

if the Borough chooses to follow this course of action, we will need to be informed as such, and new Position Classification Questionnaires will need to be completed by these individuals, which clearly demonstrate that the “Shift Commander” responsibilities are no longer being performed by (these/any) Police Sergeants.

In this case, the appellants argue that there are no longer any Police Lieutenants in Carteret, leaving their responsibilities to the Police Sergeants. They state that all shifts are run solely by Sergeants, with the most senior Sergeant serving as shift commander. The appellants argue that out-of-title duties of a Lieutenant cannot constitute the primary focus of an employee’s duties and should only be occasionally assigned, for example, for such reasons as emergency coverage. In their cases, the contend that they spend significant amounts of time directly supervising their squads, checking staffing levels, reviewing, correcting and approving all reports and complaints, approving time off requests and accounting for time of others, supervising personnel working off-duty assignments such as roadwork, and reviewing and verifying attendance books, sign outs, vehicle inspection forms and CAD entries.

Some of the Sergeants claim that they directly supervise other Sergeants. Specifically, Hart listed supervision over Rosario, Greenberg and Lilavois, while Muzyka listed supervision over Hanes. They state they are “senior Sergeants” who have direct supervisory capacity over junior Sergeants in the same squad. For example, a 2018 table of organization shows Hanes reporting directly to Muzyka.¹ Thus, they argue that Muzyka is a Lieutenant without the title, and he works under the supervision of a Police Captain, who oversees daily activities. The appellants argue that *In the Matter of Jason Anderson et al., Sheriff’s Officer, Passaic County Sheriff’s Department*, Docket No. A-4083-13T2 (August 3, 2016) supports their contention that while it is permissible for an employee to perform some work above or below their title, it cannot be the primary focus of the position as those duties should only be occasionally assigned. In this case, the appellants argue that the Sergeants perform the duties of the eliminated Lieutenant positions. They explain that one Sergeant is assigned to each patrol division squad, and they maintain that the Sergeant in Command provides assignments and instructions, provides assistance, checks work, and makes internal affairs investigations, for officers and other Sergeants. As such, they supervise one another as well as squads. They request an independent classification reviewer pursuant to *N.J.A.C. 4A:3-3.9(e)(1)*.

In response, the appointing authority, represented by Robert J. Bergen, Borough Attorney, argues that the Police Chief indicated that two Sergeants on a

¹ Muzyka’s name is directly above Hanes’ name in a vertical list which includes the names of Police Officers under the Sergeant’s names.

shift supervise Police Officers, and neither is the lone supervisor during any regular period. This is also true for “power shifts” when four Sergeants are working. In this regard, a Captain is on duty from 8 a.m. to 4 p.m., and in other administrative matters such as Internal Affairs the Sergeants are assisted by a Captain. Additionally, the Police Chief supervises while on duty. Further, the appointing authority notes that the appellants do not issue formal discipline or take independent supervisory actions, such as approving time off. While, they address minor and informal issues, they are not authorized to take punitive actions against officers. The appointing authority explains that for a period of time it operated with a civilian Police Director, a Deputy Police Chief and Police Captains. However, there is no longer a civilian Police Director and there are currently four Police Lieutenants to assist the Captains.

CONCLUSION

N.J.A.C. 4A:3-3.9(e) states that in classification appeals, the appellant shall provide copies of all materials submitted, the determination received from the lower level, statements as to which portions of the determination are being disputed, and the basis for appeal. Information and/or argument which was not presented at the prior level of appeal shall not be considered.

N.J.S.A. 11A:3-1 and *N.J.A.C.* 4A:3-3.1(a) provide that each position in the career and unclassified services shall be assigned by the Civil Service Commission (Commission) to a job title.

N.J.A.C. 4A:3-3.9(e)(1) states that the Commission may render a decision based on the written record or appoint an independent classification reviewer. If the Commission appoints an independent classification reviewer to conduct an informal review of the appeal, all parties will be advised of the review date and given the opportunity to present their arguments before the reviewer. An employee may be represented by counsel or by a union representative.

