

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

In the Matter of

CITY OF PATERSON,

Public Employer,

-and-

DOCKET NO. RO-79-170

PATERSON HOUSING POLICE,
PBA LOCAL 274,

Petitioner.

Appearances:

For the Public Employer
Leonard Jacoby, Director

For the Petitioner
Philip H. Mizzone, Esq.

DECISION

On February 22, 1979, a Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission (the "Commission") by the Paterson Housing Police, PBA Local 274 ("Local 274") seeking a collective negotiations unit consisting of patrolmen, sergeants, lieutenants, and captain employed as housing police by the City of Paterson (the "City"). The undersigned has caused an administrative investigation to be conducted into the matters and allegations involved in the Petition in order to determine the facts.

Based upon the administrative investigation to date, the undersigned finds and determines as follows:

1. The disposition of this matter is properly based upon the administrative investigation herein, it appearing that no substantial and material disputed factual issues exist which may more appropriately be resolved after an evidentiary hearing. Pursuant to N.J.A.C. 19:11-2.6(c), there is no necessity for a hearing where, as here, no substantial and material factual issues have been placed in dispute by the parties.

2. The City of Paterson is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), is the employer of the employees who are the subject of this Petition, and is subject to the provisions of the Act.

3. The Paterson Housing Police, PBA Local 274 is an employee representative within the meaning of the Act, and is subject to its provisions.

4. The Paterson Housing Police Supervisors Association is an employee representative within the meaning of the Act, and is subject to its provisions.

5. Local 274 seeks to represent a unit of housing police including patrolmen, ^{1/} sergeants, lieutenants and captain employed by the City. Approximately 33 individuals are employed in these classifications: 29 patrolmen, 3 sergeants, and 1 captain. ^{2/}

1/ This title would appear to include an individual employed as a policewoman.

2/ The investigation does not reveal that any individual is currently employed as a lieutenant.

6. Local 274 currently represents a unit comprised exclusively of personnel in the rank of patrolman. The unit description excludes superior officers in the rank of sergeant and above. ^{3/}

7. The Paterson Housing Police Supervisors Association currently represents a unit consisting of superior officers.

8. Copies of collective negotiations agreements provided in the investigation reveal that separate units of patrolmen and superior officers have been recognized by the employer since at least 1975, during which period two negotiated agreements have been entered into for each unit. The rank and file unit of patrolmen was in existence prior to 1975.

9. On May 18, 1979, the parties were advised by the undersigned that the Petition proposed an inappropriate unit for the following reasons:

The Commission's policy with respect to the appropriate unit structure of police units has been expressed in numerous decisions, and has consistently maintained that an inherent conflict of interest exists between superior officers and patrolmen requiring a separate unit structure for these employees. ^{4/} In

^{3/} Recognition Clause of collective negotiations Agreement, effective January 1, 1977 through December 31, 1978.

^{4/} See, for example, In re City of Union City, P.E.R.C. No. 70 (1972); In re Borough of Sayreville, D.R. No. 76-27, 2 NJPER 85 (1976), aff'd P.E.R.C. No. 76-35, 2 NJPER 174 (1976), aff'd App. Div. Docket No. A-3385-75 (unpublished opinion), pet. for certif. denied, 75 N.J. 29 (1977); In re Borough of South Plainfield, D.R. No. 78-18, 3 NJPER 349 (1977); and In re Borough of Fair Lawn, D.R. No. 79-30, 5 NJPER 165 (¶ 10091 1979).

certain exceptional circumstances, where the complement of employees is few in number, the Commission has viewed the potential for conflict of interest as de minimis in nature and has permitted the formation of such units.^{5/} However, the facts in the Hanover and Rockaway decisions, supra, footnote 5, indicate that the Commission's allowance of the mixed unit structure was in the context of the creation of a collective negotiations unit where employees have had no history of prior representation.

In the instant matter there is a considerable period of existing historical practice wherein two separate employee units have been recognized. The employer herein opposes the consolidation of the two negotiations units.

In Union City, supra, footnote 4, the Commission concluded its analysis of appropriate unit structure in municipal police and fire departments by stating: "We are persuaded, however, after almost four years of 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 Commission, in In re Borough of Sayreville, supra, footnote 4, relied upon the Union City rationale in making a unit determination in the context of a police department. The Appellate Division affirmed the Commission decision in Sayreville. Subsequently, the undersigned in 5/ In re Borough of Rockaway, E.D. No. 43 (1972); In re Township of Hanover, E.D. No. 41 (1971).

In re Borough of South Plainfield, supra, footnote 4, stated:

In view of the Appellate Division's affirmance of the Sayreville decision, the standards utilized by the Commission in this decision are now the standards by which all such cases will be determined. 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.

10. Accordingly, in the correspondence of May 18, 1979, the undersigned advised the parties that on the basis of the administrative investigation to date, and for the above stated reasons, the petitioned-for unit was prima facie inappropriate. Further, the undersigned advised the parties of their obligations pursuant to N.J.A.C. 19:11-2.6(a) to present documentary and other evidence as well as statements of position with respect to the above-titled matter. The undersigned stated that in the absence of the submission of a factual proffer which would place in dispute a substantial and material factual issue requiring the conduct of an evidentiary hearing, or which would present an "exceptional circumstance dictating a different result" the Petition would be dismissed.

Accordingly, in the absence of substantial and material disputed factual issues, and in the absence of a showing that there is an exceptional circumstance dictating a different result the undersigned, in application of the Commission policy that

requires a separate unit structure for superior officers and rank and file police personnel, determines that the petitioned-for unit herein is inappropriate and dismisses the within Petition.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: June 14, 1979
Trenton, New Jersey