was distributed upon arrival. The deputy chiefs had no input into the agenda or the plan.

At the retreat, the plan was presented by members of the Director's staff. It included elimination of the Staff Services Division, headed by a deputy chief. After the retreat, the Youth and Community Services Division, also headed by a deputy chief, was also abolished. Its elimination was not included in the draft plan and not discussed at the retreat.

There was some deputy chief reaction to the draft plan and some changes in the plan were made after the retreat. The Special Operations Division was subsequently created to absorb some of the workload increase that the deputy chief of the Patrol Division objected to. In addition, the retreat participants discussed a plan, not on the agenda, to rotate narcotics detectives. That plan was subsequently implemented. Also, a program of "differential response" was discussed under which radio cars would not be sent to respond to certain types of calls. The retreat participants supported implementation at the precinct level. The deputy chief of Records and Communication, who was not present at the retreat, later argued that the department's communications systems required a centralized approach. That approach was adopted.

At the end of the retreat, the draft plans were collected. A final document was later issued with no further deputy chief input.

The third example is a second command conference held in 1984. In attendance were all deputy chiefs and at least five other superior officers. The two topics discussed were training and a Chamber of Commerce study of the department. An agenda was distributed upon arrival. Some conference participants, including deputy chiefs, had been told in advance to prepare reports on programs they were involved in.

#### Analysis

Managerial executives are excluded from coverage under the Act. N.J.S.A. 34:13A-5.3. They are defined 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.

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

We first applied this definition in Borough of Avon, P.E.R.C. No. 78-21, 3 NJPER 373 (1977). The lifeguard captain was found not to be a managerial executive although he prepared the beach operations budget, authorized and modified rules and regulations, created the disciplinary point system, authorized changes in 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 the guards daily. We stated that:

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 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 an appropriate unit.

Id. at 374.

In Borough of Montvale, P.E.R.C. 81-52, 6 NJPER 507, 508-09 (¶11259 1980) we stated:

A person formulates policies when he develops a particular set of objectives designed to further the mission of the governmental unit and when he

selects a course of action from among available alternatives. A person directs the effectuation of policy when he is charged with developing the methods, means and extent for reaching a policy objective and thus oversees or coordinates policy implementation by line supervisors. Simply put, a managerial executive must possess and exercise a level of authority and independent judgment sufficient to affect broadly the organization's purposes or means of effectuation of these purposes. Whether or not an employee possesses this level of authority may generally be determined by focusing on the interplay of three factors: (1) the relative position of that employee in his employer's hierarchy; (2) his functions and responsibilities; and (3) the extent of discretion he exercises.

Id. at 509.

In Montvale, we found that the Borough's chief of police was not a managerial executive.<sup>2/</sup> The Borough's mayor and commissioners exercised almost complete control over the department. The chief had no discretion to hire, assign overtime, promulgate policies or plan schedules. In addition, he had no control over or effective input into the budget, deployment, discipline or investigations. 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 Borough of Lavellette, D.R. No. 83-17, 8 NJPER 617 (¶13293 1982), the Director of Representation held that the police

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<sup>2/</sup> 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 was not a managerial executive. Either the mayor, council or police committee retained complete authority to hire and fire, set the budget, monitor expenditures, discipline, assign personnel and set vacation and overtime schedules. The Director concluded the chief had insufficient independent judgment to "affect broadly the Police Department's purposes or its means of effectuating these purposes." Id. at 618.

In the 1981 City of Newark decision, the Director of Representation found that the deputy chiefs had the authority and discretion to deploy men in their respective divisions, discipline subordinates, transfer men within their divisions, participate in budget formulation, purchase equipment and assist in the development and drafting of departmental policies and orders. The size of the department's workforce --1,400-- was a factor contributing to his conclusion that managerial authority was delegated to the deputy chiefs.

The Petitioner argues that the Director of Representation erred in 1981, but even if the deputy chiefs were managerial executives in 1981, their input into policy has been radically reduced and, replaced since then by that of the Police Director's immediate staff. Input in the areas of budget, transfers, discipline and leaves of absence is allegedly far less than found in 1981. Also, the two retreats and the weekly meetings are allegedly merely for information exchange rather than serious input.

