

D.R. NO. 2014-12

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

In the Matter of

COUNTY OF SALEM,  
Respondent,

-and-

Docket No. CU-2013-030

SALEM COUNTY SURROGATE,  
Respondent,

COMMUNICATIONS WORKERS OF AMERICA,  
LOCAL 1085,  
Petitioner.

SYNOPSIS

The Deputy Director of Representation dismisses a clarification of unit petition filed by CWA, Local 1085 seeking to clarify a broad-based collective negotiations unit employed by Salem County to include the titles, special deputy surrogate and special probate clerk. The Deputy Director determined that the disputed titles are employed jointly by the County and the Salem County Surrogate, a Constitutional Officer that controls all of the disputed titles' terms and conditions of employment, except funding (which is controlled by the County). The Deputy Director also determined that the two titles do not share a community of interest with employees in the County unit because they do not share a common employer with those employees. The Deputy noted that the Surrogate opposes the petition. Monroe Tp., P.E.R.C. No. 95-93, 21 NJPER 232 (¶26148 1995); But cf., Ocean Cty. Sheriff, P.E.R.C. No. 99-70, 25 NJPER 117 (¶30051 1999), aff'd 26 NJPER 170 (¶31067 App. Div. 2000) (approval of multi-employer unit; longstanding unit not opposed by either joint employer).

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Petitioner.

Appearances:

For the County of Salem  
Evern D. Ford, County Administrator

For the Salem County Surrogate  
Gilmore & Monahan, attorneys  
(Andrea E. Wyatt, Esq.)

For the Communications Workers of America, Local 1085,  
Richard A. Dann, President

**DECISION**

On April 29, 2013, the Communications Workers of America, Local 1085 (CWA), filed a clarification of unit petition (petition) seeking to clarify its collective negotiations unit of blue collar employees and white collar employees of the County of Salem (County) to include the titles, Special Deputy Surrogate (SDS) and the Special Probate Clerk (SPC). The Salem County Surrogate (Surrogate) opposes the petition, asserting that it, not the County, is the public employer of the SDS and SPC and

that the disputed titles do not share a community of interest with County employees. The County does not take a position on the petition.

We have conducted an administrative investigation to determine the facts. N.J.A.C. 19:11-2.2. The CWA President filed a certification and accompanying exhibits. The Surrogate also filed a certification with accompanying exhibits. On December 20, 2013, I issued a letter to the parties, advising of my tentative findings and conclusions and inviting responses. Specifically, I wrote that I was inclined to dismiss the CWA's petition because the SDS and SPC did not appear to share a community of interest with the County employees represented by the CWA. On December 31, CWA filed a reply, contesting several tentative findings and conclusion that the petition should be dismissed.

No disputed substantial material facts require us to convene an evidentiary hearing. Based on upon our administrative investigation, I find the following facts.

The Surrogate is a constitutional officer elected by the people of the county in which he or she serves. N.J.S.A. 2B:14-1. A Surrogate is elected to a five-year term commencing January 1 after the date of election. N.J.S.A. 2B:14-1. The Surrogate serves as both the Judge and Clerk of the Surrogate's Court. N.J.S.A. 2B:14-1.

Nicki A. Burke is the Salem County Surrogate is serving a term that will expire on December 31, 2015. According to the Salem County Surrogate's website,<sup>1/</sup> Burke is responsible for ". . . the administration of the services offered by the Surrogate's Court." Burke also serves as the Deputy Clerk of the Superior Court, Chancery Division, Probate Part.

On April 22, 1999, the titles of Deputy Surrogate (DS), Special Deputy Surrogate (SDS) and Special Probate Clerk (SPC) were created. See N.J.S.A. 2B:14-10; N.J.S.A. 2B:14-11. Burke appointed the following individuals to DS, SDS and SPC on these dates:

Appointee	Title	Date of Appointment
Sandra Sorrentino	Deputy Surrogate	February 21, 2012
Melissa M. Buckwheat	Special Deputy Surrogate	February 8, 2010
Shermayne Vanaman	Special Probate Clerk	October 23, 2012

Buckwheat and Vanaman were the first appointees to SDS and SPC in the County since the titles' 1999 inception.

