

P.E.R.C. No. 85-18

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF MILLBURN,

Public Employer-Petitioner,

- and -

Docket No. CU-83-64

P.B.A. LOCAL No. 34,

Employee Representative.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated to him by the full Commission and in agreement with a Commission Hearing Officer, clarifies a negotiations unit of police officers represented by PBA Local No. 34 to exclude the Township of Millburn's sergeants, lieutenants, and captains. Neither party filed exceptions to the Hearing Officer's Report.

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P.B.A. LOCAL No. 34,

Employee Representative.

Appearances:

For the Public Employer-Petitioner
Murray & Granello, Esqs. (Karen Bulsiewicz, of Counsel)

For the Employee Representative
John N. Fox, Esq.

DECISION AND ORDER

On April 4, 1983, the Township of Millburn ("Township") filed a Petition for Clarification of Unit with the Public Employment Relations Commission. The Township seeks to have the positions of sergeant, lieutenant and captain removed from a negotiations unit of all its police officers excluding the chief. PBA Local No. 34 ("PBA") represents that unit.

On August 9, 1983, the Director of Representation issued a Notice of Hearing. On December 5, 6, and 7, 1983 and January 21, 1984, Commission Hearing Officer Mark A. Rosenbaum conducted a hearing. The parties examined witnesses and introduced exhibits. The parties waived oral argument, but filed post-hearing briefs.

On June 25, 1984, the Hearing Officer issued a report and recommended decision. H.O. No. 84-17, 10 NJPER 413 (¶15189 1984). He recommended that sergeants, lieutenants and captains be removed from the PBA's unit. He specifically found that these

superior officers were supervisors and that the Township and the PBA did not have a pre-Act negotiations relationship which would permit the continued inclusion of these officers with non-supervisory patrol officers.


The Hearing Officer served a copy of his report on the parties and informed them that exceptions, if any, were due on or before July 9, 1984. Neither party filed exceptions or asked for an extension of time.

Pursuant to N.J.A.C. 19:11-8.8 and N.J.S.A. 34:13A-6(f), the full Commission has transferred this case to itself and has delegated authority to me to issue a decision in the absence of exceptions. I have reviewed the record. The Hearing Officer's findings of fact (pp. 2-8) are accurate. I adopt and incorporate them here. Based on these findings, and in the absence of exceptions, I agree with the Hearing Officer that the sergeants, lieutenants, and captains should be removed from the PBA's negotiations unit.

ORDER

The negotiations unit which PBA Local No. 34 represents is clarified to exclude the Township's sergeants, lieutenants, and captains.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

DATED: TRENTON, NEW JERSEY
August 31, 1984

H.O. NO. 84-17

STATE OF NEW JERSEY
BEFORE A HEARING OFFICER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF MILLBURN,

Public Employer-Petitioner,

-and-

DOCKET NO. CU-83-64

P.B.A. LOCAL NO. 34,

Employee Representative.

Synopsis

A Commission Hearing Officer recommends a finding that the negotiations unit represented by Patrolmen's Benevolent Association Local No. 34 be clarified to exclude Sergeants, Lieutenants and Captains employed by the Township of Millburn. The Hearing Officer finds that the superior officers are supervisors within the meaning of the New Jersey Employer-Employee Relations Act, and that no statutory exception applies which would allow the superior officers to be represented in a unit which includes nonsupervisory employees. The Hearing Officer also finds that substantial conflicts of interest compel the removal of the superior officers from the negotiations unit represented by the PBA.

A Hearing Officer's Report and Recommendations is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Report and Recommendations, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Officer's findings of fact and/or conclusions of law.

STATE OF NEW JERSEY
BEFORE A HEARING OFFICER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF MILLBURN,

Public Employer-Petitioner,

-and-

DOCKET NO. CU-83-64

P.B.A. LOCAL NO. 34,

Employee Representative.

