

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

In the Matter of

CITY OF TRENTON,

Public Employer,

-and-

Docket No. CU-111

P.B.A. LOCAL 11,

Employee Representative.

SYNOPSIS

The Director of Representation Proceedings, finding that a substantial conflict of interest exists between patrolmen and sergeants, lieutenants, captains and deputy chiefs in a municipal police department, clarifies the composition of a unit consisting of police officers to include only the employees in the ranks of patrolmen. The Director determines that there is an insufficient evidentiary record to support the employer's claim that deputy chiefs are managerial executives and not includable in any negotiations unit, and further determines that the question as to the status of deputy chiefs is not properly placed before him.

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Appearances:

For the Public Employer,
George T. Dougherty, Esq.
Assistant City Attorney

For the Employee Representative,
Zazzali and Zazzali, Esqs.
By: Lawrence A. Whipple, Jr., Esq.

DECISION

Pursuant to a Notice of Hearing to resolve a question concerning the representation of certain employees of the City of Trenton, a hearing was held before Leo M. Rose on January 8, 1976, and June 27, 1976 in Newark, New Jersey. At the hearing all parties were given an opportunity to examine witnesses, present evidence, and argue orally. Neither party filed a brief, and the Hearing Officer issued his Report and Recommendations on August 30, 1976. A copy is annexed hereto and made a part hereof. No exceptions to the Hearing Officer's Report have been filed. The undersigned has considered the entire record and the Hearing Officer's Report and Recommendations and, on the facts in this case, finds:

1. The City of Trenton is a Public Employer within the meaning of the New Jersey Employer-Employee Relations Act (the "Act"), as amended, and is subject to its provisions.

2. The Patrolmen's Benevolent Association, Local 11 is an employee representative within the meaning of the Act and is subject to its provisions.

3. The Public Employer seeking the clarification of a unit of its employees for which the Employee Representative is the majority representative, a question concerning the composition of unit of public employees exists and the matter is appropriately before the undersigned for determination.

4. P.B.A. Local 11 is the majority representative of a unit consisting of all uniformed and non-uniformed officers, patrolmen and patrolmen detectives, in the Police Division, Department of Public Safety of the City of Trenton. The Public Employer seeks severance of all superior officers (captains, lieutenants, sergeants) and deputy chiefs from this unit.

The Hearing Officer found that neither superior officers nor deputy chiefs are supervisors within the meaning of the Act; however, he found that a conflict of interest exists between patrolmen and both superior officers and deputy chiefs, thus banning their inclusion in the same negotiating unit. He further found that deputy chiefs are managerial executives within the meaning of the Act and thus barred from inclusion in any negotiations unit. He therefore recommended that superior officers and deputy chiefs be severed from the existing unit, and the deputy chiefs be barred from any negotiating unit.

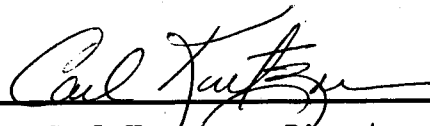
After review of the entire record, the undersigned adopts that portion of the Hearing Officer's Report and Recommendations which finds that a conflict of interest exists between patrolmen and both superior officers and deputy chiefs. This conflict of interest is of such substantial nature to warrant that superior officers and deputy chiefs not be included

in the same negotiating unit with employees in the patrolmen ranks.

However, the undersigned does not adopt the Hearing Officer's finding that deputy chiefs are managerial executives. The Hearing Officer based his finding solely on the fact that deputy chiefs substitute for the chief in his absence. An independent review of the record reveals no additional evidence in support of that conclusion. The undersigned is not inclined to make a finding as to the status of deputy chiefs based upon such a limited evidentiary record. Moreover, in clarifying the composition of the negotiating unit to include only the patrolmen ranks, the issue as to the status of deputy chiefs, as well as the issue of the appropriate composition of any proposed unit consisting superior officers, is not properly placed before the undersigned.^{1/}

5. Accordingly, the undersigned for the aforementioned reasons clarifies the negotiating unit represented by P.B.A. Local 11 as including all patrolmen and patrolmen detectives employed by the City of Trenton and excluding sergeants, lieutenants, captains and deputy chiefs.

BY ORDER OF THE DIRECTOR OF
REPRESENTATION PROCEEDINGS



Carl Kurtzman, Director
Representation Proceedings

DATED: January 28, 1977
Trenton, New Jersey

^{1/} No petitioner has come forward raising a question concerning the representation of employees in a proposed negotiating unit consisting of superior officers which would include the deputy chiefs.

