

D.R. NO. 93-17

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

In the Matter of

GLOUCESTER COUNTY SHERIFF,

Public Employer,

-and-

FOP LODGE #103,

Docket No. RO-93-49

Petitioner,

-and-

FOP LODGE #97,

Intervenor.

SYNOPSIS

The Director of Representation dismisses a petition which seeks to sever sheriffs officers and sheriffs sergeants from an existing unit of sheriffs officers and sheriffs sergeants and corrections officers and corrections sergeants. The Director rejected the petitioner's claim that community of interest was lacking among sheriffs officers/sheriffs sergeants and corrections officers/corrections sergeants. The Director also found that the petitioner had not met the severance standards set forth in Jefferson Tp. Bd. of Ed., P.E.R.C. No. 61, N.J. Supp. 248 (¶61 1971) ("Jefferson").

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Appearances:

For the Public Employer
Gerald L. Dorf, of counsel

For the Petitioner
John Morelli, of counsel

For the Intervenor
Schwartz, Simon & Edelstein
(Joel G. Scharff, of counsel)

DECISION

On September 25, 1992, the Gloucester County Sheriff's Officer Lodge 103, FOP, filed a representation petition with the Public Employment Relations Commission seeking to sever all sheriffs officers and sheriffs sergeants employed by the Gloucester County Sheriff's Office from an existing unit of all sheriffs officers, sheriffs sergeants, correction officers and correction sergeants. The petitioned-for employees are presently represented by Law

Enforcement Lodge 97, FOP in a broad-based unit which includes all sheriffs officers, sheriffs sergeants, corrections officers and corrections sergeants. The petition was timely filed and supported by an adequate showing of interest. Lodge 97, FOP has intervened in this matter on the basis of its contract with the Gloucester County Sheriff covering the petitioned-for titles. N.J.A.C. 19:11-2.7.

Lodge 103 argues that sheriffs officers and corrections officers do not share a sufficient community of interest to warrant their continuation in one unit because their job duties, training and work locations differ. It also contends that the interaction between these two groups is limited and they do not perform interchangeable functions. The County and Lodge 97 oppose the petition and refuse to consent to a secret ballot election. The County opposes the creation of a narrowly defined negotiations unit and contends that a community of interest exists among all the titles in the existing unit. It argues that its longstanding, stable negotiations relationship with Lodge 97 should not be disturbed. Lodge 97 opposes the petition; it believes the present unit structure is the most appropriate one and contends that the standards for severance as set forth in Jefferson Tp. Bd. of Ed., P.E.R.C. No. 61, N.J. Supp. 248 (¶61 1971) ("Jefferson") have not been met.

We have conducted an investigation of the issues raised by the petition and make the following findings. N.J.A.C. 19:11-2.6.

1. FOP Lodge 97 has been representing a negotiations unit consisting of all sheriffs officers, sheriffs sergeants, corrections officers and corrections sergeants employed by Gloucester County and the Gloucester County Sheriff since 1982. Thus, the petitioned-for employees are currently included in this unit. This unit composition has existed since the mid-1970s. It appears that this unit was created through a voluntary recognition (N.J.A.C. 19:11-3.1), not the certification process (N.J.A.C. 19:11-9.2).

2. The Sheriff and Lodge 97 are parties to a collective negotiations agreement covering the period from January 1, 1990 through December 31, 1992.

3. FOP Lodge 103 was chartered in July 1992. It consists of sheriffs officers and sheriffs sergeants employed by the Gloucester County Sheriff.

4. Gloucester County, in part through the Gloucester County Sheriff, is the employer of all ranks of sheriffs officers and corrections officers. All of the above employees are police within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"); their job duties include the detection, apprehension, arrest and conviction of offenders. See, N.J.S.A. 2A:154-2. All of these officers have as a central, common purpose, the preservation of public order and prevention of offenses against the State. See, County of Gloucester v. PERC, 107 N.J. Super. 150, 157 (App. Div. 1969), aff'd. 55 N.J. 33 (1970).

5. Sheriffs officers and sheriffs sergeants are responsible for maintaining order and security in the courtroom, serving court processes, criminal identification, ballistics, investigating criminal matters and apprehending criminals. Sheriffs officers and sheriffs sergeants are prohibited from being assigned to correctional facilities to guard inmates. N.J.S.A. 40A:9-117.6. Sheriffs officers and sheriffs sergeants work at the criminal justice complex and in the community serving summonses, complaints, collecting writs of executions, and assisting municipalities with traffic, crowd control and carrying out raids. Corrections officers and corrections sergeants are responsible for guarding inmates at correctional facilities. Corrections officers and corrections sergeants in Gloucester County work primarily at the Gloucester County Jail which is adjacent to the criminal justice complex. Nevertheless, there is minimal interaction among sheriffs officers and corrections officers during a normal work day.