Appearances:

For the Public Employer
Murray & Granello, Esquires
(Karen Bulsiewicz, of Counsel)

For the Employee Representative
John N. Fox, Esquire

HEARING OFFICER'S
REPORT AND RECOMMENDATIONS

On April 4, 1983, the Township of Millburn ("Township") filed a Petition for Clarification of Unit with the Public Employment Relations Commission ("Commission") seeking a clarification of the negotiations unit represented by the Policemen's Benevolent Association, Local No. 34 ("PBA"). The Township seeks a determination that the positions of sergeant, lieutenant and captain cannot be represented by the PBA for the purpose of collective negotiations, contending that the titles are supervisory, lack a community of interest with patrolmen, and/or that conflicts of interest preclude the inclusion of these titles in the PBA's negotiations unit. The PBA disputes all of these contentions; in the event that the disputed employees are found to be supervisors, the PBA argues that established practice or special

circumstances permit the inclusion of supervisors and nonsupervisors in its negotiations unit. The PBA seeks the dismissal of the petition.

Pursuant to a Notice of Hearing dated August 9, 1983, hearings were held before the undersigned on December 5, 6 and 7, 1983 and January 21, 1984. At the hearings, both parties were given opportunities to examine and cross-examine witnesses, present evidence and argue orally. Subsequent to close of the hearing, the parties filed timely briefs and responsive briefs in this matter, the last of which was received on May 14, 1984.

Based upon the entire record in these proceedings, the undersigned finds as follows:

1. The Township of Millburn 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.

2. The Policemen's Benevolent Association, Local No. 34 is an employee representative within the meaning of the Act and is subject to its provisions.

3. The Township seeks a clarification of a collective negotiations unit of its employees currently represented by the PBA, namely a determination that the sergeants, lieutenants and captains cannot be represented by the PBA for the purpose of collective negotiations. The PBA asserts that these positions are appropriately represented within its negotiations unit. Accordingly, there is a question concerning the composition of the collective negotiations

unit, and the matter is properly before the undersigned for a Report and Recommendations.

4. The Township of Millburn functions under a committee form of government. The Township Committee is comprised of five part-time officials elected at large for three year terms. From amongst themselves, the Committeemen elect a chairman/mayor. Committee members also serve as chairpersons of the standing committees of the Township. Day-to-day affairs are coordinated by full-time Business Administrator and his full-time Assistant Business Administrator, who maintain daily contact with the various departments of the Township. The Township of Millburn is a civil service community (T1 at pp. 14-17). ^{1/}

5. The petition concerns all superior officer titles, with the exception of chief, in the Township's police department. The Millburn police department's table of organization (Exhibit J-29) indicates that the police department has a Uniform Bureau, Investigation Bureau and Service Bureau, each of which is in the command of a captain who reports directly to the chief of police. The Uniform Bureau consists of four squads, each containing a lieutenant, a sergeant, and six patrolmen (T2 at p. 25).

6. The lieutenant on each shift is in command; in the lieutenant's absence the sergeant is in command of the squad. The other bureaus are also headed by superior officers. Investigation Bureau is commanded by a captain who is assisted by a detective lieutenant. The Juvenile Aides Section within the Investigation Bureau is headed

^{1/} T1 is the transcript for December 5, 1983; T2 is the transcript for December 6, 1983; T3 is the transcript for December 7, 1983; and T4 is the transcript for January 21, 1984.

by a detective sergeant. The Service Bureau is commanded by a captain who is assisted by a lieutenant in the Traffic Section (T2 at pp. 25-26; J-29). In total, the department is comprised of 60 police officers, including the Chief, and including the 16 superior officers in dispute.

7. The superior officers are regularly involved in the evaluation of employees. The department maintains an annual evaluation system, wherein superior officers compile written evaluations of their immediate subordinates for submission to the chief. These evaluations are kept in the permanent personnel files of the employees. Pursuant to this process, superior officers conduct annual meetings with their subordinates on an individual basis to discuss their evaluations (T2 at pp. 27-32). Chief William Tighe testified that he has never considered the evaluations in determining promotions, but that evaluations are considered in disciplinary determinations (T2 at pp. 120-124).

8. Superior officers also have an active role in the discipline of their subordinates. The sergeants have the greatest day-to-day contact with the patrolmen and initiate discipline most frequently. The record reveals that patrolmen have been disciplined for failing to obey orders by the sergeants (P-8), for leaving an assigned post without permission (P-9), and for being found "unfit for duty" (P-10). Penalties for these infractions included written reprimands, transfers, and suspensions (P-8, 9, 10; T2 at pp. 37-42). The record reveals that recommended discipline by superior officers has been routinely upheld by the Chief; moreover, superior officers have authority to take immediate action, such as sending an officer home, subject to

the intra-departmental disciplinary appeal process (T2 at pp. 40-44, 119-120, 151-154).

