

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

In the Matter of
COUNTY OF ESSEX,

Public Employer,

-and-

ESSEX COUNTY SHERIFF'S
OFFICERS, BCI,

DOCKET NO. RO-82-129

Petitioner,

-and-

SUPERIOR OFFICERS, BCI,

Intervenor.

SYNOPSIS

The Director of Representation, based on an administrative investigation, directs an election in a unit of superior officers employed by the County of Essex in its Bureau of Criminal Identification. The Director finds that the petitioned-for unit is appropriate and consistent with the pattern of negotiations relationships between the County and its law enforcement personnel.

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Appearances:

For the Public Employer
Elaine Hyman, Assistant County Counsel

For the Petitioner
Joseph Mastrangelo, President

For the Intervenor
Maurice Friedlander, Assistant Chief

DECISION

On January 6, 1982, a Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission ("Commission") by the Essex County Sheriff's Office, Bureau of Criminal Identification ("Petitioner"), supported by an adequate showing of interest. The Petitioner seeks to represent a collective negotiations unit consisting of

superior officers employed in the Bureau of Criminal Identification, Sheriff's Office, County of Essex ("County"). On January 21, 1982, the Superior Officers, Bureau of Criminal Identification ("Superior Officers") intervened in this matter, supported by an adequate showing of interest, pursuant to N.J.A.C. 19:11-2.7.

In accordance with N.J.A.C. 19:11-2.6, 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. An informal conference was convened by the assigned Commission staff agent with the parties on January 21, 1982.

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

1. The disposition of this matter is properly based upon 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 Essex 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 who are the subject of this Petition, and is subject to the provisions of the Act.

3. The Essex County Sheriff's Office, Bureau of Criminal Indentification and the Superior Officers, Bureau of Criminal

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

4. The Petitioner and the Superior Officers seek to represent superior officers in the Bureau of Criminal Identification in the Sheriff's Office and agree to the conduct of a secret ballot election.

5. The County does not consent to an election. The County asserts that there are currently within the County Sheriff's Department two negotiations units which are arguably appropriate units for the representation of the petitioned-for employees. The County identifies these units as the Sheriff's Superior Officers Association and the Essex County Identification Officer's Association. The County argues that the creation of an additional negotiations unit within the County would not be in the public interest.

6. The petitioned-for employees constitute the sole remaining law enforcement employees in the County who are not organized for the purpose of collective negotiations. The organized law enforcement personnel are grouped as follows:

(a) In the County Sheriff's Department, court attendants, process servers and transportation personnel are organized into one unit represented by Essex County Sheriff's PBA Court Attendants. The superior officers of these personnel are organized in a separate unit represented by Sheriff's Officers Superior Officers Association. Nonsupervisory criminal identification officers are represented in a third negotiations unit.

(b) The negotiations unit structure in the County Division of Law and Public Safety is as follows: The county police are represented in a unit which includes both patrolmen and superior officers. The correction officers are represented in two separate rank and file units (one for the County Jail and one for the County Jail Annex). There are two separate corresponding superior officers units and one combined deputy wardens unit.

7. On May 26, 1982, the undersigned advised the parties of the above findings and that, on the basis thereof, it appeared that the unit was prima facie appropriate. The County was reminded of its obligation to present an evidentiary proffer pursuant to N.J.A.C. 19:11-2.6 which would raise substantial and material disputed factual issues, and in the absence thereof the undersigned would direct an election. On June 14, 1982, the County submitted an additional evidentiary proffer. For the reasons stated below, the undersigned finds that the additional proffer does not raise substantial and material disputed factual issues.

Normally, the Commission favors the establishment of collective negotiations units along broad-based functional lines and rejects claims for narrowly defined units based upon specific occupational distinction. See In re State of New Jersey, P.E.R.C. No. 68 (1971), aff'd 64 N.J. 231 (1974). The appropriate unit question, however, must be examined in the context of the given case. In the instant matter, the County has already participated in the establishment of unit structure along distinct departmental lines. A pattern has been developed.

