

D.R. NO. 99-16

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

In the Matter of

COUNTY OF CAPE MAY (SHERIFF),

Public Employer,

-and-

Docket No. RO-99-43

PBA LOCAL NO. 59,

Petitioner.

SYNOPSIS

The Director of Representation dismisses a petition for certification filed by PBA Local 59 seeking to represent sheriff's officers and sheriff's officers sergeants employed by the County of Cape May. The petitioned-for employees are currently represented by FOP Lodge 7 in a broad-based unit which also includes sheriff's investigators, correction officers and correction officer sergeants.

Applying Jefferson Tp. Bd. of Ed., P.E.R.C. No. 61, NJPER Supp. 248 (¶61 1971), the Director determined that Local 59 had not met the standards set forth in Jefferson necessary to justify severance of the sheriff's officers and sheriff's officers sergeants from the existing unit. In this regard, the Director determined that the petitioner has not shown that the current representative has irresponsibly represented the petitioned-for employees or that an unstable negotiations relationship exists. Therefore, the Commission's previous determination that the existing broad-based unit was the most appropriate will not be disturbed.

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Appearances:

For the Public Employer  
Mauro, Savo, Camerino & Grant, attorneys  
(Eric Martin Bernstein, of counsel)

For the Petitioner  
Edmund F.X. Devlin, attorney

**DECISION**

On September 24, 1998, the Policemen's Benevolent Association Local 59 (Local 59) filed a timely petition for certification, seeking to represent a unit of approximately 26 sheriff's officers and sheriff's officer sergeants of the County of Cape May (County). These employees are currently represented by the Fraternal Order of Police Lodge 7 (Lodge 7) in a broad-based unit which includes not only the petitioned-for titles but also sheriff's investigators, correction officers and correction officer sergeants. The Certification of Representative issued by this agency on February 22, 1995, certifying Lodge 7 as the exclusive collective negotiations representative designates Cape May County Sheriff and Cape May County Board of Chosen Freeholders as the joint

employer. The most recently expired collective negotiations agreement covering the broad-based unit identifies Cape May County as the employer. All parties agree that the County and the Sheriff are joint employers of all sheriff's and correction's employees in the existing broad-based unit.

Local 59 seeks to sever the sheriff's officers and sheriff's sergeants from the existing unit based upon an alleged lack of community of interest between them and the correction officers and correction sergeants. In this regard, Local 59 asserts that the lack of a community of interest is evidenced by differences in job duties, training, uniforms, public confusion of the two groups, safety issues, and the distinction made by the Employer between the "Legal Division" and the "Correction Division" of the Sheriff's Department as noted in the Employer's annual report and budget. Local 59 also argues that Lodge 7 has failed to recognize and fairly represent the alleged divergent employment interests between the sheriff's officers and correction officers. This asserted failure by Lodge 7 as it relates to the asserted lack of community of interest noted above appears to be the crux of Local 59's request for severance. According to Local 59, this alleged failure has resulted in unreasonable representation by Lodge 7.

The Employer opposes the fragmentation of the existing unit and seeks dismissal of the petition. Lodge 7 has not disclaimed interest in continuing to represent the petitioned-for employees, however, it has chosen to take no position with respect to the instant petition.

We have conducted an investigation of the facts and allegations concerning the petition. N.J.A.C. 19:11-2.2 and 2.6. The parties were afforded the opportunity to present their positions on the issues at an investigatory conference conducted on October 19, 1998. The Employer and Local 59 also submitted position statements, certifications and other documents, all of which have been considered. On June 2, 1999, I sent the parties a letter summarizing their positions and setting forth the apparent facts in this matter. I advised the parties that absent additional facts, I intended to dismiss Local 59's petition. No additional submissions were made by either party. I find the following facts.

Lodge 7 and the Employer are parties to a collective negotiations agreement which was effective from April 1, 1995 through December 31, 1998. The recently expired agreement covered correction officers, correction sergeants, sheriff's officers, sheriff's sergeants and sheriff's investigators.

Prior to the February 1995 P.E.R.C. certification of Lodge 7 as the exclusive negotiations representative of the existing broad-based unit, Local 59 represented the identical broad-based unit, including the employees it now seeks to sever in the instant petition. Local 59 does not dispute that the petitioned-for employees in the instant case have been included in the broad-based unit since at least 1984.

