

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

In the Matter of

TOWN OF BOONTON,

Public Employer,

-and-

DOCKET NO. CU-80-90

POLICEMANS BENEVOLENT ASSOCIATION,
LOCAL NO. 212,

Petitioner.

SYNOPSIS

The Director of Representation, on the basis of an administrative investigation, finds that police superior officers should be removed from a negotiations unit which includes rank and file police employees. The Director, referring to Commission precedent regarding the inherent conflict of interest between superior officers and rank and file police employees, notes the absence of a dispute that the superior officers are supervisory employees.

D.R. NO. 81-16

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Appearances:

For the Public Employer
Maraziti, Kalish & Gregory
(Joseph Mariziti of counsel)

For the Petitioner
Michael D. Woytowich, President

DECISION

On June 16, 1980, the Town of Boonton (the "Town") filed a Petition for Clarification of Unit with the Public Employment Relations Commission (the "Commission"). The Petition seeks the removal of the Captain (1) and the Lieutenants (4) from an existing unit of police officers (patrolmen, sergeants, lieutenants and captain), approximately 18 employees.

Policeman's Benevolent Association, Local No. 212 (the "PBA") is the recognized exclusive representative of

the above described unit of employees. The PBA opposes the removal of the Captain and Lieutenants from the existing unit. In accordance with N.J.A.C. 19:11-2.6, the undersigned has caused an administrative investigation to be conducted into the matters involved in the Petition in order to determine the facts.

On the basis of the administrative investigation herein, the undersigned finds and determines as follows:

1. The disposition of this matter is properly based upon the administrative investigation herein, it appearing that no substantial and material factual issues exist which may more appropriately be resolved at a hearing. Pursuant to N.J.A.C. 19:11-2.6(b), there is no necessity for a hearing where, as here, no substantial and material factual issues have been placed in dispute by the parties.

2. The Town of Boonton is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), is the employer of the employees who are the subject of this Petition, and is subject to the provisions of the Act.

3. The Policeman's Benevolent Association, Local No. 212 is an employee representative within the meaning of the Act and is subject to its provisions. The PBA is currently the exclusive representative of all police officers employed by the Town of Boonton, including patrolmen, sergeants, lieutenants and captains, but excluding Chief of Police.

4. The Town seeks the removal of the Captain and Lieutenants from the existing police officers unit. The Town alleges that (1) the employees in those titles possess supervisory authority within the meaning of the Act; and (2) their continued inclusion in such a unit creates a conflict of interest with allegedly nonsupervisory employees (patrolmen and sergeants).

5. The PBA contends in its statement of position that the Lieutenants are "working shift commanders who run the shift," and "do not set, make or have any say in the management of the police department." Similarly, the PBA contends that the Captain "sets no policy and does not share in management decisions," and, therefore, the disputed titles should remain included in the negotiations unit.

The issue presented is not novel, and has received considerable review by the Commission. In In re Borough of South Plainfield, D.R. No. 78-18, 3 NJPER 349 (1977), the Commission's policy was synthesized. The undersigned stated:

There is now a long line of Commission decisions on the question of whether superior officers may be included in negotiations units with patrolmen. The standards utilized by the Commission in reaching these determinations are presented in In re City of Elizabeth, P.E.R.C. No. 71 (1972), In re City of Union City, P.E.R.C. No. 70 (1972), and City of Camden, P.E.R.C. No. 52 (1971). Generally these decisions provide 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 patrolmen and superior officers 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 Milford v. Wilton, 57 N.J. 404 (1971). 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.

Moreover, in the South Plainfield matter, supra, the undersigned went on to express the standard by which all such future cases would be determined; namely, that:

... in all cases involving police departments, 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 of special circumstances dictate the continued inclusion of superior officers in a unit of rank and file personnel.

In the instant matter, while the PBA alleges that Captains and Lieutenants are not involved in managerial functions of the department, it does not dispute the existence of an inherent conflict of interest between the Captain and Lieutenants and the remainder of the police unit. The Town alleges, and the PBA does not dispute, that the Captain and the Lieutenants are supervisors within the meaning of the Act and that they have the authority to recommend and to effectuate discipline of lower ranking officers. Past practice or prior agreement (prior to 1968), which might dictate the continued inclusion of the Captain and Lieutenants in the existing unit, is not alleged. It would thus appear to the undersigned that based on the statutory prohibition against the inclusion of supervisors as defined in the Act with nonsupervisory personnel that the continued inclusion of the Captain and the Lieutenants in a unit with sergeants and patrolmen unit would be inappropriate.

On October 6, 1980, the undersigned advised the parties that in the absence of the presentation of any material and substantial disputed factual issues warranting the convening of an evidentiary hearing, the undersigned would issue a decision removing the Captain and Lieutenants from the existing unit. To date, the parties have not submitted such documentary evidence.

Accordingly, for the reasons set forth above, the undersigned determines that the Captain and Lieutenants shall be removed from the current collective negotiations unit of sergeants and patrolmen effective December 31, 1980, the expiration of the current agreement.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Carl Kurtzman, Director

DATED: November 13, 1980
Trenton, New Jersey