

D.R. NO. 99-2

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

In the Matter of

OCEAN COUNTY SHERIFF,  
Public Employer,

-and-

OCEAN COUNTY SHERIFF'S OFFICERS,  
FOP LODGE NO. 135,  
Petitioner,

Docket No. RO-98-82

-and-

PBA LOCAL 258,  
Intervenor.

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OCEAN COUNTY SHERIFF,  
Public Employer,

-and-

OCEAN COUNTY SHERIFF'S SUPERIOR  
OFFICERS, FOP LODGE NO. 135,  
Petitioner,

Docket No. RO-98-83

-and-

PBA LOCAL 258 (SUPERIORS),  
Intervenor.

SYNOPSIS

The Director of Representation severs sheriff's officers from a mixed unit of corrections officers and sheriff's officers. The Director finds that the Sheriff and the County jointly employ sheriff's officers, while the County separately employs corrections personnel.

The Director rejects the incumbent's bid to preserve the existing unit as a "multi-employer unit", finding that separate units are appropriate where the employees lack a common employer. An election is ordered among the sheriff's officers.

The Director also finds a separate unit of sheriff's superiors appropriate. Subject to receipt of Camden affidavits from both organizations' supervisory affiliates, an election is also directed among sheriff's superior officers.

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Appearances:

For the Public Employer,  
Citta, Holzapfel, Millard, Zabarsky & Leahey, attorneys  
(Matthew Leahey, of counsel)

For the Petitioner,  
Markowitz & Richman, attorneys  
(Stephen C. Richman, of counsel)

For the Intervenor,  
Fox & Fox, attorneys  
(Stacey Rosenberg, of counsel)

DECISION

On December 12, 1997, Ocean County Sheriff's Officers, FOP Lodge No. 135 filed a timely representation petition, RO-98-82, seeking to represent a unit of approximately 60 sheriff's officers employed by the Ocean County Sheriff. These individuals are currently represented by Policemen's Benevolent Association Local 258 in a combined unit of 180 sheriff's and corrections officers. The collective negotiations agreement covering this unit designates the employer as the Ocean County Board of Chosen Freeholders and the Sheriff.

On December 16, 1997, Ocean County Sheriff's Superior Officers, FOP Lodge No. 135, filed a timely representation petition, RO-98-83, seeking to represent a unit of approximately 11 sheriff's superior officers, specifically, sergeants, lieutenants, and captains, employed by the Sheriff. These individuals are currently represented by Policemen's Benevolent Association Local 258 (Superiors), in a combined unit of 35 sheriff's and corrections superior officers. The agreement covering this unit also designates the employer as the County and the Sheriff.

Pursuant to N.J.A.C. 19:11-2.7, on December 19, 1997, PBA Local 258 intervened in RO-98-82 based on its current collective agreement covering the petitioned-for employees, and on January 2, 1998, PBA Local 258 (Superiors) intervened in RO-98-83, based on its collective agreement covering sheriff's superior officers.

The FOP seeks to sever the sheriff's officers and sheriff's superiors from their respective existing units because the groups lack a common employer with corrections officers.<sup>1/</sup> FOP asserts that the sheriff's officers are employed solely by the Sheriff, while the corrections officers are employees of the County, under the authority of the Warden.<sup>2/</sup> FOP maintains that the Sheriff lacks any authority or responsibility over corrections officers, and therefore the corrections officers are not employed by the Sheriff, either solely or in combination with the County.

The FOP claims that under Bergen Cty. Sheriff, P.E.R.C. No. 84-98, 10 NJPER 168 (¶15083 1984), the proposed unit should be found appropriate and representation elections conducted therein since the sheriff's officers have a different employer from the corrections officers. Accordingly, the existing relationship is unstable and thus severance is appropriate under Jefferson Tp. Bd. of Ed., P.E.R.C. No. 61, NJPER Supp. 248 (¶61 1971).

The PBA seeks dismissal of the petitions. It argues there is no evidence of unit instability or irresponsible representation as required under Jefferson Tp. to warrant severance of sheriff's officers. The PBA also cites Bergen Cty. Sheriff, contending that

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<sup>1/</sup> References to corrections officers and sheriff's officers throughout this decision includes corrections superior officers and sheriff's superior officers, respectively.