6. Sheriffs officers' training consists of instruction in various law enforcement subjects and attendance at a regular police academy for at least 18 weeks. Corrections officers attend the Corrections Officers Training Academy and their training lasts approximately 8 weeks.

7. Sheriffs officers comprise about one-fourth of the unit represented by Lodge 97. There are 38 sheriffs officers and sergeants out of a total of 156 in the unit. Sheriffs officers occupied the office of President of Lodge 97 from 1982 to 1984 and

again from 1986 to 1987. Presently, a corrections lieutenant is president of Lodge 97.

8. The petitioner makes the following allegations as evidence of Lodge 97's lack of representation of sheriffs officers' interests:

i. In the 1987-1989 contract negotiations, a fact sheet which allegedly misrepresented the subjects of negotiations was circulated and voted upon. When two sheriffs officers objected to the procedure, Lodge 97 attempted to bring charges against them. This matter was settled with the help of State-level FOP members.

ii. Lodge 97 proposed a bonus program involving overtime and hazardous duty pay which would benefit corrections officers only.

iii. The original composition of the Lodge's negotiating team for the 1990-1992 contract consisted exclusively of corrections officers; only when sheriffs officers strongly objected were they allowed to add a representative from their ranks.

iv. Corrections officers have been assigned to perform out-of-title work in sheriffs officer positions; i.e., the sheriffs officer training officer and personal guard to Judge DeSimone. Corrections officers have also been permitted to use canines for their work, even though it is alleged the use of canines is not within the scope of corrections officers' employment.

v. All overtime work at the Underwood Memorial Hospital has been assigned to corrections officers while no sheriffs officers have been assigned any of this overtime work. A seniority list for the entire unit was supposed to be the basis of this assignment, but allegedly, no list has been used.

vi. Despite repeated requests for information as to the Lodge's financial status, no information has been provided.

vii. The County's offer of leather coats for sheriffs officers who have to work outdoors during the winter was withdrawn after the Lodge refused to accept this benefit unless similarly situated corrections officers were also to receive the coats.

viii. Corrections officers have allegedly received safety glasses and protective ear devices. Although both corrections officers and sheriffs officers must qualify for the firing range, it is alleged that sheriffs officers have not received these safety items.

ix. The president of Lodge 97 has not given sheriffs officers the right to select a representative member of the current negotiating team but has personally selected someone.

x. Lodge 103 points to a grievance concerning a potential hazard which developed in the sidearms assigned to both sheriff and correction officers. A complaint was made concerning this firearm. A complaining sheriff's officer was told he could not complain to the official training officer who is both a lieutenant and an officer in Lodge 97, Lieutenant Martin. The sheriff's officer filed a grievance through Lodge #103 and the matter was resolved. Lodge #103 claims there was harassment by the lieutenant in question who allegedly asked for an investigation as to why the grieving sheriff's officer took his inquiry as to the safety of the weapon outside of the Department.

xi. Lodge 103 further alleges that Lodge 97 initially encouraged the formation of a separate lodge; however, it has now repudiated the formation of Lodge 103 and has discriminated against Lodge 103 supporters in selecting negotiations team members.

xii. Lodge 97 also represents, in a separate unit, sheriffs and corrections lieutenants employed by the Gloucester County Sheriff. Both the president and vice president of Lodge 97 are lieutenants and represent Lodge 97 in collective negotiations.

These lieutenants supervise corrections officers, corrections sergeants, sheriffs officers and sheriffs sergeants; the petitioner argues that it is improper for these lieutenants to both represent Lodge 97 in collective negotiations on behalf of the sheriffs officers/corrections officers unit and to supervise the members of that unit, on behalf of the County.

xiii. Lodge 103 points to an incident where Lt. Martin, an officer in Lodge 97 wrote-up Officer Treechock for improper

conduct. Treechock was seeking election for office in Lodge 97. However, Treechock was represented by the F.O.P. in the disciplinary proceeding. Martin stated his duty as a supervisor came before his role as a Lodge officer.

Lodge 103 also argues that its officers did not receive time off to attend the FOP convention pursuant to N.J.S.A. 40A:14-177. However, this is a dispute between the employer and Lodge 103 and has no bearing on the conduct of Lodge 97. Lodge 103 does not claim it attempted to file a grievance through the exclusive majority representative Lodge 97.

ANALYSIS

The New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.3 states: "The negotiating unit shall be defined with due regard for the community of interest among the employees concerned..."

