

P.E.R.C. NO. 85

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BERGEN COUNTY BOARD OF CHOSEN FREEHOLDERS,
Public Employer,

and

Docket No. RO-781

BERGEN COUNTY POLICE, P.B.A. LOCAL NO.
49, INC.

Petitioner.

SYNOPSIS

The Commission dismisses a petition filed by Bergen County Police, P.B.A. Local No. 49, Inc. The petitioner, who filed exceptions to the Hearing Officer's Report and Recommendations, is seeking to sever a group of County Police Officers from an existing county-wide unit of law enforcement officers including Policemen, Detectives, Sergeants, Sheriff's Officers, Sergeants-at-Arms, and Weights and Measures Officers.

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DECISION

Pursuant to a Notice of Hearing to resolve a question concerning the representation of certain employees employed by the Bergen County Board of Chosen Freeholders, a hearing was held April 16 and April 25, 1974 before Stephen B. Hunter, Hearing Officer of the Commission, at which all parties were given the opportunity to present evidence, to examine and cross-examine witnesses, and to argue orally. The Hearing Officer issued his Report and Recommendations, attached hereto and made a part hereof, on November 8, 1974. Exceptions to that Report and Recommendations were timely filed December 6, 1974 by the Petitioner in accordance with an approved request for an extension of time within which to file exceptions. While these exceptions do not fully conform to the Commission's Rules in that those portions of the record claimed to support the exceptions have not been identified, we shall, in our discretion, nevertheless consider the substance of those exceptions (See N.J.A.C. 19:14A-4.2). No exceptions were filed by the Public Employer.

The Commission has carefully considered the record, the Hearing Officer's Report and Recommendations, and the exceptions

and, on the basis of the facts in this case, finds:

1. The Bergen County Board of Chosen Freeholders is a Public Employer within the meaning of the Act and is subject to its provisions.

2. Bergen County Police P.B.A. Local No. 49, Inc., is an employee representative within the meaning of the Act and is subject to its provisions.

3. A petition was filed with the Public Employment Relations Commission on March 7, 1974 by the Petitioner seeking certification as the exclusive representative for purposes of collective negotiations for all Patrolmen, Sergeants, Lieutenants, the Captain, the Inspector and the Radio Operator employed by the Bergen County Board of Chosen Freeholders. The Public Employer has declined to recognize the Petitioner as the majority representative of these employees. Therefore, there exists a question concerning the representation of the public employees and the matter is properly before the Commission for decision.

4. The Petitioner asserts that the Hearing Officer should be reversed and that the County Police should be permitted to negotiate collectively as an individual group.

The record indicates that since the spring of 1971, the Public Employer has recognized the Bergen County Law Enforcement Group [Composed of P.B.A. Locals 49, 134, and 203 and the Sergeants-at-Arms, Bergen County District Court] as the exclusive representative of all Policemen, Detectives, Sergeants, Sheriff's Officers, Sergeants-at-Arms and Weights and Measures Officers employed by the Bergen County Board of Chosen Freeholders. There have been

two written agreements between the Public Employer and the Law Enforcement Group covering the aforementioned non-supervisory employees.

Also, the Public Employer has recognized a County Law Enforcement Supervisory Unit composed of PBA Local 134 - Superior Officers, PBA Local 49 - Superior Officers, and the Supervisory Sergeants-at-Armsu. There was an agreement in effect covering these employees during the period between January 1, 1972 and December 31, 1973.

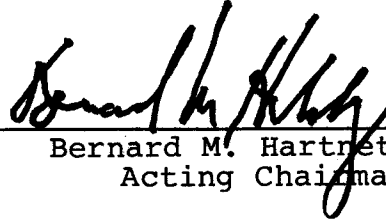
In its exceptions, the Petitioner claims the four elements of the Law Enforcement Group - County Police Officers, Sheriff's Officers, Weights and Measures Officers, and Sergeants-at-Arms - have such dissimilarities as to make the group an ineffective vehicle for negotiations. It is also asserted that "...the groups have such divergent interests, purposes, goals, scopes of operation and areas of responsibility as to create a real conflict of interest which would in fact delay negotiation rather than facilitate bargaining."

5. The above-cited assertions are not supported. The Hearing Officer clearly and specifically considered the functions, duties, and responsibilities of the elements of the Law Enforcement Group. His failure to find a conflict of interest within the Law Enforcement Group which would support the conclusion that a separate negotiating unit should be created by severing the County Police Officers from the existing Law Enforcement Group is supported by our reading of the record. We agree with and adopt the Hearing Officer's findings, conclusions and recommendation and his reasons therefore.

Specifically, we adopt his finding that the petition was a timely petition, that the unit sought is not appropriate, and that there is no claim of unfair representation of the petitioned-for employees by the Law Enforcement Group. We also adopt his finding that there is nothing in the record which casts doubt upon the appropriateness of the presently constituted Bergen County Law Enforcement Unit and the Bergen County Law Enforcement Supervisory Unit.

Therefore, the Commission concludes that the petition should be and is hereby dismissed.^{1/}

BY ORDER OF THE COMMISSION



Bernard M. Hartnett, Jr.
Acting Chairman

DATED: Trenton, New Jersey
March 27, 1975

1/ The Executive Director has not issued a decision in this matter, the Commission having transferred the case to itself for decision pursuant to N.J.A.C. 19:15-3.5.

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49, INC.

Petitioner

Appearances:

For the Public Employer

Edwin C. Eastwood, Jr., Esquire

For the Petitioner

Osterweil and LeBeau, Esquires
By Alfred G. Osterweil, Esquire

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

A petition was filed with the Public Employment Relations Commission on March 7, 1974 by Bergen County Police P.B.A., Local 49, Inc., (hereinafter Local No. 49) which sought to be certified as the exclusive representative for purposes of collective negotiations for all Patrolmen, Sergeants, Lieutenants, the Captain, the Inspector and the Radio Operator employed by the Bergen County Board of Chosen Freeholders (hereinafter the Public Employer). Pursuant to a Notice of Hearing, hearings were held on April 16, 1974 and April 25, 1974 in Newark, New Jersey at which all parties were given an opportunity to examine witnesses, to present evidence and to argue orally. Upon the entire record in this instant proceeding, the Hearing Officer finds:

1. The Bergen County Board of Chosen Freeholders is a Public Employer within the meaning of the New Jersey Employer-Employee Relations Act and is subject to its provisions.