<sup>2/</sup> Alternatively, FOP argues that the Sheriff and the County are joint employers of sheriff's officers, but not corrections officers.

the Commission has historically found broad based units, specifically those including sheriff's and corrections officers, as appropriate. The PBA asserts that the County is essentially the sole employer of both corrections and sheriff's officers and that the Sheriff and the Warden are "department heads" of the County.<sup>3/</sup> It argues that final authority on all important personnel, staffing and economic issues -- with respect to both sheriff's and corrections officers -- rests with the County. Finally, it argues in the alternative that if the County and the Sheriff are found to be separate employers, the long history of successful negotiations should dictate the preservation of a multi-employer relationship.

The County and the Sheriff take no position on the petitions or the appropriate unit issue. They assert that the Warden has responsibility for the County correctional facility and the terms and conditions of employment of corrections officers, while the Sheriff is generally responsible for sheriff's officers' terms and conditions of employment. They contend that final authority regarding certain terms and conditions of employment rests with the County.

We have conducted an administrative investigation into the above-captioned petitions. N.J.A.C. 19:11-2.2. The parties

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<sup>3/</sup> The PBA also initially asserted that the Sheriff possesses certain employment authority with regard to the County correctional facility and the corrections officers assigned there. It appears that the PBA has not pursued this claim.

submitted detailed statements of their respective positions. By letter dated June 30, 1998, we reviewed the parties' positions, the facts as they appeared to date, and the relevant caselaw; we advised the parties of our intention to direct an election in separate units of sheriff's officers and sheriff's superiors. On July 16, 1998, the PBA responded with additional arguments and an additional certification, which have been considered herein. The investigation has revealed the following facts.

The PBA has represented sheriff's officers, as well as their superiors, for approximately 30 years. Both the County and the Sheriff are named parties to numerous collective agreements covering the combined group over many years. The most recent agreements covering these units expired March 31, 1998. The petitions filed in this matter are timely. N.J.A.C. 19:11-2.8.

Until 1984, the Sheriff had full responsibility over the operation of the County's correctional facilities as well as the sheriff's department's functions including prisoner transport, process service, and maintenance of order in the courtrooms. All officers were titled sheriff's officers, both those assigned to the county jail and those assigned to traditional sheriff's officer functions. The Sheriff had overall supervision of all sheriff's officers.

N.J.S.A. 30:8-19 provides that a county board of freeholders may assume control over the "custody, rule, keeping and charge of the county jail," and that when a freeholder board

exercises such an option, "the custody, rule, keeping and charge of the county jail in such county shall no longer be in the sheriff of that county, but in the board of chosen freeholders thereof, and in such jailer, keeper or warden as they shall appoint for that purpose."

N.J.S.A. 30:8-20 provides that when the board of chosen freeholders assumes such charge of the county jail as provided in section 30:8-19, it shall appoint a keeper or warden of the jail.

In December 1984, the County exercised this option and adopted a resolution assuming control of the County jail and appointing a warden,<sup>4/</sup> charged with the responsibility of operating the jail. It also reclassified sheriff's officers assigned to the jail as corrections officers.

Since then, the Sheriff has had no authority with respect to the correctional facility, and such is reflected in the County Department of Corrections' policies and procedures manual. Also, the agreements between the parties reflect a clear distinction between the Sheriff's Department and the Department of Corrections. Specifically, with respect to terms and conditions of employment, the Warden is responsible for corrections officers, while the Sheriff is responsible for sheriff's officers.

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<sup>4/</sup> The Warden is on leave of absence from his permanent position as undersheriff. There is no evidence that the Warden reports to the Sheriff, notwithstanding his permanent title.

The parties most recent agreement permits the Sheriff to assign both sheriff's and corrections officers to the bloodhound unit. However, in practice, the Sheriff has never assigned corrections officers to this unit.

The Warden is appointed by the Freeholders and reports to the County Administrator. The Sheriff has no authority over the Warden.

Ocean County is a "civil service" employer, under the jurisdiction of the New Jersey State Department of Personnel. The County is the named "appointed authority" for County corrections officers. Corrections officers work primarily at the correctional facility guarding inmates. The Warden sets staffing levels there and assigns corrections officers. The Warden also establishes their hours of duty. The Warden authorizes the overtime policy for corrections officers and directly monitors and regulates their overtime. In addition, the Warden approves personal and vacation time for corrections officers, and determines their uniform. Further, all step 2 grievances by corrections officers are submitted to the Warden.