The Commission has found appropriate many broad-based units comprised of jobs as diverse as guidance counselor and custodian. The Commission and the Courts have consistently held that broad-based units are more appropriate than narrow units structured along single occupational lines. State of New Jersey and Professional Assn of N.J. Dept. of Ed., 64 N.J. 231 (1974) See also, Piscataway Tp. Bd. of Ed., P.E.R.C. No. 84-124, 10 NJPER 272 (¶15134 1984) (teachers and support staff share community of interest stemming from shared goals, central authority controlling working conditions and a common working environment).

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.

In applying the Jefferson standards, we review the parties' entire relationship, not just isolated events. Passaic Cty., P.E.R.C. No. 87-73, 13 NJPER 63 (¶18060 1986); Montville Tp. Bd. of Ed., D.R. No. 84-22, 10 NJPER 367 (¶15171 1984). After reviewing the evidence presented in this matter, I find that FOP Lodge 103 has not met the standards required to secure the severance of sheriffs officers and sheriffs sergeants from the existing, broad-based unit.

The unit structure, including sheriffs officers, sheriffs sergeants, corrections officers and corrections sergeants, has existed since the mid-1970s. Lodge 103 has not presented evidence of unit instability. It appears that since 1982, the County and Lodge 97 have had stable labor relations resulting in numerous collective bargaining agreements. The fact that there is generally no interchangeability or contact between corrections and sheriffs officers on a daily basis is not dispositive of a lack of community of interest. Even assuming there is some dissimilarity in the duties performed by the various titles in the extant unit, because

they have common management and supervision and a common mission, the similarities of functions outweigh the distinctions.

Supervisors and non-supervisors can belong to affiliated organizations as long as they are represented in separate units. See, Bowman v. Hackensack Hospital Ass'n., 116 N.J. Super. 260 (Ch. Div. 1971); Hudson Cty., D.R. No. 85-7, 10 NJPER 623 (¶15297 1984), aff'd App. Div. Dkt. No. A-789-84T7 (11/15/85) In Manville Bd. of Ed., P.E.R.C. No. 89-18, 14 NJPER 567 (¶19238 1988) the Commission stated:

The Legislature did not adopt a per se rule barring supervisors from holding office in organizations representing non-supervisors. However, a supervisor may not participate in union affairs if such participation unduly conflicts with the duty the supervisor owes to the employer or the right of non-supervisory employees to representation without employer interference.

Lodge 103 has not presented any evidence which shows that the actions of Lodge 97's officers have interfered with or conflicted with non-supervisory employees' representation rights. There are no allegations that management is dominating the activities of Lodge 97 in what is negotiated or in how grievances are processed. On those occasions when the president and/or vice-president of Lodge 97 acted as superior officers, as with the grievance concerning sidearms, the grievances brought by a sheriff officer were still processed. There is no evidence that Lodge 97 refused to process grievances on behalf of sheriffs.

The petitioner asserts that the issue of hospital duty was also the subject of grievances which were never acted upon by Lodge

97. See, 8v above. However, the petitioner does not state when this conduct occurred or provide other facts to support or clarify this allegation. This allegation lacks the specificity needed to meet the Jefferson standard. Moreover, there is evidence in the record that, contrary to the claim of the petitioner, Lodge 97 pursued a separate grievance to dovetail the seniority lists of sheriffs and corrections officers for overtime duty at the hospital.

There is no evidence in this record demonstrating that Lodge 97 has not properly represented all employees in its negotiations unit -- more specifically sheriff's officers and sheriff's sergeants. Significantly, two past presidents of Lodge 97 were sheriffs officers. Sheriffs officers have been members of the Lodge 97 negotiations team. Although certain proposals desired by sheriff's officers were not ultimately achieved in negotiations, this fact does not constitute improper or irresponsible representation. Greater Egg Harbor, D.R. No. 88-27, 14 NJPER 100 (¶19036 1988). Taken as a whole, the record before me does not support a claim of lack of responsible representation.

Accordingly, I find that the Petitioner has not met the standards warranting severance from the existing negotiations unit

as set forth in Jefferson Tp. The petitioned-for unit is not appropriate and I dismiss the petition.^{1/}

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: March 16, 1993
Trenton, New Jersey

^{1/} Petitioner claims that in 1992 both undersheriffs and Lodge 97's executive board encouraged sheriffs officers to form their own Lodge. Both the County and Lodge 97 dispute these allegations. Whether or not these parties encouraged sheriffs officers to form a separate unit does not appear to be evidence of unit instability or lack of responsible representation.