

D.R. NO. 91-12

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

In the Matter of

CITY OF PASSAIC,

Public Employer,

-and-

F.O.P. LODGE 67,

Docket No. RO-91-13

Petitioner,

-and-

P.B.A. Local 14,

Incumbent.

SYNOPSIS

The Director of Representation orders that an election be conducted among the City's patrol officers to determine if they wish to be represented by the petitioner FOP Lodge 67, the incumbent PBA Local 14, or no representative.

The Director also orders that superior officers be removed from the unit of all police officers employed by the City. The unit existed before 1968. Bd. of Ed. v. Wilton, 57 NJ 404 (1971); South Plainfield, D.R. No. 78-18, 3 NJPER 349 (1977); and Town of West New York, P.E.R.C. No. 87-114, 13 NJPER 277 (118115 1987).

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Appearances:

For the Public Employer  
Eric M. Bernstein, Esq.

For the Petitioner  
Markowitz & Richman, attorneys  
(Stephen C. Richman, of counsel)

For the Incumbent  
Loccke & Correia, attorneys  
(Michael J. Rappa, of counsel)

DECISION AND DIRECTION OF ELECTION

On July 31 and September 19, 1990, the Fraternal Order of Police, Lodge 67 ("FOP") filed a representation petition and amended petition, seeking to represent a negotiations unit of patrol officers employed by the City of Passaic ("City"). The current unit is represented by PBA Local 14 ("PBA") and contains 130 police officers including patrol officers, sergeants, lieutenants, captains, deputy chiefs and chief. In its original petition, the

FOP sought to represent the entire existing unit and housing police officers. The amended petition deletes all superior officers and housing police officers.

The City objects to the original petition, claiming that the current unit is inappropriate because it includes superior officers, the deputy chiefs and the chief. It also objects to the inclusion of housing police officers because they are currently represented in a separate unit and have a current collective negotiations agreement. The City does not object to the amended petition.

The PBA opposes the original and amended petition, claiming it is untimely because the City and the PBA are awaiting an interest arbitration decision and because the showing of interest is only a "protest" against the progress of negotiations for a successor agreement.

The PBA also opposes the amended petition, claiming that the FOP should submit a new showing of interest for the down-scaled unit. It contends that the latest petition is untimely. It also asserts that the petition is "highly improper" because it was filed by a police sergeant, a title ostensibly excluded from the petitioned-for unit.<sup>1/</sup>

We have investigated the matters raised by the petition(s) and responses of the interested parties. N.J.A.C. 19:11-2.6. On

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<sup>1/</sup> I note that the amended petition was filed by a non-superior officer; accordingly, this has become moot.

October 17, 1990, we issued a letter tentatively disposing all issues raised and recommending that a secret ballot election be conducted.

PBA Local 14 has represented all City police officers for more than 25 years and has signed numerous collective negotiations agreements with the City, the last running from January 1, 1988 through December 31, 1989. The unit has about 84 patrol officers, 22 sergeants, 7 lieutenants, 6 captains, 2 deputy chiefs and a chief of police. The PBA has intervened in this matter. See N.J.A.C. 19:11-2.7.

The FOP's amended petition may be processed. In Holmdel Tp. Bd. of Ed., D.R. No. 80-29 6 NJPER 120 (¶11065 1980), the Director determined that, "once a valid question concerning representation has been raised concerning employees the petitioner may later seek to propose a different unit structure limited to some or all of the petitioned-for employees." See also Cty. of Atlantic, D.R. No. 81-19 7 NJPER 39 (¶12018 1981). To obtain a secret ballot election, the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act") and Commission policy require that a valid question concerning representation be raised during an open period for filing petitions. N.J.S.A. 34:13A-6(d) and N.J.A.C. 19:11-2.8.

