

D.R. NO. 98-16

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

In the Matter of

CITY OF ATLANTIC CITY,

Public Employer/Petitioner,

-and-

Docket No. CU-98-23

PBA LOCAL 24,

Employee Representative.

**SYNOPSIS**

The Director of Representation removes police captains from an existing unit of patrol officers, sergeants and captains employed by the City of Atlantic City and represented by PBA Local 24. The Director finds that impermissible conflicts of interest exist between them and other unit members.

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Appearances:

For the Public Employer/Petitioner,  
Murray, Murray & Corrigan, attorneys  
(David F. Corrigan, of counsel)

For the Employee Organization,  
Joseph J. Bell & Associates  
(Joseph J. Bell, Jr., of counsel)

**DECISION**

On November 21, 1997, the City of Atlantic City filed a clarification of unit petition seeking to remove police captains from the existing unit of patrol officers, sergeants and captains employed by the City and represented by PBA Local 24.

The City contends that under the New Jersey Employer-Employee Relations Act ("Act"), captains should be excluded from the unit because they supervise other unit members and because a conflict of interest exists by their inclusion in the same unit as their subordinates, which is prohibited under West Orange Bd. of Ed. v. Williams, 57 N.J. 404 (1971).

Local 24 opposes the petition. It claims that mixed bargaining units consisting of supervisory and non-supervisory personnel are permissible under Town of Harrison, P.E.R.C. No. 93-104, 19 NJPER 268 (¶24134 1993). Further, it notes that the captains' participation in hiring, discharging and disciplining personnel is de minimis in nature.

We have conducted an administrative investigation; these facts appear. See N.J.A.C. 19:11-2.2 and 2.6.

The Atlantic City Police Department consists of approximately 415 sworn personnel. It is headed by the Police Chief; under the Chief are 4 inspectors, 25 captains, 59 sergeants, 104 detectives, and 222 patrol officers. The existing unit, consisting of captains, sergeants, detectives, and patrol officers, has been in existence for approximately twenty years. There is a separate unit of inspectors.

The Department consists of two bureaus--Field Operations and Support Services. The Field Operations Bureau is commanded by an inspector; a captain is assigned as the "executive officer." This bureau has 3 patrol shifts which are each divided into 2 sections. Each section is commanded by a captain, who is responsible for half of the City.

There are several different units and sections within the Field Operations Bureau. Each is commanded by a captain who has oversight responsibility for the subordinate sergeants, detectives and patrol officers.

The Support Services Bureau is also organized into various units, each headed by a captain who also has oversight responsibility for subordinate police personnel.

The City is a municipality within the jurisdiction of the State Department of Personnel. The definition of captain under the DOP job description states:

Under supervision of the Chief or Deputy Chief of Police during an assigned tour of duty, has charge of subordinates engaged in activities intended to provide assistance and protection of persons, safeguard property, assure observance of the laws, and apprehend lawbreakers; does related work as required.

Under the City's internal regulations, a captain's duties include the following:

2:4.4 Commanding Officers - Inspector; Captain:

Subject to the direction from higher command, a commanding officer has direct control over all members and employees within his/her command. In addition to the general and individual responsibilities of all members and employees and supervisory officers, a commanding officer is responsible for the following:

(a) Command: The direction and control of personnel under his command to assure the proper performance of duties and adherence to established rules, regulations, policies and procedures. Also, providing for continuation of command and supervision in his absence.

(b) Loyalty and Esprit De Corps: The development and maintenance of esprit de corps and loyalty to the Department.

(c) Discipline and Morale: The maintenance of discipline and morale within the command and the investigation of personnel complaints not assigned elsewhere.

(1) Provide prompt investigation of every violation of department rules and regulations within his/her department. He shall draft written charges and specifications, and submit these in duplicate to the Chief of Police.

(d) Interdepartmental Action: The promotion of harmony and cooperation with other units of the Department. Initiation of proper action in cases not regularly assigned to his/her command when delay necessary to inform the proper unit might result in a failure to perform a police duty.

(e) Organization and Assignment: Organization and assignment of duties within his/her unit to assure proper performance of department functions and those of his/her command.

Captains have a role in hiring, discharging, and disciplining subordinates. Captains institute oral reprimands and emergency suspensions; they make recommendations to the Chief for higher level discipline. Captains also recommend the hiring of personnel, and make recommendations for training, appearance, fitness for duty and job performance. They also evaluate the sergeants below them and review the evaluations done by sergeants on their subordinates. Captains also make recommendations on grievances and investigate disciplinary cases when delegated to them.

The City asserts that based on the above, the captains exercise significant authority over the officers below them. Considering the size of the police force, the responsibilities and authorities of captains to discipline and assign the work force and the captains' actual disciplining of subordinate unit members, the City believes an impermissible conflict of interest exists warranting severance.

