

D.R. NO. 2023-2

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

In the Matter of

BOROUGH OF CARTERET,

Public Employer,

-and-

Docket No. CU-2019-020

FIREFIGHTERS MUTUAL BENEVOLENT
ASSOCIATION LOCAL 67,

Petitioner.

SYNOPSIS

The Director of Representation grants a clarification of unit petition to exclude lieutenants from a negotiations unit of lieutenants and firefighters represented by Firefighters Mutual Benevolent Association, Local 67 (Local 67). The Borough of Carteret (Carteret) filed the clarification of unit petition seeking to clarify a collective negotiations unit of fire lieutenants and rank and file firefighters employed in the Carteret Fire Department, and represented by Local 67, to exclude lieutenants due to the conflicts of interest that arise when rank and file firefighters and fire officers are included in the same unit. Local 67 opposed the petition, arguing that lieutenants should not be excluded because the unit has traditionally been a mixed unit of firefighters and fire officers; that lieutenants do not have supervisory duties, pursuant to the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.; and no conflict of interest exists between lieutenants and firefighters.

The Director found that, due to the conflict of interest created by the inclusion of lieutenants with rank and file firefighters, the clarification of unit petition should be granted to exclude lieutenants from the negotiations unit of lieutenants and firefighters represented by Local 67.

D.R. NO. 2023-2

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

In the Matter of

BOROUGH OF CARTERET,

Public Employer,

-and-

Docket No. CU-2019-020

FIREFIGHTERS MUTUAL BENEVOLENT
ASSOCIATION LOCAL 67,

Petitioner.

Appearances:

For the Public Employer,
McManimon Scotland and Bauman, LLC, attorneys
(Ted DelGuercio III of counsel)

For the Petitioner,
Kroll Heineman Carton, attorneys
(Raymond G. Heineman, of counsel)

DECISION

On March 27, 2019, the Borough of Carteret (Carteret) filed a clarification of unit petition seeking to clarify a collective negotiations unit of fire lieutenants and rank and file firefighters employed in the Carteret Fire Department, and represented by Firefighters Mutual Benevolent Association, Local 67 (Local 67), to exclude lieutenants,^{1/} due to the conflicts of

1/ Although Carteret included the title of captain in its petition along with lieutenant, Carteret asserts that no captains have been employed in the fire department since April, 2018. Thus, we do not consider the captain title in this decision.

interest that arise when rank and file firefighters and fire officers are included in the same unit.^{2/}

Local 67 opposes the petition, arguing that lieutenants should not be excluded because the unit has traditionally been a mixed unit of firefighters and fire officers; that lieutenants do not have supervisory duties, pursuant to the Act; and no conflict of interest exists between lieutenants and firefighters.

We have conducted an administrative investigation to determine the facts. N.J.A.C. 19:11-2.2. On June 26, 2020, a

^{2/} Carteret previously filed a similar clarification of unit petition to exclude officers from this unit in 2015 (Docket No. CU-2015-014). The 2015 petition was withdrawn before a decision was issued, although the parties now disagree about the circumstances leading up to the withdrawal. Carteret alleges that it withdrew its 2015 petition because Local 67 agreed to create a separate officers unit for lieutenants and captains, but Local 67 later refused to do so, resulting in Carteret's filing of this petition. Local 67 disputes those allegations, and the parties have each filed a related unfair practice charge alleging various violations of the New Jersey Employer-Employee Relations Act (the Act), N.J.S.A. 34:13A-1 et seq. In Docket No. CE-2019-008, Carteret alleges that Local 67 violated the Act by refusing to create a separate officers unit after Carteret's withdrawal of the 2015 petition. In Docket No. CO-2019-178, Local 67 alleges that Carteret violated the Act when it refused to negotiate with Local 67 unless the union created a separate officers unit. After a contentious and lengthy disagreement between the parties regarding the sequencing of the processing of the current petition vis-a-vis the processing of the two related charges, which resulted in voluminous submissions from both parties, both charges have been held in abeyance pending the decision on this petition. Regardless of the circumstances regarding Carteret's withdrawal of its 2015 petition and the allegations set forth in the related charges, the petition in this case is decided on facts adduced in the current administrative investigation.