In 1995, Lodge 7 was certified as the exclusive representative for all of the Employer's correction officers,

sheriff's officers, sheriff's investigators, correction sergeants and sheriff's sergeants. Lodge 7 subsequently negotiated the collective negotiations agreement described above which covered all unit employees, including those now petitioned for by Local 59. Schedule "A" contained in the collective agreement is a placement guide for all represented employees by name and makes no distinction between sheriff's officers and sheriff's sergeants and correction officers and correction sergeants. Schedule "B" of the contract is a salary guide which sets forth a range with steps 1 through 7. There is no distinction in Schedule "B" between sheriff's officers and sheriff's sergeants and correction officers and correction sergeants. Additionally, Article Seventeen, Longevity, makes no distinction between the two groups of employees at issue for purposes of calculation of longevity increases. Longevity is based upon length of service an employee is employed by the County regardless of the department or departments in which the employee has accumulated his or her service. Two articles in the collective agreement make specific reference to correction officers and sheriff's officers.

Article Sixteen, Temporary Assignment Pay, provides a \$20.00 stipend for both "non-supervisory correction officer or sheriff officer" when either is assigned as a temporary "Officer-In-Charge" of a shift.

Article Nineteen, Uniforms, lists separately the uniforms provided by the County for sheriff's officers and correction

officers. The uniforms provided by the contract are identical except that correction officers are issued two baseball-style caps and the sheriff's officers are not. Both groups receive the same amount of maintenance reimbursement monies for uniforms. There are no other apparent specific references to either of the employee groups in the collective negotiations agreement; however, Article Twenty-One, College Credits, refers to tuition reimbursement payments to "employees" who successfully complete "corrections courses." There is no dispute that all employees at issue may enroll in "corrections courses" and receive the contractual tuition reimbursement.

#### Employer Structure

As noted earlier, the parties agree that the employer in the instant case for all employees in the existing broad-based unit is the County of Cape May and the County Sheriff, jointly. The Sheriff is an elected official and is head of the Sheriff's office. The Sheriff's office consists of the "Legal Division" and the "Correctional Division." The Sheriff is ultimately responsible for both divisions. All employees in the existing unit are answerable to the Sheriff. There is an undersheriff for the Legal Division and an undersheriff for the Correctional Division, both of whom report to the Sheriff. A warden appointed by the Sheriff reports to the undersheriff for the Correctional Division and ultimately to the Sheriff.

The Sheriff is responsible for preparation of the Sheriff's office budget which includes funding for both the Legal and Correctional divisions and is funded by the County of Cape May. The Sheriff is also responsible for the day to day operations of the courthouse and its sheriffs officers, and the correctional center and its corrections officers. Total discretion and final decision-making authority rest with the Sheriff in the areas of hiring, discharge, promotion, scheduling of sheriff's and correction officers and internal training. Additionally, the Sheriff appears to be the last step of the grievance procedure before arbitration. A grievance may be filed by any member of the unit.

#### Job Duties

As noted above, correction officers and correction sergeants are for the most part responsible for job duties concerning the correctional facility while sheriff's officers and sheriff's sergeants are responsible for matters concerning the courthouse. Job descriptions for the two divisions differ in certain respects and external training requirements differ. However, there are similarities in supervision, job duties and training. Correction supervisors can and do supervise sheriff's officers. Internal training for all unit members is done by the correction officer captains. Finally, there have been transfers between the two departments as evidenced by current sheriff's officers who transferred to sheriff's officer positions from the Correction Division, in part on the basis of a standardized test.

Responsible Representation and Stability of Representative

Local 59 argues that the representation provided by Lodge 7 for sheriff's officers and sergeants has not met the standard for responsible representation required of an exclusive negotiations representative. In this regard, Local 59 provided numerous certifications from members of the petitioned-for unit. The general tenor of the certifications focuses on the belief that sheriff's officers and sheriff's sergeants "must take whatever they are given" during contract negotiations because their numbers are too few to make a difference. Thus, they assert that issues relevant to sheriffs officers and sergeants, such as safety, equipment, in-service training, medical benefits, and expansion of college credit reimbursement to non-corrections classes have been ignored and traded for other economic terms. As an example, Local 59 asserts that on one occasion a sheriff's officer member of the Lodge 7 negotiations teams was told that "issues and ideas submitted by sheriff's officers would not be considered" because "submitting these ideas would adversely affect the monetary aspects of the new contract."

Additionally, since only Lodge 7 members may vote on proposed collective negotiations contracts or serve on the negotiations committee, the petitioned-for unit members believe they need a "separate contract for [their] job issues rather than including them in the joint contract." There is no dispute that any member of the existing unit can become a Lodge 7 member and thereby



be eligible to vote on the negotiations agreement. There is also no dispute that in the last negotiations there were two sheriff's officers on the negotiating committee, and the negotiating committee previous to the last one included one sheriff's officer. There is also no dispute that the petitioned-for unit members are covered by the collective negotiations agreement, even though they may not be satisfied with the entire agreement. Finally, there is no assertion that Lodge 7 has failed to process grievances for members of the petitioned-for unit.

