

D.R. NO. 90-13

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

In the Matter of

BOROUGH OF PAULSBORO,

Public Employer,

-and-

PAULSBORO POLICE OFFICERS'  
ORGANIZATION,

Docket No. RO-90-28

Petitioner,

-and-

PAULSBORO POLICE ASSOCIATION,

Intervenor.

SYNOPSIS

The Director of Representation finds that the petitioned-for unit of police officers is appropriate and orders that an election be conducted among the employees in that unit. The Director also finds that the incumbent employee organization is ineligible to appear on the ballot because it admits non-police to its membership.

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Appearances:

For the Public Employer  
Angelini, Viniar & Freedman, Esqs.  
(Michael A. Angelini, of counsel)

For the Petitioner  
Ferg, Barron & Gillespie, Esqs.  
(Ralph H. Colflesh, of counsel)

For the Intervenor  
Leo B. Dubler, Esq.

DECISION AND DIRECTION OF ELECTION

On September 13, 1989, the Paulsboro Police Officers' Organization ("Police Officers' Organization") filed a Petition for Certification of Public Employee Representative (Docket No. RO-90-28), supported by an adequate showing of interest, with the Public Employment Relations Commission ("Commission"). The Police Officers' Organization seeks to sever all full time police officers

holding the rank of sergeant and below from an existing unit of police officers and dispatchers represented by the Paulsboro Police Association ("Association"). The Association submitted an executed copy of the current collective negotiations agreement between it and the Borough of Paulsboro ("Borough") covering the petitioned-for employees. The Association is granted permission to intervene pursuant to N.J.A.C. 19:11-2.7. The Association does not consent to a secret ballot election for the petitioned-for unit. It contends that its unit is appropriate based on past practice, prior agreement and unit size. The Borough takes no position in this matter.

On September 25, 1989, a Commission staff agent conducted an informal investigatory conference pursuant to N.J.A.C. 19:11-2.2 and 2.6 in order to determine the relevant facts. The parties submitted additional documents and statements of position. It appears that there are no substantial and material factual issues in dispute which may more appropriately be resolved through the conduct of a formal hearing. N.J.A.C. 19:11-2.6(b). Accordingly, the disposition of the petition is properly based on our administrative investigation. The following facts appear.

The Paulsboro Police Association represents eleven police officers who hold the rank of sergeant or below and four Police Clerk-Dispatchers ("dispatchers"). The dispatchers' duties are listed in §51-9 of the Paulsboro Municipal Code. The duties are administrative and clerical in nature and include staffing the service desk at police headquarters, communications between

headquarters and police officers in the field, dispatching police officers and vehicles, preparing reports and records, screening telephone calls and visitors and routing mail. The municipal code also provides that police clerk-dispatchers shall not be subject to the requirements for appointment and qualification of police officers. The dispatchers are not special police officers and have no police powers.

Section 51.1 of the Paulsboro Municipal Code<sup>1/</sup> establishes the police department and lists police clerks among titles included in the department. Police Clerks were also included in the police department in a previous municipal ordinance<sup>2/</sup> that was adopted on August 21, 1959.

The Association states that it was informally established in 1974 and negotiated a contract that year on behalf of the police department, including dispatchers. The Association was formally established in 1975 and has represented the sergeants, police officers and dispatchers for all contract negotiations since 1975. Although it did not submit copies of previous contracts, the Association states that contracts from 1975 to 1987 refer to the bargaining unit as the "Paulsboro Police Force". The current agreement between the Association and the Borough covers 1987 through 1989, and recognizes the Association as "...the sole and

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1/ Chapter 51 of the Municipal Code was adopted on July 21, 1970 as Ordinance #521.

2/ Paulsboro Ordinance No. 373, §1A

exclusive representative of all members of the Police Department including Police Clerk/Dispatchers, but excluding the Chief of Police and Lieutenant for the purpose of collective negotiations...".

The Police Officers' Organization contends that the current unit is illegal because it contains both police and non-police employees. The Association contends that that the dispatchers have been members of the Police Department since 1956 and have been represented by the Association since its inception in 1974. It asserts that inclusion of the dispatchers in the Police Department since 1956 constitutes a past practice and that contracts executed since 1975 between the Association and the Borough are prior agreements. The Association also contends that the small size of the Paulsboro police force is a special circumstance justifying retention of the current unit structure.

