P.E.R.C. NO. 70

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF UNION CITY
Public Employer
and

UNION CITY SUPERIOR POLICE OFFICERS' ASSOCIATION
Petitioner
and

UNION CITY PATROLMEN'S BENEVOLENT ASSOCIATION LOCAL NO. 8
Intervenor

Docket No. RO-186

DECISION AND DIRECTION OF ELECTION

Pursuant to a Notice of Hearing to resolve a question concerning the representation of certain employees of the City of Union City, a hearing was held before Bernard J. Manney, Hearing Officer of the Commission, at which all parties were given the opportunity to present evidence, examine and cross-examine witnesses and to argue orally. Thereafter, the Hearing Officer issued his Report and Recommendations. Exceptions and supporting brief were filed by Intervenor to which Petitioner filed a reply. The Commission has considered the record, the Hearing Officer's Report and Recommendations, Intervenor's Exceptions and Brief and Petitioner's reply, and on the basis of the facts in this case finds:

1. The City of Union City is a public employer within the meaning of the Act and is subject to the provisions of the Act.

2. The Union City Superior Police Officers' Association (hereafter SPOA) and the Union City Patrolmen's Benevolent Association, Local No. 8, (hereafter PBA) are employee representatives within the meaning of the Act.

3. The Public Employer refuses to recognize Petitioner as the exclusive negotiating representative for certain of its employees. Accordingly, a question concerning the representation of public employees exists and the matter is properly before the Commission for determination.

4. Intervenor excepts to the Hearing Officer's failure to find that the Employer had recognized it as the exclusive representative of policemen and superior officers and that a bar existed to any election in this proceeding. In a related exception, Intervenor contends that the Hearing Officer erred in finding that there has been no established practice of representation or history of collective negotiations involving the personnel of the Police Department. Much of the record is devoted to an examination of the means whereby past wage and benefit increases were obtained and grievances adjusted;

some of the testimony is in conflict. In his evaluation of the evidence, the Hearing Officer accepted and relied on that evidence which supports Petitioner's view that no such established practice existed. This resolution was clearly within the province of the Hearing Officer, and our review of the record reveals no demonstrable error.

Based on the credited testimony, we find ample record support for the proposition that the history of past dealings on wages, benefits and other conditions of employment did not mount up to the "established practice" contemplated by the statute nor did it constitute or contain recognition. Specifically, the record demonstrates that no clear pattern or consistent approach was maintained when personnel of the department attempted to seek changes. When a wage increase was the objective, typically the PBA invited the SPOA to participate so that the final formulation and presentation of "demands" was a joint venture, and one undertaken in collaboration with representatives of Fire Department personnel as well. Notwithstanding that many superior officers maintained membership in both the PBA and SPOA, the separate identity of the latter was not ignored when the former was marshalling forces to improve salaries. The solicitation of the SPOA and the joint approach to the Employer is inconsistent with the PBA claim of sole responsibility. Moreover, on various occasions the superior officers dealt with the Employer for salary increases without including the patrolmen and in one instance the PBA objected successfully to an increase tentatively offered the superior officers. As often as not, when the patrolmen had failed to obtain their salary objectives from city officials and moved the question to public referendum, the superior officers did not join in that endeavor. Where improvements other than salaries were sought, the experience was a checkered one, showing that sometimes the superior offers joined in, at times the patrolmen went alone and at other times only the superior officers were involved. The record also establishes that the nature of the dealings between employer and employees, regardless of who spoke for what group, was generally at a level less that that of collective negotiations. Missing is an attitude that both parties shall strive for agreement and that differences are to be adjusted through negotiations. Occasionally, there is a glimpse of genuine negotiations, but in the main is seen the usual pre-Chapter 303 posture of the employer who made final decisions without prior negotiations.

It is conceded that there was no grant of formal recognition to the PBA by the Employer. We find that the historical relationship does not amount to de facto recognition of the PBA as the representative of superior officers and patrolmen. Furthermore, even if de facto recognition existed, that plus the history of representation supporting it would only relate to the unit question below and would in no circumstance operate to bar the instant petition. The various bars to entertaining petitions or con-

ducting elections are the product of Commission rules and the situation described above does not come within any pertinent rule. 1/

With respect to the unit question raised by Petitioner's request to represent a unit of superior officers 2/ and Intervenor's claim that officers should be represented in the same unit with patrolmen, the Hearing Officer found that superior officers were supervisors within the meaning of the Act, and that there was no established practice, prior agreement or special circumstance dictating the inclusion of these supervisors in a unit with patrolmen. He recommended that a unit of superior officers excluding the Chief and Deputy Chief be found appropriate. Intervenor excepts to the supervisory finding and, as indicated earlier, to the failure to find an estalished practice of representation.

