

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

In the Matter of

MERCER COUNTY PROSECUTOR,

Public Employer,

-and-

DOCKET NO. RO-78-151

MERCER COUNTY DETECTIVES,

Petitioner,

-and-

MERCER COUNTY PROSECUTORS DETECTIVES
AND INVESTIGATORS UNIT,

Employee Organization.

SYNOPSIS

The Director of Representation dismisses a Representation Petition filed by prosecutor's detectives who sought to be severed from a negotiations unit consisting of detectives and investigators. The Director finds that there is an identifiable community of interest between detectives and investigators and that the existing organization did not unfairly represent the interests of detectives. The detectives claimed that the investigators are interested in obtaining more immediate benefits than are the detectives and that there is a numerical superiority of investigators over detectives impacting upon the organization's decision making processes. The Director determines that "competing interests" among groups of employees within a negotiations unit with respect to benefits do not constitute a "conflict of interest" which would warrant unit separation. The Director further determines that the fact of the numerical superiority of investigators does not, in itself, indicate that the detectives have received unfair representation.

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MERCER COUNTY PROSECUTORS.
DETECTIVES & INVESTIGATORS UNIT,

Employee Representative.

DECISION

On March 6, 1978, a Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission (the "Commission") by Mercer County Detectives (the "Petitioner") with respect to a proposed unit of approximately twelve detectives employed by the Mercer County Prosecutor (the "Prosecutor"). The Petition is supported by an adequate showing of interest.

The undersigned has caused an investigation to be conducted into the matters and allegations set forth in the Petition

in order to determine the facts. On the basis of the administrative investigation herein, the undersigned finds and determines as follows:

1. The disposition of this matter is properly based upon the administrative investigation herein, it appearing that no substantial and material disputed factual issues exist which may more appropriately be resolved after a hearing. Pursuant to N.J.A.C. 19:11-2.6(b), there is no necessity for a hearing where, as here, no substantial and material factual issues have been placed in dispute by the parties.

2. The Mercer County Prosecutor is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., (the "Act"), is the employer of the employees who are the subject of this proceeding, and is subject to the provisions of the Act.

3. The Mercer County Detectives and Mercer County Prosecutors Detectives and Investigators Unit are employee representatives within the meaning of the Act and are subject to its provisions.

4. The Mercer County Prosecutor's Detectives and Investigators Unit is the exclusive collective negotiations representative of a unit of all unclassified investigators and classified detectives employed by the Mercer County Prosecutor's office.

5. The Prosecutor opposes the removal of detectives from the existing unit. The Prosecutor's position is that separation of detectives and investigators "would foster an unnatural

division within the office." According to the Prosecutor, the functions of both classifications of employees are identical and "the distinction between the two ... [has] to do with the statutory limitation on Civil Service positions."

6. The Petitioner asserts that there exists a "continual conflict of interest between the detectives and investigators" at the negotiating table in that the detectives are "career employees" who are more concerned with long range benefits than investigators who attach greater significance to benefits which accrue immediately.

In support of its position that there exists a continual conflict of interest between the detectives and the investigators, the Petitioner cites the alleged fact that the investigators, who serve at the pleasure of the Prosecutor, are interested in "getting as much money up front" as possible while the detectives, who are career employees, are interested in the "long range effects of any negotiations."

The Petitioner further asserts that there are twice as many investigators as detectives and that the investigators tend to vote as a block. It is alleged that the detectives have virtually no influence over the final product of negotiations, and, therefore, are not receiving adequate representation.

7. On December 6, 1978, the undersigned advised the parties of the Commission's policy that employees currently represented in a comprehensive collective negotiations unit shall not be severed from the unit unless it is demonstrated that the

incumbent organization has not provided fair and responsible representation. In re Jefferson Township Board of Education, P.E.R.C. No. 61 (1971). The Petitioner was advised of its responsibility to present documentary or other evidence which would demonstrate the absence of fair and responsible representation or the absence of a community of interest between detectives and investigators.

The undersigned analyzed the facts and assertions presented to that date in the investigation and advised that the proffered evidence did not raise substantial and material factual issues which would warrant the convening of an evidentiary hearing. The undersigned further stated an intention to dismiss the Petition, for reasons stated infra, in the absence of the presentation of substantial and material factual issues. No further evidence or statements of position have been submitted by the Petitioner.

The factual assertion that investigators are interested in "getting as much money up front" as possible while detectives are interested in "long range effects of any negotiations" due to their status as "career employees" does not negate the community of interest that exists between the prosecutors detectives and investigators and does not warrant a finding by the Commission that the detectives and investigators should constitute two separate units. In Passaic County Prosecutor v. Passaic County, et al., 159 N.J. Super. 258 (App. Div. 1978) the court found that

county investigators and county detectives perform "precisely the same functions." The court noted that the only difference between the detectives and investigators is in the discretion accorded by the Legislature to the respective prosecutors in the selection of the former personnel. In situations such as the one herein, where it is alleged that two groups of employees within the same unit have different views of economic or noneconomic interest, the undersigned has declined to find a conflict of interest. Rather, this not infrequent occurrence raises an issue of "competing interests" rather than "conflict of interest," as the latter term is described in Board of Education of West Orange v. Wilton, 57 N.J. 404 (1971), and does not warrant the severance of employees from an appropriate unit. ^{1/}

With regard to the factual assertion that investigators tend to vote as a block and that detectives have no influence over the final product of negotiations, the undersigned cannot speculate from an assertion of voting patterns that the majority representative is failing to provide fair and responsible representation and that the interests of detectives are being ignored. In In re Board of Education of Township of West Milford, P.E.R.C. No. 56 (1971), the Commission, analyzing the duty of fair representation, 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." While a factual

^{1/} See In re Fair Lawn Board of Education, D.R. No. 78-22, 3 NJPER 389 (1978); In re Long Branch Board of Education, D.R. No. 78-24, 3 NJPER 392 (1978).

pattern of block voting may be a matter which can be demonstrated by the Petitioner, this alone cannot constitute the basis of a finding of unfair representation.

Accordingly, on the basis of the investigation herein and for the reasons stated above the undersigned dismisses the instant Petition.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: January 25, 1979
Trenton, New Jersey