

E.D. NO. 76-27

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF SAYREVILLE,
Public Employer,

Docket No. CU-174

-and-

POLICEMEN'S BENEVOLENT ASSOCIATION
OF SAYREVILLE, LOCAL #98,
Petitioner.

SYNOPSIS

The Hearing Officer recommended that Sergeants and Lieutenants be included in a negotiations unit with Patrolmen, finding the Superior Officers not to be supervisors within the meaning of the New Jersey Employer-Employee Relations Act and finding no conflict of interest in their inclusion with Patrolmen. Exceptions were filed by the Public Employer. The Executive Director, in reversing the Hearing Officer, finds there to be a conflict of interest between the Superior Officers and the Patrolmen and determines that the Superior Officers cannot be included in the negotiations unit with the Patrolmen.

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OF SAYREVILLE, LOCAL #98,
Petitioner.

Appearances:

For the Public Employer, Blanda & Blanda, Esqs.
(Mr. Robert A. Blanda, of Counsel)

For the Petitioner, Weinberg, Manoff & Dietz, Esqs.
(Mr. Irving Weinberg, of Counsel)

DECISION

A Petition for Clarification of Unit was filed with the Public Employment Relations Commission by the Policemen's Benevolent Association of Sayreville, Local #98 (the "P.B.A.") seeking a clarification regarding the composition of a unit of employees represented by the P.B.A. and employed by the Borough of Sayreville (the "Borough"). A hearing was held on April 23 and 30, 1975 before Hearing Officer Elizabeth Toth at which the parties were given the opportunity to present evidence, to examine and cross-examine witnesses, and to argue orally. A legal memorandum was filed with the Hearing Officer on June 2, 1975 and on October 21, 1975, the Hearing Officer issued her Hearing Officer's Report and Recommendations, a copy of which is attached hereto and made a part hereof. Thereafter, timely exceptions to the Hearing Officer's Report and Recommendations were filed by

the Borough. The undersigned has considered the entire record in this proceeding including the Hearing Officer's Report and Recommendations and the exceptions filed thereto and, on the basis of the facts in this case, finds:

1. The Borough of Sayreville is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, as amended, and is subject to its provisions.

2. The Policemen's Benevolent Association of Sayreville, Local #98, is an employee representative within the meaning of the Act and is subject to its provisions.

3. The P.B.A. has filed a petition for clarification of unit, seeking the inclusion of Sergeants and Lieutenants in the unit which it represents. The Borough will not agree to the inclusion of the disputed titles in the unit. Accordingly, there is a question regarding the composition of the unit and the matter is properly before the undersigned for determination.

4. The Police Department of the Borough consists of the Chief, one Deputy Chief, two Captains, eight Lieutenants, eight Sergeants, and 41 Patrolmen.

In 1970, there was a one-year contract between the instant parties which included all members of the Police Department except the Chief. Also, the two-year contract covering 1971 and 1972 included all members of the Department except the Chief. However, for the 1973-1974 period, the Sayreville Police Superior Officers negotiated and signed a separate agreement with the Borough. Likewise, the Patrolmen negotiated a two-year

agreement with the Borough which covered only Patrolmen. The instant dispute arose in the course of negotiations for a successor agreement, the P.B.A. seeking again to include Superior Officers in the unit it represents.

The Hearing Officer found that Sergeants and Lieutenants are not supervisors within the meaning of the Act, i.e., they do not have the power to hire, discharge, discipline or to effectively recommend the same, and that there is no or only a de minimus conflict of interest if those officers are included in the same negotiations unit with Patrolmen. Therefore, she recommended that there be a single unit composed of Patrolmen, Sergeants and Lieutenants represented by the P.B.A.

The Borough excepted to the findings and recommendations of the Hearing Officer. For reasons to be discussed, and consistent with the Borough's exceptions, the undersigned concludes that the Sergeants and Lieutenants should not be included in the unit with Patrolmen.