9. The department has an internal review process for disciplinary actions. Disciplinary actions are reviewed by the Internal Affairs officer, a position which is rotated amongst the three captains. Subsequent to investigation, the action may be reviewed by the disciplinary review board, to whether or not the discipline is justified. The Chief has the sole discretion for determining the ultimate discipline effected subject to appeal to County Court and often alters the length or type of recommended discipline (T2 at pp. 119-122). Discipline for five days or more is to be appealed to Township Committee, as well as any rights applicable before Civil Service (T2 at pp. 86-88, 104-113).

10. William Tighe, the Chief of Police in Millburn since 1969, testified that no officer has been dismissed or demoted in his tenure as Chief (T2 at pp. 23, 122). As for the hiring of new officers, the record reveals that sergeants are not involved with the process, other than to complete background checks on individual candidates. Lieutenants and captains have interviewed candidates without the Chief being present and have made recommendations regarding those candidates to the Chief, who makes final recommendations to Township Committee. Captain John Laverty testified that his recommendations to the Chief have been followed when the Township Committee ultimately determined to hire various candidates in the past (T2 at pp. 179-183).

11. Day-to-day operations of the department reflect common practices in the mid-size police department. Patrolmen travel by

themselves or in pairs, depending on availability of vehicles, and attend to routine police matters such as accidents, medical aid and automobile stops. Superior officers, depending upon their availability, back-up patrolmen in their routine functions, as well as monitor their daily performance. Superior officers in the uniform bureau have daily responsibilities for making patrol sector assignments and briefing patrolmen on specific problems (T2 at pp. 149-151).

12. Superior officers are often responsible for transmitting orders along the chain of command, as well as forwarding information to their superiors (T2 at pp. 176-178; P-12, 13; EO-1, 2). Such communications often reflect requests for information from outside the department, either from the Township Committee, Township Business Administrator or members of the public. For example, the record reveals a series of memoranda generated in January, 1983, concerning a decrease in the number of summons issued by patrolmen during that month as compared to the prior month (T1, 2, 5, 6, 7, 11, 12 and 13). During this time period, the Chief instructed the superior officers to issue tickets where appropriate, and the record indicates that superiors, as well as the Chief, did issue a considerable number of summons during that month (T1 at pp. 60-65; P-2).

13. PBA Local No. 34 has been in existence since at least the mid-1950's (T2 at p. 113). The record reveals that, since its origin, the PBA has sought to secure increased pay and benefits for all police employees of the Township of Millburn. Initially, and prior to the passage of the New Jersey Employer-Employee Relations Act in 1968, the PBA formed a "Pay Raise Committee" which initiated

discussions with representatives of the Township Committee. The president of the PBA appointed the members of the Pay Raise Committee which sometimes included superior officers (T2 at pp. 48-52, 131, 157). The Pay Raise Committee would initiate discussions through written communication to the Mayor of the Township (EO-3). Topics presented by the Pay Raise Committee expanded over the years to include vacations, longevity plans, hospitalization and equipment, in addition to salary proposals. The negotiations never resulted in a written agreement which both the PBA and the Township signed; instead, the process concluded by the passage of an annual Township salary ordinance. The salary ordinance did not necessarily reflect the final discussions between the PBA Pay Raise Committee and Township Committee representatives; while one captain testified that agreement was always reached between the PBA and the Township Committee, the undersigned credits directly contradictory testimony from two other PBA members (T2 at pp. 128-140, 144-148, 200-201).

14. Ralph Batch, Mayor of the Township of Millburn from 1962-1970 and, as police commissioner, a member of the Township Committee who met with the Pay Raise Committee, testified that he would listen to proposals by the Pay Raise Committee, and "...would assure them that I would do the best I could for them in the salary range." (T4 at pp. 9-10). Batch confirmed testimony by PBA members that the enactment of the annual salary ordinance effectively concluded discussions between the Pay Raise Committee and the Township Committee representatives and that the ordinance did not necessarily reflect an agreement between the two groups (T4 at pp. 31-34).

