

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

In the Matter of

CITY OF PATERSON,

Public Employer,

-and-

DOCKET NO. CU-77-28

PBA LOCAL NO. 1,

Petitioner.

SYNOPSIS

The Director of Representation determines that the police chief and deputy chiefs employed by the City of Paterson shall be removed from the negotiations unit represented by the PBA. The PBA negotiations unit heretofore had included patrol officers, sergeants, lieutenants, captains, deputy chiefs and the chief. Based upon the administrative investigation conducted pursuant to N.J.A.C. 19:11-2.1 et seq., the Director determines that a conflict of interest exists between the chief and deputy chiefs and the rest of the above-referred unit. Accordingly, the Director finds the inclusion of the chief and deputy chiefs in the unit of lower ranking officers to be inappropriate.

In reaching this determination, the Director has applied long-standing Commission principles concerning the separation of superior officers from rank and file personnel -- i.e., that 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 rank and file and superior officers be placed in separate units. The Director also finds there was no established practice and/or prior agreement pursuant to N.J.S.A. 34:13A-5.3.

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Appearances:

For the City of Paterson
Leonard R. Jacoby, Labor Negotiator

For the PBA Local No. 1
Michael Adamo, President

DECISION

On November 24, 1976, a Petition for Clarification of Unit (Docket No. CU-77-28) was filed with the Public Employment Relations Commission (the "Commission") by the City of Paterson (the "City") seeking a determination as to whether the Chief and Deputy Chiefs of Police are excluded, or excludable from a negotiations unit represented by the Paterson PBA, Local No. 1 (the "PBA").

The undersigned has caused an administrative investigation to be conducted into the matters and allegations set forth in the instant Petition in order to determine the facts. All parties have been advised of their obligation pursuant to N.J.A.C. 19:11-2.6 and have been afforded the opportunities thereunder to present documentary and other evidence as well as statements of position relating to the Petition. On the basis of

the investigation herein the undersigned finds and determines as follows:

1. The disposition of this matter is properly based upon the administrative investigation herein, it appearing that no substantial and material factual issues exist which may more appropriately be resolved after a hearing. Pursuant to N.J.A.C. 19:11-2.6, there is no necessity for a hearing where, as here, no substantial and material factual issues have been placed in dispute by the parties.

2. The City of Paterson is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., as amended (the "Act"), is the employer of the employees involved herein, and is subject to its provisions.

3. Paterson PBA Local No. 1 is an employee representative within the meaning of the Act and is subject to its provisions.

4. The City has filed a Petition for Clarification of Unit and seeks a determination excluding the Chief and four Deputy Chiefs from the negotiations unit represented by the PBA. The PBA objects to the proposed exclusion of these personnel from its negotiations unit. Accordingly, there exists a question concerning the composition of the negotiations unit and the matter is appropriately before the undersigned for determination.

5. In support of its position, the City asserts that (a) the contested titles are managerial executives, in that they formulate and direct effectuation of management policies and practices; (b) they are supervisors within the meaning of the Act; and (c) a conflict of interest is created by the inclusion of the Chief and Deputy Chief in the same unit with the subordinate ranks (Captain, Lieutenant, Sergeant and Patrolman) due to the nature of the duties and authorities of the disputed titles.

6. The PBA maintains that neither the Chief nor the Deputy Chiefs are managerial executives. Further, the PBA argues that the disputed titles are not supervisors within the meaning of the Act as they have no authority to hire or to discharge unit personnel. The PBA contends that there is no conflict of interest created by inclusion of the Chief and Deputy Chiefs in the unit with subordinate officers. The PBA asserts that it has traditionally represented the interests of all police officers in the Department, and that the City had always accepted the PBA in that role. The PBA further notes that the Chief and four Deputy Chiefs all wish to be included in the PBA unit.

7. No question has been raised concerning the status of the PBA as the exclusive negotiations representative of a unit containing all Patrolmen, Sergeants, Lieutenants and Captains employed by the City of Paterson. This unit contains approximately 430 police officers.

8. The Chief is responsible for the daily overall operation of the Department. Each Deputy Chief is responsible for operation of one of the four divisions into which the Department is divided.

9. The Chief and Deputy Chiefs have no direct authority to hire or discharge police officers. However, the Chief and Deputy Chiefs provide recommendations on such matters.

10. The Chief and Deputy Chiefs have the authority to discipline subordinate officers. The Chief may, where warranted, impose discipline as follows: oral reprimand, written reprimand, suspension, loss of time off, or fine. Deputy Chiefs may, where warranted, impose discipline as follows: oral reprimand, emergency suspension, written reprimand (subject to approval by the Chief), or recommendation for other discipline. The utilization of

such disciplinary mechanisms may lead to the institution of formal departmental hearings. Both the Chief and Deputy Chiefs have engaged in disciplinary activities.

11. The Chief and Deputy Chiefs may regulate the appearance and dress of police officers and they pass upon the appropriateness of outside employment.

12. In the absence of the Chief, a Deputy Chief assumes the Chief's role in running the Department.

13. As of the filing of this Petition, there was no formal written negotiations agreement between the parties containing either a recognition clause or a grievance procedure. A written executed memorandum of agreement was entered into by the parties on January 6, 1975, effective July 1, 1974 through July 31, 1976, setting forth, inter alia, agreement concerning salary differentials between the ranks of Patrolman through and inclusive of the Chief. This memorandum was "modified" by the parties on January 26, 1976, after "negotiations" pursuant to a reopener provision in the initial memorandum of agreement.

