

D.U.P. NO. 94-9

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

TOWN OF DOVER,

Respondent,

-and-

Docket No. CO-93-372

DOVER PBA LOCAL 107, SOA,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a Complaint against the Township of Dover in an action brought by Dover PBA Local 107, SOA. It was found that for several years there was no contract between the SOA and the Township and in fact that for a period of over one year there was only one lieutenant employed by the Township. The Township asserts that it is willing to meet and negotiate with any properly constituted association of superior or supervisory officers. However, there is no current designated majority representative of the employees in question. Since the SOA was no longer the majority representative there was no obligation on the part of the Township to bargain in good faith with the SOA. Accordingly, the Director refused to issue a complaint.

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Appearances:

For the Respondent,
Johnson and Johnson, attorneys
(George W. Johnson, of counsel)

For the Charging Party,
Loccke & Correia, attorneys
(Manuel A. Correia, of counsel)

REFUSAL TO ISSUE COMPLAINT

On April 19, 1993, the Town of Dover Superior Officers Association, Local No. 107 ("SOA") filed an unfair practice charge with the Public Employment Relations Commission against the Town of Dover. The charge alleges that on or about February 1, 1993, the Town violated subsections 5.4(a)(1), (2), (3), (5) and (7)^{1/} of

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (3) Discriminating in regard to

Footnote Continued on Next Page

the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), when it "unilaterally notified the SOA that, effective immediately, unit employees would be required to (a) take all holidays off, (2) be compensated for longevity per the current compensation package agreement, (3) be subjected to prescription co-payments per said compensation package agreement, (4) receive wage compensation not in accordance with past practice and (5) receive notice that the Town unilaterally removed the position of captain from the unit." The SOA also filed an Application for Interim Relief seeking a temporary restraint of the Town pending negotiations and the resolution of the SOA's unfair practice charge. The Application was denied on June 9, 1993. Town of Dover, I.R. No. 93-19, 19 NJPER ____ (¶____ 1993).

The captains and lieutenants of the SOA executed an agreement with the Town on or about January 13, 1988 for the period of January 1, 1988 through December 31, 1988. In pertinent part, Article I of the agreement provided that,

The employer agrees to recognize and deal with the Superior Officers Association through its designated representative as the sole and exclusive bargaining agent for all captains and

1/ Footnote Continued From Previous Page

hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative. (7) Violating any of the rules and regulations established by the commission."

lieutenants of the Dover Police Department in the Town of Dover....

The agreement also provided for a "successor clause" under Article XXIII. This Article set forth that,

This agreement shall have a term from January 1, 1988 through December 31, 1988. If the parties have not executed a successor agreement by December 31, 1988, then this agreement shall continue in full force and effect until a successor agreement has been executed.

Since the expiration of this agreement, the parties have not executed a written successor agreement. The SOA acknowledged that the last written contract between it and the Town was the one-year, 1988 agreement. However, during the period from January 1, 1989 through December 31, 1992, the SOA received the identical benefit compensation package as did the patrolmen and sergeants in the contract negotiated between the Town and the Policeman's Benevolent Association, Dover Local 107. The SOA contends that the Town is obligated under Article XXIII of the 1988 agreement to maintain all terms and conditions of employment pending negotiations for a successor agreement.

On or about February 1, 1993, the Town informed the SOA that it was implementing the disputed changes in the terms and conditions of employment. In response, the Police Department's current captain and three lieutenants wrote the Mayor and Board of Alderman requesting that they recognize the four officers as "The Supervisors Officers Association" ("Association") and that they meet and negotiate an agreement. The Town acknowledged the Association's existence as the representative of the superior officers bargaining unit, but demanded that it exclude the captain's position from its unit. During a meeting in March 1993, one of the lieutenants

produced a copy of the 1988 agreement claiming that it was still in effect and enforceable by the Association. The parties adjourned the meeting without resolving this issue.

The Town maintains that, subsequent to the expiration of the 1988 agreement, there have been considerable changes in the composition of the Police Department. It alleges that from November 23, 1988 until October 14, 1989 there was no captain and only one lieutenant. During the succeeding years there were several periods when there was a Chief of Police and only one captain or one lieutenant. On December 31, 1992, there was an Acting Chief of Police and one captain and between December 31, 1992 through August 11, 1992, there were no lieutenants. In January 1993, three sergeants were promoted to rank of lieutenant.

The Town asserts that it remains willing to meet and negotiate with any properly constituted association of superior or supervisory officers; however, it argues that the Association was not certified or recognized as a public employee representative. The Town is presently filing a unit clarification petition, pursuant to N.J.A.C. 19:11-1.1(a)4, to resolve the issue of whether the position of captain is included in the unit. The Town argues that the terms and conditions of the 1988 agreement are unenforceable because the parties legally abandoned that agreement; the parties have not negotiated or signed a successor agreement and that the SOA has not attempted to enforce any provision of the 1988 agreement.

Analysis

Subsection 5.3 of the Act requires that all agreements be reduced to writing. Here, the parties did not execute a contract

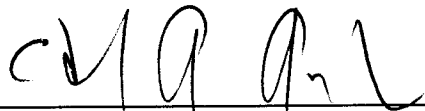
memorializing any agreed-upon terms and conditions of employment after the expiration of the 1988 agreement even though the benefit package of unit members was changed several times.

It is evident that the SOA abandoned the unit. In fact, on or around December 31, 1992, the Police Department only employed a chief and one captain -- no individuals in the rank of lieutenant. Accordingly, at that time there was apparently no appropriate unit. A single individual cannot constitute an appropriate collective negotiations unit. See Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Assn., 78 N.J. 25, 49 (1978); State of New Jersey, I.R. No 82-2, 7 NJPER 532 (¶12235 1981).

The SOA has not established that it represents an appropriate unit covered by a recently expired agreement between it and the Town.

Accordingly, the Commission's complaint issuance standard has been met and I will not issue a complaint on the allegations of this charge.^{2/} The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: August 10, 1993
Trenton, New Jersey