

P.E.R.C. NO. 84-98

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BERGEN COUNTY SHERIFF,

Respondent,

-and-

P.B.A. LOCAL 134,

Docket No. RO-82-113

Petitioner,

-and-

COUNTY OF BERGEN,

Intervenor.

SYNOPSIS

The Public Employment Relations Commission holds that the County of Bergen and the Bergen County Sheriff are joint public employers of all sheriffs and correction officers employed in Bergen County and that a unit of all the joint employers' sheriffs and correction officers is the appropriate unit for negotiations.

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COUNTY OF BERGEN,

Intervenor.

Appearances:

For the Respondent, Contant, Contant, Schuber,
Scherby and Atkins, Esqs.

(Frank M. O'Shea, of Counsel)

For the Petitioner, Loccke & Correia, Esqs.

(Manuel A. Correia, of Counsel)

For the Intervenor, Michael B. Ryan, Esq.

DECISION AND ORDER

On November 19, 1981, P.B.A. Local 134 ("PBA") filed a Petition for Certification of Public Employee Representative seeking to represent a unit of all sheriffs and corrections officers employed by the County of Bergen ("Bergen"). The petition asserted that the Bergen County Sheriff ("Sheriff") is the public employer of the sheriffs and corrections officers. In the alternative, it asserts that even if the County is the employer, the petition should be granted because the proposed unit is composed entirely of "police" employees who should not be included in the existing unit containing "non-police" employees such as District Court and Weights and Measures employees.

The petitioned-for unit is currently part of a larger unit represented in collective negotiations by the Bergen County Law Enforcement Group ("Group"). This Group is composed of the following unions: (1) PBA Local 134, consisting of the sheriffs and corrections officers; (2) PBA Local 203, consisting of the Weights and Measures employees; and (3) F.O.P. Lodge #33, consisting of the District Court Officers/Sergeants-at-Arms.^{1/}

The Sheriff agrees with the petitioner that he is the "public employer" of the petitioned-for unit and he consents to an election in the proposed unit.

The County has intervened. It objects to an election and seeks dismissal of the petition. It argues that it would be inappropriate to "sever" this subunit because the larger existing unit is the most appropriate unit and all the titles within the unit are "police" within the meaning of the Act.

On May 21, 1982, the Director of Representation issued a Notice of Hearing. On February 25, 1983, Hearing Officer Arnold H. Zudick conducted a hearing. The parties stipulated certain facts, presented exhibits, argued orally and filed post-hearing briefs.

On October 28, 1983, the Hearing Officer issued his report and recommended decision. H.O. No. 84-6, 9 NJPER ____ (¶ ____ 1983) (copy attached). He found that the Sheriff and

^{1/} Both PBA Local 203 and F.O.P. Lodge #33 were invited to participate in these proceedings. F.O.P. Lodge #33 did not do so, but PBA Local 203 has filed exceptions to the Hearing Officer's report. See pp. 3-4.

the County are the joint employer of all sheriffs and corrections officers employed in the County, but only the County is the employer of the District Court and Weights and Measures employees. Therefore, he recommended that the petitioned-for unit be severed from the existing unit, and that an election be held to determine the majority representative in the former unit. He further concluded, in the alternative, that the District Court and Weights and Measures employees are not "police" within the meaning of the Act and therefore are prohibited from being represented in a unit with sheriffs and corrections officers who are police employees within the meaning of the Act.

On November 30, 1983, the County filed exceptions. It argues that the Hearing Officer erred in not finding that the County is the sole public employer of the sheriffs and corrections officers. It argues that the joint employer status "would generate serious practical difficulties and complicate the legal relationship between the parties." Specifically, it asserts that conflicts could develop between the County and the Sheriff during negotiations which could lead to inconsistent postures and conflicting final offers during interest arbitration. It also claims that conflicts could develop in attempting to resolve grievances. Thus, it argues that the joint employer concept, as applied in this case, "could lead to strife between the joint employers and could increase rather than diminish employer-employee strife."

On December 6, 1983, PBA 203, the part of the Group currently representing Bergen County Weights and Measures employees,

filed its exceptions. It disagrees with the Hearing Officer's conclusion that weights and measure employees are not "police" within the meaning of the Act.

Pursuant to N.J.A.C. 19:11-8.6, the Commission has transferred this case to itself for appropriate action.

We have reviewed the mostly stipulated record. The Hearing Officer's findings of fact (pp. 3-12) are accurate. We adopt and incorporate them here.

This case requires us to decide who is the public employer of the petitioned-for employees. We conclude, in agreement with the Hearing Officer, that the County and the Sheriff are joint public employers of the sheriffs and corrections officers. We make this finding because the record clearly establishes that the Sheriff and the County each possess independent, distinct, and controlling authority over separate aspects of the employment relation. Therefore, the classification of both entities as the joint public employer of these employees is appropriate and the petitioned-for unit should be found appropriate.

N.J.S.A. 34:13A-3(c) defines employer and public employer as follows:

(c) The term "employer" includes an employer and any person acting, directly or indirectly, on behalf of or in the interest of an employer with the employer's knowledge or ratification, but a labor organization, or any officer or agent thereof, shall be considered an employer only with respect to individuals employed by such organization. This term shall include "public employers" and shall mean the State of New Jersey, or the several counties and municipalities thereof, or any other political subdivision of the State, or a school district, or any special district, or any authority, commission, or board, or any branch or agency of the public service.

In In re Monmouth County Board of Recreation Commissioners, E.D. No. 76-36, 2 NJPER 127 (1976) ("Monmouth County"), the Executive Director, in finding that the County and its Recreation Commission were joint employers, set forth the following relevant factors in determining the identity of the public "employer" under N.J.S.A. 34:13A-3(c):

supervisory control and authority to select, appoint, and pay employees; control over work, appointment, removal authority, duties and salaries within the limits of available appropriation; day to day control of personnel practice, final control of wages, personnel selection; and the right to select the employee, the power to discharge him, and the right to direct both the work to be done and the manner in which such work shall be done.
Id. at 133.

Moreover, the Executive Director noted that:

...joint employer relationships have been found where the indicia of employer attributes also indicate an extensive integration of labor relations programs and where the record demonstrates that effective negotiations on behalf of the employees could not take place without the presence of both governmental entities.
Id.

The Sheriff's authority over the instant employees is extensive and parallels that which existed in Monmouth County. He hires all the law enforcement personnel working in his department and is the Civil Service appointing authority for these employees. He completely directs the workforce and assignment of duties. He is responsible for promoting, evaluating, and disciplining these employees. The Sheriff has control over their equipment. Perhaps most importantly, all these attributes of his authority come from the Legislature, not the County. N.J.S.A. 40A:9-117 provides:

The sheriff shall select and employ the necessary deputies, chief clerks and other personnel. They shall receive such compensation as shall be recommended by the sheriff and approved by the board of chosen freeholders. The annual compensation of the undersheriff shall not exceed 3/4 of the annual compensation of the sheriff. The compensation of the personnel in the office of sheriff shall be paid at the same time and in the same manner as the county officers and employees are paid. The limitations of the salaries set herein shall not be construed to restrict any of said employees from participating in or benefiting from any cost of living bonuses or longevity program provided for or established in the county.^{2/}

Given all the circumstances of this case, we agree with the Hearing Officer that the Sheriff is a public employer of the petitioned-for employees.