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City of Trenton
Public Employer

and

Docket No. CU-111

P.B.A. Local 11
Employee Representative

Pursuant to Notice of Hearing, a hearing was held before the undersigned Hearing Officer of the Commission on January 8, 1976 and June 23, 1976.

Appearances:

For the Public Employer:
George T. Dougherty, Esq.
Assistant City Attorney

For the Employee Representative:
Zazzali and Zazzali, Esqs.
by Lawrence A. Whipple, Jr., Esq.

The within petition was filed by the City of Trenton on April 8, 1973 to clarify the unit of the PBA representing the Police Division, Department of Public Safety, City of Trenton, sought being the severance of patrolmen from superior officers and the exclusion of the rank of deputy chief from any unit.

Discussion

The parties hereto have been engaged in a formal negotiations relationship since 1971. In that first agreement, and thereafter, the City has reserved the

right to contest the composition of the unit.^{1/} The unit in that first agreement and succeeding ones has covered all ranks from patrolmen through deputy chief. The City seeks to sever superior officers from sergeants through captains, and excluding deputy chiefs entirely. The PBA, on the other hand, contends that sergeants, lieutenants, captains and deputy chiefs are not supervisors within the meaning of the Act^{2/} and their inclusions in a unit covering patrolmen is entirely consistent with the Act. Counsel for the PBA also contended that a negotiating history as far back as 1950 (perhaps even to 1907) has hallowed the single unit approach and only recently has the City sought to divide the unit into a unit of patrolmen and a unit of superior officers, less the deputy chiefs. He further contended that the historical relationship had been "harmonious."^{3/} However, in the formal negotiations history between the parties commencing with an agreement dated February 8, 1971, a specific clause in said agreement saved the right of the City to invoke the appropriate procedures with the Commission^{4/} to re-define the unit. Substantially, the same agreement (regarding the City's reservation insofar as unit composition is concerned) was carried over to the succeeding agreement dated March 17, 1973.^{5/} Accordingly, the within joint petition was filed on April 6, 1973, but PBA moved to amend said petition with the consent of the City. Said motion to amend was accepted by the undersigned, and consisted, substantially, of deletion of the PBA as a party in the filing of the petition.

In February, 1975, the Trenton City Council investigated an incident involving many members of the police force and released its findings in the summer of 1975. It is apparent, from the testimony of several councilmen who participated in said investigation, that they all shared a pervasive unease with the unit as it was

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1. Tr. 1, pg 11e6 et seq.
 2. Tr. 1, pg 10, e1 et seq.
 3. Tr. 1, pg 131 e 24
 4. Tr. 1, pg 134 e 6 et seq.
 5. Tr. 1, pg 10, e13 et seq.

constituted.^{6/} Remarks in this vein ranged from, ".....it was more or less talking out of both sides of your mouth.....;"^{7/} "I think when it comes to negotiations they should be separated."^{8/}

The same vein of reaction, based on feeling rather than information, permeates the testimony of the other councilmen who testified. A general, undefined sense that something was amiss in the relationship of the chain of command characterized all of their testimony. How much of this is based on the factual situation within the Department or how much is a residual private sector reaction is a matter of pure speculation.^{9/ 10/, 11/}

However, the members of the Council expressed amazement that certain superior officers of the Police Department who testified in the Council's investigation aforementioned were active members of the PBA, and even served on the PBA Negotiating committee.^{12/, 13/, 14/} In his testimony, the mayor likewise spoke to the managerial-subordinate relationship.^{15/} Further, the Business Administrator of the City, in reviewing the City's insistence ab initio to inclusion of the City's right to challenge the unit,^{16/} cited the City's reasons for desiring a severance of the Superior officers.^{17/} These were the standard philosophical objections customarily found in these matters.

(The undersigned hastens to add that the foregoing is not a cavalier dismissal of such beliefs, because they are part of the fiber of the Act).

