

D.R. No. 2007-12

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

In the Matter of

THE UNIVERSITY OF MEDICINE AND  
DENTISTRY OF NEW JERSEY (UMDNJ),

Public Employer,

-and-

Docket No. RO-2007-35

FRATERNAL ORDER OF POLICE,  
LODGE 155,

Petitioner.

SYNOPSIS

The Director of Representation certifies, by card check, the addition of a lieutenant to an existing unit of full time sergeants represented by Fraternal Order of Police, Lodge 155 at the University of Medicine and Dentistry. The Director finds that UMDNJ provided insufficient facts to demonstrate an impermissible conflict of interest between the sergeants and lieutenant.

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Appearances:

For the Public Employer,  
Stuart Rabner, Attorney General  
(Michael Gonella, Deputy Attorney General)

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

**DECISION**

On October 20, 2006, the Fraternal Order of Police, Lodge 155 (the FOP) filed a Representation Petition seeking to represent a negotiations unit of full-time police lieutenants and sergeants employed by the University of Medicine and Dentistry of New Jersey (UMDNJ). Specifically, and by card check certification rather than an election, the FOP seeks to add the newly created position of lieutenant to its existing unit of about 25 sergeants employed by UMDNJ.

UMDNJ opposes the petition. It claims that the lieutenant (i.e., currently one position) cannot appropriately be included in the petitioned-for unit because he supervises the sergeants in the unit; thus, the title's inclusion in the unit would create an impermissible conflict of interest under the Act.

We have conducted an administrative investigation. See N.J.A.C. 19:11-2.2 and 2.6. These facts appear.

FOP Lodge 155 has represented a unit of sergeants employed by UMDNJ for many years. The parties have signed a collective negotiations agreement covering the sergeants unit which runs from July 1, 2003 through June 30, 2007. At the time the unit was established, UMDNJ had not created the lieutenant title. In or about March 2006, UMDNJ established a lieutenant title and promoted Sergeant Frank DeMarzo into it; DeMarzo is also FOP Lodge 155 President. Several months later, the FOP filed this petition.

The UMDNJ Police Department is headed by a Director/Chief. Below the Director/Chief in descending order is the Director of Public Safety; the Assistant Director of Public Safety; 3 captains; the lieutenant - DeMarzo; 23 sergeants; and about 70 police officers.

The March 2006 UMDNJ Department of Public Safety job description for the lieutenant title specifies the following duties, among others:

. . . trains, evaluates, and assists in the discipline of assigned subordinates;

Supervises subordinates to insure that their actions are legal, reasonable and within departmental policy; communicates new orders and changes in policy.

The job description also sets forth the following attributes under the title's "desired knowledge, skills and abilities":

Ability to plan, assign, coordinate, and supervise the work of subordinates and to establish and maintain effective working relationships with subordinates.

The Director/Chief of the UMDNJ Department of Public Safety also compiled a list of duties and responsibilities he "envisions" for the lieutenant. The list provides, in pertinent part:

. . . the authority in the interest of UMDNJ and the Department of Public Safety to effectively recommend hiring, promoting, terminating subordinates, and otherwise directing, rewarding, or disciplining employees;

Investigates and reviews complaints from citizens against sworn or civilian employees and makes decisions and recommendations concerning disciplinary actions, training needs, or other appropriate action as a result;

Assigns, supervises, evaluates, inspects and coordinates the activities of an assigned section or unit of police personnel;

Performs field supervision of sergeants, police officers, senior police officers and security personnel as necessary;

Reviews, critiques, approve(s) or disapprove(s) evaluations and merit step

increases for employees in the unit or section.

A 2001 departmental document listing job duties and responsibilities of the Director of Public Safety specifies that title:

. . . 4. Directs the hiring, training, promotion, discipline and termination of Department personnel.

Those duties are ascribed to no other official. The Director of Public Safety also hears grievances and renders a decision at the first step of the grievance process; lower ranked officers do not share that responsibility.

The FOP contends that the lieutenant possesses no supervisory authority over sergeants regarding personnel matters, such as their hiring, discharge, or promotion. A departmental table of organization produced in November 2006 shows that the lieutenant appears on a line above and is linked to sergeants. The FOP further contends that the lieutenant would be involved in the disciplining of sergeants only if he or she participated in an internal affairs investigation of a sergeant. In the event that the lieutenant is asked to participate, he or she may recommend discipline generally, but does not recommend the level or extent of that discipline; such decisions are made at a higher level. The FOP asserts that the lieutenant's responsibility in this regard is no different than that of any sergeant asked to

participate in an internal affairs investigation of a fellow unit employee.