But the Sheriff's authority as employer is not complete. He has no power to compensate these employees. That remains with the County. In pertinent part, N.J.S.A. 40A:9-117 provides, that sheriff's employees "shall receive such compensation as shall be recommended by the Sheriff and approved by the governing body." Thus, the County has ultimate control over the compensation for the petitioned-for employees. In fact, the County conducts a budget hearing to scrutinize the Sheriff's recommendations and has exercised its power to deny the Sheriff's funding requests.^{3/}

^{2/} Indeed, the position of Sheriff is established by our Constitution, N.J. Const. (1947), Art. 7, Sect. 2, para. 2, pursuant to which N.J.S.A. 40A:9-117 was enacted.

^{3/} Compare In re Bergen County Prosecutor, P.E.R.C. No. 78-77, 4 NJPER 220 (¶4110 1978), aff'd Bergen Cty. Freeholder Bd. v. Bergen Cty. Pros'r, 172 N.J. Super. 363 (App. Div. 1980), where the County was found not to be an employer of employees in the prosecutor's office because the prosecutor has the statutory authority to submit his budget request to the Assignment Judge in the event it is not approved by the County.

This power to determine compensation is unquestionably one of the most important attributes of an employer and leads us to conclude, under all the circumstances of this case, that the County is also a public employer of the petitioned-for employees.

An analysis of the policy behind the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., supports our joint employer finding on the facts of this case. The linchpin of our Act is set forth in N.J.S.A. 34:13A-5.3. In particular, that section provides that "...the majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances and terms and conditions of employment." The Supreme Court has noted that "[this] viable bargaining process has been recognized by the Legislature in order to produce stability and further the public interest in efficiency in public employment." Bd. of Ed. Woodstown-Pilesgrove Sch. Dist. v. Woodstown-Pilesgrove Ed. Ass'n, 81 N.J. 582, 591 (1980).^{5/} See also In re IFPTE, Local 195 v. State, 88 N.J. 393, 409 (1982). In the context of deciding unit composition questions under N.J.S.A. 34:13A-6(d), our Supreme Court has specifically stressed that our guiding concern must be the establishment of fair and harmonious employer-employee relations in the public service. Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404, 416 (1971). To achieve this goal under all the circumstances of the instant case, we must find that the Sheriff and the County are joint employers and thereby make all mandatorily negotiable aspects of the employment relationship subject to effective negotiations with those governmental

^{5/} Indeed, this policy is of constitutional dimension in our State. N.J. Const. (1947), Art. 1, para. 19.

entities empowered to act as an employer over those aspects.

Our finding of a joint public employer existence here is also supported by the New York^{6/} decision in County of Ulster and Ulster County Sheriff, 3 PERB 3527 (¶3032 1970), aff'd 4 PERB 7099 (¶7015), 37 App. Div. 2nd 437 (3rd Dept. 1971). As the Hearing Officer correctly noted, the Sheriff and the County have the same relationship in New York as they do in New Jersey and what the New York Appellate Division said in that case is applicable here:

The statute is best implemented if the employee's representatives negotiate directly with those who have authority over all the essential terms of employment. In this case, that requires that separate legal entities be named as a single employment unit.^{7/}
[4 PERB at 7100].

The County, in objecting to the Hearing Officer's recommendations, argues that the joint employer concept is unworkable and could lead to conflicts between the Sheriff and the County in interest and grievance arbitration proceedings. We appreciate these concerns and will elaborate upon the finding of a joint employer relationship in order to address and, we hope, assuage them.

The essential point here is that both the County and the Sheriff possess independent authority over various negotiable aspects of the employment relation. Therefore, we have adopted

^{6/} Our Supreme Court has specifically noted that representation decisions under New York's Taylor Act are useful in interpreting our Act in view of "the considerable parallelism between the New York statute and our own." State v. Prof. Assoc. of N.J. Dept. of Ed., 64 N.J. 231, 249-250 (1974).

^{7/} The joint employer concept has also been found to exist in the private sector where, as here, two or more employers exert significant control over the same employees. See, e.g., NLRB v. Browning Ferris Industries, ___ F.2d ___, 111 LRRM 2748, 2753 (3rd Cir. 1982).

the most rational approach to a difficult problem. Effective negotiations can take place only where the authority that has control over the aspects being discussed is a party to the proceeding. Thus, in general, the County has authority over the economic terms and conditions of employment and the Sheriff has authority over what would generally be termed non-economic terms and conditions of employment. It would be futile to have the County alone negotiate on non-economic matters when the Sheriff would in fact control the implementation of any agreement reached; likewise, it would be futile to have the Sheriff alone negotiate over economic items when he has no final authority to enter or implement any agreement reached on these items. Futility in both instances could lead to employer-employee discord.

While we believe that the joint participation of the County and Sheriff is necessary to effective negotiations, we also believe it is equally necessary that the respective spheres of authority of the County and the Sheriff be recognized and honored in the negotiations and/or interest arbitration process. Thus, the County must have preeminent authority and final control over negotiable matters of compensation including, for example, such economic items at interest arbitration proceedings as wages and fringe benefits.^{8/} Similarly, the Sheriff must have preeminent authority and final control over negotiable non-economic matters including, for example, non-economic matters which may affect the day-to-day administration of the jail.

8/ Indeed, the Sheriff has not even claimed such authority.

Given the record before us, we have every reason to expect that the Sheriff and the County, although each invested with independent authority, will in fact cooperate and mutually recognize each party's authority in the interests of achieving stable labor relations. We do not envision a tripartite proceeding.

The County has also objected to the petition because it would result in the fragmentation of an existing unit. It is true that we have a strong preference for broad-based units and that normally it would be inappropriate to split a unit which has a long and stable negotiations history. Thus, in Jefferson Twp. Bd. of Ed., P.E.R.C. No. 61 (1971) ("Jefferson Township"), we said:

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 re-definition simply on a showing that one sub-category of employees enjoyed a community of interest among themselves. Such a 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. (Slip opinion at p. 4).

