

P.E.R.C. NO. 99-70

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

OCEAN COUNTY SHERIFF,

Public Employer,

-and-

OCEAN COUNTY SHERIFF'S OFFICERS,
FOP LODGE NO. 135,

Docket No. RO-98-82

Petitioner,

-and-

PBA LOCAL 258,

Intervenor.

OCEAN COUNTY SHERIFF,

Public Employer,

-and-

OCEAN COUNTY SHERIFF'S SUPERIOR
OFFICERS, FOP LODGE NO. 135,

Docket No. RO-98-83

Petitioner,

-and-

PBA LOCAL 258 (SUPERIORS),

Intervenor.

SYNOPSIS

The Public Employment Relations Commission dismisses representation petitions filed by Ocean County Sheriff's Officers, FOP Lodge No. 135 and Ocean County Sheriff's Superior Officers, FOP Lodge No. 135. The FOP seeks to sever sheriff's officers from an existing unit containing corrections officers and represented by PBA Local 258. The FOP also seeks to sever sheriff's superior officers from an existing unit containing corrections superior officers and sheriff's superior officers. The Director of Representation, concluding that the Commission has consistently severed employees from existing units whenever there has been separate employer status, directed that an election be conducted among sheriff's officers and sheriff's superior officers. However, the Commission, on balance, does not believe that the reasons for severing sheriff's officers and sheriff's superior officers from these multi-employer units outweigh the reasons for maintaining the units. There is a strong community of interest between sheriff's and corrections

officers and that fact, added to the long history of multi-employer negotiations, the willingness of the employers and the current majority representatives to continue the present unit structure, and the proliferation of negotiations units that could occur should severance be granted, leads the Commission to hold that the current units remain the appropriate units for collective negotiations.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For Ocean County and the Ocean County Sheriff, Citta,
Holzapfel, Millard, Zabarsky & Leahey, attorneys (Matthew
Leahey, of counsel)

For the Petitioners, Markowitz & Richman, attorneys
(Stephen C. Richman, of counsel)

For the Intervenors, Fox & Fox, attorneys (Stacey
Rosenberg, of counsel)

DECISION

On September 10, 1998, PBA Local 258 requested review of D.R. No. 99-2, 24 NJPER 461 (¶29213 1998). In that decision, the Director of Representation directed that an election be conducted among sheriff's officers employed jointly by the Ocean County Sheriff and Ocean County.^{1/} Sheriff's officers are currently represented by PBA Local 258 in a unit of sheriff's officers and corrections officers. The Director also directed that an election be conducted among sheriff's superior officers employed jointly by the Sheriff and the County.^{2/} Sheriff's superior officers are currently represented by PBA Local 258 (Superiors) in a unit of sheriff's superior officers and corrections superior officers.

Asserting that sheriff's officers are employed by the Sheriff while corrections officers are employed by the County, the FOP sought to sever sheriff's officers from their existing units containing corrections officers.^{3/} The PBA opposed severance,

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- ^{1/} Employees would choose to be represented for purposes of collective negotiations by petitioner Ocean County Sheriff's Officers, FOP Lodge No. 135; intervenor Policemen's Benevolent Association, Local 258; or no representative.
 - ^{2/} Employees would choose to be represented for purposes of collective negotiations by petitioner Ocean County Sheriff's Superior Officers, FOP Lodge No. 135; intervenor Policemen's Benevolent Association, Local 258 (Superiors); or no representative.
 - ^{3/} For convenience, our use of the terms sheriff's and corrections officers will encompass the respective superior officers; PBA and FOP will encompass both intervenors and petitioners, respectively.

asserting that there was no evidence of unit instability or irresponsible representation.

The County and the Sheriff took no position on the petitions or the appropriate unit question. They assert that the warden is responsible for the County correctional facility and its corrections officers' staffing levels and assignments; monitors overtime; selects officers' uniforms; and participates in the evaluation process. They assert that the Sheriff is responsible for sheriff's officers' staffing levels and assignments; monitors overtime; selects their uniforms; and participates in the evaluation process. Final authority over budgetary matters and certain terms and conditions of employment, such as promotions, rests with the County.

Applying the relevant statutory definitions and case law, the Director found that the County is the sole employer of corrections officers; the Sheriff has no statutory or de facto control over their terms and conditions of employment. As for the sheriff's officers, the Director found that the County and the Sheriff are joint employers. Concluding that we have consistently severed employees from existing units whenever we found separate employer status, he directed that an election be conducted among sheriff's officers.