In March 1996, when a layoff was contemplated in the Department of Corrections, negotiations commenced between the PBA and the County. Neither the Sheriff nor sheriff's officers had any involvement in those negotiations.

The Sheriff is neither appointed by nor supervised by the County. Rather, pursuant to Article 7, §2, ¶2 of the New Jersey



Constitution, the sheriff is elected by the people of the county through a general election, and serves a term of three years.

N.J.S.A. 40A:9-117.6 provides:

The sheriff of each county shall, subject to the budget of the county, appoint such persons as may be necessary, to the positions of sheriff's officer, pursuant to the provisions of Title 11 of the Revised Statutes, where applicable, to perform the duties involved in attending the courts heretofore performed by court attendants, or in serving court process, or in the investigation and apprehension of violators of the law, or in criminal identification, or in ballistics, or in any related work which the sheriff shall, from time to time prescribe and as shall be determined to be appropriate by the Civil Service Commission. ...no such officer shall be assigned to any penal institution, jail, penitentiary, county correction center or workhouse for the purpose of guarding, having custody of, or being charged with the rehabilitation of any inmate housed therein, except upon emergency conditions.

N.J.S.A. 40A:9-117.10 provides:

Sheriff's officers appointed under the provisions of this act shall have the duties, benefits and powers conferred by law on sheriff's officers, and their compensation shall be as fixed by the sheriff in accordance with the generally accepted county salary ranges and within the confines of the sheriff's budget allocation set by the governing body.

The Sheriff serves as the "appointing authority" in accordance with State Department of Personnel regulations. Sheriff's officers are generally assigned to the Criminal Justice Complex and the community, serving summonses, complaints, and writing writs of execution. The Sheriff also assigns sheriff's officers and sets staffing levels consistent with County budget appropriations.

The Sheriff controls, develops and implements the overtime process for sheriff's officers and determines the uniforms and equipment for them. The Sheriff also sets work hours and tours of duty for sheriff's officers. Further, vacation and personal leave for sheriff's officers are subject to the control and authorization of the Sheriff.

Disciplinary authority over sheriff's officers rests with the Sheriff. Any outside employment by sheriff's officers is subject to approval by the Sheriff. Further, all step 2 grievances by sheriff's officers are served on the Sheriff.

The evaluation process for both sheriff's and corrections officers was designed and implemented by the County Department of Employee Relations. The Sheriff evaluates sheriff's officers, while the Warden evaluates corrections officers. Final decisions regarding the performance evaluations and what, if any, impact the evaluation may have on salary increments, disciplinary action or promotion, rest with the County.

New Jersey State Department of Personnel Rules and Regulations are applicable to all promotions. The Sheriff selects sheriff's officers for promotion, while the Warden selects corrections officers. All promotions are then subject to approval by the County.

Further, the County has final authority over compensation for all sheriff's and corrections officers. While the Sheriff has the authority to make budget or appropriations recommendations, the County maintains the ultimate approval over such requests.

The County engages in contract negotiations, receiving input from the Warden and the Sheriff. The Sheriff is a party to the collective agreement covering the PBA's units. The County is responsible for disposition of step 3 grievances.

### ANALYSIS

The Act at N.J.S.A. 34:13A-3(c) defines "employer" and "public employer" as follows:

(c) the term "employer" includes an employer and any person acting, directly or indirectly, on behalf of or in the interest of an employer with the employer's knowledge or ratification, but a labor organization, or any officer or agent thereof, shall be considered an employer only with respect to individuals employed by such organization. This term shall include "public employers" and shall mean the State of New Jersey, or the several counties and municipalities thereof, or any other political subdivision of the State, or a school district, or any special district, or any authority, commission, or board, or any branch or agency of the public service.

In deciding who is the employer of certain employees, the Commission focuses on which entity generally controls the employees' hiring, performance evaluations, promotions, discipline, firing, work schedules, vacation, hours of work, wages, benefits, funding and expenditures. Cty. of Morris, P.E.R.C. No. 86-15, 11 NJPER 491 (¶16175 1985), adopting H.O. No. 85-12, 11 NJPER 418 (¶16146 1985); Bergen Cty. Freeholder Bd. v. Bergen Cty. Prosecutor and Mercer Cty. Freeholder Bd. and Mercer Cty. Prosecutor, D.R. No. 78-34, 4 NJPER 104 (¶4047 1978), aff'd P.E.R.C. No. 78-77, 4 NJPER 220 (¶4110

1978), aff'd 172 N.J. Super 363 and 172 N.J. Super 411 (App. Div. 1980); Mercer Cty. and Mercer Cty. Superintendent of Elections, P.E.R.C. No. 78-78, 4 NJPER 221 (¶4111 1978), aff'd 172 N.J. Super. 406 (App. Div. 1980).

