

P.E.R.C. NO. 2008-2

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF MAPLEWOOD,

Petitioner,

-and-

Docket No. CU-2006-026

PBA LOCAL 44,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of PBA Local 44 for review of the Director of Representation's decision in D.R. No. 2007-13, 33 NJPER 105 (¶36 2007). In that decision, the Director granted the petition of the Township of Maplewood to clarify a mixed unit of police superior officers and patrol officers by ordering the removal of the superior officers from the unit. The Commission holds that there is no compelling reason warranting review of the Director's determination. The Director applied well-settled case law generally requiring that superior officers be removed from a mixed unit based on the potential for a conflict of interest with rank-and-file officers, despite a history of a long relationship in a combined unit.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Respondent, Marc D. Abramson, consultant

For the Petitioner, Genova, Burns & Vernoia, attorneys
(Sandro Polledri, of counsel)

DECISION

On April 23, 2007, PBA Local 44 requested review of D.R. No. 2007-13, 33 NJPER 105 (¶36 2007). In that decision, the Director of Representation granted the petition of the Township of Maplewood to clarify a mixed unit of police superior officers and patrol officers by ordering the removal of the superior officers from the unit. In support of its request, the PBA relies on two previously submitted letters opposing the Township's petition. The Township opposes the PBA's request for review. We deny review.

Review of a Director's decision clarifying a negotiations unit will be granted only for one or more of these compelling reasons:

1. A substantial question of law is raised concerning the interpretation or administration of the Act or these rules;
2. The Director of Representation's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of the party seeking review;
3. The conduct of the hearing or any ruling made in connection with the proceeding may have resulted in prejudicial error; and/or
4. An important Commission rule or policy should be reconsidered. [N.J.A.C. 19:11-8.2]

There is no compelling reason warranting review of the Director's determination. He applied well-settled case law generally requiring that superior officers be removed from a mixed unit based on the potential for a conflict of interest with rank-and-file officers, despite a history of a long relationship in a combined unit. Town of West New York, P.E.R.C. No. 87-114, 13 NJPER 277 (¶18155 1988); N.J.S.A. 34:13A-5.3. While the Township withdrew an earlier clarification of unit petition in exchange for the PBA's recognizing that superior officers have the responsibility to supervise rank-and-file officers, that earlier agreement does not preclude the Township from now asserting, consistent with this case law, that superior officers are statutorily prohibited from being included in the PBA's unit. Warren Cty., P.E.R.C. No. 89-66, 15 NJPER 30 (¶20013 1988) (no time limits on filing of unit clarification petitions); cf. Miller v. Teachers' Pension & Annuity Fund, 179 N.J. Super. 473,

474-75 (App. Div. 1981), certif. den. 88 N.J. 502 (1981) (general reluctance to apply equitable estoppel against a governmental body). An evidentiary hearing is not needed because we have accepted all of the PBA's assertions about the nature of the agreement.

ORDER

The request for review is denied.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller and Watkins voted in favor of this decision. None opposed.

ISSUED: August 9, 2007

Trenton, New Jersey