

D.R. NO. 99-7

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

In the Matter of

TOWNSHIP OF GREENWICH,

Public Employer,

-and-

Docket No. CU-99-2

PBA LOCAL NO. 122,

Petitioner.

SYNOPSIS

The Director of Representation dismisses a Petition for Clarification of Unit filed by the Township of Greenwich seeking to exclude three sergeants and one lieutenant from an existing collective negotiations unit comprised of thirteen police including detectives, patrolmen, sergeants and lieutenants represented by PBA Local 122.

Applying the small unit exception established in South Plainfield, D.R. No. 78-18, 3 NJPER 349 (1997), the Director determined that the sergeants and lieutenant were not supervisors within the meaning of the Act, there existed no potential or actual conflict of interest between the positions at issue and the patrol officers, and that there was no evidence that the sergeants' and lieutenant's loyalty to the Township would be compromised by remaining in the unit.

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Appearances:

For the Public Employer
Courter, Kobert, Laufer & Cohen, attorneys
(Stephen E. Trimboli, of counsel)

For the Petitioner
Barron & Gillespie, attorneys
(Roberto Paglione, of counsel)

DECISION

On July 14, 1998, the Township of Greenwich filed a Petition for Clarification of Unit seeking to remove three sergeants and one lieutenant from an existing unit of 13 employees composed of all detectives, patrolmen, sergeants and lieutenants represented by PBA Local 122. The Township police chief and captain are not included in the collective negotiations unit.

The Township contends that under the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act) lieutenants and sergeants should be excluded from the unit inasmuch as they are supervisors within the meaning of N.J.S.A. 34:13A-5.3, and that their continued inclusion in the unit poses at least a potential conflict of interest.

Local 122 opposes the exclusion of the lieutenants and sergeants from the existing unit for the following reasons: (1) the duties of the lieutenants and sergeants are mostly the same as the patrolmen and detectives; (2) they possess no indicia of supervisory status nor do they exercise any supervisory authority; (3) historically they have been included in the unit; (4) this unit is subject to the small force exception as defined in Borough of South Plainfield, D.R. No. 78-18, 3 NJPER 349 (1977); and (5) no conflict of interest exists vis-a-vis the other unit members, but that even if a conflict did exist it would be de minimis in nature.

I have conducted an administrative investigation into the instant matter. N.J.A.C. 19:11-2.2. The parties participated in an investigatory conference and provided detailed facts and argument in support of their respective positions. The PBA also submitted affidavits from Township police officers. By letter dated November 12, 1998, we summarized the parties' positions and the evidence submitted, and advised the parties that, absent additional facts, we intended to find that there is no basis to disturb the existing unit. No additional submissions were filed. Accordingly, I find the following facts.

Representation History and Structure

PBA Local 122 is a Gloucester County-wide employee representative. It represents 16 different police departments in Gloucester County and totals 270 local members. Local 122 was

certified as the collective negotiations representative of all police officers in Greenwich Township in 1979. Prior to the instant petition, the issue of severance of sergeants and lieutenants was never raised. The first collective negotiations agreement was entered into in 1980 and the most recent agreement expired in December 1997. The parties are currently engaged in interest arbitration.

Structure of Police Force

The hierarchal structure of the Greenwich Township police department is established by Township ordinance, Chapter 36-1 and 36-2. At the top of the department command is the chief of police. Second in the structure is an administrative captain. Following the captain is a lieutenant, three sergeants, two detectives and finally the patrol officers. The entire police department is directly supervised by the Public Safety Committee chaired by a director of public safety.

Job Assignment and Responsibilities

There are no formal job descriptions, standard operating procedures, or policy manuals which set forth the job duties of the sergeant and lieutenant positions. The same is true for patrol officer positions. The lieutenant and sergeants serve as "shift supervisors." They generally work a 3 day week/12 hour day in rotation. Patrol officers work the same schedule as the lieutenant and sergeants. The chief of police schedules all employees. The lieutenant and sergeants are clocked in when they

report for their shift just as are patrol officers. There is no policy which requires replacing a lieutenant or sergeant who is absent from duty with a sergeant or lieutenant. Any of the other officers can be called to replace the lieutenant or sergeants. Replacement is usually done on a seniority basis. There are frequent occasions when neither a lieutenant nor a sergeant is on duty and in those instances a patrol officer has been designated the ranking "officer in charge." In fact, on the date of the investigatory conference in this matter, there was no lieutenant or sergeant on duty on the day shift; one of the patrol officers was the officer in charge. While the Township asserts that there have been occasions in the past when the lieutenant has been designated acting head of the department in the chief's absence, no specific examples of such occasions were presented.

All employees in the unit are responsible for patrol of the entire town. Normally, when the lieutenant and sergeants ride patrol they ride in a car marked "supervisor."

