

D.R. NO. 94-3

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

In the Matter of

TOWNSHIP OF PENNSAUKEN,

Public Employer,

-and-

Docket No. RO-93-142

PENNSAUKEN POLICE DETECTIVES ASSOCIATION,

Petitioner,

-and-

FOP, GARDEN STATE LODGE NO. 3,

Intervenor.

SYNOPSIS

The Director of Representation dismisses a Petition for Certification of Public Employee Representative seeking to sever police detectives from a unit of patrol officers and detectives.

The Director determined that a proposed elimination of a wage differential to detectives was insufficient to justify severance under Jefferson Tp. Bd. of Ed., P.E.R.C. No. 61, NJPER Supp 248 (¶61 1971).

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Appearances:

For the Public Employer
Toll, Sullivan & Luthman, attorneys
(David A. Luthman, of counsel)

For the Petitioner
Lewis Skymer, Representative

For the Intervenor
Tomar, Simonoff, Adourian & O'Brien, attorneys
(James Katz, of counsel)

DECISION

On March 11, 1993, the Pennsauken Police Detectives Association filed a Petition for Certification of Public Employee Representative seeking to represent a negotiations unit of all police detectives of the Township of Pennsauken. Detectives are included in a negotiations unit of "all full-time employees of the Township of Pennsauken employed as patrolmen, including detectives..." represented by Fraternal Order of Police, Garden

State Lodge No. 3. The FOP has intervened, pursuant to its current collective negotiations agreement with the Township which covers the petitioned-for employees. N.J.A.C. 19:11-2.7.

The Association urges that a severance of detectives be granted because a long-standing 8% wage differential between detectives and patrolmen would be eliminated in the successor collective agreement negotiated by the FOP. The FOP would drop the proposed wage differential, "compensation for additional responsibilities..." in favor of a "new salary structure." Furthermore, the petitioner asserts that the FOP wanted to delete the senior detective slot from the successor agreement, in keeping with the FOP's alleged intention to achieve "parity" between patrolmen and detectives.

The FOP filed a letter denying that a loss of a salary differential during negotiations establishes "irresponsible representation." It asserts that the 20-year history of both patrolmen and detectives in the same unit outweighs this "isolated occurrence" and the allegations do not justify severance under Jefferson Tp. Bd. of Ed., P.E.R.C. No. 61, NJPER Supp 248 (1961 1971).

A November 30, 1992 letter from the FOP president to the detectives explained the negotiations team position on the 8% wage differential. The Township's proposal "disregard[ed] other members of the bargaining unit who are assigned with additional responsibilities and duties." The president claimed that the

differential "factionalizes" the bargaining unit. The president also wrote that the FOP is trying to achieve "parity" for everyone retiring after 25 years and that "no one will lose any of the benefits they currently enjoy...." The letter further states that several pay scales were presented to the Township to "entice [it] to accept a substantial pay increase...." Finally, the president advised that the detectives' "comments and concerns are always welcome."

On June 21, 1993, I issued a letter tentatively dismissing the petition. No responses were filed.

The current unit has about 62 patrolmen and 8 detectives and the current agreement expires June 30, 1993. The Township also negotiates with a unit of 22 superior officers.

The FOP has a five member negotiating committee and it includes one detective. During negotiations in the fall of 1992, the committee rejected the employer's proposal to maintain the pay differential.

Severance from broad-based units is appropriate 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.
Id. at 251.

The Commission also reviews the parties' entire relationship, not just isolated occurrences, in evaluating severance petitions.

Passaic Cty., P.E.R.C. No. 87-73, 13 NJPER 63 (¶18060 1986).

The detectives are represented on the negotiations committee and are entitled to suggest negotiations proposals. No facts suggest that they were denied the opportunity to participate in successor contract negotiations. A proposed loss of a long-standing wage differential and a proposed elimination of a "senior" detective title are the only examples cited as justification for severing this unit.

In PBA Local 119, P.E.R.C. No. 84-76, 10 NJPER 41 (¶15023 1983), the Commission determined that the police majority representative did not violate the Act (specifically its duty of fair representation) by negotiating an agreement which eliminated a wage differential paid to detectives for several years. The Commission wrote that the PBA "acted within the wide range of reasonableness permitted it and in good faith in making certain concessions in order to obtain salary increases for the entire unit." Id. at 41. See also, Ford Motor Co. v. Huffman, 346 U.S. 330 (1953); Belen v. Woodbridge Tp. Bd. of Ed., 142 N.J. Super. 486 (App. Div. 1976). The Commission also stated that, "In light of our conclusion that the PBA did not act unlawfully, there is no basis on

this record for severing the detective from the existing unit." Id.
at 42.

The FOP and the Township had not agreed to a contract when the petition was filed, leaving to speculation what differential, if any, would be included in the successor agreement. Assuming a provision eliminating the differential is negotiated, I am not persuaded that the FOP engaged in any conduct justifying the severance of petitioner from the broad-based unit. The majority representative is acting in accordance with a "wide range of reasonableness" in seeking to negotiate improved wages for the entire unit. Accordingly, I dismiss the petition.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: July 15, 1993
Trenton, New Jersey