

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BERGEN COUNTY BOARD OF CHOSEN FREEHOLDERS
Public Employer

and

Docket No. RO-88

BERGEN COUNTY DETECTIVES AND INVESTIGATORS ASSOCIATION
Petitioner

DECISION AND DIRECTION OF ELECTION

Pursuant to a Notice of Hearing to resolve a question concerning the representation of certain employees of the Bergen County Board of Chosen Freeholders, a hearing was held on August 7 and 14, 1970 before Hearing Officer Howard M. Golob, at which the parties were given an opportunity to examine and cross-examine witnesses, to present evidence, and to argue orally. Thereafter, on December 24, 1970, there issued the Hearing Officer's Report and Recommendations, a copy of which is attached hereto. Exceptions were timely filed by both parties. The Commission has considered the entire record, the Hearing Officer's Report and Recommendations, and the Exceptions and, on the facts in this case, finds:

1. The parties identified the public employer in this proceeding as Bergen County Board of Chosen Freeholders (hereafter the Board) and stipulated that the Board was a public employer within the meaning of the Act. The Commission so finds.
2. The Bergen County Detectives and Investigators Association (hereinafter the Association) is an employee representative within the meaning of the Act.
3. The Board has refused to recognize the Association as the exclusive negotiating representative for certain of its employees; therefore, a question concerning the representation of public employees exists and the matter is properly before the Commission for determination.
4. Petitioner seeks to represent a unit of all detectives and investigators employed in the Bergen County Prosecutor's Office. The Employer contends that the unit sought is inappropriate because it includes supervisors and because the only appropriate unit would include all law enforcement personnel in Bergen County. The Hearing Officer recommended that an election be directed in a unit of "all law enforcement personnel employed by the Bergen County Board of Chosen Freeholders in the County Prosecutor's Office including captains, lieutenants and lend-lease personnel, but excluding office clerical, professional and

craft employees, managerial executives, the chief of detectives, supervisors within the meaning of the Act and all other County employees."

As footnoted by the Hearing Officer, two petitions were filed by several PBA locals seeking units of other employees in the field of law enforcement. However, both of those petitions were subsequently withdrawn. Therefore, the only matter before the Commission at this time is the instant petition.

5. No exceptions were filed to the finding of the Hearing Officer regarding the unit placement of lieutenants, captains, and the chief of county detectives. His recommendations that the lieutenants and captains are not supervisors within the meaning of the Act and that the chief of county detectives is a supervisor within the meaning of the Act are adopted pro forma.
6. The Employer takes exception to several elements of the Hearing Officer's Report. First, it excepts to the Hearing Officer's approach to the unit question, i.e., his view that the Act does not require a finding of the most or only appropriate unit, but merely a finding that the unit be appropriate. The Employer posits for argument's sake the appropriateness of both the unit found by the Hearing Officer and the unit claimed by the Employer, then questions how a choice can be made in the absence of statutory guidelines and finally concludes that logic dictates that the selection be made on the basis of the "most" appropriate unit. This approach presents an issue not involved in this case. The only issue there is whether or not the unit in which Petitioner seeks certification is appropriate for collective negotiations. No party seeks to be certified in the "Employer's unit" so there is no requirement to determine its appropriateness. Conceivably a unit sought by an employee organization may be found inappropriate and in so doing, the unit contended for by the Employer may by inference be considered appropriate. But that is not the case the Employer argues. It attacks a selection between several appropriate units when in fact no such selection was made.

The Commission is in basic agreement with the Hearing Officer's determination limiting the unit to law enforcement personnel within the prosecutor's office. In addition to certain factors cited by the Hearing Officer to support that conclusion, 1/ the Commission especially relies on another significant factor, a

1/ The Commission does not adopt the Hearing Officer's view that since employee benefits were unilaterally adopted prior to the enactment of Chapter 303, the fact of their uniformity is not an element in considering community of interest. Nor does the Commission adopt the Hearing Officer's statement that the Board of Freeholders is the appointing authority for all law enforcement personnel in the County. Later in his Report the Hearing Officer observes, correctly, that the Prosecutor is the appointing authority. See N.J.S.A. 2A:157-1 et seq.

statutory provision which makes the office of county prosecutor a unique one in an employer-employee relations context. N.J.S.A. 2A:158-1 provides for the appointment "...for each county, by the governor with the advice and consent of the senate...some fit person...who shall be the county prosecutor..." The expenses of the prosecutor, including his staff, are to be approved by the board of chosen freeholders. However, N.J.S.A. 2A 158-7 provides:

The amount or amounts to be expended shall not exceed the amount fixed by the board of chosen freeholders in its regular or emergency appropriation, unless such expenditure is specifically authorized by order of the assignment judge of the superior court for such county.

