

D.R. NO. 91-17

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

In the Matter of

CUMBERLAND COUNTY SHERIFF,

Public Employer,

-and-

PBA LOCAL 299,

Docket No. RO-91-23

Petitioner,

-and-

PBA LOCAL 231,

Intervenor.

CUMBERLAND COUNTY SHERIFF,

Public Employer,

-and-

PBA LOCAL 299 (SUPERIORS),

Docket No. RO-91-24

Petitioner,

-and-

PBA LOCAL 231,

Intervenor.

SYNOPSIS

The Director of Representation dismisses two petitions filed by PBA Local 299 and PBA Local 299 Superior Officers Committee seeking to sever a unit of sheriff's officers and a unit of sheriff's superior officers from an existing unit of sheriff's officers, corrections officers, identification officers, sheriff's superior officers, corrections superior officers and chief identification officers employed by the County of Cumberland. The petitioners did not present evidence to support a claim that the

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current relationship is unstable or that the incumbent organization has not provided responsible representation. Since the petitioners did not meet the severance standards established in Jefferson Bd. of Ed., P.E.R.C. No. 61, N.J. Supp 248 (¶61 1971), the two petitions were dismissed. D.R. NO. 91-17

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-and-

PBA LOCAL 231,

Intervenor.

Appearances:

For the Public Employer
Ivan M. Sherman, County Counsel

For the Petitioner
Zazzali, Zazzali, Fagella & Nowak, attorneys
(Paul L. Kleinbaum, of counsel)

For the Intervenor
Rocco Carri Associates, Inc.
(Rocco Carri, President)

DECISION

Two Petitions for Certification of Public Employee Representative were filed on September 4, 1990: one filed by the Cumberland County PBA Sheriff's Officers Local 299 seeks to sever 30 sheriff's officers from an existing unit represented by Cumberland County PBA Local 231; the other, filed by the Cumberland County Sheriff's Officers PBA Local 299 Superior Officers Committee seeks to sever 7 sheriff's superior officers -- including sergeants, lieutenants and captains -- from the existing unit represented by the Cumberland County PBA Local 231.

Local 231 is the exclusive majority representative for a unit of 160 employees comprised of sheriff's officers, corrections officers, identification officers, sheriff's superior officers, corrections superior officers and chief identification officers. Local 231 was recognized by the County as the majority representative of this unit in 1973. There are two current contracts in place: one with Local 231 and one with the Superior Officers Committee. Both are signed by Local 231 President Nelson Feagen.

Local 231 has intervened in both petitions using the two current contracts covering the existing unit. See N.J.A.C. 19:11-2.7. Local 231 will not consent to elections in either unit, as it contends that the employees in the existing unit share a community of interest and comprise an appropriate unit. Local 231 further argues that the Commission should deny these severance

petitions because the standard warranting severance has not been met.

The County also will not consent to elections in the petitioned-for units. It contends that to grant these severance petitions would lead to a proliferation of County negotiations units. Although there are separate contracts for line officers and superior officers, there does not appear to be a complete separation of the two units. The County would agree to appropriate elections for separate units of all superior officers and all line officers. However, that is not what is being petitioned for; the County prefers that the existing unit remain as it exists now.

PBA Local 299 and the PBA Local 299 Superior Officers Committee (PBA Local 299) argue that the two severance petitions should be granted. They argue that the existing unit is unstable and that Local 231 has not provided responsible representation to sheriff's officers and sheriff's superior officers.

We conducted an administrative investigation to determine the relevant facts. There are no substantial and material facts in dispute which warrant convening a hearing. N.J.A.C. 19:11-2.2 and 2.6. These facts appear.

Since 1973, Local 231 has been the exclusive majority representative of the current 160 person unit comprised of sheriff's officers, corrections officers, identification officers, sheriff superior officers, corrections superior officers, and chief identification officers.

In 1982, Local 299 filed a petition seeking to sever

sheriff's officers and identification officers from the overall unit. That petition was dismissed in Cumberland Cty., D.R. No. 82-41, 8 NJPER 159 (¶13070 1982). There we found the evidence presented by Local 299 did not meet the standard established for severance in Jefferson Tp. Bd. of Ed., P.E.R.C. No. 61, N.J. Supp. 248 (¶61 1971).

In 1985, after the Sheriff's Department was split into a Corrections Department and a Sheriff's Department, Local 299 requested recognition from the County as the majority representative of a unit of sheriff's officers. (The Sheriff still oversees both departments.) At that time, Local 231 was willing to allow separate representation for sheriff's officers. Local 299 argued that sheriff's officers were not being properly represented by Local 231 because there were so few sheriff's officers in the unit. The County opposed the fragmentation of the bargaining unit and denied the request.

In 1987, a second petition was filed with the Commission seeking to sever all sheriff's officers and sheriff superior officers from the existing unit. We dismissed this severance petition in Cumberland Cty., D.R. No. 88-24, 14 NJPER 90 (¶19032 1988). The petitioned-for unit would have included both supervisory and non-supervisory employees in one unit and would have been inappropriate under N.J.S.A. 34:13A-5.3 and 6(d). We also found that conflicts of interest contrary to Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404 (1971) would exist in the petitioned-for unit.

