

D.R. NO. 97-9

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

In the Matter of

TOWNSHIP OF MORRIS,

Public Employer,

-and-

Docket No. RO-97-38

MORRIS TOWNSHIP POLICE  
ADMINISTRATORS ASSOCIATION,

Petitioner,

-and-

PBA LOCAL 133,

Intervenor.

SYNOPSIS

The Director of Representation severs sergeants from a unit of patrol officers and sergeants and orders an accretion election be conducted to determine whether sergeants wish to be represented by the Police Administrators Association, in a unit which is currently comprised of lieutenants, captains and deputy chiefs. The Director finds that the size of the department, the sergeants' exercise of significant authority regarding discipline and their general direction of patrol officers creates an impermissible conflict of interest which requires the separation of sergeants from the patrol officers and the conduct of an accretion election to determine if sergeants wish to be represented by the Police Administrators Association in a unit of sergeants, lieutenants, captains and deputy chiefs.

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Appearances:

For the Public Employer  
Fred J. Rossi, Administrator

For the Petitioner  
J. Douglas Houstoun, Representative

For the Intervenor  
Stanley Witczak, President

DECISION AND DIRECTION OF ELECTION

On September 24, 1996, the Morris Township Police Administrators' Association filed a Petition for Certification of Public Employee Representative with the Public Employment Relations Commission. By its petition, the Police Administrators' Association seeks to remove police sergeants from a unit of

sergeants and patrol officers represented by PBA Local 133 and to add them to its existing unit of superior officers employed by Morris Township.

The Police Administrators' Association contends that the sergeants are supervisors within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., and that a conflict of interest is created by having the sergeants in the same negotiations unit with rank-and-file officers. The Township has consented to an election in the petitioned-for unit. PBA Local 133 refuses to agree to the removal of the sergeants from its existing unit and refuses to consent to an election in the petitioned-for unit.

The petition was accompanied by a sufficient showing of interest.

The collective negotiations agreement between the Township and PBA Local 133 expired on December 31, 1994; the agreement between the Police Administrators' Association and the Township expired on December 31, 1996. Accordingly, the petition is timely. N.J.A.C. 19:11-2.8.

We have conducted an administrative investigation; these facts appear. See N.J.A.C. 19:11-2.2 and 2.6.

The Morris Township Police Department is comprised of approximately 40 police employees. It is headed by a Chief of Police and functions through a chain-of-command operation. The other department personnel are: one deputy chief, two captains,

three lieutenants, six sergeants and twenty-seven patrol officers and detectives.

Currently, the Police Administrators' Association represents a collective negotiations unit comprised of "lieutenants, detective lieutenants, captains and deputy chiefs" (1995-96 Agreement; Morris Tp. and MTPAA). PBA Local 133 represents a unit of "patrolmen, detective patrolmen, sergeants and detective sergeants" (1992-94 Agreement; Morris Tp. and PBA Local 133).

The job description for Morris Township Police Sergeant provides as follows:

**DUTIES & RESPONSIBILITIES:** The position of Patrol Sergeant represents the first line supervisory level within the department. As such, it is the responsibility of all Patrol Sergeants to:

(a) **Supervisory Responsibilities:** Accomplish assigned tasks and responsibility through the direction, control, and guidance of those personnel assigned under his command.

(d) **Training Responsibilities:** Provide for the continuous evaluation and training of those personnel assigned under his immediate command...and shall assist and instruct them in the proper discharge of their duties and shall be held strictly responsible for their efficiency, discipline and general good conduct and appearance.

(e) **Enforcement of Departmental Regulations:** Enforce all rules, regulation, policies and procedures of this agency, and provide for disciplinary action when it is required.

(f) **Disciplinary Reporting procedures:** Report in writing to his immediate supervisor, or directly to his commanding officer, when applicable, all matters of misconduct, incompetency, neglect of duty or any violation of the rules and regulations on the part of any

member under his command.

(k) Accountability: ...be answerable for the non-performance of duties or other misconduct on the part of those personnel assigned under his command, as well as the failure to complete those assigned tasks and duties where he fails to show good cause.

(l) Direction: Exercise direct command in a manner that assures the good order, conduct, discipline and efficiency of subordinates.

(r) Shift Commander: The Patrol Sergeant shall assume the duties and responsibilities of the Shift Commander in the absence of the Shift Commander, or when one has not been specifically assigned to a particular shift.

As can be seen, the sergeants' job description describes assigned duties as supervisory.

The Police Administrators' Association contends that having the sergeants in the same unit with patrol officers creates a conflict of interest and works against securing a harmonious relationship in the Morris Township Police Department.