According to the Township, the lieutenant or sergeants on duty are responsible for "making decisions on the shift." However, the Township acknowledged that the same decision-making responsibility belongs to a patrol officer when acting as the officer in charge of a shift. The senior officer in charge on a shift, whether it be a lieutenant, sergeant or patrol officer is responsible for signing-off on incident reports which occurred during the shift. All incident reports are reviewed by the

captain or the chief. Shift supervisors, whether the lieutenant, sergeant, or a patrol officer, are responsible for making sure time cards are punched, directing the movement of manpower during the shift, and making sure follow-up is done on incoming calls. If an officer in charge of a shift needs extra staff requiring overtime, the officer in charge must call the chief for approval. If a detective is called to a crime scene and determines that a ranking officer is also needed, the detective must call the chief to obtain his approval. If a question arises during the shift for which the officer in charge feels he needs guidance, none other than the police chief must be called.

Disciplinary Authority

The lieutenant, sergeant or patrol officer acting as officer in charge, can recommend minor discipline. None of these positions can actually impose discipline. The final decision on any disciplinary action is made by the chief of police.

Neither party could present examples of situations where a formal, written reprimand of any unit employee occurred. The Township is not aware of the existence of any formal disciplinary system. There was no evidence presented that any lieutenant or sergeant has ever been placed in the position of "writing up" another unit member.

The only instance where a shift supervisor can take action to send an officer home is in an emergency situation when an incapacitated officer reports for duty and must be sent home

for safety reasons. In this situation, the lieutenant or sergeant on duty is required to call the chief immediately. If a patrol officer rather than a lieutenant or sergeant is the ranking officer in charge of the shift, he or she must also call the chief directly. The officer in charge is not permitted to call a lieutenant or sergeant. To the parties knowledge, the situation as described has never occurred.

Training/Hiring/Evaluations

Training of new police officers is shared between the lieutenant, detectives, and more senior patrol officers who ride patrol with the new hires. A new officer is often assigned to a sergeant who serves as a mentor. Evaluations of new hires are done by the lieutenant and sergeants. The evaluation consists of applying a rating system and procedure which was developed by the chief of police. A final decision on permanent employment for a new hire is made by the chief of police and Township Council acting through the Public Safety Committee.

Compensation

According to the PBA, persons holding the rank of lieutenant or sergeant have moved into those positions for the most part based on their seniority with the Department. Although there are differences in salary between patrol officers, sergeants and the lieutenant, the PBA asserts that those differences reflect seniority considerations rather than increased duties or supervisory responsibilities. Increased compensation is awarded

in a percentage amount on the basis of greater longevity, with no distinction between patrol officers and ranking officers. Finally, patrol officers receive no immediate increase in compensation for serving as an officer in charge of a shift. A non-retroactive increase is given after the patrol officer has served as an officer in charge for more than 30 consecutive days. All other contractual benefits afforded the Township's police officers are equal, except as effected by seniority, regardless of rank. There are a few distinctions made with regard to detectives.

Grievance Processing

The first step of the parties' grievance procedure consists of a written grievance submitted directly to the chief of police. Neither the lieutenant nor the sergeants play any role in grievance processing at any level. As noted previously, Local 122 represents police officers on a county-wide basis. There is no designated grievance representative among the Greenwich Township police employees although the Association President, Detective Giordano, submits the grievance to each step. Grievances are referred to the executive board of Local 122 which includes officers from other police departments represented by the Local. The Local structure allows a unit member to seek the assistance of any other Local 122 representative from any of the 16 police departments in Gloucester County. The PBA representative meets with the chief at step one of the grievance procedure, the director of public safety at step two, and the Township Committee

at step three. Subsequently, the matter may be referred to arbitration.

The Township does not dispute the facts as set forth above, but emphasizes the contractual salary differences between the lieutenant, sergeants, and patrol officers and the fact that the lieutenant and sergeants patrol in a vehicle marked "supervisor." Therefore, the Township asserts that these differences among members of the force create an inherent conflict of interest between the sergeants and lieutenant and the rank and file officers. The Township argues that a showing of a "potential" conflict of interest would require the removal of the superior officers from the unit. Additionally, because its police force totals 13 unit members, 1 captain and 1 chief, the Township argues that this is not a "very small" force as referred to in South Plainfield, D.R. No. 78-18, 3 NJPER 349 (1977), and thus the existing unit cannot be maintained.

Local 122 responds that there exists no actual or potential conflict of interest within the currently existing negotiations unit. Because the Township has vested no greater supervisory authority or responsibility in the lieutenant or sergeants than it has in any patrol officers, the PBA contends that the lieutenant and sergeant classifications are mere titles tied to seniority, and do not provide evidence of any actual or potential conflict of interest within the unit.

The PBA further argues that because of the small size of the force and the interchangeability of duties among the lieutenant, sergeants and patrol officers, the "small force" doctrine of South Plainfield is wholly applicable to this case. Finally, the PBA asserts that the lieutenant and sergeants have been included in the unit since 1979 and, therefore, should not be excluded now.