We believe, however, that this is one of the rare cases where severing a group of employees from an existing unit is clearly appropriate. The employees who seek to withdraw have a unique employment relationship. As already stated, they have a different employer -- the Sheriff -- from the other negotiations unit employees. Since the Sheriff is not the employer of either the weights and measures or district court officers, he would be well within his rights to demand separate negotiations with the County and his employees. We believe that this possibility establishes that the existing relationship is unstable and therefore severance is appropriate under the traditional Jefferson Township standard. Compare County of Orange, 14 PERB 3018, 3019 (New York, 1981).^{9/}

In sum, we hold that the County and Sheriff are joint employers of the sheriffs and corrections officers in Bergen County. Accordingly, these employees should have the opportunity to be represented in a separate negotiations unit. Therefore, in the absence of ensuing recognition of the petitioner as the majority representative of the petitioned-for employees, a secret ballot election will be directed to determine whether these employees wish to be represented by the petitioner or whether they wish no representation.

^{9/} Given this result, it is not necessary to consider whether the weights and measures and district court officers are police within the meaning of the Act. However, we note that district court officers now have the option to become sheriff's officers in the event they meet certain qualifications. N.J.S.A. 40A:9-117.6 and 8.

ORDER

The County of Bergen and the Bergen County Sheriff are the joint public employer of all sheriffs and correction officers employed in Bergen County.

This matter is remanded to the Administrator of Representation for proceedings in accordance with this opinion.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Graves, Hipp, Newbaker and Suskin voted in favor of this decision. None opposed. Commissioner Hartnett was not present.

DATED: Trenton, New Jersey
February 15, 1984
ISSUED: February 16, 1984

STATE OF NEW JERSEY
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In the Matter of

BERGEN COUNTY SHERIFF,

Respondent,

-and-

P.B.A. LOCAL 134,

Docket No. R0-82-113

Petitioner,

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COUNTY OF BERGEN,

Intervenor.

SYNOPSIS

In a Petition for Certification of Public Employee Representative a Hearing Officer of the Public Employment Relations Commission recommends that an election be directed to determine whether or not Sheriff's and Correction Officers wish to be represented by the Petitioner in a separate unit. The Hearing Officer found that the County and the Sheriff were joint public employers of the Sheriff's and Correction Officers and that the petitioned for unit was appropriate. The Hearing Officer also found that District Court Officers (court attendants) and Weight's and Measures employees were inappropriate for inclusion in a unit with the Sheriff's and Correction Officers because they were employed by the County alone, and not by the County/Sheriff, and because they were not police employees within the meaning of the Act.

A Hearing Officer's Report and Recommendations is not a final administrative determination of the Public Employment Relations Commission. The report is submitted to the Director of Representation who reviews the Report, any exceptions thereto filed by the parties and the record, and issues a decision which may adopt, reject or modify the Hearing Officer's findings of fact and/or conclusions of law. The Director's decision is binding upon the parties unless a request for review is filed before the Commission.

H.O. No. 84-6

STATE OF NEW JERSEY
BEFORE A HEARING OFFICER OF THE
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Respondent,

-and-

P.B.A. LOCAL 134,

Docket No. R0-82-113

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COUNTY OF BERGEN,

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Appearances:

For the Respondent, Bergen County Sheriff
Contant, Contant, Schuber, Scherby and Atkins, Esqs.
(Frank M. O'Shea of counsel)

For the Petitioner
Loccke & Correia, Esqs.
(Manuel A. Correia of counsel)

For the Intervenor, County of Bergen
Michael B. Ryan, Esq.

HEARING OFFICER'S
REPORT AND RECOMMENDATIONS

A Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission ("Commission") on November 19, 1981, by P.B.A. Local 134 ("PBA") seeking to represent a unit of all Sheriffs' Officers and Correction Officers employed in Bergen County. The PBA alleged that the Bergen County Sheriff ("Sheriff") is the public employer of the Sheriff's and Correction Officers, and the Sheriff asserts that he is the public employer of

those titles. The County of Bergen ("County"), however, intervened herein and asserted that it is the public employer of those titles.

The Sheriff indicated that he was prepared to consent to an election in the proposed unit, but the County objected to an election and seeks dismissal of the Petition. The County argued that the Sheriff and Correction Officers are already included in a negotiations unit known as the Bergen Law Enforcement Group ("Group") which also presently includes the District Court Officers, and Weights and Measures personnel, both of whom are County employees. ^{1/}

The PBA argued in the alternative that even if the County were the public employer of the Petitioned for titles, that the Petition should go forward because the District Court Officers and the Weights and Measures employees are not police within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). The County argued, however, that those titles were police within the meaning of the Act and that the Group was an appropriate unit, and therefore it continued to refuse to consent to an election.

Since the parties have been unable to agree upon the appropriateness of the petitioned for unit, a question concerning representation exists regarding the instant titles, and the matter is appropriately before the undersigned for Report and Recommendations.

Pursuant to a Notice of Hearing dated May 21, 1982, a hearing was held in this matter on February 25, 1983, in Newark, New Jersey, at which all parties were given the opportunity to examine and

^{1/} The District Court Officers title was formerly referred to as Court Attendant or Sergeant-at-Arms. The Weights and Measures title is actually called the Assistant Superintendent of Weights and Measures.

cross-examine witnesses, present evidence and argue orally. ^{2/} All of the parties filed post hearing briefs that last of which was received on June 9, 1983. ^{3/}

Based upon the entire record in this proceeding the Hearing Officer makes the following:

FINDINGS OF FACT

1. The County of Bergen is a public employer within the meaning of the Act, and is subject to its provisions. ^{4/}

2. PBA Local 134 is an employee representative within the meaning of the Act and is subject to its provisions.

^{2/} The Bergen Law Enforcement Group is actually comprised of three different unions, PBA Local 134, the Petitioner herein, representing the Sheriff's and Correction Officers; PBA Local 203 representing the Weights and Measures personnel; and, FOP Lodge #33 representing the District Court Officers/Sergeant-at-Arms. The representatives of both PBA Local 203 and FOP Lodge #33 were advised of these proceedings and invited to participate. However, neither organization appeared at hearing or tried to participate herein in any manner known to the Hearing Officer.

^{3/} There are several reasons for the delay in the processing of this matter. The delay between the filing of the Petition and the Notice of Hearing is attributed to attempts by the parties to voluntarily settle the matter. An informal conference was conducted on February 8, 1982, and the parties subsequently considered settlement proposals. Settlement, however, was not reached. The delay between the Notice of Hearing and the hearing is attributed to attempts by the parties to stipulate the facts, and because of requests to reschedule the hearing. The Notice of Hearing originally scheduled a pre-hearing for July 23, 1982, and a hearing for July 30, 1982. The pre-hearing took place as scheduled and resulted in a tentative agreement on stipulations of fact. As a result of the stipulations the hearing for July 30 was cancelled. On August 6, 1982 the undersigned mailed copies of the stipulations to the parties. The parties attempted to refine the language in the stipulations but failed to reach agreement. Therefore, on January 12, 1983 the undersigned rescheduled the hearing which occurred on February 25, 1983.

The delay between the hearing and receipt of briefs was attributed to the late receipt of the transcript, and requests by the parties for additional time to submit the briefs.