Thus, a county prosecutor, unlike the sheriff, the chief of county police, or any other county functionary within or outside of the area of law enforcement, has available to him an appeal from decisions of the board of freeholders. The prosecutor may request of the assignment judge funds beyond those provided by the freeholders and the assignment judge is empowered to authorize additional expenditures. This authority has been most recently affirmed by the New Jersey Supreme Court in Bruce M. Schragger v. Board of Chosen Freeholders of the County of Mercer, 58 N.J. 274(1971). As a consequence there exists a potential for treatment of employees in the prosecutor's office which differs from that accorded to other law enforcement personnel in the county regarding certain terms and conditions of employment. And in fact this potential has been realized, although not in this particular county.

It is our judgement that this factor coupled with others cited by the Hearing Officer, 2/ justifies the conclusion that a unit of law enforcement personnel of the county prosecutor constitutes an appropriate unit.

On one aspect of the unit question the Commission differs with the Hearing Officer, namely, his inclusion of so-called "lend-lease" personnel. Both parties take exception to that inclusion. As noted by the parties at the hearing, there was a suit then in progress relating to the validity of the arrangement whereby employees of the county police department were temporarily assigned for investigative work in the prosecutor's office. The Appellate Division of the Superior Court of

2/ Particularly, the distinctive duties, training and skills required of those in the prosecutor's office, and the fact that the Prosecutor is the appointing authority.

New Jersey ruled on July 7, 1971 that such transfers had not been validly made because they ignored applicable Civil Service regulations. ^{3/} That decision would seem to remove lend-lease personnel as an issue. Those in the classified service, i.e., county patrolmen and sheriff's officers, who had been temporarily assigned to the prosecutor, will presumably either return to their home department or submit to Civil Service regulations and qualify for permanent assignment in the prosecutor's office. As to the one individual from Palisades Interstate Park Commission and another from South Hackensack Police Department, it appears that they are not within the term "lend-lease". They are not considered to be on temporary assignment, but rather have been, so far as the Employer is concerned and the testimony indicates, permanently assigned to the prosecutor's office and thus indistinguishable from other staff personnel not in dispute.

The remaining exceptions, all by the Employer, have been considered and are found to be without merit. Thus, the Employer contends that the Hearing Officer disregarded evidence of the interchange of personnel between law enforcement units. Except for "lend-lease" personnel whose status was resolved above, the only evidence of interchange of employees between the prosecutor's office and other law enforcement personnel is that sometimes on an informal basis men have been made available for the purposes of raids. The Employer also excepts to the Hearing Officer's finding that the county police department's principal function is traffic control. The record, especially the testimony of the first assistant prosecutor, clearly supports the finding. Finally, the Employer claims the Hearing Officer ignored various factors which the Employer contends demonstrate an inappropriateness of a unit limited to the prosecutor's office. It is clear from the Hearing Officer's Report that he was aware of these factors and considered them; he found them insufficient to support the Employer's contention, a treatment with which we agree. The Employer concludes by way of argument that the Hearing Officer's recommendation, if followed, would adversely affect and otherwise substantially restrict law enforcement activities in Bergen County. This argument no longer has force so far as "lend-lease" personnel are concerned. To the extent it relates to the question of a limited unit versus a county-wide enforcement unit, we find this conclusion to be unsupported by the record.

7. The unit appropriate for collective negotiations is: "All law enforcement personnel employed by the Bergen County Board of Chosen Freeholders in the County Prosecutor's Office including captains and

^{3/} County of Bergen V. Department of Civil Service of the State of New Jersey, et als, v. Roy Morrissey and County Detectives Association of New Jersey, 115 N.J. Super 90 (1971).

lieutenants, but excluding office clerical, professional and craft employees, managerial executives, the chief of detectives, supervisors within the meaning of the Act, and non-police employees."

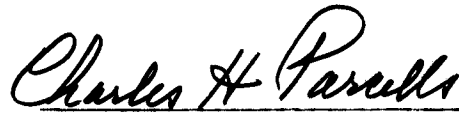
8. A secret-ballot election shall be conducted among employees in the unit described above no later than 30 days from the date set forth below. Eligible to vote are employees employed in the unit described during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or 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 quit 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 the Bergen County Detectives and Investigator's Association.

