

D.R. NO. 89-1

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

In the Matter of

TOWNSHIP OF HANOVER,

Public Employer,

-and-

Docket No. RO-88-167

HANOVER TOWNSHIP POLICE PBA 128,
SUPERIOR OFFICERS NEGOTIATING UNIT,

Petitioner.

SYNOPSIS

The Director of Representation directs an election among Hanover Township police lieutenants to determine if they desire representation by ("SONU"), a superior officers affiliate of PBA Local 128. Despite SONU's "Camden" certification, the Township refused to consent to an election unless SONU demonstrated that it had a dues structure and treasury fund separate from the Local 128 affiliate representing the Township's patrol officers and sergeants. Relying on Camden, P.E.R.C. No. 82-89, 8 NJPER 226 (¶13094 1982) and Hudson Cty., D.R. No. 85-7, 10 NJPER 623 (¶15297 1984), aff'd App. Div. Dkt. No. A-789-84T7 (11/15/85), the Director found SONU qualified to represent the unit of lieutenants.

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Appearances:

For the Public Employer
Hansbury, Martin & Knapp, Esqs.
(Fredric M. Knapp, of counsel)

For the Petitioner
Whipple, Ross & Hirsh, Esqs.
(Donald B. Ross, of counsel)

DECISION AND DIRECTION OF ELECTION

On April 18, 1988, the Hanover Township Police PBA Local 128 Superior Officer's Negotiating Unit ("SONU") filed a petition seeking certification as the exclusive representative of a negotiations unit of police lieutenants employed by the Township of Hanover ("Township"). On May 3, 1988, a Commission staff agent conducted an informal conference and began an investigation. The Township refused to consent to a secret ballot election. On May 27, 1988, we advised the parties that it appeared that the petitioned-for unit was appropriate and SONU was qualified to

represent the unit it seeks. We invited the parties to file additional position statements and supporting documents. On June 16, 1988, the Township filed a position statement. On June 21, 1988, it filed a copy of the job description for lieutenants. On June 27, 1988, SONU filed a position statement. The investigation reveals the following facts.

The Township refuses to consent to an election until SONU demonstrates that it has a dues structure and a treasury fund separate from those of the PBA Local 128 affiliate representing the Township's patrolmen. The Township also refuses to consent to an election until SONU obtains its own charter from the N.J. State PBA and omits any reference to Local 128 in its name.

On March 29, 1972, PBA Local 128 was certified as the exclusive representative of the Township's patrolmen and sergeants. In June 1978, Local 128 filed a clarification of unit petition to add lieutenants to its unit. The petition was later withdrawn.

SONU has certified that it will remain an organization separate from the Local 128 affiliate representing the Township's patrolmen, that it will maintain its own officers, charter and by-laws, negotiate and administer its own contracts and that it has no rank-and-file officers as members. However, SONU refuses to obtain a charter from the N.J. State PBA, change its name or supply the Township with any documentation about its dues structure or treasury.

The parties have no disagreement about the composition of the SONU unit. Their dispute is about the extent of SONU's obligation to document its identity as an employee organization separate from the Local 128 affiliate which represents the unit of patrol officers.

The Township initially argued that a treasury funded by dues from both units presents a substantial potential conflict between the interests of patrol officers and superior officers. It compared this to the conflict created by the presence of non-supervisors on a supervisory unit's negotiations team. See Town of Kearny, P.E.R.C. No. 81-137, 7 NJPER 339 (¶12153 1981); Borough of Somerville, P.E.R.C. No. 88-77, 14 NJPER 218 (¶19077 1988). It argues that the documentation it demands is necessary to prove the independence of SONU from the majority representative of the patrol officers' unit.

The Township also analogizes this alleged conflict to that between security guards and non-guard employees of the same private-sector employer. The Township cites several private-sector cases about the affiliation of guard and non-guard organizations and argues that the principles developed under section 9(b)(3)^{1/} of the Labor Management Relations Act, 29 U.S.C. 159(b)(3), apply here

^{1/} Section 9(b)(3) prohibits the NLRB from certifying any labor organization as the representative of a guard unit "if such organization admits to membership or is affiliated directly or indirectly with an organization which admits to membership employees other than guards."

and compel a finding that SONU's petition is per se inappropriate. See International Harvester Co., 145 NLRB 1747, 55 LRRM 1227 (1964); Bonded Armor Carrier, 195 NLRB 346, 79 LRRM 1317 (1972); Brinks, Inc., 226 NLRB 1182, 94 LRRM 1022 (1976).

SONU argues that it need present no assurances beyond those in its certification, and that SONU is an employee organization separate from the Local 128 affiliate representing the Township's patrol officers.

