

D.R. No. 2009-4

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

In the Matter of

ESSEX COUNTY SHERIFF'S OFFICE,

Petitioner,

-and-

PBA LOCAL 183,

Docket No. CU-2008-030

Employee Organization,

-and-

PBA LOCAL 54,

Employee Organization.

SYNOPSIS

The Director of Representation clarifies a negotiations unit of Sheriff officers by ordering the unit be clarified to include employees formerly holding County police titles who were reclassified by the State Department of Personnel as Sheriff officers to be included in the unit of Sheriff officers represented by PBA Local 183.

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Appearances:

For the Petitioner,
Genova, Burns & Vernoia, attorneys
(Brian W. Kronick, of counsel)

For the Employee Organization/PBA Local 183,
Loccke, Correia, Schlager, Limsky & Bukosky, attorneys
(Richard D. Loccke, of counsel)

For the Employee Organization/PBA Local 54,
Cotz & Cotz, attorneys
(Lydia Cotz, of counsel)

DECISION

On April 22, 2008, the Essex County Sheriff's Office (Sheriff's Office or County) filed a clarification of unit petition seeking to clarify a negotiations unit of about 345 sheriff's officers, court attendants and identification officers to include 23 newly designated sheriff's officers. The unit is

represented by Policemen's Benevolent Association Local 183 (Local 183). The Sheriff's Office asserts that a March 2006 reorganization and merger of the County's police department into the Sheriff's Office led to the reclassification of 23 former County police officers into the Sheriff's officer title. It argues that these new sheriff's officers should be included in the unit represented by Local 183. The former police officers were represented by Policemen's Benevolent Association Local 54 (Local 54).

On May 7, 2008, we notified Local 54 and Local 183 of the County's petition. On June 11, 2008, Local 54 filed an "Answer and third party petition." Local 183 has not filed a response.

Local 54 admits many of the facts set forth in the petition, but maintains it is the majority representative of the former police officers. Local 54 alleges that the Sheriff's Office has engaged in unfair practices; deprived the former police officers of their civil liberties; refused to negotiate with it; refused to make payments in accordance with Local 54's collective negotiations agreement; negotiated with Local 183 over the former police officers' terms and conditions of employment, and failed to implement those terms.

We have conducted an administrative investigation into the issues raised by the petition. N.J.A.C. 19:1-2.2. The Sheriff and Local 54 filed statements of position and other documents

supporting their respective positions. By letter of July 14, 2008, I advised the parties that I was inclined to clarify Local 183's unit to include employees who formerly held positions as County police officers. The parties were provided an opportunity to reply to my letter by submitting documents and other evidentiary materials and a letter brief in support of their positions if they disagreed with my interim determination.

On July 29, 2008, Local 54 filed a response objecting to my interim determination and disputing certain facts. It also disagreed with my determination that the holding in Gloucester County, D.R. No. 2007-10, 33 NJPER 45 (¶18 2007) was not applicable here.

The County responded with additional information and argument by letters received on August 1 and 25, 2008. It argued that the facts disputed by Local 54 were not material to the determination here and that Gloucester County was distinguishable from this case. The County also provided a decision of the State PBA Judiciary Committee holding that Local 54 has no authority to continue to represent former County police officers, that such rights belong to Local 183. The following facts appear.

The Sheriff's Office and Local 183 have negotiated a series of collective negotiations agreements, the most recent of which expired on December 31, 2007. On May 28, 2008, Local 183 filed a petition to initiate interest arbitration for a successor

agreement (Docket No. IA-2008-098). Local 183's unit includes sheriff's officers, court attendants, and identification officers employed by the Sheriff's Office. Local 54 was the majority representative of County police officers until those officers' titles were changed in 2007 by the New Jersey Department of Personnel (NJ DOP).

The Essex County Police Department (County Police) was established in 1895 to provide protection in Essex County's recreational areas. In 1978, the County Police, a division of the County Department of Safety, became responsible for patrolling the County's parks, and all County buildings and facilities.