Commission staff agent issued a letter to the parties requesting information about the duties of employees in the unit, including any supervisory duties performed by lieutenants. The parties were required to submit facts in certifications or sworn affidavits from individuals with personal knowledge of those facts. Carteret filed a certification of its fire chief Mark Hruska. Local 67 filed affidavits by its president Jason Kurdyla and executive delegate Nathaniel Reynolds.

No disputed substantial material facts require us to convene an evidentiary hearing. N.J.A.C. 19:11-2.2 and 2.6. Based upon the administrative investigation, I find the following facts.

The New Jersey Civil Service Commission (CSC) job description for fire lieutenant provides that a lieutenant, "[u]nder the direction of a Fire Captain, has charge of a fire department company or a platoon intended to assist in the extinguishing of fires." Under "Examples of Work," the CSC job description provides that a lieutenant "[t]akes command at fires until arrival of superior officers," "[d]irects work of firefighters engaged in extinguishing fires," and "[p]reserves order and discipline among subordinates."

The CSC job description further provides that the a lieutenant "[g]ives assignments and instruction to subordinates; provides them with needed advice and assistance when difficult and unusual problems arise, and checks their work to see that

proper procedures are followed;" "[e]nsures reasonable standards of workmanship, conduct, and output are maintained and that desired objectives are achieved;" and "[a]cts in the place of a Fire Captain in his/her absence." A lieutenant also ". . . [a]ssigns firefighters to inspect schools, theaters, offices, and other buildings and to ensure that proper fire precautionary measures are maintained at public gatherings." Finally, the CSC job description provides that a fire lieutenant must have the "[a]bility to give assignments to firefighters."

Carteret submitted the certification of its Fire Chief Mark Hruska. Hruska certifies that the Carteret Fire Department consists of one fire chief, no fire captains, five (5) lieutenants, and fourteen firefighters. (Hruska cert., ¶2, 4.) Lieutenants report to the fire chief, and there are no other titles with managerial duties in the department besides lieutenants and the chief. (Id., ¶3.) Hruska certifies that lieutenants "serve as first level supervisors for all firefighters assigned to their respective duty shifts," and "supervise the rank and file firefighters . . . to ensure they are performing their firefighting functions safely and in accordance with their training and departmental orders and directives." (Id., ¶7.)

Hruska certifies that "lieutenants make sure that . . . firefighters are completing their other assigned job tasks, when not actively engaged in firefighting," and "are expected to report any subordinates not performing up to acceptable and proscribed standards to the Fire Chief." (Id.) Hruska certifies that lieutenants "[c]all in firefighters from a pre-established overtime list, to fill vacancies on their duty tour when required;" "[k]eep track of employee attendance while working on their respective duty tours;" "report any disciplinary issues of subordinate employees working on their respective duty tours to the Fire Chief, so they may be remediated or addressed in the ordinary course;" and "[t]ake supervisory charge at emergency fire scenes in the absence of the Fire Chief during their respective duty tours." (Id.)

Hruska certifies that because Carteret is a civil service jurisdiction, "lieutenants do not have the authority to hire, fire or formally discipline other employees," but lieutenants "are responsible for corrective actions in immediate circumstances that may arise with their subordinates during their respective duty shifts," and "are responsible to report potential disciplinary issues by subordinates to the Fire Chief for his review and ultimate determination regarding formal Civil Service disciplinary action(s)." (Id., ¶14.) Hruska certifies that lieutenants, "make recommendations for consideration" by

"reporting potential disciplinary issues to the Fire Chief," but "the ultimate decision [regarding discipline] lies with the Fire Chief." (Id.) Hruska certifies that lieutenants can "'reprimand' subordinates under their supervision for obvious violations of required procedures and performance standards," and are "responsible to report the same, and any other disciplinary matters involving their subordinate firefighters that may arise, to the Fire Chief." (Id., ¶18.)