The organizational structure of the Union City Police Department shows a Director of Public Safety, a Chief and Deputy Chief, and 4 Captains, 3 of whom command successive eight hour shifts; the fourth Captain supervises the operations of the Detective Bureau. The remaining officer ranks are Lieutenant and Sergeant. There are 27 superior officers and over 90 patrolmen. 3/

Normally a Captain will have at least a Lieutenant and one or two Sergeants per shift. One Sergeant, designated Patrol Sergeant, checks the various posts to see that the patrol car, footman, crossing guard, etc. is performing as assigned. The other Sergeant mans the desk at headquarters - midway in the shift the 2 Sergeants interchange duties. The Captains prepare the work schedules and the Lieutenants and Sergeants assign the patrolman and supervise them in the proper execution of assigned work. Complaints about or requests to change work assignments are given first to the Sergeant; requests for time off are also directed first to the Sergeant. The shift Captain decides all such requests, although any decision can be appealed higher. In the typical discipline case involving a patrolman, the superior officer knowledgeable of the alleged infraction submits a written report which passes up the chain of command to the Chief who decides whether the situation merits an informal disposition by himself or referral to the Director. 4/ In either event

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1/ See Section 19:11-15 of the Commission's Rules and Regulations.

2/ At the hearing Petitioner moved to amend its unit description by excluding the Chief; Intervenor objected to the proposal. We see no reason why Petitioner should not be permitted to make this kind of minor amendment to the unit it seeks to represent, and therefore the motion is granted.

3/ The record does not disclose the number of patrolmen, but the Commission takes administrative notice of the pertinent payroll records of the Civil Service Commission.

4/ The job description of Captain states among other things that the Captain "...disciplines subordinates for neglect of duty..." The record does not otherwise support that assertion and such is clearly at odds with the testimony of serveral witnesses who indicate that the power to discipline is reserved to the Chief and Director. A Captain is authorized to send home a patrolman who is unfit for duty. A report is submitted to the Chief and apparently the case is then handled like any other reported infraction.

the case is subject to an independent investigation rather than total reliance on the written report. If the Chief retains the case, he may discipline by verbal reprimand, giving the patrolman an unfavorable assignment, etc. The more serious allegations are referred to the Director, who, upon the entry of formal charges, sits as Hearing Officer with authority to suspend or discharge.

Most fringe benefits are uniform throughout the Department, but superior officers receive a different vacation benefit from patrolmen. There is a 15% salary differential between patrolmen and Sergeants; the same percentage difference is maintained between each of the superior ranks. At the time of the hearing, superior officers wore uniforms different from patrolmen and were required to pay for their purchase, although reimbursement was then being considered by the City.

We agree with the Intervenor that the record does not establish superior officers, as a group, to be supervisors. Under the statute that term is reserved for those with authority to hire, fire, discipline or effectively recommend with respect to these actions. Their closest proximity to these authorities is their role in discipline cases where, except for the Chief, they submit written reports of the incident which may or may not result in discipline depending upon the Chief's evaluation of the case and this may include his own investigation of the merits. In the absence of more convincing and detailed evidence we are unable to construe this process as productive of effective recommendations. Therefore, excepting the Chief who clearly has authority to discipline, superior officers do not normally exercise any of the requisite authorities and are not found to be supervisors within the meaning of the Act. This conclusion alone, however, does not dispose of the basic unit question: whether superior officers, even though non-supervisors, are to be included with their subordinate patrolmen.

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.