15. The record is not consistent with respect to the status of superior officers prior to 1968, as well as after. Mayor Batch testified that salary and benefits for superior officers were not discussed with the Pay Raise Committee, and that the Township practice was to grant superior officers salary and benefits commensurate to those granted to patrolmen (T4 at p. 24). PBA Pay Raise Committee members John Laverty and Donald Bray testified that the committee sought raises and increased benefits for superior officers as well as patrolmen (T2 at pp. 131, 157).

16. The first written contracts between the parties were executed in 1973, at which time the patrolmen and superior officers had separate agreements (J-9, 10). Grievance procedures in both contracts provided for step one settlement efforts between the aggrieved employee and the Chief. With the exception of salary provisions and references to covered employees, the contracts were identical, and were signed by the same individuals on behalf of both parties on the same date. This practice continued for the contracts for calendar years 1974 through 1977 (J-5, 6, 7, 8) whereafter the Township changed labor counsel, and agreements covering both patrolmen and superior officers were concluded for calendar years 1978 through 1984 (J-1, 2, 3, 4).

Analysis

I. Supervisor Status/Established Practice/Special Circumstances

N.J.S.A. 34:13A provides, in pertinent part:

5.3...nor, except where established practice, prior agreement or special circumstances, dictate the contrary, shall any 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....

6(d)...The division shall decide in each instance which unit of employees is appropriate for collective negotiations, provided that, except where dictated by established practice, prior agreement, or special circumstances, no unit shall be appropriate which includes (1) both supervisors and nonsupervisors....

It is undisputed that the negotiations unit represented by the PBA includes nonsupervisory employees. Accordingly, if the superior officers are supervisors within the meaning of the Act, they must be removed from the PBA's negotiations unit unless "established practice, prior agreement or special circumstances" are found.

Preliminarily, the undersigned notes that a determination of supervisory status requires far more than a job description or verbal assertion stating that an employee may have the power to hire, discharge, discipline or effectively recommend the same:

[T]he 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 employees in question, the mere "possession" of the authority is a sterile attribute unable to sustain a claim of supervisory status.

Somerset County Guidance Center, D.R. No. 77-4, 2 NJPER 358, 360 (1976).

With this caveat in mind, the undersigned reviews the responsibilities and actual job performances of the superior officers to determine whether or not they are supervisors within the meaning of the Act.

With respect to the hiring of employees, the record reveals that the sergeants do not have a regular role in the process. Lieutenants and captains interview candidates outside of the Chief's

presence and make recommendations to the Chief. While these suggestions ultimately have been implemented by the Township, the participation of the lieutenants and captains occurs solely at the initial stages, and is subject to the review of the Chief, the Township Administrator, and the Township Committee. Accordingly, the undersigned concludes that the superior officers do not have a regular, formal and effective role in the hiring process. See, e.g. Brookdale Community College, D.R. No. 78-10, 4 NJPER 32 (¶4018 1977).

With respect to the firing of employees, the record reveals that not a single employee has been discharged from the department since Tighe became Chief in 1969. Clearly, the superior officers do not have a role in the firing of employees.

The remaining indicator of supervisory status is whether or not the employees in question discipline employees or effectively recommend the same. Actual discipline is typically manifested by prompt action at the work site. See, e.g. Borough of Metuchen, D.R. No. 78-27, 3 NJPER 395 (1977). Effective recommendation of discipline can be demonstrated by the employee who has "...primary responsibility for evaluating..." employees "...where the evaluations are instrumental..." in effectuating various personnel actions. Emerson Board of Education, D.R. No. 82-13, 7 NJPER 571 (¶12255 1981); see also State of New Jersey and Local 194, IFPTE, D.R. No. 83-11, 8 NJPER 586 (¶13271 1982) and Borough of Avalon, P.E.R.C. No. 84-108, 10 NJPER 207 (¶15102 1984).

As noted above, the record reveals that superior officers have an established role in evaluation and discipline of patrolmen.

Both Township and PBA witnesses testified that the superior officers possess and exercise the authority to discipline employees on the job, as well as to recommend more formal discipline such as transfer and suspensions (see Finding Numbers 7, 8 and 9, supra).