2. Bergen County Police P.B.A. Local No. 49, Inc. is an employee representative within the meaning of the New Jersey Employer-Employee Relations Act.

3. The Public Employer seeks dismissal of the instant petition on the basis that the unit sought by Local No. 49 is not an appropriate unit for the purposes of collective negotiations "with due regard for the community of interest among the employees concerned." N.J.S.A. 34:13A-5.3(7) In addition, the Public Employer seeks dismissal of this instant petition on the basis that the presence of a Commission appointed mediator and the continuing negotiations between the representatives of the Bergen County Board of Chosen Freeholders and the County Law Enforcement Group, consisting of P.B.A. Locals 134 and 203 and the County Sergeants-at-Arms as well as P.B.A. Local 49, barred the timely filing of a petition by Local No. 49.

Therefore, as the parties do not consent to a secret-ballot election in a stipulated appropriate unit, and the question is unresolved as to the disposition of the instant petition, a question concerning the representation of public employees exists and the matter is properly before the Commission.

BACKGROUND

The Public Employer has recognized since the spring of 1971, the Bergen County Law Enforcement Group Composed of P.B.A. Locals 49, 134 and 203 and the Sergeants-at-Arms, Bergen County

District Court⁷ as the sole and exclusive representative of all Policemen, Detectives, Sergeants, Sheriff's Officers, Sergeants-at-Arms and Weights and Measures Officers employed by the Bergen County Board of Chosen Freeholders.

The Public Employer has negotiated two separate written agreements with the Law Enforcement Group covering the terms and conditions of employment for the employees subsumed within the collective negotiating unit, including the aforementioned "non-supervisory" job titles within the Bergen County Police Department,^{1/} and was in the process of negotiating a successor agreement with the Law Enforcement Group when the petition in this instant matter was filed by PBA Local 49 on March 7, 1974.^{2/}

In addition, the Public Employer has recognized apparently since the latter part of 1970 a Bergen County Law Enforcement Supervisory unit ⁷composed of PBA Local 134-Superior Officers, PBA Local 49-Superior Officers and the Supervisory Sergeants-at-Arms-Bergen County District Court⁷ as the sole and exclusive representative, in apposite part, of all Superior Officers employed within the Bergen County Police Department. An agreement had been entered into between the Public Employer and the Bergen County Law Enforcement Supervisory unit covering the period between

^{1/} The second agreement between the Public Employer and the Bergen County Law Enforcement Group was a two year agreement covering the period between January 1, 1972 and December 31, 1973. ⁷Commission Exhibit #2⁷

^{2/} An earlier petition had been filed by PBA Local 49 on November 18, 1970 for the presently petitioned-for unit ⁷Docket No. RO-214⁷. This petition was formally withdrawn by PBA Local 49 on September 1, 1971 several months after PBA Local 49 and the other aforementioned law enforcement groups had agreed to negotiate as one unit with the representatives of the Bergen County Board of Chosen Freeholders.

January 1, 1972 and December 31, 1973.^{3/}

MAIN ISSUES

1. Is a petition a timely petition when filed during the pendency of an active mediation proceeding, invoked pursuant to Section 19:12-1.1, et seq. of the Commission's Rules, involving in part the employees petitioned for?

2. Is the unit sought an appropriate unit for the purposes of collective negotiations "with due regard for the community of interest among the employees concerned? N.J.S.A. 34:13A-5.3(7)

MEDIATION BAR ISSUE-
POSITION OF THE PUBLIC EMPLOYER

The Public Employer asserted that a Notice of Impasse (Docket No. I-1343) had been filed on behalf of the entire Law Enforcement Group on November 13, 1973 and had been signed by Ptl. John W. Weidowke on behalf of PBA Local 49. Thereafter, on December 11, 1973, Carl Kurtzman was appointed as mediator and had met with all the parties involved in this contractual dispute on approximately six separate occasions beginning on January 10, 1974 before the Petition for Certification in this instant matter was filed by Local 49 on March 7, 1974.

The Public Employer thus alleged that as a result of the then pending negotiations with the Law Enforcement Group including PBA Local 49 there was a "mediation bar" in effect at the time of the filing of the above-entitled matter that mandated the dismissal

^{3/} Exhibit C-6.

of this petition.^{4/}

MEDIATION BAR ISSUE-
POSITION OF THE PETITIONER

The Petitioner, Local 49, contended that the filing of their Petition for Certification was in all respects timely in accordance with Section 19:11-1.15 of the Commission's Rules and Regulations.

DISCUSSION OF THE MEDIATION BAR ISSUE

In the matter of Township of Franklin, P.E.R.C. No. 64 (December 3, 1971) the Commission contended with the allegation of the Public Employer that a petition filed by the Petitioner, Local 177, International Brotherhood of Teamsters, should have been dismissed forthwith because of the pendency of a mediation matter involving the Township of Franklin and the incumbent majority representative, the Franklin Township Municipal Employees Association. The Public Employer had argued that it should be protected from petitions for certification during the pendency of a related mediation matter since if petitions were accepted during the mediation process no employer would "take a chance" and move to its ultimate position in the belief that it was achieving a settlement.

The Commission responded in the following fashion in rejecting the Township of Franklin's claim that a mediator's presence barred the timely filing of a petition for certification:

^{4/} At no time did the Public Employer allege that this instant petition was untimely filed pursuant to Section 19:11-1.15 of the Commission's Rules which sets forth the requirements for the timely filing of Petitions for Certification.