The case at hand is more than a de minimis situation. We conclude that there is a conflict rather than a community of interest between superior officers and the patrolmen. From the Captain who is responsible for the entire complement on his shift, who determines work priorities, grants time off and changes in assignments to the Sergeant who makes the assignments, checks on patrolmen and regularly oversees them in their work, there is obviously a different orientation between them and the patrolmen who spend their day doing the routine police work. As a group superior officers share active responsibility for the maintenance of discipline among the patrolmen - the contrary is obviously not true. The duties and responsibilities of officers are such as to generate grievances among patrolmen and it may be reasonably anticipated that representation of both groups as one would be inimical both to the prosecution and resolution of many grievances.

Superior superior officers, though not supervisors within the meaning of the Act, may still avail themselves of statutory exemptions under NJSA 34:13A-6(d) which explicitly permits the inclusion of statutory supervisors in a unit with non-supervisory personnel where established practice, prior agreement or special circumstances dictate. Otherwise it would be paradoxical if the statutory supervisors with the power to hire, discharge or discipline subordinate employees or to effectively recommend the same were covered by the above exceptions while individuals such as the superior officers in the matter before us with more limited supervisory responsibilities were not. However, we have previously determined that, even if non-statutory supervisors, in general, can utilize the statutory exceptions to their advantage, the superior officers of the Union City Police Department specifically have failed to prove the existence of an established practice of representation or history of collective negotiations involving the personnel of the Police Department.

In view of the aforementioned points of actual and potential conflict and in the absence of statutory exceptions regarding established practice, prior agreement or special circumstances, we conclude that a community of interest does not exist between patrolmen and their superior officers.

The separation of officers and patrolmen does not, however, immediately resolve the question of the appropriateness of a unit of officers. The Intervenor argues, in support of its contention for an all inclusive unit, that if rank is a barrier to an overall unit, that same factor must operate to produce separate units for each rank in the department. The logic of that position need not be decided here. No party to this case seeks such an arrangement, so the issue is not presented. Under the circumstances, we find that a unit of superior officers is appropriate with the following reservations. The Chief has been found to be a supervisor within the meaning of the Act. He should therefore be excluded pursuant to N.J.S.A. 34:13A-6(d) which prohibits, generally, the inclusion of supervisors with non-supervisors. This disposition is in accord with Petitioner's position. The Hearing Officer found him to be a managerial executive, but in view of the above we need not comment on that finding. We also exclude the Deputy Chief because he substitutes for the Chief in the latter's absence. The Hearing Officer included the Master Mechanic in his recommended unit, but since the record is silent on his status as a superior officer, we make no finding. He will be permitted to vote subject to challenge.

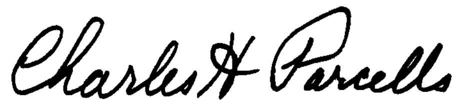
5. The Commission finds appropriate the following unit: "All superior officers employed by the City of Union City, Department of Public Safety, Division of Police, excluding patrolmen, the Chief and Deputy Chief, office clerical, craft and professional employees, managerial executives and other supervisors within the meaning of the Act."

6. The Commission directs that an election by secret ballot shall be conducted among the employees in the unit found appropriate. The election shall be conducted no later than 30 days from the date set forth below.

   Eligible to vote are employees in the unit described in paragraph 5 above who were employed during the payroll period immediately preceding the date below, including the employees who did not work during that period because they were out ill, or on vacation, or on leave of absence, or temporarily laid off, including those in military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

   The employees eligible to vote shall vote on whether or not they desire to be represented for purposes of collective negotiations by Union City Superior Police Officers' Association. 5/

BY ORDER OF THE COMMISSION



Charles H. Parcells
Acting Chairman

DATED: August 4, 1972
Trenton, New Jersey

5/ The record indicates that at the time of the hearing the PBA was seeking to consumate an agreement covering the patrolmen. Its effort to represent the patrolmen, if successful, would bar the PBA from representing a unit of superior officers for the reasons expressed in City of Camden, Department of Public Safety, PERC No. 52. If in fact the PBA does not represent the patrolmen, prompt notice to that effect to the Commission will enable the PBA to appear on the ballot.

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LOCAL NO. 8
Intervenor

Docket No. RO-186

REPORT AND RECOMMENDATION OF HEARING OFFICER

On September 24, 1970, the Union City Superior Police Officers' Association filed a petition with the Public Employment Relations Commission for Certification of Public Employee Representative in a unit encompassing all superior officers in the Union City Police Department. On October 14, 1970, the Executive Director of P.E.R.C. granted a motion to intervene made by the Union City Patrolmens' Benevolent Association.