14. The staff member assigned to investigate the case conducted an informal conference with the parties on March 14, 1977. At the conference, the staff member discussed at length the statutory exclusion of managerial executives from the coverage of the Act and the statutory exclusion of supervisors from negotiations units containing non-supervisors. See N.J.S.A. 34:13A-5.3 and N.J.S.A. 34:13A-6(d). Further, the staff member discussed the concept of conflict of interest as set forth by the Supreme Court in Board of Education of W. Orange v. Wilton, 57 N.J. 404 (1971), and by the

Commission in numerous decisions concerning police and fire departments. ^{1/}
The staff member noted that where substantial actual or potential conflicts of interest exist between superior officers and subordinate officers, the Commission has without exception found the inclusion of both groups in one negotiating unit to be inappropriate. Only in those situations where the conflict of interest is deemed de minimis has the Commission permitted the formation or continuance of a unit containing both categories of personnel.

15. In a recent decision concerning a substantially similar matter, In re Borough of South Plainfield, D.R. No. 78-18, 3 NJPER ____ (1977), the undersigned stated:

"There is now a long line of Commission decisions on the question of whether superior officers may be included in negotiations units with patrolmen. The standards utilized by the Commission in reaching these determinations are presented in In re City of Elizabeth, P.E.R.C. No. 71 (1972), In re City of Union City, P.E.R.C. No. 70 (1972), and City of Camden, P.E.R.C. No. 52 (1971). Generally, these decisions provide that, 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 compel that patrolmen and superior officers 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 Board of Education of West Orange v. Wilton, 57 N.J. 404 (1971). The existence of an inherent conflict of interest in these circumstances

^{1/} See, In re City of Camden, P.E.R.C. No. 52 (1971); In re City of Union City, P.E.R.C. No. 70 (1972); In re Town of Kearney, P.E.R.C. No. 78 (1973); In re Township of Hanover, E.D. No. 41 (1971); In re Borough of Sayreville, E.D. No. 76-27, 2 NJPER 85, aff'd., App. Div. Docket No. A-3385-75, cert. den., ___ N.J. ___ (July 20, 1977); and In re Essex County Board of Chosen Freeholders, D.R. No. 77-13 (1977); In re Essex County Board of Chosen Freeholders, D.R. No. 77-14 (1977).

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."

The above principles concerning the separation of superior officers from rank and file personnel are no less applicable and perhaps more compelling when they involve a proposed separation of Chiefs and Deputy Chiefs from the balance of an all inclusive collective negotiations unit.

On August 17, 1977 the undersigned advised the parties of the facts which had been adduced by the administrative investigation herein. The parties were also advised that based upon the facts and applicable Commission decisions, including an examination of the relevancy of the Union City matter, supra, which was extensively cited, that the following conclusions could be drawn from the investigation to date:

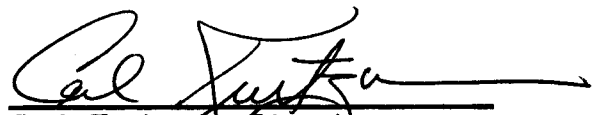
- (1) Chiefs and Deputy Chiefs are included in the 1974-76 memorandum of agreement entered into between the parties, and, accordingly, as no dispute as to the inclusion of such titles was reserved by the parties in the memo, 2/ they were included in the PBA unit as of the filing of the CU Petition. Thus, the Chief and Deputy Chief are included in the unit as previously recognized by the City; the issue before the Commission is whether the Chiefs and Deputy Chiefs should be excluded from the unit either because of the statutory exclusions embodied in N.J.S.A. 34:13A-5.3 or because of substantial actual or potential conflicts of interest;
- (2) The inclusion of Chiefs and Deputy Chiefs in the negotiating unit of subordinate officers gives rise to a substantial actual and potential conflict of interest between these titles and rank and file officers; and
- (3) There is no evidence before the undersigned to support a claim of established practice and/or prior agreement pursuant to N.J.S.A. 34:13A-5.3. See In re West Paterson Board of Education, P.E.R.C. No. 77 and No. 79.

2/ In re Town of Kearny, P.E.R.C. No. 78, p.4 (1973).

The parties were also advised by the undersigned that on the basis of the information provided to date, the inclusion of the Chiefs and Deputy Chiefs in the unit containing Patrolmen, Sergeants, Lieutenants and Captains would be inappropriate. The parties were then afforded additional time to provide, pursuant to N.J.A.C. 19:11-2.6, any supplementary evidence relevant to the instant Petition. The parties were also advised that in the absence of the presentation of any material and substantial disputed factual issues warranting the conduct of an evidentiary hearing, the undersigned would thereafter issue a determination based upon the administrative investigation herein. To date, neither the City nor the PBA has submitted any supplementary documentary evidence. Accordingly, the undersigned based upon the facts elicited in the administrative investigation herein and in accordance with the discussion above, determines that Chiefs and Deputy Chiefs employed by the City of Paterson shall be removed from the negotiations unit represented by the PBA.

The undersigned notes that at the time of the filing of the instant Clarification of Unit Petition (a) the Chiefs and Deputy Chiefs were included in the negotiations unit, (b) the parties' Agreement had expired on July 31, 1976 and (c) the parties were engaged in negotiations for a new agreement. Accordingly, under the precepts set forth in In re Clearview Regional High School Board of Education, D.R. No. 78-2, 3 NJPER 248 (1977), the clarification of unit determination herein shall be effective immediately.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Carl Kurtzman, Director
of Representation

DATED: November 14, 1977
Trenton, New Jersey