The DS, SPC and SDS serve at the pleasure of the Surrogate. N.J.S.A. 2B:14-10; N.J.S.A. 2B:14-11. The Surrogate has the exclusive authority to appoint and remove a DS, SDS and SPC. Id.; see also N.J.S.A. 2B:14-13. The SPC ". . . may exercise the

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<sup>1/</sup> See <http://www.salemcountynj.gov/departments/surrogate/>

same powers as the Surrogate in taking depositions of witnesses to wills, qualifications of executors and administrators, acceptance of trusteeships and guardianships, and oaths and affirmances." N.J.S.A. 2B:14-11. In the Surrogate's absence, the DS ". . . shall exercise all powers and duties of the Surrogate's office." If the Surrogate and DS are absent or the offices are vacant, the SDS must exercise all the powers and duties of the Surrogate. N.J.S.A. 2B:14-10.

Burke certifies that as Surrogate, she exercises complete control over the DS, SDS and SPC's terms and conditions of employment. She certifies that the Surrogate assigns duties and sets the work schedules for the DS, SDS and SPC. Leave of absence requests are approved by the Surrogate. Performance evaluations and disciplinary procedures are conducted and controlled by the Surrogate. Burke also certifies that she has the power to make promotional decisions, but does not have final decision-making authority over salaries.

Consistent with Burke's certification, the CWA President certifies that the Surrogate exercises control over the SDS and SPC's work schedule, duties, leave requests, performance evaluations, and initiates discipline. The CWA President also certifies that the Surrogate is considered a "separate appointing authority" of the SDS and SPC and is their "immediate employer."

Finally, the CWA President attests that the County controls the compensation of the disputed employees.

N.J.S.A. 2B:14-13 provides:

The Surrogate shall select and appoint the Deputy Surrogate, any special Deputy Surrogate, Executive Secretary, Chief Clerk and engage all other employees, who shall receive such compensation as shall be recommended by the Surrogate and approved by the county governing body.

The Surrogate also has the statutory authority “. . . to designate one or more employees to serve as Special Probate Clerk.” N.J.S.A. 2B:14-11.

The SDS and SPC are unclassified titles for which no state-wide standard job descriptions have been promulgated.<sup>2/</sup> In assigning duties, the Surrogate retains complete control over the specific work performed by the SDS and SPC and the hours during which work is performed. The Surrogate may at any time alter the duties performed by the SPC and SDS. The Surrogate Court's hours of operation are from 8:30 a.m. to 4:30 p.m. The Surrogate may extend the number of hours the SDS and SPC must work in a given day due to workload demands, meetings, county events and other reasons which he or she deems appropriate. The Surrogate also determines the holidays observed in her office.

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<sup>2/</sup> The New Jersey Civil Service Commission has not adopted job descriptions for the SDS and SPC.

The SDS and SPC perform a wide range of supervisory, clerical and administrative duties in support of the Surrogate. The SDS supervises staff and performs managerial duties in the absence of the Surrogate and DS. Confidential adoption and guardianship matters are processed by the SDS and SPC in accordance with the New Jersey Court Rules. The SDS and SPC maintain a systematic filing system for Superior Court and Surrogate Court documents, answer phone calls and e-mails from the public on behalf of the Surrogate, and the SDS is in charge of bookkeeping of the Surrogate Court's financial accounts. The SDS and SPC also interact with the public by providing confidential, sensitive information to family members of decedents and answering its general questions and concerns.

The County assigned administrative clerk Mary Beth Lawyer to the Surrogate Court to provide additional clerical support in the Surrogate's office. Lawyer was promoted to the title, administrative clerk in January, 2009. Prior to her promotion, Lawyer worked as a probate clerk, a title included in the county-wide unit represented by CWA for many years.

The title, administrative clerk is a classified position for which the New Jersey Civil Service Commission has adopted a job description. Lawyer performs a variety of clerical, administrative and probate-related duties in support of the Surrogate. Some of Lawyer's duties overlap with duties assigned

to Buckwheat and Vanaman. Unlike the SDS and SPC, Lawyer is a permanent employee of the County entitled to the protections afforded under the New Jersey Civil Service Act (N.J.S.A. 11A:1-1 et seq.)