^{4/} This finding does not necessarily mean that the County is the employer of the titles in question, but only that it is a public employer within the meaning of the Act.

3. The parties stipulated on the record to the following facts:

a. The Sheriff of Bergen County is an elected constitutional official, in Bergen County, as established in Article 7, Section 2 and paragraph 2 of the New Jersey Constitution [of 1948]. Pursuant to N.J.S.A. 40A:9-115, the Sheriff has the authority to appoint or remove all undersheriffs. In addition, pursuant to N.J.S.A. 40A:9-117, the Sheriff has the authority to hire all of his personnel, deputies and clerks. Such authority is exercised within the limits of the operating budget, funded with the Board of Freeholders, and within salary ranges approved by the Board. 5/

b. The Sheriff hires all law enforcement personnel who work in his department, including the petitioned-for employees, and is the Civil Service appointing authority for such employees. The Board must pass a resolution hiring those employees, in order for them to be paid. However, the Board cannot refuse to pass such a resolution, if the money has already been approved in the Sheriff's budget.

5/ N.J.S.A. 40A:9-117 (as amended 1981) is as follows:

The Sheriff shall select and employ the necessary deputies, chief clerks and other personnel. They shall receive such compensation as shall be recommended by the Sheriff and approved by the governing body. The annual compensation of the undersheriff shall not exceed 90% of the annual compensation of the Sheriff. The compensation of the personnel in the Office of Sheriff shall be paid at the same time and in the same manner as the County officers and employees are paid. The limitations of the salaries set herein shall not be construed to restrict any of said employees from participating in or benefiting from any cost of living bonus or longevity program provided for or established in the County.

There are approximately 320 employees employed in the Sheriff's Department.

c. The Sheriff, and the undersheriffs appointed by him, completely direct the work force and assignment of duties of all Sheriff's and Correction's Officers, in Bergen County. In addition, the Sheriff controls the work place and the facilities used by the Sheriff's and Correction's Officers.

d. The Sheriff has total responsibility for all promotions, evaluations, discipline, and terminations, regarding Sheriff's and Correction's Officers, in Bergen County. The Board exercises no authority with respect to any of these functions. 6/

e. Pursuant to N.J.S.A. 30:8-19, the Board ...may take authority of the County jail, in certain emergent situations, but has never done so.

f. The money for the salaries of Sheriff's and Correction's Officers comes from the Board. But the Sheriff has, under his control, certain statutory methods for raising money. Such money or fees are turned over to the County treasurer.

g. The Sheriff, but not the Board, is responsible for the facilities used by the Bergen County Sheriff, as well as for the maintenance and staffing of the facilities and of the supplies used by the Sheriff's office. There are three primary facilities under the Sheriff's control: One, the main jail, within which are the administrative offices of the Sheriff, as well as a smaller jail facility; two, the jail annex, which is a larger jail facility; and three, there's a jail facility located in a section of Bergen Pines Hospital. Although the hospital, itself, is a County facility, the jail portion of that facility is totally

6/ The evidence adduced at hearing shows that it is not entirely accurate to suggest that the County has "no authority" with respect to promotions made by the Sheriff. The Sheriff is actually required to make a recommendation for promotion to the County Personnel Committee which may question him regarding the recommendation. However, the County must pass a resolution hiring or promoting the people or person in question unless the funds for the position have not previously been provided by the County for the position. (Transcript "T" pp. 25, 57-59).

controlled by the Sheriff. Patient care, however, is entirely in the jurisdiction of the hospital. 7/

h. The Sheriff has total control over all the equipment used by the Sheriff's and Correction's Officers, including vehicles, uniforms, weapons, ballistics, communication facilities, identification and training equipment. Except for five vehicles, in a special police package, and several vans, the vehicles used by the Sheriff's department are the same as the standard vehicles used by various County departments. The vehicles used by the Sheriff's department are serviced by County employees, unless the same are leased, rather than owned by the County.

i. The majority of blue collar and white collar employees do not work continuous operations. The hours of employment for most Sheriff's Officers and Correction's Officers differ from the hours of employment for most other County employees. Some County employees at the County hospital, the County police department, the juvenile detention center and the "JINS" shelter, work continuous operations, at eight-hour shifts each day. The jails operate on a continuous rotating shift, 24 hours a day, as do the identification bureau and the jail facility in the Bergen Pines Hospital.

In contrast, the duties of the District Court Officers who, with the Sheriff's and Correction's Officers, and Weights' and Measure's Officers, are currently part of the Bergen County Law Enforcement Group, work Monday to Friday, 9:00 to 5:00, approximately 35 hours a week, and are not subject to call. Whereas, the Sheriff's and Correction's Officers are always subject to being recalled. The hours of employment for Weights' and Measures' employees are generally Monday to Friday, approximately 32 hours per week. 8/

7/ Although the Sheriff has control over the facilities and supplies used by his office, the purchasing of supplies is done through the County. (T. p. 67).

8/ The Sheriff and Correction's Officers work three rotating shifts rather than the traditional 9 to 5 work day of the District Court Officers and Weights' and Measures employees.

j. Sheriff's Officers wear brown uniforms, but a different badge, and are different than other individuals who work in the County. The Sheriff's and Correction's Officers have separate identification cards from other employees who work in the County. The District Court Officers wear a different uniform and badge; and the Weights' and Measures' Officers wear no uniforms.

The Sheriff determines what type of weapon the Sheriff's and Correction's Officers will carry; and they are in power to carry weapons both on and off duty. The Board, and not the Sheriff, determines what type of weapons the District Court Officers can carry; and they may only carry their weapons while on duty, or as ordered by the judge. ^{9/} Weights' and Measures' Officers carry no weapons. The Sheriff's and Correction's Officers have the power to arrest. But neither the District Court Officer or Weights' and Measures' Officer have a similar power.

Finally, all the training of Sheriff's and Correction's Officers is controlled and operated by the Sheriff, and is more extensive than training for District Court Officers. However, the Court system is integrated, and the function in the courtroom of the Sheriff's Officers and the District Court Sergeant-at-Arms is essentially the same. However, Sheriff's Officers guard Superior Court prisoners at all times, when the prisoners are in the courthouse.

k. The Sheriff determines when the Sheriff's and Correction's Officers will take their vacations, and any time an individual must call in sick or on vacation that information must be directed to the Sheriff's Office. All other County employees must report their absences to their respective departments. However, both the Sheriff's employees and County

^{9/} It would be misleading to suggest that District Court Officers are normally required to carry a gun, or are trained to use a gun. The facts show that some District Court Officers have voluntarily received weapon training at the County Police Academy and they have been permitted to carry a weapon while on duty. However, the record also shows that only two or three of approximately ten to sixteen District Court Officers actually carry guns. (T. pp. 45-48, 73, 76, 78-79).

employees have the same number of vacation and sick days allotted to them, because those figures are the same in their respective collective agreements.