Counsel for PBA attempted most persuasively to elicit from all of Petitioner's witnesses the harmlessness of the commingling of patrolmen and

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- 6. Tr. p 57 e 22, Tr. p 58, e 22 et seq.
 - 7. Tr. p 61, e 16
 - 8. Tr. p 63, e 21
 - 9. Tr. I p 77 e 13 et seq.
 - 10. Tr. I p 84 e 1 et seq.
 - 11. Tr. 1 p 85 e 6 et seq.
 - 12. Tr. 1 p 91 e 5 et seq.
 - 13. Tr. 1 p 1, et seq.
 - 14. Tr. 1 p 2 e 17 et seq.
 - 15. Tr. 1 p 128 e 7
 - 16. Stipulation by counsel, Tr. p 133, e 2 et seq.
 - 17. Tr. p 135 e 2 et seq.

superiors, 18/, 19/, 20/, 21/ and although no one came forward with any concrete examples of conflict, this is not surprising. This is true because the Council is not involved in day to day police operations, but also because the fact of commingling became highlighted in the aforementioned investigation conducted by the Council. Because of this background, and the continuous saving clause to permit such action, the within petition has been submitted.

Chapter 303, as amended provides that there shall be no mingling of supervisors and non-supervisors. 22/ Counsel for the PBA presented a competent case in showing that the usual indicia of supervisors reside almost entirely in the Director of Public Safety. 23/

Charges may originate lower in the hierarchy, but the actual imposition of discipline resides in the Director, 24/ with no recommendation accompanying the charge. 25/, 26/ However, it is noted that charges originate below and pass upward through the chain of command. 27/ It is stipulated in the record that Sergeants through Captain have no role in regard to hiring of a patrolman or any other rank, therefore, the authority to hire is absent, thus at least one of the criteria for identifying supervisors is lacking here. However, as set forth above at length, the superior officers do play an important part in the discipline procedure, by virtue of being the point of origin in disciplinary matters.

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- 18. Tr. p 127 e 15 et seq.
 - 19. Tr. p 103 e 3
 - 20. Tr. p 88 e 2 et seq.
 - 21. Tr. p 95 e 25 et seq.
 - 22. C.34:13A-5.3(7)
 - 23. Tr. 1, p 34 e 21 et seq.
 - 24. Tr. 1, p 34 e 17
 - 25. Tr. 1, p 34 e 20
 - 26. Tr. 1, p 39 e 6
 - 27. Tr. 2 p 33 e 24 et seq.

Therefore, the criteria originating in Board of Education of West Orange, V. Wilton^{28/} and refined in subsequent matters before the Commission nearly spells out that the patrolmen-superior officer relationship in a city police department carries an innate conflict of interest.^{29/} In Wilton, the court found that a superior exercising authorities over other supervisors was in a situation of actual or potential conflict of interest. In Camden (supra) this concept was applied to sever superior officers from a fireman's unit. Nor is it deemed by the undersigned that the rule of de minimis, as set forth in Hanover,^{30/} can be applied herein. The record clearly demonstrates that conflict of interest is apparent.

Regarding the status of the Deputy Chiefs, this rank is shown to serve as Acting Chief of Police in the absence of the Chief.^{31/, 32/} Said fact is uncontroverted, having appeared in the record during cross examination of the Director. Merely based on this fact, it is sufficient to conclude that Deputy Chiefs, like the Chief are managerial executives and, as such are excluded by the Act from coverage thereunder.^{33/} Further, that the Deputy Chief in serving as Acting Chief, "runs his division"^{34/} (i.e. the Police Division of the Department of Public Safety). Therefore, there seems little doubt that a Deputy Chief has been designated Acting Chief, and is therefore not properly a member of any negotiating unit, pursuant to NJSA 34:13A-3(f), cited above.

Prior to the hearing on June 23, 1976, James V. Lazana offered an off the record proposal to compromise this situation: the PBA would agree to sever the superior officers, from sergeant to deputy chief, but including the latter. The attorney for the City declined said compromise. It should be noted that PBA was not represented by counsel at this hearing.

28. 57 N.J. 404 (1971)

29. See PERC 52

30. ED #41

31. Tr. 1, p 149 e 2

32. Tr. 1, p 149 e 22

33. NJSA 34:13A-3(f)

34. Tr. 1, p. 148 e 10

By reasoning set forth above, a study of the entire record and the facts presented, the undersigned recommends the following:

1. The ranks of sergeant, lieutenant, captain and deputy chief should be severed from the negotiating unit represented by the PBA;
2. The deputy chiefs should be severed from any negotiating unit.

Respectfully submitted,


Leo M. Rose
Hearing Officer

Dated: August 30, 1976
Newark, New Jersey