

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF TEANECK,

Public Employer,

-and-

Docket No. RO-86-68

TEANECK POLICE CAPTAIN'S  
ASSOCIATION,

Petitioner.

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TOWNSHIP OF TEANECK,

Public Employer-Petitioner,

-and-

Docket No. CU-86-69

SERGEANTS & LIEUTENANTS  
ASSOCIATION OF TEANECK,

Employee Representative.

SYNOPSIS

The Public Employment Relations Commission dismisses a representation petition filed by the Teaneck Police Captain's Association. The Association sought to represent a collective negotiations unit of police captains employed by the Township of Teaneck. The Public Employment Relations Commission also dismisses a clarification of unit petition filed by the Township. The Township sought to have a unit of police sergeants and lieutenants clarified to include captains.

The Commission finds that the captains should be placed in a negotiations unit containing the other nineteen superior police officers. The Township's petition, however, is also dismissed subject to the refiling of an appropriate petition should an agreement upon recognition of all superior officers in one unit not be reached.

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Docket No. CU-86-69

SERGEANTS & LIEUTENANTS  
ASSOCIATION OF TEANECK,

Employee Representative.

Appearances:

For the Public Employer, Grotta, Glassman & Hoffman, Esqs.  
(M. Joan Foster, of counsel; Mark Faber, on the brief)

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

DECISION AND ORDER

On October 31, 1985, the Teaneck Police Captains Association ("Association") filed a representation petition. The Association seeks to represent a collective negotiations unit of police captains employed by the Township of Teaneck ("Township"). It claims that captains have a community of interest separating them from other superior officers.

On June 12, 1986, the Township filed a clarification of unit petition. The Township seeks to have a unit of police sergeants and lieutenants clarified to include the captains. The Sergeants & Lieutenants Association of Teaneck ("SLA"), an affiliate of PBA Local 215, represents that unit. The Township asserts that all superior officers should be in the same unit; that the captains, like the sergeants and lieutenants, pay dues to PBA Local 215 and have signed authorization cards on its behalf, and that a separate unit of three captains is too small and would cause undue proliferation in the number of units with which it must deal.

On June 23, 1986, the Director of Representation consolidated the two cases and issued a Notice of Hearing.

On October 20, 1986, Hearing Officer Jonathon Roth conducted a hearing. The parties examined witnesses and introduced exhibits. They submitted post-hearing briefs by January 23, 1987.

On June 2, 1987, the Hearing Officer issued his report and recommended decision. H.O. No. 87-21, 13 NJPER 557 (¶18203 1987). He concluded that the captains should be placed in a separate unit since the SLA did not want them in its unit. He therefore recommended the Township's petition be dismissed and the Association's petition result in an election.

On July 15, after receiving an extension, the Township filed exceptions and a supporting affidavit of its Assistant Manager

and Fiscal Officer.<sup>1/</sup> It asserts that the captains should be placed in the existing unit of superior officers and alleges that these conclusions of the Hearing Officer were wrong: (1) the petitioner is not affiliated with the PBA, (2) a separate unit of captains would not result in undue unit fragmentation; (3) the Township opposed the inclusion of captains in the unit of sergeants and lieutenants created in 1977; and (4) SLA opposes including captains in its unit.

We have reviewed the record. The Hearing Officer's findings of fact (pp. 2-6) are generally accurate. We adopt and incorporate them here, with these changes and additions.

PBA Local 215 represents the Township's rank-and-file police officers. SLA is an affiliate of PBA Local 215 and shares its funds. The captains gave the Township cards authorizing PBA Local 215 to represent them and asking the Township to deduct union dues from their paychecks.

In 1977 a unit of superior officers was proposed. The captains initially wanted to be in this unit, but the Township opposed that request because it viewed these employees as part of

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<sup>1/</sup> The affidavit refers to exhibits filed with the Township's petition and the affiant's testimony. It also speculates about the possibility of deputy fire chiefs and two other groups of employees seeking a separate unit. We cannot accept this post-hearing affidavit. To the extent it mentions facts of record, there is no need for it; to the extent it alleges new facts, there is no explanation why they were not presented at the hearing.

management. That issue was not litigated, and the present unit of sergeants and lieutenants was formed instead. Captains received the same bonus that year as other management employees.