As is pointed out in the Borough's exceptions, the record does indicate that a shift commander, in this case and normally a Lieutenant, did send a Patrolman home who was not in proper uniform (Exhibit R-8). Additionally, contrary to the Hearing Officer's statements, the examples of review boards discussed by the Hearing Officer did not include Patrolmen as members of such boards (Exhibits R-9 and R-10). Furthermore, it is found that an effective recommendation as to discipline which was followed by the Chief emanated from at least one such

review board (Exhibit R-10) which included a Lieutenant on such board. Also, the Lieutenant who testified on behalf of the P.B.A. did testify that in May, 1974 he made a written report of misconduct by a Patrolman and that, as a result, the Patrolman was relieved of one job and assigned to another. He also testified that he makes recommendations to the Captain regarding vacations and days off.

The record indicates that, in instances in which, due to the absence of a Lieutenant, a Patrolman is at the desk, the Patrolman cannot discipline another Patrolman but must wait until the Lieutenant returns.

Additionally, it is noted that the Rules and Regulations, Revision of 1958 (Exhibit R-1), and so-called Suggested Rules, Regulations, and Procedures adopted in September, 1969 (Exhibit R-2) clearly confer upon the disputed ranks substantial authority over and responsibility for employees under their command.

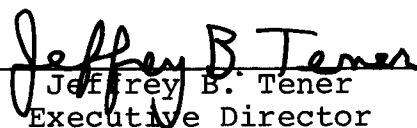
5. Based upon the above, the undersigned concludes that Sergeants and Lieutenants cannot be included in the unit with Patrolmen. Even if the Hearing Officer's recommendation that such officers not be found to be supervisors within the meaning of the Act were adopted,^{1/} the unit sought by the P.B.A. would

^{1/} That disposition would be most favorable to the P.B.A. However, there is no claim or evidence in support of a finding of past practice, prior agreement or special circumstances which would justify the existence of a mixed unit of supervisors and nonsupervisors. See In re West Paterson Board of Education, P.E.R.C. Nos. 77 (September 14, 1973) and 79 (December 28, 1973). Thus, only if the Superior Officers in
(Continued)

not be appropriate. As discussed, there is an actual and potential substantial conflict of interest between the Patrolmen on the one hand and the Sergeants and Lieutenants on the other hand.^{2/} The requisite community of interest between the Patrolmen and the Superior Officers is not present.

Accordingly, the undersigned finds, determines and orders that the unit be clarified to exclude the Sergeants and Lieutenants from the unit of Patrolmen represented by the P.B.A.

BY ORDER OF THE EXECUTIVE DIRECTOR


Jeffrey B. Tener
Executive Director

DATED: Trenton, New Jersey
April 2, 1976

- 1/ (Continued) question are not supervisors within the meaning of the Act can the P.B.A. possibly prevail in this matter.
- 2/ See Bd. of Education of West Orange v. Wilton, 57 N.J. 404 (1971) and In re City of Union City, P.E.R.C. No. 70 (1972). The facts in the instant case are quite similar to the facts in City of Union City where the Commission excluded Superior Officers from a unit of Patrolmen even though it found Superior Officers not to be supervisors within the meaning of the Act. Compare with the dissimilar facts in In re Township of Hanover, E.D. No. 41 (1971) and In re Borough of Rockaway, E.D. No. 43 (1972) in which Superior Officers in those departments were permitted to be included in negotiating units with Patrolmen in the absence of evidence indicating a substantial conflict of interest.

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF SAYREVILLE,

Public Employer,

-and-

Docket No. CU-174

P.B.A. LOCAL 98,

Petitioner.