The majority representative shall be determined by a majority of 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



Charles H. Parcels
Acting Chairman

DATED: April 6, 1972
Trenton, New Jersey

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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Docket No. RO-88

BERGEN COUNTY DETECTIVES AND INVESTIGATORS ASSOCIATION

Petitioner

APPEARANCES:

Michael Ferrera, Esq., County Counsel for Bergen County
By Edwin C. Eastwood, Jr., Esq., Assistant County Counsel
for the Public Employer

Lynwood Jackson and Richard Fallon of Hackensack
for the Petitioner

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

Pursuant to a Notice of Hearing dated May 1, 1970 and an Order Rescheduling Hearing dated June 3, 1970, a hearing was held before the undersigned on August 7 and August 14, 1970. At this hearing the parties were afforded the right to present evidence, examine and cross-examine witnesses, and to submit briefs, though the parties declined to do so.

The petitioner seeks to represent a unit of detectives and investigators employed in the prosecutor's office in the County of Bergen. The employer takes the position that such a unit is inappropriate and that the appropriate unit should include all law enforcement personnel employed by the County. 2/

1/ As amended at the hearing.

2/ Subsequent to the close of hearing separate petitions for Certification of Public Employee Representative were filed by P.B.A. Local No. 134 and P.B.A. Local 49, seeking a unit inter alia of Sheriff's Department employees and County Police Officers respectively.

The Bergen County Board of Chosen Freeholders is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, hereinafter called the Act.

Bergen County Detectives and Investigators Association is an employee representative within the meaning of the Act.

On or about February 17, 1970 the petitioner requested recognition as the exclusive negotiating representative for the employees in the requested unit. On that date the public employer orally refused to grant such recognition. Accordingly, a question concerning representation exists and the matter is appropriately before the Commission.

The public employer is a county in the northern part of New Jersey. It is administered by the Board of Chosen Freeholders and its agent, the County Administrator.

The County employs among others approximately 48 in the prosecutor's office, 6 Weights and Measures investigators, 88 Sheriff's officers, 73 court attendants, 107 county traffic police, 18 in the Identification Bureau in the Sheriff's Office and 14 Sergeants of Arms at the District Court. The appointing authority in all cases is the Board of Freeholders. All personnel matters are based upon specific recommendations made by the Prosecutor, the Sheriff, the Chief of County Police, the Supervisors of the Weights and Measures Department and by the Judge of the District Court. Each of the aforementioned submits its own departmental budget requests to the Freeholders, who make the final decision. All salaries are paid from the same fund. Personnel records are kept in a central location. There is a uniform schedule of all fringe benefits, i.e. vacations, sick leave, etc. for all county employees. There is no history of collective negotiations as the Freeholders have used meetings

at budget time with the representatives of the various groups on a sounding board basis only.

The prosecutor's office is under the supervision of the County Prosecutor, who is appointed by the Governor with the consent of the Senate. It contains one first assistant, ten assistant prosecutors, several clerks, one chief of detectives, two captains, four lieutenants, 7 county detectives and 17 investigators. There are also 21 employees on "lend-lease" from the police department, four from the sheriff's department and two on leave of absence from other police departments. The employees on "lend-lease" receive their instructions from the prosecutor's office and on a day-by-day basis are responsible to him. They are paid by their old department, i.e. the police department or sheriff's office, though they are not under their control in anyway. Lend-lease personnel have been with the prosecutor's office for anywhere from four months to two years. 3/

The men from the prosecutor's office are divided into six groups. Their work is mostly of investigatory nature of alleged crimes. The matter under investigation may be initiated from the prosecutor's office or it may be the result of a preliminary investigation performed by police of the various municipalities within the County or the County police. In any event, the final investigation is performed by the prosecutor's office at which time a determination is made as to whether or not to present the matter to the grand jury for possible indictment. If an indictment is returned, the detective and investigator may assist the assistant county prosecutors in the actual preparation for trial.

3/ There is now pending in the courts a suit as to their status.

The County police department is mostly responsible for traffic control in the County. Occasionally they do preliminary investigation of a crime and then turn the matter over to the prosecutor's office. This investigatory work that is performed is similar to the work done by the several communities within the County. The police department is under the supervision of the Chief of Police. If a superior officer is loaned to the prosecutor's office he takes his assignment from personnel in that office regardless of his rank.

The sheriff's department is supervised by the sheriff. Its main duties are 1) to keep order in the court, 2) to act as guards in the county penitentiary, and 3) to act as process servers in civil matters. The Identification Bureau within the sheriff's office is composed of technicians who are responsible for identifying fingerprints and other evidential matters that may be useful in the investigation and trial of a criminal matter. This office also contains files concerning other related matters. The prosecutor's office is the Bureau's best customer though the prosecutor's office occasionally uses the facilities of the F.B.I. Also employed in the sheriff's department are employees designated "Sheriff's Office Assigned Detective, who performs under direction varied investigational and other work involved in the detection and apprehension of criminals.

