

STATE OF CONNECTICUT
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

IN THE MATTER OF
STATE OF CONNECTICUT
JUDICIAL BRANCH

DECISION NO. 4018

-AND-

FEBRUARY 3, 2005

CSEA, INC., LOCAL 760, SEIU

Case No. SE-24,840

A P P E A R A N C E S:

Attorney Brian Clemow
For the State

Attorney Robert Krzys
For the Union

DECISION AND DISMISSAL OF OBJECTIONS AND CERTIFICATION

On July 27, 2004 Connecticut State Employees Association, Inc., Local 760, SEIU (the Union) filed a petition, amended on September 1, 2004, with the Connecticut State Board of Labor Relations (the Labor Board) seeking certification as the exclusive collective bargaining representative of a bargaining unit of Supervising Judicial Marshals employed by the State of Connecticut Judicial Branch (the State or Judicial).

On September 23, 2004, the Agent of the Labor Board ordered an election in the petitioned-for bargaining unit. On October 6, 2004 Judicial filed Objections to the Order of Election. A hearing was held on October 7 and October 20, 2004 at which all parties appeared and were heard. On October 14, 2004, the Union filed a brief in support of the direction of election. On October 19, 2004 the State filed a reply brief to the Union's brief. An election was scheduled for and conducted on October 19, 2004. Ballots were counted on October 20, 2004. The Union prevailed in the election. On October 25, 2004 both parties filed supplemental statements and affidavits.

The Hearing

The hearing in this matter revealed the following. The employees at issue in this case provide court security. These types of employees were formerly employed by the County Sheriffs system within the Executive Branch. Under the former system, the employees performing this work were called Special Deputies and some held military-type ranking such as Sergeant, Lieutenant, Captain and Major to signify various levels of responsibilities and duties. Special Deputies did not have collective bargaining rights until 1997 when legislation granted them the right to organize and be represented.

In September 1999 the State and several unions seeking to represent the Special Deputies entered into an Agreement for Consent Election. The parties defined the unit as “all Special Deputy Sheriffs, up to and including the rank of Senior Lieutenant, and excluding summer employees and the ranks of Captain and above.” After an election, the Labor Board certified the International Brotherhood of Police Officers (IBPO) as the exclusive representative of the employees in the agreed upon unit. (Decision No. 3739, October 29, 1999). Thereafter, the State legislature eliminated the Office of the County Sheriffs upon passage of Public Act 00-99. All employees of the County Sheriffs then became employees of the Judicial Branch.

After the elimination of the County Sheriffs, the title of Special Deputy changed to Judicial Marshal. The duties of the positions remained essentially the same. Judicial designated certain employees as Lead Judicial Marshals, Supervising Judicial Marshals, Deputy Chiefs and Chief Judicial Marshals to reflect varying responsibilities and duties. Judicial and IBPO eventually agreed upon which of the newly labeled Marshal positions were included in the unit previously certified under the Sheriff system. The parties agreed that Supervising Judicial Marshals were excluded from the unit. The resulting recognition clause of the contract between IBPO and Judicial states in relevant part:

Section 1. The Judicial Branch of the State of Connecticut herein recognizes the International Brotherhood of Police Officers, Local 731 as the exclusive representative of the employees in Judicial Marshal and Lead Judicial Marshal positions regularly working 20 or more hours per week, with the exception of employees whose titles have been removed either by the State Board of Labor Relations or by mutual agreement of the parties, and with the exceptions of summer interns, temporary employees, Chief Judicial Marshals and Deputy Chief Judicial Marshals.

IBPO and Judicial also entered into a side letter attached to their collective bargaining agreement stating in relevant part:

The parties recognize that the position of Supervising Judicial Marshal is the subject of representation petitions filed by the Fraternal Order of Police as well as IBPO Local 731. The parties agree that the Union will pursue representation of Supervising Judicial Marshals only if and so long as any other union pursues such representation. The parties further agree

that in the event the Union prevails in that effort, Supervising Judicial Marshals shall be placed in the same bargaining unit as other Judicial Marshals, and the parties shall negotiate over the conditions of employment for such employees as well as any other effects of such inclusion, such as the impact on the performance appraisal process for bargaining unit employees. Otherwise, Supervising Judicial Marshals shall be excluded from the bargaining unit, and shall be listed as such in successor contracts.

The collective bargaining agreement between IBPO and Judicial has effective dates of July 1, 2002 to June 30, 2004.

On July 27, 2004 the Union filed the instant petition, amended on September 1, 2004. IBPO was notified of the pending petition but disclaimed any interest in the petitioned-for positions. No competing petition has been filed by IBPO or any other union.