Local 67 opposes Carteret's petition. It provided an affidavit of its president, Jason Kurdyla. Kurdyla affirms that he has been employed by Carteret as an emergency medical technician (EMT) since October, 2009, and then as a firefighter since June, 2011. (Kurdyla aff., ¶1.) Kurdyla affirms that the unit is a mixed unit of approximately twenty (20) employees, including seven (7) lieutenants and thirteen (13) rank and file firefighters. (Id., ¶5.) Kurdyla affirms that by April, 2018, the captain position had been eliminated by attrition and that captains' duties as tour commanders had been assumed by lieutenants. (Id.)

Local 67 also provided the affidavit of Nathaniel Reynolds. Reynolds has been employed by Carteret as a firefighter since December, 1998, and then as a lieutenant since 2013. (Reynolds aff., ¶1.) Reynolds affirms that Local 67 has represented all paid firefighters employed by Carteret since at least 1965

through the most recent collective negotiations agreement (CNA), extending from January 1, 2011 to December 31, 2015, as well as a MOA for a successor agreement that was ratified on August 8, 2020. (Id., ¶3.)

Reynolds affirms that in 2011, Carteret employed five (5) captains and had not yet instituted the classification of lieutenant. (Id., ¶4.) Reynolds affirms that on December 20, 2012, Carteret approved an ordinance restructuring the fire department, effective January 1, 2012, establishing the title of fire lieutenant, to be paid \$1,500 more than a senior firefighter, and \$8,500 less than a captain. (Id.) Reynolds affirms that after the enactment of the ordinance establishing the fire lieutenant title, "the [u]nion did not ratify any agreement concerning the Lieutenants," and "the [o]rdrinance did not change the provisions of the CNA," but "the firefighters, who were appointed to the position of lieutenant, continued to be covered by the CNA." (Id.) Reynolds affirms that "the fire lieutenant position was intended as a first-level supervisory position and the fire captain title would be a second-level supervisory position." (Id.)

Reynolds affirms that by April, 2018, "the captains had been eliminated by attrition and their duties as Tour Commanders," were "assumed by lieutenants." (Id., ¶5.) Reynolds affirms that "[t]here are no fire captains at this time, despite [Carteret's]

expressed intent, at the time the fire lieutenant classification was created to maintain the classification of fire lieutenant as a primary level supervisor and the fire captain as a secondary level supervisor." (Id.) Reynolds affirms that "[t]here are no other job titles with similar duties at this time." (Id., ¶6.)

Reynolds affirms that the "[l]ieutenants are supervised directly by Chief Mark Hruska." (Id., ¶7.) Reynolds affirms that the CSC conducted an audit of his lieutenant title and concluded on April 11, 2019:

Based on our review of the current organizational structure, employees functioning in the Fire Lieutenant title report directly to the Fire Chief and provide limited 1st level supervision to Fire Fighters and Emergency Medical Technicians (EMT), only when serving as the highest ranking officer on the work shift. The Fire Chief has sole responsibility for directly supervising all fire department personnel; evaluating employee performance and conduct, authorizing the hiring and firing of staff, implementing disciplinary actions; managing all investigations, follow up actions, and departmental and equipment inspections, and authorizes the purchase, repair and maintenance of all equipment

A review of Lieutenant Reynolds' position reveals that he . . . makes recommendations but does not have the authority to hire and fire personnel, prepare performance evaluations, or implement disciplinary actions. (Id., ¶7).