The PBA disagrees. It asserts that the County is the common employer of both sheriff's officers and corrections officers and that the County has final authority to decide all budgetary

issues, compensation, benefits and critical personnel issues including grievances, appointments, promotions and layoffs. In the alternative, the PBA asserts that even if the County and Sheriff are separate employers, a multi-employer negotiations unit has existed since at least 1984 and should not be disturbed. The FOP asserts that the Director's decision is grounded in Commission precedent.

The Chair granted review and we granted oral argument to evaluate two PBA arguments. The first is that our precedents decline to sever sheriff's officers from negotiations units with corrections officers. The second is that even if we assume the County and Sheriff are separate employers, the multi-employer negotiations unit should not be disturbed.

The Director of Representation conducted an investigation and found facts based on that investigation. We incorporate his findings (D.R. at 5-10). Based on these findings, we agree with the Director that the County is the sole employer of the corrections officers and that the County and the Sheriff are joint employers of the sheriff's officers.^{4/}

The New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., empowers us to resolve questions concerning

^{4/} The PBA argues that the Director failed to consider the regular interaction and similar and interrelated duties and functions performed by sheriff's officers and corrections officers at the direction of the Sheriff. Assuming the PBA's examples to be true, we nevertheless find that the Sheriff is not the employer of the corrections officers.

representation of public employees by conducting a secret ballot election or utilizing any other appropriate and suitable method designed to ascertain the free choice of the employees. N.J.S.A. 34:13A-6d. We are to decide in each instance which unit of employees is appropriate for collective negotiations. Ibid. The negotiations unit shall be defined with due regard for the community of interest among the employees concerned, but the Commission shall not intervene in matters of unit definition except in the event of a dispute. N.J.S.A. 34:13A-5.3.

We begin with a brief discussion of multi-employer negotiations. Multi-employer bargaining -- that is, bargaining between a union or unions and a group of employers -- has existed in the private sector for over 90 years. Hardin, The Developing Labor Law, 508 (3d ed. 1992). Although the Wagner Act, 29 U.S.C. §141 et seq., did not explicitly authorize the National Labor Relations Board to find multi-employer units appropriate, the Board and the Supreme Court early on construed that Act to allow for multi-employer units. Shipowners' Ass'n of the Pac. Coast, 7 NLRB 1002, 1024-25, 2 LRRM 377 (1938), rev. den. sub. nom. AFL v. NLRB, 103 F.2d 933, 4 LRRM 78 (D.C. Cir. 1939), aff'd 308 U.S. 401, 5 LRRM 670 (1940). Other public sector jurisdictions permit consensual multi-employer bargaining. See, e.g., Orange Cty., 14 PERB ¶3012 (NY 1981) (permitting multi-employer unit where the several public employers and their employees' representative agree to unit); INS and AFGE, 16 FLRA 80 (1984) (discussing circumstances under which

party to multi-employer bargaining arrangement may withdraw from that arrangement). We are not aware of any jurisdiction that compels the formation of multi-employer units where either employers or majority representatives object.

Multi-employer negotiations is consistent with the concept of broad-based negotiations units. This agency and the courts favor broad-based units as a means of promoting the legislative desire for labor relations stability. State v. Prof. Ass'n of New Jersey Dept. of Ed., 64 N.J. 231 (1974). Accordingly, we believe that a multi-employer unit may be appropriate where the different employers and employee representatives agree to such a unit.

The PBA has represented sheriff's officers and corrections officers in a combined unit for many years. There is no evidence of unit instability or irresponsible representation. Such evidence has long been needed to sever a group of employees from an existing negotiations unit. Jefferson Tp., P.E.R.C No. 61, NJPER Supp. 246 (¶61 1971).

But this is not a typical severance case, so our normal precedents on severance do not control. This case involves a multi-employer unit. Complicating matters, the employers overlap. The County is the employer of one group of employees and the County and Sheriff are joint employers of the other group of employees. Given the existence of this multi-employer unit, this case presents us with the task of balancing the employers' interests in negotiating separately with their own employees, the employees'

interests in self-organization and freedom of choice, and the public interest in labor relations stability. We must decide whether to give controlling weight to the history of collective negotiations between the PBA and the County and Sheriff in the face of a petition seeking to represent separately sheriff's officers jointly employed by the County and the Sheriff.

In the private sector, neither an employer nor a union may effectively withdraw from a duly established multi-employer bargaining relationship except upon adequate written notice given prior to the date set by the contract for modification, or the agreed-upon date to begin multi-employer negotiations. Retail Associates, 120 NLRB No. 66, 41 LRRM 1502, suppl. dec. 42 LRRM 1119 (1958). Severance of employees of one employer from a multi-employer bargaining unit will be permitted only where other factors outweigh a historical pattern of multi-employer bargaining. See, e.g., Maramount Corp., 310 NLRB No. 65, 142 LRRM 1265 (1993) (petitions granted seeking separate units of employees of some members of multi-employer association where multi-employer unit was heterogeneous aggregation of distinct groups of employees with widely differing interests and concerns); see also Mo's West, 283 NLRB No. 23, 124 LRRM 1279 (1987) (decertification petitions dismissed because petitioned-for unit not coextensive with existing multi-employer unit).

