

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of

NEW YORK CITY DEPUTY SHERIFFS
ASSOCIATION,

Petitioner,

Decision No. 3-2002
Docket No. RU-1190-95

-and-

THE CITY OF NEW YORK and THE NEW
YORK CITY DEPARTMENT OF FINANCE,

Respondents.

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DECISION AND ORDER

On October 10, 1995, the New York City Deputy Sheriffs Association (“Union” or “Petitioner”) filed a petition, Case No. RU-1190-95, seeking to represent employees of the New York City Department of Finance (“Finance”) in the title Administrative Sheriff, Level II, title code no. M10060, and add them to its bargaining unit in Certification No. 94-73.¹ The City of New York (“City”) filed a response to the petition asserting that the petitioned-for employees are managerial and/or confidential and are therefore not eligible for collective bargaining. The Trial Examiner designated by the Board of Certification (“Board”) held a hearing in this matter on February 12, 2002. We find that Administrative Sheriffs are not managerial and/or confidential because they are not significantly involved in policy-making and do not engage in budget-making, labor relations, grievance handling, or collective bargaining. Administrative Sheriffs are

¹ At the time the petition was submitted, the Union petitioned for four employees.

therefore eligible for collective bargaining.

BACKGROUND

Petitioner seeks to represent employees who work as Administrative Sheriffs in the Sheriff's Office, which is part of Finance. The Administrative Sheriff title has never before been represented by a union.

The Sheriff is the highest ranking official in the Sheriff's Office, with the First Deputy Sheriff reporting directly to him. The Chief of Operations, in turn, reports to the First Deputy Sheriff and oversees the Administrative Sheriffs. The Union represents the titles Supervising Deputy Sheriff, Senior Deputy Sheriff and Deputy Sheriff ("Deputies"), which are subordinate to Administrative Sheriffs. There are currently three Administrative Sheriffs and 150 Deputies within the Sheriff's Office.

The general job description for the Administrative Sheriff position is:

Under general direction, with much latitude for independent or unreviewed action or decision, performs work of a difficult and responsible nature in managing the operations of the County Divisions, or other equivalent assignments, for the Office of the City Sheriff in order to approve new processes as to legal sufficiency and enforce court orders in accordance with the law.

(Respondent's Exhibit #2)

Each Administrative Sheriff, assigned to a specific location, is the highest ranking officer within that office,² and has supervisory responsibility over support staff and Deputies. The three Administrative Sheriffs are: Linda Reynolds, in Queens; and two Manhattan locations, Steven B.

² Supervising Deputy Sheriffs are the highest ranking officers in the Bronx and Brooklyn offices where no Administrative Sheriffs are currently located.

Adams and Peter Talamo.

In Queens, Reynolds' responsibilities include overseeing enforcement of civil judgments and evictions in the "private sector" unit, as well as enforcement of warrants. In Manhattan, Adams is in charge of the "private sector" unit in the other boroughs of New York City. Talamo, also in Manhattan, is in charge of the "auto theft", "auctions", and "Management Information System" units, as well as municipal security for City buildings. His responsibilities include overseeing the auction of vehicles, and the identification of vehicles that are towed or impounded to ascertain whether they are stolen.

The Administrative Sheriffs' involvement in the recruitment process is limited to participation on interview panels, which often include Supervising and Senior Deputy Sheriffs. Members of the panels may make recommendations that are forwarded to the Sheriff, who has ultimate authority on hiring.

Administrative Sheriffs oversee training to make sure that recruits become familiar with statutory provisions and the requirements to carry out service of process. Senior and Supervising Deputy Sheriffs are also in charge of running particular training areas for new recruits and often run training sessions.³ Training materials used in the curriculum are not created by Administrative Sheriffs.

Administrative Sheriffs have supervisory authority over the Deputies. Talamo's interaction with Supervising and Senior Deputy Sheriffs, for example, involves being told what auctions they have scheduled for seized vehicles. The Deputy Sheriffs are directly supervised by

³ Administrative Sheriff Talamo testified that Senior Deputy Sheriffs Boyar, Pellot and Davis handled the firearms and tactics training, and Supervising Deputy Sheriffs Fucito and Shor were jointly in charge of a previously held training session in which Talamo was also involved.

the Supervising Deputy Sheriffs. The Deputies interact directly with support staff to complete paperwork required for assignments.

Some of an Administrative Sheriff's responsibilities include completing and maintaining records and reports, and preparing written correspondence to lawyers, bank personnel, and government agencies. In addition, Administrative Sheriffs are in charge of reviewing documents such as memoranda, arrest reports, and summonses generated by staff members. At times, they are called upon to assist in various assignments with other offices. For example, in one instance when the Office of Emergency Management requested personnel from the Sheriff's Office, the Administrative Sheriffs decided on the number of personnel to send.