Reynolds affirms that "[a]s the position of Captain has been left unfilled through attrition, the Lieutenants have taken over the same responsibilities as the Captains, whom they have

replaced on each fire suppression tour." (Id., ¶8.) Reynolds affirms that captain duties were transferred to lieutenants "by April, 2018, with the retirement of the last Captain." (Id., ¶9.) Reynolds affirms that lieutenants "assigned to each 24 hour tour perform the same duties that were previously performed by the Captains," including

Fire House maintenance, in-house training, scheduling and updating yearly time off under provisions of the contract, submitting the submission of the initial payroll, equipment maintenance, and supervision of the EMTs in the separately represented EMS unit (Id., ¶8).

Reynolds affirms that in the parties' 2020 MOA, "the salary of the Lieutenant was increased to one-half of the differential between the 2015 salary of Fire Captain and the senior firefighter." (Id., ¶10.) Reynolds certifies that during the negotiations for the MOA, Carteret "agreed only to acknowledge that the Lieutenants were part of the negotiations unit, pending the outcome of" this petition. (Id.)

Reynolds further affirms that since the elimination of captains, "Lieutenants oversee the day to day operations in the Fire House and take incident command of fire and emergency medical calls." (Id., ¶12.) Reynolds affirms that "Lieutenants oversee professional firefighters, volunteer firefighters, and EMTs on duty," and "report to the Chief." (Id.) Reynolds affirms that lieutenants "assign the EMS division schedule, including time off," and "organize . . . vacation picks for the

firefighters and lieutenants," but Chief Hruska "approves the Firefighter/Lieutenant work schedule." (Id., ¶13.)

Reynolds affirms that lieutenants "do not hire, fire, discipline, or effectively recommend the same," but "report observed disciplinary infractions by firefighters to the Chief, for his consideration." (Id., ¶14.) Reynolds affirms that lieutenants can "reprimand EMT personnel, which are forwarded to the Chief for final approval/follow through," and "have given initial discipline to EMTs," such as when a lieutenant sent an EMT "home for falling asleep on duty and not being able to perform his job requirements." (Id., ¶¶14, 16.)

Reynolds affirms that lieutenants "cannot immediately suspend firefighters," but they can "write up the issue and forward their report to the Chief." (Id., ¶16.) Reynolds affirms that an unspecified lieutenant "recommended that the Chief discipline a probationary [f]irefighter . . . for falling asleep during a training class and for not paying attention during another class," but that lieutenant "was not provided any feedback on his recommendation." (Id., ¶14.)

Reynolds affirms that a lieutenant "oversees the day to day operations of the EMS Division," and the same lieutenant "assisted the Chief in the hiring process for EMTs," even when he was a firefighter. (Id., ¶15.) Reynolds affirms that lieutenants "do not provide input for the hiring process of

firefighters.” (Id.)

Reynolds further affirms that with regard to evaluations, “[t]here is no standard evaluation process for firefighters,” and lieutenants “do not consistently participate in the evaluation process for probationary firefighters,” but the Chief “has occasionally requested” evaluations from lieutenants. (Id., ¶17.) Reynolds affirms that although lieutenants “have provided” evaluations to the Chief, “it is unclear if [the Chief] followed their recommendations or took their input into account.” (Id.) Reynolds affirms that lieutenants provide “daily training,” but there is no “enunciated standard.” (Id., ¶18.)

ANALYSIS

Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977), explains the circumstances under which a unit clarification petition is appropriate:

Clarification of unit petitions are designed to resolve questions concerning the exact composition of an existing unit of employees for which the exclusive representative has already been selected Occasionally a change in circumstances has occurred, a new title may have been created . . . [or] the employer may have created a new operation or opened a new facility [which would make] a clarification of unit proceeding appropriate Normally, it is inappropriate to utilize a clarification of unit petition to enlarge or diminish the scope of the negotiations unit for reasons other than the above. [3 NJPER at 251]

See also Rutgers, The State University, D.R. No. 84-19, 10 NJPER

284 (¶15140 1984).

