

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF CAMDEN
DEPARTMENT OF PUBLIC SAFETY, DIVISION OF POLICE 1/
Public Employer

and

Docket Nos. RO-109
CU-33

CAMDEN LODGE NO. 1, FRATERNAL ORDER OF POLICE
Petitioner

In the Matter of

CITY OF CAMDEN
DEPARTMENT OF PUBLIC SAFETY, DIVISION OF POLICE
Public Employer

and

Docket No. RO-130

POLICEMEN'S BENEVOLENT ASSOCIATION, LOCAL 35 2/
Petitioner

DECISION AND DIRECTION OF ELECTION

Pursuant to a Notice of Consolidated Representation Hearing dated June 19, 1970, a hearing was held before Hearing Officer, Jeffrey B. Tener on July 16, 1970 in Camden, New Jersey, at which all parties were given an opportunity to examine and cross-examine witnesses, to present evidence and to argue orally. Briefs were submitted by two parties by August 10, 1970. Exceptions to the Hearing Officer's Report and Recommendations dated November 3, 1970 were filed by Camden Lodge #1, Fraternal Order of Police 3/. Before setting forth the Commission's findings, it is necessary to discuss by way of background the procedural posture presented by this appeal.

On March 24, 1970, Camden Lodge #1, Fraternal Order of Police (hereinafter sometimes referred to as F.O.P.) filed a petition for certification of public employee representative (Docket No. RO-109) seeking to represent all policemen employed within the Department of Public Safety, Division of Police, City of Camden, New Jersey. Thereafter, on April 20, 1970, Policemen's Benevolent Association, Local 35, (hereinafter sometimes referred to as P.B.A.) filed a similar petition, (Docket No. RO-130) requesting to be certified for the same unit. These two matters were consolidated for hearing on June 19, 1970 by the Executive Director. Prior to hearing the F.O.P. and the P.B.A. agreed to resolve the question of majority status between themselves by conducting a representation election under the supervision of a private organization other than

1/ As amended at hearing.
2/ As amended at hearing.
3/ Attached as Appendix A.

this Commission. The City of Camden had knowledge of this agreement and apparently acquiesced to the conduct of such election among all of its police employees on June 25, 1970. It did not, however, agree to be bound by the conduct or results thereof as regards the composition of a collective negotiations unit for police employees.

Following the election, which was won by the F.O.P., the P.B.A. at hearing moved to withdraw its petition (Docket No. RO-130) indicating it did not wish to represent either patrolmen or superior officers and requested to withdraw as intervenor in Docket No. RO-109. Subsequent to the election also, but prior to hearing, the F.O.P. moved to amend its petition from one of certification to one of unit clarification alleging that it had been recognized by the City of Camden as majority representative. The requests to withdraw of the P.B.A. are granted herein and Docket No. RO-130 is severed from Docket No. RO-109 in accordance with Commission Rules and Regulations. The application of the F.O.P. for amendment of petition is denied pursuant to Commission Rule 19:11-5 as the F.O.P. is not a recognized or certified representative and thus has no standing before the Commission to move such amendment or file a clarification of unit petition. Hence, CU-33 is hereby dismissed and the Commission shall determine the appropriateness of petitioner's unit under petition RO-109.

Proceeding to its findings, the Commission, after considering the record, the Hearing Officer's Report and Recommendations, exceptions filed thereto, a motion to reopen the record and the public employer's reply to same, 4/ finds as follows:

1. The City of Camden, Department of Public Safety, Division of Police, is a public employer within the meaning of the Act and is subject to the provisions thereof.
2. Camden Lodge #1, Fraternal Order of Police is a public employee representative within the meaning of the Act.
3. As set forth above there is no question of majority status of representative submitted to the Commission on review but only a question of appropriateness of the unit sought by Petitioner, F.O.P. The public employer contends that a unit of both patrolmen and superior officers is inappropriate. A stipulation has been entered on the record that superior officers, i.e., sergeants, lieutenants, captains, deputy chiefs and the chief are supervisors within the meaning of the Act. Thus, an issue concerning the appropriateness of the unit petitioned for has been raised and is properly before the Commission for determination.
4. Since there is agreement between the parties that the F.O.P. represents both patrolmen and superior officers of the Division of Police and seeks to represent them in one unit and superior officers are supervisors, the issues involved herein concern whether there

4/ On October 27, 1970, the F.O.P. moved to reopen the record in this matter to allow for documentation and testimony concerning the fact that the Fraternal Order of Police does not establish more than one lodge in any municipality and does not divide into separate lodges on the basis of rank between superior officers and patrolmen. In light of the Commission's decision herein, it is not necessary to take testimony on this issue. Hence the F.O.P.'s request is denied.

exists established practice, prior agreement or special circumstances which overcomes the statutory prohibition against combining supervisors and non-supervisors in a single bargaining unit. The Commission, in agreement with the Hearing Officer, finds none of these statutory exceptions apply in the instant case.