The City claims that there have been no changes since 1981 in vacation scheduling, discipline, budget preparation or assignment and deployment. It argues that the deputy chiefs aid in the formulation of policy, and that although the Director is deluged with policy recommendations, he rarely implements policies without deputy chief input. The weekly meetings are allegedly the Director's attempt to create a team approach to department management. In addition, the City contends that the effectuation of policy in the Department is carried out through the rules and regulations, general and special orders and memoranda issued by various levels of rank, including deputy chief.

The record indicates that in some areas (e.g. overtime) the discretion that we found existed in 1981 no longer exists. In other areas (e.g. budget preparation and equipment purchases) the record, now more fully developed, indicates that there wasn't such discretion then and isn't such discretion now. In most areas, however, it is not clear whether changes have occurred since 1981. We must therefore independently determine whether the deputy chiefs' duties warrant their continued exclusion from the Act's coverage. We find that they do not.

Based only on the testimony on the Chief, the Hearing Officer in the 1981 proceeding stated:

It is...unreasonable to conclude that one person--the Chief or even perhaps two people--the Chief and Police Director--could alone operate, from a management perspective, a police force of 1400 people and nine separate divisions. The size and comprehensiveness of the police force



alone dictates the need for multiple levels of managerial control and policy effectuation. City of Newark, H.O. No. 81-13, 7 NJPER 305 (¶12134 1981).

In this proceeding, testimony was taken from the Director, Chief, six deputy chiefs, a lieutenant, the business administrative officer, the personnel director, an inspector and three captains. Also, hundreds of pages of documents were admitted during ten days of hearing.

We are compelled by the facts to now find that the deputy chiefs do not formulate management policies and practice and that the limited discretion they exercise in the effectuation of policy does not warrant their exclusion from coverage under the Act. It is quite apparent that the Director, with the aid of a very large supportive staff which includes only one deputy chief, makes virtually all policy-related decisions.

Permanent transfers and assignments emanate from the Director's office. Overtime and vacations are controlled by orders and collective negotiations agreements. Formal discipline can only be imposed after investigation by the Internal Affairs Bureau and only the Director can refer matters to that Bureau. Deputy chief discretion regarding personal days and leaves of absence is the same as other superior officers. Budget input is minimal.

In addition, the weekly staff meetings serve the important function of reporting and providing deputy chief input into the Director's decision making process. It is apparent, however, that the deputy chiefs do not participate in making policy decisions.

Instead, they provide information to the Director so he can make those decisions.

In a similar vein, the two retreats provided the Director with deputy chief feedback. The policy recommendations presented at the gatherings were not prepared by the deputy chiefs, nor were the final decisions on those policies made by the deputy chiefs.

For all these reasons and based on the extensive record in this case, we find that the deputy police chiefs in the Newark police department are not managerial executives within the meaning of the Act.

We recognize the unique role of deputy chiefs in overseeing many of the important functions of the police department. Our analysis of the facts demonstrates that inclusion in a unit of all superiors would present potential conflict of interests between the deputy chiefs and other members of the superior officers' unit. Therefore, if the deputy chiefs seek representation under the Act we find that they must pursue representation in a separate negotiating unit.

In Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404, 427 (1971), the Supreme Court announced the applicable standard:

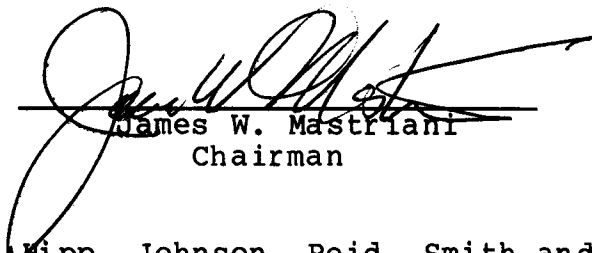
[W]here a substantial actual or potential conflict of interest exists among supervisors with respect to their duties and obligations to the employer in relation to each other, the requisite community of interest among them is lacking, and...a unit which undertakes to include all of them is not an appropriate negotiating unit within the intendment of the statute.

Applying this standard we find that a separate unit of deputy chiefs would be the most appropriate way to balance the employees' interest in representation and the city's interest in effective supervision.

ORDER

The Association's petition is dismissed.<sup>3/</sup>

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Hipp, Johnson, Reid, Smith and Wenzler voted in favor of this decision. None opposed. Commissioner Horan was not present.

DATED: Trenton, New Jersey  
June 25, 1986  
ISSUED: June 25, 1986

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<sup>3/</sup> This dismissal is without prejudice to the deputy chiefs' filing of a petition for representation for their own unit.