

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

In the Matter of

NEW JERSEY INSTITUTE OF  
TECHNOLOGY,

Public Employer,

-and-

Docket No. RO-92-102

NJIT POLICE SUPERIORS,

Petitioner.

SYNOPSIS

The Director of Representation orders an election among police sergeants employed by NJIT. The sergeants were included in a unit with police officers. The Director ordered a severance, finding a "material potential conflict", first described in Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404 (1971).

NJIT argued that officers and sergeants share the same responsibilities, but the Director pointed to the "chain of command" established by NJIT regulations and the absence of a "small force exception" to conclude that the petitioning sergeants shall vote in a separate unit.

The Director also determined that the petitioned-for police lieutenant was a "supervisor", and excluded the title from the proposed unit.

D.R. NO. 92-21

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Appearances:

For the Public Employer  
Robert H. Avery, Executive Director of Employee Relations

For the Petitioner  
Markowitz & Richman, attorneys  
(Stephen C. Richman, of counsel)

DECISION AND DIRECTION OF ELECTION

On October 31, 1991, the NJIT Police Superiors ("Petitioner") filed a Petition for Certification of Public Employee Representative seeking to represent police sergeants and the lieutenant employed by the New Jersey Institute of Technology ("NJIT"). Sergeants are currently included in a unit with police officers represented by Fraternal Order of Police, Lodge No. 93 ("FOP"). The lieutenant is unrepresented.

NJIT opposes the petition, claiming that the existing unit is most appropriate.

On February 13, 1992, I issued a letter tentatively finding

that a separate unit of sergeants was appropriate and directing an election to determine if a majority wishes to be represented in collective negotiations by the petitioner. I also tentatively concluded that the lieutenant should not be included in the proposed unit.

These facts were unrebutted:

NJIT and the FOP signed a collective agreement for all full-time "commissioned police officers" and "commissioned police sergeants" extending from July 1, 1989 through June 30, 1992. The recognition article excludes all police employees "above the rank of police sergeant and all other supervisors...."

The agreement provides seniority rights, vacation, overtime and holiday benefits and includes a grievance procedure ending in binding arbitration.

The unit was formed in 1980 and now has seventeen police officers and four police sergeants. Topping the organizational pyramid is a lieutenant, the chief of police and Director of Public Safety. NJIT regulations also call for an assistant to the chief -- a position which is now apparently vacant.

NJIT negotiates with three other majority representatives on behalf of about 800 employees.

NJIT police employees are "fully commissioned and [as] equally qualified as their municipal counterparts." They make arrests, carry handguns and drive patrol vehicles. They usually pass some investigative and evidence gathering responsibilities to

the nearby municipal police authorities.

NJIT's police regulations describe the "chain of command" as "the unbroken line of authority extending from the chief of police through a single subordinate at each level of command down to the level of execution and vice versa." (1.08.3). It also defines "command officer" as "any officer appointed to the rank of lieutenant or higher who is in command of all supervisory personnel or any officer assigned by the Chief to act in this capacity." (1.08.5).

Section 2.01.2 of the NJIT police regulations states that, "command shall be exercised by the virtue of rank, and in cases of equal rank, by length of service...." Section 2.01.5 states that, "upon all occasions when a body of members of the Department is assembled, the ranking officer present shall take command and will be held responsible for the official action and conduct of those present...."

The lieutenant job description states that under the direction of the assistant to the Chief, the lieutenant "exercises direct control over the shift sergeants and the operations of the department...." Lieutenant responsibilities include assigning and supervising work, inspecting, investigating complaints and police service, making recommendations and, "in minor infractions, disciplining subordinates."

Step one of the grievance procedure requires the grievant to discuss the grievance informally with the lieutenant, subject to

a written appeal to the Director of Public Safety at step two.

The sergeant job description states that the sergeant, under direction, is responsible for activities of field personnel, oversees and "takes part in" police activities, investigates improper police services, visits and inspects patrol units, and "closely supervises activities of subordinates."

Police officers and police sergeants have at one time or another served as presidents of the FOP.

The petitioner has filed a certification that it shall act as a separate organization from any other organization representing non-supervisory employees, and shall admit only supervisory employees as members.

NJIT asserts that the existing unit should be maintained because there is at worst, a "de minimis" conflict of interest among officers and sergeants. It points to a lengthy and harmonious single-unit negotiations history, the interchangeability of officers and sergeants as local union presidents and to the sergeants' non-supervisory responsibilities as evidence of the unit's appropriateness. NJIT asserts that sergeants act in "lead" capacities only and have performed all duties assigned to the officers.