Considering, first, petitioner's claim of special circumstances, it must be pointed out that despite the citation of various New Jersey statutes dealing with policemen, no evidence was presented demonstrating that policemen were to be treated differently from other public employees with respect to inclusion of supervisors with non-supervisors in a single bargaining unit. The legislature of this state did mention policemen in one section of the Act, however, when it forbade the inclusion of policemen with non-policemen in one organization for purposes of representation. Thus, it appears that if the legislature had intended police departments and their employees to be uniquely treated in unit determination on the issue of commingling of supervisors and non-supervisors, it would have so provided as it did when it felt policemen should be uniquely represented in negotiations by an organization composed solely of police. Therefore, the Commission finds no merit to petitioner's special circumstances argument.

Turning next to the F.O.P.'s claim of history of established practice or the presence of prior agreement, the Commission likewise finds the complete absence thereof. Established practice includes the joint determination of terms and conditions of employment through negotiation on a bilateral basis. There must be the give and take of negotiation as contrasted with the unilateral determination of terms and conditions of employment by a public employer following discussions with public employees or their representatives. To require less would render meaningless a statutory prohibition based upon accepted principles of labor relations. The mere fact that there is evidence of an intent to treat supervisors and non-supervisors jointly and to provide them with identical fringe benefits does not mean that collective negotiations afforded the basis for such treatment or produced such benefits. The record herein demonstrates the contrary as it is replete with instances wherein issues were discussed on an ad hoc basis by various individuals, often as problems arose requiring action. Frequently, one or more organizations representing police and/or other employees responded to a particular problem by meeting with different public officials. There does not emerge therefrom the selection of an exclusive representative, the exchange of demands and the regularity of meeting associated with collective negotiations. Further, suggestions made by employee representatives were implemented unilaterally by City Council Ordinance, not bilaterally by written agreement. Thus it is

evident that discussions and not collective negotiations precipitated improvements in salary and fringe benefits. This, however, fails to meet the litmus test for collective negotiations let alone provide a benchmark to measure established practice.

The statutory exception of prior agreement contemplates in this context a written agreement executed by both parties resulting from the process of collective negotiations and relating to a unit involving supervisors and non-supervisors. The record presented herein does not contain evidence of such agreement. It only shows the embodiment of salaries, fringe benefits, and other conditions of employment in municipal ordinance, not the establishment of terms and conditions of employment by written agreement executed by public employer and public employee representative following negotiations. Therefore, the essence of prior agreement is not found herein.

Failing to submit evidence sufficient to demonstrate the presence of established practice, prior agreement or special circumstances dictating the inclusion of supervisors and non-supervisors in a single unit, petitioner's contention that the statutory exceptions apply must be rejected.

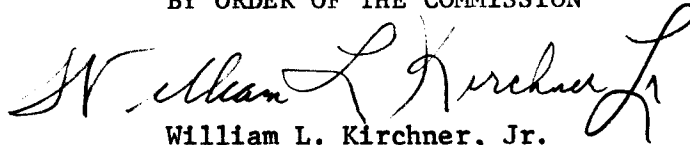
5. The F.O.P., which admits both supervisors and non-supervisors to membership, has filed a petition seeking to represent both in a single unit. It cannot, however, pursuant to the Act represent supervisors due to the statute's prohibition against representation of supervisors by an organization admitting non-supervisory personnel to membership. Rather than dismiss the F.O.P.'s petition, require it to file another petition for patrolmen, and then consider the issue of appropriate unit again, the Commission shall consider herein the appropriateness of a unit of patrolmen. The petitioner submitted testimony showing an identity among patrolmen in wages, vacations, holidays, sick leave, rules of discipline and uniform. There is a community of interest enjoyed by the patrolmen within the Division of Police, and such is found to be an appropriate unit and is described as follows: "All patrolmen and policewomen employed by Division of Police, Department of Public Safety, City of Camden excluding all supervisors, within the meaning of the Act, managerial executives, professional, craft and clerical employees."
6. The Commission therefore directs a secret ballot election be conducted in a unit of patrolmen within thirty days of the date of this decision. If in fact Petitioner does not wish to participate in such election, it may withdraw its petition within 10 days from the date of this decision.

Those eligible to vote are employees set forth in the unit described 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 ill, 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 resigned or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

Those eligible to vote shall vote on whether or not they desire to be represented for the purpose of collective negotiations by Camden Lodge #1, Fraternal Order of Police. The majority representative shall be determined by a majority of the valid votes 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 COMMISSION

A handwritten signature in cursive script, reading "William L. Kirchner, Jr.", written in black ink.

William L. Kirchner, Jr.
Acting Chairman

DATED: April 1, 1971
Trenton, New Jersey

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

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DEPARTMENT OF PUBLIC SAFETY, DIVISION OF POLICE

Public Employer

and

Docket No. RO-130

POLICEMEN'S BENEVOLENT ASSOCIATION, LODGE #35 2/

Petitioner

Appearances:

For the City of Camden
Isaiah Steinberg, Esq. City Attorney

For Lodge #1, Fraternal Order of Police
Plone, Tomar, Parks and Seliger, Esqs.
By Howard S. Simonoff, Esq.

For Lodge #35, Policemen's Benevolent Association
Robert Kirkbride, President

-
- 1/ As amended at the hearing.
2/ As amended at the hearing.