The PBA argues that these facts do not indicate supervisory status because all disciplinary recommendations are subject to review by the Chief. It is undisputed that the Chief can and has modified disciplinary recommendations of superior officers. At the same time, the record clearly indicates that when superior officers initiate formal disciplinary procedures, these procedures result in disciplinary action which resembles that recommended by the superior officer. Regarding his own action in disciplinary proceedings, Chief Tighe testified as follows:

...let's say a superior is contending that a man did something wrong he's asking that he be disciplined. I would say that the heavy percentage is that if we find that he did something wrong, maybe something less or whatever, I would say a majority of the cases usually yes. But if he recommends a loss of two days off how often do we hit two right on the button, I would say rarely because I take a greater input of something, and I have more knowledge. I mean, there is nobody in the department that knows all the discipline or just how bad any individual's record might be outside of me. I can listen to everybody.... (T2 at pp. 120-121)

While superior officers' disciplinary recommendations are subject to review by the department's disciplinary review board and ultimately by the Chief, the testimony and exhibits clearly indicate that the superior officers' recommendations are instrumental in achieving the end result (i.e. an adverse personnel action). In fact,

the record does not reveal a single instance where a disciplinary recommendation by a superior officer did not result in discipline of the subject employee. Viewing these facts in conjunction with on site authority for discipline possessed and exercised by the superior officers, the undersigned concludes that the superior officers are supervisors within the meaning of the Act.

The undersigned now proceeds to review whether or not "established practice" or "special circumstances" would permit the superior officers to be represented in a collective negotiations unit which includes nonsupervisory employees. ^{2/} While these terms are not defined within the Act, Commission case law has given them limited meaning.

"Established practice" can be found only where the record reveals the existence of a meaningful negotiations relationship between a union and a public employer prior to the passage of the New Jersey Employer-Employees Relations Act in 1968. In West Paterson Board of Education, P.E.R.C. No. 77 (1973), the Commission set forth the "minimum requisite ingredients" for such relationships: "...an organization regularly speaking on behalf of a reasonably well defined group of employees seeking improvement of employee conditions and resolution of differences through dialogue (now called negotiations) with an employer who engaged in the process with an intent to reach agreement." (Id. at p. 10). See also, Boro of So. Plainfield, D.R. No. 78-18, 3 NJPER 349 (1977).

The record clearly indicates that the PBA existed as a formal organization which sought to improve conditions for police

^{2/} The PBA does not claim, nor does the evidence suggest, that "prior agreement" existed which would permit a unit comprised of supervisors and nonsupervisors.

officers through negotiations with the Township well before the passage of the Act in 1968. However, the record does not indicate "...an employer who engaged in the process [of negotiations] with the intent to reach agreement." To the contrary, the record reveals an employer who respectfully and in good faith engaged in discussions with an employee organization with an intent of hearing that organization's concern, whereafter the employer implemented terms and conditions of employment as it saw fit. Particularly compelling is the testimony of both Township and PBA witnesses confirming that Township salary ordinances did not reflect an agreement or even final discussions between the PBA and the Township in any given year prior to the passage of the Act (Finding Numbers 13 and 14, supra). Accordingly, the undersigned concludes that "established practice" does not exist, and that the negotiations history between the parties does not compel the retention of the superior officers in a unit which admits nonsupervisors.

The PBA also argues that "special circumstances" exist which would allow the continuation of the current unit structure. However, the special circumstances cited by the PBA ^{3/} do not fit within the narrow construction which the Commission has given to the "special circumstances" exception. See e.g., In re N.J. Turnpike Authority, P.E.R.C. No. 24 (1969); Township of Mine Hill, D.R. No. 79-4, 4 NJPER 297 (¶4148 1978); and Township of Maple Shade, D.R. No. 79-10, 4 NJPER 440 (¶4199 1978). Accordingly, in the absence of "special circumstances" or "established practice," the undersigned concludes that the superior officers, who are supervisors within the meaning of the Act, must be

3/ Letter brief, March 22, 1984, p. 4.

excluded from the negotiations unit represented by the PBA.

II. Community of Interest/Conflict of Interest

N.J.S.A. 34:13A-5.3 provides that a "...negotiating unit shall be defined with due regard with the community of interest among the employees concerned...." In Board of Education of West Orange v. Wilton, 57 N.J. 404 (1971), the New Jersey Supreme Court reviewed community of interest issues in the context of a supervisory employee and her subordinates:

If performance of the obligations or powers delegated by the employer to a supervisory employee whose membership in the unit is sought creates an actual or potential substantial conflict between the interests of a particular supervisor and the other included employees, the community of interest required for inclusion of such supervisor is not present. 57 N.J. at 425.