NJIT also asserts that the lieutenant is a supervisor whose duties include evaluating officers, and recommending discipline for officers and sergeants. It asserts that the "conflict" between the lieutenant and the sergeants makes the former title's inclusion in

the petitioned-for unit inappropriate.

The petitioner asserts that superior officers do not share a community of interest with rank-and-file employees, that the quasi-military structure of police departments compel the formation of separate units of superior officers and rank-and-file officers and that a history of stable negotiations does not dispose of the issue. Petitioner did not respond to NJIT's objection to the inclusion of the lieutenant in the proposed unit.

The FOP believes that severance is appropriate.

In Rochelle Park Tp. and Rochelle Park Superior Officers Assn. and Rochelle Park PBA Local #102, D.R. No. 89-22, 15 NJPER 195 (¶20082 1989), aff'd App. Div. Dkt. No. A-5273-88T1 (3/19/90), the petitioning organization sought a severance of an existing unit composed of 14 patrol officers, 4 sergeants, 2 lieutenants and 1 captain. That petitioner wanted to represent sergeants, lieutenants and captains -- all superior officers. The employer took no position and the incumbent majority representative opposed the petition, arguing that superiors should not be removed and that the existing unit was appropriate.

In Rochelle Park, no substantial and material actual conflict of interest existed among police superiors and rank-and-file officers. Nor did the record prove that the superior officers were "supervisors." I nevertheless ordered a severance because a substantial and material potential conflict existed from the circumstance that superiors and rank-and-file officers were in

one negotiations unit. In Bor. of So. Plainfield, D.R. No. 78-18, 3 NJPER 349 (1977), the then-Director wrote:

Except in very small departments where any conflict of interest between superior officers and rank and file personnel is de minimis in nature, the quasi-military structure of police departments virtually compels that superior officers and patrolmen be placed in separate units. This is so inasmuch as the exercise of significant authority in a chain of command operation produces an inherent conflict of interest within the New Jersey Supreme Court's definition of that concept in Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404 (1971). The existence of an inherent conflict of interest in these circumstances must lead to a determination that separates superior officers from rank and file notwithstanding a previous history of collective negotiations in a combined unit. Moreover, the finding of such conflict is not contingent upon a finding that the superior officers are supervisors within the meaning of N.J.S.A. 34:13A-5.3 (emphasis added).

In Rochelle Park, the size of the department did not fit within the "small force exception" to the presumption that the quasi-military structure of police departments requires that superior officers not be included in the same unit with patrol officers.

This matter also is no exception. The Rochelle Park department and the NJIT police force are of comparable size. Furthermore, NJIT regulations establish a chain of command indistinguishable from one in any municipal police department. That some investigative and evidence gathering responsibilities are transferred to a nearby municipal department does not weaken that chain. Nor is it weakened because the sergeants may not be

supervisors under the Act. See also Roselle Park Bor., D.R. No. 89-19, 15 NJPER 174 (¶20074 1989). In Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404 (1971), the New Jersey Supreme Court held that public employees who exercise significant power over and are responsible for other personnel should not be included in the same negotiations unit as their subordinates because of a conflict of interest.

Accordingly, I order that sergeants be "severed" from the existing unit and be permitted to vote on whether they wish to be represented in a separate unit by NJIT Police Superiors or no representative.

The parties did not dispute the lieutenant's supervisory responsibilities over the sergeants or that this position is responsible for minor discipline and responds to grievances on behalf of NJIT at step one of the grievance procedure. Considering these supervisory duties, I determine that the lieutenant should not be included in the proposed unit. If NJIT adds other superior officers to the roster who assume pertinent supervisory duties of the lieutenant, petitioner may seek to add the lieutenant by filing the appropriate petition.

I direct an election among all NJIT police sergeants in a separate negotiations unit. Excluded from the unit are the Chief, the lieutenant, patrol officers, non-police employees, non-supervisory employees, confidential employees, craft employees, firefighters, professional employees and managerial executives




within the meaning of the Act.

The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, including those in the military service. The election will be by mail ballot. Ineligible to vote are employees who resigned or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

Pursuant to N.J.A.C. 19:11-9.6, the public employer is directed to file with us an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the units, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by us no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously provided to the employee organization with a statement of service filed with us. We shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

The exclusive representative, if any, shall be determined by a majority of the valid votes cast in the election. The election shall be conducted in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Edmund G. Gerber, Director

DATED: March 4, 1992  
Trenton, New Jersey