

D.R. NO. 90-29

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

In the Matter of

VILLAGE OF RIDGEFIELD PARK,

Public Employer-Petitioner,

-and-

Docket No. CU-90-1

PBA LOCAL 86,

Employee Organization.

SYNOPSIS

The Director of Representation clarifies a negotiations unit of patrol officers, sergeants and lieutenants to exclude all lieutenants immediately. The chain of command inherent to the quasi-military structure of the police force compels their removal even though no determination is made regarding their supervisory status.

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Appearances:

For the Public Employer  
Eric M. Bernstein, attorney

For the Employee Organization  
Alfred G. Osterweil, attorney  
(Craig Kozan, of counsel)

DECISION

On July 11, 1989, the Village of Ridgefield Park ("Village") filed a Petition for Clarification of Unit with the Public Employment Relations Commission ("Commission") seeking to exclude lieutenants from a negotiations unit of patrol officers, sergeants and lieutenants represented by the Policemen's Benevolent Association, Local 86 ("PBA"). The PBA opposes the petition and requests its dismissal.

The Village contends that the title of lieutenant should not be included in the unit because a conflict of interest exists between the lieutenants and other unit members. Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404 (1971). The Village also asserts that the two lieutenants are supervisors and managerial executives within

the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.3 ("Act"), which also requires their removal from the unit.

The PBA argues that the clarification petition should be dismissed and that the unit should remain intact. It contends that the petition was not timely filed and that the "small force and established practice exceptions" as defined in South Plainfield, D.R. No. 78-18, 3 NJPER 349 (1977), apply to this case.

We have conducted an administrative investigation to determine the relevant facts. There are no substantial and material factual disputes which would warrant a hearing. See N.J.A.C. 19:11-2.2 and 2.6. The following facts appear.

The Village and the PBA have had a collective negotiations relationship for the unit of patrol officers, sergeants and lieutenants for fifteen years. Their first contract was executed in 1974. The parties' most recently negotiated agreement expired on December 31, 1988.

The Village employs one chief, one captain (this position is now vacant), two lieutenants, six sergeants and twenty-one patrol officers for a total of 31 positions. The sole captain retired in March 1988 and has not been replaced.

The chief is ultimately responsible for the general control of the department and has the final authority to hire, discipline

and discharge employees. The Village has not disciplined a police employee in eight years.<sup>1/</sup>

The captain is the commanding officer of the department and reports directly to the chief. The captain is in charge of the patrol, detective, traffic and records divisions. The captain reviews activities of all subordinate departmental personnel, strictly enforces all orders, rules and departmental instructions and reports all violations to the chief. The captain also provides aid and instruction to subordinates.

Sergeants are generally tour commanders and are charged with supervising patrol officers during their tours of duty. If a sergeant has a problem with a patrol officer, it is brought to the attention of the commanding officer, who is now a lieutenant.

Patrol officers perform the functions of the department related to law enforcement and obey the orders of, and report to their superior officers. They also receive advice and guidance as necessary from their superior officers.

The parties described many of the actual duties of the lieutenants. Lieutenants perform duties formerly performed by the captain and exercise the authorities of that position. Each

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<sup>1/</sup> While the PBA questions whether the Rules and job descriptions were ever formally adopted by the Village, it has not submitted any specific, alternate factual assertions concerning the duties and responsibilities of the chief, captain, sergeants and patrol officers which were included in the Rules and job descriptions. It does assert that employees in all titles could act, at some time, as tour commanders assuming the total responsibilities of the position.

lieutenant heads a division. The lieutenant heading the patrol division oversees fifteen officers. His varied duties include a) operating the police computer; b) preparing reports; c) overseeing weapons qualifications of patrol officers; d) reviewing schedules and patrol assignments prepared by the sergeants; e) providing input to the chief on hiring, background checks, and interviewing applicants;<sup>2/</sup> and f) functioning as a tour commander during the 8 a.m. - 4 p.m. shift.<sup>3/</sup>

The other lieutenant oversees the traffic division. The Village and the PBA disagree about whether he supervises one patrol officer.<sup>4/</sup> His duties include: a) scheduling staff on radar/control/traffic detail; b) suggesting patrol officer assignments throughout the department; c) performing some road duties similar to patrolmen including truck and DWI detail; d) overseeing the records department; and e) conducting meetings with outside parties concerning road and traffic matters.