Appearances:

Messrs. Blanda & Blanda
By Robert A. Blanda, Esquire
For the Public Employer

Irwin Weinberg, Esquire
For the Petitioner

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

A petition for certification of public employee representative was filed with the Public Employment Relations Commission by P.B.A. Local 98 (hereinafter Petitioner) on January 2, 1975. On February 19, 1975 the petition was amended to be a petition for Clarification of Unit after a conference held with Commission Staff Members. Pursuant to a Notice of Hearing dated March 5, 1975 and an Order Rescheduling Hearing dated April 4, 1975, hearings were held before the undersigned Hearing Officer on April 23, 1975 and April 30, 1975 in Sayreville, New Jersey at which all parties were given an opportunity to examine and cross-examine witnesses, present evidence, and argue orally. A legal memorandum on behalf of the Public Employer was submitted on June 2, 1975. Upon the entire record in this proceeding, the Hearing Officer finds:

1. The Borough of Sayreville is a Public Employer within the meaning of the Act and is subject to the provisions of the Act.

2. The Policemen's Benevolent Association, Local 98 is an employee representative within the meaning of the Act.
3. The public employee representative represents for the purpose of collective negotiations patrolmen of Borough of Sayreville and seeks to have the unit clarified to include sergeants and lieutenants.

Statement of Facts

The Sayreville Police Department consists of the chief, a deputy chief, two captains, eight lieutenants, eight sergeants and forty-one patrolmen (P-5). The Petitioner seeks to represent for the purpose of collective negotiations patrolmen, sergeants and lieutenants. The petition originally included patrolmen, sergeants, lieutenants and captains; however, Petitioner withdrew captains from their submission. (TR 1-11,14,20).

The Sayreville Police Department operates on a 24-hour rotating shift with three eight-hour shifts in each day (TR 2-77). The compliment of personnel is divided into four shift sections: "A," "B," "C," and "D," and has a Traffic Division, Detective Division, Juvenile Division, Narcotics Division, Identification Division and Administration Division. (P-5).

The Lieutenant who directs each shift section is called a Station Commander and is responsible for carrying out all police department functions. He sees to it that all calls are answered; that all personnel including the shift sergeant are informed as to what is going on within the Department, and takes note of who is on the shift. Further, he inquires as to what transpired on the previous shift. The Lieutenant is provided with a daily report which he distributes to the men on the shift (TR 2-12), and he is responsible to the Captain. (P-5).

When the Lieutenant is unable to man the desk, the Sergeant replaces him and performs all of the above-described functions. If the Sergeant is unable to replace the Lieutenant, the Senior Patrolman on the shift will do so and perform all of the above-described duties of the Lieutenant (TR 2-13).

The chain of command in the Traffic Division is different in that there is no Sergeant, though this Division is also responsible to the Captain. (P-5). In the Narcotics Division there is a Sergeant, but no Lieutenant. This Sergeant answers to the Deputy Chief who, in turn, is responsible to the Chief. The Juvenile and Detective Divisions include detectives, sergeants and lieutenants who are responsible to the Deputy Chief who, in turn, answers to the Chief. (TR 2-58,59). The Identification Division is comprised of two patrolmen who also answer to the Deputy Chief.

Fringe benefits are the same for patrolmen, sergeants and lieutenants in terms of clothing allowance, longevity, insurance, mileage reimbursement, educational training opportunities and vacations. Salary is an exception: there is a differential in pay based on rank (TR 2-82); however, the difference in salary is not dispositive of any of the issues, and was not further elaborated by either of the parties.

Some mention must be made as to the negotiating history between the Public Employer and the P.B.A. Contracts were negotiated covering 1970 and 1971-1972 and included all the members of the police force except the Chief. In the 1973-1974 negotiations the superior officers including the Chief and Deputy Chief presented their demands separate from the patrolmen, and the Public Employer and Superior Officers signed a document separate and apart from the agreement which covered the patrolmen. In the course of commencing negotiations for an agreement for the current year questions arose leading to this hearing.

In addition to testimony regarding the operation of the department, numerous documents were introduced and examined. Included among them were the "Rules and Regulations established for the Police Department of Sayreville" (R-1) and the subsequent "Suggested Rules, Regulations, Procedure" (R-2) which set out the duties of the various ranks, correspondence between parties and numerous memoranda from the Captains and the Chief to the other personnel.