#### Stability of negotiations relationship

Local 59 does not assert that the negotiations relationship between Lodge 7 and the County is unstable. However, there are several instances set forth in two different certifications provided by Local 59 which seem to be offered to support the idea that the relationship between the petitioned-for unit members and the remaining unit members is so unstable as to require severance. First, one sheriff's officer "feel(s) there is animosity and mistrust between the two groups." This feeling is based in part on a statement allegedly made to the officer in July 1998 by an unidentified correction officer that "all you sheriff's officers do is sit on your fat butts all day and do nothing, while we do all the work. You don't count because you're a sheriff's officer."

A second instance relates to alleged statements made "on different occasions" by certain unspecified correction officers who allegedly told a junior sheriff's officer and a sheriff's officer

who is an FOP member that if the group splits most of the court positions would be privatized and junior personnel would be laid off. Some of the sheriff's officers felt "uneasy" about these comments.

Finally, in what appears to be intended as an example of instability, one sheriff's officer states that "one of our officers who supports the instant petition was labeled a 'traitor' by one [sheriff's officer] who is not [supporting the severance petition]." Neither officer is identified.

#### ANALYSIS

After reviewing the arguments and submissions presented by the parties as set forth above, I find that the petitioned-for unit is inappropriate.

As expressly recognized by Local 59 in its submissions, N.J.S.A. 34:13A-6(d) provides that the Commission shall determine the appropriate unit for collective negotiations. In making unit determinations, we must consider the general statutory intent of promoting stable and harmonious employer-employee relations. Where there is a dispute, the Commission is charged with the responsibility of determining the most appropriate unit. State v. Prof. Assn. of N.J. Dept. of Ed., 64 N.J. 231 (1974). Moreover, the Commission has long held that severance from an existing broad-based unit may occur under very limited circumstances. In Jefferson Tp. Bd. of Ed., P.E.R.C. No. 61, NJPER Supp. 248, 249 (¶61 1971), the

## Commission stated:

The underlying 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.

Thus, there exist strong policy concerns and statutory objectives for establishing predictable, stable labor relationships between public employers and public employee representatives. The benefit of this stability runs not only to the two parties to the relationship and their constituencies, but also to the public at large.

In the instant case, Local 59 argues that because of differences in job duties and/or job descriptions, training, separate safety concerns, and separate budgeting concerns, the sheriff's officers and sheriff's sergeants do not share a community of interest with the correction officers and correction sergeants. Even if we assume the existence of the differences asserted by Local 59, and if we assume, without deciding, that a community of interest exists among the employees in the petitioned-for unit, Local 59 still has a heavy burden in overcoming policy concerns when seeking to redefine a long-existing negotiations relationship.

In this regard, as Local 59 aptly pointed out in its argument, our State Supreme Court in State v. Professional Association of New Jersey, Department of Education, 64 N.J. 231 (1974), recognized that negotiations units should be established with due regard for community of interest among employees. However, the Court went on to emphasize that our own statute manifests a special concern with regard to the negotiations relationships and interests where the employer is a public sector employer, not a private sector employer. Moreover, while in the "private sector the LMRA assures employees in industry the fullest freedom in exercising the rights guaranteed by" that act, the New Jersey Employer-Employee Relations Act contrasts very clearly with the federal act in its emphasis on "...the interests and rights of the people of the State at large." State v. Prof. Assoc. of N.J. Dept. of Education, 64 N.J. at 247 (1974). The public sector act itself provides that the rights of the public at large, although not parties to a labor dispute, shall "always be considered, respected and protected." State v. Prof. Assoc. of N.J. at 247, citing N.J.S.A. 34:13A-2.

In light of the foregoing, in the situation at hand, where the broad-based unit has an established existence of over 14 years, and where the petitioner, Local 59, has itself previously been the exclusive representative of the same broad-based unit for a great deal of that history, Local 59's assertion of "a lack of a community of interest" at this late date appears to be incongruous with not only the facts of the prior representational history, but with the

statutory objectives emphasizing stability in maintaining established broad-based units. Therefore, as set forth in Jefferson, unless there is a showing that the existing relationship is unstable, or that Lodge 7 has not provided responsible representation, the Commission's previous determination that the broad-based existing unit was the most appropriate will not be disturbed.

