

D.R. NO. 99-15

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

In the Matter of

BOROUGH OF PINE VALLEY,

Public Employer,

-and-

Docket No. RO-99-84

NEW JERSEY POLICEMEN'S BENEVOLENT
ASSOCIATION, INTERCOUNTIES LOCAL #30,

Petitioner.

SYNOPSIS

The Director of Representation directs that an election be conducted for a proposed unit of three patrolmen and one sergeant in the Borough of Pine Valley. The Director determines that the sergeant is not a supervisory employee and should be included in a unit with patrol officers represented by the PBA, Intercounties Local #30. The Director further determines that this unit qualifies for the small force exception set forth in South Plainfield, Merchantville and Greenwich, infra.

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Appearances:

For the Public Employer,
Aronberg & Kouser, attorneys
(Barbara M. Paul, of counsel)

For the Employee Organization
Capehart & Scatchard, attorneys
(Craig Bailey, of counsel)

DECISION AND DIRECTION OF ELECTION

On December 11, 1998, a representation petition was filed with the Public Employment Relations Commission (Commission) by PBA Inter-Counties, Local #30 (PBA). The PBA seeks to represent a unit consisting of three patrol officers and one sergeant employed by the Borough of Pine Valley. The Borough does not consent to a secret ballot election, and seeks to exclude the position of sergeant from the proposed unit. The Borough asserts that the sergeant is a supervisor within the meaning of N.J.S.A. 34:13A-5.3, and that there is an inherent conflict of interest between the position of sergeant and patrol officer which compels the exclusion of the sergeant from any representation election.

I have conducted an administrative investigation in this matter. N.J.A.C. 19:11-2.2. By letter dated April 9, 1999, I summarized the parties' positions and the evidence submitted, and advised the parties that absent additional facts, I intended to find that the sergeant is not a supervisor within the meaning of the Act, include the sergeant in the proposed unit of non-supervisory police employees and order an election which would include the sergeant as an eligible voter. No additional submissions were filed. I make the following findings:

The Borough's police department is composed of the Chief of Police, a sergeant (also known as sergeant/detective), and three patrol officers.

The Borough asserts that the position of sergeant was created to provide the police force with a supervisor in the absence of the chief of police. The Borough asserts that in the absence of the chief of police, the sergeant is the commanding officer in charge of the police department and has assumed command in the absence of the chief due to vacation, unavailability, etc. In those instances when the sergeant has allegedly assumed command, the Borough claims that he has authorized overtime and changed schedules when necessary, all without the prior approval of the chief.

The Borough asserts that the supervisory authority of the sergeant is established in the Borough's police manual, which sets forth the sergeant's authority to manage and direct police personnel in fulfilling the objectives of the department. The Borough asserts

that the sergeant has the ability to assign and instruct the patrol officers in adhering to the work standards established by the department. For example, the sergeant supervises the twice-yearly qualification of the patrol officers at the shooting range.

The Borough claims that the sergeant has the authority to effectively recommend disciplinary action, including discharge, directly to the chief of police, and can issue oral reprimands and suspensions until the next business day without the chief's approval. However, the Borough concedes that the sergeant has never had occasion to exercise disciplinary authority, although he would be expected to do so if a situation arose. The Borough further asserts that the fact that the sergeant performs the same patrol duties as the officers is not dispositive, since the chief also performs patrol duties. The Borough asserts that the sergeant possesses supervisory authority and exercises it with sufficient regularity to create a conflict of interest if he were permitted to be in the same unit with patrol officers. The sergeant is paid approximately \$1500.00 more annually than a patrol officer.^{1/}

The sergeant does not have authority to hire or fire. Since filling the sergeant's position, the Borough has hired two officers. The hiring process has been conducted by a committee

^{1/} It is not clear whether the sergeant receives a higher salary because of a greater number of years of service in the police department, because of his assignment as a detective or solely because he encumbers the sergeant position.

composed of the mayor, public safety director and the chief of police. The sergeant was not involved.

The PBA submitted affidavits from the sergeant and each of the three patrol officers in support of its position. The PBA asserts that the sergeant and patrol officers work independently on individual shifts. The PBA asserts that the duties of the sergeant are exactly the same as those of the patrol officers, that the sergeant is neither referred to, nor acts as a "shift commander", "supervisor" or "officer in charge." The PBA asserts that the sergeant possesses no supervisory powers and/or training responsibilities. It claims that all supervisory and training responsibilities are handled solely by the chief of police, including scheduling, time off, firearms qualifications, and any disciplinary action.

The employee handbook issued to the sergeant describes him as a non-supervisory, hourly employee, and describes all supervisory and decision-making powers as vested in the chief of police. Specifically, the handbook directs officers to discuss time cards only with the chief. Only the chief can approve an officer's total time worked. According to the handbook, only the chief can change the work schedule. The chief approves paid funeral time off. Officers are directed to advise the chief of changes of address or telephone numbers. All grievances are filed with the chief of

police.^{2/} The PBA presents several examples of written reprimands issued directly to the patrol officers from the chief as proof that the chief alone possesses disciplinary authority. The PBA also presents several policy memoranda concerning scheduling, uniforms, etc. issued to "All Officers" by the chief individually or in conjunction with the public safety director.

