

D.R. NO. 88-9

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

In the Matter of

BOROUGH OF MORRIS PLAINS,

Public Employer-Petitioner,

-and-

Docket No. CU-87-44

P.B.A., LOCAL 254,

Employee Organization.

SYNOPSIS

The Director of Representation determines that the title Operations Division Commander is a supervisor within the meaning of the Act. The Commander has and shall have responsibility in the areas of discipline and formal evaluation of sergeants and patrolmen. Furthermore, the Commander shall have an "effective recommendation" with regard to the hiring and firing of department personnel. Accordingly, the Director clarifies the negotiations unit of all police officers employed by the Borough of Morris Plains, excluding the Chief of Police, to exclude the newly created position of Operations Division Commander, effectively immediately.

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Appearances:

For the Public Employer-Petitioner  
Hansbury, Martin & Knapp  
(Fredric M. Knapp, of counsel)

For the Employee Organization  
Loccke & Correia  
(Richard D. Loccke, of counsel)

DECISION

On February 6, 1987, the Borough of Morris Plains ("Borough") filed a Clarification of Unit Petition with the Public Employment Relations Commission ("Commission") seeking to exclude the title Operations Division Commander from a bargaining unit represented by PBA Local 254. The unit is comprised of all police officers, excluding the chief of police. PBA Local 254 opposes the petition and requests its dismissal. The Borough contends that the Operations Division Commander is a supervisor within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.3 and thus, should be excluded from the unit. The Borough further

relies upon the New Jersey Supreme Court's decision in Bd/Ed of West Orange v. Wilton, 57 N.J. 404 (1971), and its subsequent derivative case law.

In Borough of South Plainfield, D.R. No. 78-18, 3 NJPER 349 (1977), the Commission addressed the issue of supervisory employees in non-supervisory police negotiations units. The Commission stated:

...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 Board of Education of West Orange 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.

In the Union City matter, supra, the Commission stated the above most cogently:

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. City of Union City, P.E.R.C. No. 70 (1971) at 5.

Accordingly, in cases involving police department units, superior officers will normally be severed from rank and file personnel...

South Plainfield, supra, at 349-350.

See also Township of Bloomfield, P.E.R.C. No. 84-86, 10 NJPER 117 (¶15060 1984), aff'd Docket No. A-2850-8353 (App. Div. January 8, 1985).

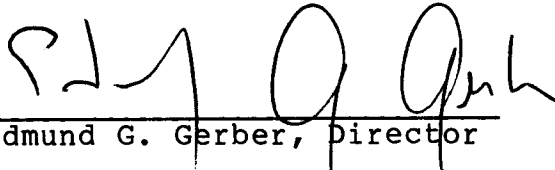
In the instant case, the Borough implemented rules and regulations concerning the establishment of both the Operations Division and the Operations Division Commander after January 2, 1987. The Borough has filed, and relies upon, Chapter 4, Volume II of the Department Rules and Regulations/Policy and Procedures of the Morris Plains Police Department. Those rules provide that the Operations Division Commander has and shall have responsibility in the areas of discipline and formal evaluation of sergeants and patrolmen. It further provides that the Operations Division Commander shall have an "effective recommendation" with regard to the hiring and firing of department personnel.

The parties were given the opportunity to file and/or supplement their formal positions on February 10, June 9, July 9 and August 19, 1987. As of this date, PBA Local 254 has not filed any formal written response to the Petitioner's assertions with regard to the duties of the Operations Division Commander. However, the Borough has filed an additional statement in support of the Director of Representation's proposed findings and conclusions. In it, the Borough reasserts its argument that there is an inherent conflict of interest between the Operations Division Commander and the remainder of the unit as a result of the Commander's supervisory functions. The Borough further argues that these supervisory responsibilities, formerly performed by the Captain, present a substantial conflict of interest necessitating the Operations Division Commander's removal from the unit.

Thus, the inclusion of the Operations Division Commander in the police negotiations unit represented by PBA Local 254 creates a conflict of interest with other unit members. Accordingly, the Operations Division Commander's continued presence in the unit is inappropriate.

Based upon the record in this matter and the above discussion, we clarify the negotiations unit of all police officers employed by the Borough of Morris Plains, excluding the chief of police, to exclude the newly created position of Operations Division Commander, effective immediately. Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977).

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Edmund G. Gerber, Director

DATED: September 21, 1987  
Trenton, New Jersey