The definition section of the job specification for Police Sergeant states:

Under supervision of a Police Lieutenant during an assigned tour of duty, has charge of police activities intended to provide assistance and protection for persons, safeguard property, and assure observance of the laws, and apprehend lawbreakers; does related work as required

The definition section of the job specification for Police Lieutenant states:

Under supervision of a Police Captain during an assigned tour of duty, has charge of a police platoon or performs specialized supervisory police duties; does related work as required.

Initially, the appellants request the assignment of an independent classification reviewer. Classification reviews are typically conducted on the written record. Independent classification reviewers are assigned in those limited instances where the Commission determines that a material and controlling dispute of fact exists which can only be resolved through independent classification review process. In this instance, the Commission finds no conflict in the record which would warrant an independent reviewer. That is, there are no contested facts which require an in-person review in front of an independent reviewer, and a review of the written record is sufficient. Further, these reviews are conducted at the discretion of the Commission, and requests from appellants for these reviews are not accepted.

A significant classification consideration is the level of supervisory authority within the organizational structure. First, it must be emphasized that the appointing authority has the right to determine the organizational structure of its operation. The New Jersey Administrative Code does not mandate that local jurisdictions spend funds to make promotional appointments, and the Commission does not have any authority over fiscal decisions of local jurisdictions. As such, the Department can choose to have a tour supervised by a Sergeant. As long as there are no improper reporting relationships or misclassifications, how the office is organized or how often the office is reorganized is not under the jurisdiction of the Commission or reviewable in the context of a classification appeal. In addition, the Commission's determination is controlling regarding the proper classification of the appellant's position. *See e.g., In the Matter of Lawrence Craig and Louis Muzyka, Borough of Carteret* (CSC, decided February 11, 2009).

It has been well established in prior classification determinations that a position classified as Police Lieutenant is required to exercise full supervisory authority over Police Sergeants on a regular and recurring basis. *See In the Matter of Thomas Allegretta, et al.* (Commissioner of Personnel, decided April 23, 1990) (Desk Officer duties of Police Sergeants did not warrant their reclassification to Police Lieutenant since they did not have full supervisory authority over Police Sergeants on a regular and recurring basis). This supervisory requirement has consistently been applied to all law enforcement titles classified at the Lieutenant level. *See In the Matter of John Dougherty* (Commissioner of Personnel, decided May 14, 2007) (Sheriff's Officer Lieutenant who performed some of the duties performed by the former civilian Director of Security did not evidence position misclassification since the incumbent supervised Sheriff's Officer Sergeants and Security Guards providing security to county facilities in combination with courts).

In the instant matter, Messrs. Pomales, Rosario, Terebetski, Stentella, Greenberg, and Hanes, and Ms. Lilavois, indicated that they had supervisory responsibilities over Police Officers and others. Mr. Kelly stated that he had supervisory responsibility, but did not list those employees and their titles as

directed. As such, these appellants have clearly not established full supervisory responsibilities for Police Sergeants on a regular and recurring basis, and their appeals are denied on this basis. It is also noted for the record that Mr. Hart's determination was dated January 8, 2020, and he was regularly appointed to Police Lieutenant on February 20, 2020.

The issue at hand pertains to the proper classification of Muzyka's position, and of Hart's position to February 20, 2020, as they were the sole appellants who indicated supervisory responsibilities over other Sergeants. By way of background, the appointing authority appealed the March 24, 2008 determination involving Muzyka to the Commission. In *In the Matter of Lawrence Craig and Louis Muzyka, Borough of Carteret* (CSC, decided February 11, 2009), the Commission reversed the determination which classified the positions as Police Lieutenant, and determined that Police Sergeants who were serving in an acting capacity of Police Lieutenant less than 50% of the time should not be reclassified as Police Lieutenants. The Commission disagreed that positions are transformed into Police Lieutenant positions when Police Sergeants fill in as Shift Commanders during a "lull" time and when there is not a need for heightened police coverage in the community, and found that experience in an acting capacity is not in a recognized type of appointment. It found that a Police Sergeant classification is appropriate when the duties of a Police Sergeant are performed for a majority of the shift.

