

D.R. NO. 96-14

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

In the Matter of

GLOUCESTER COUNTY SHERIFF,

Public Employer,

-and-

Docket No. RO-96-32

GLOUCESTER COUNTY SHERIFF'S
OFFICERS' ASSOCIATION,

Petitioner,

-and-

F.O.P. LODGE 97,

Intervenor.

SYNOPSIS

The Director of Representation dismisses a representation petition filed by the Gloucester County Sheriff's Officers' Association seeking to sever 43 Sheriff's officers and Sheriff's sergeants from a unit of Sheriff's officers and sergeants and Correction's officers and sergeants employed by the Gloucester County Sheriff's Department. The Director finds that the Association has not met the Jefferson Tp. standards for severance.

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Appearances:

For the Public Employer
Dorf & Dorf, attorneys
(Gerald L. Dorf, of counsel)

For the Petitioner
Morelli & Rinaldi, attorneys
(John Morelli, of counsel)

For the Intervenor
A.J. Fusco, attorney
(Thomas Possumato, consultant)

DECISION

On September 27, 1995, the Gloucester County Sheriff's Officers' Association filed a Petition for Certification of Public Employee Representative with the Public Employment Relations Commission seeking to sever 43 sheriff's officers and sheriff's sergeants employed by the Gloucester County Sheriff's Department

from a broad-based unit of approximately 160 sheriff's officers and sergeants and correction officers and sergeants represented by F.O.P. Lodge 97.

The petition was timely filed and supported by an adequate showing of interest. The Petitioner claims that the severance of the petitioned-for employees from the existing unit is appropriate under Jefferson Tp. Bd. of Ed., P.E.R.C. No. 61, N.J.Supp. 248 (¶61 1971), in that the existing relationship is "unstable or that the incumbent organization has not provided responsible representation."

Lodge 97 has intervened in this matter on the basis of its collective bargaining agreement with the Sheriff covering the petitioned-for titles. N.J.A.C. 19:11-2.7.

A similar representation petition was previously filed by FOP Lodge 103 on September 25, 1992 and FOP Lodge 97 intervened in that matter as well. On March 16, 1993, in Gloucester Cty. Sheriff, D.R. No. 93-17, 19 NJPER 183 (¶24090 1993), I dismissed that petition, rejecting the petitioner's claim that a community of interest was lacking among sheriff's officers and sergeants and corrections officers and sergeants. I also found that the petitioner had not met the Jefferson Tp. severance standards.

The Commission denied Lodge 103's request for review. See Gloucester Cty. Sheriff, P.E.R.C. No. 93-118, 19 NJPER 353 (¶24159 1993). The Commission found that, even accepting Lodge 103's allegations as true, severance would not be warranted. Although there was some evidence of competing interests within the

negotiations unit, there was no evidence that these intra-unit disputes disrupted labor relations. Moreover, even if Lodge 97 had breached its duty of fair representation, individual and isolated breaches of that duty would not warrant that sheriff's officers and sergeants should be severed from the unit.

The Association claims it is the successor to Lodge 103 and relies upon evidence submitted in the prior case to show that Lodge 97 (1) was dominated by supervisory personnel who determined the scope of negotiations and the processing of grievances; and (2) was unstable and failed to provide responsible and responsive representation. It claims these allegations continue to the present time and indicate a pattern of non-responsive representation by Lodge 97 and unit instability.

The Association adds several new allegations. First, the Association claims that Lodge 97 has failed to maintain a proper demand on return system for non-members. Specifically, it has failed to account for its income and expenditures^{1/} and it failed to provide a procedure for review of amounts returned under the demand and return system.

The Association claims that Lodge 97's collective negotiations agreement with the Sheriff, which ran from January 1, 1993 through December 31, 1995, favors corrections officers over sheriff's officers with regard to seniority and equipment, and,

^{1/} Consequently, non-members cannot determine what portion of paid out representation fees shall be returned to them.

since most sheriff's officers are not Lodge 97 members, the agreement demonstrates Lodge 97's failure to negotiate in good faith and adequately represent the interests of non-members. The Association notes that Lodge 97 failed to allow the sheriff's officers who are paying representation fees to vote in the contract ratification process and to serve on the negotiations committee. Further, it claims that corrections officers (specifically, George Urban and Joseph Pinto) are continuing to work out of title.

The Association also claims that Lodge 97 has failed to process sheriff's officers' grievances. Specifically, it claims Lodge 97 lost a grievance involving William Barnett and failed to provide information to Association President Leonard Ouellette who wanted to file his own grievance. Finally, it asserts that Lodge 97's President has failed to respond to requests by Ouellette to discuss issues and conflicts which have arisen between sheriff's officers and corrections officers.

Lodge 97 opposes the petition and refuses to consent to a secret ballot election. Lodge 97 notes that it has represented the unit since 1982 and the unit composition has existed since the mid-1970's. It asserts that the Association has not met the Jefferson Tp. severance standards, as it has provided adequate representation to all unit members and the unit is not unstable.

As to the Barnett grievance that was allegedly lost, it claims it was in fact filed and scheduled for arbitration, but then settled by Barnett. Further, it disputes that it failed to provide

information to Ouellette regarding a grievance he wanted to file, as Ouellette failed to request assistance from the union. In any event Ouellette could have filed a grievance on his own under the contract and did not do so. Further, it denies Urban and Pinto have inappropriately worked out of title or that sheriff's officers received less equipment than corrections officers. Finally, it notes that its President has communicated with sheriff's officers and Ouellette regarding the needs of sheriff's officers and differences between them and corrections officers.