A Notice of Representation Hearing, issued to the parties on October 22, 1970, scheduled a hearing for November 16, 1970 in Newark, New Jersey. At the request of Counsel for the Intervenor, and with the consent of the Petitioner, the case was rescheduled to November 25, 1970 in Newark, New Jersey. At the further request of Counsel, and by mutual agreement, the matter was rescheduled to December 10, 1970 in Newark, New Jersey, and pursuant thereto, a hearing was held on this date before the undersigned. All parties were given the opportunity to examine and cross-examine witnesses, to present evidence, and to argue orally. Appearances were recorded as follows:

For the Public Employer:
Hon. Harry M. Calandrillo, Jr., Director,
Department of Public Safety
For the Petitioner:
Frances X. Hayes, Esquire
For the Intervenor:
Roger H. McGlynn, Esquire
Witnesses testifying in this hearing were:
St. Paul Gabriel Kelly, President, Union City
Superior Police Officers' Association
Harry M. Calandrillo, Jr., Director
Department of Public Safety

At the request of Petitioner and with the agreement of Intervenor, the hearing was adjourned and rescheduled to January 15, 1971 in Newark,

New Jersey. Pursuant thereto the hearing resumed on said date before the undersigned and all parties were given the opportunity to examine and cross-examine witnesses, to present evidence, and to argue orally. Appearances were recorded as follows:

For the Petitioner:
Frances X. Hayes, Esquire
For the Intervenor:
Roger H. McGlynn, Esquire
Witnesses testifying in this hearing were:
Police Captain John M. Mescall
Lieutenant Wilbert Nelson
Harry Calandrillo, Jr., Director, Public Works Department
Patrolman Harold Gilbert, President P.B.A. Local No. 8

The record of the proceedings establishes that:

1. The City of Union City is a public employer within the meaning of the Act.
2. The Union City Superior Police Officers' Association and the Union City Patrolmens' Benevolent Association, Local No. 8, are employee representatives within the meaning of the Act.
3. The Intervenor opposes severance of the unit which it claims to represent, and which unit allegedly includes the Superior Police Officers of the City of Union City; that therefore, a question concerning representation is involved, and the matter is appropriately before the Commission for adjudication.

ISSUES

The critically significant question before the Hearing Officer relates to the timeliness of the instant petition for certification of public employee representative. Secondly, assuming the timeliness of said petition, is the requested unit an appropriate one for purposes of collective negotiations within the meaning of the Act?

POSITIONS OF PARTIES

The Intervenor contends that, "...based on past history, as the statute refers to, or on the history of the department, that the appropriate unit should be the P.B.A. unit for all policemen, be they patrolmen, captains, lieutenants, and, also, including the Chief." (Tr 146) In addition, he contends that there is a bar to an election.

The Petitioner maintains "...that the unit should be limited to the police superior officers from sergeant up to chief. I will let the record speak for itself as to the statutory exceptions as (T 146) to supervisory and non-supervisory personnel."

"...the PERC law simply does not permit an employee group to be represented by a bargaining agent in which group they have no right to select their representatives. (Tr 156)

...their interest may be in conflict with the interest of the other members of the unit and, they are in the curious position of having the other members of the unit vote on propositions and demands which are peculiar to them." (Tr 156) The Petitioner holds, too. that there is no bar to an election.

The Public Employer advanced a position congruous with that of the Intervenor.

DISCUSSION AND FINDINGS

The resolution of the issues involved hinge upon the prior consideration and disposition of the key question raised by the argument of the Intervenor and Public Employer, to wit;

Does the "past history" of collective negotiation among and between the disputants herein definitively establish that an existing bar proscribes an election?