It surely cannot be reasonably argued that after the expiration of an agreement, the parties should be protected for however long it takes them to reach a successor agreement on the theory that otherwise one or both parties will be reluctant to "take a chance" and advance to final positions. Such a proposition could negate all opportunity for employees to seek a change in their representation. To deny an otherwise timely petition on this ground would void the legitimate aspirations of employees who have petitioned for representation of their choice in the absence of legal or procedural restrictions on this right. 5/

The undersigned subscribes to the principles delineated above. The petition filed in the above-entitled matter clearly does not run afoul of the Commission's timeliness rules as set forth in N.J.A.C. 19:11-1.15. Given the absence of any legal or procedural bars to the processing of this matter at hand the undersigned finds that the contentions of the Public Employer with reference to a "mediation bar" must be dismissed.

APPROPRIATENESS OF THE UNIT ISSUE -
POSITION OF THE PUBLIC EMPLOYER

It was the contention of the Public Employer that the unit petitioned for by Local 49 was clearly not an appropriate unit for the purposes of collective negotiations given the mandate of Chapter 303, Laws of 1968 and apposite Commission and judicial decisions.

The Public Employer asserted that the only appropriate negotiating units with reference to the Bergen County Police Department were the two units recognized previously, specifically

5/ Township of Franklin, P.E.R.C. No. 64 (December 3, 1971) at page 3.

the Bergen County Law Enforcement Group and the Bergen County Law Enforcement Supervisory Unit.

APPROPRIATENESS OF THE UNIT ISSUE-
POSITION OF THE PETITIONER

The Petitioner asserted that personnel of the Bergen County Police Department, exclusive of the Chief of Police and civilian personnel, should be certified as an independent negotiating unit for purposes of collective negotiations because of "its unique situation and unique problems."

It was also Local 49's position that none of the job classifications petitioned for should be categorized as supervisory in nature, within the intendment of Chapter 303, Laws of 1968, inasmuch as the individuals holding these grades did not have the power to hire, discharge or discipline subordinate employees nor did they have the authority to effectively recommend such personnel actions.^{6/}

DISCUSSION OF THE APPROPRIATENESS OF THE UNIT QUESTION

A. Analysis of Apposite Administrative and Judicial Decisions

It is important to first examine N.J.S.A. 34:13A-5.3 which states in part that, "the negotiating unit shall be defined with due regard for the community of interest among the employees concerned..."^{7/} In light of Commission and

^{6/} See N.J.S.A. 34:13A-5.3(7)

^{7/} It has been generally recognized that factors that are particularly relevant in determining whether a group of public employees possesses said "community of interest" include the extent to which the employees involved have a similarity in training, skills, and level of education; the scope of their job functions and responsibilities; their relative placement within the pertinent supervisory and organizational structure; and an examination of the economic and non-economic benefits accorded to members of this particular grouping.

judicial decisions on the question of the appropriateness of particular petitioned-for collective negotiating units, the critical issue facing the undersigned is whether the petitioned-for members of the Bergen County Police Department possess a sufficient community of interest that will first be responsive to the legislative intent and statutory purpose of Chapter 303, Laws of 1968 which is declared to be, among other things, the promotion of permanent employer-employee peace^{8/} or as the New Jersey Supreme Court phrased it "...[the] establishment and promotion of fair and harmonious employer-employee relations in the public service,"^{9/} and yet also be reflective of the Commission's pronouncements and apposite judicial decisions that assert that an established structure for negotiations should not be altered or upset by the filing of a severance petition except for clear and compelling reasons.

Typically a severance petition is limited to a subgroup of employees who claim to have unique responsibilities and qualities which entitle them to be separately represented. Under the National Labor Relations Act a severance petition will be denied unless it has been established that the employees petitioned for constitute "a functionally distinct group with special interests sufficiently distinguishable from those of the Employer's other employees to warrant severing them from the overall [existing]

^{8/} See N.J.S.A. 34:13A-2

^{9/} Board of Education of the Town of West Orange v. Elizabeth Wilton, et al, 57 N.J. 404 (1971)

unit.^{10/}

The same approach was followed by the New Jersey Public Employment Relations Commission in dismissing a petition by a group of nurses to be severed from a larger unit composed of teachers, nurses, guidance counselors and librarians. The Commission addressed itself to this issue thusly:

The Commission concludes, under all the circumstances of this case, that it is not appropriate to permit the separation of nurses from the contract unit. It is not enough to observe that nurses enjoy a community of interest among themselves. Any group having common qualifications, duties and conditions of employment will meet this test. The issue is whether their interests are so distinct from those with whom they were formerly grouped as to negate a community of interest.... Under all the circumstances, the Commission concludes that the interests of the nurses are so closely related to the educational process that the factors distinguishing nurses from teachers are submerged in recognition of the broader community of interest shared by the two groups. Furthermore, in this case, the nurses have been included with the teachers for purposes of representation for approximately six years. This history of prior representation constitutes an additional factor in determining their community of interest.^{11/}

The Public Employment Relations Commission, in this

^{10/} See for example Kalamazoo Paper Box Corp., 136 NLRB 134 at 139 (1962) The Federal Labor Relations Council in Department of the Navy, Naval Air Station, Corpus Christi, Texas /FLRC No. 72A-24 (1973), GERR Ref. File 21:7079/ has upheld the Assistant Secretary of Labor's so-called Davisville rule concerning the approach taken to severance petitions under Executive Order 11,491. This Davisville rule held that "where the evidence showed that an established, effective and fair collective bargaining relationship is in existence, a separate unit carved out of the existing unit will not be found to be appropriate except in unusual circumstances." /See United States Naval Construction Battalion, Davisville, R.I., A/SLMR No. 8 (1971), GERR. Ref. File 21:4011/ Applying this formula, the Assistant Secretary of Labor has denied virtually every severance request.