There are between 50 and 60 Supervising Judicial Marshals in 13 districts compared to 701 employees in the Judicial Marshals unit. Each district has a Chief Judicial Marshal and two of the districts also have a Deputy Chief Judicial Marshal. The other classifications of Marshals are Judicial Marshal I, Judicial Marshal II, Lead Judicial Marshal and Supervising Judicial Marshal. The Judicial Branch currently has three bargaining units of employee, including the existing Judicial Marshal unit. Each of the current bargaining units contains employees who have some supervisory authority over other employees in the unit. The other bargaining units in Judicial have approximately 1300 (AFSCME) and 990 (AFT) employees.

The job descriptions of Supervising Judicial Marshal and Lead Judicial Marshal show the following relevant information. Lead Judicial Marshals schedule, oversee and review the work of Marshals; plan unit workflow and establish priorities; establish and maintain procedures in accordance with policies; provide training and assistance; assist in performance appraisals; supervise an assigned shift as needed and perform the duties of the lower class of Judicial Marshal II. The Supervising Judicial Marshals perform all the above functions except they conduct the performance appraisals. They also conduct daily roll calls; inspect posts; evaluate employee performance and enforce rules and regulations; inspect facilities; assist in preparing staff assessments; coordinate, plan and manage staff training; make recommendations on the development of policies and standards; investigate client and staff complaints and perform the duties of the higher classes of Chief or Deputy Chief Judicial Marshal as needed.

The testimony regarding these positions established that the Supervising Judicial Marshals do not act as a step in the grievance procedure but do make effective recommendations concerning termination of employees. There is no evidence that the Lead Judicial Marshals perform the same function nor do they evaluate employees. The Supervising Judicial Marshals may also use their discretion concerning staffing and daily assignments.

There are five other State bargaining units comparable in size to the petitioned-for unit. Four of the other units involve educational employees of the State. The fifth is an agreed upon unit of Inspectors in the Executive Branch.

DISCUSSION

The State objects to the order of election in this case on the basis that SERA, unlike the Municipal Employees Relations Act (MERA), purposefully provides for the inclusion of supervisors with non-supervisors in the same unit and that the Labor Board is required to certify the broadest possible unit under SERA. The State argues that the broadest possible unit in this situation is either the IBPO unit of Judicial Marshals or the existing Judicial AFSCME unit. The State claims in its brief that the petitioned-for employees were previously included in the certification of the Sheriffs' bargaining unit within the Executive Branch and that the Labor Board cannot now allow CSEA to "carve out" these employees from that bargaining unit. The State asserts that the Labor Board should use its rule-making authority to include these employees in one of the existing appropriate Judicial bargaining units.

We first address an issue that was not the focus of the parties' presentations during this case but which the State addresses in its brief. That is the question of the posture of this petition and the collective bargaining "status" of these employees. The State now describes these employees as part of the previously certified unit and thus, already represented by IBPO. As such, the State describes this petition by CSEA as one to "carve out" these supervisors, which, if allowed, could lead to many more petitions for separate units of supervisory employees.

We do not agree with the State's description of this petition or the status of these employees. It is apparent that some supervisory employees were included in the original certification of the bargaining unit when the Sheriffs were part of the Executive branch. However, after the Sheriffs were transformed into Marshals and the titles and hierarchy were changed, Judicial and IBPO determined that the Supervisory Judicial Marshals were not part of the bargaining unit that now exists in the Judicial branch. While there seems to be some acknowledgement among the parties that the former Lieutenant classification was "slotted" into the current Supervising Marshal classification after the transfer, there is also evidence that all former Lieutenants were stripped of their higher "rank", initially employed as Marshals and required to apply for the elevated ranks in the new Marshal system. It is clear from this record that this was not simply a matter of changing the title of these positions and transferring the employees to the new system. Some changes were made and in the course of dealing with those changes, both parties agreed that the Supervising Judicial Marshals were not part of the unit previously certified in the Sheriff's system and preserved by the legislation in the Judicial branch. The parties themselves determined what effect the changes in the system, structure and titles had on the parameters of the previously certified bargaining unit. They decided these positions were not included and thus rendered these new positions unrepresented. As such, this case is not in the form of a petition to carve positions out of an existing unit. In this case,

the most accurate description of the circumstances is a petition to represent unrepresented employees with no competing petitions by other labor organizations.¹

The issue then is whether SERA allows for this separate unit of supervisors or whether these employees are confined to placement in an existing unit either by petition of one of the existing representatives or by rule-making of this Board. Both parties agree that the relevant considerations are (1) whether the employees share a recognizable community of interest; and (2) the effects of overfragmentation on collective bargaining. Conn. Gen. Stat. § 5-275(b)(1). Both parties also agree that the proposed unit consists entirely of supervisors of the employees in the IBPO unit.