The PBA maintains that the lieutenants regularly perform skilled functions, not supervisory functions. The PBA does not regard "input into hiring" from the lieutenants as a supervisory

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2/ The chief and the police commissioner compile the list of applicants.

3/ Sergeants and senior patrol officers sometimes perform this function in the absence of a higher ranking officer.

4/ The PBA contends that even assuming he supervises one patrol officer, this circumstance fits within the small force/de minimis conflict exception in South Plainfield.

task. The parties also disagree about whether the lieutenants evaluate sergeants and detective bureau members and if lieutenants can recommend discipline and discharge.

#### Analysis

The PBA asserts that the petition is not timely filed. However, the Commission will process a clarification petition raising a Wilton conflict at any time. Clearview Reg. H.S. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977). We consider this petition to be timely filed.

In mixed police units containing superior officers and rank-and-file personnel, superior officers will normally be removed from the mixed unit even where superior officers are not supervisors within the meaning of the Act. Due to the the quasi-military nature inherent in a police force, an impermissible conflict of interest arises when superior officers are included in a unit with rank-and-file police officers. The exercise of significant authority in a chain of command operation produces an inherent conflict of interest. South Plainfield. Accordingly, superior officers will be removed from such mixed units to alleviate the conflict of interest problem. See Town of West New York, P.E.R.C. No. 87-114, 13 NJPER 277 (¶18115 1987); Bor. of Roselle Park, D.R. No. 89-19, 15 NJPER 174 (¶20074 1989) and Tp. of Rochelle Park, D.R. No. 89-22, 15 NJPER 195 (¶20082 1989), aff'd App. Div. Dkt. No. A-5273-88T1 (3/19/90). See also, Wilton.

The parties' submissions do not reveal the precise role lieutenants have in disciplining other officers or the extent of their participation in evaluating sergeants. However, it is not necessary to determine that lieutenants are supervisors within the meaning of the Act to remove them from the unit. West New York, So. Plainfield, Rochelle Park. Lieutenants exercise significant authority in the chain of command. Accordingly, the lieutenants should be removed from the unit.

The established practice and prior agreement language in South Plainfield relied on by the PBA applies only to collective negotiations units existing prior to the enactment of the Act in 1968. West Paterson Bd. of Ed., P.E.R.C. No. 77, NJPER Supp 333 (¶77 1973). Moreover, the Commission has narrowly construed South Plainfield and will normally remove superior officers from mixed units of superiors and rank-and-file officers even where there is an established practice. In Town of West New York, there was a mixed superiors/rank-and-file police unit in existence prior to 1968. Although there was no evidence of an actual conflict of interest, the Commission nevertheless ordered the removal of superior officers from the mixed unit of patrol officers and superior officers.

The Commission stated:

While there was no specific factual setting where a superior officer was actually torn between his divided loyalties to his employer and his unit, thus damaging the public interest, such a standard is too exacting and is inconsistent with West Paterson especially when public safety employees are involved. Rather, we believe severance is appropriate for uniformed employees

even where there has been an "established practice" where, as here, the employees' job responsibilities place him in a substantial conflict of interest with his subordinates.... the prior negotiations history does not dictate an exception. Wilton; South Plainfield; Union City; West Paterson.

The Village and PBA did not sign their first contract until 1974. Accordingly, neither the established practice nor the prior agreement exceptions apply here.

As to the other exception in South Plainfield -- the small-force exception -- I held that it was not applicable in Roselle Park where there is a force of nineteen officers and six sergeants; or in Rochelle Park where there is a force of fourteen patrol officers and four sergeants. Both of those departments are smaller than the Ridgefield Park Police Department. Accordingly, the small-force exception is not applicable here. See also Tp. of Sparta, D.R. No. 87-2, 12 NJPER 678 (117256 1986).

Based upon the above, I clarify the existing unit of patrol officers, sergeants and lieutenants to exclude all lieutenants, effective immediately. Clearview.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Edmund G. Gerber, Director

DATED: May 22, 1990  
Trenton, New Jersey