The Weights and Measures employees have the responsibility to inspect and check all types of weighing and measuring devices in the County. They do not carry a hand weapon. If they find a violation of a statute or a town ordinance, they file a complaint similar to a traffic summons which is processed by the prosecutor's office.

The aforementioned departments have their own supervisors. The County detectives, investigators and lend-lease personnel assigned to the office report to the prosecutor. The police department has its own chief of police. The sheriff's officers including those who work in the courts, as process servers and as prison guards report to the sheriff. The Weights and Measures personnel are under the supervision of the county freeholders. The Sergeants at Arms are under the supervision of the Judges.

The County prosecutor's office is in the courthouse. The police department employees report to the police department which is in a different location than the court house. The sheriff's employees report either to the county jail, the old county jail, or the court house. The police department is an around-the-clock operation as is the sheriff's department operation at the penitentiary. The members of the prosecutor's office are theoretically to work from 8:30 to 4:30 but, in fact, depending upon the case load and the matter under investigation work much longer. The sheriff's department employees who act as process servers may be required to work at night to serve papers.

The sheriff's employees assigned to the courthouse work when court is in session. In the summertime, when they are not needed in the courthouse, 4 to 10 of them have been assigned to the prosecutor's office to work as investigators. Occasionally, when a raid is planned and additional personnel is needed, members of the several departments are combined.

County Detectives and County Investigators are covered under the "County Detectives and County Investigators Act (Revision of 1959)." This Act provides in part that the prosecutor may appoint county detectives who upon their employment shall be in the classified service of civil service. The Act also provides for the creation of the position of county investigator which shall be in unclassified service and who serves at the

pleasure of the county prosecutor subject to removal by him at any time.

The lieutenant and the captain in the prosecutor's office supervise the work product of the investigator and detective and the lend-lease personnel. They do not hire, fire or discipline. They may not and have never effectively recommended any of the aforementioned. They may make such recommendations, but the Chief of Detectives would then perform his own investigation and make his recommendation to the First Assistant County Prosecutor who may, in turn, make his own investigation and recommendation to the Prosecutor who in turn makes his recommendation to the Freeholders when necessary. The Chief of Detectives is also responsible for the clerical staff. His recommendations as to any personnel matter with that group is followed by the first assistant prosecutor and the prosecutor without any additional investigation. Both the chief, the First Assistant Prosecutor and the Prosecutor may suspend an employee up to five days without a hearing. Accordingly, I find that the Chief of Detectives is a supervisor within the meaning of the Act but that the captain and/or lieutenant are not. [emphasis is mine].

The public employer takes the position as stated above that the only appropriate negotiating unit within Chapter 303 are all positions within law enforcement of the County. It would include personnel in Weights and Measures, the sheriff's office, the county police department, the Identification Bureau, the prosecutor's office and the sergeant at arms in county district law court. Petitioner, on the other hand, takes the position that even though the prosecutor's office is classified as law enforcement it is entirely different from any of the groups as proposed by the employer; that the jobs are different; that the responsibilities of the job required are far different; and that the appropriate unit is the county detectives and the investigators employed in the prosecutors office excluding lend-lease personnel.

The Act does not require the Commission to find the most appropriate unit or the only appropriate unit but calls for a finding that, after giving due regard for the community of interest among the employees concerned, a unit is an appropriate unit. In the instant case there is a community of interest among all law enforcement personnel employed in the prosecutor's office including lend-lease personnel, lieutenants and captains but excluding the chief of police and all other personnel.

Those employed in the prosecutor's office have similiarity of duties, requiring distinct skills, and working conditions. The day-by-day control of operations and managerial functions is within the prosecutor's office. There is little or no contact with other county personnel and a minimum of interchange. The promotional ladders for the employees, supervisory hierarchy and immediate common supervision are unique to the prosecutor's office. Though employee benefits are at present identical, such benefits were unilaterally promulgated prior to the enactment of Chapter 303, Laws of 1968 and is therefore inapposite.

Concerning the lend-lease personnel, I shall pierce the civil service regulation veil and include them in the unit. They have a community of interest with the detectives and investigators in the prosecutor's office. There is in fact no difference between them and county investigators.

Accordingly, based upon the foregoing and the record as a whole I recommend that an election be directed among all law enforcement personnel employed by the Bergen County Board of Chosen Freeholders in the County Prosecutor's Office including captains, lieutenants and lend-

lease personnel, but excluding office clerical, professional and craft employees, managerial executives, the chief of detectives, supervisors within the meaning of the Act and all other county employees.



Howard M. Golob
Hearing Officer

DATED: *December 24, 1970*
Trenton, New Jersey