

P.E.R.C. NO. 93-118

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

GLOUCESTER COUNTY SHERIFF,

Public Employer,

-and-

FRATERNAL ORDER OF POLICE
LODGE #103,

Docket No. RO-93-49

Petitioner,

-and-

FRATERNAL ORDER OF POLICE
LODGE #97,

Intervenor.

SYNOPSIS

The Public Employment Relations Commission denies a request for review of D.R. No. 93-17, 19 NJPER 183 (¶24090 1993) filed by Fraternal Order of Police Lodge #103. In that decision, the Director of Representation dismissed a petition seeking to sever sheriff's officers and sheriff's sergeants employed by the Gloucester County Sheriff from an existing unit of all sheriff's officers, sheriff's sergeants, correction officers and correction sergeants. The existing unit is represented by Fraternal Order of Police Lodge #97. The Employer and Lodge #97 opposed severance. The Commission finds that even assuming all of Lodge #103's allegations are true, severance would not be warranted. There is some evidence of the type of competing interests that sometimes occur within negotiations units. But there is no evidence that these intraunit disputes disrupted labor-management relations. Similarly, even if it were shown that Lodge #97 had breached its duty of fair representation, individual and isolated breaches of that duty would not mean that sheriff's officers and sergeants should be severed from a broad-based unit.

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Appearances:

For the Public Employer, Gerald L. Dorf, P.C., attorneys
(Gerald L. Dorf, of counsel)

For the Petitioner, John Morelli, attorneys (John Morelli,
of counsel)

For the Intervenor, Schwartz, Simon & Edelstein, attorneys
(Joel G. Scharff, of counsel)

DECISION AND ORDER

On March 26, 1993, Fraternal Order of Police Lodge #103 requested review of D.R. No. 93-17, 19 NJPER 183 (¶24090 1993). In that decision, the Director of Representation dismissed a petition seeking to sever sheriff's officers and sheriff's sergeants employed by the Gloucester County Sheriff from an existing unit of all sheriff's officers, sheriff's sergeants, correction officers and

correction sergeants. The existing unit is represented by Fraternal Order of Police Lodge #97. The employer and Lodge #97 oppose severance.

Requests for review will be granted only for compelling reasons. N.J.A.C. 19:11-8.2 sets forth the possible grounds:

1. That a substantial question of law is raised concerning the interpretation or administration of the act or these rules;
2. That the director of representation's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of the party seeking review;
3. That the conduct of the hearing or any ruling made in connection with the proceeding may have resulted in prejudicial error; and/or
4. That there are compelling reasons for reconsideration of an important commission rule or policy.

None of these grounds is present here.

In Jefferson Tp. Bd. of Ed., P.E.R.C. No. 61, NJPER Supp. 248 (¶61 1971), we expressed our reluctance to disturb an existing negotiations relationship absent a showing that the relationship is unstable or that the incumbent organization has not provided responsible representation. Id. at 249; see also UMDNJ, P.E.R.C. No. 90-112, 16 NJPER 385 (¶21156 1990); Mercer Cty., P.E.R.C. No. 89-112, 15 NJPER 277 (¶20121 1989); Sussex-Wantage Bd. of Ed., P.E.R.C. No. 88-113, 14 NJPER 346 (¶19133 1988); Middletown Tp. Bd. of Ed., P.E.R.C. No. 88-44, 13 NJPER 841 (¶18322 1987); Passaic Cty.

Tech. and Voc. H.S. Bd. of Ed., P.E.R.C. No. 87-73, 13 NJPER 63

(¶18026 1986). Lodge #103 argues that the Director wrongly applied the Jefferson standards in finding no evidence of unit instability and in not addressing its evidence of irresponsible representation.

Lodge #103 claims that Lodge #97 is dominated by supervisory personnel. Yet since Lodge #97's founding in 1982, its presidents have been a sheriff's officer (1982-1984); a correction officer (1984-1985); a correction officer (1985-1986); a sheriff's officer (1986-1987); and a correction lieutenant (1987 to present). Lodge #103 contends that a sheriff's officer was disciplined for filing a grievance on safety issues. In that case, a correction superior who was Lodge #97's treasurer requested an official investigation as to why certain officers went outside the department to see whether a weapon was safe. There is no evidence that any officers were disciplined for filing a grievance. Lodge #103 also contends that a correction officer was disciplined by a correction superior seeking union office. The correction officer was represented by a sheriff's officer and former president of Lodge #97. There is no allegation that superior officers in Local #97 interfered with the officer's defense. Finally, Lodge #103 contends that a seniority list of correction and sheriff's officers for hospital duty was disregarded on at least three occasions by a correction superior who is president of Local #97. An affidavit from a sheriff's officer indicates that a grievance was filed, but it does not indicate the outcome or that any superior officers interfered with the processing of the grievance.