Local 59 has not raised a claim of instability in the negotiations relationship between Lodge 7 and the County. Local 59 claims that discord exists among the petitioned-for employees and the other members of the existing unit as evidenced by verbal disagreements regarding this petition and the collective negotiations agreement. There is no evidence that Lodge 7 condoned the statements assertedly made by individual, unidentified correction officers to sheriff's officers during discussions of the instant petition or during disagreements over the group's competing interests. There is no dispute that Local 59 members are free to become Lodge 7 members and, if they do so, may make their interests known by serving on the negotiating committee and voting on collective negotiations agreement ratification. Finally, there is no evidence that Local 59 members have been discriminated against by Lodge 7 as a result of voicing their dissatisfaction with contract issues. Thus, while there are disagreements between the two groups, these disagreements reflect competing interests among the represented employees but do not destroy the unit's community of

interest or justify disturbing the existing unit. Bergen Pines Hosp., D.R. No. 91-31, 17 NJPER 300 (¶22131 1991).

### Responsible Representation

Not having met the scrutiny applied to a claim of instability in the negotiations relationship, Local 59 must, as would any petitioner who seeks to disturb an existing broad-based unit, show that the incumbent employee representative has failed to provide the petitioned-for employees with responsible representation. Local 59 has raised such a claim.

A claim of irresponsible representation, which could result in a dramatic change in the negotiations relationship between the employer and employees, will be carefully scrutinized in the context of the entire relationship rather than isolated occurrences. Passaic Cty. Tech. & Voc. H.S. Bd. of Ed., P.E.R.C. No. 87-73, 13 NJPER 63 (¶18026 1986). Section 5.3 of the Act empowers an organization to negotiate on behalf of all unit employees and to represent all unit employees in administering the contract. Section 5.3 specifically links that obligation to negotiate and administer the contract with the duty to represent all unit employees "without discrimination and without regard to employee organization membership." The standards in the private sector for measuring a union's compliance with the duty of fair representation were articulated in Vaca v. Sipes, 386 U.S. 171 (1967). Those standards have been adopted in the public sector. Belen v. Woodbridge Tp. Bd. of Ed. and Woodbridge Fed. of Teachers, 142 N.J. Super. 486 (App. Div. 1976).

The duty of fair representation as described in Vaca is reviewed differently depending on the nature of the parties' filings before the Commission. There is a difference between the review required in determining whether a statutory violation has occurred in the unfair practice context and the review triggered by the representation question raised in a petition to sever employees from an existing bargaining unit. In the first instance we examine isolated incidents; in the latter context we look to the entirety of the parties' relationship. Moreover, even a finding that the employee representative has breached its duty of fair representation on one occasion, and perhaps more, does not necessarily mean that employees must be severed from the existing unit. If this were the case, units would be constantly subject to redefinition and labor instability would inevitably result. Passaic Cty; Middletown Bd. of Ed., D.R. No. 99-5, 25 NJPER 1 (¶30000 1998).

In W. Milford Bd. of Ed., P.E.R.C. No. 56, NJPER Supp. 218, 219, (¶56 1971), the Commission stated:

The measure of fair representation is ultimately found at the negotiating table, in the administration of the negotiated agreement and in the processing of grievances.

The assertions made by Local 59 focus on Lodge 7's representation performance in collective negotiations rather than administration of the agreement or processing of grievances. Accordingly, Lodge 7's negotiations representation is the area addressed in this determination.

Local 59 has based its claim of irresponsible representation upon Lodge 7's failure to negotiate into the negotiations agreement items dealing specifically with concerns held by the petitioned-for unit members. Namely, these items include training, safety, and education reimbursement concerns. Additionally, Local 59 argues that because of the size of the petitioned-for unit, in comparison to the larger number of correction officers and correction sergeants, the sheriff's officers and sheriff's sergeants can have no impact on negotiations and, therefore, their interests are submerged and inadequately dealt with within the structure of the larger unit. This type of problem was recognized in State v. Prof. Assoc. of N.J. In that case, the Court recognized that such a problem existed where "discrete categories" of employees are members of a common unit. However, the Court also found that "it must be assumed...that the common representative will perform its duty fairly in respect of all within the unit and exercise good faith judgment as to when or whether different characteristics within the group warrant different demands." Id. at 258. In a particular case, the burden is on the petitioner seeking to disturb the existing broad-based unit to show that the incumbent representative's activity or lack of activity in the negotiations process with regard to the petitioned-for unit employees was done in such bad faith or was so irresponsible that the existing unit should be redefined.