No party disputes that Lawyer's terms and conditions of employment are governed by a collective negotiations agreement between the County and the CWA. The Surrogate does not control the terms and conditions of Lawyer's employment and lacks the authority to evaluate, discipline, transfer, fire or promote Lawyer to another position within the County. The County has the exclusive authority to reassign or transfer Lawyer to another County department, terminate her employment and initiate discipline against Lawyer. In addition, the County sets Lawyer's work schedule.

The CWA and County are parties to a collective negotiations agreement extending from January 1, 2009 through December 31, 2012 (Agreement). Under the recognition clause of the Agreement, CWA is the exclusive representative of a negotiations unit of all rank and file blue collar employees and white collar employees and a unit of supervisory blue collar employees and white collar employees of the County, excluding, ". . . department heads, police, employees in the Human Resources Department and the Clerk of the Board's Office, and all personnel represented in other



bargaining units." The DS is not included in this negotiations unit.

The Surrogate was not involved in collective negotiations for the agreement, nor has it participated in collective negotiations with the CWA and County over the terms and conditions of employment of Lawyer or any other County employee.

### ANALYSIS

The Surrogate contends that it, not the County, is the employer of the SPC and SDS. The Surrogate also maintains that even if the County is the employer of the SPC and SDS, inclusion of the SPC and SDS in the county-wide negotiations unit would be inappropriate because the SPC and SDS do not share a community of interest with employees in the county-wide unit. The CWA disagrees. I find that the County and Surrogate are joint employers of the SPC and SDS and that the SPC and SDS should not be included in the county-wide unit because they do not share a community of interest with County employees.

#### Employer Status

The Commission considers a number of factors in identifying a public employer, including which entity controls the hiring, discipline, performance evaluations, firing, promotions, vacations, hours of work, scheduling, wages and benefits of employees and the funding of employees' compensation and benefits. Bloomfield Tp., D.R. No. 2008-13, 34 NJPER 130, 133

(¶56 2008); Morris Cty., P.E.R.C. No. 86-15, 11 NJPER 491 (¶16175 1985). We have also found that two public employers can serve as a joint employer of an employee where each employer controls different aspects of the employee's terms and conditions of employment. Bergen Cty. Sheriff, P.E.R.C. No. 84-98, 10 NJPER 168 (¶15083 1984); Monroe Tp., P.E.R.C. No. 95-93, 21 NJPER 232 (¶26148 1995), aff'g H.O. No. 95-1, 21 NJPER 98 (¶26061 1995).

In Bergen Cty. Sheriff, the Commission held that the Bergen County Sheriff (Sheriff) and Bergen County were joint employers of the sheriffs and corrections officers working in Bergen County. The Commission explained that since the Sheriff and County each had independent authority over different aspects of the officers' employment relationship, it was appropriate to find that the Sheriff and County were joint employers. 10 NJPER at 170. Specifically, the Sheriff exercised complete control over non-economic terms and conditions of employment of the officers, including promotions, evaluations, discipline, hiring and firing of officers. However, Bergen County controlled one important term and condition of employment for officers: their compensation. Id. The Commission noted that, by statute, the Sheriff could recommend compensation for officers but that such recommendations were subject to final approval by Bergen

County.<sup>3/</sup> The Commission concluded that since ". . . the power to determine compensation is unquestionably one of the most important attributes of an employer," Bergen County was also an employer of the officers and that Bergen County and the Bergen County Sheriff were joint employers. Id.

Bergen Cty. Sheriff is analogous to this case. With the exception of compensation, the Surrogate exercises complete control over all aspects of the employer-employee relationship with the SPC and SDS. The Surrogate retains the authority to appoint and remove the SPC and SDS; set their work schedules and duties; evaluate their performance; initiate discipline and approve their leave of absence requests. As with the County in Bergen Cty. Sheriff, Salem County controls one important term and condition of employment for the disputed employees -- their compensation. By statute, the Surrogate may recommend the salaries for the SPC and SDS but such recommendations are subject to approval by the County. N.J.S.A. 2B:14-13. The County and Surrogate control separate and distinct aspects of the employer-employee relationship with the SPC and SDS. Accordingly, I find that the County and Surrogate are joint employers of the SPC and SDS.

