

D.R. NO. 92-8

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

In the Matter of

TOWN OF HARRISON,

Public Employer,

-and-

F.O.P. LODGE 116,

Docket No. RO-92-42

Petitioner,

-and-

P.B.A. LOCAL 22,

Intervenor.

SYNOPSIS

The Director of Representation orders an election among the petitioned-for unit of police personnel below the rank of sergeant. The Director rejects an argument by the incumbent union - the PBA - and the Town that restructuring the present unit by removing the non-superior officers from it would disrupt the Town's labor harmony. The Director also finds meritless the Town and PBA's argument that since the superior officers are not supervisors, no conflict of interest exists between them and the non-superior officers. The Director holds that the quasi-military nature of a police force and the inherent authority of superior officers in such a chain of command creates an impermissible conflict of interest that can only be cured by the removal of superior officers from such units. Accordingly, he finds the petitioned-for unit appropriate and directs an election among its members.

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Appearances:

For the Public Employer
Murray, Murray & Corrigan, attorneys
(David F. Corrigan, of counsel)

For the Petitioner
Daniel T. Nankivell, Secretary

For the Intervenor
Whipple, Ross & Hirsh, attorneys
(Donald B. Ross, of counsel)

DECISION AND DIRECTION OF ELECTION

On September 13, 1991, Harrison Fraternal Order of Police Lodge #116 ("FOP") filed a representation petition seeking to represent a negotiations unit of all patrolmen, plainclothes detectives, traffic officers and other police personnel below the rank of sergeant employed by the Town of Harrison ("Town"). The petitioned-for employees are currently represented by PBA Local 22

("PBA") in a unit with all other Harrison police employees below the rank of Chief (including the deputy chief, captains, lieutenants and sergeants). A sufficient showing of interest was submitted by FOP to support its petition.

Both the Town and PBA object to the petition. They argue that it would disrupt the Town's labor harmony to permit a restructuring of the current policemen's bargaining unit by removing non-superior officers from the unit with superior officers. The Town and PBA point to a nearly twenty year history of bargaining with an all-inclusive unit.

The Town and PBA also contend that the superior officers are not "supervisors" as defined by the Act, and therefore have no conflict of interest with the patrolmen.

We have investigated the matters raised by the petition. N.J.A.C. 19:11-2.6. It appears that there are no substantial and material factual issues in dispute which require a formal hearing for resolution. Accordingly, the disposition of the petition is properly based on our administrative investigation. The following facts appear.

There are 51 police employees of the Town of Harrison: 1 chief, 1 deputy chief; 3 captains; 4 lieutenants, 6 sergeants and 36 patrolmen. The department is divided into 6 squads - 5 patrol and 1 traffic. Three lieutenants and 2 captains head the patrol squads. The traffic squad is headed by a captain and the detective bureau is headed by a lieutenant. There are also 2 special squads, A and B.

The first formal collective bargaining agreement between the PBA (representing superior and non-superior officers) and the Town was signed in 1974. Prior to that, the parties had an informal meet and confer relationship.

Where superior officers and rank-and-file personnel are in one overall collective negotiations unit, superior officers will normally be removed from the unit even where the superior officers are not supervisors within the meaning of the Act. The quasi-military nature of a police force and the inherent authority of superior officers in such a chain of command creates an impermissible conflict of interest that can only be cured by the removal of superior officers from such units. South Plainfield, D.R. No. 78-18, 3 NJPER 349 (1977). See Town of West New York, P.E.R.C. No. 87-114, 13 NJPER 277 (¶18115 1987); Bor. of Roselle Park, D.R. No. 89-19, 15 NJPER 174 (¶20074 1989) and Tp. of Rochelle Park, D.R. No. 89-22, 15 NJPER 195 (¶20082 1989), aff'd App. Div. Dkt. No. A-5273-88T1 (3/19/90). See also, Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404 (1971); Ridgefield Park, D.R. No. 90-29, 16 NJPER 376 (¶21150 1990) and City of Passaic, D.R. No. 91-12, 17 NJPER 7 (¶22005 1990) (where, as here, the patrol officers filed the petition seeking to be represented in a unit separate from the superior officers.)

It is not necessary to determine that the superior officers are supervisors within the meaning of the Act to remove them from the unit. West New York; S. Plainfield; Rochelle Park. Superiors

will be removed from a mixed unit even if that unit had collective negotiations agreements or a bargaining relationship with the public employer before 1968. West New York; Ridgefield Park. The PBA and Harrison's contractual and meet and confer relationships stretching back sometime prior to 1974 will not alter this determination.

Accordingly, I find the petitioned-for unit appropriate and order an election to be conducted among the following employees:

Included: All patrolmen, plainclothes detectives, traffic officers and other police personnel below the rank of sergeant employed by the Town of Harrison.

Excluded: All other employees, chiefs, deputy chiefs, captains, lieutenants, sergeants, managerial executives, confidential employees, non-police employees, professional employees, craft employees and supervisors within the meaning of the Act employed by the Town of Harrison.

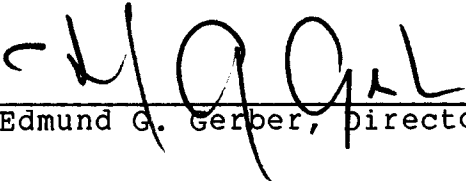
The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation 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: December 19, 1991
Trenton, New Jersey