

D.R. NO. 89-20

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

In the Matter of

TOWNSHIP OF FRANKLIN,

Public Employer,

-and-

FRANKLIN TP. SUPERIOR OFFICERS
ASSOCIATION OF PBA LOCAL NO. 154,

Docket No. RO-89-27

Petitioner,

-and-

F.O.P. LODGE NO. 102,

Intervenor.

SYNOPSIS

Rejecting the Township's argument that the SOA's "Camden" certification does not sufficiently guarantee the separateness of superior and nonsuperior police units, the Director directs an election among the Township's police sergeants and lieutenants. The Township's concern that the PBA rank-and-file affiliate might dominate a PBA superior officers' affiliate is premature. Hudson Cty. and Assn. of Hudson Cty. Nursing Supervisors, a/w District 1199J, NUHHCE, AFL-CIO, App. Div. Dkt. No. A-989-84T7 (11/15/85), aff'g D.R. No. 85-7, 10 NJPER 623 (115297 1984).

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F.O.P. LODGE NO. 102,

Intervenor.

Appearances:

For the Public Employer
Shanley & Fisher, Esqs.
(Ellen O'Connell, of counsel)

For the Petitioner
Abramson & Liebeskind, Consultants
(Marc Abramson, Consultant)

For the Intervenor
Pincus, Gordon & Zuckerman, Esqs.
(Gerald Gordon, of counsel)

DECISION AND DIRECTION OF ELECTION

On September 19, 1988, the Franklin Township Superior Officers Association of PBA Local No. 154 ("SOA") filed a petition seeking certification as the representative of a collective negotiations unit of Franklin Township's ("Township") police sergeants, lieutenants and captains. FOP Lodge No. 102 ("Lodge

102") currently represents the Township's superior officers. PBA Local No. 154 ("PBA Local 154") represents police officers below the rank of sergeant.

On September 20, 1988, we scheduled an informal conference for October 4, 1988. The conference was later rescheduled to October 21, 1988. On September 26, 1988, we received the Township's Certification of Posting and a statement indicating that the Township "believed that two separate (PBA) locals must exist." The Township was, "indifferent as to whether or not both locals are a part of the same umbrella union organization." On September 29, 1988, the Township submitted a position statement asserting that, due to a reorganization of its police department, captains should be excluded from the unit as managerial executives. The Township further asserted that it would consent to an election if captains were excluded from the unit.

On October 3, 1988, FOP Lodge 102 submitted a request to intervene and we have granted intervention. N.J.A.C. 19:11-2.7. On October 5, 1988, the Township amended its position, stating it would consent to an election only if captains were excluded from the unit and only if the SOA obtained its own PBA charter. The Township refused to consent to an election unless the SOA had no affiliation with PBA Local 154. The Township contended that PBA Local 154 should not be permitted to represent both superior and rank-and-file officers, even in separate units. It alleged that PBA Local 154 threatened to expel a superior officer who had disciplined a patrolman for sleeping on duty.

On October 11, 1988, FOP Lodge 102 filed a statement concurring with the Township's position and adding that it objected to the representation of units of superior officers and rank-and-file officers even by separate PBA locals.

On October 21, 1988, Commission staff agent Richard Gwin conducted an informal conference and began an administrative investigation. N.J.A.C. 19:11-2.2 and 2.6. SOA President Eugene Scaletti submitted a certification stating that, "if elected [the SOA] will comply with the requirements that it be and act as a separate organization from any other organization representing nonsupervisory police officers employed by [the Township, and that the SOA] rather than the majority representative of any nonsupervisory organization, will control the negotiations for and the administration of any collective negotiations agreements covering superior officers." Scaletti also certified that the SOA has no nonsupervisory members.

At the informal conference, the SOA and FOP Lodge 102, agreed that captains should be excluded from the unit. The parties were directed to submit position statements and supporting documents to conclude the administrative investigation. The investigation revealed the following additional facts.

Prior to March 1984, PBA Local 154 represented all the Township's police officers (patrolmen and superiors) in one collective negotiations unit. In February 1984, FOP Lodge 102 filed a petition seeking to represent sergeants, lieutenants and

captains. PBA Local 154 did not intervene and on March 22, 1984, the Township recognized FOP Lodge 102 as the superior officers' negotiations representative.

On June 14, 1988, the Township adopted a new Public Safety Ordinance under which captains were given division commands. All parties agree that captains should be excluded from the superior officers' unit. The SOA's showing of interest is adequate for the uncontested unit of sergeants and lieutenants.