These employees have an identifiable community of interest. They work at a higher level than their colleagues in the existing unit and have job responsibilities of a different and higher-ranking nature. They are expected to act as the Chiefs and Deputy Chiefs in their divisions when needed and have discretion regarding schedules and direction of the workforce not enjoyed by the employees in the existing bargaining unit. There is undoubtedly some overlap in duties between the two groups but the supervisors have distinct job functions and roles not shared with the others.

This leads us to the question of whether this community of interest is enough to justify a separate unit of supervisory employees under SERA or whether the certification of this unit constitutes overfragmentation which will lead to undesirable results for other employee groups.

First, SERA does not prohibit this separate unit of supervisors. While the Act allows the two groups to be included in the same unit and such an arrangement is common in the Executive and Judicial branches, the Act does not prohibit this certification.²

Next we acknowledge the findings of this Board, through the words of its esteemed former Chairman Professor James, as set forth in *Judicial Department (Division of Criminal Justice)*, Decision No. 1716 (1979). In that case, in the context of a petition to carve out “Inspectors” from a larger unit of non-professional employees, the Board rejected the idea of a smaller unit containing one job classification. The Board stated:

Every job classification has some unique features but this does not warrant carving it out as a separate bargaining unit even in the sphere of municipal government. That is far more true of State employment where we believe

¹ We note the existence of the side agreement to the IBPO/Judicial collective bargaining agreement, which purports to control, to some extent, the collective bargaining future of the Supervising Judicial Marshals by requiring IBPO to petition for these employees if and only if another union attempted to organize them. This is an interesting and unusual agreement, but we fail to see how an employer and a union can decide to exclude a group of employees from a bargaining unit yet retain some control over their future statutory collective bargaining rights. We need not decide here what the exact legal effect is of this side agreement; for purposes of this case, it is irrelevant. The IBPO has not petitioned for these employees and the agreement has no effect on the outcome here.

² Indeed the State has agreed to such an arrangement with the Inspectors formerly employed by Judicial.

the Legislature intends us to create “the broadest possible units in which a community of interest may be found.” Application of that test might permit some further divisions of the employees in the Judicial Department... We do not think it is appropriate to define the exact limits in the absence of further evidence...It is enough for present purposes to decide, as we do, that the unit claimed in the petition is too narrow.

We do not reject this approach and find it in keeping with our decision to certify this unit. In *Judicial, supra*, the Board was faced with a petition to carve out employees. In that context, the Board rejected the carve-out petition but acknowledged that even in the face of an obligation to create the broadest possible units, further divisions in Judicial employees might be permitted. Here, we are not presented with a petition to carve out employees. In this case, there is no other “possible unit” for the petitioning employees. No other union has petitioned for these employees and they are not currently part of an existing unit. While the State asserts that we should use our “rule making” authority to force these employees into another existing unit, we fail to see where that is either allowed or appropriate in these circumstances. Here, if the State’s theory is to be applied, we must first acknowledge that these employees were part of a unit and were cut out of that unit, and thus left without representation, by the agreement of the State and IBPO. Then we must accept that because there is now a competing union, the employees should be forced back into a unit from which they were unwillingly excluded and stripped of their represented status, to be represented by a union that has not petitioned for them and by whom they do not wish to be represented. Simply put, nothing in the statute supports that course of action and such a determination constitutes far too much of an invasion upon these employees’ collective bargaining rights to be supported by this Board.

Under the circumstances of this case, we find that the objections to the order of election should be dismissed and the election results certified.

ORDER

By virtue of and pursuant to the powers vested in the Connecticut State Board of Labor Relations by the State Employee Relations Act, it is hereby

CERTIFIED, that the Connecticut State Employees Association, Inc., Local 760, SEIU, AFL-CIO has been designated as the representative for the purposes of collective bargaining by the majority of Supervising Judicial Marshals and that said Connecticut State Employees Association, Inc., Local 760, SEIU is the exclusive bargaining representative of all said Supervising Judicial Marshals for the purposes of collective bargaining with respect to wages, hours and other conditions of employment.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

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Chairman

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Patricia V. Low
Board Member

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Wendella A. Battey
Board Member

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed postage prepaid this 3rd day of February, 2005 to the following:

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