HEARING OFFICER'S REPORT AND RECOMMENDATION

A petition was filed with the Public Employment Relations Commission by Camden Lodge #1, Fraternal Order of Police on March 24, 1970 requesting certification of representative. On April 20, 1970, Lodge #35, Policemen's Benevolent Association filed a similar petition with the Commission. These two cases were consolidated by Order dated June 19, 1970. On July 2, 1970, Lodge #1, Fraternal Order of Police filed a petition amending its initial petition and asking for a clarification of unit, claiming therein they had already been recognized as the majority representative by the public employer.

Pursuant to a Notice of Representation Hearing dated June 19, 1970, a hearing was held before the undersigned on July 16, 1970 in Camden, New Jersey at which all parties were given an opportunity to examine and cross-examine witnesses, to present evidence, and to argue orally. Briefs were submitted by two of the parties by August 10, 1970. Upon the entire record in the proceeding, the Hearing Officer finds:

1. The City of Camden, Department of Public Safety, Division of Police, is a public employer within the meaning of the Act and is subject to the provisions of the Act.
2. Camden Lodge #1, Fraternal Order of Police and Lodge #35, Policemen's Benevolent Association are employee representatives within the meaning of the Act.
3. As set forth more fully below, there is no question concerning representation at this time. The request of the Policemen's Benevolent Association (P.B.A.) to withdraw its petition, Docket No. RO-130, should be approved and the amended petition for clarification of unit

of the Fraternal Order of Police (F.O.P.), Docket No. CU-33, should be substituted for the initial F.O.P. petition for certification, Docket No. RO-109.

4. The public employer disagrees with F.O.P. that a single combined unit of supervisors and nonsupervisors is appropriate. Therefore, this is a question concerning the composition of the unit and the matter is properly before the undersigned for Report and Recommendations.

BACKGROUND

Both the F.O.P. and the P.B.A. filed petitions for certification. These petitions did indicate the existence of a question concerning representation. However, the two employee organizations, by mutual agreement and with the knowledge and apparent acquiescence of the City, and completely outside the area of the activities and procedures of the Public Employment Relations Commission, agreed to resolve the question concerning representation by arranging for an election to be privately conducted by an organization other than P.E.R.C. This election, according to F.O.P. Exhibit No. 1, was conducted on June 25, 1970.

Subsequent to this election, which was won by the F.O.P., the P.B.A. disavowed any interest in representing the employees concerned which, according to their petition, included all policemen under the Department of Public Safety. In accordance with this position, the P.B.A. at the hearing moved to withdraw its petition and indicated, through the President, that it did not wish to represent either patrolmen or superior officers. (TR. 16 and 17)

Prior to the hearing but subsequent to the June 25 election referred to above, the F.O.P. amended its petition from a petition for certification to a petition for unit clarification.

The parties are in agreement that there is no question concerning representation and that the only issue concerns the composition of the unit. (TR. 27 and 28) Therefore, the Hearing Officer recommends that the request of the P.B.A. to withdraw its petition (Docket No. RO-109) be approved and that the amended petition for clarification of unit (Docket No. CU-33) of the F.O.P. be substituted for the original F.O.P. petition for certification (Docket No. RO-130).

STIPULATION

The F.O.P. stipulated (TR. 118) and the bulk of the record suggests that the superior officers, that is, sergeants, lieutenants, captains, deputy chiefs, and the chief, are supervisors within the meaning of Chapter 303, P.L. 1968. On this basis, the Hearing Officer finds that the superior officers are supervisors within the meaning of the Act.

ISSUES

Section 7 of Chapter 303 specifies that:

...nor, except where established practice, prior agreement or special circumstances, dictate the contrary, shall any supervisor...have the right to be represented in collective negotiations by an employee organization that admits nonsupervisory personnel to membership, and the fact that any organization has such supervisory employees as members shall not deny the right of that organization to represent the appropriate unit in collective negotiations...

That section continues to provide that:

The negotiating unit shall be defined with due regard for the community of interest among the employees concerned...

These excerpts indicate the issues in this case: 1) is there "established practice, prior agreement or special circumstances" to permit

a combined unit of supervisors and nonsupervisors in spite of the general statutory prohibition against such a unit and 2) if the above question is answered affirmatively, do the employees in such a combined supervisory - nonsupervisory unit have a sufficient community of interest to constitute an appropriate unit?

DISCUSSION AND FINDINGS

The F.O.P. contends that all three statutory exceptions to the existence of a combined unit of supervisors and nonsupervisors are present in this case. The Hearing Officer disagrees.

These terms must be considered in the context of collective negotiations. In the Hearing Officer's view, a "special circumstance", for example, outside of the context of labor relations, would be of questionable relevance. Established practice, prior agreement, and special circumstances must, to be applicable, relate to facts, events, behavior, etc. within the scope of the relationship between a public employer and organized employees. To go outside of this framework would be to extend the meaning of these terms unreasonably.