Administrative Sheriffs also have authority to delegate work to all subordinates. For example, they set up work partners and coordinate the locations in which Deputies work. However, they do not have authority to transfer subordinates or assign them to different work tours. The Administrative Sheriffs also approve time and leave of all Deputies and very recently were given authority to select individuals for overtime assignment and approve overtime payment for all subordinates. Overtime is approved by whoever is running the particular unit and actually assigns the overtime. For example, the auto theft unit is run by a Supervising Deputy Sheriff who assigns overtime and then signs off on the form. The form is reviewed by the Administrative Sheriff, who has final approval, and in turn, sends it to the payroll department.

Either Administrative Sheriffs or Supervising and Senior Deputy Sheriffs complete performance evaluations of Deputy Sheriffs. The evidence indicates that Supervising and Senior Deputy Sheriffs often complete personnel evaluations, which are then reviewed and "signed off" by the Administrative Sheriff. These reports then go up the chain of command. The

Administrative Sheriffs do not have authority to change evaluations completed by subordinates but must file a separate document to either approve or oppose a particular evaluation.

Administrative Sheriffs can recommend Deputy Sheriffs for promotion to Senior Deputy Sheriffs, but the Sheriff has final authority to approve or reject a recommendation. Talamo testified that no Administrative Sheriff had any input in the last two promotions. He personally has never made a recommendation for promotion to Senior Deputy Sheriff. The record does not show whether Administrative Sheriffs have any involvement in promoting Senior Deputy Sheriffs.

In cases involving minor infractions committed by subordinates, for example, improper memo book entry, and improper use of uniform or equipment, Administrative Sheriffs can recommend disciplinary penalties. When a minor infraction occurs, the Administrative Sheriff interviews the individual who may be disciplined, conducts an investigation, and completes a command discipline report which goes up the chain of command. Supervising Deputy Sheriffs may also perform these functions and complete a command discipline report. Once the Sheriff, who has final authority, approves discipline, the Administrative Sheriff must follow the command discipline booklet, which sets forth the appropriate penalties for specific infractions. Administrative Sheriffs do not have discretion to impose a penalty of their own creation, but must remain within the parameters of the command discipline guidelines. According to Talamo, in one situation involving a lost radio, he recommended loss of a day's pay for each of the Deputy Sheriffs implicated. The penalty in the discipline booklet ranged from a reprimand or warning to the loss of up to five days' pay. In the two instances of discipline in which Administrative Sheriff Talamo was involved, the recommended penalties were never imposed.

Administrative Sheriffs have no authority to suspend or terminate subordinates but may make recommendations for these penalties in accordance with the command discipline guide. More serious offenses that may lead to suspension or termination are dealt with directly by the Department of Investigation and/or the Advocate's Office.

Along with the Sheriff, the First Deputy Sheriff, Supervising and Senior Deputy Sheriffs, Administrative Sheriffs attend bi-weekly executive staff meetings to discuss operations of the unit, supplies and manpower, current problems, updates, and other issues. All the sheriffs may make recommendations regarding these issues; however, recommendations by Administrative Sheriffs are subject to approval or action by superiors. Talamo testified that one of his recommendations regarding the Sheriff's role in executing process was considered but not implemented. When the Sheriff's office recently revised a manual outlining policies and procedures of the office, both Administrative Sheriffs and Supervising Deputy Sheriffs participated in panels to discuss the pertinent issues. This type of activity is not a regular or significant part of an Administrative Sheriff's job. The record indicates that certain Deputies were actually responsible for updating most of the manual. First Deputy Sheriff Oscar Odom testified that Supervising Deputy Sheriff Fucito created most of the manual and that Senior Deputy Sheriff Boyar predominantly wrote the firearms portion of the manual.

The record provides no evidence that Administrative Sheriffs participate in budget-making, labor relations, grievance handling, or the collective bargaining process.

POSITIONS OF THE PARTIES

Union's Position

The Union asserts that Administrative Sheriffs are eligible for collective bargaining and that the Board has found eligible many similarly situated employees under the criteria established; therefore, the three individuals holding the title of Administrative Sheriff are not managerial. In particular, the Union claims that Administrative Sheriffs do not participate in the budget process, do not participate in collective bargaining and/or labor relations, and have a recent and very limited role in disciplinary proceedings.