SLA's president submitted a letter advising that sergeants and lieutenants strongly opposed having captains in their unit. At a meeting, a majority of these employees voted against the captains' inclusion because they believed the function of captain would be out of place in their unit. SLA, however, has not asserted that it would refuse to represent captains if placed in their unit.

Grievances are presented to an immediate superior. Sergeants may thus present their grievances to lieutenants, just as lieutenants may present their grievances to captains. The Chief resolves all grievances and makes disciplinary determinations.

Deputy fire chiefs are the functional counterpart of police captains. They are unorganized.

The issue is narrow: should the three police captains be placed in the negotiations unit containing the other nineteen superior police officers? We agree with the Hearing Officer that the answer would normally be yes since public policy favors broad-based negotiations units and units of all superior officers have often been approved. See, e.g., State and Prof. Ass'n and N.J. Dept. of Ed., 64 N.J. 231 (1974); Town of West New York, P.E.R.C. No. 87-114, 13 NJPER 277 (¶18115 1987); South Plainfield Bor., D.R. No. 78-18, 3 NJPER 349 (1977). We further agree that the community of interest among the superior officers outweighs any conflict of

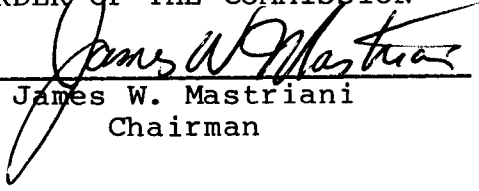
interest suggested by this record. But we part company when we come to his conclusion that the captains should nevertheless be placed in a separate unit because of University of Medicine and Dentistry of New Jersey, P.E.R.C. No. 84-28, 9 NJPER 598 (¶14253 1983) and despite Camden Bd. of Ed., P.E.R.C. No. 87-53, 12 NJPER 847 (¶17326 1986). Under the facts of this case, Camden rather than UMDNJ is the relevant precedent. As in Camden, and contrary to UMDNJ, the organization petitioning to represent a small segment of employees has ties with the organization already representing the broad-based and appropriate unit. Creating separate units would impermissibly permit employees and affiliated employee organizations to substitute their preferred unit configurations for those appropriate under the statutory criteria. We are also concerned about undue proliferation of units, both because a unit of three superior officers would be small and because it might encourage the formation of other small units. Accordingly, we dismiss the Association's petition. We also dismiss the Township's clarification of unit petition subject to the refiling of an appropriate petition should an agreement upon recognition of all superior officers in one unit not be reached.

ORDER

The representation petition filed by the Teaneck Police Captains Association is dismissed.

The clarification of unit petition filed by the Township of Teaneck is dismissed.

BY ORDER OF THE COMMISSION

  
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James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Reid, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey  
August 19, 1987  
ISSUED: August 20, 1987

H.O. NO. 87-21

STATE OF NEW JERSEY  
BEFORE A HEARING OFFICER OF THE  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF TEANECK,

Public Employer,

-and-

Docket Nos. RO-86-68  
CU-86-69

TEANECK POLICE CAPTAIN'S ASSOCIATION,

Petitioner.

SYNOPSIS

A Hearing Officer recommends that a unit of police captains employed by the Township of Teaneck is appropriate for collective negotiations and that an election be ordered to determine their representational desires. He also recommends that the clarification of unit petition filed by the Township seeking to have the police captains clarified into a unit of police sergeants and lieutenants be dismissed. He rejects the Township's arguments that a separate unit would unduly proliferate the number of units with which the Township must negotiate.

A Hearing Officer's Report and Recommendations is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Report and Recommendations, any exception thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Officer's findings of fact and/or conclusions of law.