Early in 1991, the County, in lieu of abolishing the police department, laid off and reassigned 88 of 148 County police officers and superior officers represented by Local 54, reassigning them to the Sheriff's Office as County police. Unfair practice charges and good faith layoff appeals were filed with the Commission and NJ DOP. In County of Essex, H.E. No. 92-30, 18 NJPER 289 (¶23124 1992), a Commission hearing examiner dismissed Local 54's charge, finding that the County did not violate the Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), when it reassigned the police officers to the Sheriff. The layoff appeals were settled in April 1997.

On April 9, 1997, the County adopted County Ordinance No. 0-97-0006 (Ordinance), which formally removed the County Police from the Essex County Department of Safety and added them to the Sheriff's Office. On April 3, 2001, the Sheriff issued Amended General Order 97-03, establishing the County Police as a bureau within the Sheriff's Office.

On March 30, 2006, Amended General Order 03-01 revised the organizational structure of the Sheriff's Office. In order to achieve the most efficient use of personnel, the County Police Division was designated as a component of Field Operations. Some duties formerly performed by the County police officers were now performed by Sheriff's officers and vice versa. New Sheriff's officers receive police academy training. Further, all County police dispatch functions were relocated to the Essex County Sheriff's Command Post. While Local 54 disputed how much sheriff officer work is performed by former County police officers and vice-versa, the difference is not material to the decision here.

On June 21, 2006, the Sheriff promulgated Special Order #2006-05, directing the formal and complete merger of the County police with the Sheriff's Office effective August 1, 2006. The table of organization shows that the County Police Bureau is now identified as the Patrol Division. The merger of the County police and the Sheriff's Office results in administrative, equipment and personnel efficiencies. Also in June 2006, DOP

conducted an administrative review of the merger of the County Police Department and the Sheriff's Department. The DOP reviewed the impact of the merger upon promotional opportunities, testing, job titles and seniority for the County police officers.

On or about August and September 2006, Local 54 and Local 183 each filed unfair practice charges and orders to show cause with the Commission seeking to enjoin the merger of the County Police Department and the Sheriff's Office (Docket Nos. CO-2007-067 and CO-2007-096, respectively). The orders to show cause sought interim relief and the Commission denied both (I.R. No. 2007-001). The Commission dismissed Local 54's unfair practice charge and Local 183's unfair practice charge was withdrawn on June 20, 2008.

On or about September 29, 2006, DOP issued a letter to Sheriff Fontoura advising of DOP's proposed actions regarding the consolidation of the County police with the Sheriff's Office. This correspondence addressed promotional issues raised by the merger. On October 2, 2006, all former County police officers were sworn in as Sheriff's officers. Local 54 questioned the veracity of DOP's decision, but this is not the forum within which to raise such issues.

After October 2, 2006, all newly sworn Sheriff's officers wore Sheriff's officer uniforms and all former County police vehicles were modified in appearance to mirror the vehicles of

the Sheriff's Office. Promotional examinations have been made available to all eligible former County police officers. Local 54 questioned the process and fairness of the promotions, but the issues raised were not material to the decision in this case.

On or about November 1, 2006, Chris Tyminski, President of PBA Local 183, issued a letter to all former County police officers welcoming them as members of the Sheriff's Office, together with a membership application to Local 183.

In January 2007, the Sheriff, Essex County and Local 183 participated in an interest arbitration hearing concerning their successor collective agreement which was due to expire on December 31, 2007. Among the documents presented to the arbitrator on behalf of the County and the Sheriff were: Local 54's collective negotiations agreement that expired on December 31, 2005; a roster of Sheriff's officers (which included former county police officers); cost-outs of Sheriff's officers' salaries (which included former County police officers); work schedules of Sheriff's officers (which included former county police officers); and longevity of Sheriff's officers (which included former County police officers).

On April 12, 2007, DOP issued a decision regarding the MSB's "Final Administrative Action" - an administrative review of the merger of the Essex County Police department and the Sheriff's office. The DOP decision permitted ". . . the lateral title

change of these employees serving in the County Police Officer title series to the corresponding rank in the Sheriff's Officer title series with the retention of title seniority, and without the need for examination or completion of the working test period." The decision was not appealed by any party. Local 54 argued that former County police had different hours than sheriff officers and that no one from Local 54 participated in negotiations. Those arguments, even if accurate, do not outweigh the fact that DOP reclassified County police as Sheriffs officers and that Sheriffs officers are included in Local 183's unit.

