

In the Matter of Lori Apicelli, et al., Essex County Sheriff's Office
CSC Docket Nos. 2008-4511, 2008-4512, and 2008-4513
(Civil Service Commission, decided June 10, 2009)

The Essex County Sheriff's Office (Sheriff's Office), on behalf of Lori Apicelli, Anthony Melia, and Abraham Tettamanti, appeals the attached decisions of the Division of Local Human Resource Management (LHRM) that the proper classifications of their positions are, respectively, Training Officer, Law Enforcement, Chief Communications Officer, and Management Information Systems Coordinator. The Sheriff's Office seeks Sheriff's Officer Captain classifications for Apicelli and Tettamanti and a Sheriff's Officer Lieutenant classification for Melia. These appeals have been consolidated due to common issues presented.

The record in the present matter establishes that as a result of a complaint filed by the Essex County Sheriff's Superior Officers, Fraternal Order of Police (FOP) Lodge 138, LHRM conducted a classification review of the positions encumbered by Apicelli, Melia, and Tettamanti. It was FOP Lodge 138's contention that Apicelli and Tettamanti were not assigned duties commensurate with their permanent title of Sheriff's Officer Captain and that Melia was not assigned duties commensurate with his permanent title of Sheriff's Officer Lieutenant.

FOP Lodge 138 claimed that Apicelli is assigned to the Essex County College Police Academy (Police Academy) on a full time basis, which is independent of the Sheriff's Office, is not patrolled or secured by members of the Sheriff's Office, and the assignment is exclusive of any duties as defined in the job specification for Sheriff's Officer Captain. It also claimed that Melia had been assigned on a full time basis to maintain and repair the Sheriff's Office radio and communications systems and that he also performed responsibilities for the County Office of Emergency Management (OEM), which were inconsistent with the duties of a Sheriff's Officer Lieutenant. Finally, FOP Lodge 138 averred that Tettamanti was assigned on a full time basis as an "information tech" and that his duties did not fall within the job specification for Sheriff's Officer Captain.

Sheriff's Officer Captain Lori Apicelli

Apicelli's position is located at the Police Academy and she reports to John Dough, Chief, Sheriff's Office and Rocco Miscia, Director, Police Academy. Apicelli supervises secretarial and janitorial staff, training advisors, instructors, and recruits at the Police Academy. As a result of FOP Lodge 138's complaint, Apicelli submitted a Position Classification

Questionnaire (PCQ) detailing the different duties she performs as a Sheriff's Officer Captain. LHRM reviewed and analyzed the PCQ completed by Apicelli. On August 9, 2007 and on March 6, 2008, LHRM verified Apicelli's duties with her immediate supervisor, Dough. LHRM determined that the duties performed by Apicelli were consistent with the definition and examples of work included in the job specification for Training Officer, Law Enforcement and assigned her an effective date of February 17, 2007.

Sheriff's Officer Lieutenant Anthony Melia

Melia position is assigned to the Sheriff's Office Command Staff and he also reports to Dough. Melia supervises two Sheriff's Officers on a regular basis. Upon its review of the PCQ submitted by Melia, LHRM determined that the duties he performed were consistent with the job specification for Chief Communications Officer and assigned him an effective date of February 17, 2007.

Sheriff's Officer Captain Abraham Tettamanti

Tettamanti's position is assigned to the Information Technology Unit of the Sheriff's Office and he reports to Dough. Tettamanti supervises a Sheriff's Officer Lieutenant and two Sheriff's Officers. LHRM reviewed the PCQ submitted by Tettamanti and verified his duties with Dough on August 7, 2007. In its determination, LHRM found that the duties performed by Tettamanti were consistent with the definitions and examples of work included in the job specification for Management Information Systems Coordinator and assigned him an effective date of February 17, 2007.

On appeal, the Sheriff's Office presents that the basis of its appeal centers on two critical issues, supervision and the job specifications for the Sheriff's Officer title series. First, it states that all three employees supervise other Sheriff's Officers and/or supervisors assigned to their respective commands. The Sheriff's Office emphasizes that this is a basic requirement for all supervisory positions and it maintains that this is "unequivocally true" for these employees. With respect to the job specifications, the Sheriff's Office presents that all Sheriff's Officer titles have evolved dramatically since the job definitions were first promulgated. It underscores that this has become especially apparent when considering how the present duties and responsibilities of Sheriff's Offices in New Jersey relate to terrorism, emergency management, training, and the State edict on inter-agency sharing of resources. In short, the Sheriff's Office argues that the Department of Personnel (DOP)¹ has not kept pace with the times and that

¹ On June 30, 2008, Public Law 2008, Chapter 29 was signed into law and took effect, changing the Merit System Board to the Civil Service Commission, abolishing the

this conflict is magnified when considering that the Governor and State Legislature take public positions on the economic matter of sharing resources which affects all levels of government.

