

D.R. NO. 87-2

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

In the Matter of

TOWNSHIP OF SPARTA,

Public Employer-Petitioner,

-and-

Docket No. CU-86-55

SPARTA LODGE #26, F.O.P.,

Employee Organization.

SYNOPSIS

The Director of Representation clarifies a negotiations unit to exclude the positions of sergeants and lieutenants from a negotiations unit which had consisted of all Township of Sparta police officers, excluding the Chief, and represented by Sparta Lodge #26, F.O.P. The Director found that neither the "small force" nor the "established practice" exception applied, and thus there was an impermissible conflict of interest.

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Appearances:

For the Township of Sparta
David Ferguson, City Manager

For Sparta Lodge # 26, F.O.P.
Markowitz and Richman, Esqs.
(Stephen C. Richman, of counsel)

DECISION

On March 24, 1986, the Township of Sparta ("Township") filed a Clarification of Unit Petition with the Public Employment Relations Commission ("Commission") seeking to exclude sergeants and lieutenants from a bargaining unit of all police officers represented by the Fraternal Order of Police, Lodge #26 ("FOP"). The FOP opposes the petition and requests its dismissal.

The Township contends that the four sergeants and two lieutenants currently in the unit with patrolmen are supervisors within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.3, and thus should be excluded. The FOP

argues that these positions are not supervisory, that the smallness of the department necessitates interchanging of work functions, and that a pre-1968 relationship between the parties exists. Therefore, the FOP maintains that the positions should remain in the unit.

I have authorized an administrative investigation into the matters and allegations involved in the petition in order to determine the facts. See, N.J.A.C. 19:11-2.6(c). Based upon the administrative investigation, I find and determine the following:

1. The disposition of this matter is properly based upon the administrative investigation, inasmuch as the parties have not placed in dispute any substantial and material factual issues which may more appropriately be resolved after an evidentiary hearing, pursuant to N.J.A.C. 19:11-2.6(c).

2. The Township of Sparta is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), is subject to its provisions and is the employer of the police sergeants and lieutenants.

3. Sparta Lodge #26, F.O.P. is an employee organization within the meaning of the Act and is subject to its provisions. Sparta Lodge #26 is presently the exclusive representative for collective negotiations of all police officers employed by the Township of Sparta, including the group which is the subject of this petition.

4. The Sparta Township police force consists of 20 patrolmen, 4 sergeants and 2 lieutenants. The lieutenants spend

100% of their time doing administrative tasks in the office. They do no patrol duty at all. The lieutenants have effective input into the hiring, firing and discipline of subordinate officers.

5. The sergeants also perform duties different from the patrolmen. At least 25% of their time is spent doing office paperwork. The sergeants make work assignments, give internal approval for vacation and other leave requests, and once a year perform evaluations of the patrolmen in their sections. In addition, sergeants have some authority over subordinate officers concerning the recommendation of discipline and dismissal.

6. Although the Sparta Lodge FOP contends that it was formed "around 1968", it appears that the first contract was not signed until 1974. Moreover, there has not been a clearly consistent pattern throughout the contracts of including or excluding superior officers.

* * * *

The Commission has previously addressed the issue of exclusion of superior police officers from units of patrolmen. In Borough of South Plainfield, D.R. No. 78-18, 3 NJPER 349 (1977), the Commission set forth its position as follows:

...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. 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 (1971).

The existence of an inherent conflict of interest in these 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.

In the Union County matter, supra, the Commission stated the above most congenitly:

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 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....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 dictates the continued inclusion of superior officers in a unit of rank and file personnel. (footnotes omitted)

See also Township of Bloomfield, P.E.R.C. No. 84-86, 10 NJPER 117 (¶15060 1984) aff'd Docket No. A-2850-8353 (App. Div. January 8, 1985).

In the instant case neither of the above-stated exceptions apply. Both the sergeants and the lieutenants perform duties substantially different than that of patrolmen. There is no interchanging of functions whatsoever between the lieutenants and the patrolmen. With regard to the sergeants, although some of their time is spent doing patrol work, the conflict of interest can not be considered de minimis. The sergeants exercise supervisory authority over the subordinate officers in assignment and disciplinary matters. In addition, the sergeants annually evaluate the performance of the patrolmen in their sections. Thus, the internal structure of the Sparta police force does not fall into the category contemplated by the "small force" exception.

Further, there is no evidence of a pre-1968 bargaining relationship between the Township and the FOP. In order for the

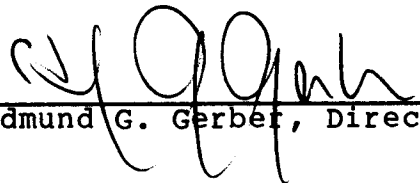
"established practice" exception to apply, there is a requirement that prior to the passage of the Act in 1968 there was:

...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. In re West Paterson, P.E.R.C. No. 77 at p. 10 (1973)

The Commission also stated in West Paterson, P.E.R.C. No. 79 (1973), that the term "prior agreement" referred to an executed agreement pre-dating the 1968 Act. As there is no evidence of such an agreement or a regular bargaining relationship between the parties which pre-dates the Act, no valid exception can be found.

Accordingly, based upon the foregoing, I grant the Township's request to remove the superior officers from the existing unit of patrolmen. The unit represented by Sparta Lodge #26 F.O.P. will be clarified to exclude sergeants and lieutenants.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

Dated: July 23, 1986
Trenton, New Jersey