

D.R. NO. 90-32

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF REPRESENTATION

In the Matter of

TOWNSHIP OF BERNARDS,

Public Employer-Petitioner,

-and-

Docket No. CU-90-44

BERNARDS TOWNSHIP POLICEMEN'S
ASSOCIATION,

Employee Representative.

SYNOPSIS

The Director of Representation finds that sergeants should be removed from a mixed unit of sergeants and patrolmen. It was found that there was an inherent conflict of interest in having both patrolmen and sergeants in one negotiations unit.

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Appearances:

For the Public Employer
Ruderman & Glickman, attorneys
(Mark S. Ruderman, of counsel)

For the Employee Representative
Loccke & Correia, attorneys
(Manuel A. Correia, of counsel)

DECISION

On January 9, 1990, Bernards Township ("Township") filed a Petition for Clarification of Unit with the Public Employment Relations Commission ("Commission") seeking to exclude sergeants from an existing police unit of all patrolmen and sergeants currently represented by the Bernards Township Policemen's Association ("Association"). The Township argues that sergeants are supervisors within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically subsection 5.3 and therefore, have an inherent conflict of interest with the patrol officers.

The Association argues that the current unit composition should be maintained. In the alternative, if the Commission determines that sergeants should be removed from the unit, the Association argues that the Commission should establish two units, one for patrol officers and one for all sergeants, lieutenants and captains.

A Commission agent conducted an investigatory conference on February 20, 1990, pursuant to N.J.A.C. 19:11-2.2 and 2.6. It appears that there are no substantial and material factual issues in dispute which require a formal hearing for resolution. N.J.A.C. 19:11-2.6(b). Accordingly, the disposition of the petition is properly based on our administrative investigation. The following facts appear.

The Bernards Township Police Department consists of one chief of police, one captain, one lieutenant, five sergeants and 19 patrol officers. The Police Department operates three shifts per day, 7 days per week. The highest ranking officer on duty is routinely appointed shift commander. Shift commanders are appointed by the Chief. When there are no superior officers on duty, a patrol officer is appointed shift commander. However, this latter situation is unusual.

The parties disagree over the supervisory status of sergeants. In an affidavit, Police Chief Robert Moore states that sergeants perform the following supervisory functions.

Sergeants evaluate patrol officers. Although disciplinary actions rarely occur, when discipline of a patrol officer is necessary, a disciplinary report with recommendations is drafted by the involved sergeant who in turn gives the report to the captain.^{1/} Sergeants participate in the investigations of the backgrounds of police officer candidates and make appropriate recommendations to the chief. Sergeants interview patrol officers for promotion and make recommendations to the chief. In April 1990, two sergeants interviewed and made effective recommendations to the chief concerning three promotions of patrol officers to sergeant.

Although the Association disputes many of the statements made in the affidavit of Chief Moore, it has not provided any affidavits or other evidence in support of its position that sergeants are not supervisors. Accordingly, I find the sergeants are supervisors within the meaning of the Act. However, it is not necessary to find that sergeants are supervisors in order to determine that they should be removed from the mixed unit of patrol officers and sergeants. In Township of Rochelle Park and Rochelle Park Superior Officers Ass'n and Rochelle Park PBA Loc. #102, D.R. No. 89-22, 15 NJPER 195 (¶20082 1989), aff'd App. Div. Dkt. No. A-5273-88T1 (3/19/90), I ordered that superior officers be removed from a mixed unit of patrol officers and superior officers because,

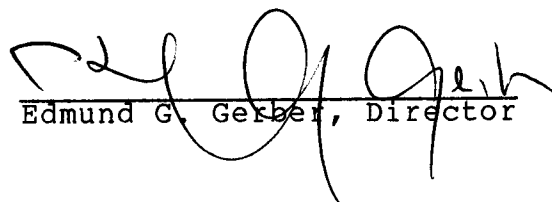
^{1/} Charges are then filed with the captain and a hearing is set before the chief of police who renders a final disciplinary decision.

in the quasi-military setting of a police department, an inherent conflict of interest was created by having both rank and file officers and superior officers in one negotiations unit. There was no specific finding in Rochelle Park that the superior officers were supervisors. West New York, P.E.R.C. No. 87-114, 13 NJPER 277 (¶18115 1987).

The Association concedes that if we determine a conflict of interest exists here, then pursuant to Rochelle Park, the sergeants should be removed from the unit. It argues that if the sergeants are removed from the unit, they should be placed in a new unit with the lieutenant and the captain. However, I cannot make such a determination in this proceeding. If the superior officers wish to be represented in collective negotiations, they may bring an appropriate petition for certification pursuant to N.J.A.C. 19:11-1.1 et seq.

Based upon the entire record in this matter, I clarify the existing police unit to exclude sergeants from the unit.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: June 14, 1990
Trenton, New Jersey