H.O. NO. 87-21

STATE OF NEW JERSEY  
BEFORE A HEARING OFFICER OF THE  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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Appearances:

For the Public Employer  
Grotta, Glassman & Hoffman, Esqs.  
(M. Joan Foster, of counsel)  
(Mark Faber, on the brief)

For the Petitioner  
Loccke & Correia, Esqs.  
(Richard D. Loccke, of counsel)

HEARING OFFICER'S REPORT AND RECOMMENDATION

On October 31, 1985, the Teaneck Police Captain's Association ("Association") filed a representation petition with the Public Employment Relations Commission ("Commission") seeking certification as the exclusive representative of a collective negotiations unit composed of all police captains employed by the Township of Teaneck ("Teaneck" or "Township"). The captains are not represented in any collective negotiations unit.

On June 12, 1986, the Township filed a clarification of unit petition with the Commission seeking to have the captains

clarified into an existing collective negotiations unit of police sergeants and lieutenants. The Township seeks to have all superior police officers represented in one collective negotiations unit. The Association asserts that a community of interest exists among police captains and they are entitled to representation in a separate bargaining unit. The employer maintains that the appropriate unit is composed of all superior officers and that a separate unit of police captains would constitute an undue proliferation of bargaining units.

On June 23, 1986, the Director of Representation issued an order consolidating the two cases and a notice of hearing. After granting alternate requests for adjournment, I conducted a hearing on October 20, 1986, at which the parties were able to examine and cross-examine witnesses, present evidence and argue orally. Post hearing briefs were submitted by January 23, 1987. Based upon the entire record, I make the following:

#### FINDINGS OF FACT

1. The Township of Teaneck is a public employer within the meaning of the Act.
2. The Teaneck Police Captains Association and Sergeants and Lieutenants Association of Teaneck are public employee representatives within the meaning of the Act.
3. Teaneck operates under the Municipal Manager's Act in which seven representatives are popularly elected every four years

and in turn select a mayor and then serve as a legislative body. The Township Manager is appointed chief negotiator. Gary Saage is Teaneck's Assistant Manager and Fiscal Officer and was delegated the responsibility to negotiate collective negotiations agreements between the Township and its negotiations units.

4. Teaneck employs approximately 300 employees in seven collective negotiations units. The department of public works has two units. The non-supervisory unit is represented by the Public Works Employees Association and has about 50 employees. Fourteen supervisors are represented by the Public Works Supervisors Association. About 50 clerical, service and administrative employees are represented in one unit by AFSCME. In the fire department, about 73 firefighters are represented by the FMBA. About 23 lieutenants and captains in the fire department are represented by the Professional Fire Officers Association. A lieutenant in the fire department is the rough equivalent of a sergeant in the police department and a fire captain is the approximate equivalent of a police lieutenant. In the police department, about 67 patrol officers are represented by the PBA. Since 1977, about 10 sergeants and 9 lieutenants have been represented by the Sergeants and Lieutenants Association. Three police captains and the Chief complete the structural pyramid (T4-T6). Teaneck also employs about 30 managerial employees.<sup>1/</sup>

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<sup>1/</sup> Saage testified that the Township employes about 375 full-time employees. His account of the collective negotiation units and other employees establish a total of about 335.

5. The parties stipulated that captains in the police department do not formulate policy and the Township does not assert that the captains are managerial executives within the meaning of the Act (T12).<sup>2/</sup>

6. Donald Giannone is a police captain who has been employed in the Teaneck police department for 20 years. Captains typically work 7:30 to about 4 p.m. They have "charge of subordinates engaged [in police duties]." See Civil Service job description, J-3). Lieutenants work under the captains' supervision (J-4). The current collective negotiations agreement executed by the Township and the police superiors unit identifies the "immediate supervisor" as the person to whom a sergeant or lieutenant presents a grievance for a step 1 determination (J-2). Lieutenants typically grieve terms and conditions of employment to captains. Although captains have sustained and denied grievances filed by patrol officers, they often defer grievances filed by superiors to the Chief (T82). Captains rarely testify at grievance arbitration hearings. Fiedler testified at one hearing concerning a tour

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2/ Managerial executives are defined in the Act as:

Persons who formulate management policies and practices and persons who are charged with responsibility of directing the effectuation of such management policies and practices ....  
See N.J.S.A. 34:13A-3 of the Act.