Some public sector jurisdictions will permit severance in circumstances like this, finding that the unique joint employer

status of the petitioned-for unit constitutes a significant community of interest factor sufficient to warrant the establishment of a separate unit. Orange Cty. We have also permitted severance where employees in the petitioned-for subset of the unit had a different employer than the other employees in the unit and one of the employers consented to the severance.

In Bergen Cty. Sheriff, P.E.R.C. No. 84-98, 10 NJPER 168 (¶15083 1984), where the County and the Sheriff were joint employers of sheriff's officers and corrections officers, we severed those employees from a larger unit that included other County employees. We found that the employees in the petitioned-for unit had a unique employment relationship. They had a different employer, the Sheriff, from the other negotiations unit employees who were employed solely by the County. The Sheriff agreed with the petitioner that he was the employer of the sheriff's officers and corrections officers and consented to an election severing those employees from the unit with other County employees.^{5/} The possibility that the Sheriff (who wanted separate negotiations) could demand separate negotiations with respect to sheriff's officers and corrections officers established that the existing relationship was unstable and severance was therefore appropriate under Jefferson Tp.

^{5/} The record in Bergen Cty. reveals that at hearing, the Sheriff sought to have a separate unit for sheriff's and corrections officers, even if the Sheriff was not deemed to be the employer of those employees (T8).

This case presents facts distinguishable from those in Bergen Cty. and therefore warrants further consideration. In the instant case, neither the County, the Sheriff, nor the majority representative of the employees in the multi-employer unit seek to end the multi-employer negotiations relationship. Thus, the potential instability present in Bergen Cty. is not present here. The Sheriff does not seek separate negotiations for his employees.

Since neither Jefferson Tp. nor Bergen Cty. controls this case, we will proceed to balance the competing factors, beginning with community of interest. The petition seeks an election in a unit of sheriff's officers only. Such a unit is normally appropriate given the strong community of interest likely to exist among employees of the same employer.

Against that community of interest factor, we must balance the community of interest of employees in the historical multi-employer unit. The PBA has represented sheriff's officers for approximately 30 years. In 1984, the County exercised its option to assume control of the County jail and appoint a warden. It also reclassified sheriff's officers assigned to the jail as corrections officers. The Sheriff no longer had authority over the jail and the collective negotiations agreements began to distinguish between the Sheriff's Department and the Department of Corrections. However, most terms and conditions of employment set by the most recent collective negotiations agreement covering these employees apply to

both Sheriff's and corrections officers. Final authority over budgetary matters and certain terms and conditions of employment rests with the County. Contrast Bergen Cty. Freeholder Bd. v. Bergen Cty. Prosecutor, 172 N.J. Super. 411 (App. Div. 1980) (County prosecutor has authority to obtain funding over and above amounts allocated by county). The warden and the Sheriff, in many ways, have parallel and limited authority over the terms and conditions of employment of corrections officers and Sheriff's officers respectively.

We must also factor in the interests of the employers and the majority representative of the employees in the historical unit. Neither the Sheriff, the County, nor the union seeks to withdraw from the multi-employer negotiations relationship. Moreover, granting severance would increase the number of negotiations units by two and open up the possibility of even more units. Any civilian employees of the Sheriff currently represented in a unit with County employees could also petition for separate representation.

Finally, we must consider the desire for labor relations stability. These employees have been in the same unit for approximately 30 years. Before 1984, there was a unit of Sheriff's officers. After the County assumed control of the jail in December 1984, representation continued in a single, multi-employer unit of sheriff's officers and employees in the new title of "corrections officer." There is no evidence of instability or irresponsible representation.

On balance, we do not believe that the reasons for severing sheriff's officers from this multi-employer unit outweigh the reasons for maintaining that unit. On these facts, the community of interest between sheriff's officers and corrections officers is strong. That fact, added to the long history of multi-employer negotiations, the willingness of the employers and the current majority representative to continue the present unit structure, and the proliferation of negotiations units that could occur should severance be granted, leads us to hold that the current unit remains the appropriate unit for collective negotiations. Accordingly, we dismiss the FOP's petitions to represent sheriff's officers and sheriff's superior officers in separate units.

ORDER

The petitions are dismissed.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Boose, Buchanan and Ricci voted in favor of this decision. None opposed. Commissioner Finn abstained from consideration.

DATED: February 25, 1999
Trenton, New Jersey
ISSUED: February 26, 1999