In his affidavit, the sergeant attests that the police department is run entirely by the chief; that there are no supervisors other than the chief, and that the sergeant does not have any power or authority to discipline or supervise any other officers of the department. The PBA asserts that the Borough has failed to provide any specific examples of the sergeant's exercise of supervisory authority. The PBA asserts that the sergeant's inclusion in the unit would not compromise his loyalty to the employer and that the "small force" exception clearly applies in this case.

N.J.S.A. 34:13A-5.3 provides that:

except where established practice, prior agreement or special circumstances dictate the contrary, [no supervisor] having 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 nonsupervisory personnel to membership

^{2/} The PBA alleges that the police manual of rules and regulations presented by the Borough in this case has never been seen by, nor given to any members of the Pine Valley police department, and disputes that these rules were ever officially promulgated.

See Cherry Hill Tp. Dept. of Public Works, P.E.R.C. No. 30, NJPER Supp 114 (¶30 1970).

The Commission has consistently held that "the bare possession of supervisory authority without more is insufficient to sustain a claim of status as a supervisor within the meaning of the Act. In the absence of some indication in the record that the power claimed possessed is exercised with some regularity by the employee in question, the mere 'possession' of the authority is a sterile attribute unable to restrain a claim of supervisory status." Somerset County Guidance Center, D.R. No. 77-4, 2 NJPER 358, 360 (1976). It is well established that the Commission will look beyond the title or job description to ascertain the nature of the authority the employee actually exercises. Somerset County Guidance Center. Evidence that the authority is exercised with some degree of regularity is required.

In this matter, the sergeant has no true authority to hire, discharge, discipline or to recommend such action. In the instant case, all activities normally exercised by "supervisors" are exercised by the chief of police. The chief is responsible for any disciplinary action, hiring decisions, all employees' schedules and grievances. While the Borough asserted that the sergeant is responsible for making decisions during the shift, such incidents have never arisen and the chief must be directly consulted as problems arise.

The sole support for the Borough's allegation that the sergeant is a supervisor is its assertion that he substitutes for the chief when the chief is on vacation or otherwise unavailable. However, although the Borough asserts that on occasion the sergeant has been designated acting commanding officer in the chief's absence, no evidence was submitted to support this assertion. Even assuming such substitution has occurred, possession of supervisory authority on a temporary basis when the permanent supervisor is unavailable does not support a claim of supervisory status. See Union Cty 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, NJPER Supp 465 (¶114 1971). I find that the sergeant is not a supervisor.

While superior officers do not ordinarily share a community of interest with patrol officers, there are limited exceptions. In Union City, P.E.R.C. No. 70, NJPER Supp 295, 297 (¶70 1972), 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]^{3/} 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, 350

(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 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

3/ The original decision uses the word "community." The decision should read "conflict."

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 force exception applies where superior officers do not have supervisory authority and there is no evidence that their loyalty to the employer is compromised. Township of Greenwich, D.R. No. 99-7, 25 NJPER 61 (¶30023 1998); Borough of Merchantville, D.R. No. 80-38, 6 NJPER 305 (¶11147 1980); Borough of Audubon Park, D.R. No. 88-6, 13 NJPER 741 (¶18278 1987). In Merchantville, the Director applied the small force 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, falls within the small force exception. The entire police department consists of four employees. All employees perform the same work. The sergeant and the patrol officers engage in patrol activity in the same manner. There is no evidence the sergeant exercises any significant authority over the patrol officers on a regular basis. Rather, the sergeant and the patrol officers perform the same work together as peers. There is no indication that their relationship changes if the sergeant substitutes for the chief. There is no evidence that

the sergeant exercises any authority to discipline his fellow officers. All decisions on discharge, discipline or hiring are and have been made by the police chief. Thus, the sergeant's job classification differs from the patrol officers' only in that he earns a slightly higher salary. This difference, in light of all the similarities among the sergeant and patrol officers, is too tenuous to support a finding of conflict of interest.

Therefore, I find that the appropriate unit for collective negotiations is:

Included: All patrol officers and sergeants employed by the Borough of Pine Valley.

Excluded: Managerial executives, confidential employees and supervisors within the meaning of the Act; craft employees, professional employees, non-police employees, casual employees, chief of police, and all other employees.

DIRECTION OF ELECTION


I ORDER that a representation election be conducted among the employees in this unit. Employees will vote on whether they wish to be represented for purposes of collective negotiations by PBA Intercounties Local #30, or by no representative. The election will commence 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 will vote by mail ballot. 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, 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



Stuart Reichman, Director

DATED: May 12, 1999
Trenton, New Jersey