Nothing in the record established that the police captains were managerial executives.

exchange (and not discipline). With respect to discipline, captains prepare "work ups" or reports of incidents involving sergeants and lieutenants and present them to the Chief, who retains disciplinary authority (T16). Giannone never recommended suspension or termination of a superior officer and Fiedler's recommendations about appropriate discipline were never followed (T72, T89).

7. Giannone is the "custodian" of personnel files and may place only "non-controversial" documents in them (e.g., certification of college course credits) (T67). Only the Chief has random discretion to review such files. The Chief sometimes assigns "work-ups" to one of three captains (T35, T45, T62). The captains will gather information and present it to the Chief who is the ultimate arbiter of appropriate discipline (T35). Captains also review personnel files of sergeants and lieutenants when the Chief considers making a promotion (T37). The Chief has advised the captains of the qualities that are necessary for someone to be a lieutenant or a sergeant and they make appropriate recommendations.

8. Giannone asserted that captains are sometimes requested to prepare information on sergeants and lieutenants with respect to negotiations matters and grievances proceeding to arbitration. Captains are requested to supply background information (T45). Giannone has never recommended suspension of a sergeant or a lieutenant (T72).

Gary Fiedler was promoted to captain in January 1984. One of his directives was subject to a grievance filed by a sergeant.

The grievance was processed and in preparation for the arbitration hearing Fiedler met with the Township labor counsel and testified at the hearing (T81). Fiedler does not respond to grievances seeking any monetary remuneration or a change in the Chief's policies (T82). With respect to discipline, Fiedler has been "an observer" at internal disciplinary hearings but has never testified at a proceeding. After any such disciplinary hearings, the Chief consults with Fiedler but has never followed his recommendations.

9. On June 19, 1986, Lieutenant Patrick Hogan, president of the Sergeants and Lieutenants Association, typed a letter advising those concerned that the sergeants and lieutenants were "strongly opposed" to the placement of the captains in their unit (P-2).

#### ANALYSIS

The Commission resolves questions concerning representation of public employees by conducting secret ballot elections or using any other appropriate means designed to ascertain the employees' free choice. N.J.S.A. 34:13A-6(d). The Commission decides in each instance which unit of employees is appropriate for collective negotiations. State of New Jersey and Prof. Assn. and N.J. Dept. of Education, 64 N.J. 231 (1974). The appropriate unit is defined with due regard for the community of interest among the concerned

employees. N.J.S.A. 34:13A-5.3.<sup>3/</sup> A community of interest determination encompasses many factors. Englewood Board of Education, P.E.R.C. No. 82-25, 7 NJPER 516 (¶12229 1981); State of New Jersey, P.E.R.C. No. 68 (1972).

Petitioner maintains that the most appropriate unit is composed of police captains. The Township counters that captains should be placed in the existing unit of police sergeants and lieutenants. It asserts that captains' authority over the other police superior officers results in (at worst) a de minimus conflict of interest and that a separate unit unduly proliferates its collective negotiations responsibilities.

In Board of Education of West Orange v. Wilton, 57 N.J. 404 (1971), the New Jersey Supreme Court identified the principles and significance of conflicts of interest in delineating collective negotiations units. The Court held:

If performance of the obligations or powers delegated by the employer to a supervisory employee whose membership in the unit is sought creates an actual or potential substantial conflict between the interests of a particular supervisor and the other included employees, the community of interest required for inclusion of

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<sup>3/</sup> The Commission has on numerous occasions found that units of police sergeants, lieutenants and captains, i.e., police superior officers, are appropriate for collective negotiations. South Plainfield, D.R. No. 78-18, 3 NJPER 349 (1977); City of Asbury Park, D.R. No. 85-26, 11 NJPER 475 (¶16171 1985); Borough of Collingswood, 10 NJPER 620 (¶15295 1984); Town of West New York, P.E.R.C. No. 87-114, 13 NJPER 277 (¶18115 1987). West New York emphasized that an intolerable conflict of interest exists when superior officers are placed in units with patrol officers.

such supervisors is not present.... While a conflict of interest which is de minimus or peripheral may in certain circumstances be tolerable, any conflict of greater substance must be deemed opposed to the public interest. [Id. at 425-426].