The Sheriff also opposes the petition and refuses to consent to a secret ballot election. It opposes the creation of a narrowly defined negotiations unit and contends that a community of interest exists among all titles in the existing unit. It argues that its longstanding, stable negotiations relationship with Lodge 97 should not be disturbed.

The Sheriff notes that the Barnett grievance was processed through the grievance procedure but was settled prior to arbitration. It also disputes that sheriff's officers have received less favorable treatment with respect to the issuance of equipment and denies that Urban and Pinto have inappropriately worked out of title, as they are provisional sheriff's officers.

Analysis

The Commission and 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); Gloucester Cty. Sheriff. Accordingly, severance from an existing broad-based unit is appropriate only under limited circumstances. In Jefferson Tp., 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 Tp. standards, we review the parties' entire relationship, not just isolated events. Passaic Cty., P.E.R.C. No. 87-73, 13 NJPER 63 (¶18026 1986); Montville Tp. Bd. of Ed., D.R. No. 84-22, 10 NJPER 367 (¶15171 1984).

Upon review of this matter, I find that the Association has not met the standards required to sever the sheriff's officers and sergeants from the existing, broad-based unit.

The unit structure including sheriff's officers and sergeants and corrections officers and sergeants has existed since the mid-1970s. The Association 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.

I see no reason to disturb the earlier finding that the evidence submitted in support of the 1992 petition filed by FOP Lodge 103, fails to support a finding of severance. Gloucester Cty. Sheriff, P.E.R.C. No. 93-118. Moreover, the new allegations submitted by the Association when viewed together with the 1992 allegations do not support a finding that severance is appropriate.

While the allegations regarding Lodge 97's failure to maintain a proper demand and return system may support a violation of the Act and the Appeal Board Rules, they do not demonstrate the unit instability or irresponsible representation criteria needed to support severance.

Further, the allegations regarding Lodge 97's loss of a grievance and failure to provide grievance information do not support a finding that severance is appropriate. At most they show mere negligence, which does not amount to a breach of the duty of fair representation. Rutgers and AFSCME, D.U.P. No. 94-1, 19 NJPER 426 (¶24192 1993); Service Employees International Union, Local No. 579, AFL-CIO, 229 NLRB 692, 95 LRRM 1156 (1977). In any event, the contractual grievance procedure allows individuals to process their own grievances without Lodge 97 intervention; and, according to Lodge 97, individuals often do this. Further, the Barnett grievance did proceed through the grievance procedure and was scheduled for arbitration, but was settled prior to that.

As to the allegation that the recently expired agreement favored corrections officers over sheriff's officers with respect to seniority and equipment, the fact that a negotiated agreement results in less of a benefit to one group of employees does not, without more, constitute a breach of the duty of fair representation or otherwise compel severance. Mercer Cty., P.E.R.C. No. 89-112, 15 NJPER 277 (¶20121 1989); Greater Egg Harbor, D.R. No. 88-27, 14 NJPER 100 (¶19036 1988); Clifton Bd. of Ed., D.R. No. 80-18, 6 NJPER 38 (¶11020 1979). Rather, a majority representative has broad discretion and a "wide-range of reasonableness," in negotiations. So. Brunswick Tp., D.R. No. 91-13, 17 NJPER 9 (¶22006 1990); PBA Local 119, P.E.R.C. No. 84-76, 10 NJPER 41 (¶15023 1983). In any event, the Sheriff claims that sheriff's officers have not received less favorable treatment with regard to the issuance of equipment. However, even if it were shown that Lodge 97 had breached its duty of fair representation with respect to these items, such isolated breaches would not warrant the petitioned-for severance. Sussex-Wantage Bd. of Ed., P.E.R.C. No. 88-113, 14 NJPER 346 (¶19133 1988); Passaic Cty.

As to the claim that sheriff's officers are continuing to work out of title, this allegation was raised previously with respect to Lodge 103's 1992 petition and was rejected. Gloucester Cty. Sheriff, D.R. No. 93-17. Moreover, according to the Sheriff, Urban and Pinto have not been working out of title because they are provisional sheriff's officers.

The Association's allegations regarding the contract ratification process and the makeup of Lodge 97's negotiations


committee is not relevant. These allegations involve internal union matters which the Commission does not review; they are not evidence of irresponsible representation or unit instability. Jefferson Tp., PBA Local 105, D.U.P. No. 94-4, 19 NJPER 431 (¶24196 1993); Middletown Tp. Bd. of Ed., D.R. No. 88-11, 13 NJPER 765 (¶18291 1987); Newark Building Trades Council, D.U.P. No. 82-34, 8 NJPER 333 (¶3151 1982). In any event, two past presidents of Lodge 97 were sheriff's officers and sheriff's officers have been members of Lodge 97's negotiations team; in fact, one serves on it now.

Finally, the Association's claim regarding the failure of Local 97's President to respond to requests by Ouellette to discuss issues and conflicts between sheriff's officers and correction's officers is unsupported by any specific facts and thus does not warrant severance under Jefferson Tp.

Taking all of the Association's allegations as true, even when added to the facts previously considered in the 1992 petition, the allegations do not warrant the severance of the sheriff's officers from the existing unit.

Accordingly, I find that the petitioner has not met the Commission's standards for severance. Thus, I find that the petitioned-for unit is not appropriate and I hereby dismiss the petition.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: April 11, 1996
Trenton, New Jersey