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

"...except where established practice, prior agreement, or special circumstances dictate the contrary, no policeman shall have the right to join an employee organization that admits employees other than policemen to membership...". A unit which includes both police employees and non-police employees, absent circumstances which implicate one of the aforementioned statutory exceptions, is prima facie inappropriate. Twp. of Moorestown, D.R. No. 78-38, 4 NJPER 166 (¶4081 1978). The statutory prohibition precludes having civilian dispatchers in a unit of police officers. Moorestown,

Gloucester City, D.R. No. 82-12, 7 NJPER 564 (¶12251 1981). The Association does not assert that the dispatchers perform police functions; however, it contends that each of the three statutory exceptions exist.

In order to find that an established practice or prior agreement exists, it is necessary to prove that an established practice or prior agreement existed between the parties prior to the enactment of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), in 1968. West Paterson Bd. of Ed. and West Paterson Ed. Ass'n, P.E.R.C. No. 77 (1973) and P.E.R.C. No. 79 (1973). A finding of established practice requires a pre-1968 negotiations relationship between a public employer and an employee organization, or more specifically, "...an organization regularly speaking on behalf of a reasonably well-defined group of employees seeking improvement of employee conditions and resolution of differences through dialogue (now called negotiations) with an employer who engaged in the process with an intent to reach agreement." West Paterson, P.E.R.C. No. 77 at 10.

Although the Borough has recognized dispatchers as members of the police department by ordinance since 1956 and in its municipal code since 1970, the code simply describes the composition of the police department. It does not refer to the Association or any other employee representatives, nor does it address a bargaining relationship between department members and the Borough. The Association was not formed until 1974 -- six years after enactment

of the Act. Accordingly, it has not proven an established practice exception to the statutory subsection which prohibits police employees and non-police employees from belonging to the same employee organization.<sup>3/</sup> The Association also stated that its first written collective negotiations agreement with the Borough was executed in 1975, seven years after enactment of the Act. Thus, the Association has failed to prove an exception based on prior agreement.

The Association also contends that the small size of its unit constitutes an exception based on "special circumstances". Although the Commission has found that a small force may provide an exception to removal of superior officers from a rank and file unit, it has not applied this exception to units containing police and non-police employees. Cf. South Plainfield, D.R. No. 78-18, 3 NJPER 359 (1977). The size of the Association's unit does not constitute a special circumstance.

Based on the foregoing, I find that the petitioned-for unit of all non-supervisory police officers employed by the Borough of Paulsboro is appropriate. Accordingly, I order that an election be conducted to determine whether the petitioned-for employees wish to be represented by the Paulsboro Police Officers' Organization for the purpose of collective negotiations. The election shall be conducted in the petitioned-for unit, described as follows:

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<sup>3/</sup> Even assuming that an established practice can be shown here, the Commission may nevertheless find a mixed police/non-police unit to be inappropriate. Cf. Town of West New York, P.E.R.C. No. 87-114, 13 NJPER 277 (18115 1987).

Included: All sergeants and patrolmen employed by the Borough of Paulsboro.

Excluded: All police officers above the rank of sergeants, all police clerk-dispatchers, managerial executives, confidential employees, craft employees, professional employees and supervisors within the meaning of the Act.

The incumbent association is not eligible to appear on the ballot.<sup>4/</sup>

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

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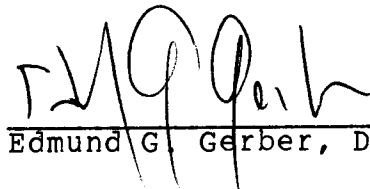
<sup>4/</sup> The Commission has held that an employee representative should not appear on the ballot if it is currently disqualified to represent the employees in the petitioned-for unit. City of Camden, P.E.R.C. No. 82-89, 8 NJPER 226 (¶13094 1982). Since organizations which admit non-police to membership are prohibited from representing police for purposes of collective negotiations, the Association cannot be a party to an election for a unit of police employees. City of Camden, P.E.R.C. 81-139, 7 NJPER 345 (¶12155 1981).



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: December 15, 1989  
Trenton, New Jersey