In Camden Police Department, P.E.R.C. No. 82-89, 8 NJPER 226 (¶13094 1982), the Commission established the standard required of a union already representing rank-and-file police officers when it seeks to represent a unit of superior officers. The Commission modified a Director of Representation decision which held that the petitioner need only certify that, if selected as majority representative of superior officers, it would be a separate organizational entity from the unit of rank-and-file officers. The Director had rejected the City's request for more specific assurances of autonomy. City of Camden, D.R. No. 82-25, 8 NJPER 11 (¶13005 1981). The Commission agreed with the City that there should be some pre-election examination of the petitioner's organizational structure. The Commission noted that, pursuant to subsection 5.3 of the Act, employee organizations which admit non-supervisors to membership are prohibited from representing supervisors in collective negotiations. In addition to the requirements imposed by the Director, the Commission required the

petitioner to certify that, as it then existed, it had no non-supervisory members.

Since Camden, the Commission has required that petitioners such as SONU certify that: (1) it is a separate organization from any other organization representing non-supervisory employees; (2) if elected, it, rather than an organization representing non-supervisors, will control the negotiations and administration of contracts covering superior officers; and (3) as it currently exists, it has no non-supervisory members. In Camden, the Commission concluded that, "[t]his certification creates a presumption that the Committee is qualified to represent the unit of superior officers." In a footnote, the Commission explained, "we particularly emphasize that a petitioner is not required to have certain attributes in order to file a representation petition. N.J.S.A. 34:13A-3(e). It is only required not to have an illegal structure. Beyond enforcing the Act's specific prohibitions, we will not interfere in a petitioner's internal affairs." 8 NJPER at 227, n. 2.

SONU has met the certification requirements of Camden and the Township has presented no evidence to rebut the presumption that SONU is qualified to represent a unit of superior officers. The Township's reliance on Labor Management Relations Act section 9(b)(3) cases is misplaced. The intent of Congress in enacting Section 9(b)(3) was "to insure to an employer during strikes or labor unrest among his other employees he would have a core of

plant-protection employees who would enforce the employer's rules for the protection of his property and persons therein without being confronted with a division of loyalty between the employer and dissatisfied fellow union members." McDonnell Aircraft Corp., 109 NLRB 967, 969, 34 LRRM 1489 (1954).

The prohibition in section 9(b)(3) is similar to New Jersey Employer-Employee Relations Act's prohibition that unions representing police officers may not admit non-police employees to membership. N.J.S.A. 34:13A-5.3. The issue raised by SONU's petition is not the conflict between police and non-police but that between rank-and-file officers and superior officers. The Commission addressed that issue in Camden. The safeguards adopted by the Commission in Camden were endorsed in Hudson Cty. and Assn. of Hudson Cty. Nursing Supervisors, a/w Dist. 1199J, NUHHCE, AFL-CIO, D.R. No. 85-7, 10 NJPER 623 (¶15297 1984), aff'd App. Div. Dkt No. A-989-84T7 (11/15/85). In Hudson County, a union petitioned to represent the County's nursing supervisors. The Association of Hudson County Nursing Supervisors was affiliated with District 1199J, which represented the County's nonsupervisory nurses. The County objected to the petition and sought an evidentiary hearing to ascertain the Association's independence from District 1199J. The Court affirmed the Director of Representation's reliance on the Association's certification -- identical to one filed by SONU -- and concluded that the County's objection to the petition was premature. The Court reasoned that, "when and if there is an actual violation, the County may seek its remedy." Id. slip opin. at p.4.

Given SONU's compliance with the Camden requirements, we have no basis to presume that its structure violates any statutory prohibition.^{2/}

Accordingly, we direct that an election be conducted in the petitioned-for unit of police lieutenants to determine whether the lieutenants wish to be represented for the purpose of collective negotiations by the Hanover Township Police PBA Local 128 Superior Officers' Negotiating Unit.

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. Employees must appear in person at the polls in order to be eligible to vote. 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.

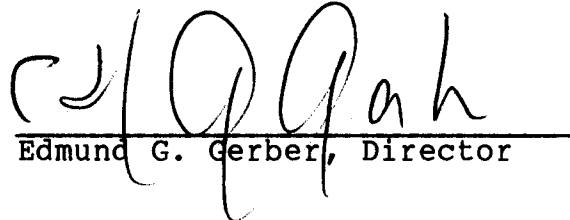
Pursuant to N.J.A.C. 19:11-9.6, the public employer is directed to file with us an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the

^{2/} See Borough of Somerville, P.E.R.C. No. 88-77, 14 NJPER 218 (¶19077 1988), which held that it was not an unfair practice for an employer to refuse to negotiate with a negotiating team whose composition failed to comply with the Act. See also Hudson County, as to possible remedies for such violations.

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: July 5, 1988
Trenton, New Jersey