ANALYSIS

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

[E]xcept where established practice, prior agreement or special circumstances, dictate to 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 of interest between these employees and their supervisors. In particular, the Court wrote:

[W]here a substantial actual or potential conflict of interest exists among supervisors with respect to their duties and obligations to the employer in relation to each other, the requisite community of interest among them is lacking, and . . . a unit which undertakes to include all of them is not an appropriate negotiating unit within the intentment of the statute. [Id. at 57 N.J. 427]

Our determination of supervisory conflict of interest requires more than a proffered job description or bald assertion that an employee has authority to hire, discharge, discipline,

assign, evaluate, or promote other employees. The Commission requires evidence that such authority is regularly exercised. City of Burlington, 29 NJPER 501 (¶158 2003); Somerset Cty. Guidance Center, D.R. No. 77-4, 2 NJPER 358, 360 (1976). In Somerset Cty., we held that unless the authority claimed is actually exercised with some regularity by the employee in question, the mere claim of possession of the authority is a sterile attribute unable to support the actual finding of such authority.

UMDNJ asserts that the lieutenant position is inappropriate for inclusion in the sergeants unit, claiming that an impermissible conflict of interest will be created if the lieutenant, whose duties include the power to hire, discharge, discipline, or effectively recommend those actions, is included in the same negotiations unit as employees he supervises.

The FOP asserts that no meaningful conflict of interest exists between the sergeants and the lieutenant because the lieutenant does not possess any supervisory authority over the sergeants. Specifically, the FOP asserts that the lieutenant has never participated in personnel decisions involving the sergeants, including their hiring, firing or disciplining. Accordingly, the FOP contends that a bargaining unit of all full-time sergeants and lieutenants would be appropriate. It notes that exclusion of the lieutenant position from the existing unit

would run contrary to Commission policy favoring broad-based units; in fact, the Commission has often approved units that include all superior officers. See e.g., Woodbridge Tp., 22 NJPER 216 (¶27116 1996) (unit of police sergeants, lieutenants and captains approved).

UMDNJ has not provided sufficient facts demonstrating an impermissible conflict of interest. Although UMDNJ claims that the lieutenant supervises the sergeants, no facts indicate that he has exercised supervisory authority to hire, discharge, or discipline sergeants, or to effectively recommend those actions. Similarly, UMDNJ has not shown that the lieutenant has evaluated subordinates and assisted in disciplining them, despite the recitation of those duties in the printed lieutenant job description. While the Chief/Director "envisions" that the lieutenant will have the authority to effectively recommend hiring, promoting, and terminating sergeants and approving/disapproving their merit step increases, no facts show that any of that authority has been exercised. The Commission generally requires that such authority is exercised with some degree of regularity. City of Burlington.

The lieutenant's possible participation in an internal affairs investigation that could result in the discipline of a sergeant does not differ from that of a sergeant who might be called upon to investigate a fellow unit employee. In those



instances, the lieutenant, like a sergeant, may only recommend that an employee be disciplined, but does not recommend the level or extent of discipline. Finally, I note that the lieutenant has not participated in any grievance decisions involving the sergeants; that duty is reserved for the Director of Public Safety, pursuant to UMDNJ's job listing for that title.

I find that UMDNJ has not provided sufficient facts showing that an impermissible supervisory conflict of interest warrants the exclusion of the lieutenant from the sergeants' unit.<sup>1/</sup> Accordingly, I determine that the lieutenant position should be added to the unit, and that the following is appropriate for collective negotiations:

Included: All full-time police lieutenants and sergeants employed by the University of Medicine and Dentistry.

Excluded: All managerial executives, confidential employees and supervisory employees within the meaning of the Act; professional employees, craft employees, casual employees and all other employees of the University of Medicine and Dentistry.

The FOP has met the requirements of the Act and is entitled to certification based upon the authorization cards from a majority of the petitioned for employees to be added to the existing unit of sergeants.

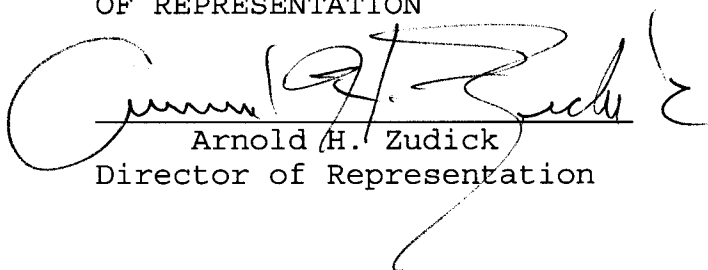
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<sup>1/</sup> If circumstances change and the lieutenant's duties place the title in a conflict of interest with the sergeants, either party may file a clarification of unit petition.

ORDER

Based upon its authorization cards, I certify the Fraternal Order of Police, Lodge 155 as the exclusive representative of a unit of full time sergeants and lieutenants employed by the University of Medicine and Dentistry, as described above.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION



Arnold H. Zudick  
Director of Representation

DATED: April 5, 2007  
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 April 16, 2007.