The Township hired John Blazakis as its Chief of Police, effective May 10, 1988. Blazakis promoted two lieutenants to captain, four sergeants to lieutenant, and eight patrol officers to superior officer positions.

PBA Local 154 and FOP Lodge 102 each have collective negotiations agreements with the Township that expired on December 31, 1988.

On September 7, 1983, then-Sergeant Livak reported Patrolman Lenart for sleeping on duty. Based on Livak's report, the Township disciplined Lenart. Shortly after disciplinary charges were brought against Lenart, rumors circulated that PBA Local 154 intended to take action against Livak for testifying against a brother union officer. PBA Local 154 did not, however, take any action against Livak.

On February 2, 1984, Detective Sergeant Shedden counseled Patrolman Marinelli for his conduct during an incident at Franklin High School. PBA President Perrine interrupted Shedden's discussion

with Marinelli in an attempt to advise Marinelli that he was entitled to a union representative. Shedden did not allow Perrine to talk to Marinelli. PBA Local 154 later charged Shedden with violating its by-laws by refusing to permit a union representative at the counseling. In an internal union proceeding, a PBA Local 154 panel of rank-and-file officers heard the matter and dropped the charges against Shedden.

In its position statement, the Township asserts that "upon information and belief, the State by-laws of the PBA prohibit separate locals for patrolman and superior officers in the same Township." (position statement, p.11). The Township refuses to consent to an election unless the superior officers are chartered as a separate PBA local.

New Jersey State PBA Uniform Constitution and By-laws provide:

Article III, Section 1(b):

Any person who is not a member of a municipal police department, but who is a bonafide law enforcement officer, who resides in any municipality wherein a PBA local exists, shall be entitled to membership in said local, providing however that he is not already a member of another PBA local or his department does not have a PBA local and that he conforms to all the other requirements set forth in this Constitution and By-Laws.

Article IV, Section 1(a):

Superior officers and retired members may attend open meetings of this local and shall be permitted a voice on the floor at such meetings,

but they shall not be permitted to vote at any time.^{1/}

Article IV, Section 3(a):

It is the policy of this Association that superior officers and rank and file members should make every effort to remain as a single unit of employees in collective negotiations with their employers. Those instances where superiors and rank and file constitute an appropriate negotiations unit, no less than one (1) superior shall serve on the local's negotiations committee. Any superior officer who signs a petition to establish a separate negotiations unit for superior officers is subject to expulsion from this Association.

Article IV, Section 3(b):

Superior officers may not have their own treasury.

Article IV, Section 3(c):

In the event that the Public Employment Relations Commission or court of competent jurisdiction directs that superior officers and rank and file members be represented in separate negotiations units within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A.

34:13A-1.1 et seq., as amended, or as may be hereafter amended, the local association may assume responsibility for any costs incurred in representing the unit(s) of superiors provided that a majority of the members gives prior approval of the utilization and expenses of a professional or labor specialist. The superiors must first submit a request in writing to the President of the local association. The request shall then be voted upon at the regularly scheduled local association meeting following the receipt of the request from the superiors.

- Superior officers shall be prohibited from voting on any request submitted pursuant to this section.

^{1/} The uniform by-laws also provide several local options granting supervisors the right to vote on contract matters, expenditures and union officers.

The by-laws also obligate superior officers to make the following pledge:

I, _____, accept insofar as my duties as a superior officer to the police department in the City of _____ compel me to make or file charges against any member for violation of the rules or laws of the department laid down by the Police Manual to maintain proper discipline and government of the men under my charge. I do solemnly swear to live up to this obligation in all its parts as long as I am a member of this Association, so help me, by Everliving God, and may He make me steadfast.

Based on these facts, we advised the parties on January 20, 1989, that we were inclined to direct an election among the Township's sergeants and lieutenants to determine whether they desired representation in negotiations by SOA, Lodge 102 or neither.