The clarification of unit process is intended to resolve uncertainties concerning the composition of an existing negotiations unit as it relates to the identification of titles within a general classification of employees. The clarification of unit process is also appropriate where a title's job functions have changed or a new title has been created, from which we might find that the changed or new title could be identified within the parties' described unit. Clearview Reg. Bd. of Ed. However, absent changed circumstances, where the parties specifically agree to exclude titles from a unit, a clarification of unit petition is inappropriate to add those titles to that unit, and it will be dismissed. Wayne Tp. Bd. of Ed.; Warren Tp. Finally, if a clarification of unit petition is not appropriate or timely, employees may be added by the Commission to an existing unit through the filing of a representation petition. See N.J.A.C. 19:11-1.1.

N.J.S.A. 34:13A-5.3 provides in a pertinent part:

[E]xcept where established practice, prior agreement or special circumstances dictate the contrary, . . . any supervisor having the power to hire, discharge, discipline, or to effectively recommend the same, [shall not] have the right to be represented in collective negotiations by an employee organization that admits non-supervisory personnel to membership

In Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404, 425-427

(1971), the New Jersey Supreme Court held that public employees who exercise significant power and responsibilities over other personnel should not be included in the same negotiations unit as their subordinates because of the conflict of interest between those employees and their supervisors.

In Town of West New York, P.E.R.C. No. 87-114, 13 NJPER 277 (¶18115 1987), the Commission reaffirmed its long line of cases holding that we will ordinarily find a conflict of interest between superior officers and rank and file officers in a public safety department. In Union City, P.E.R.C. No. 70, NJPER Supp. 295, 297 (¶70 1972), cited in West New York, 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 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. [Union City at 350]

Thus, for fifty years, we have held that the inclusion of both police and fire superior officers in rank and file units creates an impermissible conflict of interest. See City of Atlantic City, D.R. No. 2018-9, 44 NJPER 149 (¶44 2017).

In West New York, the Commission also cited with approval Borough of South Plainfield, D.R. No. 78-18, 3 NJPER 349 (1977), in which the Director of Representation found that

. . . except in very small departments where any conflict of interest between superior officers and rank and file personnel is de minimis in nature, the quasi-military structure of police departments virtually compels that superior officers and patrolmen be placed in separate units. This is so inasmuch as the exercise of significant authority in a chain of command operation produces an inherent conflict of interest within the New Jersey Supreme Court's definition of that concept in Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404 (1971) (emphasis added). The existence of an

inherent conflict of interest in these circumstances must lead to a determination that separates superior officers from rank and file notwithstanding a previous history of collective negotiations in a combined unit. Moreover, the finding of such conflict is not contingent upon a finding that the superior officers are supervisors within the meaning of N.J.S.A. 34:13A-5.3. [Id. at 349]

* * *

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 existence of established practice, prior agreement or special circumstances dictate the continued inclusion of superior officers in a unit of rank and file personnel. [Emphasis added; footnotes omitted. Id. at 350]

In West New York, the Commission ordered that superior officers be removed from the unit based upon the potential for a conflict of interest with rank and file officers, despite a history of a long relationship in one combined unit, and notwithstanding that the employer did not assert that an actual conflict existed. The Commission clarified the unit to exclude the superiors even in the absence of direct evidence of actual conflict - - "where a superior officer was actually torn between

his divided loyalties to his employer and his unit, thus damaging the public interest" - - finding that such a standard, i.e., actual conflict, is "too exacting and is inconsistent with West Paterson, especially when public safety employees are involved." West New York, 13 NJPER 279 (citing West Paterson Bd. of Ed., P.E.R.C. No. 77, NJPER Supp. 333 (¶77 1973)). The Commission wrote:

Rather, we believe severance is appropriate for uniformed employees even where there has been an 'established practice' where, as here, the employee's job responsibilities place him in a substantial conflict of interest with his subordinates. [West New York at 279]