City's Position

The City asserts that Administrative Sheriffs are managerial and/or confidential because they “participate in the formulation and implementation of Agency policy, administration of collective bargaining agreements, and personnel administration through the performance of a variety of tasks.” (Respondent’s Exhibit #2 ¶ 26) These tasks include managing the operations of the County Divisions; reviewing legal documents; directing the receipt, deposit and/or disbursement of fees, poundage and other monies; preparing written correspondence to lawyers, government agencies and bank personnel; reviewing and approving payroll and time and leave; coordinating intra- and inter-agency operations; responding to situations that involve community concerns; and directing and overseeing related procedures.

According to the City, Administrative Sheriffs exercise significant discretion and independent judgment in training of personnel, evaluation of subordinates’ work performance, disciplinary actions, assignment or scheduling of work and tours, delegating tasks to personnel, and directing office activities.

Further, the City asserts that Administrative Sheriffs are also actively involved with the

Sheriff, Community Board members, and community leaders at meetings during which matters regarding policy, procedure and local operations are discussed. In addition, the City claims that Administrative Sheriffs also interact with the Sheriff's Counsel to analyze legal issues.

DISCUSSION

This Board finds that Administrative Sheriffs are not managerial and/or confidential employees because they are not significantly involved in policy-making, and do not engage in budget-making, labor relations, grievance handling, or collective bargaining. Administrative Sheriffs are therefore eligible for collective bargaining.

Section 12-305 of the NYCCBL states, in pertinent part, that “public employees shall be presumed eligible for the rights set forth in this section. . . .” such as the right to self-organization and the right to bargain collectively. Therefore, when the City objects to the bargaining status of a title, the City has the burden to demonstrate that a title is not eligible for bargaining because it is managerial and/or confidential within the meaning of Section 201.7(a) of the Taylor Law.

Communications Workers of America, AFL-CIO, Decision No. 5-87.

The relevant language of Section 201.7(a) provides:

Employees may be designated as managerial only if they are persons (i) who formulate policy or (ii) who may reasonably be required on behalf of the public employer to assist directly in the preparation for and conduct of collective negotiation or to have a major role in the administration of agreements or in personnel administration provided that such role is not of a routine or clerical nature and requires the exercise of independent judgment. Employees may be designated as confidential only if they are persons who assist and act in a confidential capacity to managerial employees described in clause (ii).

In implementing this section of the Taylor Law, we have consistently held that

formulation of policy is the single most important factor of managerial status. *District Council 37*, Decision No. 4-97; *District Council 37*, Decision No. 34-81. We have also considered the following factors as reliable indicia of managerial status: the number of subordinate employees; area of authority; involvement with labor relations; preparation of budget and allocation of funds; involvement in personnel administration; and the formulation, determination, and effectuation of an employer's policies.⁴

This Board has defined "policy" as an objective of a governmental agency to fulfill its mission and the methods, means, and extent of achieving such objectives. *EMS Superior Officers Ass'n*, Decision No. 10-2001; *Uniformed Sanitation Chiefs Ass'n*, Decision No. 4-2000; *District Council 37*, Decision No. 4-97; *District Council 37*, Decision No. 34-81. Employees who "formulate" policy include those with the authority or responsibility to select among options and to put a proposed policy into effect, as well as those who "regularly participate" in the "essential process" which results in a policy proposal and the decision to put such proposal into effect. *Uniformed Fire Officers Ass'n, Local 854*, Decision No. 15-92 at 19-20; *District Council 37*, Decision No. 36-82 at 14. Participation in the formulation of policy must be "regular,"

⁴ *EMS Superior Officers Ass'n*, Decision No. 10-2001 at 25-26; *Assistant Deputy Wardens Ass'n*, Decision No. 11-95 at 21-22; *Civil Serv. Technical Guild, Local 375*, Decision No. 45-78, *rev'd Civil Serv. Technical Guild, Local 375 v. Anderson*, N.Y.L.J. Oct. 9, 1979 at 10 (Sup.Ct. N.Y. Co.), *aff'd*, 79 A.D.2d 541, 434 N.Y. Supp. 2d 13 (1st Dept. 1980), *rev'd*, 55 N.Y.2d 264 (1981)(reinstating the Board's decision). For cases discussing other factors which are reliable indicia of managerial status see *Serv. Employees Int'l Union, Local 144*, Decision No. 43-69 (number of subordinates); *District Council 37*, Decision No. 19-21 (scope of authority); *Local 317, District Council 31*, Decision No. 46-72 and *Civil Serv. Bar Ass'n*, Decision No. 43-69 (involvement in labor relations); *Civil Serv. Technical Guild, Local 375*, Decision No. 5-85 and *Civil Serv. Forum, Local 300, SEIU*, Decision No. 8-72 (preparation and allocation of budget); *Allied Bldg. Inspectors, Local 211, I.U.O.E.*, Decision No. 13-86 and *Communications Workers of America*, Decision No. 63-72 (personnel administration).