The statute does recognize policemen as a unique group by forbidding them, in the absence of established practice, prior agreement, or special circumstances, to join an employee organization that admits employees other than policemen to membership. In the opinion of the undersigned, the unique qualities of policemen were considered by the Legislature and the Legislature decided that, generally, policemen could not be in a unit with non-police employees. However, this does not constitute "special circumstances". Had the Legislature recognized anything inherent in police departments, as opposed to other units, they could have, at the same time that they included the above-mentioned language concerning policemen, also indicated that police departments, unlike other

units, can or must be units inclusive of supervisors and nonsupervisors despite the general statutory proscription. The failure to do so convinces the undersigned that there was no Legislative intent to treat police departments differently from other units in this respect. Similarly, the undersigned does not find the fact that State laws refer to all policemen on a departmental basis as constituting "special circumstances".

We next consider "prior agreement". The Executive Director In the Matter of Willingboro Board of Education and Willingboro Education Association, E.D. No. 3, ruled that this term must refer, "...minimally, to a particular kind of agreement, namely, a written agreement, reached in the context of collective negotiations, executed by both parties, and providing for the inclusion, in a single unit, of supervisors and non-supervisors." (p.9) The facts in this case do not support a finding of "prior agreement" as defined in that decision. Any provision governing salaries, fringes, and other working conditions have taken the form of City Council ordinances. There is no evidence that these provisions have been embodied in writing and executed by both parties. Accordingly, the minimal requirements of "prior agreement" have not been met and the Hearing Officer finds no "prior agreement".

The final exception is "established practice". This gets to the relationship between the parties. It is clear that supervisors and non-supervisors have been treated jointly by the City. It is also clear that the fringe benefits of supervisors and nonsupervisors have been set on a department-wide basis. (TR. 69) Additionally, the record reveals that salary increases -- achieved either by referendum or through Council action-- have been accorded to both supervisors and nonsupervisors simultaneously. Furthermore, a coalition of groups including the F.O.P. and P.B.A. from the Police and Fire Departments have, over a period of years, served as a

committee and discussed with Council, the Mayor, the Business Administrator the City Attorney, and the Director various proposals regarding salaries and other conditions of employment. (TR. 112, 113, and 114) Finally, both the P.B.A. and the F.O.P. have discussed personnel grievances with the Director. (TR. 75 and 89)

This is not sufficient, in the opinion of the undersigned, to support a finding of "established practice". The mere fact that supervisors and nonsupervisors have been treated jointly and that fringe benefits are identical regardless of rank does not mean that the basis for such treatment and level of benefits was arrived at through an established process of collective negotiations. The record indicates the contrary.

A coalition of organizations consisting of employees of the Police and Fire Departments made a concerted effort to secure the adoption of a City Council Ordinance which provided for improved vacation leave, holiday leave, sick leave, special leave of absence, compensatory leave, military leave, and leave without pay. This ordinance was adopted in April, 1967, (F.O.P. EX. 3) after many months of effort which "went from one office to another, leading from one Director, to another, from Council back to the Mayor, from the Mayor back to the City Attorney." (TR. 91)

The President of the F.O.P. testified that, on several other occasions, changes in working conditions or other terms of employment were achieved as a result of meetings and discussions with City officials and/or the Director of Public Safety. Some examples relate to shift changes, Blue Cross-Blue Shield and summer uniforms. In each instance, the issue was dealt with on an ad hoc basis, often in response to a particular problem or situation. There is no evidence of negotiations having been conducted on a regular basis between designated representatives of the public employer and the public employees.

The major improvements in salaries over the years have been achieved through referenda. Referenda in 1959 and 1966 resulted in substantial increases. In 1969, a referendum on increases for employees of the police and fire departments was turned down by the voters. While recognizing the efficacy and legitimacy of the referendum as a means of achieving salary increases, such a procedure is not, in the opinion of the undersigned, related to collective negotiations.

As to the small increases which were granted between referenda, the testimony of the F.O.P. President is on point:

HEARING OFFICER: How did you convince the Mayor to approve a particular, or recommend a particular amount of increase to the City Council?

THE WITNESS: He was very receptive on the pay raises.

He didn't come -- as a matter of fact, the way the raises were formulated was more at his convenience. If the City budget could offer it, we agreed.

HEARING OFFICER: How were the amounts arrived at?"

THE WITNESS: It's all according to how much the City could afford at that time. (TR. 100 and 101)

The fact that representatives from a number of organizations in the police and fire departments met with various City officials indicates that, regardless of the exact nature of the relationship between the employer and the employees, there was not any exclusive representative. The Director of the Department of Public Safety testified that, over the years, he had dealings with both the F.O.P. and the P.B.A. (TR. 75) These dealings concerned one organization one time and the other organization another time. There was no single or exclusive representative such as contemplated and provided for by

Chapter 303 and which the Hearing Officer considers to be an important if not an essential element of a collective negotiation relationship.

To summarize, the record reveals that policemen - both patrolmen and superior officers - have been members of organizations which have worked to represent these members but that these organizations have not represented these employees in collective negotiations. Accordingly, the undersigned finds that there is no established practice in this case.

Having found no "established practice, prior agreement, or special circumstances" the Act, in the language quoted above, seems to preclude representation of supervisors and nonsupervisors in a single unit.

