

D.R. NO. 88-18

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

In the Matter of

CITY OF VINELAND,

Public employer,

-and-

F.O.P., CUMBERLAND LODGE #8
(SUPERVISORS),

Docket No. RO-88-35

Petitioner,

-and-

SUPERIOR OFFICERS' ASSOCIATION,

Intervenor.

Synopsis

The Director of Representation directs an election among certain supervisory police officers employed by the City of Vineland. In light of the "Camden" certification filed by the Petitioner, the Director rejects the arguments set forth by the City and the intervenor that the petition should be dismissed on the grounds that FOP Cumberland Lodge #8, the employee organization representing the City's patrol officers, would dominate the Petitioner.

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Appearances:

For the Public Employer
Gruccio, Pepper, Giovinazzi, DeSanto & Mann, Esqs.
(Henry Carpenter, of counsel)

For the Petitioner
Sgt. Anthony J. Gioielli

For the Intervenor
Lt. Louis Lugiano, President

DECISION AND DIRECTION OF ELECTION

On September 28, 1987, the Fraternal Order of Police, Cumberland Lodge #8 (Supervisors) ("Petitioner"), filed a Petition for Certification of Public Employee Representative, supported by an adequate showing of interest, with the Public Employment Relations Commission ("Commission"). By its petition, FOP, Cumberland Lodge #8 (Supervisors) seeks to represent all police superior officers

currently covered by the collective negotiations agreement in effect between the City of Vineland ("City) and the Vineland Superior Officers' Association ("Association").

On October 30, 1987, an informal investigatory conference was conducted by a Commission staff attorney with representatives from each of the parties in order to determine the relevant facts in this matter. See N.J.A.C. 19:11-2.2 and N.J.A.C. 19:11-2.6. The investigation reveals the following facts:

The disposition of this petition is properly based on our administrative investigation, since we have not found any substantial and material factual disputes which may be more appropriately resolved at a hearing. See N.J.A.C. 19:11-2.6(b).

In a letter dated October 9, 1987, the Superior Officers' Association requested that it be granted intervenor status on the basis of the collective agreement currently in effect between it and the City. See N.J.A.C. 19:11-2.7(a). The Association's request to intervene was granted.

On November 18, 1987, the parties were advised that we were inclined to direct an election in this matter. The parties were provided with an opportunity to submit additional documentary materials, affidavits or other evidentiary materials in support of their respective positions. Only the Petitioner filed a response indicating that it accepted the determination set forth in our November 18, 1987 letter.

The Association currently represents the superior officers employed by the City of Vineland Police Department including personnel serving in the grades of sergeant, lieutenant and captain.^{1/}

The unit described in the petition constitutes an appropriate unit.

The Petitioner argues that it has filed a timely petition seeking to represent employees in the historical unit represented by the incumbent, Superior Officers' Association. Consequently, the Petitioner urges that the Commission conduct a secret ballot election at the earliest possible time.

The City of Vineland objects to the conduct of an election here. Since Cumberland Lodge #8, Fraternal Order of Police ("FOP"), currently represents the patrol officers employed by the Vineland Police Department, the City contends that a substantial conflict of interest would result in the event that the Petitioner were successful in an election conducted among superior officers. The City asserts that since superior officers are charged with the duty to supervise and discipline patrol officers, having superior officers represented by an employee organization which also represents the patrol officers of the same employer would interfere with the superior officers' performance of their supervisory duties.

^{1/} Mario Brunetta, Captain of Patrols, is not currently and has not been included in the collective negotiations unit represented by the Association. The Petitioner does not seek the inclusion of Captain Brunetta in the unit.

The Association opposes the conduct of a secret ballot election and urges the Commission to dismiss this petition. The Association opposes the instant petition on the grounds that there is not a sufficient separation between FOP Cumberland Lodge #8 and FOP Cumberland Lodge #8 (Supervisors). The Association contends that FOP Cumberland Lodge #8 would dominate the Petitioner with regard to the conduct of labor relations matters. The Association contends that the Petitioner has neither negotiated a superior officers' agreement nor does it have any written plan regarding what it can offer to superior officers. However, the Association concedes that an organizational structure which provides greater separation between FOP Cumberland Lodge #8 and the Petitioner would be less objectionable. The Association agrees with the City that a substantial conflict of interest would be created as a result of the superior officers electing the Petitioner as the majority representative.

In response to the City's and the Association's arguments, the Petitioner asserts that, in fact, it would be a separate employee organization for purposes of collective negotiations, if elected. In that regard, the FOP states that a separate negotiations committee would be established for the purpose of conducting collective negotiations with the City on behalf of superior officers. This committee would be comprised of superior officers either selected by the chairman of the superior officers' negotiations committee or elected by other superior officers

included in the collective negotiations unit. Moreover, the Petitioner states that if elected by the employees, it will establish and control its own treasury in order to independently carry out its collective negotiations responsibilities. To this end, the Petitioner has proffered a written certification attesting that the organization understands that, if elected, it will comply with the requirements that it will act as a separate organization from any other organization representing nonsupervisory employees in the Vineland Police Department; it (the Petitioner), rather than the majority representative of any nonsupervisory organization, will control the negotiations for and the administration of any collective negotiations agreements covering superior officers; and that the Petitioner, as it now exists, has no nonsupervisory members.

