

D.R. NO. 88-24

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

In the Matter of

CUMBERLAND COUNTY BOARD OF FREEHOLDERS,

Public Employer,

-and-

CUMBERLAND COUNTY SHERIFF'S OFFICERS,
P.B.A. LOCAL #299,

Docket No. RO-88-39

Petitioner,

-and-

P.B.A., Local #231,

Intervenor.

SYNOPSIS

The Director of Representation dismisses a Petition, filed by PBA Local #299, seeking to represent sheriff's officers, sheriff officer sergeants and sheriff's officer captains employed by the County of Cumberland. The petitioned-for unit, including supervisory and nonsupervisory titles, is inappropriate under N.J.S.A. 34:13A-5.3 and 6(d); and is violative of Bd. of Ed. of West Orange v. Wilton, 57 NJ 404 (1971).

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Appearances:

For the Public Employer
Davidow, Sherman & Eddowes, Esqs.
(Ivan M. Sherman, of counsel)

For the Petitioner
Samuel H. Bullock, Esq.

For the Intervenor
Colflesh & Burris, Esqs.
(Ralph H. Colflesh, Jr., of counsel)

DECISION

On September 29, 1987, PBA Local #299 filed a Petition for Certification of Public Employee Representative with the Public Employment Relations Commission seeking to represent sheriff's officers, sheriff officer sergeants and sheriff's officer captains employed by the County of Cumberland. These sheriff's officer

titles have been represented together with corrections officers, sergeants, lieutenants, captains, identification officers, and chief identification officers since 1973 by PBA Local #231, the majority representative and bargaining agent for establishment of salaries, wages, hours and other conditions of employment. Approximately during the period 1981-82, sheriff's officers and sheriff's officer superiors applied for and received a separate charter from the PBA resulting in the formation of PBA Local #299. However, PBA Local #231 still maintained its majority representative status for the overall sheriff's officer/corrections officer unit. Thereafter, PBA Local #299 made several formal and informal attempts to sever the sheriff's officers from the overall unit represented by Local #231. In 1982, PBA Local #299 filed a Petition seeking such a severance from PBA Local #231's overall unit. That petition resulted in a decision by us, D.R. No. 82-41, 8 NJPER 159 (¶13070 1982), declining Local #299's request to sever sheriff's officers and superiors and identification officers and superiors from the present unit. Thereafter, at least one informal attempt was made by PBA Local #299 to sever sheriff's officers from PBA Local #231's overall unit; however, no severance was accomplished. Finally, on September 29, 1987, this petition was filed again seeking to sever sheriff's officers and superiors^{1/} from the present unit.

^{1/} Identification officers are not included in this petition.

In accordance with N.J.A.C. 19:11-2.2(a), an administrative investigation was conducted into the matters and allegations involved in the Petition in order to determine the facts. An informal conference was held by a Commission staff attorney on October 19, 1987. PBA Local #299, PBA Local #231 and the County of Cumberland were all represented by counsel at the informal conference. All parties were given an opportunity to file statements of position prior to the conference, at the conference and following the conference.

The investigation reveals the following:

The County of Cumberland is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), is the employer of the employees involved herein and is subject to the provisions of the Act.

PBA Local #299 and PBA Local #231 are employee representatives within the meaning of the Act and are subject to its provisions.

PBA Local #231 is the majority representative of all sheriff's officers and superiors and correction officers and superiors employed by the County of Cumberland.

The Petitioner, PBA Local #299, is seeking to represent a unit of sheriff's officers, sheriff's officer sergeant(s), and sheriff's officer captain(s) employed by the County.

At the conference on October 19, 1987 and in its position statement of October 22, 1987, the County maintained that the

petitioned-for unit is inappropriate on the ground that it contains both supervisory and nonsupervisory employees. The parties do not dispute that a mixed unit of sheriff's officers and superiors would constitute a unit of nonsupervisory and supervisory personnel.

The petitioned-for unit appears to be inappropriate on its face under N.J.S.A. 34:13A-5.3, which provides, in pertinent part:

"...nor, except where established practice, prior agreement or special circumstances, dictate the contrary, shall any supervisor having the power to hire, discharge discipline, or to effectively recommend the same, have the right to be represented in collective negotiations by an employee organization that admits nonsupervisory personnel to membership...."

Similarly, N.J.S.A. 34:13A-6(d) states:

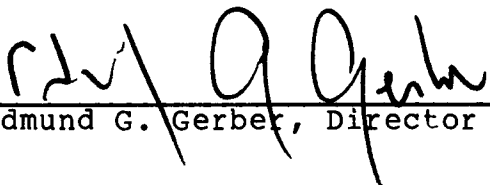
The division shall decide in each instance which unit of employees is appropriate for collective negotiation, provided that, except where dictated by established practice, prior agreement, or special circumstances, no unit shall be appropriate which includes (1) both supervisors and nonsupervisors....

See also, Cherry Hill Dept. of Public Works, P.E.R.C. No. 30 (1970). Further, in Bd. of Ed. of West Orange v. Wilton, 57 NJ 404 (1971), the Supreme Court determined that an employee may possess authority from his/her employer that can create a substantial conflict between the interests of that individual and others in the same negotiations unit. The Court reasoned that employees should not be placed in a position of choosing between duties required by one's employer and loyalties owed to member's of one's negotiations unit.

By letter dated December 8, 1987, the parties were given the opportunity to submit additional documentary materials, affidavits and statements of position, if any, that bear on the facts in this matter. No party has made any additional proffer.^{2/}

Accordingly, based upon the record in this matter we determine that the petitioned-for unit is inappropriate under N.J.S.A. 34:13A-5.3 and 6(d); and, that conflicts of interest violative of the Wilton standard would arise between certain members of the proposed unit. Based upon the foregoing and in the absence of substantial and material factual issues which would warrant the convening of an evidentiary hearing, the petition is dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: January 8, 1988
Trenton, New Jersey

^{2/} We note that in the Petitioner's previous attempt to sever sheriff's officer employees from the overall unit, we issued a decision dismissing the petition, D.R. No. 82-41, 8 NJPER 159 (¶13070 1982), because the Petitioner had not met the Commission's standards for severance stated in Jefferson Tp. Bd. of Ed., P.E.R.C. No. 61 (1975). Here, the County has not pressed the severance issue in the instant matter. Accordingly, we do not address this issue here.