The Sheriff keeps his own personnel records, in his own office, including records on vacation and sick leave. Although the checks for Sheriff's and Correction's Officers are County checks, the Sheriff has complete control over his own payroll and authorizes whether an individual, under his control, should be paid. The Sheriff signs all of the personnel forms as the appointing authority for the employees under his control in the manner similar to that of the County prosecutor.

The duties of the Sheriff and his officers are primarily law enforcement, compared to the duties of the District Court Officer which are primarily to provide security in the courtroom, under the direction of the presiding Judge of the District Court which includes handling of District Court prisoners in the District courtrooms. Sheriffs' and Correction's Officers, however, control the prisoners in the jail.

The Sheriff and Correction's Officer must go through regular and extensive police training; whereas, neither the District Court Officer or Weights' and Measures' Officer receive any training, particularly for weapons use. 10/

1. If a Sheriff's or Correction's Officer is sued because of the manner in which they perform their job, the entity to be sued would be the Sheriff, with respect to the following examples: Habeas corpus Civil Rights action; actions in lieu of prerogative writ; and Section 1981 suits. And the Board may also be sued, with respect to those actions. Whereas, a suite concerning a District Court Officer would be directed against the Board of Freeholders.

10/ As stated in note 9, infra, some District Court Officers have received weapons training at the Academy but not police training (T. pp. 73-79). However, none of the Weights' and Measures personnel have received police or weapons training.

m. The vehicles utilized within the Sheriff's department bear the Bergen County Sheriff's insignia, the Sheriff's colors, and are purchased with funds within the Sheriff's budget, though the title for the vehicles may remain within the County's name.

n. The issue raised herein is who is the public employer of the Sheriff's and Correction's Officers, the Board or the Sheriff? If the Board is the employer, a question has been raised as to the appropriateness of the petitioned-for unit. If the Sheriff is the employer, then he consents to an election.

4. The funding for the operation of the Sheriff's department comes from the County. The Sheriff is required to submit a budget request to the County Administrator who reviews it with the Sheriff and then submits a budget recommendation to the County Board of Freeholders ("Board"). The Board conducts a budget hearing and determines the budget allocation for the Sheriff and then gives the Sheriff a detailed listing of his budget. (T. pp. 12-14, 64, 66). Any request by the Sheriff for additional funds must be made to the Board which may grant or deny such requests. The Board apparently has denied such requests by the Sheriff in the past. (T. pp. 15-17).

5. The grievance procedures set forth in all of the collective agreements that have covered the Group (which includes the Sheriff's and Correction Officers) 11/ provide for a second step before the department head which, in this matter, is the Sheriff. The grievance procedures

11/ There have been five collective agreements covering the Group which includes the employees petitioned for herein. Exhibit J-5 covered 1980-81 and is the most recent collective agreement covering the instant employees. Exhibit J-4 covered 1978-79, Exhibit J-3 covered 1976-77, Exhibit J-2 covered 1974-75, and Exhibit J-1 covered 1971. All of these contracts were negotiated by the County and signed by representatives on behalf of the County. Sheriffs have never independently signed or negotiated those contracts.

have further provided for a third step where the decision of the department head may be appealed to the County Administrator. 12/

6. The Group as currently constituted (Sheriff and Correction Officers, District Court Officers, and Weights and Measures personnel) has requested and received interest arbitration, and the County has implemented awards arising therefrom. (T. p. 63). But in order to implement such awards the County has transferred money from other funds into the Sheriff's budget to pay for the award. (T. p. 65). Only the Board, not the Sheriff, has control over the budget to appropriate or transfer funds to pay interest arbitration awards. (T. pp. 63-64). The most recent collective agreement covering the Group, Exhibit J-5, shows that all of the titles involved herein earn approximately the same salary.

7. There are a total of seven Weights' and Measures employees which include the Superintendent, the Deputy Superintendent, and the five individuals involved in the instant Petition known as Assistant County Superintendents. However, there are no para-military ranks for these employees. The duties of the Assistant County Superintendents include checking scales and meters and other weighing and measuring equipment to assure their accuracy, and issuing summonses for violations of the Weights' and Measures laws.

8. The employees currently in the Group belong to different pension systems. The Sheriff's and Correction Officers are included in the Police and Fireman's Retirement System, but the District Court Officers and Weights' and Measures personnel are included in the Public Employee Retirement System. (T. pp. 49, 90).

12/ In J-1 and J-2 the decision of the Department Head could be appealed to the Executive Administrator which apparently was the predecessor title to County Administrator.

9. In 1982 the State enacted N.J.S.A. 40A:9-117.6 and 40A:9-117.8 which provides for the appointment and transfer of court attendants (the District Court Officers herein) to Sheriff Officers providing the attendants met certain requirements. 13/ Those requirements, as set forth

13/ The pertinent part of N.J.S.A. 40A:9-117.6 is as follows:

The Sheriff of each County shall, subject to any personnel policies establish by the governing body of the County, appoint such persons as may be necessary, to the position of Sheriff's Officer, pursuant to the provisions of Title II of the Revised Statutes, where applicable, to perform the duties involved in attending the courts heretofore performed by Court Attendants, or in serving Court processes, or in the investigation and apprehension of violators of the law, or in criminal identifications, or in ballistics, or in any related work which the Sheriff shall, from time to time, prescribe and as shall be determined to be appropriate by the Civil Service Commission.

N.J.S.A. 40A:9-117.8 is as follows:

Every duly appointed employee holding permanent Civil Service status in a title the functions of which encompass the performance of duties set forth in section 1 of this Act, 1/ may apply to the Sheriff for appointment as a Sheriff's Officer within 30 days after the effective date of this Act, and shall be so appointed to the corresponding level Sheriff's Officer title and be granted permanent Civil Service status upon meeting the training qualifications for the position of Sheriff's Officer. Training shall be waived if the applicant has graduated from a police training school or has ten or more years in the position of Court Attendant.

If no application is made, the employee's title shall remain in effect, together with all duties, benefits, privileges and powers pertaining thereto. If application is made and applicant shall fail to meet the qualifications for Sheriff's Officer within a reasonable period as the Civil Service Commission shall prescribe, the employee's title shall remain in effect as if no application had been made.

1/ Section 40A:9-117.6.

in 40A:9-117.8, are that the court attendants meet the regular training qualifications for a Sheriff's Officer position. The training is waived, however, if the individual has served as an attendant for ten or more years. Pursuant to N.J.S.A. 40A:9-117.10, a court attendant appointed to a Sheriff's Officer under these provisions has the same powers as regular Sheriff's Officers and is compensated as recommended by the Sheriff. 14/

The Statement of the Senate Judiciary Committee attached to Senate Bill No. 1021 which resulted in the statutes discussed above indicated that the intent of the Bill was to abolish the court attendant position and include the duties of that title among the duties of a Sheriff's Officer. The court attendants themselves, however, were still required to meet the training qualifications for a Sheriff's Officer absent meeting the ten year waiver provision.