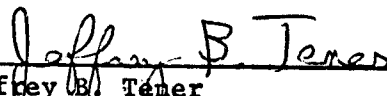
This question has not been dealt with exhaustively by either the Commission or the Executive Director. However, in E.D. No. 6, In the Matter of Town of West Orange and Local 692, International Association of Fire Fighters, the Executive Director stated that Local 692, IAFF could not-in the absence of one of the statutory exceptions-represent supervisors since they already represented nonsupervisory employees of the employer. Also, in P.E.R.C. No. 42, In the Matter of City of Newark and Professional Fire Officers, Local 1860, IAFF and Newark Fire Officers Association, the Commission permitted a separate local of the IAFF to appear on the ballot in an election among supervisors even though another local of that same International was seeking to represent nonsupervisory employees of the employer. Subsequently, the Executive Director approved a Consent Agreement which had, as one of the parties and signatories, the other local of the IAFF.

Based upon the above and having found no established practice, prior agreement, or special circumstances, the undersigned finds that the FOP cannot represent both supervisors and nonsupervisors in a single unit. However, if the FOP forms two distinct locals to represent the supervisors and nonsupervisors in separate units, then these locals can serve as negotiating agents for the supervisors and nonsupervisors respectively. The undersigned finds that two separate units, each affiliated with the FOP, may constitute appropriate employee representatives for the supervisors and nonsupervisors of the employees of the Division of Police, Department of Public Safety, City of Camden.

Recommendations

It is recommended that the motion of the PBA to withdraw its petition, Docket No. RO-130, be approved, and that the FOP motion to amend its petition from a petition for certification (Docket No. RO-109) to a petition for unit clarification (Docket No. CU-33) also be approved.

Furthermore, it is recommended that the unit be clarified to provide for two separate units, each affiliated with the FOP- one of patrolmen and the other of superior officers including sergeants, lieutenants, captains, deputy chiefs, and the chief. In accordance with the provisions of the statute, it is recommended that, in order to represent these two units, the FOP must form two local organizations. One organization will represent patrolmen and the other one will represent superior officers. There is no question concerning representation and no need for an election.



Jeffrey B. Tener
Hearing Officer

DATED: October 9, 1970
Trenton, New Jersey

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF CAMDEN, :
DEPARTMENT OF PUBLIC SAFETY, :
DIVISION OF POLICE, :
Public Employer :
and : Docket No. CU-33
CAMDEN LODGE #1, FRATERNAL ORDER : EXCEPTIONS TO HEARING OFFICER'S
OF POLICE, : REPORT AND RECOMMENDATIONS
Petitioner :
:

A. Camden Lodge #1, Fraternal Order of Police excepts to
the following statements and conclusions by the Hearing Officer:

1. "These terms must be considered in the context of collective negotiations. In the Hearing Officer's view, a "special circumstance", for example, outside of the context of labor relations, would be of questionable relevance. Established practice, prior agreement, and special circumstances must, to be applicable, relate to facts, events, behavior, etc. within the scope of the relationship between a public employer and organized employees. To go outside of this framework would be to extend the meaning of these terms unreasonably."

Hearing Officer's Report and Recommendations, p. 5.

2. F.O.P. excepts to the Hearing Officer's conclusion that since the legislature did not specifically provide that police units could include both supervisory and non-supervisory personnel, the fact that the legislature recognized the unique qualities of policemen by directing that they not be included in the same unit

as non-police employees is not a "special circumstance" within the meaning of the Public Employer-Employee Relations Act.

Hearing Officer's Report and Recommendations, bottom of p. 5 to top of p. 6.

3. The F.O.P. excepts to the Hearing Officer's finding that:

"Similarly, the undersigned does not find that the fact that State laws refer to all policemen on a departmental basis as constituting "special circumstances."

Hearing Officer's Report and Recommendations, p. 6.

4. The F.O.P. excepts to the Hearing Officer's conclusion that there has not been an "established practice" of negotiations for all policemen notwithstanding their status of being officers or patrolmen as exemplified by the following language from his Report and Recommendations, p. 7:

"The mere fact that supervisors and nonsupervisors have been treated jointly and that fringe benefits are identical regardless of rank does not mean that the basis for such treatment and level of benefits was arrived at through an established process of collective negotiations. The record indicates the contrary."

5. The F.O.P. excepts to the Hearing Officer's apparent conclusion that since negotiations; though on a department wide basis, were done on an ad hoc basis (concerning specific issues) such are not established practices within the Public Employer-Employee Relations Act as evidenced by the following:

"In each instance, the issue was dealt with on an ad hoc basis, often in response to a particular problem or situation. There is no evidence of negotiations having been conducted on a regular basis between designated representatives of the public employer and the public employees."

Hearing Officer's Report and Recommendations, p. 7.

6. The F.O.P. excepts to the Hearing Officer's conclusion that since all negotiations in behalf of the policemen were not handled by the same organization, it cannot be considered "established practice" within the meaning of the Public Employer-Employee Relations Act as evidenced by the following:

"These dealings concerned one organization one time and the other organization another time. There was no single or exclusive representative such as contemplated and provided for by Chapter 303 and which the Hearing Officer considers to be an important if not an essential element of a collective negotiation relationship."