#### Community of Interest

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<sup>3/</sup> N.J.S.A. 40A:9-117 was amended on April 19, 1984, a short time after the Commission issued Bergen Cty. Sheriff.

The Surrogate also contends that the SPC and SDS should not be included in the county-wide unit represented by the CWA because they do not share a community of interest with the employees in the county-wide unit. The CWA disagrees. I find that since the SPC and SDS do not share a common employer with County employees, they should not be included in the same collective negotiations unit.

An essential element of finding a community of interest among employees is that they share a common employer. Bloomfield Tp., 34 NJPER at 134. The Commission has often held that employees who are employed by separate and autonomous employers should not be included in the same negotiations unit. Monroe Tp., P.E.R.C. No. 95-93, 21 NJPER 232 (¶26148 1995), aff'g H.O. No. 95-1, 21 NJPER 98 (¶26061 1995); Morris Cty. Bd. of Social Services, P.E.R.C. No. 86-15, 11 NJPER 491 (¶16175 1985) (employees employed by Morrisview Nursing Home severed from unit of county employees); Camden Cty. Health Services Ctr. Bd. of Managers, D.R. No. 89-36, 15 NJPER 379 (¶20161 1989) (health services center board of managers with authority to direct and control hospital employees is autonomous employer and their employees must be in their own unit); Ocean Cty., D.R. No. 79-25, 5 NJPER 128 (¶10076 1979) (county board of health employees removed from county-wide unit).

In Monroe Tp., the Commission affirmed a Hearing Officer's recommended decision dismissing a clarification of unit petition that sought to include a Welfare Director in a unit of township supervisory employees. Id., 21 NJPER at 232. The Hearing Officer found that the Monroe Local Assistance Board (LAB) and the Township were joint employers of the Welfare Director, since neither had complete control over all of the Welfare Director's terms and conditions of employment. 21 NJPER at 101. The Township controlled the welfare director's health insurance benefits package, holidays, overtime compensation, and sick and vacation leave allotment and had final decision-making authority over the title's salary. However, the LAB retained the authority to appoint and remove the welfare director from her position, as well as the power to initiate discipline and exercise control over the Welfare Director's day to day duties and work schedule. By contrast, the Township was the sole employer of the supervisors. Id. Based on these factors, the Hearing Officer concluded that the Welfare Director could not be included in the unit with the township supervisors because the supervisors did not share a common employer with the welfare director; i.e., the LAB.

Here, the SPC and SDS lack a community of interest with County employees because they do not share a common employer, i.e., the Surrogate. With the exception of compensation,

Surrogate Burke exercises complete control over Vanaman's and Buckwheat's terms and conditions of employment, including hours worked, holidays observed, leave of absence requests, and job duties. Surrogate Burke also has the authority to appoint and remove Buckwheat and Vanaman from their positions at any time and may initiate discipline against them. By contrast, Surrogate Burke does not have control over Lawyer's terms and conditions of employment. Lawyer, like other County employees, can be assigned and transferred to any County department by the County and her work schedule, duties, and other working conditions are determined by the County subject to the terms of the collective negotiations agreement with the CWA. Moreover, the County has exclusive authority to initiate discipline against Lawyer and/or terminate her employment.

The CWA relies on Ocean Cty. Sheriff, P.E.R.C. No. 99-70, 25 NJPER 117 (¶30051 1999), aff'd 26 NJPER 170 (¶31067 App. Div. 2000), in support of its position that the SDS and SPC should be included in the county-wide unit of non-supervisory employees. It asserts that Ocean Cty. Sheriff's approval of multi-employer units is consistent with the Commission's general policy in favor of broad based negotiations unit. CWA's reliance on Ocean Cty. Sheriff is misplaced.

Ocean Cty. Sheriff concerned a severance petition seeking to remove sheriff's officers from a combined unit of sheriff's

officers and corrections officers that had existed for thirty (30) years. FOP Lodge No. 135 filed a representation petition seeking an election among sheriff's officers, thereby requiring the severance of sheriff's officers from the existing unit of corrections officers and sheriff's officers represented by the PBA Local 258. The Director and Commission found that Ocean County (County) and the Ocean County Sheriff (Sheriff) were joint employers of sheriff's officers and that the County was the sole employer of corrections officers. 25 NJPER at 117. Citing longstanding Commission precedent, the Director ordered that an election be conducted among sheriff's officers exclusively because corrections officers and sheriff's officers had separate employers and did not share a common employer, i.e., the Sheriff. Ocean Cty. Sheriff, D.R. No. 99-2, 24 NJPER 461 (¶29213 1998).