The evidence presented herein suggests that most, if not all, of the District Court Officers (court attendants) lacked the training requirements for a Sheriff's Officer position. 15/

14/ N.J.S.A. 40A:9-117.10 is as follows:

Sheriff's Officers appointed under the provisions of this Act shall have the duties benefits and powers conferred by law on Sheriff's Officers, and their compensation shall be as recommended by the Sheriff and approved by the governing body of the County, pursuant to the budgetary procedures established for the County.

15/ N.J.S.A. 40A:9-117.8 gave court attendants 30 days from the effective date of the Act (which was September 1982) to apply for an appointment to a Sheriff's Officer. There is no indication if any District Court Officers herein applied for a Sheriff's Officer position within the time provided. But that is an immaterial fact herein since under N.J.S.A. 40A:9-117.10 once court attendants become Sheriff's Officers pursuant to 40A:9-117.6 et. seq., they are treated like all other Sheriff's Officers and will be treated as such in this matter.

ANALYSISThe Public Employer Issue

In the stipulated facts the parties framed the primary issue herein as "who is the public employer, the Board or the Sheriff." The parties apparently -- and probably unintentionally -- did not consider a third and very viable alternative, that the Sheriff and the County were joint employers of the Sheriff and Correction Officers. The Act at N.J.S.A. 34:13A-3(c) defines "employer" and "public employer" as follows:

(c) The term "employer" includes an employer and any person acting, directly or indirectly, on behalf of or in the interest of an employer with the employer's knowledge or ratification, but a labor organization, or any officer or agent thereof, shall be considered an employer only with respect to individuals employed by such organization. This term shall include "public employers" and shall mean the State of New Jersey, or the several counties and municipalities thereof, or any other political subdivision of the State, or a school district, or any special district, or any authority, commission, or board, or any branch or agency of the public service.

There is nothing contained in that statute, however, which prevents the finding of a joint public employer. In fact, the New Jersey Supreme Court and this Commission have already developed the concept of joint public employers in this State. See Council of New Jersey State College Locals, NJSFT-AFT/AFL-CIO v. State Board of Higher Education, 91 N.J. 18, 26-27, 8 NJPER 625 (¶ 13299 1982); and In re Monmouth County Board of Recreation Commissioners, E.D. No. 76-36, 2 NJPER 127 (1976).

In determining the public employer herein it is undisputed that the County is already a public employer within the meaning of the Act. The more important question is whether the Sheriff qualifies as

a public employer within the meaning of the Act. The undersigned believes that he does based upon a general application of a variety of statutes and the instant facts. The Sheriff is an elected constitutional officer who is empowered by statute to hire his own employees and who controls virtually all of the aspects of labor relations for those employees. Based primarily upon the statutory authority that he possesses, the Sheriff certainly falls within the terminology of an "authority" or a "branch or agency of the public service."

Finding that the Sheriff qualifies as a public employer, however, is not the same as finding the Sheriff to be the public employer of the petitioned for employees. It is possible that the Sheriff may not, independently, be the public employer of any employees.

The Commission (and/or its designees) have considered the issue of who is the employer, or who is the public employer, on several occasions and has relied upon the rationale developed by the National Labor Relations Board and the Federal Courts. The private sector approach is to determine what, or which, entity actually controls the labor relations of the affected employees. ^{16/} That is, who generally controls the hiring, firing, work schedules, promotions, discipline, evaluations, vacation, establishment of hours, wages, benefits, and control of funding. Generally, the entity controlling those factors is the employer, however, where control of those factors are split

^{16/} See Howard University, 224 NLRB No. 44, 92 LRRM 1249 (1976); We Transport and Town Bus Corp., 214 NLRB No. 91, 87 LRRM 1745 (1974); Herbert Harvey, Inc. v. N.L.R.B., 424 F2nd 777, 72 LRRM 2213 (1969).

between two entities, a joint employer relationship will probably be found to exist. 17/

In application of the policies developed in the private sector the Commission has held in In re Newark Housing Development & Rehabilitation Corp., D.R. No. 80-2, 5 NJPER 328 (¶ 10175 1979); In re Cape May County Guidance Center, D.R. No. 78-19, 3 NJPER 350 (1977); and In re ARA Services, Inc., E.D. No. 76-31, 2 NJPER 112 (1976); that despite some involvement and relationship with a public entity, the labor relations of the affected employees was controlled by a private -- not a public -- employer. Critical to the decision in Newark Housing, supra, and Cape May, supra, was a finding that although a public entity contributed funds to the respective employers, the public entity did not retain primary control over the use of those funds.

In further application of the "control of labor relations test", the Commission, and the courts in this State, have already had the opportunity to choose the public employer from two public entities. In In re Bergen and Mercer County Prosecutor, D.R. No. 78-34, 4 NJPER 105 (¶ 4047), aff'd P.E.R.C. No. 78-77, 4 NJPER 220 (¶ 4110 1978), aff'd 172 N.J. Super, 363, 411 (App. Div. 1980), the Commission and Appellate Division held that the Prosecutor, and not the respective

17/ The NLRB has held that where control over wages and control over work assignment is divided a joint employer relationship exists. See The Greyhound Corp. and Floors, Inc., 153 NLRB 1488, 59 LRRM 1665 (1965); Manpower Inc. and Armour Grocery Products Co., 164 NLRB 287, 65 LRRM 1059 (1967); Jewel Smokeless Coal et. al., 170 NLRB 392, 67 LRRM 1417 (1968).

It is possible in the private sector for the NLRB to deny jurisdiction over an employer if the funding source is public (government) money and the government retains control of how that money is spent.

counties, was the public employer of employees in the Prosecutor's Office. That case is similar to the facts herein because although the Prosecutor controls the labor relations of his own employees, the Prosecutor, like the Sheriff, is required to submit a budget request to the County Administrator who then submits a request to the Board of Freeholders, who then pass on the request. However, a critical difference between that case and the instant matter is that the statute providing for the payment of a prosecutors expenses, N.J.S.A. 2A:158-7, provides that the county assignment judge can overrule a county's appropriation for the prosecutor. ^{18/} In fact, the State Supreme Court has held that the assignment judge, and not the county, has final and conclusive authority to approve expenditures of the county prosecutor beyond the county's appropriation. See In re Bigley, 55 N.J. 53 (1969); and In re Schragger, 58 N.J. 274 (1971).

