

D.R. NO. 89-22

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

In the Matter of

TOWNSHIP OF ROCHELLE PARK,

Public Employer,

-and-

ROCHELLE PARK SUPERIOR OFFICERS  
ASSOCIATION,

Docket No. RO-89-40

Petitioner.

-and-

POLICEMEN'S BENEVOLENT ASSOCIATION  
LOCAL 102, ROCHELLE PARK POLICE DEPARTMENT,

Intervenor.

SYNOPSIS

The Director of Representation finds that the superior officers of the Rochelle Park Police Department have an inherent conflict of interest with the patrol officers of the police department and orders an election among them for representation in a petition brought by the Rochelle Park Superior Officers Association.

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Intervenor.

Appearances:

For the Public Employer  
Lawrence J. Jaskot, Esq.

For the Petitioner  
Loccke & Correia, Esqs.  
(Richard D. Loccke, of counsel)

For the Intervenor  
Alfred G. Osterweil, Esq.

DECISION AND DIRECTION OF ELECTION

On September 30, 1988, the Rochelle Park Superior Officers Association ("SOA") filed a Petition seeking certification as the majority representative of a collective negotiations unit of the Township of Rochelle Park's ("Township") police superiors (sergeants, lieutenants and captains). Rochelle Park Unit of PBA Local 102 ("PBA") currently represents a unit of all police

personnel including patrol officers, sergeants, lieutenants and captains. The PBA argues that the petition here is not "an independent petition". Rather, it was filed during the processing of an earlier petition (RO-88-194), and according to the PBA, the earlier petition was untimely (see N.J.A.C. 19:11-2.8) and that this petition is also untimely. I conducted a hearing on September 29, 1988 on Docket No. RO-88-194 to determine if the PBA had standing to intervene in that matter. On that date, the PBA raised the issue of the timeliness of RO-88-194. I stated to the parties that it appeared that Docket No. RO-88-194 was not timely filed. However, the parties were then in the open period for the filing of petitions (September 2 to October 3, 1988 inclusive) and any petition filed during that period would be considered timely filed.<sup>1/</sup> On September 30, 1988, the petitioner filed this petition (Docket No. RO-89-40) and withdrew Docket No. RO-88-194. Contrary to the position of the PBA, I conclude that this petition stands independent of Docket No. RO-88-194 and is timely filed.

On February 15, 1989, I conducted an informal conference with the petitioner SOA, the incumbent PBA and a representative of the Township of Rochelle Park. The Township has taken no position as to the proper unit composition of its police force. The PBA opposes the petition brought by the SOA and has intervened in this matter. N.J.A.C. 19:11-2.7. The PBA contends that superior

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<sup>1/</sup> (Note that a representation proceeding is not adversarial in nature.)

officers should not be removed from the combined unit of superior and rank-and-file officers and that the extant unit is and continues to be appropriate for the purposes of collective negotiations.

The current police department consists of 21 members not counting the chief: 14 patrol officers, 4 sergeants, 2 lieutenants and 1 captain. The PBA argues that the superior officers are not supervisors within the meaning of the Act and there is no conflict of interest between superior officers and rank-and-file police officers.

My investigation to date reveals the following:

The police department has 3 shifts per day, seven days per week.

The highest ranking officer on duty is routinely appointed shift commander. Shift commanders are appointed by the chief. When there are no superior officers on duty, a patrol officer is appointed shift commander. On at least one-third of all shifts, a patrol officer is the highest ranking officer and is shift commander.

The collective negotiations agreement between the PBA and the Township provides for a table of organization (Article 24) of one captain, 2 lieutenants, 4 sergeants and 11 patrol officers.

By Ordinance dated September 2, 1969, the Township promulgated and established "Rules and Regulations for the Police Department." The rules provide that the captain is second in command and is in charge of the uniformed officers of the department. The lieutenant is next in rank to the captain. The

lieutenant on duty performs all duties and assumes all responsibilities and functions of the Captain. The sergeants are next in rank to the lieutenant. In the absence of a higher-ranking superior officer, the sergeant on duty takes charge of police headquarters.