The Commission granted PBA's request for review of the Director's decision and dismissed the FOP's petitions.<sup>4/</sup> 25 NJPER at 119. While agreeing with the Director on the joint employer and single employer status of the County and Sheriff, the Commission held that the unique circumstances and labor relations history between the parties indicated the severance of sheriff's officers from the unit would be inappropriate.

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<sup>4/</sup> The FOP filed two representation petitions—one seeking an election among rank and file sheriff's officers and another petition seeking an election among sheriff's superior officers. Both petitions sought to sever sheriff's officers from an existing unit of sheriff's and corrections officers.

Specifically, the Commission considered the following factors in reaching the conclusion that severance was inappropriate: (1) the long history of multi-employer negotiations with the combined unit, spanning decades; (2) the willingness of both employers and the PBA to continue the existing unit structure; (3) the proliferation of negotiations units should severance be granted; and (4) the absence of evidence of unit instability or irresponsible representation in the combined unit. Id., 25 NJPER at 118-119.

Significantly, the Commission found that a multi-employer unit ". . . may be appropriate where the different employers and employee representatives **agree** to such a unit." 25 NJPER at 118 (emphasis added). In this respect, neither the County, Sheriff nor the PBA objected to the existence of a unit of corrections officers and sheriff's officers. Conversely, the Commission noted that it was ". . . not aware of any jurisdiction that compels the formation of multi-employer units where either employer or majority representatives object." Id., 25 NJPER at 118.

The unique factual circumstances relevant to the decision in Ocean Cty. Sheriff are not present here. Unlike the petitioner in Ocean Cty. Sheriff, the CWA is not seeking to sever the SDS and SPC from an existing unit, but is seeking to add the SDS and SPC to a county-wide unit that has existed for decades without



those titles. The long labor relations history of a multi-employer unit in Ocean Cty. Sheriff is not duplicated in this instance of the Surrogate and County. Also, while both employers in Ocean Cty. Sheriff agreed to continue a combined unit of corrections officers and sheriff's officers, the Surrogate in this case objects to the formation of a unit composed of county employees and the SDS and SPC. As expressed by the Commission in Ocean Cty. Sheriff, there is no legal justification for compelling two employers, such as the County and Surrogate, to agree to a multi-employer unit for purposes of collective negotiations. Instead, I find that this case falls within a line of Commission decisions declining to include employees of separate employers in the same unit.<sup>5/</sup>

Accordingly, I find that the SPC and SDS do not share a community of interest with employees in the county-wide unit represented by the CWA and dismiss the clarification of unit petition.

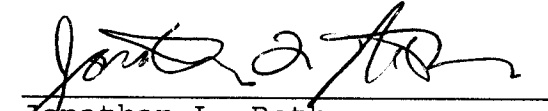
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5/ Monroe Tp., P.E.R.C. No. 95-93, 21 NJPER 232 (¶26148 1995), aff'g H.O. No. 95-1, 21 NJPER 98 (¶26061 1995); Morris Cty. Bd. of Social Services, P.E.R.C. No. 86-15, 11 NJPER 491 (¶16175 1985) (employees employed by Morrisview nursing home severed from unit of county employees); Camden Cty. Health Services Ctr. Bd. of Managers, D.R. No. 89-36, 15 NJPER 379 (¶20161 1989) (health services center board of managers with authority to direct and control hospital employees is autonomous employer and their employees must be in their own unit); Ocean Cty., D.R. No. 79-25, 5 NJPER 128 (¶10076 1979) (county board of health employees removed from county-wide unit).

ORDER

The CWA's petition is dismissed.

BY ORDER OF THE DEPUTY  
DIRECTOR OF REPRESENTATION  
OF REPRESENTATION

  
Jonathan L. Roth  
Deputy Director of  
Representation

DATED: January 10, 2014  
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 January 21, 2014.