Lodge #103 also claims that Lodge #97 has not provided responsible representation. It alleges that Lodge #97's negotiations team, made up of two correction officers and one sheriff's officer, fraudulently represented certain issues concerning the 1987 to 1989 contract and then brought charges against sheriff's officers who challenged those misrepresentations. Certain officers believed that the negotiations committee misrepresented a proposed settlement and misled unit members into ratifying the contract. Those officers urged the freeholders not to ratify the contract, requested a re-vote, held an "unsanctioned" union meeting where a vote was taken to remove Lodge #97 officers, and brought internal charges against Lodge #97 officers which were dismissed as untimely. The leaders of the protest were then brought up on charges by Lodge #97's president. The State Fraternal Order of Police mediated the dispute and asked members to abide by the contract and drop charges against individual members. Lodge #103 also alleges that Lodge #97 negotiated various benefits for correction officers only. One of its supporting affidavits notes that correction officers and not sheriff's officers have received safety glasses and ear protective devices and were issued other safety equipment for use on the firing range. It does not indicate, however, that sheriff's officers have not been provided with access to all necessary safety equipment. An affidavit from the sheriff indicates that all sheriff's officers and correction officers are issued similar protective equipment for the firing range. Lodge #103 also alleges that Lodge #97 excluded sheriff's officers from

negotiations teams. According to one of Lodge #103's affidavits, the original negotiations team for the 1990-1992 contract was three correction officers but when sheriff's officers objected, a sheriff's officer was added to the team. Lodge #103 also alleges that Lodge #97 permitted correction officers to work out-of-title at the expense of sheriff's officers. A supporting affidavit claims that a correction officer is working out of title as a training officer for sheriff's officers; correction officers have been allowed to use K-9 dogs and drug dogs which is not within the scope of their employment; and a correction officer has been assigned as personal guard to the Assignment Judge which is outside his job duties. According to the employer, a correction superior is assigned to train both correction and sheriff's officers and he is in a separate unit and covered by a separate collective negotiations agreement; a K-9 dog is assigned to County jail to patrol the prison perimeter and therefore use of K-9 dogs is within the scope of duties of correction officers (the drug dog was not needed and retired); and although a correction officer was assigned as a driver for the Assignment Judge, a sheriff's investigator has since been assigned. Finally, Lodge #103 alleges that Lodge #97 has failed to inform unit members concerning its financial status and failed to process grievances. There are no specific allegations that these alleged failures were discriminatorily directed at sheriff's officers.

Lodge #103 asserts that the Director noted its allegations but failed to find facts concerning them. We agree with Lodge #103 that the Director did not find as a fact each and every point in its supporting affidavits. But we do not agree that he had to. Nor do we agree that his decision on a substantial factual issue is clearly erroneous on the record or that any of Lodge #103's rights have been prejudiced. We have reviewed those affidavits. Even assuming all these allegations are true, we do not believe that severance would be warranted. Thus, Lodge #103's request for a hearing to resolve factual disputes must be rejected.

We also find no substantial question of law concerning the interpretation or administration of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. We believe the Director properly addressed the Jefferson standards. There is some evidence of the type of competing interests that sometimes occur within negotiations units. But there is no evidence that these intraunit disputes disrupted labor-management relations.

The Director also correctly found no evidence that Lodge #97 has not responsibly represented sheriff's officers and sergeants. Some of the issues raised concern Lodge #97's representation of the entire unit and do not show favoritism or warrant severance: for example, the alleged failure to disclose financial information and the alleged supervisory domination of the rank-and-file negotiations unit. Others concern isolated allegations of favoritism toward correction officers: for example,

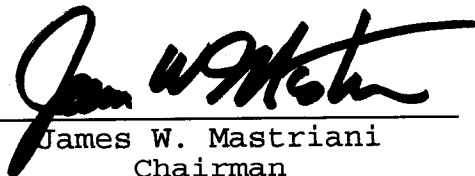
the alleged failure to negotiate comparable overtime opportunities for sheriff's officers. But even if it were shown that Lodge #97 had breached its duty of fair representation, these individual and isolated breaches of that duty would not mean that sheriff's officers and sergeants should be severed from a broad-based unit. Sussex-Wantage; Passaic. We believe that the allegations here are insufficient to warrant a finding that the existing unit is inappropriate.

Absent any other compelling reasons for reconsideration of an important rule or policy, we deny Lodge #103's request for review.

ORDER

Fraternal Order of Police Lodge #103's request for review is denied.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Grandrimo, Regan, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: June 24, 1993
Trenton, New Jersey
ISSUED: June 25, 1993