^{11/} South Plainfield Board of Education, PERC No. 46 (August 28, 1970) at pages 6 and 7.

same South Plainfield Board of Education matter, addressed itself to a commonly proffered argument in severance matters in the form of a policy statement:

It is axiomatic in labor relations that in determining an appropriate unit or in achieving an agreement, the specific wishes of each group may not always be satisfied. If the desires of each group of employees were to be given controlling weight complete chaos would result since, in any appropriate unit, there are groups whose interests are of some variance to the total complement of the unit and there are employees or categories of employees who do not want the designated representatives to represent them for purposes of collective negotiations... Were all such groups whose needs were not met permitted to obtain separate representation or none at all, the concepts of an appropriate unit for collective negotiations and the exclusivity of majority representation would soon disappear to be replaced by individual or group dealings. Whether this unit is one established by this Commission or is one agreed upon by the parties to a contract is not material providing it is basically an appropriate unit. Thus, where as here, the parties to a contract have agreed upon an appropriate unit without a reservation, the existence of some dissatisfaction by numbers of the unit will not constitute a basis to separate or sever a dissatisfied group from an appropriate unit.^{12/}

In a later consolidated matter, Jefferson Township Board of Education, et al., P.E.R.C. No. 61 (October 22, 1971), the Public Employment Relations Commission dismissed the petition of Local 866, a/w International Brotherhood of Teamsters, who sought to represent all bus drivers employed by the Jefferson Township Board of Education and the petition of the American Federation of State, County and Municipal Employees, AFL-CIO who sought to represent all clerical, custodial and maintenance employees, cafeteria

^{12/} South Plainfield Board of Education at pages 5 and 6.

workers, and head custodians employed by the Board of Education where the Jefferson Township Education Association had represented all the employees sought by the Teamsters and A.F.S.C.M.E. as well as teachers, department heads, specialists and nurses in a single negotiating unit.^{13/}

The Commission analyzed all the arguments proposed by the apposite parties and concluded thusly:

There is no evidence nor is there even a contention that the Association in any way defaulted on its statutory obligation to be "responsible for representing the interests of all such unit employees without discrimination and without regard to employee organization membership." N.J.S.A. 34:13A-5.3 There is no claim that the Association did not provide effective and fair representation to all employees in the unit. In fact, as described above, the record indicates that the Association did make a responsible effort to represent all elements in the negotiating unit.^{14/}

The Commission in the Jefferson Township matter reconciled that language within Chapter 303, Laws of 1968 that "the negotiating unit shall be defined with due regard for the community of interest among the employees concerned" N.J.S.A. 34:13A-5.3 with the legislative intent and statutory purpose of this statute, hereinbefore discussed, in the following way:

The underlying question is a policy one: assuming without deciding that a community of interest exists for the units sought, should that consideration prevail and be permitted to disturb the existing relationship in the absence of a showing that such relationship

^{13/} Contracts between the Board and the Association covering the employees in the overall unit were in effect from July 1, 1969 to June 30, 1970 and for July 1, 1970 to June 30, 1971.

^{14/} Jefferson Township Board of Education, page 3.

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.

Here we have a unit created by recognition, not demonstrated to be inappropriate, covered by two successive agreements, and represented by an organization not shown to have provided less than responsible representation. Under these circumstances, the Commission is not prepared to upset that relationship on the single premise that bus drivers enjoy a variety of common interests. The Commission concludes that the unit/s sought are not appropriate for collective negotiations under these circumstances.^{15/}

The aforementioned Commission decisions on the topic of severance petitions are also illustrative of numerous Commission decisions that have asserted that negotiating units in the public sector should be organized along broad-based functional lines rather than by distinct occupational groupings and thus should be larger and less fragmented than industrial units have been in the private sector.^{16/}

Cogent reasons for this policy have been advanced by the Commission. The Commission has found that there is an "obligation implicit in the concept of Civil Service to insure equality of

^{15/} Jefferson Township Board of Education at page 4.

^{16/} See, for example, State of New Jersey (Neuro-Psychiatric Institute, et al), P.E.R.C. No. 50 (1971), Board of Chosen Freeholders of the County of Burlington, P.E.R.C. No. 58 (1971), Bergen County Board of Chosen Freeholders, P.E.R.C. No. 69 (1972), and, especially State of New Jersey (Prof. Assoc. of N.J., Dept. of Ed., et al.), P.E.R.C. No. 68 (1972).

employment opportunity and uniformity of treatment once employed, and in consequence of that obligation, to insure the basic consistency of terms and conditions of employment...for employees engaged in essentially like functions..." (Emphasis mine)^{17/}

Therefore it has been reasoned that it would be impractical and disruptive to negotiate changes in otherwise essentially uniform conditions of employment on a piecemeal basis whereby a single public employer could be obligated to deal with a multiplicity of collective negotiating units of public employees composed of individuals who possess similar skills and training and who perform functionally related services.

A second important factor relied upon by the Commission in its rejection of separate collective negotiating units organized primarily along occupational lines concerns an essential objective of Chapter 303, Laws of 1968 - discussed hereinbefore - the promotion of employer-employee peace and the protection of the public interest.^{18/} The Commission has carefully reasoned that if unit parameters were dictated by the desires of certain employees to be represented along occupational lines rather than broad-based functional lines, the statute's objective would be jeopardized as a consequence of the multiplicity of units that would thus be organized. A large number of negotiating units within the public sector would unnecessarily encumber the entire negotiations process by encouraging wide-spread whipsawing; would mandate the hiring of additional management personnel to handle "simultaneous negotiations"

^{17/} State of New Jersey (Neuro-Psychiatric Institute, et al), P.E.R.C. No. 50 at page 10.