With the exception of the county police unit, wherein patrolmen and superior officers are in the same negotiations unit, the organized law enforcement employees of the County are divided into rank and file and corresponding superior officer units. As noted above, the rank and file officers in the Sheriff's Department, consisting of court attendants, process servers and transportation officers comprise one unit, and their superior officers in the Sheriff's Department are represented in a separate unit. The correction officers in the Division of Law and Public Safety are similarly organized into rank and file and corresponding superior officers units. Rank and file identification officers within the Sheriff's Department have their own negotiations unit. The petitioned-for employees rank above the identification officers within the Bureau of Criminal Identification.

Based upon the above, the undersigned advised the parties that the petitioned-for unit would appear to complete a pattern of negotiations relationships between the County and its law enforcement personnel. Further, the addition of one last unit to complete the pattern did not appear to overly tax the resources of the County nor would it precipitate significant additional fragmentation. While the County argued that one additional unit would "exacerbate the proliferation of bargaining units within the County", the undersigned noted that thirty-three units are not significantly different from the present thirty-two units in the County.

In its response, the County asserted that the existing nonsupervisory and supervisory units in the Sheriff's Department encompass employees of all bureaus, including Criminal Identification. The County contends that this is more indicative of its pattern of negotiations relationships, and that the unit limited solely to the nonsupervisory criminal identification officers in the Bureau of Criminal Identification is an "anomaly." The County argues that "Isolation of criminal identification superiors into a unit would merely reinforce this deviation, not conform to the existing practice."

In the judgment of the undersigned, the separate treatment accorded by the County to its criminal identification officers is the significant factor herein. At the time the County agreed to a unit of superior officers excluding the petitioned-for employees, the County could have and should have anticipated the foreseeable consequence in the event superior identification officers petitioned-for self organization. ^{1/} Moreover, self-organization of superior identification officers receives further impetus and sanction by the separate recognition accorded by the County to nonsuperior criminal identification personnel.

Under these circumstances, and in further consideration of the fact that further self-organization or fragmentation is not precipitated by this determination, the undersigned concludes that the appropriate placement of the superior criminal identification officers is in the petitioned-for unit.

^{1/} In the private labor relations sector, said organization would be approved under the "residual" unit concept.

Accordingly, on the basis of the investigation to date, the undersigned concludes that a valid question concerning representation exists in an appropriate unit.

Therefore, the undersigned finds the following unit appropriate: All superior officers employed at the Essex County Bureau of Criminal Identification, but excluding all non-law enforcement personnel, managerial executives, confidential and craft employees, and all superior officers currently included in other collective negotiations units. ^{2/}

Pursuant to N.J.A.C. 19:11-2.6(b)(3), the undersigned directs that an election be conducted among the employees described above. The election shall be conducted no later than thirty (30) days from the date set forth below.

Those eligible to vote are the employees set forth above who were employed 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 resigned or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

Pursuant to N.J.A.C. 19:11-9.6, the County is directed to file with the undersigned, the Essex County Sheriff's Officers,

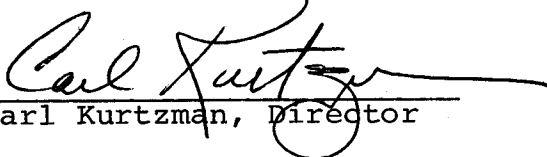
^{2/} These currently represented employees are identified as certain sheriff's officers and court attendants.

BCI and with the Superior Officers, BCI, the relevant election eligibility list consisting of an alphabetical listing of the names of all eligible voters together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by the undersigned no later than ten (10) days prior to the election. A copy of the appropriate eligibility list shall be simultaneously filed with Essex County Sheriff's Officers, BCI and with Superior Officers, BCI with statement of service to the undersigned. The undersigned shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

Those employees eligible to vote shall vote on whether or not they desire to be represented by Essex County Sheriff's Officers, BCI, Superior Officers, BCI, or neither.

The exclusive representative, if any, shall be determined by the majority of valid ballots cast by the employees voting in the election. The election directed herein shall be conducted in accordance with the provisions of the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: July 30, 1982
Trenton, New Jersey