Sergeants are charged with overseeing the daily work of police officers. Whenever a lieutenant is not assigned as shift commander, a sergeant is assigned to cover that post. A shift commander has responsibility for all the department activities occurring during that tour of duty.

Sergeants, lieutenants and captains are responsible for the formal and informal evaluations of the officers working under their supervision. Although such evaluations do not directly affect officers' compensation, they do affect the assignments which officers may receive; thus, over time, as these evaluative

determinations assist in deciding assignments, assignments may affect employee compensation and promotional opportunities.

In accordance with their job descriptions, the Departmental Rules and Regulations and SOP No. 26 (Disciplinary Action), sergeants are responsible for the discipline of the officers assigned to them (as are other superior officers). When improper officer behavior is discovered by the department, the officer's supervisor (i.e., sergeant) is required to investigate the circumstance. Upon completion of the investigation, if the supervisor evaluates the conduct as inappropriate, the investigating supervisor must cite the officer with a violation. The supervisor then writes a report which is passed through the chain of command to the chief. In the report, the investigating supervisor both describes the facts of the incident and reaches a conclusion. The conclusion would include the recommended action which the department should take vis-a-vis the officer being investigated.

A sergeant may initiate and recommend all forms of discipline, including oral reprimands (which consists of a written disciplinary report that is placed in an employee's personnel file; the report is removed after six months), written reprimands (which consists of a written disciplinary report which is placed into an employee's personnel file and remains there), suspensions and discharge. When a disciplinary situation arises, a sergeant, as would any other superior officer, prepares a disciplinary

report which is passed through the chain of command to the chief. After the chief reviews the report, he will either approve the report or disapprove the report. If he disapproves the report, the chief would then decide what action, if any, should be taken.

The Police Administrators' Association provided several documented examples of sergeants' roles in the disciplinary process, over a period of years. The examples provided show that sergeants have made recommendations for no discipline, have issued both oral and written reprimands to subordinates, and have made open-ended disciplinary recommendations which resulted in suspensions being meted out to the affected employees.

N.J.S.A. 34:13A-5.3 provides, in pertinent part, that "except where established practice, prior agreement or special circumstances, dictate the contrary, ...any supervisor having the power to hire, discharge, discipline, or to effectively recommend the same, [shall not] have the right to be represented in collective negotiations by an employee organization that admits non-supervisory personnel to membership...."

Further, in Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404 at 425-427 (1971), the New Jersey 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 a conflict of interest is created by having these two groups of employees included in the same negotiations unit.

In Town of West New York, P.E.R.C. No. 87-114, 13 NJPER 277 (¶18115 1988), the Commission reaffirmed its long line of cases holding that we will ordinarily find a conflict of interest between superior officers and rank-and-file officers in a given police unit. In West New York, the Commission cited Union City, P.E.R.C. No. 70, NJPER Supp. 295 (¶70 1972), where it had stated:

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.... Accordingly, in cases involving police department units, 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 or special circumstances dictate the continued inclusion of superior officers in a unit of rank-and-file personnel. [emphasis added; footnotes omitted.]

Union City at 297.

In West New York, the Commission also cited with approval, South Plainfield, D.R. No. 78-18, 3 NJPER 349 (1977), in which the Director of Representation had found,

...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.

So. Plainfield at 349.

In Morris Township, sergeants exercise significant authority over rank-and-file officers. Considering the size of the police force, the responsibilities and authorities of sergeants to

discipline and assign the workforce, and the sergeants' actual disciplining of subordinate officers, I conclude that an impermissible conflict of interest exists here. Wilton.

Given the conflict of interest created by the inclusion of sergeants in the same negotiations unit with rank-and-file officers, I find that the petitioned-for unit is the most appropriate unit for collective negotiations for sergeants. Accordingly, I direct that an election be conducted among all police sergeants employed by Morris Township to determine if a majority wish to be represented by the Morris Township Police Administrators' Association. The election shall be conducted in the unit described below:

Included: All police sergeants and detective sergeants employed by Morris Township to be added to the existing unit of lieutenants, detective lieutenants, captains and deputy chiefs.

Excluded: All non-supervisory employees including all patrolmen and patrolmen detectives, the chief, managerial executives, confidential employees, professional employees, craft employees and non-police employees.

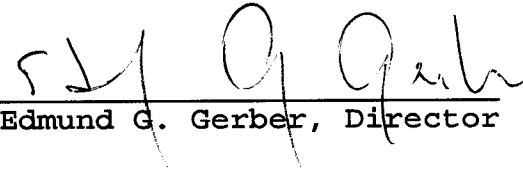
The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, 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.

Pursuant to N.J.A.C. 19:11-10.1, the public employer is directed to file with us an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the units, 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 organization 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 13, 1997  
Trenton, New Jersey