

P.E.R.C. NO. 92-76

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWN OF HARRISON,

Public Employer,

-and-

Docket No. RO-92-42

F.O.P. LODGE NO. 116,

Petitioner,

-and-

P.B.A. LOCAL 22,

Intervenor.

SYNOPSIS

The Public Employment Relations Commission vacates D.R. No. 92-8 and remands this matter to the Director of Representation. The Director had ordered an election to be conducted among police officers below the rank of sergeant employed by the Town of Harrison. He rejected arguments by the Town and incumbent P.B.A. Local 22 that the existing unit of all police below the rank of chief should be preserved. The Commission holds, given the position of the parties, that there are insufficient facts in the record to determine whether there is a substantial conflict of interest, either potential or actual, mandating separate units.

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Appearances:

For the Public Employer, Murray, Murray & Corrigan,
attorneys (David F. Corrigan, of counsel)

For the Petitioner, Daniel T. Nankivell, Secretary

For the Intervenor, Whipple, Ross & Hirsch, attorneys
(Donald B. Ross, of counsel)

DECISION AND ORDER

On January 2, 1992, the Town of Harrison requested review of a Director of Representation's Decision and Direction of Election. D.R. No. 92-8, 18 NJPER ____ (¶____ 1991). The Director ordered an election to be conducted among the Town's police officers below the rank of sergeant. He rejected arguments by the Town and incumbent PBA Local 22 that the existing unit of all police below the rank of chief should be preserved.

On January 6, 1992, the Chairman temporarily stayed the scheduling of an election pending our review of the merits of the Town's request. On January 7, we received FOP Lodge No. 116's reply opposing any stay of the election but not the request for review. On January 14, we received a submission from the FOP opposing review.

The Director found these facts. There are 51 police officers: 1 chief, 1 deputy chief, 3 captains, 4 lieutenants, 6 sergeants and 36 patrol officers. There are six squads headed by lieutenants and captains. The first formal collective negotiations agreement between the Town and PBA was signed in 1974. Before that, the parties had an informal meet and confer relationship. The Director also found no substantial and material factual issues in dispute warranting a formal hearing. He concluded that where superior officers and rank-and-file personnel are in the same unit, the "quasi-military nature of a police force and the inherent authority of superior officers in such a chain of command creates an impermissible conflict of interest that can only be cured by removal of superior officers from such units." Slip op. at 3.

The Town argues that a factual hearing should be conducted. It claims that there is no conflict of interest; a pre-1968 negotiations history permits a mixed unit to continue; the relationship between Harrison police officers and superior officers is unique; and only the chief and the internal affairs officer discipline other employees.

While the FOP has correctly cited existing caselaw which generally favors separate units of superior and rank and file police officers,^{1/} there are circumstances present in this case which compel an investigation of evidence beyond that which was considered by the Director. This case is somewhat unique in that the employer has joined with the incumbent union in claiming that there is no conflict of interest between rank and file and superior officers. There is also a history of at least eighteen years which must be weighed against the potential for conflict which the Director found.


We believe, given the positions of the parties, that there are insufficient facts in the record to determine whether there is a substantial conflict of interest, either potential or actual. We therefore remand the case to the Director for further investigation of the employees' job responsibilities and a supplemental decision based on that investigation. During the course of the investigation, the Director shall exercise his discretion under N.J.A.C. 19:11-2.6 to determine whether a hearing is required.

^{1/} See Union City, P.E.R.C. No. 70, NJPER Supp. 295, 297 (¶70 1972); City of Camden, P.E.R.C. No. 52, NJPER Supp. 195 (¶52 1971); see also Town of West New York, P.E.R.C. No. 87-114, 13 NJPER 277 (¶18115 1987); Springfield Tp., P.E.R.C. No. 85-88, 11 NJPER 138 (¶16061 1985); East Brunswick Tp., D.R. 82-42, 8 NJPER 187 (¶13080 1982).

ORDER

D.R No. 92-8 is vacated. The matter is remanded to the Director of Representation for further proceedings consistent with this decision.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Grandrimo, Regan, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: January 30, 1992
Trenton, New Jersey
ISSUED: January 31, 1992