With respect to Apicelli, the Sheriff's Office contends that LHRM's narrow interpretation of the higher level Sheriff's Officer job specifications essentially equates to a determination that civilians should oversee all training of law enforcement personnel. In this regard, the Sheriff's Office emphasizes that all law enforcement agencies assign a uniformed officer to oversee training for both permanent and volunteer law enforcement officers. In fact, it states that most agencies have an established field training officer whose primary responsibility is to train patrol officers. Given LHRM's determination, the Sheriff's Office questions if training of patrol officers should universally be performed by civilian training instructors instead of uniformed law enforcement officers and argues that this would clearly not be appropriate. Further, it states that if Apicelli's title is changed to Training Officer, Law Enforcement, its Police Academy would be the only one in the State to have a civilian in charge of law enforcement training. Finally, the Sheriff's Office verifies that Apicelli supervises Sheriff's Officer Lieutenants, Sheriff's Officer Sergeants, and Sheriff's Officers who are at the Police Academy, which is a Sheriff's Office assignment and post for staffing and includes security functions for a county property.

The Sheriff's Office states that Melia's functions are of a temporary nature, both internally and externally. It explains that every law enforcement agency in the State and nation assigns a uniformed officer to oversee its external voice and radio communications. Besides providing support to the communications system, the Sheriff's Office states that Melia assists in the State's efforts towards regional and State interoperability of law enforcement agencies. Thus, to change his classification from law enforcement to civilian status "would cripple the [S]tate's effort in its crime fighting and homeland security efforts." Moreover, the Sheriff's Office verifies that Melia supervises staff, including the issuance of assignments to Sheriff's Officer Sergeants, both on a daily basis and in emergency situations. It also verifies that he establishes and maintains work schedules for subordinates under his supervision and reviews and evaluates their work. Accordingly, the Sheriff's Office maintains that his proper classification is Sheriff's Officer Lieutenant.

Regarding Tettamanti, the Sheriff's Office underscores that he directs and supervises officers assigned to his unit, which involves statistical and

Department of Personnel and transferring its functions, powers and duties primarily to the Civil Service Commission. In this decision, the former names will be used to refer to actions which took place prior to June 30, 2008.

crime analysis. It maintains that the fact that his position is located in the Information Technology Section is of little consequence, since it has applied the talent, knowledge, skill and training of a law enforcement professional without incurring the cost of hiring additional personnel at a much higher salary. In fact, the Sheriff's Office asserts that even if it did hire civilian personnel to perform the duties performed by Tettamanti, they would still have to draw on law enforcement expertise in the agency to fulfill the records management and information system requirements of the office, which consists of Civil Process and Criminal Records Management.

The Sheriff's Office argues that LHRM's determinations potentially create an unfair tax burden and negatively impact its operations. Indeed, it emphasizes that it has a fiduciary responsibility to seek the most efficient and effective utilization of the resources allotted to it and notes that both the Governor and the State Legislature have indicated their support of the use of shared resources. It also questions why LHRM's determinations are all dated in May 2008, but they were advised that the classification findings should be made effective in February 2007. Finally, the Sheriff's Office presents that all of the issues addressed in this appeal can be resolved by updating the job specifications for the Sheriff's Officer title series. To this end, it offers its assistance and extends an invitation to other Civil Service jurisdictions as well as to the New Jersey Sheriff's Association to join in this effort.

In response, FOP Lodge 138, represented by David J. De Fillippo, Esq., initially indicated that it opposed the Sheriff's Office appeals of these matters. However, in a supplemental submission, FOP Lodge 138 indicated that it is withdrawing its opposition to the Sheriff's Office appeals.

CONCLUSION

Sheriff's Officer Captain Lori Apicelli

The definition section of the specification for Sheriff's Officer Captain states:

Under direction with wide latitude for independent judgment and initiative which may include authority to make decisions on policy matters, serves as third level of supervision and is responsible for administration and direction of one or more major functional organizational activities of a sheriff's office such as maintaining order and security in a courtroom, serving court processes, criminal identification, ballistics, apprehension of violators of the law, and criminal investigation; does other related duties.

The definition section of the job specification for Training Officer, Law Enforcement states:

Under direction, plans, organizes, supervises, coordinates, and implements comprehensive law enforcement and staff development programs; does other related duties as required.

It is uncontested that Apicelli is assigned as the Commanding Officer of the Police Academy, a law enforcement training facility. Thus, since her position primarily involves various functions relating to the implementation, planning, coordination, and supervision of the provision of training to all levels of law enforcement personnel, including new recruits, and is not involved in one of the functional organizational activities of the Sheriff's Office, such as maintaining order and security in a courtroom, serving court processes, criminal identification, ballistics, apprehension of violators of the law, and criminal investigations, LHRM determined that her proper classification should be Training Officer, Law Enforcement.