Issues Presented to the Hearing Officer:

1. Whether Sergeants and Lieutenants are Supervisors within the meaning of the Act and therefore not appropriately members of a negotiating unit which includes patrolmen?
2. Whether the inclusion of Sergeants and Lieutenants in the negotiating unit of Police Officers presents a conflict of interest as is proscribed by Board of Education of the Town of West Orange v. Wilton, et al, 57 N.J. 404 (1971)?
3. What effect, if any, have the separate "Negotiations" and "contract" entered into by the Sergeants, Lieutenants and Captains in 1973-1974 had on the above conclusions?

Discussion and Findings

The Public Employer questions the appropriateness of a unit which includes Patrolmen, Sergeants and Lieutenants for the purposes of collective negotiations. ^{1/} N.J.S. 34:13A-5.3(7) provides that Supervisors who have the power to hire, discharge, discipline or to effectively recommend same, do not have the right to be represented in collective negotiations by an employee

1/ The petition originally included patrolmen, sergeants, lieutenants and captains; however, petitioner has withdrawn captains from their submission (TR 1-16,20).

organization that admits non-supervisory personnel to membership, except where established practice, prior agreement or special circumstances dictate the contrary.

In order to determine if Sergeants and Lieutenants are supervisors within the meaning of the Act it is necessary to examine their duties and determine if the duties described in the Rules and Regulations accurately reflect their duties, or are the Rules and Regulations merely guidelines, and do the duties as exercised, vary from the dictates of the Rules.

The Borough of Sayreville has two booklets which contain the Rules and Regulations under which the Police Department functions. The first booklet, Rules and Regulations Established for the Police Department of Sayreville, N.J. (hereinafter Rules 1958) (R-1) was approved and adopted September 17, 1958. A subsequent booklet, Suggested...Rules, Regulations, Procedures (hereinafter Rules 1969) (R-2) embodies rules and regulations approved and adopted by resolution on September 17, 1969 which among other things provides that "if there be any inconsistency between the Rules and Regulations established by the resolution of September 17, 1958 and the new substituted Article 12, that the Rules and Regulations hereby adopted and substituted for the previous Article 12 shall govern and control." (R-2, p.1).

Article 12 in Rules 1958 embodies "General Rules and Regulations". Rules 1969 has taken the same basic concepts, codified them differently, and revised them to be more readily referable, readable, and understandable. Five of the first six pages of Rules 1969 are definitions and terminology. It is true that Article 12 in Rules 1958 does not include the duties and responsibilities of the Members of the Police Force; this information is included in Articles 4 through 11 of Rules 1959. However, keeping in mind the caveat in

the 1969 resolution about any inconsistency, the two booklets can be read together, one supplementing the other.

The Lieutenant's duties are specifically listed in Rules 1958; none of the listed duties, however, indicate that Lieutenants interview job applicants, or hire any personnel. (TR 2-11). While Rules 1958 indicates that a lieutenant is "responsible...for the condition and discipline of the men", ^{2/} Rules 1969, though it does not specifically identify lieutenants, lists as a job responsibility of Shift Commanders (Lieutenants serve in this capacity) not only responsibility for "the efficiency, discipline and morale of all Members of their command", but it requires that Shift Commanders "...submit written reports, through proper channels, concerning incompetency, misconduct, neglect of duty, or violations of rules and regulations by their subordinates..." and that "These reports...contain recommendations as to the action to be taken." ^{3/} However, in actual practice if a patrolman appeared for duty out of uniform, or in need of a hair cut, the Lieutenant would not send the patrolman home. He might make suggestions to the offending party as to how to correct the problem, and he would report the matter to the Captain who would determine the discipline to be meted out. (TR 2-15,36,37). According to testimony from Lieutenant Connors, he would not make up charges if they were to be made up with respect to discipline; the Chief makes them up. (TR 2-19). Further, requests for vacation or days-off must pass through the Lieutenant's hands so that he may advise the Captain if adequate personnel coverage is scheduled to permit the requested vacation. The Captain, however, is the one who approves or rejects the request for such time-off. (TR 2-17,18).

