

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

In the Matter of

COUNTY OF CUMBERLAND,

Public Employer,

-and-

P.B.A. LOCAL 299, CUMBERLAND
COUNTY SHERIFF'S OFFICERS,

DOCKET NO. RO-82-42

Petitioner,

-and-

CUMBERLAND COUNTY P.B.A.,
LOCAL 231,

Intervenor.

SYNOPSIS

The Director of Representation, on the basis of an administrative investigation, dismisses a Petition filed by Petitioner PBA Local 299, seeking to sever sheriff's officers and identification officers from the extant negotiations unit comprised of sheriff's officers, identification officers and correction officers and to establish a separate negotiations unit. Petitioner asserts that there are differences in the duties and responsibilities between sheriff's officers and identification officers and corrections officers. Both the Employer and the Intervenor have declined to consent to an election herein. The Employer contends that the employees have a strong community of interest and any differences which may exist are minimal. The Intervenor asserts that it has fairly and adequately represented the interests of the entire negotiations unit. The Director concludes that the existing unit is an appropriate unit for collective negotiations. Inasmuch as the Petitioner has not presented any evidence to support a claim that the current relationship is unstable or that the incumbent organization has not provided responsible representation, the Director dismisses the instant Petition pursuant to N.J.A.C. 19:11-2.6(b).

D.R. NO. 82-41

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Appearances:

For the Public Employer
Ivan Sherman, County Counsel

For the Petitioner
Basil Beck, attorney

For the Intervenor
Ross Levitsky, attorney

DECISION

A Petition for Certification of Public Employee Representative, supported by an adequate showing of interest, was filed by P.B.A. Local 299, Cumberland County Sheriff's Officers (the "Petitioner") with respect to a negotiations unit comprised of sheriff's officers and identification officers employed by the Cumberland County Board of Chosen Freeholders (the "County") but

excluding corrections officers. By letter dated October 7, 1981, the Cumberland County PBA, Local 231 (the "Intervenor") requested intervention herein on the basis of a written collective negotiations agreement with the County covering a unit consisting of the petitioned-for employees as well as corrections officers. The undersigned granted intervenor status to PBA Local 231 pursuant to N.J.A.C. 19:11-2.7.

In accordance with N.J.A.C. 19:11-2.2(a), the undersigned has caused an administrative investigation to be conducted into the matters and allegations set forth in the Petition in order to determine the facts.

Based upon the administrative investigation to date, the undersigned finds and determines as follows:

1. The disposition of this matter is properly based on the administrative investigation herein, it appearing that no substantial and material factual issues exist which may more appropriately be resolved after an evidentiary hearing. Pursuant to N.J.A.C. 19:11-2.6(b), there is no necessity for a hearing, where, as here, no substantial and material factual issues have been placed in dispute by the parties.

2. The County of Cumberland is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), is the employer of the employees involved herein and is subject to the provisions of the Act.

3. P.B.A. Local 299, Cumberland County Sheriff's Officers and Cumberland County PBA, Local 231 are employee

representatives within the meaning of the Act and are subject to its provisions.

4. The Petitioner, P.B.A. Local 299, is seeking to represent a unit of sheriffs officers and identification officers employed by the County. The petitioned-for employees are currently represented by the Intervenor, P.B.A. Local 231, in an overall unit comprised of corrections officers, sheriffs officers, and identification officers.

5. The Petitioner contends that there are gross differences between the duties and responsibilities of sheriffs and identification officers, and corrections officers. The Petitioner notes that it has applied for and received its own local charter from the New Jersey State Policemen's Benevolent Association.

6. The County has declined to consent to an election herein. The County indicates that the sheriffs officers and identification officers and corrections officers have been represented in the same unit since 1973. The County argues that the extant unit is a broad-based unit and it contends that it is the most appropriate unit for the representation of the petitioned-for employees. While the County concedes that there may be some differences between the interests of corrections officers, sheriffs officers and identification officers, it contends that these differences are minimal and, in any event, are not so great so as to negate the strong, overall community of interest among these employees. The County contends that granting the Petitioner's

request will result in fragmentation of the extant unit and is likely to lead to a proliferation of negotiations units in the County.