^{18/} N.J.S.A. 34:13A-2.

with a myriad of employee organizations; and, in general, would force the taxpayer to bear the brunt of the spiraling costs involved.^{19/}

The New Jersey Supreme Court in the recently rendered decision State of New Jersey v. Professional Association of New Jersey Department of Education, et al, 64 N.J. 231 (1974) affirmed the Commission's determination in State of New Jersey, et al, P.E.R.C. No. 68 (May 23, 1972) that one all-inclusive unit of professional employees^{20/} was the statutory optimum and agreed that

^{19/} Commentators in this field almost unanimously agree with the Commission's position on collective negotiating units in the public sector. See in this regard the following: Report of Task Force on State and Local Government Labor Relations, 1967 Executive Committee - National Governor's Conference (Library of Congress Catalog 67-31610); Shaw and Clark, "Determination of Appropriate Bargaining Units in the Public Sector: Legal and Practical Problems" 51 Oregon Law Review 151 (1971); Edwards, "The Developing Labor Relations Law in the Public Sector" 10 Duquesne Law Review 357 (1972); Sullivan, "Appropriate Unit Determinations in Public Employee Collective Bargaining," 19 Mercer L. Review 402 (1968); Rock, "The Appropriate Unit Question in the Public Service: The Problem of Proliferation" 67 Mich. L. Rev. 1001 (1969); and Anderson, "Public Employee Collective Bargaining: the Changing of the Establishment", 7 Wake Forest L. Review 175 (1971).

Recent legislation and judicial decisions have sought to avoid the undue fragmentation of negotiating units in the public sector. See, for example, Executive Order 11491 Section 10(b), 5 U.S.C.A. Section 7301 (Supp. 1973); N.Y. Civil Service Law Section 207 ("Taylor Law") (McKinney); Pa. Stat. Ann. Title 43 Section 1101.604(1) (ii) (Supp. 1973); Kansas Stat. Ann. Section 75-4327(e) (Supp. 1972); and Hawaii Rev. Laws Section 89-1 et seq., Section 89-6 (Supp. 1972).

Also see in this regard the landmark decision State of New Jersey v. Professional Association of New Jersey Department of Education, et al, 64 N. J. 231 (1974) and also Civil Service Employees Association v. Helsby 303 N. Y. S. 2d 690 (1969) affirming the opinion of the Appellate Division, 300 N.Y.S. 2d 424 (1969).

^{20/} This unit is composed of well over 7,000 employees in over 600 separate job classifications including titles as diverse as Senior Civil Engineer, Resident Chaplain, Rehabilitation Counselor and Senior Seed Analyst.

the two petitioned-for professional units of registered nurses and professional educational employees in the Department of Education and of Institutions and Agencies, composed of 800 employees and 1,200 individuals respectively, should be dismissed as being inappropriate.

In emphasizing that the Commission was under a duty to make a determination as to the most appropriate negotiating unit not merely an appropriate unit, in deference to the clear import of Chapter 303, Laws of 1968, the New Jersey Supreme Court re-affirmed the substance and rationale of the Commission's decisions concerning, in general, the concept of broad-based collective negotiating units organized along functional lines and, more specifically, the issue of severance petitions.^{21/}

B. Analysis of this Instant Matter Involving the Bergen County Police Department in Light of the Apposite Administrative and Judicial Decisions

The undersigned Hearing Officer finds upon complete examination of the record and exhibits and pertinent administrative and judicial decisions that the unit sought by Local No. 49 is not an appropriate unit for purposes of collective negotiations.

The Petitioner has failed to support its thesis that the Bergen County Police Department constitutes a functionally distinct group of county employees sufficiently distinguishable from the rest of the public safety officers or law enforcement personnel included within either the Bergen County Law Enforcement

21/ State of New Jersey v. Professional Association of New Jersey, Department of Education, 64 N. J. 231 at page 257.

Group of Bergen County Law Enforcement Supervisory Unit so as to warrant severance from these collective negotiating units. As discussed hereinbefore it is not enough to proffer evidence intended to confirm the community of interest shared among a group of employees such as the county police force. The issue is whether their interests, authorities and responsibilities are so distinct from those with whom they were formerly grouped so as to negate a broader community of interest shared with other unit members.

It is important at this juncture to note that the Petitioner at no time in this proceeding even alleged that the Law Enforcement Groups had failed to provide effective and fair representation to all the individuals within the units nor did Local No. 49 allege that these employee organizations had in any way defaulted in their statutory obligation to be responsible for representing the interests of all job classifications and individuals within these units without discrimination. In the past these two concepts, as analyzed before, have been the major bases for attempting to effect a severance from a larger certified or recognized unit with a bargaining history. The absence of any attempt to offer evidence on the record that the present negotiating relationships were unstable or that the incumbent organizations were unable to provide responsible, fair representation made it more imperative for the Petitioner to completely develop and sustain its argument that it was entitled to separate representation solely because of the uniqueness of the services provided by

the Bergen County Police Department.^{22/} This the Petitioner clearly failed to do for the reasons to be set forth.

The Petitioner, in its introduction of exhibits and its examination of its witnesses, sought to controvert any impression that the County Police Department's principal function was that of traffic control despite considerable evidence to the contrary^{23/} and introduced evidence describing the additional functions and responsibilities of the Bergen County Police Force. These include the enforcement of all criminal laws and County resolutions, the patrolling of and maintenance of order within the County Parks System, the Bergen Pines Hospital and other county facilities, the partial supervision of private security guards employed at various county facilities, the providing of escort services for visiting dignataries, the furnishing of transport facilities for prisoners, and the providing of unique services to municipal police departments and outside agencies through their "Special Squad" units such as their Weighing Team, their Breathalyzer Unit, their Water Search and Recovery Division, their Special Services Investi-

^{22/} The very fact that all of the job classifications included within the "Law Enforcement Group" had representation on the negotiating committee with one of the two attorneys involved in negotiations representing the County Police exclusively would appear to establish that every effort was made to have the "Law Enforcement Group" function in as responsible a fashion as possible.