^{2/} R-1, page 13 § 4.

^{3/} R-2, page 27 § 127; TR 2-31.

The Shift Commander would also obtain important information from the shift being relieved regarding special traffic problems, a crime that might have occurred, etc., to alert the oncoming shift to possible activity that might be required. (TR 2-63).

Lt. Connors testified further that if the occasion occurred that the Chief was not present, the Deputy Chief was not present and the Division Commander was not present, he, the Lieutenant would be in charge. If the Lieutenant had to be absent himself, he would then put his Sergeant in charge. (TR 2-41). There was no testimony as to the frequency of such an occurrence, nor was proof offered; however, the Lieutenant's testimony in this matter was affirmed by testimony obtained subsequently from Sgt. Zdan (TR 2-64 to 65) and Captain Sprague (TR 2-128 to 129).

Lieutenants have, on occasion, substituted for Captains, during vacation or illness. This substitution for a brief period of time does not, in fact, move the Lieutenant to a permanent supervisory status, any more than the temporary substitution of a Senior Patrolman for a Sergeant or Lieutenant would make the patrolman a Superior Officer, despite the fact that Captain Sprague testified that each had differing levels of responsibility and authority (TR 2-129).

Sergeants' duties are also covered in both Rules 1959 and Rules 1968. In Rules 1959, Article 10, they are required to "promptly obey the Order of all superior Officers and shall assist them in every way in the performance of their duty." ^{4/} They are directed to "carefully note every case of neglect, misconduct,

^{4/} R-1, page 17, Art 10. § 1

or other violation of the rules and regulations on the part of any member and... promptly report the same to the Chief or [his] immediate Superior Officer." ^{5/}

However, a Sergeant may not remove any member from his patrol without direct authority from a Superior Officer except in a case of emergency, and this was affirmed by testimony from Captain Sprague (TR 2-164). Rules 1969 does not specifically address itself to sergeants, per se; however, testimony elicited at hearing indicated that Sergeants might serve as Shift Commanders when a Lieutenant's absence so required. ^{6/}

At no place in either rule book is it a part of a sergeant's duty to hire or discharge another member of the force, nor can he effectively recommend same. Sgt. Zdan testified that recommendations regarding hire are not made by Sergeants or Lieutenants. (TR 2-62). This supported testimony to the same effect given by Lieutenant Connors (TR 2-11).

Sergeants make up the line-up of patrolmen in order to determine who will be assigned to each post. Sgt. Zdan testified that after he compiled his line-up and acquired the important information from the previous shift, he inspected the patrolmen as to their readiness for duty, gave them the pertinent information obtained from the previous shift and advised them which sections they were working. If any patrolman appeared for duty out of uniform or unfit to serve, or if there were a problem with any of the vehicles, he called the problem to the attention of the Lieutenant who would write up a report as previously discussed. When the patrolmen were on their respective assignments the Sergeant went on the road and patrolled the entire borough assisting wherever needed. Sgt. Zdan said:

^{5/} Id., § 4

^{6/} As P-5 indicates a Sergeant is the reanking officer in the Narcotics Division. He is responsible to Deputy Chief Hartman. Lt. Connors testified that Sergeants, when assigned to substitute for Lieutenants, would perform all of the described duties of the Lieutenant. He further indicated that should the Sergeant not be available, the duties would be performed by the senior patrolman (TR 2-13).

"Usually I go to just about every call that I could possibly make." (TR 2-64).

The evidence presented showed that, in practice, the desk officer or shift commander would report other police personnel to the Captain if they had committed an infraction of the rules (e.g. being unfit for duty, out of uniform, etc.), but the report would be that only - a report, with no recommendation for specific action to be taken. The action to be taken would be determined by the Captain (TR 2-67 to 69, 137, 160 to 164), ^{7/} or by the Chief with advice from the Captain. (TR 2-154).