Here, if the petitioned-for units are found appropriate, there would be one unit of 30 sheriff's officers and one unit of 7 sheriff's superior officers. The remaining unit would consist of 123 corrections officers, identification officers, corrections superior officers and chief identification officers. Instead of the present petitions, if Local 299 had petitioned for two units -- one comprised of all superior officers and one comprised of all non-supervisory sheriff's officers -- its argument that the existing mixed unit is inappropriate because it contains both superior officers and non-supervisory officers would be compelling. See Cumberland, D.R. No. 88-24. However, the petition before us seeks to carve out only sheriff's officers from the existing unit. Such a severance is appropriate only where the existing unit is unstable or where the majority representative has not provided responsible representation for the petitioned-for employees. Jefferson.

Local 299 claims that because the existing unit combines supervisory and non-supervisory employees it is unstable. Also, through an affidavit prepared by Local 299 President and sheriff's officer Joseph Cifaloglio, Local 299 claims that Local 231 has failed to properly represent the interests of sheriff's officers. Cifaloglio states that during the 1986-87 negotiations, Local 231 would not permit any Local 299 members to be on the negotiations committee and would only entertain six proposals from Local 299. None of the proposals were presented to the County as part of the Local 231 negotiations package. In negotiations for the current

contract, Local 299 claims that Local 231 would not entertain any of its sought-after language items and negotiated only salary increases for sheriff's officers. Local 299 argues that Local 231 ignored sheriff's officers' interests in not negotiating safety and health issues or a special clause allowing sheriff's officers representation on the grievance committee at the jail. Local 299 also cites several situations where it conferred with the County on its own. These conferences resulted in regular monthly meetings with the Sheriff, securing bullet-proof vests for sheriff's officers, obtaining a walkie-talkie radio communication system and helping get a position reinstated for a sheriff's officer who lost her rank.

Local 231 maintains that sheriff's officers are properly represented by Local 231. The President of Local 231, Nelson Feagen, is a sheriff's officer. Two members of the current negotiations team are sheriff's officers and two members of the package committee are sheriff's superior officers. Local 231 invites Local 299 members to attend all PBA Local 231 meetings including contract ratification meetings and all social functions. Members of Local 299 are polled for negotiations proposals just as Local 231 members are polled. Further, Local 299 members are represented in the grievance procedure just as Local 231 members are. Local 231 acknowledges that there was a need to get a radio communications system for sheriff's officers in the court room and for those transporting prisoners; Local 231 asserts it exerted

pressures to get the needed equipment. In 1989, Local 231 states it negotiated with the County to get more bullet-proof vests and offered to buy a matching number of vests as were purchased by the County for sheriff's officers. Local 231 also claims to have exerted pressure on the County to secure budget money to purchase three new police cars to be used by sheriff's officers. Finally, as a special accommodation to Local 299 members, Local 231 does not take agency fee deductions from them.

The Commission has long held that severance from broad-based units can occur only under limited circumstances.

In Jefferson, the Commission stated:

The question is a policy one: Assuming without deciding that a community of interest exists for the unit sought, should that consideration prevail and be permitted to disturb the existing relationship in the absence of a showing that such relationship is unstable or that the incumbent organization has not provided responsible representation. We think not. To hold otherwise would leave every unit open to redefinition simply on a showing that one sub-category of employees enjoyed a community of interest among themselves. Such course would predictably lead to continuous agitation and uncertainty, would run counter to the statutory objective and would, for that matter, ignore that the existing relationship may also demonstrate its own community of interest.

In applying the Jefferson standards, we review the parties' entire relationship, not just isolated occurrences. Passaic Cty., P.E.R.C. No. 87-73, 13 NJPER 63 (¶18060 1986); Montville Tp. Bd. of Ed., D.R. No. 84-22, 10 NJPER 367 (¶15171 1984). After reviewing the evidence presented, I conclude that PBA Local 299 and the Local 299 Superior

Officers Committee have not met the standards justifying the severance of sheriff's officers and sheriff's superior officers from the existing, broad-based unit.

The County and Local 231 have had stable labor relations resulting in numerous collective bargaining agreements since 1973. There is no record evidence which indicates instability. There is no evidence demonstrating that Local 231 has not properly represented all employees in its negotiations unit, and specifically sheriff's officers and sheriff's superior officers. Significantly, the President of Local 231 Nelson Feagen is a sheriff's officer. He is certainly aware of any special needs of sheriff's officers. Additionally, sheriff's officers and sheriff superior officers have participated on the negotiations team despite not being Local 299 members. Although certain proposals desired by sheriff's officers were not ultimately achieved in negotiations, this does not constitute improper or irresponsible representation. Greater Egg Harbor, D.R. No. 88-27, 14 NJPER 100 (¶19036 1988). Special concerns of sheriff's officers have been addressed by Local 231, as indicated by its securing bullet-proof vests, walkie-talkies and additional police cars for sheriff's officers. Further, we will not speculate about how Local 231 might have handled certain issues that Local 299 handled independently.

Based upon the foregoing, I determine that the Petitioner has not met the standards warranting severance from the existing negotiations unit as set forth in Jefferson Tp. Accordingly, the

petitioned-for units are not appropriate and the petitions are dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Edmund G. Gerber, Director

DATED: January 4, 1991
Trenton, New Jersey