^{23/} In an earlier case, Bergen County Board of Chosen Freeholders and Bergen County Detectives and Investigators Association, P.E.R.C. No. 66 (April 6, 1972) the Commission sustained the finding of the Hearing Officer that the County Police Department's principal function was traffic control.

In addition the Annual Report of the Bergen County Police Department (Exhibit P-6), the Rules and Regulations of the Police Department (Transcript, page 41), and the testimony of the Inspector of the County Police Department (Transcript, page 41) clearly buttressed the argument advanced by the County that the primary duties of the Bergen County Police Department were those of traffic control.

gative Unit and their Photography Section.^{24/} In addition the record establishes that the Bergen County Police Department provides assistance and supplemental services to many municipalities throughout the county as well as to Port Authority of New York and Teterboro Airport officials and takes care of all the normal police functions within the tiny Borough of Rockleigh on a daily basis and the Borough of Teterboro on most weekends.^{25/}

However, the testimony of other witnesses called by the Petitioner and the apposite exhibits introduced clearly substantiate the assertions of the Public Employer that the Sheriff's Officers, Weights and Measures Officers and Sergeants-at-Arms perform necessary complementary law enforcement functions within the County of Bergen thus mandating the conclusion that the presently recognized law enforcement negotiating units should remain undisturbed.

An examination of the duties, responsibilities and authorities of Sheriff's Officers, Weights and Measures Officers and Sergeants-at-Arms at this time is extremely instructive.

It was learned that approximately eighty-five Sheriff's Officers function as correction officers within the county jail and supervise and control the general conduct and behavior of all inmates detained therein in an effort to prevent disturbances and attempts at escape. These correction officers are also given instruction so as to assist individuals deprived of their liberty toward rehabilitation. In addition, these correction officers

^{24/} Transcript, pages 21-27, 60-65.

^{25/} Transcript, pages 29-32, 34, 79-86.

escort inmates to and from their quarters, inspect all appropriate areas within the county jails, and perform other diverse duties that are part of the correctional process.^{26/}

Pursuant to N.J.S.A. 2A:154-3 all county correction officers are empowered "to act as officers for the detection, apprehension, arrest and conviction of offenders against the law." The Appellate Division of the New Jersey Superior Court in County of Gloucester v. Public Employment Relations Commission, 107 N. J. Super. 150 (App. Div. 1969), aff'd per curiam, 55 N.J. 333 (1970) (reversing In Re County of Gloucester Board of Chosen Freeholders, P.E.R.C. No. 11, August 20, 1969) found that county correction officers were policemen within the intendment of N.J.S.A. 34:13A-5.3.^{27/} The Appellate Division also emphasized that the fact that county correction officers were unarmed did not negate their statutory right and duty, in appropriate circumstances, to detect, apprehend and arrest and concurred with a prior Appellate Division decision /State v. Grant, 102 N. J. Super. 164 (App. Div.), certif. den. 53 N.J. 62 (1968)⁷ that stated that "overseeing the custody and punishment of law violators is as much a part of law enforcement^{28/} as undertaking the detection and apprehension of such violators."

There are about seventy-two Sheriff's Officers employed by the County of Bergen as Court Attendants who protect the judge and all other parties in the courtroom to which they are assigned

^{26/} Transcript, pages 122, 149, and 180 and Exhibit P-1.

^{27/} This section provides, in apposite part, that "no policemen shall have the right to join an employee organization that admits employees other than policemen to membership."

^{28/} County of Gloucester v. Public Employment Relations Commission 107 N.J. Super. 150 at 158.

while maintaining order and proper decorum, assist in the selection and swearing in of a jury, aid and assist parties to the litigation in the court, make all appropriate arrangements concerning the sequestering and protection of juries, search courtrooms in case of bomb threats, supervise the handling of prisoners while in court, and in general, operate as keepers of the peace in county courthouses.^{29/}

These "Sheriff's Officers - Court Attendants", according to the testimony of one witness, are reassigned at times when the courts are closed to perform guard duty at various county facilities such as the Bergen Pines Hospital or may be asked to fill in for absent "Sheriff's Officers - Correctional Officers" at the County Jail or Annex. At all times these men are available to perform a wide variety of law enforcement duties that in the past even included riot duty.^{30/}

There are seventeen or eighteen Sheriff's Officers assigned to the Communications Bureau who are responsible for the complete processing of all prisoners including the fingerprinting and photographing of these individuals as well as the identification of fingerprints and other evidential material that may be useful in the investigation and trial of a criminal matter. In addition these officers have assisted in various raids with the Prosecutor's Office, provide different Bergen County municipalities with fingerprinting and photography services, and , like other

^{29/} Transcript, pages 127, 132 and 184 and Exhibit P-1.

^{30/} Transcript, pages 53, 132, 134, and 142.

Sheriff's Officers, may be reassigned throughout the county on an ad hoc basis to perform other law enforcement functions.^{31/}

There are also Sheriff's Officers employed by the Bergen County Board of Chosen Freeholders who act as process servers and who perform the office and field work necessary to serve and execute writs and other legal papers and documents such as court orders, summonses, subpoenas, and other such documents directed to the Sheriff. These "Sheriff's Officers - Process Servers" execute complaints directed by the Superior Court, County Court and Chancery Division of the Superior Court, collect monies to satisfy legal debts as ordered by the court, and record daily writs, papers, and documents processed, among other functions. These individuals are also subject to call at any time to make themselves available for riot duty, guard duty or other emergency temporary assignments in the realm of law enforcement.^{32/}

There are, in addition, Bergen County Sheriff's Officers assigned to either a Ballistics Division of the Sheriff's Department that conducts investigations of firearms and ammunition in criminal investigations or a Communications Division that, in part, receives, transmits, and records all pertinent information concerned with criminal investigations.^{33/}

^{31/} Transcript, pages 134, 179, 182, 183, and Exhibit P-1.