I find that a de minimus conflict of interest exists between captains and sergeants and lieutenants. In discipline, promotion and evaluation matters, primary and final authority rests with the Chief. The Chief has delegated some "information gathering" tasks to the captains. Only when the Chief has made an employment decision which is grieved by the Sergeants and Lieutenants Association, have captains been called by the Township to participate in litigation. Their participation is usually limited to supplying data to the Chief and observing arbitration proceedings. Furthermore, Giannone may place only "non-controversial" documents in the personnel files of sergeants and lieutenants. In the past ten years, no captain has recommended that a sergeant or lieutenant be suspended or discharged.

Under all the circumstances, I do not perceive any intolerable conflict of interest which requires that captains be separated from the lieutenants and sergeants unit.<sup>4/</sup> Their

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<sup>4/</sup> Although employees organizations are not precluded from arguing that a conflict of interest warrants the separation of one group of employees from another for the purpose of collective negotiations, employers are in the best position to determine if their managerial efficiency is compromised by the presence of incompatible positions in a negotiations unit. See City of Orange Township, D.R. No. 85-23, 11 NJPER 317 (¶16115 1985). Such conflicts would be most apparent in



peripheral involvement in "work ups," occasional participation at arbitration hearings concerning contractual disputes between the Township and Sergeants and Lieutenants Association and occasional recommendations on promotions of superiors demonstrates only a de minimus conflict of interest with the sergeants and lieutenants.

That a community of interest exists among all Teaneck police superior officers does not, standing alone, end the inquiry into whether an overall unit is most appropriate for collective negotiations. The Commission identifies the appropriate unit on a case-by-case basis, after weighing and balancing all pertinent factors. State of New Jersey, P.E.R.C. No. 68 (1972). Although the Commission normally favors broad-based units, it must also consider the differences between the petitioned-for employees and other allegedly appropriate units of employees, an employer's concern about undue fragmentation and the employees' interest in being able to be represented. Camden Board of Education ("Camden Psychologists II"), P.E.R.C. No. 87-53, 12 NJPER 847 (¶17326 1986) and University

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para-military employment models where the lines of authority are most clearly delineated. See Town of West New York, P.E.R.C. No. 87-114, 13 NJPER 277 (¶18115 1987). In the absence of facts establishing something more than a de minimus conflict of interest between captains and other police superiors, the Township's assertion that no such conflict exists should be given adequate deference.

of Medicine and Dentistry of New Jersey, P.E.R.C. No. 84-28, 9 NJPER 598 (¶14253 1983).<sup>5/</sup>

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5/ In Camden Psychologists II, an NJEA affiliate filed a representation petition seeking certification as the exclusive representative of about 14 psychologists employed by the Camden Board of Education. The Board opposed the petition and relying on Board of Education of the City of Camden and Camden City School Psychologists, E.D. No. 76-32, 2 NJPER 123 (1976), it contended that a separate unit of psychologists was inappropriate and instead they should be placed in a unit of professional employees represented by the Camden Education Association, NJEA ("CEA"). The CEA professional unit contained about 1250 teachers, librarians, nurses, guidance counsellors, social workers, child study team leaders, speech therapists, learning disability consultants and department chairpersons. In 1977, psychologists began working closely with child study team members, who were represented in the broad-based unit. In 1981, the CEA rejected the psychologists' request to be included in the professional unit with assurances that the CEA would maintain a separate salary scale for the psychologists. In 1983, the Board declined to recognize a separate unit of school psychologists. In 1985, NJEA agreed to affiliate with the Psychologists Association and filed the representation petition.

The Commission found that the most appropriate unit for psychologists was the broad-based unit. The Commission also summarized the pertinent facts of its earlier UMDNJ decision and distinguished it from Camden Psychologists II:

In UMDNJ, an NJEA affiliate sought to represent a residual unit of undergraduate allied health faculty; the AAUP had twice declined to represent these employees in its unit of graduate school faculty. Stressing the difference between graduate and undergraduate faculty, the minimal fragmentation which the proposed unit would cause, and AAUP's refusal to represent these employees, we directed an election.