In *In the Matter of Richard Colabelli* (Commissioner of Personnel, decided July 16, 2007), the Commissioner addressed a classification issue involving a Sheriff's Officer Sergeant assigned to the Essex County Office of Emergency Management (OEM), which is housed in the Essex County Sheriff's Office, who primarily performed OEM related training. In *Colabelli*, FOP Lodge 138 asserted that a Sheriff's Officer Sergeant was performing emergency management duties, such as responding to oil spills and industrial fires, and was performing various emergency management training, which was completely unrelated to law enforcement and court security. The Commissioner determined that 80-85% of Colabelli's time was spent working in the OEM performing training duties and that he was not assigned supervisory responsibilities over Sheriff's Officers as required by a Sheriff's Officer Sergeant classification. Accordingly, the Commissioner determined that Colabelli's position would be properly classified as Operations and Training Officer, Emergency Management. In reaching this conclusion, the Commissioner rejected an Independent Classification Reviewer's assessment that the combination of supervision and training within paramilitary units, in that case, often requires a different relationship between the trainer and the trainee in that it is a relationship that embodies the legal power and authority to command and the need to exercise strict control over the actions of a subordinate/trainer and subordinate/trainee. Rather, at least in the case of OEM training, the Commissioner relied on the former Division of Human Resource Management's opinion that the training of personnel, while imperative and essential, and which comprised the majority of Colabelli's

duties, was by definition, educational and should not be construed to be a supervisory law enforcement function.

In this case, the Civil Service Commission (Commission) finds that the training-related functions performed by Apicelli are clearly distinguishable from those discussed in *Colabelli, supra*, and her position would be appropriately classified as a Sheriff's Officer Captain. Apicelli is assigned as the Commanding Officer of the Police Academy and is responsible for its daily operations, which includes all aspects of *recruit* training for Police Officers, Sheriff's Officers, County Correction Officers, Juvenile Detention Officers, Special Law Enforcement Officers 1 and Special Law Enforcement Officers 2. Unlike the situation in *Colabelli, supra*, where the training related duties of the OEM impacted trainees in a variety of professions, such as in the areas of law enforcement, community, fire, emergency medical, public works, other governmental officials, and in the private sector, Apicelli's training duties are only focused on law enforcement. Moreover, it is axiomatic that the majority of the training-related duties she performs prepares recruits to work in, among other areas of law enforcement, major functional organizational activities of a sheriff's office such as maintaining order and security in a courtroom, serving court processes, criminal identification, ballistics, apprehension of violators of the law, and criminal investigation.

While the job specification for Sheriff's Officer Captain, or for that matter Police Captain or County Correction Captain, may not precisely indicate that an incumbent may be placed in command of a Police Academy operated by a county in one of its county facilities, it stands to reason that individuals in law enforcement titles should indoctrinate new recruits to the rigors and reality of paramilitary life. Indeed, one of the essential components of any paramilitary organization is the chain of command: the line of authority and responsibility along which orders are passed within a paramilitary unit and between different units. Orders are transmitted down the chain of command, from a higher-ranked officer to lower-ranked personnel who either carry out the order personally or transmit it down the chain as appropriate, until it is received by those expected to carry it out. An understanding by individuals at all levels of the chain of command as to where they stand in it and how it functions is essential to the successful operation of any command.

In this case, it is evident that the Policy Academy is structured along the lines of a chain of command, with Apicelli as the Commanding Officer, which includes academy training staff serving at different levels of law enforcement titles, from the entry level to Captain level. It would be inappropriate for the Commission to undermine this command structure on

the sole basis that her duties do not precisely fit within the parameters of the job specification for Sheriff's Officer Captain. As was essentially argued by the Sheriff's Office, to follow through with FOP Lodge 138's initial argument to its only logical conclusion, purely focusing on the narrow job definitions within the job specifications for all law enforcement titles would essentially preclude any incumbent in a law enforcement title from training new law enforcement recruits or other law enforcement staff. Stated differently, if Apicelli, or any law enforcement officers providing training to law enforcement recruits are misclassified as law enforcement officers, it can only be inferred that FOP Lodge 138 was essentially arguing that all law enforcement training must be done by individuals with civilian classifications. While it may be debatable in the context of OEM training as in *Colabelli, supra*, the Commission finds that in the context of Police Academy training, supervision within a paramilitary unit requires a different relationship between a trainer and a trainee because the need exists for strict control over the actions of a subordinate/trainer and subordinate/trainee. Therefore, given that Apicelli indicated on her PCQ that she is responsible for the review and evaluation of all part-time and full-time Police Academy staff², including in-service and recruit class instruction, who train staff, in part, to work in one of the functional areas of a sheriff's department, the Commission finds that her position would be appropriately classified as Sheriff's Officer Captain.