7. The F.O.P. excepts to the following recommendation by the Hearing Officer:

"Furthermore, it is recommended that the unit be clarified to provide for two separate units, each affiliated with the FOP - one of patrolmen and the other of superior officers including sergeants, lieutenants, captains, deputy chiefs, and the chief. In accordance with the provisions of the statute, it is recommended that, in order to represent these two units, the FOP must form two local organizations. One organization will represent patrolmen and the other one will represent superior officers. There is no question concerning representation and no need for an election."

Hearing Officer's Report and Recommendations, p. 10.

B. Camden Lodge #1, Fraternal Order of Police also excepts to the Hearing Officer's failure to make certain findings of fact and conclusion incumbent upon him to make in support of his recommendation and to the improper procedure followed by the Hearing Officer. Specific exceptions follow:

1. The Hearing Officer failed to make any determination as to the existence of a community of interest among all police officers.

2. In reference to Exception A 3, supra, the Hearing Officer failed to make any factual determination in support of his conclusion stated therein, therefore denying petitioner its due process rights.

3. The Hearing Officer failed to recognize that while he is demanding exclusive employee organizational representation conducted under formal bargaining procedures (see Exception A 5 and 6, supra) the petitioner was legally prevented from such representation until the enactment of the Public Employer-Employee Relations Act and that if this interpretation is upheld, it will be tantamount to striking the words "established practice" from the Act entirely.

4. The Hearing Officer failed to properly exercise his duties by making a recommendation (specifically that two local organizations must be established by the petitioner) which, because of its highly unusual character in light of standard labor

negotiations, was made without notice to the petitioner and therefore, without opportunity for the petitioner to submit evidence in opposition thereto. Significantly, the Hearing Officer's own statement of the issue was limited to "the composition of the unit." Report and Recommendations, p. 3.

5. The Hearing Officer further imperfectly executed his duties by making a conclusion (see Exception A 3, supra) without stating the basis for his conclusion in his Report and Recommendation, and by concluding that two local organizations be required without first eliciting facts with respect thereto nor referring to such findings of fact in his Report and Recommendations, again denying the petitioner its due process rights.

6. The Hearing Officer failed to find the Petitioner's requested unit to be appropriate.

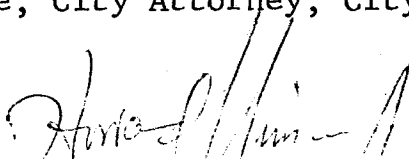
Respectfully submitted,

PLONE, TOMAR, PARKS AND SELIGER
Attorneys for Petitioner

By: 

Howard S. Simonoff

This is to certify that a copy of the within Exceptions has been served upon Isaiah Steinberg, Esquire, City Attorney, City Hall, Camden, New Jersey.


Howard S. Simonoff

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For Lodge #1, Fraternal Order of Police
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By Howard S. Simonoff, Esq.

For Lodge #35, Policemen's Benevolent Association
Robert Kirkbride, President

1/ As amended at the hearing.

2/ As amended at the hearing.

HEARING OFFICER'S REPORT AND RECOMMENDATION

A petition was filed with the Public Employment Relations Commission by Camden Lodge #1, Fraternal Order of Police on March 24, 1970 requesting certification of representative. On April 20, 1970, Lodge #35, Policemen's Benevolent Association filed a similar petition with the Commission. These two cases were consolidated by Order dated June 19, 1970. On July 2, 1970, Lodge #1, Fraternal Order of Police filed a petition amending its initial petition and asking for a clarification of unit, claiming therein they had already been recognized as the majority representative by the public employer.

Pursuant to a Notice of Representation Hearing dated June 19, 1970, a hearing was held before the undersigned on July 16, 1970 in Camden, New Jersey at which all parties were given an opportunity to examine and cross-examine witnesses, to present evidence, and to argue orally. Briefs were submitted by two of the parties by August 10, 1970. Upon the entire record in the proceeding, the Hearing Officer finds:

1. The City of Camden, Department of Public Safety, Division of Police, is a public employer within the meaning of the Act and is subject to the provisions of the Act.
2. Camden Lodge #1, Fraternal Order of Police and Lodge #35, Policemen's Benevolent Association are employee representatives within the meaning of the Act.
3. As set forth more fully below, there is no question concerning representation at this time. The request of the Policemen's Benevolent Association (P.B.A.) to withdraw its petition, Docket No. RO-130, should be approved and the amended petition for clarification of unit

of the Fraternal Order of Police (F.O.P.), Docket No. CU-33, should be substituted for the initial F.O.P. petition for certification, Docket No. RO-109.

4. The public employer disagrees with F.O.P. that a single combined unit of supervisors and nonsupervisors is appropriate. Therefore, this is a question concerning the composition of the unit and the matter is properly before the undersigned for Report and Recommendations.

BACKGROUND

Both the F.O.P. and the P.B.A. filed petitions for certification. These petitions did indicate the existence of a question concerning representation. However, the two employee organizations, by mutual agreement and with the knowledge and apparent acquiescence of the City, and completely outside the area of the activities and procedures of the Public Employment Relations Commission, agreed to resolve the question concerning representation by arranging for an election to be privately conducted by an organization other than P.E.R.C. This election, according to F.O.P. Exhibit No. 1, was conducted on June 25, 1970.

