

D.R. No. 2006-8

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

In the Matter of

BOROUGH OF PARK RIDGE,

Public Employer,

-and-

Docket No. CU-2005-037

PARK RIDGE POLICE EMPLOYEES ASSOCIATION,  
PBA LOCAL 206,

Petitioner.

SYNOPSIS

The Director of Representation orders that a broad based police negotiations unit in the Borough of Park Ridge is clarified to exclude the captain. The Director found that the captain is a supervisor within the meaning of the Act and, based on his role in recent disciplinary actions, there exists an impermissible supervisory conflict between him and other unit members.

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Petitioner.

Appearances:

For the Public Employer,  
Apruzzese, McDermott, Mastro & Murphy, attorneys  
(Joel Scharff, of counsel)

For the Petitioner,  
Loccke & Correia, attorneys  
(Michael A. Bukosky, of counsel)

DECISION

On May 26, 2005, the Borough of Park Ridge (Borough) filed a clarification of unit petition with the Public Employment Relations Commission seeking to have the negotiations unit of police officers represented by the Park Ridge Police Employees Association, PBA Local 206 (Association or PBA)<sup>1/</sup> clarified to

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1/ A series of collective negotiations agreements put into this record identifies the majority representative of the unit as the Park Ridge Police Department Employees Association. There is no Commission certification of PBA Local 206 as the representative of this group of employees, nor has the Borough indicated that it voluntarily recognized the PBA. It is not clear how PBA Local 206 became the  
(continued...)

exclude the captain. The Borough asserts that the captain's duties place him in a substantial conflict of interest with other unit police officers, alleging he is a supervisor within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act). The Association opposes the petition and denies that there is a conflict of interest between the captain and other unit members.

Pursuant to N.J.A.C. 19:11-2.2 and 2.6, we conducted an administrative investigation into the petition. On August 4, 2005, the parties were requested to supply substantive information and documentation about the captain's duties and responsibilities. The Borough was given several extensions and filed its position on November 16, 2005. The PBA did not file a response or any affidavits or documents in support of its position. On January 6, 2006, we wrote to the parties, advising them of our tentative findings and conclusions and inviting their

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1/ (...continued)

majority representative, but it appears there is no dispute about it. The Borough identified the majority representative as PBA Local 206 on the clarification petition, and in its statement, noted that it learned during interest arbitration proceedings sometime after April 1, 2005, that: "The interest arbitration petition was filed by PBA Local No. 206 (Park Ridge Unit). During interest arbitration proceedings the Borough was advised that the members of the Association were also members of PBA Local 206, which is an umbrella organization representing a number of police employees in Bergen County. ... The Association told the Borough that it intended to continue to have its collective agreements "held by the Park Ridge Police Employees Association."

responses. Neither party responded by the deadline. Based on our investigation, these facts appear:

FINDINGS OF FACT

The Borough and Association are parties to a series of collective negotiations agreements, the most recent of which was effective from January 1, 1998 through December 31, 2003, covering all ranks of police employees, and excluding the police chief. The captain has been included in the Association's unit since at least 2001. The parties are negotiating a successor agreement.

The police department consists of the chief, one captain, no lieutenants,<sup>2/</sup> four sergeants and twelve police officers. There is no deputy chief on the table of organization. In 2001, Joseph Madden was appointed captain. Prior to 2004, the Borough was not aware of any actual conflict of interest between the captain and other ranks. Pursuant to department rules and organizational structure, Madden is the department's executive officer and, as such, acting chief of police in the chief's absence.

The Borough is a civil service jurisdiction and it supplied a job specification containing a general description of duties illustrative of a municipal police captain. That description provides that a captain is in charge of and supervises

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<sup>2/</sup> At one time there was a lieutenant, and a vacant position appears on the table of organization.

subordinates engaged in police activities. According to the department's organization chart, Madden is in charge of the patrol bureau, the largest section within the department.

On November 11, 2004, after investigating an anonymous allegation at the chief's urging, Captain Madden recommended that two police officers be reprimanded, and the chief followed the captain's recommendation and issued the reprimands. On May 8, 2004, after investigating another potential disciplinary matter, Madden recommended to the chief that a patrol sergeant be given a four day suspension for knowingly issuing an improper performance notice and the chief followed his recommendation. In both of these instances the chief directed Madden to investigate the underlying matters.

Madden is also the department's public information officer, training coordinator, and the officer in charge of headquarters, special investigations, administrative court liaison and detention cells.

#### ANALYSIS

A clarification of unit petition is used to resolve questions concerning the composition of an existing collective negotiations unit. In circumstances where there have been changes in job responsibilities over time, or where a petition seeks to exclude supervisors from a non-supervisory unit, a clarification petition is appropriate. See Clearview Reg. Bd. of

Ed., D.R. No. 78-2, 3 NJPER 248, 251 (1977). I find that the Borough's petition, which addresses the combination of supervisors with non-supervisors in the same negotiations unit, raises a statutory issue, and is appropriate for determination.<sup>3/</sup> With respect to the effective date of any order removing a supervisor from a unit, where the petition is filed after the expiration of an agreement and prior to the execution of a successor agreement, we will remove the supervisor from the unit immediately. Clearview.

N.J.S.A. 34:13A-5.3 provides, in pertinent part:

except where established practice, prior agreement or special circumstances, dictate the contrary, . . . any supervisor having the power to hire, discharge, discipline, or to effectively recommend the same, [shall not] have the right to be represented in collective negotiations by an employee organization that admits non-supervisory personnel to membership . . .

In Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404 at 425-427 (1971), the New Jersey Supreme Court held that public employees who exercise significant power and responsibilities over other personnel should not be included in the same negotiations unit as their subordinates because of the conflict

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<sup>3/</sup> There are no time restrictions on filing clarification petitions which raise statutory issues. N.J.A.C. 19:11-1.5 and 2.8. An employer can never permanently waive the right to assert that employees are statutorily prohibited from inclusion in a negotiations unit. See County of Warren, P.E.R.C. No. 89-66, 15 NJPER 30 (¶20013 1988) and Bor. of Madison, D.R. No. 99-1, 24 NJPER 441 (¶29203 1998).

of interest between these employees and their supervisors. In Town of West New York, P.E.R.C. No. 87-114, 13 NJPER 277 (¶18115 1988), the Commission reaffirmed its long line of cases holding that we will ordinarily find a conflict of interest between superior officers and rank-and-file officers in a police department unit. In Union City, P.E.R.C. No. 70, NJPER Supp. 295, 297 (¶70 1972), cited in West New York, the Commission explained:

It is readily observable that the military-like approach to organization and administration and the nature of the service provided (which presumably accounts for that approach) set municipal police and fire departments apart from other governmental services. Normally there exist traditions of discipline, regimentation and ritual, and conspicuous reliance on a chain of command all of which tend to accentuate and reinforce the presence of superior-subordinate relationships to a degree not expected to be found in other governmental units and which exist quite apart from the exercise of specific, formal authorities vested at various levels of the organization. When the Commission is asked to draw the boundaries of common interest in this class of cases, it cannot ignore this background as it examines for evidence of whether or not a superior exercises any significant authority over a rank and file subordinate which would or could create a conflict of interest between the two. In our view, where these considerations are real rather than merely apparent, it would be difficult indeed to conclude, in contested cases, that a community of interest exists between the lowest ranking subordinate and his superior, absent exceptional circumstances. We do not intend that this observation extend to those cases where the points of division are so few and so insignificant as to be termed de minimis, such as might not unreasonably be expected to exist in a small police or fire department. We are persuaded, however, after almost four years experience with this statute that unless a de minimis situation is clearly established, the distinction

between superior officers and the rank and file should be recognized in unit determination by not including the two groups in the same unit.

In West New York , the Commission also cited with approval, South Plainfield , D.R. No. 78-18, 3 NJPER 349 (1977) holding:

. . . 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. [Id. at 349.]

\* \* \*

Accordingly, in cases involving police department units, superior officers will normally be severed from rank and file personnel unless it is shown that there is an exceptional circumstance dictating a different result. Examples of such are the following: (1) A department in which there is a very small force where superior officers perform virtually the same duties as patrolmen, and where any conflict of interest is de minimis in nature; (2) Where it is determined that superior officers are supervisors, the existence of established practice, prior agreement or special circumstances dictate the continued inclusion of superior officers in a unit of rank and file personnel. [footnotes omitted. Id. at 350.]

In West New York the Commission removed superior officers from the rank and file unit based upon the potential for conflict



of interest, despite the long history of a combined unit, and notwithstanding that the employer did not assert a conflict existed. There, the Commission observed that it was removing the superiors even in the absence of direct evidence of actual conflict, "where a superior officer was actually torn between his divided loyalties to his employer and his unit, thus damaging the public interest," finding that a standard of actual conflict is "too exacting and is inconsistent with West Paterson Bd. of Ed., P.E.R.C. No. 77, NJPER Supp. 333 (¶77 1973), especially when public safety employees are involved." West New York at 279.

Applying the above standards, the captain must be removed from the existing unit of captains, sergeants, and police officers. The captain has significant authority over the officers below him in the patrol bureau and as executive officer. He is in charge of training, special investigations, headquarters, detention, court liaison and records. More important, he has effectively recommended discipline in two recent instances, both of which were followed by the chief. These facts show that, at a minimum, an impermissible conflict of interest exists between the captain and the officers below him, which requires his removal from the existing unit. See Wilton; West New York.<sup>4/</sup>

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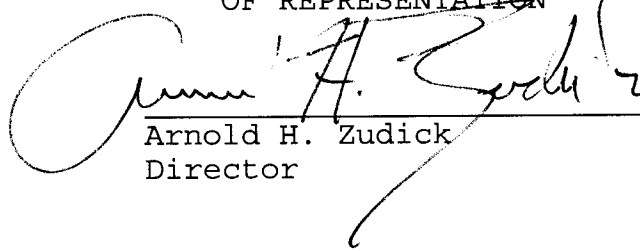
<sup>4/</sup> Accord, City of Asbury Park, D.R. No. 85-26, 11 NJPER 475 (¶16171 1985) (police unit clarified to exclude captains, (continued...))

Based on the above, and absent contravening facts, I find that the captain is a supervisor within the meaning of the Act and clarify the unit to exclude the captain from the existing unit immediately, based upon the existence of an impermissible supervisory conflict between him and other unit members.

ORDER

Effective immediately, the Association's unit is clarified to exclude the captain.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION



Arnold H. Zudick  
Director

DATED: January 20, 2006  
Trenton, New Jersey

A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3.

Any request for review is due by February 2, 2005.

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4/ (...continued)  
lieutenants and sergeants) and Woodbridge Tp., D.R. No. 96-19, 22 NJPER 216 (¶16171 1985) (captains, sergeants and lieutenants removed from unit of patrol officers).