Evidence submitted regarding the assignment to a specific shift (P-13, P-14) indicated that such assignments came from the Captain, as did notification to all personnel concerning the uniform of the day. (P-15). Testimony from Sgt. Zdan indicated that this was the method used to instruct the personnel of their specific duties.

Vacation dates are picked by seniority according to rank; however, only one person on a shift, irrespective of rank, may be on vacation at one time. All choices are subject to the approval of the Captain as are all requests for time off. (TR 2-73, 94 to 95). The Lieutenants verify that sufficient manpower is available before the Captain makes his decision regarding the vacation or time-off. (TR 2-166).

Based on the foregoing the Hearing Officer finds that Sergeants and Lieutenants do not hire or fire or effectively recommend same. As far as discipline is concerned Sergeants and Lieutenants in practice actually only make reports; they do not recommend any specific discipline for infractions of the rules, regulations or policy. (TR 2-80, 160 to 164). They are, in fact, allowed very limited discretion as to action they may undertake in the line of duty. Sergeants and Lieutenants must seek the advice of and instruction from

7/ The Captain might confer with the Chief before acting (TR 2-69).

the Captain, Chief or Deputy Chief before they may act outside the strict limitations imposed on them (TR 2-65). It is apparent that recommendations, if made, are subject to a procedure which provides for **independent** investigation of the facts and a subsequent determination of the appropriate disciplinary action. Therefore, the report of the officer filing the report with the Captain carries weight only to the extent that it is confirmed by facts developed at a hearing (R-8). No evidence or testimony was provided to indicate that Lieutenants or Sergeants in fact were called upon or exercised of their own volition, the power provided in Rules 1969.^{8/} If weight is to be given to the fact that a Lieutenant or Sergeant sits on a hearing board when convened subsequent to a written report of some infraction by a member of the force, then the same weight must be given to the presence of a Patrolman on each board as evidenced by R-9 and R-10. No allegation is made, however, that Patrolmen are supervisors within the meaning of the Act. Further, testimony from Captain Sprague indicated that Review Board findings were directed merely at determining fault. The Chief had the discretion as to the discipline (TR 2-154,155).

Captain Sprague testified that any police officer is free to make recommendations to the Chief regarding policy matters, but decisions concerning such recommendations lie with the top officers: The Chief, the Deputy Chief, and the two Captains (TR 2-128). Sergeants and Lieutenants never enunciate binding policy (TR 2-156). It is apparent from the evidence and testimony that the primary function of Sergeants and Lieutenants as to discipline is reportorial. Discipline is determined and meted out by the Chief unilaterally, or in conjunction

^{8/} R-2, page 27 § 127; TR 2-31 footnote 3 suprd

with a determination made pursuant to a hearing by a police board (TR 2-154). Therefore, Sergeants and Lieutenants are found not to discipline or effectively recommend same, and it having been established that they do not hire, fire or effectively recommend it, they are not found to be Supervisors within the meaning of the Act.

In reference to the second issue, the "determinative factor...in ascertaining the appropriateness of a unit is neither what [they want] but rather whether [their] inclusion in the unit will serve and not subvert the purpose of the Act, i.e. establishment and promotion of fair and harmonious employer-employee relations in the public service".^{9/} Admittedly, the decision in Wilton centered on the appropriateness of the membership of a specific supervisor within a supervisory unit. While Wilton may be distinguished on that basis, some of the language, with modifications to this instant matter, is very appropriate:

Ordinary considerations of employer-employee relations make it sensible to say that if performance of assigned duties by a particular [employee] bespeaks such an intimate relationship with management and policy-making function as to indicate actual or potential conflict of interest between him and other...personnel in a different or lower echelon of authority, such [employee] should not be admitted to the same negotiating unit. Admission would not be fair either to the other employees or to the employer. Obviously no man can serve two masters.^{10/}

Without restating the testimony and evidence already referred to in determining the first issue, it would appear that while Lieutenants and Sergeants act as Station Commanders, they are, in fact, allowed little discretionary latitude in their activities, except in cases of emergency. Even as

^{9/} Board of Education of the Town of West Orange v. Wilton, et al 57 NJ 404, at 416 (1971)

^{10/} Id., at 417.

