

E.D. NO. 76-10

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF UNION,
Public Employer,

-and-

Docket No. RO-1016

SUPERIOR OFFICERS ASSOCIATION OF THE
POLICE DEPARTMENT OF THE TOWNSHIP OF
UNION,

Petitioner,

-and-

P.B.A. LOCAL 69,

Intervenor.

SYNOPSIS

The Executive Director directs an election in a unit comprised of sergeants, lieutenants and captains of the Police Department of the Public Employer, finding those employees to be supervisors within the meaning of the Act. The Intervenor, which represents nonsupervisory patrolmen, is precluded from participating in the election because of the statutory provision which prohibits supervisors from being represented by an organization that admits nonsupervisory personnel to membership. There are no substantial and material factual issues in dispute in this matter.

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DECISION AND DIRECTION OF ELECTION

On April 3, 1975 a timely Petition for Certification of Public Employee Representative, supported by an adequate showing of interest, was filed with the Public Employment Relations Commission by the Superior Officers Association of the Police Department of the Township of Union (the "Petitioner") with respect to a unit of 22 Sergeants, Lieutenants, and Captains employed by the Township of Union (the "Township"). The undersigned has caused an investigation to be conducted into the matters and allegations set forth in the Petition in order to determine the facts. All parties have been advised of their obligation under Rule Section 19:11-1.12, and have been afforded an opportunity thereunder, to present to the undersigned documentary and other evidence, as well as statements of position, relating to the Petition. 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 to the undersigned that no substantial and material factual issues exist which may more appropriately be resolved after a hearing. Pursuant to Rule Section 19:11-1.12(c), 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 Township of Union is a public employer within the meaning of the Act and is subject to its provisions.

3. The Superior Officers Association of the Police Department of the Township of Union and P.B.A. Local 69 are employee representatives within the meaning of the Act and are subject to its provisions.

4. P.B.A. Local 69 has moved to intervene in this proceeding based upon a collective negotiations agreement between the Township and the P.B.A. with a termination date of December 31, 1974. That agreement included the petitioned-for Superior Officers in addition to the patrolmen employed by the Township. The motion to intervene is hereby granted although, for reasons to be stated below, the P.B.A. will not be permitted to participate in the election directed herein.

5. The Township has declined to recognize the Petitioner as the majority representative of the employees sought. Therefore, there is a question concerning representation and the matter is properly before the undersigned for determination.

6. The employees sought by the Petitioner are supervisors within the meaning of the Act.^{1/} P.B.A. Local 69 represents nonsupervisory patrolmen employed by the Township. However, the Act, except in limited circumstances not claimed in this matter, prohibits supervisors from being "...represented in collective negotiations by an employee organization that admits nonsupervisory personnel to membership...." (N.J.S.A. 34:13A-5.3). Therefore, the P.B.A. is precluded from representing supervisory Superior Officers because it admits nonsupervisory patrolmen to membership.

7. P.B.A. Local 69, in a letter dated April 18, 1975, stated that it would consent to an election among the Superior Officers although it indicated that its

"main objection to this petition is that we have been involved in negotiations with the Township of Union for approximately nine (9) months...We contend that any action at this time would be most damaging to our negotiating process."

The parties agreed that this matter should be held in abeyance during the course of negotiations which were aided by a mediator appointed by the Commission. On July 28, 1975, the Township and P.B.A. Local 69 entered into an agreement for the period January 1, 1975 through December 31, 1976. That agreement recognizes the existence of the instant petition filed by the

^{1/} N.J.S.A. 34:13A-5.3 describes a supervisor as one "...having the power to hire, discharge, discipline, or to effectively recommend the same..."

Superior Officers Association and provides that,

"In the event said 'PERC' determines to authorize a separate bargaining agent for the Superior members of the Police Department of the Township of Union, then and in that event, the parties hereto do agree that the salary schedule herein set forth, insofar as it pertains to said Superior Officers shall be terminated and subject to renegotiations between the bargaining agent of said Superior Officers Association and the Township of Union."

P.B.A. Local 69 has subsequently refused to consent to a secret ballot election although no reason for this position has been offered. However, as stated above, it has been determined that the P.B.A. is precluded from representing the supervisory Superior Officers.

The Township has indicated in writing that it will consent to a secret ballot election.

8. The unit of Superior Officers sought by the Petition is prima facie appropriate for the purposes of collective negotiations. No contrary contention has been advanced by any party although afforded an opportunity to do so.

Accordingly, the undersigned shall direct an election in the following appropriate unit: "All sergeants, lieutenants and captains employed by the Township of Union within the Police Department but excluding managerial executives, confidential employees, professional employees, craft employees, nonpolicemen, and nonsupervisors.

9. The undersigned directs that a secret ballot election

be conducted in the unit found appropriate. The election shall be conducted no later than thirty (30) days from the date set forth below.

Those eligible to vote are employees set forth above who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation, or temporarily laid off, including those in military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

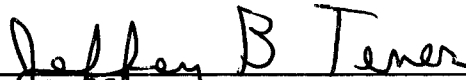
Pursuant to Rule Section 19:11-2.7 the public employer is directed to file with the undersigned an election eligibility list, consisting of an alphabetical listing of the names of all eligible voters together with their last known mailing addresses and job titles. Such list must be received by the undersigned no later than ten (10) days prior to the date of the election. The undersigned shall make the eligibility list immediately available to all parties to the election. Failure to comply with the foregoing shall be grounds for setting aside the election upon the filing of proper post-election objections pursuant to the Commission's Rules.

Those eligible to vote shall vote on whether or not they desire to be represented for the purpose of collective negotiations by the Superior Officers Association of the Police

Department of the Township of Union.

The majority representative shall be determined by a majority of the valid ballots cast. The election directed herein shall be conducted in accordance with the provisions of the Commission's Rules and Regulations and Statement of Procedure.

BY ORDER OF THE EXECUTIVE DIRECTOR



Jeffrey B. Tener
Executive Director

DATED: Trenton, New Jersey
December 15, 1975