Local 24 disagrees. It points out that mixed units of supervisory and non-supervisory personnel are permissible under the Act. It relies on Town of Harrison, in which the Commission declined to divide the existing mixed unit of supervisory and non-supervisory personnel. It argues that like in Harrison, the mixed unit in Atlantic City has existed for decades. It claims that during that time, no actual conflict has arisen between superior officers and rank and file officers. It also notes that there is no showing that the mixed unit relationship is unstable or that a sufficient conflict exists to warrant severance.

Further, while Local 24 admits that captains have a role in hiring, discharging and disciplining unit personnel, it believes their role is de minimis in nature. Local 24 notes that captains, on their own, are limited to issuing oral reprimands and emergency suspensions. Oral reprimands, according to Local 24, are the lowest form of discipline, and emergency suspensions are rare and can be imposed by any superior. Accordingly, Local 24 claims that the captain's limited disciplinary powers do not distinguish them as supervisors and thus they should remain in the unit.

#### ANALYSIS

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, ...any supervisor having the power to hire, discharge, discipline, or to effectively recommend

the same, [shall not] have the right to be represented in collective negotiations by an employee organization that admits non-supervisory personnel to membership...."

In Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404 at 425-427 (1971), the New Jersey Supreme Court held that public employees who exercise significant power and responsibilities over other personnel should not be included in the same negotiations unit as their subordinates because of the conflict of interest between these employees and their supervisors.

In Town of West New York, P.E.R.C. No. 87-114, 13 NJPER 277 (¶18115 1988), the Commission reaffirmed its long line of cases holding that we will ordinarily find a conflict of interest between superior officers and rank-and-file officers in a police department. In Union City, P.E.R.C. No. 70, NJPER Supp. 295, 297 (¶70 1972), cited in West New York, the Commission explained:

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. [*Id.* at 350.]

In West New York, the Commission also cited with approval, South Plainfield, D.R. No. 78-18, 3 NJPER 349 (1977), in which the Director of Representation found:

...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 Bd. of Ed. 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. [*Id.* at 349.]

\* \* \*

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. [emphasis added; footnotes omitted. Id. at 350.]

In West New York, the Commission removed superior officers from the rank and file unit based upon the potential for conflict of interest, even though a history of a long relationship in one combined unit existed, and notwithstanding the employer's lack of assertion of conflict. There, the Commission observed that it was removing the superiors even in the absence of direct evidence of actual conflict -- "where a superior officer was actually torn between his divided loyalties to his employer and his unit, thus damaging the public interest" -- finding that such a standard (actual conflict) is "too exacting and is inconsistent with West Paterson,<sup>1/</sup> especially when public safety employees are involved." West New York at 279. The Commission said:

Rather, we believe severance is appropriate for uniformed employees even where there has been an 'established practice' where, as here, the employees' job responsibilities place him in a substantial conflict of interest with his subordinates. [West New York at 279.]

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<sup>1/</sup> West Paterson Bd. of Ed., P.E.R.C. No. 77, NJPER Supp. 333 (¶77 1973).

Based on the above, the captains must be removed from the existing unit of captains, sergeants, detectives and patrol officers. The Atlantic City Police Department is a large one, with approximately 415 police personnel. Captains have significant authority over the officers below them. They command their subordinates on a daily basis, assuring the proper performance of duties. Further, they institute oral reprimands and emergency suspensions and make recommendations for other forms of discipline. They also make hiring recommendations and recommendations for training, appearance, fitness for duty and job performance. They also investigate disciplinary cases when so delegated and make recommendations on grievances. Captains also evaluate sergeants under them and review the evaluations performed by their sergeants or subordinate police officers. These facts clearly show that, at a minimum, an impermissible potential conflict of interest exists between captains and the officers below them, which requires their removal from the existing unit. See Wilton; West New York.

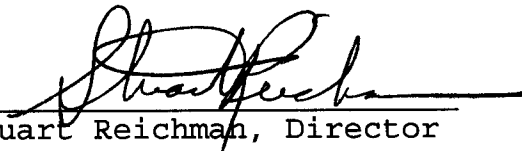
Finally, Local 24's reliance on Harrison is misplaced. In Harrison, the employer found that no conflict of interest existed. Here the employer asserts the existence of conflicts of interest. Further, in Harrison, the superiors lacked authority to hire, discipline or reprimand employees; rather their duties were virtually identical to those of rank and file officers. As noted above, in this case the captains clearly exercise significant authority over their subordinates to discipline and evaluate which

results in an inherent potential conflict of interest between the two groups. The fact that other superior officers can also institute emergency suspensions, as asserted by Local 24, does not diminish the conflict of interest which exists between captains and their subordinates.

ORDER

Captains must be severed from the existing unit immediately, based upon the existence of impermissible potential conflicts of interest between them and other unit members.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Stuart Reichman, Director

DATED: June 10, 1998  
Trenton, New Jersey