Sheriff's Officer Lieutenant Anthony Melia

The definition section of the job specification for Sheriff's Officer Lieutenant states:

Under direction, develops plans for and makes changes in staff assignment and in organization of work for assigned functional area or areas of responsibility of a Sheriff's Office such as maintaining order and security in a courtroom, serving court processes, criminal identification, ballistics, apprehension of violators of the law, and criminal investigation to achieve more effective operations within allowable guidelines and policies established by higher levels of supervision; establishes performance standards for subordinates; prepares and issues internal operating instructions and procedures for the unit(s) for which responsible; makes independent decisions on problems which occur during normal course of work; does other related duties.

² According to the Police Academy website, the staff consists of several Police and Sheriff's Officer Sergeants as well as a Police Lieutenant.

The definition section of the job specification for Chief Communications Officer states:

Under direction, supervises and has charge of the activities of a centralized unit engaged in operating data processing and computer oriented equipment used to receive, enter and transmit information to local state, and out-of-state law enforcement and/or other emergency services, does related work as required.

Melia's position is assigned to the Sheriff's Office Command Staff and he is responsible for the supervision of the Chief's office staff as well as the Communications Unit. To this end, he is responsible for all radio communications of the Sheriff's OEM as well as other county agencies and he supervises two Sheriff's Officers, Christopher Wodopuja and Joseph Stivalo. LHRM determined that since Melia's position plans and directs projects, provides assignment and instruction, and supervises employees who do not perform law enforcement functions, it would be more appropriately classified as Chief Communications Officer. Although he works in this area, it is clear that his duties are related to the traditional areas of a Sheriff's Office which warrant his classification as a Sheriff's Officer Lieutenant. Indeed, it would be imprudent not to have a uniformed officer overseeing internal and external voice and radio communications, as part of the Command Staff, in support of those Sheriff's Officers working in the field doing such things as serving court processes or criminal investigations. Moreover, the Sheriff's Office has verified that Melia does in fact supervise staff, including Sheriff's Officer Sergeants, both on a daily basis and in emergency situations. Additionally, there is no record of a challenge to the classifications of the positions held by Wodopuja and Stivalo. Presumably, if Melia is misclassified because he primarily performs communications duties, it would stand to reason that the two Sheriff's Officers he supervises on a daily basis are also misclassified. Accordingly, the Commission finds that Melia's position is properly classified as a Sheriff's Officer Lieutenant.

Sheriff's Officer Captain Abraham Tettamanti

The definition section of the job specification for Management Information Systems Coordinator states:

Under the general supervision of a supervisory official in a State or local department, institution or agency, coordinates department or agency data processing, word processing, and data communications activities to ensure efficient and effective installation and use, directs all data processing projects and

assigned staff; leads the need analysis, operations analysis, and systems analysis activities for the operation, implementation, and enhancement of all agency data processing, word processing, and data communications facilities, and resources; does other related duties.

The PCQ submitted by Tettamanti clearly indicates that 25% of his time is spent managing the Information Technology Unit, consisting of a staff of 3 Sheriff's Officers, with over 300 computer devices and over 500 users in 3 locations, with 3 application interfaces and 7 separate software applications. However, the Sheriff's Office explains that Tettamanti's unit utilizes various types of information technology in support of statistical crime analysis. The Commission agrees with the Sheriff's Office that the fact that Tettamanti's position is located in the Information Technology Section is of little consequence. Essentially, the Sheriff's Officers in this area utilize various forms of information technology in support of such Sheriff's Office operations as civil process, criminal records management, criminal identification, ballistics, apprehension of violators of the law, and criminal investigation. Therefore, it is appropriate to assign these tasks to Tettamanti, as well as his staff, without changing their classifications from the Sheriff's Officer title series.

Finally, the Commission agrees with the Sheriff's Office that the job specifications for the Sheriff's Officer title series should be updated to address the concerns outlined in these appeals. Accordingly, the Division of Classification and Compensation should consult with the Sheriffs of all Civil Service jurisdictions as well as the New Jersey Sheriff's Association to update these specifications and to make any changes deemed appropriate.

ORDER

Therefore, the Civil Service Commission concludes that the positions of Lori Apicelli and Abraham Tettamanti are properly classified as Sheriff's Officer Captain and that the position of Anthony Melia is properly classified as Sheriff's Officer Lieutenant and has so Ordered. Accordingly, their County and Municipal Personnel System (CAMPS) records should be revised to remove the civilian titles and to reflect continuous permanent service in the appropriate Sheriff's Officer title. Additionally, the Division of Classification and Compensation should consult with the Sheriffs of all Civil Service jurisdictions as well as the New Jersey Sheriff's Association to update these specifications and to make any changes deemed appropriate.

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