These cases set forth the following relevant factors in determining the identity of the public "employer" under N.J.S.A. 34:13A-3(c):

supervisory control and authority to select, appoint, and pay employees; control over work, appointment, removal authority, duties and salaries within the limits of available appropriation; day to day control of personnel practice, final control of wages, personnel selection; and the right to select the employee, the power to discharge him, and the right to direct both the work to be done and the manner in which such work shall be done.

In Monmouth Cty. Bd. of Recreation Commissioners, E.D. No. 76-36, 2 NJPER 127, 133 (1976), the Executive Director, in finding that the County and its Recreation Commission were joint employers, noted that:

joint employer relationships have been found where the indicia of employer attributes also indicate an extensive integration of labor relations programs and where the record demonstrates that effective negotiations on behalf of the employees could not take place without the presence of both governmental entities.

Here, I find that the County is the sole employer of corrections officers. The Sheriff is not an employer of corrections officers, as he has no statutory or granted powers over their terms and conditions of employment.

Since the County's 1984 resolution taking control of the jail and its concurrent appointment of the Warden, the County has exercised control over the County correctional facility, with the Warden having responsibility over corrections officers. Since then, the Sheriff has not had any authority with respect to the terms and conditions of employment of corrections officers.

The Sheriff does not have any supervisory control or authority with respect to the selection, appointment, removal or compensation of corrections officers. Further, the Sheriff does not have the authority to direct their work, and is not involved with the staffing, discipline or promotion of them. The Sheriff's lack of involvement with corrections officers is further supported by the fact that when a layoff of corrections officers was threatened in March 1996, the PBA and the County negotiated over the situation; the Sheriff was not involved.

While the collective agreement provides that the Sheriff may assign corrections and sheriff's officers to the bloodhound unit, this is insufficient to support a finding that the Sheriff is a single or joint employer of corrections officers. Moreover, the Sheriff has never assigned corrections officers to this unit. I conclude that the County is the employer of corrections officers and corrections superiors.

The FOP asserts that the Sheriff is the sole employer of sheriff's officers and sheriff's superiors; however, it acknowledges that the Sheriff and the County may be joint employers of these

officers. The PBA urges us to find that the County is the employer of sheriff's officers as well as corrections officers. It maintains that the Sheriff, as well as the Warden, are merely department heads of the County, that each possesses similar authority and powers over their respective departmental employees, but that the County retains ultimate control over the most significant aspects of all officers' terms and conditions of employment. I reject that argument.

The Sheriff clearly has extensive authority over the day-to-day working conditions of sheriff's officers. As stated previously, the Sheriff appoints sheriff's officers and fixes their compensation under N.J.S.A. 40A:9-117.6 and 117.10. The Sheriff serves as the appointing authority under Department of Personnel regulation. The Sheriff also has disciplinary authority over them and final approval authority over their outside employment. Further, the Sheriff determines the Sheriff's officers' staffing levels, work hours, tours of duty, uniforms and equipment. The Sheriff also controls and authorizes overtime, vacation leave and personal days and directs their work.

Moreover, as a constitutional and elected official, the Sheriff's authority over his employees is statutory; therefore he cannot be considered as an "agent" of the County. This independent statutory authority was, in fact, the basis for the Commission's

conclusion of joint authority in the Bergen Cty. Sheriff matter.<sup>5/</sup>

The PBA acknowledges that the Sheriff possesses statutory powers, but it asserts that in reality, he is not "permitted to exercise these broad powers." It argues that the Sheriff's significant managerial and personnel powers (as well as the Warden's) are subject to review and approval by the County, which retains final decision-making and approval authority.

The County does have some significant authority over the terms and conditions of employment of sheriff's officers. While the Sheriff evaluates sheriff's officers, the evaluation process was implemented and designed by the County. Moreover, final decisions regarding an evaluation and what, if any, impact the evaluation may have on salary increases, disciplinary action or promotion rest with the County. Further, all promotions recommended by the Sheriff are subject to approval by the County.