In or about November 2007, Arbitrator James Mastriani issued an interest arbitration award for the agreement between the County and Local 183 which expired on December 31, 2007. On or about January 30, 2008, the County approved the award and began implementing the terms of the award. On or about April 9, 2008, Local 183 President Tyminski filed a grievance on behalf of the former police officers (who are now Sheriff's officers) seeking application of the award to the former police officers. Tyminski attached to his grievance a letter issued to him from Michael J. Madonna, then-president of the New Jersey State Policemen's Benevolent Association, Inc., dated October 6, 2006, advising that "any grievances, unfair labor practices, etc. that are brought by any member of the Sheriff's Department (including

Essex County Police who are now Essex County Sheriff's Officers) will be handled by PBA #183."

On June 9, 2008, the PBA State Judiciary Committee issued a decision that Local 183 is the majority representative of all officers employed by the Sheriff's office, including former County police officers and held that Local 54 had no authority to represent former County police officers.

ANALYSIS

In view of the continuing demand by Local 54, the Sheriff's Office seeks a formal clarification of Local 183's bargaining unit to include the former county police officers who are now sheriff's officers. Local 54 argues that it continues to be the majority representative for the former police officers. Based upon the facts in this matter, I find that the former police officers are represented exclusively by PBA Local 183, the majority representative of all Essex County Sheriff's officers.

A clarification of unit petition is intended to resolve confusion concerning the composition of an existing collective negotiations unit for which the exclusive representative has already been selected. "Typically, clarification is sought as to whether a particular title is contemplated within the scope of the unit." Clearview Reg. Bd. Of Ed., D.R. No. 78-2, 3 NJPER 248, 251 (1977).

In this instance, the scope of each local's unit has already been established. Local 54 insists that the former county police officers who are now sheriff's officers are entitled to separate collective representation. Local 54 does not dispute that the County Police and Sheriff's Office merged or that DOP found that the County police officers were now Sheriff's officers and converted their titles to reflect the organizational change. Even if former County police who now hold Sheriff officer titles perform some different duties than other Sheriff officers, that is not material to the issue in this case. The County police title has been eliminated and there was no appeal of DOP's decision reclassifying former County police as Sheriff officers. The former police officers now share the same title, job function and employer as the other Sheriff's officers and are appropriately included in Local 183's unit.

In Gloucester Cty., D.R. No. 2007-10, 33 NJPER 45 (¶18 2007), I dismissed the County's clarification of unit petition seeking the accretion of employees of the abolished Gloucester County Board of Social Services (Board) into CWA Local 1085's broad-based unit of county employees. Although the Board had been reorganized as a division under the County, and its former employees became County employees, I found that a majority of the former-Board employees continued to hold titles that were unique to social services. In contrast, here, the merger of the County

Police and Sheriff's Office did not result in the preservation of the County police title, and despite Local 54's argument, I find the distinctions between what former County police do as Sheriff's officers and what other Sheriff's officers do does not warrant a change in this unit structure.

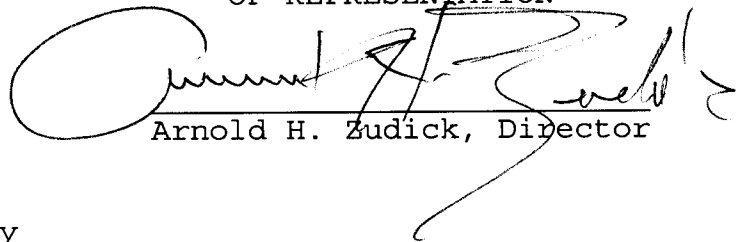
Finally Local 183 already represents three hundred sheriff's officers; the disputed 23 former police officers constitute less than 10% of 183's unit and is properly accreted into 183's unit by a clarification of unit petition.

Based upon the above, the negotiations unit of sheriff's officers, court attendants and identification officers, represented by PBA Local 183, is clarified to include the former Essex County police officers.

ORDER

Effective immediately, Local 183's unit is clarified to include the former County police officers.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Arnold H. Zudick, Director

DATED: September 3, 2008
Trenton, New Jersey

A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3.

Any request for review is due by September 15, 2008.