ANALYSIS

While superior officers do not ordinarily share a community of interest with patrol officers, there are exceptions. In Union City, P.E.R.C. No. 70, NJPER Supp. 295 (170 1972), the Commission explained why the interests of superior officers diverge from the patrol officers:

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]^{1/} 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....[Emphasis added. NJPER Supp. at 297.]

In South Plainfield, D.R. No. 78-18, 3 NJPER 349 (1977), the Director of Representation said:

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.

Additionally, N.J.S.A. 34:13A-5.3 provides that no supervisors who have:

^{1/} The original decision uses the word "community." The decision should read "conflict."

the power to hire, discharge, discipline, or to effectively recommend the same, have the right to be represented in collective negotiations by an employee organization that admits non-supervisory personnel to membership.

Further, any finding that an employee is a supervisor within the meaning of the Act requires a presentation of evidence that shows that supervisory authority is exercised with some degree of regularity. Somerset County Guidance Center, D.R. No. 77-4, 2 NJPER 358, 360 (1976).

In the instant case, the lieutenant and sergeants have no authority to hire, assign, discharge, or discipline any of the department employees. The chief of police is responsible for any disciplinary action, hiring decision and scheduling of all employees.

While the Township asserted that the sergeants or lieutenants were responsible for making decisions on the shift, it is clear that the police chief must be directly consulted if a problem arises on a shift. The sergeant, lieutenants and senior patrol officers are often interchanged as the "officer in charge" on a given shift and regardless of rank the "officer in charge" performs the same duties. If a decision on overtime is required for any given shift, the police chief must be called for his approval. Even if an officer were to report for duty in an impaired condition, the officer in charge of the shift is required to report the incident immediately to the chief, including the officer's decision to send the incapacitated officer home.

While evaluation forms are completed by sergeants or lieutenants, the evaluation system and form used were developed by the chief and the decision of whether or not to hire a new recruit is retained by the chief.

It is clear in the instant case that the lieutenant and sergeants have no supervisory authority to exercise, and that all activities normally exercised by "supervisors" are exercised in this case by the chief of police. Moreover, although the Township asserts that on occasion the lieutenant has been designated acting department head in the chief's absence, no evidence was submitted to support this assertion. Even assuming such substitution has occurred, possession of supervisory authority on a temporary basis when the permanent supervisor is unavailable does not support a claim of supervisory status. Union Cty Bd. of Social Services, D.R. No. 87-29, 13 NJPER 509 (¶18190 1987).

Small Force Exception

The small force exception applies where superior officers do not have supervisory authority and there is no evidence that their loyalty to the employer is compromised. Borough of Merchantville, D.R. No. 80-38, 6 NJPER 305 (¶11147 1980); Borough of Audubon Park, D.R. No. 88-6, 13 NJPER 741 (¶18278 1987). In Merchantville, the Director applied the small force exception, holding a detective-sergeant was appropriately included in a wall-to-wall unit in an eleven person police department. There, the police committee and the director of public safety were

responsible for hiring, discipline and discharge. Though the detective-sergeant was second in command and received a shift differential, he did not have supervisory authority and had not been placed in a position where his loyalty to his employer was compromised.

This case, like Merchantville, appears to fall within the small unit exception. The entire police department is composed of 15 employees. There is no evidence the sergeant or lieutenants exercise any significant authority over the patrol officers. Rather, it appears the sergeant, lieutenants and the patrol officers perform the same work as peers. They patrol together; they clock in together. They are interchangeably assigned to act as officer in charge. They all report to the chief of police and/or the officer in charge. If a grievance arises among any of the 13, the chief serves as the management representative at the first step. No unit member is designated as a grievance representative for any other member of the unit. There is no evidence that either the lieutenant or sergeants have any authority to discipline their fellow officers and any decisions on discharge, discipline or hiring are made by the police chief. Thus, the lieutenants and sergeants job classification differ from patrol officers only in that they earn a higher salary than patrol officers and ride in a vehicle marked "supervisor" in the same patrol area as patrol officers. These differences, in light of all the similarities among the lieutenant, sergeant and patrol

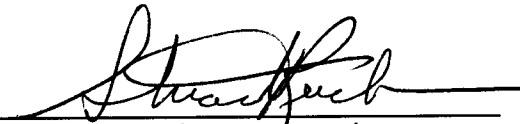
officers, are too tenuous to support a finding of any conflict of interest.

Based on the circumstances detailed above, I find that neither the lieutenant nor the sergeants are supervisors within the meaning of the Act. I further find that there is no actual or potential conflict of interest between the patrol officers and the positions at issue which would warrant removing the lieutenant and sergeants from the existing unit. Finally, I find that there is no evidence that the lieutenant or sergeant's loyalty to their employer is compromised by remaining in the existing unit. Therefore, the lieutenant and sergeants are properly included in the existing unit of non-supervisory police employees employed by the Township of Greenwich and the Township's petition must be dismissed.

ORDER

The Petition for Clarification of Unit is dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Stuart Reichman, Director

DATED: December 10, 1998
Trenton, New Jersey