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<sup>5/</sup> Cf., Mercer Cty. Prosecutor, P.E.R.C. No. 78-77, 4 NJPER 220 (¶4110 1978); and Bergen Cty. Prosecutor, D.R. No. 78-34, 4 NJPER 104 (¶4047 1978) where the Commission found that the prosecutor was the sole employer and that the prosecutor's employees may not continue to be included in a unit with County employees. There the Commission found that prosecutors possess independent statutory authority over their employees and are not merely an arm of the County government. The circumstances applicable to the Sheriff in this matter differs from that of the prosecutor; the latter has statutory authority to make a request directly to the assignment judge for increases in its budget allocations from the county. The Sheriff does not appear to have such authority. Rather, the Sheriff's authority to set compensation is limited to "the confines of the sheriff's budget set by the governing body." N.J.S.A. 40A:9-117.10.

In addition, the County sets salary ranges for sheriff's officers and allocates the budget for staffing levels and officers' salaries. Also, the County has the power to deny budget and appropriations recommendations made by the Sheriff. The County hears step 3 grievances. Finally, the County is the party who engages in negotiations with regard to sheriff's officers, receiving input from the Sheriff.

Thus, the facts establish that the Sheriff and the County each have control over differing, essential aspects of the sheriffs' officers working conditions.

The fact that the Sheriff's powers are set by statute is significant. In Ocean Cty. Prosecutor, D.R. No. 82-29, 8 NJPER 60 (¶13024 1981), it was argued that the County, rather than the prosecutor, was the public employer because the prosecutor conformed his employment relations activities to the County's personnel policy and review procedures administered by the County's employee relations department. In that case, the petitioner sought to sever clerical employees working in the Prosecutor's Office from the county-wide unit in which they had been included. The Director observed,

It appears...that in employment relations activities the Prosecutor's Office functions in the same manner as any other County department, and consistent with County employee relations policy. The County and the Prosecutor list 17 facets of personnel activities and focus attention on the role of the County's employee relations department in these areas. It is submitted that the Prosecutor conforms his employment relations activities to the policy and review of the County



as administered by the employee relations department, in such areas as, inter alia, employee selection and evaluation, employee discipline, promotional action and approval, contractual fringe benefit administration and personnel assignments.

Notwithstanding the statutory independence of the Prosecutor's Office, it is not surprising that the Prosecutor may desire to harmonize his employee relations policies with those of the County as well as to integrate these functions through the employment relations arm of the County. However, the undersigned has not been referred to any authority, either statutory or decisional, which compels the Prosecutor to delegate or subjugate his authority to the County in personnel matters. In the absence of such a submission the undersigned cannot conclude, against weight of given statutory and decisional law, that the Prosecutor's conformance to County policies and that his utilization of the Employment Relations Department as a conduit for Civil Service and other personnel actions, indicates that his ultimate legal authority can in any way be diminished by the County. Id.

The same argument was also addressed in Morris. In that matter, the petitioner sought to sever nursing home employees from the county-wide unit, asserting that the nursing home was operated by an independent social services board separate from the county. The incumbent representative there argued that the county, not the independent board, should be found as the employer since it effectively controlled nursing home employees' terms and conditions of employment, treated those employees consistent with overall county employee relations policy, historically negotiated through its county employee relations office over the affected employees, and administered the contract through its role in the grievance procedure. However, like Ocean Cty. Prosecutor, the Commission held

that no authority compelled the independent board to delegate or subjugate its statutory authority to the county for personnel and labor relations matters. Therefore, based upon the board's statutory authority to select, appoint and control its employees, the Commission found the separate board to be the employer and severed the subject employees from the existing county unit.

Morris.<sup>6/</sup> See also, Sussex Cty. Judiciary, D.R. No. 91-11, 16 NJPER 572 (¶21250 1990) (judiciary employees employed by courts, not by county to which they are assigned, even where county historically negotiated and administered collective agreements covering them).

The same result is appropriate here. The Sheriff's authority to control the sheriff's officer's terms and conditions of employment is granted by the legislature, not by the County Board of Freeholders. There is no evidence nor statutory authority to support the PBA's assertion that the Sheriff is not "permitted" to control his employee's working conditions, nor that his power must be subjugated to that of the Freeholders. Even assuming that the Sheriff delegated his authority to negotiate and administer the terms of the contract to the County administration, that does not diminish the fact that he possesses independent, exercisable statutory authority.