Station Commander they are responsible to a Chief or Deputy Chief or Captain (TR 2-65). The fact that they might be the individuals who would write a report on a police officer based on infraction of the Rules and Regulations is not dispositive of the issue of conflict; the report does not contain a recommendation as to discipline. Discipline is decided by the Chief after an investigatory hearing is held. As a matter of fact, the rules provide that a patrolman could, if occasion demanded, report a Lieutenant or Sergeant for some infraction of the Rules (TR 2-97). While Lieutenants and Sergeants, in the course of their duties, have more responsibilities than patrolmen, these responsibilities do not bring them in conflict with the patrolmen, for all their responsibilities are directed at a smoothly functioning, well-integrated police force over which the top officers, i.e. Chief, Deputy Chief and Captains exercise control.

Disciplinary action has emanated from the Chief after Review Board hearings which were inquiries prompted by alleged violations of the Rules and Regulations or citizen complaints. In the opinion of the undersigned, conflict, if there be any, is de minimus. The record does not support the conclusion that there is a conflict of interest between the patrolmen and the others sought to be included; therefore, inclusion of Lieutenants and Sergeants in the negotiating unit of Police Officers does not present a proscribed conflict of interest.

Before a final recommendation can be made, due consideration must be given to the effect, if any, the separate negotiations and separate writing entered into in 1973-1974 by the Sergeants and Lieutenants, had on the appropriateness of the overall unit.

The Public Employer stated that both Employer and Employees sought direction in their earliest years of negotiating. The contracts covering 1970 and 1971-1972 included all members of the police force excluding the Chief.

In the 1973-1974 negotiations, however, the officers, excluding the Patrolmen but including the Deputy Chief and Chief, decided to present their own demands to the Public Employer. Testimony from Lt. Connors indicated that the superior officers did not formally organize: they did not elect officers nor incorporate, nor did they hold a ratification meeting after terms were agreed upon (TR 2-4 to 8), though the document was signed by the negotiators for the superior officers on October 18, 1973. The superior officers did not elect a grievance committee during the two years of the agreement though language provided for one (TR 2-8). Further, the superior officers have not since October 18, 1973 held even one meeting exclusively of Superior Officers. (TR 2-9). Sgt. Everhard stated that the Superior Officers had not formally organized, that they intended at all times to remain members of the PBA and did so remain (TR 2-47 to 49). He indicated that this was the feeling of the body as he understood it rather than his individual feelings. (TR 2-53). He, in fact, testified under cross-examination that his motive for separate negotiations was to have more say as to his specific rank (TR 2-51), and that the three members of the Superior Officers who acted as a negotiating team represented the individual ranks. (TR 2-54 to 55). Sgt. Everhard elaborated further saying that what the officers wanted basically was the entire P.B.A. contract, "but with special ramifications towards us in our individual ranks." (TR 2-56). Testimony from Captain Sprague was basically supportive of the statement made by Sgt. Zdan as to the intentions of and the rationale behind the superior officers in their desire to negotiate separately. (TR 2-107,116,51,54,55).

A review of the 1973-1974 contract negotiated for and ratified by Local 98 New Jersey State Policemen Benevolent Assn., Inc. (Patrolmen) indicates that Article I provides recognition of the P.B.A. as the exclusive collective

negotiations agent for all Patrolmen in the Borough Police Department. The agreement between the Borough and Superior Officers does not have such a recognition clause. The patrolmen's grievance procedure provides that a grievance may be raised by any individual police officer, the P.B.A. or the Borough. The grievance procedure established for the Superior Officers provided for the election of a grievance committee from amongst the superior officer who would review the grievance to see if it were justified; if it were, the Committee would present it to the Borough Council's full police committee. Testimony from Sgt. Zdan indicated that at no time during the life of the separate superior officers agreement was a grievance committee selected.