Under all the circumstances, we believe UMDNJ is distinguishable and that it would not be appropriate to carve out a separate unit of psychologists represented by one NJEA affiliate from the overall unit of professional employees

The community of interest between Teaneck police captains and the unit of sergeants and lieutenants is comparable to that which exists between the psychologists and other child study team members represented by the CEA in Camden Psychologists II. (At least the former groups' interests are greater than those of the graduate and undergraduate faculties in UMDNJ, which did not work together). But what most concerned the Commission in Camden Psychologists II was that an NJEA affiliate attempted to carve out a

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represented by another NJEA affiliate. Unlike UMDNJ, where the graduate and undergraduate faculties did not work together, psychologists work in child study teams with other professional employees, all of whom CWA represents. Also, unlike UMDNJ, where the employees unconditionally sought AAUP's representation, the psychologists initially conditioned their request for CEA representation upon being assured that they would be treated differently from other professional employees and would retain a separate salary guide. These conditions, although not expressly reiterated, were not renounced when the psychologists renewed their request for representation. CEA, for its own part, did not want to have the monetary pie available to teachers and other professional employees cut into by the salary demands of psychologists. A solution to these interrelated problems could be found by having psychologists represented in a separate unit by another NJEA affiliate. This arrangement, however, would impermissibly permit employees and employee organizations to substitute their preferred unit configurations for those which are appropriate under the statutory criteria. Accordingly, we will not establish a separate unit of psychologists. [Id. at 849].

separate unit of employees which should have been included in the overall professional unit. Nothing in the record established an affiliation between the petitioned-for captains unit and the sergeants and lieutenants unit. This circumstance is more closely aligned to UMDNJ, (than Camden Psychologist II) where the Allied Health Faculty, NJEA was unaffiliated with the AAUP, the majority representative of most of the State's faculty.

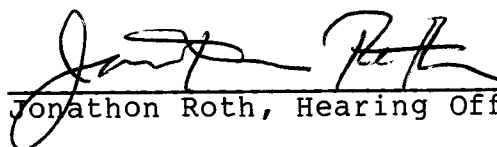
I am also not persuaded that a separate unit of police captains would cause undue fragmentation or threaten labor stability. The unit structure in Teaneck is well fixed: about 300 Township employees are represented in 7 collective negotiations units by various employee organizations. The smallest unit has about 14 employees and the largest has about 75. The Township negotiator stated that the remaining employees are managerial (and therefore, ineligible to be included in any collective negotiations unit. See fn. no. 2). The addition of one more unit would bring the total of established units to eight but cannot lead to the organization of a multitude of other units. See UMDNJ and County of Bergen, D.R. No. 87-3, 12 NJPER 619 (¶17234 1986). Furthermore, when the Township failed to seek to include the captains in the sergeants and lieutenants unit in 1977, it ran the risk that ten years later it could not persuasively argue that those employees rightfully belong in the superiors' unit.

While it is true that the addition of another unit will increase by one-third the number of police units with which the

Township must negotiate and seek resolution of disputes through interest arbitration, this fact does not countervail the captains' interests in being able to be represented. The Sergeants and Lieutenants Association, like the AAUP in UMDNJ, has expressed its opposition to the inclusion of the petitioned-for employees in their collective negotiations unit. A decision which leaves the captains bereft of the opportunity to be represented is contrary to the unique status which police officers (and firefighters) have been granted in the Act.<sup>6/</sup> Given the Supreme Court's recognition that public policy favors the ultimate organization or all employees who desire collective negotiations, it would defeat the purposes of the Act to dismiss this petition.

RECOMMENDATION

I recommend that the Commission find that the police captains in Teaneck form an appropriate collective negotiations unit and that an election be directed to allow the petitioned-for employees to express their representational desires. I also recommend that the captains not be clarified into the existing unit of sergeants and lieutenants employed by the Township.

  
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Jonathon Roth, Hearing Officer

DATED: June 2, 1987  
Trenton, New Jersey

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<sup>6/</sup> See N.J.S.A. 34:13A-16.