Currently, a December 2017 schedule shows that Muzyka, along with Sergeant Hanes, was supervising Squad C from 7 am to 5 pm, when a senior officer was available on weekdays. This schedule also indicates that Hanes was supervising Squad D from 5 pm to 3 am, as the sole Sergeant, and Sergeant Rosario supervised Squad D "power" from 9 pm to 7 am as the sole Sergeant. While their shifts had overlapping hours, the schedule does not have them in the same squad, or supervising one another.

In *In the Matter of Thomas Nicolette* (CSC, decided November 2, 2011), the Commission explained that final decision-making authority over an incident is not the sole breadth and scope of supervisory duties, but that supervisory duties included supervision of subordinate personnel. In *In the Matter of Robert Bielsten* (CSC, decided August 17, 2011), Bielsten was permanently appointed as a Police Lieutenant and believed he was working in the capacity of a Police Captain. When Bielsten worked as Watch Commander, he made all decisions during his shift and the Police Captain was only contacted at home during off hours in case of extreme emergency, for notification purposes. He was the highest-ranking officer during his assigned shift, and he supervised another Police Lieutenant at least three or four times in a five day week. It was explained that the Watch Commander has "charge of, and is responsible for the police station, prisoners, property, surgeons, patrol officers, and public safety telecommunicators during an assigned tour of duty in activities intended to provide assistance and protection for persons, safeguarding property,

assure observance of laws, and apprehend lawbreakers.” The Commission stated that it did not necessarily find it inappropriate to have two Police Lieutenants on the same shift, with one considered as “in charge,” so long as the duties performed by both fall predominantly within their job classification. However, one should not be supervising the other.

Typically, supervision includes responsibility for seeing that tasks assigned to subordinates are efficiently accomplished. It involves independent assignment and distribution of work to employees, with oral or written task instructions, and maintenance of the flow and quality of work in order to ensure timely and effective fulfillment of objectives. Supervisors are responsible for making available or obtaining materials, supplies, equipment, and/or plans necessary for particular tasks. They provide on-the-job training to subordinates when needed, and make employee evaluations based on their own judgment. They have the authority to recommend hiring, firing, and disciplining employees. *See In the Matter of Julie Petix* (MSB, decided January 12, 2005). *See also, In the Matter of Susan Simon and William Gardiner* (Commissioner of Personnel, decided September 10, 1997). The Commission has determined that the essential component of supervision is the responsibility for the administration of performance evaluations for subordinate staff. *See In the Matter of Timothy Teel* (MSB, decided November 16, 2001). In this matter, the appellants have not provided evidence that the Department does not conduct performance evaluations, and they have not provided performance evaluations which substantiate their claims that they supervise other Sergeants. While they claim that they supervise other Sergeants, Rosario and Hanes jointly supervise Police Officers and are assisted by Captains, and that the Police Chief and supervises them on any matters that arise. The appointing authority states that during some of Muzyka’s shifts, a Captain is on duty, and another Captain is available to assist. Moreover, the appointing authority indicates that neither is authorized to engage in issuing formal discipline.

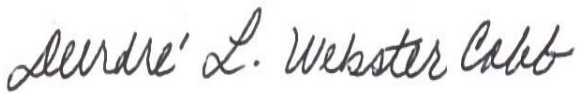
Accordingly, a thorough review of the entire record establishes that the proper classification of the appellants’ positions is Police Sergeant.

ORDER

Therefore, the positions of Louis Muzyka, James Hart, Larissa Lilavois, David Pomales, Marcus Rosario, Justin Terebetski, Paul Stentella, Douglas Greenberg, Jason Hanes, and John Kelly are properly classified as Police Sergeant.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 1ST DAY OF JULY, 2020



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c: Louis Muzyka (CSC Docket No. 2020-2044)
James Hart (CSC Docket No. 2020-2045)
Larissa Lilavois (CSC Docket No. 2020-2046)
David Pomales (CSC Docket No. 2020-2047)
Marcus Rosario (CSC Docket No. 2020-2050)
Justin Terebetski (CSC Docket No. 2020-2052)
Paul Stentella (CSC Docket No. 2020-2064)
Douglas Greenberg (CSC Docket No. 2020-2065)
Jason Hanes (CSC Docket No. 2020-2066)
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