7. The Intervenor declines to consent to a secret ballot election herein. It contends that it has fairly and adequately represented the interests of the entire negotiations unit. In this connection, the Intervenor notes that in recent years sheriffs officers have participated extensively in collective negotiations concerning the current unit of sheriffs officers, corrections officers and identification officers -- sometimes comprising a majority of the negotiations team.

The unit of sheriffs officers and identification officers sought by the Petitioner is one portion of the larger unit which has been recognized by the County in contract negotiations with the Intervenor. The instant Petition is an attempt to sever the petitioned-for employees from the extant unit. At the investigatory conference conducted by the Commission staff agent, all parties were apprised of the Commission's policy of favoring the establishment of a broad-based functional unit and rejecting the claims for narrowly defined units based upon specific occupational distinctions. The parties were also advised of the Commission's standards for severing employees from an appropriate collective negotiations unit. ^{1/}

1/ In re Jefferson Tp. Bd. of Ed., P.E.R.C. No. 61 (1975); In re Bergen Cty. Bd./Chosen Freeholders, P.E.R.C. No. 85 (1975); In re Somerset Cty. Bd./Chosen Freeholders, D.R. No. 78-42, 4 NJPER 198 (¶ 4099 1978); see also, In re Bd. of Chosen Freeholders/Cty. of Burlington, P.E.R.C. No. 58 (1971); and In re Union Cty. Bd./Chosen Freeholders, E.D. No. 68 (1975).

In In re Jefferson Tp. Bd. of Ed., supra, n.1, the Commission stated:

The underlying 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 unit 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 subcategory of employees enjoyed a community of interest among themselves. Such a 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.

Accordingly, based upon the factors described above, it would appear to the undersigned that the existing unit is an appropriate unit for collective negotiations. The Petitioner has sought to sever a group of employees from the existing unit but has not presented an evidentiary proffer to support any claim that the current relationship is unstable or that the incumbent organization has not provided responsible representation.

In view of the foregoing, the undersigned requested the Petitioner to withdraw the Petition, or, in the alternative, afforded the Petitioner an additional opportunity to submit documentary and other evidence, including a statement of position, raising substantial and material factual issues which would warrant the convening of a hearing pursuant to N.J.A.C. 19:11-2.6. The

undersigned further advised the Petitioner that in the absence of a withdrawal request and in the absence of any substantial and material disputed factual issues, the undersigned would be inclined to dismiss the instant Petition.

By correspondence dated December 1, 1981, the Petitioner replied to the undersigned's letter, stating: " ... we feel that [the undersigned's letter] was unfair and that it ignores the fact that there is discord among the two groups and that we do not feel that we will get fair representation." The PBA states a belief that the Commission's processing of this matter was "pre-determined."

The Commission's procedures provide for investigation of representation petitions (N.J.S.A. 19:11-2.2) and, to this end, an informal conference was convened in this matter. Prior to the conference, the Petitioner was advised of its responsibility to present its position and to support its position with evidentiary material. During the informal conference, the PBA's position was reviewed, and the Commission's assigned staff agent advised the Petitioner of the criteria which the Commission has established in previous decisions involving severance petitions. The undersigned reiterated these criteria in his letter dated November 23, 1981, and the Petitioner was provided an additional opportunity to present evidentiary proffers in support of its Petition which might warrant the convening of an evidentiary hearing pursuant to N.J.A.C. 19:11-2.6(a) and (c).

To date, the PBA has not presented any evidentiary proffer which would support a claim, pursuant to Jefferson Tp.

Bd. of Ed., supra, of instability or lack of responsible representation.

Accordingly, since there has not been a presentation of substantial and material factual issues relating to the criteria established in Jefferson Tp. Bd. of Ed., the undersigned dismisses the instant Petition pursuant to N.J.A.C. 19:11-2.6(b).

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: February 10, 1982
Trenton, New Jersey