We presume that in paramilitary organizations, such as fire departments, an inherent potential conflict of interest exists between superior officers and rank and file uniformed personnel. See West New York, supra. The presumption is not dependent upon a finding of the supervisory status of superiors or upon the presence of actual conflict among the groups. Id. An exception may be found in small units if the duties and authority of superiors and rank and file are virtually identical so that any potential for conflict between the ranks is de minimis. See Town of Harrison, P.E.R.C. No. 93-104, 19 NJPER 268 (¶24134 1993), affirming H.O. No. 93-1, 19 NJPER 39 (¶24018 1992). This situation is normally found in a very small public safety departments, where the lines of demarcation between ranks is

slight. See Pine Valley Borough, D.R. No. 99-15, 25 NJPER 269 (¶30114 1999) (unit of three (3) patrolmen and one (1) sergeant appropriate where sergeant is not a statutory supervisor and performs the same duties as patrolmen); Township of Greenwich, D.R. No. 99-7, 25 NJPER 61 (¶30023 1998) (small force exception applied where all ranks of fifteen (15) member department have interchangeable responsibilities); Borough of Audubon Park, D.R. No. 88-6, 13 NJPER 741 (¶18278 1987) (small force exception applied to unit of one (1) sergeant and two (2) patrolmen); Borough of Merchantville, D.R. No. 80-38, 6 NJPER 305 (¶11147 1980) (unit appropriate where sergeant has no greater authority than patrol officers in ten (10) member department).

In this case, I find that the lieutenants should be separated from the existing unit of rank and file firefighters. Impermissible potential conflicts of interest exist between the lieutenants and rank and file members because lieutenants are the sole remaining superior officers (other than the Fire Chief) to whom rank and file unit members report directly. The CSC job description for fire lieutenant, as well as the Hruska certification and the Reynolds affidavit, detail the numerous duties and responsibilities of lieutenants that involve the supervision of rank and file firefighters, including the authority to direct assignments, and recommend discipline.

Reynolds' affidavit, submitted by Local 67, reveals the

supervisory duties assumed by lieutenants following the retirement of the last captain in the department in April, 2018. Specifically, Reynolds affirms that since the elimination of captains by attrition, lieutenants oversee day-to-day operations in the firehouse; take incident command of fire and emergency medical calls; are responsible for firehouse maintenance, in-house training, scheduling, updating yearly time off under provisions of the contract, submitting initial payroll, equipment maintenance; and oversee professional firefighters, volunteer firefighters, and EMTs on duty.

Local 67 argues that lieutenants are not supervisors, pursuant to the Act, and alternatively, that lieutenants are first level supervisors and not second level supervisors (like captains), and therefore not supervisors within the meaning of the Act. However, lieutenants are now the only superior officers in Carteret other than Fire Chief, and lieutenants have assumed all captain duties after April, 2018. Thus, Local 67's distinction between first level supervisors and second level supervisors appears misplaced. Furthermore, as detailed above, it is undisputed that lieutenants exercise supervisory authority over rank and file firefighters and EMTs.

Fire Chief Hruska concedes in his certification that because Carteret is a civil service jurisdiction, "lieutenants do not have the authority to hire, fire or formally discipline other

employees." He certifies that lieutenants ". . . are responsible for corrective actions in immediate circumstances that may arise with their subordinates during their respective duty shifts," and "are responsible to report potential disciplinary issues by subordinates to the Fire Chief for his review and ultimate determination regarding formal Civil Service disciplinary action(s)." (Hruska cert., ¶14.) Lieutenants can "'reprimand' subordinates under their supervision for obvious violations of required procedures and performance standards," and are "responsible to report the same, and any other disciplinary matters involving their subordinate firefighters that may arise, to the Fire Chief."^{3/} (Id., ¶18.)