After a thorough study of the record, the undersigned concludes that the common position of the Intervenor and Public Employer is not supported by the evidence, and a bar does not exist to an election. As of the closing date of the hearing, the Intervenor was not recognized by the Public Employer as the exclusive collective negotiating representative for patrolmen, or for patrolmen and superior officers combined in one unit (Tr 140-142) and, too, there has never been a signed contract between said parties (Tr 166, Tr 129). Moreover, the record, vis-a-vis the history of collective negotiations, manifests contradictory testimony covering the crucial issue of "give-and-take" bargaining; i.e., the witness for the Intervenor testified that "give-and-take" collective negotiations did take place with the Public Employer in recent years, and that the P.B.A. represented the superior officers in these endeavors; however, witnesses for the Petitioner denied this (Tr 22, Tr 103) and contended that the annual negotiation was more of a "hat-in-hand" procedure characterized by unilateral and arbitrary settlements proposed and finalized by the Public Employer, or concluded by way of a public referendum. (Tr 115) The undersigned finds the recorded testimony equally nebulous and inconsistent as it relates to the modus operandi of collective negotiations to wit, in some instances, the P.B.A. and superior officers joined in preparation of wage requests and/or fringe benefits, whereas, at other times, they would dichotomize (Tr 105) and establish separate group dialogues with the Public Employer. Moreover, until approximately two years ago, P.B.A. by-laws did not permit superior officers, who held memberships in its organization, to attend regular meetings; they could attend special meetings by invitation only, and under no conditions were they permitted to vote. (Tr 49, Tr 107-108) Under the above circumstances, the undersigned finds that there is no recognized or certified majority representative of the employees in question, and pursuant to 19:11-15(a) of the Rules and Regulations of P.E.R.C, the instant petition is timely filed for purposes of certification of public employee representative.

The undersigned now addresses himself to the determination of an appropriate unit and extracts it from Exhibit C-2 which lists by name all of the superior officers of the Union City Police Department; the list was submitted to the Commission by the Public Employer, and the Intervenor and Petitioner approved its authenticity and accuracy. (Tr 146, 147) In addition, I refer to Exhibit P-3 (which consists of detailed job descriptions for police sergeants, police lieutenant, police captain, deputy police chief, and police chief) and to the relevant testimony of witness, Captain John M. Mescall, describing the respective functions and duties of all superior officers. (Tr 148 to Tr 152)

To properly evaluate the status of each classification of superior officers, the undersigned is guided by appropriate provisions of Chapter 303, Laws of 1968 (New Jersey Employer-Employees Relations Act,) to wit, C34:13A-3(d), wherein the term "employee"...shall include public employee, i.e., any person holding a position, by appointment or contract or employment in the service of a public employer, except elected officials, heads and deputy heads of departments and agencies...; C34:13A-5.3 which provides that "except as hereinafter provided, public employees shall have, and shall be protected in the exercise of, the right...to form, join and assist any such activity; provided, however, that this right shall not extend to any managerial executive...nor, except where established practice, prior agreement, or special circumstances dictate the contrary, shall any supervisor having 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 nonsupervisory personnel to membership..." -- This section of the Act provides, too, that "the negotiating unit shall be defined with due regard for the community of interest among the employees concerned..." (all emphasis added); C34:13A-6(d) which admonishes that, "except where dictated by established practice, prior agreement, or special circumstances, no unit shall be appropriate which includes both supervisors and nonsupervisors..." and, too, because of its crucial bearing on this issue, the undersigned takes official notice of, and relies upon pertinent and applicable judgments of the Supreme Court of New Jersey in Board of Education of the Town of West Orange v. Elizabeth Wilton, and Administrator's Association of West Orange Public Schools, (Supreme Court of New Jersey, A-36, September Term-1970).

Exhibit C-2 lists a chief, a deputy chief, four captains, nine lieutenants, twelve sergeants and one master mechanic. Exhibit P-3 defines the police sergeants position: "under the supervision of a police Lieutenant, during an assigned tour of duty, has charge of the police activities intended to provide assistance and protection for persons...and, too, visits and inspects beats, notes and reports irregularities... notes conditions which are significant from a police standpoint ...that patrolmen are doing their work properly. This is corroborated by the testimony of Witness Mescall. (Tr 151-2) The police lieutenant "works under the direction of a captain..has charge of a police platoon or performs specialized supervisory police duties...gives suitable police assignments

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*All emphasis added.

and instructions to sergeants and patrolmen...checks their work to see that proper procedures are followed, reasonable standards of workmanship, conduct and output are maintained, and that desired police objectives are achieved..:" the police captains "...under the supervision of the chief or deputy chief of police, has charge of subordinates engaged in activities intended to provide assistance and protection for persons, safeguard property...assigns subordinates to their posts and supervises them in the prevention of crime...disciplines subordinates for neglect of duty ...the deputy police chief "...assists the police chief in management and discipline of the Municipal Police Department ...checks their (all subordinate superior officers) work to see that proper procedures are followed, that reasonable standards of workmanship conducted, and output are maintained...and acts as the police chief in his absence...; the police chief "...under direction, has charge of the Police Department..formulates police rules and regulations ...gives suitable assignments and instructions to the other members of the Police Department...and checks their work to see that proper procedures are followed, that reasonable standards of workmanship, conduct, and output are maintained and that desired police objectives are achieved..."

