

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF CAMDEN,

Public Employer,

- and -

FRATERNAL ORDER OF POLICE,
CAMDEN LODGE NO. 1 SUPERIOR
OFFICERS COMMITTEE,

Petitioner,

Docket No. RO-82-62

- and -

CAMDEN CITY POLICE SUPERIOR
OFFICERS ASSOCIATION,

Intervenor.

SYNOPSIS

The New Jersey Public Employment Relations Commission remands a representation matter to the Director of Representation to resume processing of a petition filed by the Fraternal Order of Police, Camden Lodge No. 1 Superior Officers Committee ("Committee") in accordance with its opinion. The City of Camden refused to consent to an election in a unit of superior officers because the Fraternal Order of Police, Camden Lodge No. 1 represented the City's rank and file police officers and the Committee had not adequately assured the City that it constituted a separate organization which did not admit non-supervisors to membership. After receiving a certification from the Committee that if selected as the majority representative of the superior officers, it would be a separate organization from F.O.P., Camden Lodge No. 1, the Director ordered an election. The City requested review of the direction of election. The Commission granted review. The Commission now approves the certification required by the Director and, in addition, holds that the Committee should certify that none of its members are non-supervisory employees and that if selected by its employees, the Committee, rather than the F.O.P. Camden Lodge No. 1, will control the negotiations and administration of contracts concerning supervisory personnel.

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Appearances:

For the Public Employer, Murray, Granello & Kenney, Esqs.
(James P. Granello, of Counsel)

For the Petitioner, Kirschner, Walters & Willig, Esqs.
(Jonathan Walters, of Counsel)

For the Intervenor, Richard A. D'Auria, President
Camden City Police Superior Officers Association

DECISION ON REQUEST FOR REVIEW

On December 2, 1981, the Director of Representation issued his Decision and Direction of Election in the above-captioned representation proceeding. In re City of Camden, D.R. No. 82-25, 8 NJPER 11 (¶13005 1981). On December 4, 1981, the Public Employer, the City of Camden, served and filed a timely Request for Review and requested a stay pending review. By letter of December 29, 1981, the Chairman, acting under authority delegated to him by the full Commission, granted the Request for

Review. Neither the Petitioner nor the Intervenor has filed a response to the Request for Review.

The direction of election in this matter resulted from the filing of a Petition for Certification of Public Employee Representative by the Fraternal Order of Police, Camden Lodge No. 1, Superior Officers Committee (the "Committee"), seeking to represent the existing unit of the City's superior police officers. The Camden City Police Superior Officers Association (the "Association"), the current exclusive representative of that unit, intervened on the basis of a recent contract.

The City objected to the holding of an election because F.O.P. Camden Lodge No. 1 represented its rank and file police officers unit, and the Committee had not adequately assured the City that it constituted a separate organization which did not admit non-supervisors to membership. N.J.S.A. 34:13A-5.3. The Director ruled that an acknowledgment by the Committee that if selected as the majority representative of the superior officers, it would be a separate organizational entity from the F.O.P. Camden Lodge No. 1, was sufficient to meet the requirements of the Act and permit the election to go forward.

The City maintained that such an acknowledgment without further specificity was insufficient. The City desired further assurances that the statutory prohibition not be violated. The Director rejected this request in his decision directing the election, finding that the statutory prohibition was not implicated until and unless the Committee was chosen as the majority representative. He held that it would be pointless and premature

to investigate the present or potential structure of an organization that does not yet represent employees. In its Request for Review, the City seeks to have any election postponed until it receives assurances that the Committee is a separate organization which does not admit non-supervisory employees to membership.

We approve of the Director's requirement that an organization seeking to represent supervisors should certify that it understands and, if elected, will comply with the requirement that it must be, and act as, a separate structure from any organization representing non-supervisory personnel. However, we also agree with the City's position that under the facts of this case there should be some pre-election examination of the Committee's present organizational structure.

The City correctly points out that F.O.P. Camden Lodge No. 1, the organization with which the Committee is affiliated, is the majority representative of the rank and file unit of Camden police.^{1/} N.J.S.A. 34:13A-5.3 prohibits an employee organization that admits non-supervisory employees to membership from representing supervisory employees in collective negotiations. Thus, if the Committee has rank and file Camden police officers as members, it is currently not qualified to represent the superior officers. We believe that an employee representative

^{1/} This fact distinguishes this case from In re State of New Jersey, D.R. No. 81-20, 7 NJPER 41 (¶12019 1980), aff'd P.E.R.C. No. 81-94, 7 NJPER 105 (¶12044 1981). In that case the petitioning employee organization was not then certified as the representative of any of the employees, supervisory or non-supervisory, of the employer.

should not appear on the ballot if it is currently disqualified to represent the employees. To permit the employees to vote for a representative which is legally prohibited from representing them does implicate the statutory prohibition at the election stage of the process.

Employees are entitled to know that the organization they are voting for is the organization they will have if selected by a majority. If the Committee is currently composed of rank and file members, employees voting for the Committee will not have this assurance since under N.J.S.A. 34:13A-5.3 and the acknowledgement required by the Director, rank and file members would have to be removed. Thus, we believe that the Director should have been satisfied that the Committee as it currently exists has no non-supervisory employees as members.

The Director should require the Committee to certify that as it exists now, it has no members who are non-supervisory Camden police officers. This certification creates a presumption that the Committee is qualified to represent the unit of superior officers.^{2/} In the absence of information negating the accuracy of this certification or otherwise evidencing a present illegal organizational structure, the petitioner will be qualified to participate in a Commission election.

^{2/} We particularly emphasize that a petitioner is not required to have certain attributes in order to file a representation petition. N.J.S.A. 34:13A-3(e). It is only required not to have an illegal structure. Beyond enforcing the Act's specific prohibitions, we will not interfere in a petitioner's internal affairs.

This certification is in addition to the acknowledgment already required by the Director. Consistent with our recent decision in In re Town of Kearny, P.E.R.C. No. 81-137, 7 NJPER 339 (¶12153 1981), we believe the certification should also include the Committee's understanding that, if selected by the employees, it, rather than FOP Camden Lodge #1, will control the negotiations and administration of contracts concerning the supervisory personnel.

If the Committee is able to comply with the above requirements, then an election would appear to be in order. We do not believe that speculation about how a validly organized entity might actually conduct itself if elected should delay representation proceedings. In the event that speculation of possible improper domination during contract negotiations and administration by non-supervisors becomes fact, then a satisfactory and sufficient remedy is at hand. The City may file an unfair practice charge. It may then test the legality of a representative's actual conduct. See, In re Town of Kearny, supra.

Based upon the above analysis, we remand this matter to the Director of Representation to resume the processing of this petition in accordance with this opinion.

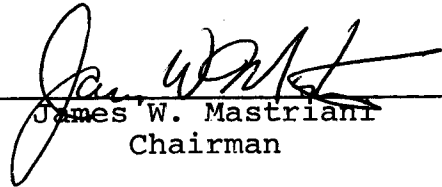
The Director's decision below ordered that an election be conducted within 30 days from the date it was issued, December 2, 1981. Since our decision herein modifies his decision somewhat, that order is no longer in effect. However, in the event the

Director becomes satisfied that the requirements set forth herein have been met, we would expect that this matter would proceed to a prompt election.

ORDER

Based upon the foregoing, the instant petition is hereby remanded to the Director of Representation for further processing in accordance with this opinion. We do not retain jurisdiction.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Suskin, Hartnett, Butch, Graves, Hipp and Newbaker voted for this decision. None opposed.

DATED: Trenton, New Jersey
March 9, 1982
ISSUED: March 10, 1982