

D.R. NO. 96-19

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

In the Matter of

WOODBIDGE TOWNSHIP,

Public Employer,

-and-

Docket No. RO-96-79

WOODBIDGE POLICE DEPARTMENT
SUPERVISING OFFICERS ASSOCIATION,

Petitioner,

-and-

PBA LOCAL NO. 38,

Intervenor.

WOODBIDGE TOWNSHIP,

Public Employer-Petitioner,

-and-

Docket No. CU-96-35

PBA LOCAL NO. 38,

Employee Representative.

SYNOPSIS

The Director of Representation severs superior officers from a unit of police patrol officers and orders an election among the superiors. The Director finds that the size of the department, as well as the superiors' exercise of significant authority for discipline and direction over rank-and-file officers, creates an intolerable conflict of interest which requires the separation of superiors into their own unit. West New York, P.E.R.C. No. 87-114, 13 NJPER 277 (¶18115 1988).

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Appearances:

For the Public Employer
Genova, Burns, Trimboli & Vernoia, attorneys
(James M. McGovern, of counsel)

For the Petitioner
Schneider, Goldberger, Cohen, Finn, Solomon, Leder &
Montalbano, attorneys
(James M. Mets, of counsel)

For the Intervenor/Employee Representative
Loccke & Correia, attorneys
(Richard D. Loccke, of counsel)

DECISION AND DIRECTION OF ELECTION

On January 4, 1996, the Woodbridge Township Police Department Supervising Officers Association filed a Petition for Certification of Public Employee Representative with the Public Employment Relations Commission. The Association seeks to represent a collective negotiations unit of approximately 44 sergeants, lieutenants and captains employed by the Woodbridge Township Police Department. The superior officers are currently represented by PBA Local 38 in a broader unit of approximately 200 police officers, which includes both superiors and rank-and-file officers.

On February 23, 1996, the Township filed a Petition for Unit Clarification seeking to remove the sergeants, lieutenants, and captains from the PBA unit. Both the Supervising Officers Association and the Township contend that the superiors are supervisors within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., and that a substantial actual conflict of interest exists between superior officers and rank-and-file police. The PBA objects to the removal of superiors from its unit. It cites the long, stable relationship between its existing unit and the Township.

The contract between the Township and the PBA expired on December 31, 1995. As there is no contract currently in effect for the petitioned-for superiors, the representation petition is timely filed. See N.J.A.C. 19:11-2.8.

The petition is accompanied by a sufficient showing of interest. The PBA questions the language of the showing of interest. N.J.A.C. 19:11-2.1 requires showings of interest in support of representation petitions to comply with N.J.A.C. 19:10-1.1(25), which defines showing of interest as "...written authorization cards or petitions, signed and dated by employees..., authorizing the employee organization to represent such employees for the purpose of collective negotiations;..." The showing submitted by the Association in support of its petition comports with the Rule requirement concerning showings of interest.

* * *

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

The Woodbridge Police Department consists of about 200 police personnel: it is headed by the Chief of Police, and operates under a strict chain of command. Under the Chief is a deputy chief, six captains, 13 lieutenants, 25 sergeants, and approximately 150 rank-and-file police officers.

The Department is structurally organized into five divisions: Radio Patrol, Administration, Detective Division, Operations, and Communications. The Patrol Division, which is the largest division, is headed by a captain. Patrol Division personnel are organized into 12 squads. There are 16 sergeants in the Patrol Division, 12 of whom are assigned to head one of the patrol squads. Eight lieutenants function as shift commanders in the Radio Patrol

Division. The Administrative Division, which includes Internal Affairs, is headed by a captain. Two lieutenants report to the captain. The Detective Division includes Narcotics and is headed by a captain and one lieutenant and seven sergeants report to the captain. The Operations Division is headed by a captain, who is assisted by a lieutenant. The Communications Division is headed by two captains with one lieutenant and two sergeants reporting to the captain.

Woodbridge Township is a civil service employer and is within the jurisdiction of the State Department of Personnel. The civil service job description for police captain defines the position as:

"Under supervision of the Chief or deputy chief of police, has charge of subordinates engaged in activities intended to provide assistance and protection for persons, safeguard property, assure observance of the laws and apprehend lawbreakers...."

Under examples of work, the job description states in part that captains assign, discipline and supervise subordinates; have charge of a police station, review arrest books, police blotter, rounds books and property books; and supervise the preparation of reports. They may patrol areas to observe subordinates.

According to the Police Department Rules, captains are in charge of the division to which they are assigned. Captains assigned as commanding officers have direct control over all members and employees within their command. The Departmental Rules further provide, in part, that a captain is responsible for:

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.

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 division. He shall draft written charges and specifications, and submit these in duplicate to the Chief.

Organization and Assignment. Organization and assignment of duties within his unit to assure proper performance of department functions and those of his command.

The civil service job description for police lieutenant defines the position as: "Under supervision of a police captain, has charge of a police platoon or performs specialized supervisory police duties..." Under examples of work, the job description states in part that a lieutenant "gives suitable police assignments and instructions to sergeants and police officers, provides them with needed advice and assistance, checks their work....Directs criminal and non-criminal investigations and sees that appropriate police action is taken."