^{32/} Transcript, pages 133-134 and 153 and Exhibit P-1. Also see State v. Andrew D. Nicol, 120 N.J. Super. 503 (1972) that helps bring into focus one of the potential dangers that a process server, in general, may face in the performance of his duties.

^{33/} Transcript, pages 133 and 151 and Exhibit P-1.

In addition, there have historically been individuals employed within the Bergen County Sheriff's Department as "Sheriff's Officer - Assigned Detective" who acted in an investigatory capacity concerning the detection and apprehension of criminals /see Bergen County Board of Chosen Freeholders and Bergen County Detectives and Investigators Association, P.E.R.C. No. 66 (1972)./

The record also delineates the duties and responsibilities of the four Assistant Superintendents of Weights and Measures, the one Deputy Superintendent of Weights and Measures, and the Superintendent of Weights and Measures employed by the Bergen County Board of Chosen Freeholders. These Weights and Measures Officers have the responsibility of enforcing the laws of Title 51 of the New Jersey Statutes Annotated entitled "Standards, Weights, Measures, and Containers" and inspect all weighing and measuring devices within Bergen County. Any violations concerning "short weight" or "incorrect standards" problems may result in the issuance of a summons by the Weights and Measures Officer after appropriate warnings. The officer would then be responsible for the presentation of evidence to the District Court in Bergen County or he would seek certain assistance from the Prosecutor's Officer in particularly difficult matters.^{34/}

The Executive Director in a recent decision sustained the conclusion of the Hearing Officer that Weights and Measures personnel possessed law enforcement and police powers, pursuant to Title 51, and were thus policemen within the meaning of N.J.S.A. 34:13A-5.3.^{35/} The Executive Director stated that an Inspector of Weights and Measures may, without warrant, arrest an offender on a violation of Title 51 within his view and conduct him before the court having jurisdiction in the municipality where the arrest is made or the offense committed,^{36/} and concluded that these

34/ Transcript, pages 90-91, 94-96, and Exhibit P-4.

35/ City of Jersey City and New Jersey Weights and Measures Local No. 203, U.D. No. 30 (March 2, 1973).

36/ See N.J.S.A. 51:1-106.

Weights and Measures Officers were policemen within the purview of the criteria set forth in the County of Gloucester decision.

Finally, there are thirteen non-supervisory Sergeants-at-Arms assigned jurisdictionally to the Bergen County District Court employed by the Bergen County Board of Chosen Freeholders. These individuals are invested with all the rights, privileges, powers, and duties of a constable pursuant to N.J.S.A. 2A:6-25 entitling them to carry weapons without a permit or identification card^{37/} in the performance of their responsibilities.^{38/}

The primary function of these Sergeants-at-Arms is to maintain order and decorum in their courtrooms and, in the course of this facet of their work, they may perform the same duties as "Sheriff's Officers - Court Attendants".^{39/} However, Sergeants-at-Arms also have responsibilities that parallel those of "Sheriff's Officers - Process Servers" when they serve summonses and subpoenas issued from the District Court on the appropriate parties.^{40/} Sergeants-at-Arms are also temporarily assigned to the County Prosecutor's Fugitive Squad when courts are in recess or there is an overabundance of Sergeants-at-Arms and "Sheriff's Officers - Court Attendants" available for courtroom security. As part of this Fugitive Squad Sergeants-at-Arms are involved in criminal investigations, the apprehension of suspected fugitives, and the transporting and initial processing of these individuals.^{41/} Sergeants-

^{37/} See N.J.S.A. 2A:151:43.

^{38/} Transcript, pages 102, 104.

^{39/} Transcript, pages 114-115 and Exhibit P-5.

^{40/} Transcript, pages 102-103, 109, 111-114 and Exhibit P-5

^{41/} Transcript, pages 104 and 109-110.

at-Arms can also be made available to handle riot or strike situations.^{42/}

It is thus readily ascertainable that the two presently recognized law enforcement units consist of qualified public safety officers, with police powers, involved in an integrated law enforcement system whose authorities and responsibilities both complement and supplement each other.

Sheriff's Officers, County Policemen, Weights and Measures Officers and Sergeants-at-Arms share a community of interest in other respects also. The appointing authority in all cases vis-a-vis these law enforcement unit members is the Bergen County Board of Chosen Freeholders. All significant personnel actions emanate from the County Personnel Department although usually based upon specific recommendations made by the County Sheriff, the Chief of the County Police, the Superintendent of the Weights and Measures Department, and the Presiding Judge of the District Court. Each of these aforementioned individuals submits a departmental budget request to the Board of Chosen Freeholders who are empowered to make the final decision concerning these requests.

In addition, the minimum educational requirements for all of these apposite positions are identical and most fringe benefits including vacation and holiday schedules, injury and sick leaves, insurance benefits, bereavement leaves, and longevity payments are accorded to all members of the law enforcement unit

^{42/} Transcript, pages 105-106.

equally.^{43/} Even the basic salary ranges for the various included titles are very similar.^{44/}

Furthermore, in this instant matter, the county police force has been included with Sheriff's Officers, Weights and Measures Officers, and Sergeants-at-Arms for purposes of collective negotiations for approximately three years during which time agreements have been executed between the County of Bergen and the law enforcement groups. This history of prior representation constitutes an additional particularly important factor in analyzing the community of interest shared by these groups, especially in light of the "severance" nature of this petition.^{45/}

The Petitioner has asserted that county policemen must comply with more stringent age and physical requirements; are trained differently with regard to weapons; wear distinctive uniforms; maintain an independent main base of operations; and work different hours pursuant to their particular assignment schedules than other members of the recognized law enforcement units. In light of apposite Commission decisions, however, it is axiomatic that the existence of certain dissimilarities among employees in a particular negotiating unit does not mandate a conclusion that the requisite community of interest among these individuals is wanting.^{46/}

43/ Transcript, page 55 and Exhibit C-6.

44/ Transcript, pages 97 and 105-106.