Subsequent to this election, which was won by the F.O.P., the P.B.A. disavowed any interest in representing the employees concerned which, according to their petition, included all policemen under the Department of Public Safety. In accordance with this position, the P.B.A. at the hearing moved to withdraw its petition and indicated, through the President, that it did not wish to represent either patrolmen or superior officers. (TR. 16 and 17)

Prior to the hearing but subsequent to the June 25 election referred to above, the F.O.P. amended its petition from a petition for certification to a petition for unit clarification.

The parties are in agreement that there is no question concerning representation and that the only issue concerns the composition of the unit. (TR. 27 and 28) Therefore, the Hearing Officer recommends that the request of the P.B.A. to withdraw its petition (Docket No. RO-109) be approved and that the amended petition for clarification of unit (Docket No. CU-33) of the F.O.P. be substituted for the original F.O.P. petition for certification (Docket No. RO-130).

STIPULATION

The F.O.P. stipulated (TR. 118) and the bulk of the record suggests that the superior officers, that is, sergeants, lieutenants, captains, deputy chiefs, and the chief, are supervisors within the meaning of Chapter 303, P.L. 1968. On this basis, the Hearing Officer finds that the superior officers are supervisors within the meaning of the Act.

ISSUES

Section 7 of Chapter 303 specifies that:

...nor, except where established practice, prior agreement or special circumstances, dictate the contrary, shall any supervisor...have the right to be represented in collective negotiations by an employee organization that admits nonsupervisory personnel to membership, and the fact that any organization has such supervisory employees as members shall not deny the right of that organization to represent the appropriate unit in collective negotiations...

That section continues to provide that:

The negotiating unit shall be defined with due regard for the community of interest among the employees concerned...

These excerpts indicate the issues in this case: 1) is there "established practice, prior agreement or special circumstances" to permit

a combined unit of supervisors and nonsupervisors in spite of the general statutory prohibition against such a unit and 2) if the above question is answered affirmatively, do the employees in such a combined supervisory - nonsupervisory unit have a sufficient community of interest to constitute an appropriate unit?

DISCUSSION AND FINDINGS

The F.O.P. contends that all three statutory exceptions to the existence of a combined unit of supervisors and nonsupervisors are present in this case. The Hearing Officer disagrees.

These terms must be considered in the context of collective negotiations. In the Hearing Officer's view, a "special circumstance", for example, outside of the context of labor relations, would be of questionable relevance. Established practice, prior agreement, and special circumstances must, to be applicable, relate to facts, events, behavior, etc. within the scope of the relationship between a public employer and organized employees. To go outside of this framework would be to extend the meaning of these terms unreasonably.

The statute does recognize policemen as a unique group by forbidding them, in the absence of established practice, prior agreement, or special circumstances, to join an employee organization that admits employees other than policemen to membership. In the opinion of the undersigned, the unique qualities of policemen were considered by the Legislature and the Legislature decided that, generally, policemen could not be in a unit with non-police employees. However, this does not constitute "special circumstances". Had the Legislature recognized anything inherent in police departments, as opposed to other units, they could have, at the same time that they included the above-mentioned language concerning policemen, also indicated that police departments, unlike other

units, can or must be units inclusive of supervisors and nonsupervisors despite the general statutory proscription. The failure to do so convinces the undersigned that there was no Legislative intent to treat police departments differently from other units in this respect. Similarly, the undersigned does not find the fact that State laws refer to all policemen on a departmental basis as constituting "special circumstances".

We next consider "prior agreement". The Executive Director In the Matter of Willingboro Board of Education and Willingboro Education Association, E.D. No. 3, ruled that this term must refer, "...minimally, to a particular kind of agreement, namely, a written agreement, reached in the context of collective negotiations, executed by both parties, and providing for the inclusion, in a single unit, of supervisors and non-supervisors." (p.9) The facts in this case do not support a finding of "prior agreement" as defined in that decision. Any provision governing salaries, fringes, and other working conditions have taken the form of City Council ordinances. There is no evidence that these provisions have been embodied in writing and executed by both parties. Accordingly, the minimal requirements of "prior agreement" have not been met and the Hearing Officer finds no "prior agreement".

The final exception is "established practice". This gets to the relationship between the parties. It is clear that supervisors and non-supervisors have been treated jointly by the City. It is also clear that the fringe benefits of supervisors and nonsupervisors have been set on a department-wide basis. (TR. 69) Additionally, the record reveals that salary increases -- achieved either by referendum or through Council action-- have been accorded to both supervisors and nonsupervisors simultaneously. Furthermore, a coalition of groups including the F.O.P. and P.B.A. from the Police and Fire Departments have, over a period of years, served as a

committee and discussed with Council, the Mayor, the Business Administrator the City Attorney, and the Director various proposals regarding salaries and other conditions of employment. (TR. 112, 113, and 114) Finally, both the P.B.A. and the F.O.P. have discussed personnel grievances with the Director. (TR. 75 and 89)

This is not sufficient, in the opinion of the undersigned, to support a finding of "established practice". The mere fact that supervisors and nonsupervisors have been treated jointly and that fringe benefits are identical regardless of rank does not mean that the basis for such treatment and level of benefits was arrived at through an established process of collective negotiations. The record indicates the contrary.

