

D.R. NO. 93-14

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

In the Matter of

LITTLE EGG HARBOR TOWNSHIP,

Public Employer,

-and-

LITTLE EGG HARBOR TOWNSHIP
SUPERIOR OFFICERS ASSOCIATION,

Docket No. RO-93-20

Petitioner,

-and-

PBA LOCAL 295,

Intervenor.

SYNOPSIS

The Director of Representation dismisses a representation petition filed by police sergeants, lieutenants and captains currently represented in two negotiations units. Sergeants are currently included in a unit with patrol officers and lieutenants and captains are represented in a separate unit.

The Director dismissed petitioner's assertions that sergeants "supervise" patrol officers and are supervisors within the meaning of the Act. He also noted that the incumbent representatives and the employer oppose the petition. He concluded there was no "impermissible conflict" in the current unit configuration.

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Appearances:

For the Public Employer
Mark H. Stein, attorney

For the Petitioner
Mark P. Siino, Representative

For the Intervenor
Szaferman, Lakind, Blumstein, Watter & Bladder, attorneys
(Sidney H. Lehmann, of counsel)

DECISION

On August 6, 1992, the Superior Officers Association of Little Egg Harbor Township ("SOA") filed a Petition for Certification of Public Employee Representative seeking to represent a negotiations unit of about 8 police superior officers, specifically sergeants, lieutenants and captains employed by the Township of Little Egg Harbor. Sergeants are currently included in

a negotiations unit with patrol officers represented by PBA Local 295 ("PBA"). The collective agreement covering the patrol officers and sergeants expired December 31, 1991. PBA Local 295 (Superior Officers Association) ("PBA Local 295-SOA") represents a unit of lieutenants and captains and its collective negotiations agreement also expired on December 31, 1991.

On August 25, 1992, the PBA filed a letter and agreement, intervening in this matter. N.J.A.C. 19:11-2.7.

The Township opposes the formation of another negotiations unit. The PBA, representing both the patrol officers/sergeants negotiations unit and the lieutenant/captain negotiations unit, also opposes the petition. It asserts that the petition was "filed in error", that the showing of interest was obtained under false pretenses, and that the current unit structure was agreed upon after a Clarification of Unit Petition (Docket No. CU-82-54) was filed by the Township seeking to "sever" sergeants, lieutenants and captains from one unit combined with patrol officers.

On October 15 and 28, 1992, the petitioner SOA filed a statement of position and certification.

On December 31, 1992, I issued a letter tentatively dismissing the petition. No responses were filed.

The Township has collective negotiations agreements with the PBA and PBA Local 295 SOA. The agreements expired December 31, 1991. The PBA represents "all full-time and part-time patrolmen, detectives and sergeants." PBA Local 295 SOA represents "all

full-time and part-time lieutenants and captains." The Township employs 17 patrol officers, 4 sergeants, 2 lieutenants and 2 captains.

In 1981, PBA Local 295 represented all Township police officers in a single unit. In 1982, the Township filed a Clarification of Unit Petition with the Commission, which it eventually withdrew. The then-existing broad-based unit was divided by the parties' agreement, leaving the current unit configuration. Several successor collective agreements covering both of the present units were negotiated after 1982.

The petitioning SOA argues that some rules and regulations of the Township police department show that sergeants are supervisors. One rule states that "shift commanders have direct control and supervision, subject to the orders of the commanding officers, over all officers and employees assigned to their command." Another regulation states that the shift commanders "closely supervise the activities of their subordinates, making corrections where necessary...." The SOA asserts that "shift commanders" are sergeants and "commanding officers" are lieutenants and higher ranking officers. SOA also asserts that a Department of Personnel regulation provides that police sergeants, "...under supervision of a police lieutenant during an assigned tour of duty, has charge of the police activities intended to provide assistance and protection...."

In contested cases, the Commission has frequently ordered

the removal of police superior officers from negotiations units which also include rank-and-file personnel. The quasi-military structure of police departments and inherent authority of police superior officers in the the chain of command generally creates an impermissible conflict of interest that is curable only by removing the superior officers. 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). Town of West New York, P.E.R.C. No. 87-114, 13 NJPER 277 (¶18115 1987); See also, Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404 (1971).

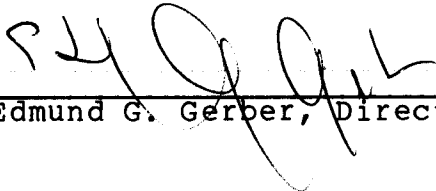
Here, the incumbent employee representative and the Township claim that no conflict exists under the present unit structure in which patrol officers and sergeants are in one unit. This circumstance has existed for more than 10 years without any party filing a charge or petition concerning the unit configuration.

The Township and both PBA organizations remedied any "impermissible conflict" in 1982 by creating two negotiations units -- one for superior officers (lieutenants and captains) and another for rank-and-file officers (patrol officers and sergeants). Absent other evidence, the regulations delineating the sergeants' supervisory authority over patrol officers does not show a "substantial conflict of interest, either potential or actual", warranting the removal of sergeants from their long-standing combined unit. See Wilton. Moreover, the regulations do not

establish their supervisory authority. See Town of Harrison,
P.E.R.C. No. 92-76, 18 NJPER 86 (¶23038 1992).

The petitioned-for unit is not appropriate in light of the negotiations history and absence of a demonstrable conflict of interest. The petition is dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Edmund G. Gerber, Director

DATED: January 19, 1993
Trenton, New Jersey