The FOP's original petition is timely because it was filed after the parites' last collective negotiations agreement had expired and before a successor agreement was signed. Borough of Fair Lawn, D.R. No. 79-30, 5 NJPER 165 (¶10091 1979). I reject the

notion that the City's and PBA's mere participation in interest arbitration bars the petition. Such a bar would effectively thwart the legitimate aspirations of employees who have petitioned the Commission to conduct an election to determine the negotiations representative of their choice.

The FOP's showing of interest is adequate. N.J.A.C.

19:11-2.1 states:

The showing of interest shall not be furnished to any of the parties. The director of representation shall determine the adequacy of the showing of interest and such decision shall not be subject to collateral attack.

The FOP's original authorization sheets contain plain language, signed by an adequate number of unit employees, designating the FOP as the desired bargaining agent. Comparing the FOP's signature list with the City's list of police employees, (setting forth employees' names and titles), I find that the showing is also adequate for the amended petition. See Camden Cty. Health Services Center Board of Managers, D.R. No. 89-36 15 NJPER 379 (¶20161 1989) and N.J.A.C. 19:10-1.1.

I reject the PBA's assertion that the showing was merely a protest against the pace of collective negotiations. We do not ordinarily review such claims in the context of a representation proceeding. In Jersey City Medical Center, D.R. No. 83-19, 8 NJPER 642 (¶13308 1982) we stated:

The submission of a showing of interest by a petitioner is an administrative requirement for the purpose of ensuring that sufficient interest exists among employees on behalf of

the petitioner to warrant the expenditure of Commission resources in processing the petition. It is uniquely an administrative concern....  
[Id. at 643].

In City of Jersey City, E.D. No. 76-19, 2 NJPER 30 (1976), the Director stated:

The object of an investigation [into a challenge of the showing of interest] is not to ascertain whether the petitioning party still has the same support it did when it filed, or even to resolve each challenge to the showing of interest raised by the objecting party. The true desires of the employees involved, which is the essential question to be resolved, will best be ascertained by the holding of an election, not by drawn out evidentiary hearings. City of Jersey City, at 32.

See also Essex County, D.R. No. 85-25, 11 NJPER 433 (¶16149 1985). Accordingly, the amended petition meets all our procedural requirements and may be processed.

Where parties dispute the structure of a police unit, superior officers will normally be removed from a negotiations unit containing both rank and file officers and superior officers. The quasi-military structure of a police force creates a conflict of interest in a chain of command situation if superior officers are included in a mixed unit with non-superiors. Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404 (1971); South Plainfield, D.R. No. 78-18, 3 NJPER 349 (1977); Ridgefield Park, D.R. No. 90-29, 16 NJPER 376 (¶21150 1990). Superiors will be removed from a mixed unit even if that unit had collective negotiations agreements with the public

employer before 1968. See Town of West New York, P.E.R.C. No. 87-114, 13 NJPER 277 (¶18115 1987). There is no need to determine the extent of supervisory authority which superior officers have over patrol officers. Ridgefield Park. Accordingly, we order that all sergeants, lieutenants, captains, deputy chiefs and the chief of police be removed from the existing negotiations unit.

I conclude that the petitioned-for unit is the most appropriate unit for negotiations and direct an election among all patrol officers and patrol officers/detectives in this negotiations unit:

Included: All patrol officers and patrol officers/detectives employed by the City of Passaic.

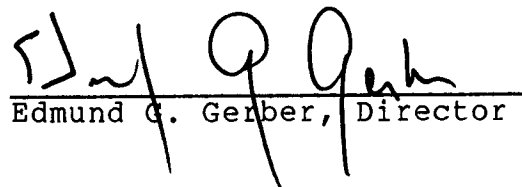
Excluded: All other police personnel including sergeants, lieutenants, captains, deputy chiefs and chief of police, all non-law enforcement employees, supervisory employees, managerial executives, confidential employees, craft employees and professional employees within the meaning of the Act.

The election shall be 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, 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 public employer is directed to file with us an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the units, 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 organization 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

DATED: November 8, 1990  
Trenton, New Jersey