These decriptions adequately establish the supervisory nature of all superior officers involved herein. This conclusion is reinforced by testimony of Witness Mescall (Tr 152):

> Q. - "Now, in your years of experience as a superior officer, can you state whether police superiors, from sergeant on, have been able to effectively recommend discipline of persons under their command?"
>
> A. - "Yes, Sir. The disciplinary procedure usually starts from the sergeant.
>
> Q. - Although they don't have the final say as to discipline, they can effectively recommend discipline.?"
>
> A. - "Yes, Sir."

Furthermore, the record is devoid of concrete evidence to indicate that established practice, prior agreement, or special circumstances, militate in favor of a homogeneous unit comprised of patrolmen and superior officers. Therefore, under provisions of C34:13A-5.3 and C34:13A-6(d), the Hearing Officer finds that the above named superior officers are supervisors within the meaning of the Act.

The undersigned finds, too, that under C34:13A-3(d), the chief and deputy chief are proscribed by the definition of public employee i.e., the chief is the head of the police department, and the deputy chief is a deputy head; furthermore, under C34:13A-5.3, the chief is a managerial executive, and the deputy chief attains this status when he "acts as the police chief in his absence. "-in this capacity, the chief and deputy chief do not meet the requisites to qualify as public employees.

All emphasis added.

As to the community of interest criterion, and the conflict of interest argument projected by the Petitioner (Tr 156), the undersigned must be guided by the definitive findings of the court in the above-cited Wilton case. Unfortunately, as the court points up "no express definition of the phrase '<u>community of interest</u>' is contained anywhere in the statute; nor has the court found any decision "which undertook to set out an explicit or mathematically precise definition of <u>community of interest</u> in the public employment field. To fill this overt void, the court said, "<u>If performance of the obligations or powers delegated by the employer to a supervisory employee, whose membership in the unit is sought, creates an actual or potential substantial conflict between the interests of a particular supervisor and the other included employees, the community of interest required for inclusion of such supervisor is not present</u>...."i.e.. "...<u>where a</u> ...<u>conflict of interest exists among supervisors with respect to their duties and obligations to the employer in relation to each other the requisite community of interest among them is lacking, and...a unit which undertakes to include all of them is not an appropriate negotiating unit within the intendment of the statute.</u> "

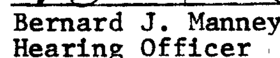
As to the <u>conflict of interest</u> argument advanced by the Petitioner, the court introduces an old concept in employer-employee relations, but a novel interpretation of applicable sections of the Act to wit,"..<u>representatives of the employer and the employees cannot sit on both sides of the negotiating table. Good faith negotiating requires that there be two parties confronting each other on opposite sides of the table... employer and employee organizations need the undivided loyalty of their representatives and their members, if fair and equitable settlement of problems is to be accomplished</u>."

In view of all of the above, and adhering to the court's ruling, the undersigned finds that the chief and deputy chief may not be included in an appropriate unit of superior officers.

<u>RECOMMENDATIONS</u>

From all of the foregoing and the official record of these proceedings, the undersigned recommends:

1. That a secret ballot election be conducted among employees as hereinafter delineated in the designated appropriate unit, and the date for the election shall be set by the Public Employment Relations Commission.
2. The appropriate unit shall be: All sergeants, lieutenants and captains, and master mechanic of the City of Union City Police Department, and excluding the chief, deputy chief, patrolmen, professional employees, clerical employees, and craft employees.
3. Those eligible to cast ballots in this election shall vote on whether or not they desire to be represented for purposes of collective negotiations by the Union City Superior Police Officers' Association.



Bernard J. Manney
Hearing Officer

DATED: March 29, 1971
Trenton, New Jersey

* All emphasis added.