In a similar matter, In re Mercer County Superintendent of Elections, D.R. No. 78-37, 4 NJPER 147 (¶ 4069), aff'd P.E.R.C. No. 78-78, 4 NJPER 221 (¶ 4111 1978), the Commission held that the Superintendent of Elections, and not the County, was the public employer of employees in the Superintendent's office. The Superintendent controlled the

^{18/} N.J.S.A. 2A:158-7 provides that:

All necessary expenses incurred by the prosecutor for each County in the detection, arrest, indictment and conviction of offenders against the laws shall, upon being certified to by the prosecutor and approved, under his hand, by a judge of the superior court or of the county court for such County, be paid by the county treasurer whenever the same shall be approved by the Board of Chosen Freeholders of such County. The amount or amounts to be expended shall not exceed that amount fixed by the Board of Chosen Freeholders in its regular or emergency appropriation, unless such expenditure is specifically authorized by order of the assignment judge of the superior court for such County.

labor relations of his employees, and although his funding was provided by the County, the statute requiring County funds, N.J.S.A. 19:32-27, did not give the County the discretion to deny the Superintendent's request. 19/

When the Sheriff's funding statute, 40A:9-117, is compared to the prosecutors funding statute, 2A:158-7, or the superintendent of elections funding statute, 19:32-27, there is an apparent and critical difference. The Sheriff's budget is required to be approved by the County, and the instant facts show that the County actually makes the final determination with respect to the Sheriff's budget. In comparison, the counties in this State do not have final authority over the funding for the prosecutors or the superintendents of election. Consequently, the undersigned believes that neither Bergen/Mercer County Prosecutor, supra, nor Mercer County Superintendent of Elections, supra, can be relied upon to establish that the Sheriff alone is the public employer of the petitioned for employees.

19/ N.J.S.A. 19:32-27 provides that:

Each superintendent may appoint a chief deputy, a clerk, a secretary and any other assistants he considers necessary to carry out the provisions of his Title, and may remove the same whenever he deems it necessary. Those so appointed shall not be subject to any of the provisions of Title II, Civil Service, but shall be in the unclassified service. Each superintendent shall fix the salaries of the persons so appointed and such salaries certified to and approved under his hand shall be paid semi-monthly by the county treasurer of the County in which such persons are so engaged. All other necessary expenses incurred in carrying out the provisions of this Title when certified to and approved by the superintendent shall be paid by the county treasurer of the County in which the superintendent shall maintain his office.

The instant facts show conclusively that the Sheriff controls the labor relations of the Sheriff's and Correction Officers, but that the County controls the funding for the Sheriff and has total control over any additional funding that may be necessary for the operation of the Sheriff's Department.

For example, the evidence shows that the County has appropriated additional funds for the Sheriff's budget in order to implement interest arbitration awards. The Sheriff would not independently have the authority to obtain more funds for that purpose, and if the County denied additional funds, the Sheriff might be unable to fully implement interest arbitration awards. Therefore, it is necessary for the County to be a joint employer or co-employer with the Sheriff so that the County is as liable as the Sheriff for the implementation of interest arbitration awards.

The undersigned believes that when such critical elements of an employers control is divided between two viable public entities, a joint public employer relationship exists.

The Commission in In re Monmouth County Board of Recreation Commissioners, supra, has already found a joint employer relationship for some of the same reasons discussed above. In that case the Recreation Commission controlled the employees terms and conditions of employment, but the County had final authority in allocating the appropriations for the Recreation Commission thus resulting in a finding of a joint employer relationship.

Subsequently, in Council of N.J. State College Locals, supra, a matter which did not originate before this Commission, the State Supreme Court found that the State Department of Higher Education was

a joint public employer with the individual State Colleges. The Court found that the Department participated with the Colleges in negotiations, that the Department was named as a party on several collective agreements, that the agreements were signed by someone on behalf of the Department, and that the Department Head (the Chancellor of Higher Education) was the last step in the grievance procedure before arbitration. Many of the elements found relevant in that case exist in the instant matter. For example, the County, and not the Sheriff, has negotiated and signed the agreements that have to date covered the Sheriff's and Correction Officers, and, the County Administrator, and not the Sheriff, is the last step in the grievance procedure before arbitration.

Although there are no other cases in this State specifically dealing with joint public employers, several States have found joint public employers for many of the reasons already set forth above.

In AFSCME v. County of Lancaster Nebraska Division of Public Welfare, 241 N.W. 2d 523, 92 LRRM 3441 (Neb. Sup. Ct. 1976), for example, the Nebraska Supreme Court held that the State and the respective county welfare boards were joint public employers over welfare board employees. In that case the welfare boards controlled the day to day labor relations, but the State controlled the grievance procedure and pay plan. ^{20/} The facts of the instant matter are similar to the

^{20/} Our Commission cited the Nebraska case at Note 22 of In re New Jersey Department of Human Services, P.E.R.C. No. 82-83, 8 NJPER 209 (¶ 13088 1982), but noted that since the parties did not raise a joint public employer issue in that particular case, that it would not decide at that time whether, in New Jersey, the State and the respective county welfare boards were also joint public employers.

(Continued)

Nebraska case to the extent that the County herein is involved in the grievance procedure and controls appropriations needed to implement the pay plan.

In Pennsylvania, the Pennsylvania Labor Relations Board and the Pennsylvania Supreme Court have held that joint public employer relationships exist where employer factors such as supervision and control of funding were divided between two public entities. See generally In re Erie City and County Library, 10 PPER 412 (¶ 10279 1979); In re Borough of Ephrata, 11 PPER 103 (¶ 11055 1980); In re Center Township, 11 PPER 259 (¶ 11155 1980); In re Erie School District, 12 PPER 479 (¶ 12322 1981); and Costigan v. Philadelphia Finance Department Employees Local 696, 462 PA 425, 341 A2d 456 (1975). ^{21/}

But the best case in relationship to the instant matter which supports a joint public employer finding emanated from the New York Public Employment Relations Board and that State's Appellate Division where in County of Ulster and Ulster County Sheriff, 3 PERB 3527 (¶ 3032 1970), aff'd County of Ulster v. P.E.R.C., 4 PERB 7099 (¶ 7015), 37 App. Div. 2nd 437 (3rd Dept. 1971), the New York PERB, with the

^{20/} (Continuation...However, in a new matter filed before the Commission on March 2, 1983, In re New Jersey Department Human Services, Docket No. C0-83-228, the issue of whether the State and the County welfare boards were joint employers was formally raised before the Commission. The Charging Party in that matter sought interim relief relying upon the Nebraska case. However, in In re New Jersey Department Human Services, I.R. No. 83-17, 9 NJPER 353 (¶ 14156 1983), the Hearing Examiner denied interim relief because the Commission had not yet made a policy determination with respect to that issue. Unless the matter is resolved, the Commission will soon be faced with the very issue considered in Nebraska.

^{21/} The Florida Public Employment Relations Commission has also adopted the joint public employer concept when employer factors are shared by two public entities. See In re Broward County School Board, 6 FPER 252 (¶ 11164 1980).