“active,” and “significant” to support a finding of managerial status. *Id.*

Applying the above criteria to the instant matter, we find that Administrative Sheriffs are eligible for collective bargaining because the evidence shows that they do not regularly or significantly participate in the policy-making process. Administrative Sheriffs, along with subordinates, attend executive staff meetings regarding unit operations, supplies and manpower, current problems and updates, but the Administrative Sheriffs’ role is limited to discussion and recommendations or, in one instance, revision of an official manual in conjunction with subordinates. Therefore, the record establishes that these meetings regularly concern operational affairs of the units rather than overall policy matters or policy-making. Moreover, the City presented no evidence that information exchanged at executive staff meetings was confidential. We therefore conclude that Administrative Sheriffs do not have requisite independent authority to develop policy and are not significantly involved in making policy. This conclusion is consistent with *Uniformed Fire Officers Ass’n, Local 854*, Decision No. 15-92 at 22, in which we held that regular meetings primarily dealing with operational matters of a borough command and attended by Administrative Fire Marshals and their Chief Fire Marshal, along with a non-managerial employee, were “not policy-making sessions.”

While Administrative Sheriffs have significant supervisory responsibilities such as assigning work, overseeing disciplinary matters, completing or reviewing employee evaluations, and training of personnel, Administrative Sheriffs exercise very limited independent judgment and discretion in these matters and generally follow the parameters set forth in official guidelines and/or carry out the orders of their superiors. In disciplinary matters regarding minor infractions, for example, either an Administrative Sheriff or a Supervising Deputy Sheriff can complete the

command discipline form and superiors must approve their penalty recommendations. Because Administrative Sheriffs must adhere to the narrow parameters of the command discipline guide, their “discretion” is very limited. In addition, Administrative Sheriffs do not have authority to suspend or terminate employees but may only make recommendations. Therefore, Administrative Sheriffs’ role in disciplinary matters fails to meet the level of managerial responsibility. In the past, the Board has concluded that “it is the conditions under which discretion may be exercised, not the exercise of discretion itself, which we find relevant in determining managerial status.” *Uniformed Sanitation Chiefs Ass’n*, Decision No. 4-2000 at 28. Therefore, “[e]mployees who exercise their discretion only when permitted by policy, and exercise it within the specified guidelines of that policy, do not have the degree of freedom or authority to make decisions necessary to invoke managerial status.” *Local 854*, Decision No. 15-92 at 23.

In *EMS Superior Officers Ass’n*, Decision No. 10-2001 at 23, this Board, in deciding whether EMS services Division Commanders are managerial, concluded that:

while Division Commanders have ample supervisory responsibilities as demonstrated by the number of subordinates, their discretion in allocating resources in order to maintain day-to-day operation of EMS services, and by their duties to schedule and assign work, and transfer and evaluate employees within their divisions, these responsibilities fall short of the level that can be found managerial.

Applying the standard articulated to this case, Administrative Sheriffs’ supervisory responsibilities do not rise to the level of managerial status. The Administrative Sheriffs’ capacity for independent judgment and discretion is limited in many areas. The training of personnel is mostly conducted by subordinates, and the training materials used are provided to,

and not created by, the Administrative Sheriffs. Although they assign work to personnel, they do not have authority to transfer personnel or change their work tours. Further, Administrative Sheriffs prepare personnel evaluations in conjunction with subordinates and have very limited involvement in promotions. The Board has clearly indicated that these types of responsibilities, and in fact greater supervisory authority, do not constitute a managerial level of responsibility.

Id.

Finally, the City offered no evidence that Administrative Sheriffs engage in budget-making, labor relations, grievance handling or collective bargaining.

Having found the title Administrative Sheriff eligible for collective bargaining, and the City having raised no objection to the appropriateness of including this title in the petitioned-for unit, we find that addition of the title to the petitioned-for unit is appropriate.

ORDER

_____ Pursuant to the powers vested in the Board of Certification by the New York City Collective Bargaining Law, it is hereby

ORDERED, that the employees designated as Administrative Sheriff are eligible for collective bargaining; and it is further,

ORDERED, that Certification No. 94-73 be amended to include the title Administrative Sheriff, and it is further,

CERTIFIED, that the New York City Deputy Sheriffs Association is the exclusive representative of Administrative Sheriffs for the purposes of collective bargaining for the unit found appropriate.

DATED: June 4, 2002

New York, New York

Marlene Gold
Chairperson

George Nicolau
Member

Member