Thus, lieutenants can make recommendations to the Fire Chief regarding discipline, see N.J.S.A. 34:13A-5.3 (supervisors are employees "having the power to hire, discharge, discipline, or to effectively recommend the same"), but as detailed in West New York, Union City, and South Plainfield, supra, in paramilitary public safety organizations like fire departments, the presumption of a conflict of interest between a superior and subordinates, ". . . is not contingent upon a finding that the superior officers are supervisors within the meaning of N.J.S.A.

^{3/} On behalf of Local 67, Reynolds concurs that lieutenants "do not hire, fire, discipline, or effectively recommend the same," but "report observed disciplinary infractions by firefighters to the Chief, for his consideration." (Id. at ¶14.)

34:13A-5.3." South Plainfield, supra, 3 NJPER at 349.

In Woodbridge Tp., D.R. No. 96-19, 22 NJPER 216 (¶27116 1996), the Director of Representation ordered that a combined unit of police superiors and patrol officers be clarified to exclude the superiors. In so doing, the Director found that the size of the Department (approximately two hundred (200) police personnel) and the superiors' exercise of authority to discipline and direct assignments of the rank and file officers created an intolerable conflict of interest. This finding was made despite a twenty-six (26) year relationship between the Township and a unit that included all police officers except the chief and deputy chief, and without any evidence of an actual conflict of interest.

Despite Local 67's arguments to the contrary, the facts of this matter do not meet the small force exception; the Carteret Fire Department has approximately 20 fire personnel, lieutenants have authority to recommend discipline, and are responsible for exercising supervisory authority over subordinate rank and file firefighters and EMTs. Furthermore, the decisions cited by Local 67 in support of a small force exception are distinguishable.

Local 67 relies on Metuchen Borough, D.R. No. 78-27, 3 NJPER 395 (1977), where the Director did not address the issue of small force exception at all, and found that police captains were supervisors, but relied upon the absence of actual conflicts of

interest between captains and subordinates to find that an existing mixed unit was appropriate. But see West New York, supra (holding that actual conflict is "too exacting and is inconsistent with West Paterson, especially when public safety employees are involved").

Next, Local 67 relies on South Plainfield, D.R. No. 78-18, 3 NJPER 349 (1977), where the Director found a conflict of interest between superior officers and subordinates that warranted the removal of superior officers from the unit. In Borough of Merchantville, D.R. No. 80-38, 6 NJPER 305 (¶11147 1980), the Director found that a mixed unit was appropriate where the sergeant had no greater authority than patrol officers in a ten (10) member department.

Local 67 also relies on Township of Greenwich, D.R. No. 99-7, 25 NJPER 61 (¶30023 1998), where the small force exception was applied, albeit in a factual setting distinguishable from Carteret. Greenwich involved a 15 employee department with both a chief and an administrative captain superior to the lieutenant and sergeants. The Director found that the lieutenant and sergeants were not supervisors, as they had interchangeable responsibilities with the patrol officers. Again, this is factually distinguishable from the situation in Carteret, with twenty employees, no superior officers other than lieutenants and the Fire Chief, where lieutenants' duties are not interchangeable

with firefighter duties, especially after lieutenants assumed captain duties in 2018, and where the lieutenants have supervisory authority over firefighters and EMTs.

No special circumstances support the continuation of the historic unit. Although the parties have a long history of a combined unit of lieutenants with firefighters, that history does not supercede the potential conflict or harm to the public interest. See West New York, 13 NJPER 277 (¶18115 1987); Woodbridge Tp., 22 NJPER 216 (¶27116 1996).

Considering the conflict of interest created by the inclusion of lieutenants with rank and file firefighters, I find that the unit should be clarified to exclude lieutenants.

ORDER

The clarification of unit petition is granted to exclude lieutenants from the negotiations unit of lieutenants and firefighters represented by Local 67.

/s/ Jonathan Roth
Jonathan Roth
Director of Representation

DATED: August 1, 2022
Trenton, New Jersey

A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3.

Any request for review is due by August 11, 2022.