The Rules state that "Officers shall require from subordinates a proper attitude of respect and obedience at all times..." The PBA argues that these Rules and Regulations have been abandoned, that a number of patrol officers have never seen copies of the regulations and moreover, portions of the regulations are obsolete. Nevertheless, no evidence was submitted to show that the ordinance was ever repealed or otherwise abandoned.

There does not appear to be a substantial and material actual conflict of interest between superior officers and rank-and-file nor does the evidence before me establish that the superior officers are supervisors. There have been two cases of disciplinary action instituted by sergeants within the past year, but there have also been disciplinary reports filed by patrol officers against other patrol officers.

However, there is a substantial and material potential conflict of interest which arises from having the superiors and rank-and-file officers in one negotiations unit.

In South Plainfield, the Director held 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 superior officers and patrolmen be placed in separate units.<sup>2/</sup> 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 (1071). The existence of an inherent conflict of interest in the 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.

Emphasis supplied

This language was quoted with approval by the Commission in West New York, P.E.R.C. 87-114, 13 NJPER 277 (118115 1987).

Accordingly, the superior officers' lack of clear supervisory authority within the meaning of N.J.S.A. 34:13A-5.3 and the lack of an actual conflict of interest between patrol officers and superior

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2/ In Union City, P.E.R.C. No. 70 (1972), the Commission stated:

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.

officers is not controlling here. Rather, the inherent conflict of interest due to the quasi-military structure of the Rochelle Park police department compels the severance of the superior officers from the rank and file.

The PBA argues that the police force here falls within the small force exception. However, it is clear that the duties of superior officers are not identical to those of patrol officers. It is undisputed that tour commanders are appointed by rank; that is, the highest officer on duty is the tour commander. The small force exception has only been applied to police forces that are half the size of Rochelle Park's or smaller. Audubon Park, D.R. 88-6, 13 NJPER 741 (¶18278 1987); Merchantville, D.R. 80-38, 6 NJPER 305 (¶11146 1980); units where the police force is so small<sup>3/</sup> that, of necessity, duties of superior officers are indistinguishable from duties of patrol officers. The PBA cites Borough of Metuchen, D.R. 87-27, 3 NJPER 395 (1977), to support its position that the small force exception should be applied to Rochelle Park. However, in Metuchen, the superior officers were allowed to remain in the unit on the basis of the pre-1968 collective negotiations relationship between the employer and the union -- that is, the Metuchen department fell within the "established practice" exception. The Hearing Officer in Metuchen expressly found that the small force exception did not apply in the Metuchen police department. Borough

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<sup>3/</sup> There was one chief and 3 police officers in Audubon and one chief and 10 police officers in Merchantville.

of Metuchen, H.O. 78-3, 3 NJPER 275, 276 (1977). Metuchen is not apposite.<sup>4/</sup>

Here, I believe that the police superiors should be given the opportunity to vote on whether they wish to be represented by Rochelle Park Superior Officers Association. Accordingly, I direct that an election be conducted in the following collective negotiations unit:

Included: All police superiors including sergeants, lieutenants and captains employed by the Township of Rochelle Park.

Excluded: The Chief of Police, all non-supervisory police officers, non-police employees, craft employees, professional employees, confidential employees, managerial executives, all employees in other negotiations units and all other employees.

Accordingly, we direct that an election be conducted among the employees in the petitioned-for unit, pursuant to N.J.A.C. 19:11-2.6(b)(3). 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, and including those in the military service. Ineligible to vote are employees who resigned, or were discharged

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<sup>4/</sup> The Commission declined to follow the established practice exception in West New York.




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 the Commission an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the units, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by the Commission 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 the Commission. 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: March 17, 1989  
Trenton, New Jersey