In this regard, the Commission and the Courts have long recognized that unions have broad power to represent unit members and to negotiate their terms and conditions of employment. The mere fact that one group of employees is not completely satisfied with what a majority representative presents or obtains in negotiations does not establish that the representative has either breached its duty to the minority group or has acted irresponsibly in negotiations. Camden Cty. Council No. 10 NJCSA, P.E.R.C. No. 89-54, 14 NJPER 420 (¶19172 1988); Belen v. Woodbridge Tp. Bd. of Ed., 142 N.J. Super. at 490-491 (App. Div. 1976); Cty. of Mercer, P.E.R.C. No. 89-112, 15 NJPER 277 (¶20121 1989); Clifton Bd. of Ed., D.R. No. 80-18, 6 NJPER 38 (¶11020 1980). Moreover, the existence itself of competing interests between the employee majority and the employee minority group within the existing unit does not establish irresponsible representation by a collective negotiations representative, when one group's interests are met and the others are not.

Thus, in Gloucester Cty. Sheriff, D.R. No. 93-17, 19 NJPER 183 (¶24090 1993) and Gloucester Cty. Sheriff, D.R. No. 96-14, 22 NJPER 153 (¶27081 1996), the petitioner twice sought to sever sheriff's officers and sheriff's sergeants from an existing broad-based unit which also included correction officers. The petitioner there argued, in part, that the terms of a recently expired negotiations agreement favored one group over the other. The severance petition was denied for several reasons including a

finding that a negotiated agreement, the terms of which result in less of a benefit to one group of employees than another, does not constitute a breach of the duty of fair representation or otherwise compel severance. Rather, a majority representative has broad discretion and a "wide-range of reasonableness" in negotiations.

S. Brunswick Tp., D.R. No. 91-13, 17 NJPER 9 (¶22006 1990).

The findings and rationale of the cases cited above are particularly applicable to the instant case. Local 59 has raised legitimate concerns surrounding the safety, training and educational needs of the petitioned-for sheriff's officers and sergeants. It is Local 59's position that Lodge 7 has not adequately presented or fulfilled these needs at the negotiations table. However, there is no dispute that members of the petitioned-for unit have had representation on the Lodge 7 negotiations team by way of one or more of their own officers in at least the two previous contract negotiations. While Local 59 asserts that on one occasion during a negotiating team meeting a sheriff's officer/negotiating team member was told that issues and ideas submitted by sheriff's officers would not be considered because of their adverse effect on the entire economic portion of the contract, no negotiating team member from the petitioned-for unit was excluded from negotiations and all contract benefits actually obtained were provided to all members of the petitioned-for unit. Moreover, there is no assertion that Lodge 7's alleged decision not to proffer certain, unidentified sheriff's officers' proposals during negotiations was based on any

discriminatory or arbitrary motive. While the sheriff's officers and sheriff's sergeants proposals, coming from that group as a minority, were perhaps not favored or accepted by Lodge 7, the determination not to put them forth as proposals was based upon a stated concern for the overall economic contract package and thus did not constitute either a breach of the duty of fair representation or an act of irresponsible representation. See Clifton, supra, 6 NJPER at 40; Ford Motor Co. v. Huffman, 345 U.S. 330 (1953). The negotiations decisions made by Lodge 7 were within their authority to make as "...compromises which adversely affect some members of a negotiations unit, while resulting in greater benefits for other members." Camden Cty. Council 10, 14 NJPER at 423, citing Jersey City, P.E.R.C. No. 87-56, 12 NJPER 853 (¶17329 1986).

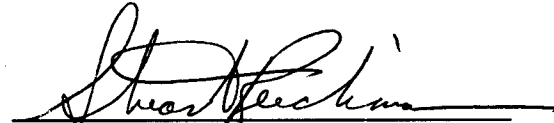
In the instant case, the facts suggest that the majority representative might have been "impolitic" in dealing with the concerns of the sheriff's officers and sheriff's sergeants in negotiations. See S. Brunswick Tp., D.R. No. 91-13, 17 NJPER 9 (¶22006 1990). However, Lodge 7's actions and omissions do not rise to the level of irresponsible representation, nor do they suggest instability in the existing negotiations relationship.

Therefore, based upon the totality of the circumstances reviewed herein, Local 59 has not met the standards under Jefferson Tp. necessary to justify severance of the petitioned-for employees from the existing unit.

ORDER

The petition for certification is dismissed.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Stuart Reichman, Director

DATED: June 23, 1999  
Trenton, New Jersey