There apparently is a different pay scale between the ranks, a difference of one day in personal days allowed and a difference in the basis for vacation pay, none of which were dispositive of the issues raised.

The minor differences which exist in the two agreements for 1973-1974 and the fact of the existence of 2 separate writings memorializing terms of employment for patrolmen in one agreement and other officers in another document do not affect the conclusions and resultant recommendations of the undersigned.

In Township of Hanover^{11/} the Commission faced questions as to the supervisory (and managerial executive) status of the superior officers, in addition to a question of community interest and an actual or potential conflict of interest as proscribed by Wilton.^{12/} The rationale is applicable here with slight modification:

^{11/} E.D. 41, page 3

^{12/} Wilton, 57 N.J. 404 (1971)

While it is undisputed on the record that the desk officer is [at times] physically alone in the station...it is equally clear [that] the desk officer [station commander] has no power to "control" the department beyond the duties already described...[H]'s duties are pursuant to a routine established by the Chief, Deputy Chief [and Captains] and consist of the same activities whether or not his superior officers are present.

The duties of the Sayreville superior officers closely parallels the duties described in Hanover. All of the ranks are closely regimented and controlled by the Chief, Deputy Chief and Captains.

Certainly Hanover is distinguishable because it posed issues not included in the Sayreville matter. However, the same conclusions may be reached: the superior officers are not supervisors within the Act, and though, in the course of their duties they do direct patrolmen, the conflict which may arise from that direction is de minimus and outside the proscription of the Wilton case.

The decision rendered in the Borough of Rockaway^{13/} dealt with a force even smaller than Hanover (about 10 members with no Captains or Deputy Chief) yet the conclusions were the same for the same reasons:

It is evident from the record that within this 10 man police department the Chief is the predominating influence and force for the maintenance of discipline and that the inclusion within one negotiating unit of the ranks below Chief would not diminish or compromise departmental discipline.

The conflict of interest in Rockaway was also held to be de minimus applying Wilton standards.^{14/}

The police force in the City of Union City^{15/} was about twice the size of Sayreville's. One of the issues questioned the appropriateness of the inclusion of superior officers in the same unit with Patrolmen. The Commission

^{13/} E.D. 43

^{14/} 57 N.J. 404

^{15/} PERC 70

found the superior officers not to be supervisors within the meaning of the Act. However, they found the actual or potential conflict to be more than de minimus.

The superior officers were

found to show an active responsibility for the maintenance of discipline among the patrolmen. The duties and responsibilities of officers [were] such as to generate grievances among patrolmen and it may be reasonably anticipated that representation of both groups is one would be inimical both to the prosecution and resolution of many grievances.

Such cannot be said to be true in Sayreville. The superior officers below the rank of Captain do not dole out discipline, nor do they recommend same. Sayreville's superior officers' duties regarding discipline are merely reportorial. Interaction resulting from duties and responsibilities of sergeants and lieutenants have not generated grievances among the patrolmen in Sayreville. None of the conflict present in the Union case appears to be present in Sayreville.

Though the Rules require that Lieutenants make recommendations as to discipline, in practice it is not done. Though Captain Sprague testified to the effect that he knew of one instance where such recommendation was made, evidence supportive of the statement was not available nor was it later produced (TR2-154 to 155).

RECOMMENDATIONS

Based on all of the above, the undersigned recommends as follows:

1. That the Lieutenants and Sergeants not be found to be supervisors within the meaning of the Act.
2. That it be found that no substantial, actual or potential conflict of interest exists sufficient to require an exclusion of the Lieutenants and Sergeants from a unit of patrolmen.

3. That the appropriate unit be described as follows:

All Patrolmen, Sergeants and Lieutenants employed by the Borough of Sayreville, but excluding, Chief, Deputy Chief, Captains, Craft, Professional, Office Clerical employees, Managerial Executives, Non-Police and Supervisors within the meaning of the Act.

There is no question concerning the majority status of the PBA representation and no need for an election.


Elizabeth L. Peck
Hearing Officer