According to the Police Department Rules, lieutenants assigned as shift commanders are in charge of that part of the division under their jurisdiction. A lieutenant "exercises the same authority and has the same responsibilities as his commanding officer, subject to higher authority." (sic) In addition, Departmental Rules provide, in part, that a lieutenant is responsible for:

Good Order. The general good order of his command during his tour of duty to include proper discipline, conduct, welfare, field training and efficiency.

(1) The prompt investigation of every violation of rules and regulations and he shall assist the captain, if requested, in drafting written charges and specifications.

Personnel Complaints. Inquiry into personnel complaints against members and employees under his command in accordance with the provisions of this manual.

General. In addition to the matters outlined in the preceding paragraphs as responsibilities of all lieutenants, desk lieutenants shall be responsible for:

Roll Call. Conduct of prescribed roll calls, communication of all orders or other information at roll call and inspection and correction of his command as necessary.

The civil service job description for police sergeant defines the position as: "Under supervision of a police lieutenant...has charge of police activities....." Under examples of work, the job description states in part that a sergeant "visits and inspects beats, notes and reports irregularities...receives complaints and makes needed investigations...and takes appropriate action to assure that ...good order is maintained and police officers are doing their work properly."

According to Police Department Rules, sergeants are designed as "supervisory officers" and "shall have immediate supervision of all patrolmen and force members assigned to him and is subject to the same orders and directions of his superiors." In addition, Departmental Rules provide that supervisory officers are responsible for:

Supervision. Closely supervise the activities of their subordinates, making corrections where necessary and commending where appropriate.

Leadership. Provide on-the-job training as needed for efficient operations and coordination of effort when more than one member or employee is involved.

Direction. Exercise direct command in a manner that assures the good order, conduct, discipline and efficiency of subordinates....

Inspection. Inspection of activities, personnel and equipment under their supervision and initiation of suitable action in the event of a failure, error, violation, misconduct or neglect of duty by a subordinate.

Assisting Subordinates. ...Observe contacts made with the public by his subordinates and being available for assistance or instruction as may be required. He shall respond to calls of a serious nature....He should observe the conduct of the assigned personnel and take active charge when necessary.

General. ...in the absence of the shift commander, perform all the duties and exercise the authorities, responsibilities and functions of the shift commander. He shall report immediately to his superior, in writing, any violation of rules and regulations which he observes or is cognizant of.

The Association asserts that superior officers effectively recommend discipline. They have recommended oral reprimands and written warnings which have been approved up the chain of command by the Chief. They have had input into major discipline, including suspensions and discharge. Superiors have been witnesses at departmental disciplinary hearings before the Chief. The Association and the Township assert that the structure of the Department and the supervisory duties of the superiors create a substantial conflict of interest between superiors and police

officers. The PBA does not dispute that superiors have authority to issue oral and written reprimands, and have actually done so. It agrees that superiors bring rank-and-file officers up on disciplinary charges before the Chief, but points out that any officer can initiate charges against another officer; for instance, Internal Affairs officers can initiate disciplinary charges. It does not dispute that superior officers can effectively recommend discipline, and have had operational "input" pursuant to departmental protocol. It does not dispute that captains have testified in disciplinary proceedings, but notes that they may also be asked to testify against sergeants and lieutenants.

The PBA was first recognized by the Township as the exclusive representative of police officers, including superiors, in 1970. The unit has included all grades of officers except the Chief and deputy chief, for the last 26 years. The PBA asserts that no actual conflict of interest has occurred. Superiors have always been represented on the PBA's negotiations committee.

* * *

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...."

Further, 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 this case, it is undisputed that the superior officers discipline subordinates with reprimands and prefer charges against subordinate officers involving major discipline. Thus, the significant exercise of authority over rank-and-file officers creates an impermissible conflict of interest between the superior officers and the rank-and-file members of the PBA unit.

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 (¶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.... 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.]

Union City at 297.

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

So. Plainfield at 349.

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,^{1/} especially when public safety employees are involved." West New York at 279. In West New York, 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.

^{1/} West Paterson Bd. of Ed., P.E.R.C. No. 77 (1973).

West New York at 279.

The PBA relies on City of Harrison, P.E.R.C. No. 93-104, 19 NJPER 268 (¶24134 1993), in which the Commission declined to divide an existing top-to-bottom police unit. However, Harrison is not controlling. In Harrison, the employer opposed the assertion that a conflict of interest existed. Here, the employer is asserting the conflict. Further, in Harrison, the superiors were not cloaked with authority to discipline or reprimand employees; rather, the duties of superiors were virtually identical to those of rank-and-file.

Based upon the size of the police force here, as well as the responsibilities and authority of superiors to discipline and assign the workforce, I find that the conflict of interest between superiors and police officers requires the separation of the superiors into their own unit.

Accordingly, the superiors are hereby removed from the PBA unit. I direct an election among the unit of sergeants, lieutenants and captains to determine if a majority wish to be represented by the Woodbridge Township Police Department Supervising Officers Association.^{2/}

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

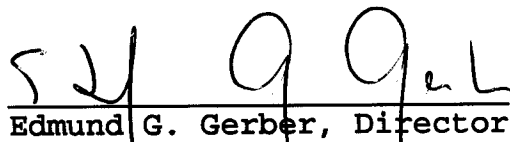
^{2/} No PBA affiliate has sought to intervene in the election petition.

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. 19:11-10.1, 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 Supervising Officers Association 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: May 31, 1996
Trenton, New Jersey