

D.R. NO. 89-19

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

In the Matter of

ROSELLE PARK BOROUGH,

Public Employer,

-and-

ROSELLE PARK POLICE SUPERVISORS'
ASSOCIATION,

Docket No. RO-89-34

Petitioner,

-and-

P.B.A. LOCAL NO. 27,

Intervenor.

SYNOPSIS

The Director of Representation directs an election among the police sergeants and lieutenants employed by the Borough of Roselle Park Police Department. The Director found that an impermissible conflict of interest exists between these titles and the rank and file patrol officers, and concludes that they must be removed from the unit. In a police unit context statutory supervisory status is not a prerequisite for severance; a conflict of interest finding may sustain a severance request.

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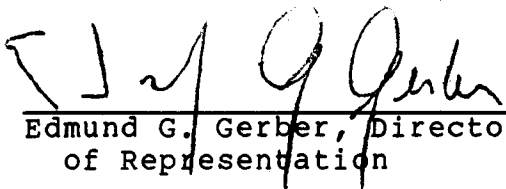
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ERRATA

The Director of Representation's decision in the above matter, issued February 17, 1989, is hereby amended as follows:

<u>Page</u>	<u>Line</u>	<u>Delete</u>	<u>Substitute</u>
1	15	ROSELLE PARK SUPERVISORS'	ROSELLE PARK POLICE SUPERVISORS'


Edmund G. Gerber, Director
of Representation

DATED: March 9, 1989
Trenton, New Jersey

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Appearances:

For the Public Employer
Pisano & Triarsi, Esqs.
(Rafael Betancourt, of counsel)

For the Petitioner
Sgt. Ronald R. Scull

For the Intervenor
Zazzali, Zazzali, Fagella & Nowak
(Paul L. Kleinbaum, of counsel)

DECISION AND DIRECTION OF ELECTION

On September 26, 1988, the Roselle Park Police Supervisors' Group ("Supervisors' Group" or "Petitioner") filed a Representation Petition with the Public Employment Relations Commission ("Commission") seeking to represent a unit of all superior officers in the rank of sergeant and above employed by the Borough of Roselle Park Police Department ("Borough"). The Petition excludes the captains and the Chief. The subject employees are presently

represented by the Policemen's Benevolent Association, Local 27 ("Local 27" or "PBA"). The Petition was accompanied by an adequate showing of interest. N.J.A.C. 19:11-1.2(a)8. The Borough takes no position as to the issues raised by the petition. The PBA opposes the petition, arguing that the present unit is appropriate, that it has always represented the subject titles fairly, and that the superior officers should not be severed since they are not supervisors within the meaning of the Act.

We have conducted an administrative investigation of this matter. N.J.A.C. 19:11-2.2. We make the following factual findings.

The Borough and PBA have had a long collective negotiations relationship for the unit of patrol officers, sergeants, and lieutenants. The Borough employs nineteen patrol officers, six sergeants and no lieutenants. The parties' current agreement expires on December 31, 1988. Captains negotiate separately.

The sergeants are responsible for enforcing department rules and regulations. The sergeants are also responsible for inspection of activities, personnel and equipment under their control, and for initiating "suitable action in the event of a failure, error, violation misconduct, or neglect of duty by a subordinate."

ANALYSIS

Our statute and case law provide the proper frame for the question presented here: should the sergeants and lieutenants be severed from the existing unit of patrol officers, sergeants and lieutenants?

N.J.S.A. 34:13A-5.3 provides:

...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 non-supervisory personnel to membership,...

Superior officers in police units are presumed not to have a community of interest with rank and file employees. In Borough of So. Plainfield, D.R. No. 78-18, 3 NJPER 349 (1977), the Director of Representation said:

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). 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 (emphasis added).

There are two exceptions to the presumption: (1) very small departments where conflict of interest between superiors and rank and file is de minimis, and (2) where established practice, prior agreement, or special circumstances dictate the contrary. See Union City., P.E.R.C. No. 71 (1972). These exceptions are narrowly construed. Here, the size of the Roselle Park department does not

bring it under the small department exception. Further, none of the evidence or documentation submitted indicates that the special circumstance or prior agreement exceptions apply. While it appears here that a long history of negotiations exists, our cases state that superior officers will be removed from mixed units of rank-and-file and superior officers where a substantial conflict of interest exists, notwithstanding a relationship of long duration. In West Paterson Bd. of Ed., P.E.R.C. No. 77 (1973), we rejected the view that mixed units would automatically continue to be appropriate whenever the "established practice" exception had been met. In Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404 at 425-427 (1971), our 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 these employees and their supervisors. Here, the sergeants are responsible for inspecting patrol officers and for initiating corrective action when there has been a violation of rules. These responsibilities generate the type of conflict the legislature and Court intended to avoid. Wilton. Under these circumstances, the requisite community of interest for an appropriate unit is lacking.

Based upon the above, we conclude that the sergeants and lieutenants should be removed from the existing negotiations unit.

The PBA argues that severance is inappropriate because the sergeants are not supervisors under the Act. However, in police unit settings, statutory supervisory status is not a prerequisite for

severance; a conflict of interest may sustain a severance request. So. Plainfield; Town of West New York, P.E.R.C. No. 87-114, 13 NJPER 277 (¶18115 1987); Wilton. The PBA also argues that the severance will result in unit proliferation. The employer Borough, normally the party burdened by unit proliferation, has not raised this issue. There is nothing in this record which suggests that the addition of a superior officer's unit will create an extraordinary negotiations burden on the public employer.^{1/}

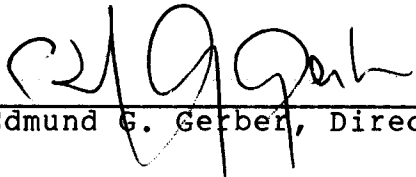
Accordingly, we direct that an election be conducted among the employees in the petitioned-for unit. The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, and including those in the military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who resigned, or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

^{1/} In this regard, we note that the petitioner alleges that the Borough and PBA recently agreed to sever captains from the rank and file unit.

Pursuant to N.J.A.C. 19:11-9.6, the Borough is directed to file with us an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the unit, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by us no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously provided to the employee organizations with a statement of service filed with us. We shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

The exclusive representative, if any, shall be determined by a majority of the valid votes cast in the election. The election shall be conducted in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: February 17, 1989
Trenton, New Jersey