

D.R. NO. 84-18

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE ADMINISTRATOR OF REPRESENTATION PROCEEDINGS

In the Matter of

TOWNSHIP OF SPRINGFIELD,

Public Employer/Petitioner,

-and-

DOCKET NO. CU-84-1

SPRINGFIELD TOWNSHIP PBA,
LOCAL 76,

Employee Representative.

SYNOPSIS

The Administrator of Representation Proceedings, on the basis of an administrative investigation, determines that superior officers should be excluded from the existing unit containing rank and file personnel. The Commission presumes that superior officers have an inherent conflict of interest with rank and file personnel. The Petitioner did not produce any evidence to demonstrate that any exceptions to this policy existed.

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE ADMINISTRATOR OF REPRESENTATION PROCEEDINGS

In the Matter of

TOWNSHIP OF SPRINGFIELD,

Public Employer/Petitioner,

-and-

DOCKET NO. CU-84-1

SPRINGFIELD TOWNSHIP PBA,
LOCAL 76,

Employee Representative.

Appearances:

For the Public Employer
Stephen Koppenkin, attorney

For the Employee Representative
Loccke & Correia, attorneys
(Richard Loccke of counsel)

DECISION

On July 1, 1983, the Township of Springfield ("Township") filed a Petition for Clarification of Unit with the Public Employment Relations Commission ("Commission"), seeking to exclude superior officers from a collective negotiations unit of police officers (patrolmen, sergeants, lieutenants and captains).

Springfield Township PBA, Local 76, ("PBA") is the recognized exclusive representative of the above-described unit of employees. The PBA opposes the removal of the superior officers from the existing unit.

In accordance with N.J.A.C. 19:11-2.6, undersigned has caused an administrative investigation to be conducted into the matters involved in the Petition in order to determine the facts. On the basis of the administrative investigation 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 factual issues exist which may more appropriately be resolved after an evidentiary hearing. Pursuant to N.J.A.C. 19:11-2.6(b), 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 Township of Springfield is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), is the employer of the employees who are the subject of this Petition, and is subject to the provisions of the Act.

3. Springfield Township PBA, Local 76, is an employee representative within the meaning of the Act, and is subject to its provisions. The PBA is currently the exclusive representative of all Township police officers (approximately 36) including patrolmen (25), sergeants (5), lieutenants (5) and captain (1). The chief of police is excluded from the unit.

4. The Township seeks the removal of the sergeants, lieutenants and captain from the existing police unit, alleging

that: (1) the superior officers are supervisors within the meaning of the Act; (2) the captain is a managerial executive and confidential employee within the meaning of the Act; and (3) there is an inherent conflict of interest between superior officers and the rank and file police officers.

5. The PBA contends that the superior officers are not supervisors within the meaning of the Act, and, even if found to be supervisors, a pre-1968 established practice exists which would apply as an exception to their removal. The PBA also contends that there is no conflict of interest between superior officers and rank and file police officers.

In In re Borough of South Plainfield, D.R. No. 78-18, 3 NJPER 349 (1977), the Commission's policy with respect to police department personnel was synthesized. The Director of Representation stated:

There is now a long line of Commission decisions on the question of whether superior officers may be included in negotiations units with patrolmen. The standards utilized by the Commission in reaching these determinations are presented in In re City of Elizabeth, P.E.R.C. No. 71 (1972), In re City of Union City, P.E.R.C. No. 70 (1972), and City of Camden, P.E.R.C. No. 52 (1971). Generally, these decisions provide that, 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 patrolmen and superior officers 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.

Moreover, in the South Plainfield matter, supra, the Director of Representation went on to express the standard by which all such future cases would be determined; namely, that:

... in cases involving police departments, 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 rank and file personnel.

The PBA has not supported its "established practice" claim with any documentary material. Furthermore, the Springfield Police Department is not a small force, where conflict of interest is arguably de minimis.

It thus appears to the undersigned, based on the absence of exceptional circumstances as contemplated by South Plainfield,

supra, that a unit clarification determination severing lieutenants and captains from the unit with patrolmen is appropriate herein. ^{1/}

On January 6, 1984, the parties were reminded of their obligations under N.J.A.C. 19:11-2.6, to submit any additional statements of position together with documentary evidence in support of their positions and were afforded an additional opportunity within which to respond. The undersigned advised the parties that in the absence of the issues warranting the convening of an evidentiary hearing, the undersigned would issue a decision removing the superior officers from the existing unit.

Accordingly, there being no further proffers from the parties, the undersigned clarifies the collective negotiations unit to exclude superior officers effective upon the expiration of the parties' current collective negotiations agreement.

BY ORDER OF THE ADMINISTRATOR
OF REPRESENTATION PROCEEDINGS


Joel G. Scharff, Administrator

DATED: January 24, 1984
Trenton, New Jersey

^{1/} Inasmuch as a determination in this matter contemplates the removal of all superior officers from the current unit, there is no need in this proceeding to determine the employee status of the captain.