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<sup>6/</sup> While the statutory scheme establishing the separate authority of the Prosecutor in the Ocean case and the statute authorizing the social services board in the Morris matter are not equal to the statutory scheme applicable here for sheriffs, the degree of independence and control authorized by statute is similar.

Based upon the statutory scheme, I find that the Sheriff together with the County, is a joint employer over sheriff's officers.

The PBA also argues that designating the Sheriff as an employer for sheriff's officers but not corrections officers based upon N.J.S.A. 30:8-19 has the effect of giving the County control over the structure of the negotiations unit. The PBA warns that the County might return the jail operation to the control of the Sheriff at any time, thus potentially giving the County the ability to influence the structure of the negotiations unit at its whim.

N.J.S.A. 30:18-19 and 20 permits the County to take control of the jail.<sup>7/</sup> The fact that the legislature gave the County Board of Freeholders authority to decide which entity would control the employment relationship of certain employees is not unique to this situation.

Counties and municipalities have statutory authority to create separate boards or commissions for certain purposes. When they do so, the autonomous boards are often vested with statutory authority to control their employees. We have found, in those circumstances where the autonomous board has separate power over

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<sup>7/</sup> I note that N.J.S.A. 30:18-19 does not provide a mechanism for the sheriff to retake control of the county jail once the board of chosen freeholders acts to assume such control. The PBA has not cited any statutory provision which allows the sheriff to retake control of the jail. N.J.S.A. 30:8-24.2 pertains to the return of control of the county jail to the sheriff under particular conditions and does not appear to apply here.

their employees' working conditions, that those employees must be in separate units from employees of the county or municipality that created it. In Tp. of Monroe, P.E.R.C. No. 95-93, 21 NJPER 232 (¶26148 1995), aff'g H.O. No. 95-1, 21 NJPER 98 (¶26061 1995), the Township sought to exclude the welfare director from the Township unit because she was employed by the Local Assistance Board, not by the Township. The Commission held that, although the Township has significant control over the welfare director's terms and conditions of employment, New Jersey statutes and regulations give exclusive authority over certain terms and conditions of employment to the Local Assistance Board, including the power to appoint and remove. The Commission found the Township and the Assistance Board to be joint employers over the welfare director, and found she could not be included in a unit of Township employees.

In Camden Cty. Health Services Center Bd. of Managers, D.R. No. 89-36, 15 NJPER 379 (¶20161 1989), the County Freeholders created a board of managers to manage the county hospital. The Freeholders granted the hospital board of managers authority to direct and control the hospital employees and manage their labor relations. We found that the hospital board of managers was an autonomous public employer, notwithstanding that the County labor relations office continued to negotiate and administer the collective negotiations agreement covering hospital employees. There was no indication that the County Freeholders could not again pass resolutions eliminating the hospital board of managers. We

severed hospital employees from the county unit and created a separate negotiations unit.

In Neptune Tp., D.R. No. 87-26, 13 NJPER 386 (¶18155 1987), we found that the Township created a board of health by resolution, which then exercised its authority pursuant to N.J.S.A. 26:3-1 et. seq. to hire its employees, set their salaries, and control their labor relations. While the board of health chose to exercise its statutory right to act as the employer of its employees by applying most of the same policies as the Township, nonetheless, the board of health is statutorily empowered as the employer. Accordingly, a clerk-typist was excluded from a unit of Township employees on the grounds that only the employer had the authority to establish the terms and conditions of its employees. Id. at 388. See also Monmouth Cty. Bd. of Recreation Commissioners (finding that recreation board is a joint employer with the county, and its employees must be in a separate negotiations unit); Boro. of Carteret, D.R. No. 96-16, 22 NJPER 184 (¶27096 1996) (finding that library board employees must be excluded from municipal employee unit); Boro. of Bloomingdale, D.R. No. 88-4, 13 NJPER 689 (¶18258 1987) (borough's board of health and its library board were autonomous employers and their employees could not be included in a unit of the borough's employees); Ocean Cty., D.R. No. 79-25, 5 NJPER 128 (¶10076 1979) (finding that the county created a board of health which then had autonomous authority over its employees, dictating their removal from the county unit).