Appellate Division affirming, held that the County and Sheriff were joint employers of the deputy sheriffs. The facts of that case are virtually identical to the facts in the instant matter. The Sheriffs in New York are also elected constitutional officers who have the statutory authority to hire or fire their deputies, assign job duties, make promotions, approve vacations, overtime and work schedules, and, they control discipline and training of the deputy sheriffs. In addition, the appropriation power of the New York counties over the New York sheriffs is virtually the same as the appropriation power of the New Jersey counties over the New Jersey sheriffs. The ability of the New York sheriffs to hire, promote, or approve vacations and overtime, therefore, is limited to or conditioned by the appropriations made by the counties. In affirming that decision the New York

Appellate Division held:

The statute [New York's Taylor law] is best implemented if the employees' representatives negotiate directly with those who have authority over all the essential terms of employment. In this case, that requires that separate legal entities be named as a single employment unit. 4 PERB at p. 7100.

The result in the instant matter should be the same as the result in County of Ulster, supra, for the same reasons set forth therein. The County in this case controls the appropriations which can -- and has -- affect(ed) the Sheriffs' ability to operate his Department. Unless the County and Sheriff are found joint employers herein, the majority representative of the Sheriff's and Correction Officers may find it impossible to effectively negotiate an economic package for the employees or to have an interest arbitration award implemented.

Even the one factual difference between County of Ulster and the instant matter is a factor supporting the need for joint employers herein. In New York, the sheriffs have the sole authority to hear and resolve grievances. However, the instant facts show that the County Administrator and not the Sheriff is the last step of the grievance procedure before arbitration. This factor is just further evidence in support of finding a joint employer relationship herein.

Based upon the above analysis the undersigned recommends that the Commission find that the public employer of the petitioned for employees is the County/Sheriff.

The Appropriate Unit

Having found that the public employer of the petitioned for employees is the County/Sheriff rather than the County independently, an election should be directed in the petitioned for unit. The facts show that the District Court Officers and the Weights' and Measures employees are employees of the County, not employees of the County/Sheriff. Consequently, the County/Sheriff is a different public employer from the County, and a petition for only its (County/Sheriff) employees is appropriate.

In fact, even if the County independently was the employer of the Sheriff's and Correction Officers, the undersigned would still recommend the direction of an election in the petitioned for unit. 22/

22/ The undersigned cannot assume that the Commission will adopt the recommended joint employer relationship herein. In the event that it does not, the discussion of the appropriate unit will be of greater importance. The parties should be aware, however, that if the Commission adopts the joint employer analysis it may choose not to pass upon the other issue(s) discussed in the Appropriate Unit analysis.

The undersigned finds that neither the District Court Officers nor the Weights' and Measures employees are police within the meaning of the Act and are thus prohibited from being represented in a unit with Sheriff's and Correction Officers who are police employees within the meaning of the Act. ^{23/}

The definition of police (law enforcement officers) within the meaning of the Act has been provided by the courts as those law enforcement officers "authorized to make detections, apprehensions and arrests." See County of Gloucester v. P.E.R.C. and Teamsters Local Union No. 676, 107 N.J. Super., 150 (App. Div. 1969), aff'd 55 N.J. 333 (1970). Our Act at N.J.S.A. 34:13A-15 specifically provides that sheriff's officers are police employees, and the Court in County of Gloucester, supra, held that correction officers are also police within the meaning of the Act. ^{24/}

The facts, however, do not support a finding that the District Court Officers are police or law enforcement officers as defined in County of Gloucester. The parties herein stipulated that the District Court Officers do not have the power of arrest and they are not involved in the detection or apprehending of criminals. Moreover, the facts show that, as a whole, the District Court Officers do not receive police training, that most of them have had no weapons training, and that they are not included in the Police and Fireman's Retirement System.

^{23/} The Act at N.J.S.A. 34:13A-5.3 has been interpreted as prohibiting the formation of employee units of police and non-police.

^{24/} In addition, N.J.S.A. 2A:154-4 specifically gives Correction Officers the power of detection, apprehension, and arrest.

Similarly, the Weights' and Measures employees do not have the power of arrest, detection, and apprehension, nor do they have uniforms or badges, receive police or weapons training, and they are not in the Police Retirement System. More importantly, the Commission has already held in In re Sussex County, P.E.R.C. No. 76-14, 2 NJPER 1 (1976), that weights' and measures employees are not police within the meaning of the Act. ^{25/}

In accordance with the above analysis, and noting that the County/Sheriff and not the County alone is the public employer of the petitioned for employees, the undersigned recommends that a secret ballot election be directed for the Sheriff's and Correction's Officers as employees of the County/Sheriff to determine whether they wish to be represented by the Petitioner for purposes of collective negotiations, or whether they wish no representation.

RECOMMENDATIONS

Based upon the foregoing discussion, the undersigned Hearing Officer recommends the following:

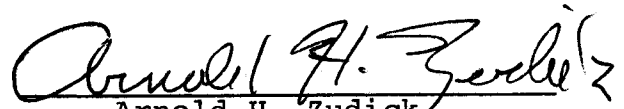
1. That the joint employer, County/Sheriff, is the public employer of all Sheriff's and Correction Officers employed in Bergen County.

^{25/} Of particular importance in the instant case is In re Bergen County, P.E.R.C. No. 85, 1 NJPER 9 (1975), wherein the Commission held that a countywide law enforcement unit which included the instant Weight's and Measures employees and the Sergeant-at-Arms (the title preceding the District Court Officers) was appropriate. The Commission in Sussex County, supra, Note 6, however, indicated that there was no dispute in the Bergen County, supra, case as to the status of the Weight's and Measures employees, and the undersigned notes that no dispute was raised therein concerning the status of the Sergeant-at-Arms. Consequently, Bergen County cannot be read as having found the Weight's and Measures employees or the District Court Officers as police within the meaning of the Act.

2. That neither the District Court Officers nor the Assistant County Superintendents (Weight's and Measures employees) are police within the meaning of the Act and are therefore inappropriate for inclusion in a negotiations unit including the Sheriff's and Correction Officers. 26/

3. That a secret ballot election be directed to permit Sheriff's and Correction Officers to vote as to whether they wish to be represented by the Petitioner in a separate unit, or whether they wish no representation.

Respectfully Submitted


Arnold H. Zudick
Hearing Officer

DATED: October 28, 1983
Trenton, New Jersey

26/ The parties are reminded that if the Director of Representation and/or the Commission adopts the undersigned's recommendation that the County/Sheriff is the joint employer of the petitioned for employees and directs an election for those employees, he/it may find it unnecessary to rule upon the recommendation regarding the status of the District Court Officers and the Weight's and Measures employees. If the undersigned's recommendation regarding those employees is not formally adopted, then the County must decide whether to continue treating those employees as police within the meaning of the Act thereby permitting them to go to interest arbitration and to remain in a separate unit, or whether to seek adoption of the recommendation regarding those employees in this, or a subsequent proceeding.