The arguments asserted by the City and the Association are similar to those raised in Hudson County, D.R. No. 84-21, 10 NJPER 293 (¶15144 1984), request for review denied P.E.R.C. No. 84-131, 10 NJPER 320 (¶15152 1984), mot. for leave to appeal den. App. Div. Docket No. AM-944-83T2 (6/7/84), mot. for leave to appeal and stay of election den. Supr. Ct. Docket No. 22,796 (6/12/84) ("Hudson County"). In Hudson County, the Association of Hudson County Nursing Supervisors, affiliated with District 1199J, NUHHCE, RWDSU/AFL-CIO, filed a petition for certification of public employee representative seeking to represent supervisory employees employed by the County at its hospitals. The United Nurses Organization was

also affiliated with District 1199J which represented the nonsupervisory nursing personnel employed at the same County hospitals. The County challenged the right of the Association of Hudson County Nursing Supervisors, as an affiliate of District 1199J, to represent nursing supervisors at the same County hospitals at which the United Nurses Organization, another affiliate of District 1199J, represented the nonsupervisory nursing personnel.

At an informal conference attended by the County and the Association of Hudson County Nursing Supervisors, the Association was advised of its responsibility to structure itself as a separate entity for the representation of supervisory employees. See N.J.S.A. 34:13A-5.3; City of Camden, D.R. No. 82-25, 8 NJPER 11 (¶13005 1981), aff'd. P.E.R.C. No. 82-89, 8 NJPER 226 (¶13094 1982). Subsequently, the Association filed a notarized affidavit which stated that it would limit organizational membership to supervisors and pledged that if certified by the Commission, it would maintain a separate structure from the United Nurses Organization.

In City of Camden, supra, the Commission stated the following:

If the committee is able to comply with the above requirements, then an election would appear to be in order. We do not believe that speculation about how a validly organized entity might actually conduct itself if elected should delay representation proceedings. In the event that speculation of possible improper domination during contract negotiations and administration by nonsupervisors becomes fact, then a satisfactory and sufficient remedy is at hand. The City may file an unfair practice charge. It may then test the legality of a

representative's actual conduct. See In re Town of Kearney [P.E.R.C. No. 81-137, 7 NJPER 339 (¶12153 1981); (emphasis in original)]. City of Camden, 8 NJPER at 227.

In Hudson County, we concluded that the requisite safeguards to insure against improper domination were in place in light of the representations made by the Association of Hudson County Nursing Supervisors in its affidavit. Accordingly, we concluded that the County's objections to the conduct of an election were premature and directed that an election among the County's nursing supervisors proceed.

Here, the City and the Superior Officers' Association do not argue that the parent organization, Fraternal Order of Police, will control the collective negotiations and contract administration of the Petitioner. Rather, the City and the Association contend that FOP Cumberland Lodge #8, the majority representative of the non-supervisory patrol officers, will dominate the Petitioner, FOP Cumberland Lodge #8 (Supervisors).

The principles set forth in Hudson County control here. The Petitioner has executed a certification which formally acknowledges its responsibility to establish an independent entity, if elected, to represent the City's superior officers in negotiations and contract administration. FOP Cumberland Lodge #8 (Supervisors) certified that it will act as a separate organization from any other organization representing nonsupervisory employees in the Vineland Police Department; that it, rather than the majority representative of any nonsupervisory organization, will control the

negotiations for and the administration of any collective negotiations agreements covering superior officers; and that it has no nonsupervisory members as it currently exists. "In the absence of information negating the accuracy of this certification or otherwise evidencing a present illegal organizational structure, the petitioner will be qualified to participate in a Commission election." City of Camden, 8 NJPER at 227.

We therefore find the concerns of the City and the Superior Officers' Association regarding improper domination of the Petitioner by FOP Cumberland Lodge #8 to be premature and must not serve to delay the conduct of a secret ballot election in the petitioned-for unit.

Accordingly, we direct that an election be conducted among the employees currently included in the superior officers' unit. The employees shall vote on whether they wish to be represented by the Fraternal Order of Police, Cumberland Lodge #8 (Supervisors), the Superior Officers' Association or neither. Those eligible to vote are all employees employed in the Police Department of the City of Vineland and whose titles are included in the superior officers' unit, specifically including employees serving in the grades of sergeant, lieutenant and captain.^{2/} Those not eligible to vote are all managerial executives, confidentials, professional and craft


^{2/} Mario Brunetta, Captain of Patrols, is not included in the collective negotiations unit and, consequently, shall not be eligible to vote.

employees within the meaning of the Act and all non-police, non-supervisory police officers, all other employees included in any other collective negotiations unit and all other employees employed by the City of Vineland.

The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote are the employees in the unit set forth above who were employed during the payroll period immediately preceding the date of issuance of this decision, 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. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are those employees shown above as not eligible and 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 unit, 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 filed simultaneously with the employee organizations and a statement of service shall be 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: December 4, 1987
Trenton, New Jersey