In each of these cases above, the autonomous board or commission was a creation of the county or municipality. Whatever their origins, we have consistently concluded that the employees of an independent board must be in a separate unit from employees of that county or municipality based on a finding of different employers. In this matter, the fact that the County arguably may have the authority to return control over the corrections facility and its employees to the Sheriff at any time does not diminish the Sheriff's separate statutory authority, nor the fact that the County has retained authority over the jail by the present designation of the Warden.

Further, the County has had control over its corrections facilities for the past 14 years. We will not speculate now whether or how the unit might be reconfigured in the event that the County is able to cede control of the jail back to the Sheriff.

The PBA argues that, if the County and the Sheriff are found to be separate employers, the long, stable bargaining history with the County and the Sheriff constitutes a multi-employer bargaining unit which should not be disturbed. It cites private sector cases. However, the Commission has consistently severed employees from existing units wherever we have found separate employer status, even where the combined unit has a long history. Bergen Cty. Prosecutor; Mercer Cty. Prosecutor; Morris Cty; Bergen Cty. Sheriff; Sussex Cty. Judiciary; Camden Cty. Health Services; Ocean Cty. Judiciary, Monmouth Cty. Bd. of Recreation

Commissioners. As the Commission specifically stated in Bergen Cty. Sheriff,

It is true that we have a strong preference for broad-based units and that normally it would be inappropriate to split a unit which has a long and stable negotiations history.

\* \* \*

We believe, however, that this is one of the rare cases where severing a group of employees from an existing unit is clearly appropriate. The employees who seek to withdraw have a unique employment relationship. As already stated, they have a different employer -- the sheriff -- from the other negotiations unit employees. ...[the sheriff] would be well within his rights to demand separate negotiations with the County and his employees. We believe this possibility establishes that the existing relationship is unstable and therefore severance is appropriate under the traditional Jefferson Tp. standard. [Id. at 171.]

This is the case here. The statutory framework, as well as the facts in this matter do not suggest a departure from our caselaw. The sheriff's officers must be placed in a unit separate from County employees.

Accordingly, based upon all of the above, I find the following units appropriate for collective negotiations:

RO-98-82

Included: All sheriff's officers jointly employed by the Ocean County Sheriff and the Ocean County Board of Chosen Freeholders.

Excluded: Managerial executives, confidential employees and supervisors within the meaning of the Act; craft employees, professional employees, non-police employees, casual employees, corrections officers, all sheriff's superior officers, and all other employees.

RO-98-83

Included: All sheriff's superior officers holding the rank of sergeant, lieutenant and captain, jointly employed by the Ocean County Sheriff and the Ocean County Board of Chosen Freeholders.

Excluded: Managerial executives and confidential employees within the meaning of the Act, non-supervisory employees, craft employees, professional employees, non-police employees, casual employees, corrections superior officers, deputy warden, chief sheriff's officer and all other employees.

DIRECTION OF ELECTION

I hereby direct that an election be conducted among sheriff's officers as described above. Eligible Sheriff's officers will vote on whether they wish to be represented for purposes of collective negotiations by Ocean County Sheriff's Officers, FOP Lodge No. 135; Policemen's Benevolent Association, Local 258; or no representative.

Further, upon receipt of properly executed Camden affidavits<sup>8/</sup> from each superior officers' organization attesting to their separate organizational structure which qualifies each organization to represent this supervisory unit, I direct that an election be conducted among eligible sheriff's superior officers as described above. Sheriff's superior officers shall vote on whether they wish to be represented for purposes of collective negotiations by Ocean County Sheriff's Superior Officers, FOP Lodge No. 135;

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<sup>8/</sup> See Camden Police Department, P.E.R.C. No. 82-89, 8 NJPER 226 (¶13094 1982).



Policemen's Benevolent Association, Local 258 (Superiors); or no representative.

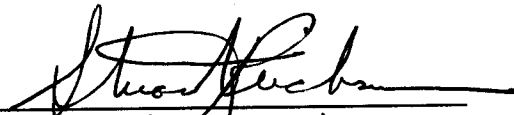
The elections shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation 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 for each unit, consisting of an alphabetical listing of the names of all eligible voters, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility lists 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 respective employee organizations with a statement of service filed with us. We shall not grant an extension of time within which to file the eligibility lists except in extraordinary circumstances.

The exclusive representative, if any, shall be determined by a majority of the valid votes cast in each election. The

elections shall be conducted in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION



Stuart Reichman, Director

DATED: August 27, 1998  
Trenton, New Jersey