45/ Cf. South Plainfield Board of Education, P.E.R.C. No. 46 (August 25, 1970).

46/ See, for example, State of New Jersey (Neuro-Psychiatric Institute, et al), P.E.R.C. No. 50 (1971), Board of Chosen Freeholders of the County of Burlington, P.E.R.C. No. 58 (1971) and Bergen

The undersigned Hearing Officer therefore concludes that the interests, responsibilities, and duties of the county police force are so integrally related to the entire law enforcement process that the factors distinguishing them from Sheriff's Officers, Weights and Measures Officers, and Sergeants-at-Arms must be submerged in recognition of the broader community of interest shared by all of these public safety groups.

The undersigned would also like to comment on the fact that shortly after the conclusion of the second hearing date concerning this above-entitled matter the remainder of the non-supervisory Law Enforcement Group [Sheriff's Officers, Sergeants-at-Arms, and Weights and Measures Officers] executed a Memorandum of Understanding with the representatives of the Bergen County Board of Chosen Freeholders resolving the contractual impasse between the parties, exclusive of Local No. 49, that was discussed in an earlier part of this Hearing Officer's Report. The Public Employer emphasized that an agreement was being reached with the remainder of the Law Enforcement Group because the county felt that it had a moral obligation to do so without waiting for the resolution of this instant unit matter months later. The Public Employer asked at the hearing that no inference be drawn from its

46/ (Continued) County Board of Chosen Freeholders, P.E.R.C. No. 69 (1972).

It is also important to add that the record does sustain the position of the Public Employer that other individuals in these law enforcement units, in fact, complete the same nine week course at the Police and Fire Training Commission School as the county police force [all new Sheriff's Officers and apparently some Sergeants-at-Arms]; one group wears similar uniforms [Sergeants-at-Arms]; several groups wear guns, at times, in the performance of their duties [certain Sheriff's Officers and Sergeants-at-Arms]; and another law enforcement "unit" shares their main headquarters [Weights and Measures Officers]. Transcript, pages 45-47, 77, 102, 104, 106, 120, 143-147, and 187.

act that it, in any way, conceded that the position of Local No. 49 should be sustained. The undersigned, after examination of the entire record in this matter, has not drawn any inference from this decision of the Bergen County Board of Chosen Freeholders to resolve their impasse with the remainder of the Law Enforcement Group.^{47/}

Lastly, the undersigned would like to discuss the decision of the Commission in an earlier case^{48/} wherein the Commission found that a unit of law enforcement personnel of the County Prosecutor's Office constituted an appropriate negotiating unit. The undersigned finds that the findings of fact and conclusions of law contained within the Commission's decision buttresses this Hearing Officer's conclusion that the unit petitioned for by Local No. 49 is not an appropriate one for purposes of collective negotiations and that the presently constituted law enforcement units are appropriate and represent the statutory optimum.

The Commission in this earlier decision recognized that the State Legislature and the courts have long recognized the considerations of law enforcement which warrant the separate treatment of a county prosecutor's law enforcement personnel from county law enforcement personnel generally.^{49/} (Emphasis mine) The Commission found that the County Prosecutor was charged with major law enforcement responsibilities under the general supervision of the attorney general and had been given the broad power to appoint his own employees and fix their salaries within the limitations

^{47/} Transcript, page 192.

^{48/} The Bergen County Board of Chosen Freeholders and Bergen County Detectives and Investigators Association, P.E.R.C. No. 66 (April 6, 1972).

^{49/} See State v. Winne, 12 N.J. 152 (1953).

prescribed by law. N.J.S.A. 2A:157-2,18 The Prosecutor appointed his own investigators to serve at his pleasure who were removable at his will. N.J.S.A. 2A:157-10 If the Prosecutor needed additional assistance in carrying out his law enforcement functions, he could appoint additional personnel and fix their salaries within the boundaries established by statute and judicial decisions. The Commission found that unlike the Sheriff, Chief of the County Police, or any other county functionary within or outside of the area of law enforcement, the Prosecutor could request funds for salaries of employees beyond those appropriated by the Board of Freeholders, and the Assignment Judge of the appropriate Superior Court was empowered to authorize additional expenditures.^{50/} As a result of these factors the Commission concluded that there existed "a potential for treatment of employees in the Prosecutor's Office which differ/ed" from that accorded to other law enforcement personnel in the county regarding certain terms and conditions of employment" and thus concurred with the Hearing Officer that a unit of law enforcement personnel of the County Prosecutor constituted an appropriate unit.^{51/}

The undersigned thus finds that any reliance by the Petitioner on this earlier decision concerning Detectives and Investigators in the County Prosecutor's Office is clearly misplaced.

50/ In Re Application of Schragger, 58 N.J. 274 (1971) and Cetrulo v. Byrne, 31 N.J. 320 (1960)

51/ Bergen County Board of Chosen Freeholders, P.E.R.C. NO. 66 at page 3.

In conclusion, the undersigned finds that for all the reasons set forth in this report the Petitioner has not set forth any basis to warrant a severance from the presently recognized law enforcement units.^{52/}

RECOMMENDATION

The undersigned concludes that the petition in this instant matter filed by Local No. 49 should be dismissed.

RESPECTFULLY SUBMITTED



Stephen B. Hunter
Hearing Officer

DATED: November 8, 1974
Trenton, New Jersey

52/ In light of the disposition of this matter, the undersigned does not find it necessary to analyze the subsidiary question of whether lieutenants, the captain, and the inspector of the Bergen County police are supervisors within the meaning of Chapter 303, Laws of 1968. The Petitioner had alleged that these individuals were not "statutory supervisors" and were thus entitled to be represented by Local No. 49 within their petitioned for unit.

The undersigned does find that nothing within the record casts any doubt on the appropriateness of the two law enforcement groups [the Bergen County Law Enforcement Unit and the Bergen County Law Enforcement Supervisory Unit] as presently constituted.