

D.R. NO. 88-6

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

In the Matter of

BOROUGH OF AUDUBON PARK,

Petitioner,

-and-

Docket No. CU-87-81

PBA, LOCAL 257,

Employee Organization.

SYNOPSIS

The Director of Representation determines that the Borough of Audubon Park's police sergeant is not a supervisory employee and should continue to be included in a unit with patrol officers represented by the PBA, Local 257.

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Appearances:

For the Petitioner,
Brennan and Bernardin, Esqs.
(Daniel Bernardin, of counsel)

For the Employee Organization,
Thomas Fitzgerald, President

DECISION

On June 26, 1987, a Petition for Clarification of Unit was filed with the Public Employment Relations Commission ("Commission") by the Borough of Audubon Park ("Borough"). The Borough seeks to exclude the position of sergeant from a unit of police officers represented by the Policemen's Benevolent Association, Local 257 ("PBA"). The Borough asserts that the sergeant does not share a community of interest with the patrol officers and is a supervisor within the meaning of N.J.S.A. 34:13A-5.3.

We conducted an administrative investigation in this matter (N.J.A.C. 19:11-2.6). The administrative investigation reveals the following:

The PBA is the majority representative of a negotiations unit comprised of all police officers employed by the Borough of Audubon Park excluding, the chief of police.

The Borough's police department is composed of the Chief of Police, a sergeant, two patrol officers and two part-time special officers. The Chief works the day shift. All other employees are assigned to the evening and night shifts. The Borough anticipates replacing the two special officers with an additional full-time patrol officer in the near future. The second patrol officer was hired by the Police Committee in July 1986.

The Police Committee oversees the operation of the Police Department. It is composed of the mayor, who serves as the Director of Public Safety, and two members of the Borough Council. The Chief advises the Committee. He participates in the interview process, but does not vote in hiring decisions. No other member of the police department has any role in hiring decisions. According to the Borough, if the Chief was not available to assist the Committee with the interview process, the Sergeant would do so. That situation, however, has not occurred.

The Director of Public Safety is responsible for the discipline and/or discharge of police employees. Neither the Chief nor the Sergeant have the authority to discipline or discharge a police employee. The Director of Public Safety may consult the Chief with respect to disciplinary matters. According to the Borough, when the Chief is unavailable, the Director of Public

Safety would consult the Sergeant. The Borough has not used its discipline or discharge procedures and does not have established evaluation procedures for the police department.

The patrol officers and the Sergeant report to the Chief. The Chief reports to the Director of Public Safety who controls the operations of the department. The patrol officers and the Sergeant patrol the Borough during the evening and at night. They perform the same functions within the department. The only difference between their jobs is that the Sergeant substitutes for the Chief when the latter is on leave and the Sergeant earns a higher salary than patrol officers. The Chief is entitled to five weeks of vacation, 14 personal days and 14 sick days per year. The amount of leave time the Chief actually uses is unclear.

The Sergeant negotiates for the PBA. The Borough asserts that the Sergeant is a supervisor within the meaning of the Act and that his role as the Chief's substitute is inconsistent with his role as a negotiator for the PBA. Therefore, the Borough contends that the Sergeant does not share a community of interest with the patrol officers.

N.J.S.A. 34:13A-5.3 provides that except where established practice, prior agreement or special circumstances, dictate the contrary, no supervisor who has:

the power to hire, discharge, discipline, or to effectively recommend the same, have the right to be represented in collective negotiations by an employee organization that admits non-supervisory personnel to membership.

See Cherry Hill Tp. Dept. of Public Works, P.E.R.C. No. 30 (1970).

A finding that an employee holds supervisory status requires more than a bald assertion that an employee has or will have the authority to hire, discharge, discipline or effectively recommend such action. Evidence that the authority is exercised with some degree of regularity is required. Somerset County Guidance Center, D.R. No. 77-4, 2 NJPER 358, 360 (1976).

The sergeant has no authority to hire, discharge, discipline or to recommend such action. The sole reason the Borough alleges he is a supervisor is that he substitutes for the Chief. Mere possession of supervisory authority on a temporary basis when the permanent supervisor is unavailable is insufficient to support a claim of supervisory status, Union County Bd. of Social Services, D.R. No. 87-29, 13 NJPER 509 (¶18190 1987). Moreover, the Sergeant has not substituted for the Chief with respect to any employment matter. Effective recommendation requires more than the "mere rendering of an opinion which is subject to independent analysis by the hiring authority." Tp. of Teaneck, E.D. No. 23 (1971). We therefore find the Sergeant is not a supervisor.

While superior officers do not ordinarily share a community of interest with patrol officers, there are exceptions. In Union City, P.E.R.C. No. 70 (1972), the Commission explained why the interests of superior officers diverge from the patrol officers':

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]^{1/} 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....(Emphasis added).

In South Plainfield, D.R. No. 78-18, 3 NJPER 349 (1977), the Director of Representation said:

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

^{1/} The original decision uses the word "community." The decision should read "conflict."

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.

The small unit exception applies where superior officers do not have supervisory authority and there is no evidence that their loyalty to the employer is compromised. Borough of Merchantville, D.R. No. 80-38, 6 NJPER 305 (¶11147 1980). In Merchantville, the Director applied the small unit exception, holding a detective-sergeant was appropriately included in a wall-to-wall unit in an eleven person police department. There, the police committee and the director of public safety were responsible for hiring, discipline and discharge. Though the detective-sergeant was second in command and received a shift differential, he did not have supervisory authority and had not been placed in a position where his loyalty to his employer was compromised.


This case, like Merchantville, appears to fall within the small unit exception. The entire police department is composed of four employees. All employees perform the same work. The Sergeant and the patrol officers patrol the same shifts. There is no evidence the Sergeant exercises any significant authority over the patrol officers on a regular basis. Rather, it appears the Sergeant and the patrol officers perform the same work together as peers. There is no indication that their relationship changes when the sergeant substitutes for the Chief.

The Borough believes the Sergeant's role as a negotiator for the unit makes it impossible for him to function as a superior officer. However, the Sergeant's responsibilities as a superior officer differ from those of the patrol officers only when the chief is unavailable, and then only minimally.

The Borough asserts that the addition of a third patrol officer in the near future will create a conflict of interest. The Borough, however, has not indicated when a third patrol officer will be hired and how the Sergeant's responsibilities will be changed by the addition of another full time officer to the police force. At this time, the possibility of the Sergeant exercising additional authority over the patrol officers is too tenuous to support a finding of a conflict of interest. See Tp. of Neptune, D.R. No. 87-26, 13 NJPER 386 (¶18155 1987).

Accordingly, we find the Sergeant is not a supervisor within the meaning of the Act, there is not a conflict of interest between the Sergeant and the patrol officers and the Sergeant is appropriately included in the unit of non-supervisory police employees employed by the Borough. The Borough's petition is dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: September 3, 1987
Trenton, New Jersey