In Camden Police Department, P.E.R.C. No. 82-89, 8 NJPER 226 (¶13094 1982), the Commission established the standard required of a union already representing rank-and-file officers when it seeks to represent a unit of superior officers. Camden requires the petitioner to certify that: (1) it is a separate organization from any other organization representing non-supervisors; (2) if elected, it, rather than an employee organization representing non-supervisors, will control the negotiations and administration of contracts covering superior officers; and (3) as it currently exists, it has no non-supervisory members. In Camden, the Commission concluded that: "[t]his certification creates a presumption that the Committee is qualified to represent the unit of

superior officers." In a footnote, the Commission explained, "we particularly emphasize that a petitioner is not required to have certain attributes in order to file a representation petition. N.J.S.A. 34:13A-3(e). It is only required not to have an illegal structure. Beyond enforcing the Act's specific prohibitions, we will not interfere in a petitioner's internal affairs." 8 NJPER at 227, n. 2.

Relying on Camden and Hudson Cty. and Assn. of Hudson Cty. Nursing Supervisors, a/w District 1199J, NUHHCE, AFL-CIO, App. Div. Dkt No. A-989-84T7 (11/15/85), aff'g D.R. No. 85-7, 10 NJPER 623 (¶15297 1984), we concluded that the Township's objections to the SOA's petition were premature. We invited the parties to file additional position statements or bring any additional relevant facts to our attention by January 30, 1989.

On January 31, 1989, the Township filed a letter arguing that an election should not be directed. The Township asserted that we understated the significance of Lenart and Shedden incidents by suggesting they were remote in time. The Township explained that there is little turnover in the police department and its employees remember the incidents. The Township also asserted that our failure to condemn Lodge 154's hearing of Shedden suggests that we condone such conduct. The Township asserted further that we should not rely on the SOA's certification because: 1) on October 20, 1988, the SOA's president gave a letter to the Township's business administrator indicating that SOA members will attend rank-and-file

meetings to "participate in matters of mutual concern" but "will be excused from matters that pertain to [rank-and-file] grievances against supervisors;" (2) PBA constitution and by-laws do not permit the SOA to have its own treasury or control its own expenses for negotiations or legal proceedings; and (3) in late summer 1988, Shedden had to advise two patrolmen that Sergeant Linsky could not act as their PBA representative at a meeting. The Township argues that these additional allegations demonstrate: (1) the PBA [intends] to allow participation by both units in grievances, negotiations and administration; (2) the rank-and-file will dominate the representation of superior officers; and (3) PBA members are reluctant "to accept the distinction between the superior's allegiance to the public employer and their allegiance to the PBA."

Neither the SOA nor Lodge 102 filed supplemental position statements. There do not appear to be any substantial and material factual disputes which may more appropriately be resolved through the conduct of a formal hearing. Accordingly, the disposition of this matter is properly based upon our administrative investigation.

We did not intend to imply in our January 20 letter that the Shedden and Lenart incidents were not significant because they occurred several years ago, nor do we condone the conduct of Local 154 in filing charges against Shedden. We merely conclude based on the Camden Certification submitted by the SOA that if elected it will have a structure that gives it control over negotiations and

administration of contracts for superior officers. The Township's supplemental filings and argument do not change that opinion. Rather, the "Camden" certification creates a presumption that the SOA is qualified to represent the unit. However, if the SOA is certified here as the majority representative of superior officers and within a reasonable time after the certification,^{2/} a truly independent SOA structure is not in place or if the Local 154 affiliate representing the Township rank-and-file officers attempts to control the SOA's negotiations or legal proceedings, the Township (or the SOA) can file an unfair practice charge alleging illegal domination of interference. If the Commission finds a violation, certification could be revoked. Hudson Cty. If a superior officer fails in his duty to properly supervise officers under his command, the Township may discipline the superior officer whether he belongs to a PBA affiliate, an FOP affiliate or no labor organization. In sum, if the SOA does not abide by its certification, the Township will have recourse with the Commission. As the Appellate Division concluded in Hudson Cty., "when and if there is an actual violation, the [employer] may seek its remedy." See also Hanover Tp., D.R. No. 89-1, 14 NJPER 523 (¶19222 1988). The determination here is solely that an election is appropriate.

Accordingly, we direct that an election be conducted among the employees in the petitioned-for unit. The election shall be


^{2/} Here, a reasonable time would be 30 days after the certification.

conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, and including those in the military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who resigned, or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

Pursuant to N.J.A.C. 19:11-9.6, the Township is directed to file with us an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the unit, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by us no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously provided to the employee organizations with a statement of service filed with us. We shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

The exclusive representative, if any, shall be determined by a majority of the valid votes cast in the election. The election shall be conducted in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Edmund G. Gerber
Director of Representation

DATED: February 23, 1989
Trenton, New Jersey