Recognizing the varied levels of conflict of interest which might occur in the work place, the Court in Wilton limited the concept as follows:

While a conflict of interest which is de minimis or peripheral may in certain circumstances be tolerable, any conflict of greater substance must be deemed opposed to the public interest. 57 N.J. at 425-426.

The initial Commission decisions regarding conflict of interest involved police and fire superior officers. In City of Linden, P.E.R.C. No. 52 (1971) and City of Union City, P.E.R.C. No. 70 (1972), the Commission found that certain superior officers had substantial conflicts of interest with subordinate personnel. In so ruling, the Commission in Union City, found: "[T]he duties and responsibilities of officers are such as to generate grievances among patrolmen and it may be

reasonably anticipated that representation of both groups as one would be inimical both to the prosecution and resolution of any grievances." Reaching a similar conclusion in City of Elizabeth, P.E.R.C. No. 71 (1972), the Commission emphasized the nature of a conflict of interest inquiry: "Required is a complete examination of the nature of authority over subordinates, the nature and responsibility to superiors and the context within which they function." Applying these principles in educational settings, the Commission's Director of Representation has removed employees from negotiations units where potential conflicts of interest existed due to both evaluative and disciplinary functions. See e.g. Ridgewood Board of Education and Ridgewood Education Association, D.R. No. 80-33, 6 NJPER 209 (¶11102 1980); Board of Education of Paramus and Education Association of Paramus, NJEA, D.R. No. 82-7, 7 NJPER 556 (¶12247 1981).

In the context of the above standards for reviewing alleged conflicts of interest, the undersigned proceeds to review the record in the instant matter. As noted above, the superior officers are responsible for the discipline and evaluation of their respective subordinates, and have regularly exercised those responsibilities. Inevitably, these disciplinary and evaluative roles could lead to conflicts between superior officers and patrolmen when patrolmen dispute disciplinary actions or evaluations by superior officers.

In addition to potential conflict of interest, the record also reveals the occurrence of actual conflicts of interest between patrolmen and superior officers. As noted above, all allegations of serious misconduct by officers are subject to investigation by the

Internal Affairs Officer, a position rotated amongst the three captains. The Internal Affairs function, described by Chief Tighe as a "tough job" (T2 at p. 104), becomes too difficult when the Internal Affairs Officer is both an investigator and, as a fellow unit member, a peer with respect to the subject officer.

Actual conflict is also evident in record testimony and documents concerning an alleged "job action" by the PBA in January, 1983. The Township alleges that PBA members severely curtailed the writing of traffic summonses during that month to place pressure on the Township in pending collective negotiations. While the undersigned renders no finding as to that allegation, which is vehemently denied by the PBA, the record clearly reveals that the Township sought corrective action from superior officers during January, 1983. Whether or not a "job action" was taking place, superior officers were placed in an actual conflict between the instructions of management and the denials of unit members. This kind of substantial actual conflict negates the community of interest necessary for the inclusion of the superior officers within the PBA's unit.

Based on all the factors cited above, and noting the importance of functional hierarchy in the police setting, the undersigned concludes that potential and actual conflicts of interest compel the removal of the superior officers from the collective negotiations unit represented by the PBA.

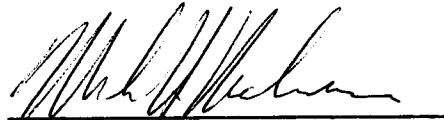
RECOMMENDATIONS

For the above stated reasons, the undersigned recommends the following findings:

1. The sergeants, lieutenants and captains employed by the Township of Millburn are supervisors within the meaning of the Act; neither established practice, prior agreement nor special circumstances exist which would allow the inclusion of these positions in the PBA's negotiations unit, which includes nonsupervisors; and the positions must therefore be excluded from the collective negotiations unit represented by the PBA.

2. Substantial conflicts of interest exist which compel the exclusion of the sergeants, lieutenants and captains positions from the negotiations unit represented by the PBA.

Respectfully submitted,



Mark A. Rosenbaum
Hearing Officer

DATED: June 25, 1984
Trenton, New Jersey