A coalition of organizations consisting of employees of the Police and Fire Departments made a concerted effort to secure the adoption of a City Council Ordinance which provided for improved vacation leave, holiday leave, sick leave, special leave of absence, compensatory leave, military leave, and leave without pay. This ordinance was adopted in April, 1967, (F.O.P. EX. 3) after many months of effort which "went from one office to another, leading from one Director, to another, from Council back to the Mayor, from the Mayor back to the City Attorney." (TR. 91)

The President of the F.O.P. testified that, on several other occasions, changes in working conditions or other terms of employment were achieved as a result of meetings and discussions with City officials and/or the Director of Public Safety. Some examples relate to shift changes, Blue Cross-Blue Shield and summer uniforms. In each instance, the issue was dealt with on an ad hoc basis, often in response to a particular problem or situation. There is no evidence of negotiations having been conducted on a regular basis between designated representatives of the public employer and the public employees.

The major improvements in salaries over the years have been achieved through referenda. Referenda in 1959 and 1966 resulted in substantial increases. In 1969, a referendum on increases for employees of the police and fire departments was turned down by the voters. While recognizing the efficacy and legitimacy of the referendum as a means of achieving salary increases, such a procedure is not, in the opinion of the undersigned, related to collective negotiations.

As to the small increases which were granted between referenda, the testimony of the F.O.P. President is on point:

HEARING OFFICER: "How did you convince the Mayor to approve a particular, or recommend a particular amount of increase to the City Council?"

THE WITNESS: He was very receptive on the pay raises.

He didn't come -- as a matter of fact, the way the raises were formulated was more at his convenience. If the City budget could offer it, we agreed.

HEARING OFFICER: How were the amounts arrived at?"

THE WITNESS: It's all according to how much the City could afford at that time. (TR. 100 and 101)

The fact that representatives from a number of organizations in the police and fire departments met with various City officials indicates that, regardless of the exact nature of the relationship between the employer and the employees, there was not any exclusive representative. The Director of the Department of Public Safety testified that, over the years, he had dealings with both the F.O.P. and the P.B.A. (TR. 75) These dealings concerned one organization one time and the other organization another time. There was no single or exclusive representative such as contemplated and provided for by

Chapter 303 and which the Hearing Officer considers to be an important if not an essential element of a collective negotiation relationship.

To summarize, the record reveals that policemen - both patrolmen and superior officers - have been members of organizations which have worked to represent these members but that these organizations have not represented these employees in collective negotiations. Accordingly, the undersigned finds that there is no established practice in this case.

Having found no "established practice, prior agreement, or special circumstances" the Act, in the language quoted above, seems to preclude representation of supervisors and nonsupervisors in a single unit.

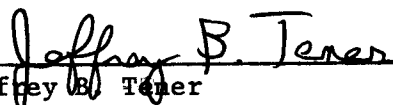
This question has not been dealt with exhaustively by either the Commission or the Executive Director. However, in E.D. No. 6, In the Matter of Town of West Orange and Local 692, International Association of Fire Fighters, the Executive Director stated that Local 692, IAFF could not-in the absence of one of the statutory exceptions-represent supervisors since they already represented nonsupervisory employees of the employer. Also, in P.E.R.C. No. 42, In the Matter of City of Newark and Professional Fire Officers, Local 1860, IAFF and Newark Fire Officers Association, the Commission permitted a separate local of the IAFF to appear on the ballot in an election among supervisors even though another local of that same International was seeking to represent nonsupervisory employees of the employer. Subsequently, the Executive Director approved a Consent Agreement which had, as one of the parties and signatories, the other local of the IAFF.

Based upon the above and having found no established practice, prior agreement, or special circumstances, the undersigned finds that the FOP cannot represent both supervisors and nonsupervisors in a single unit. However, if the FOP forms two distinct locals to represent the supervisors and nonsupervisors in separate units, then these locals can serve as negotiating agents for the supervisors and nonsupervisors respectively. The undersigned finds that two separate units, each affiliated with the FOP, may constitute appropriate employee representatives for the supervisors and nonsupervisors of the employees of the Division of Police, Department of Public Safety, City of Camden.

Recommendations

It is recommended that the motion of the PBA to withdraw its petition, Docket No. RO-130, be approved, and that the FOP motion to amend its petition from a petition for certification (Docket No. RO-109) to a petition for unit clarification (Docket No. CU-33) also be approved.

Furthermore, it is recommended that the unit be clarified to provide for two separate units, each affiliated with the FOP- one of patrolmen and the other of superior officers including sergeants, lieutenants, captains, deputy chiefs, and the chief. In accordance with the provisions of the statute, it is recommended that, in order to represent these two units, the FOP must form two local organizations. One organization will represent patrolmen and the other one will represent superior officers. There is no question concerning representation and no need for an election.



Jeffrey B. Tener
Hearing Officer

DATED: October 9, 1970
Trenton, New Jersey