

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION  
BEFORE THE DIRECTOR OF REPRESENTATION

In the Matter of  
CITY OF TRENTON

Public Employer,

-and-

PBA LOCAL #11,

DOCKET NO. CU-82-60

Petitioner,

-and-

AMERICAN FEDERATION OF STATE,  
COUNTY AND MUNICIPAL EMPLOYEES,  
AFL-CIO, LOCALS NO. 2281 & 2286,

Intervenor.

SYNOPSIS

The Director of Representation, on the basis of an administrative investigation, determines that employees in the titles of Senior Engineer, Garage Foreman, and Supervisor of Police and Fire Signal Systems shall not be included in the PBA's negotiations unit. The PBA had alleged that the titles, which are in negotiations units represented by AFSCME, function as police employees and should therefore be removed from the AFSCME units and placed in the police unit represented by the PBA. AFSCME and the City disputed this claim. The Director determined that the petitioned-for employees had neither the statutory police powers of detection, apprehension or arrest, nor were they engaged in rendering police services which would qualify them for coverage under the impasse procedures of the interest arbitration statute.

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Appearances:

For the Public Employer  
Katz, Bitterman & Dougherty  
(Michael Bitterman, of counsel)

For the Petitioner  
Strauss, Wills, O'Neil & Voorhees  
(G. Robert Wills, of counsel)

For the Intervenor  
Carlton Steger, Representative

DECISION

On February 22, 1982, a Petition for Clarification of Unit was filed with the Public Employment Relations Commission (the "Commission") by Policemen's Benevolent Association, Local No. 11 (the "PBA") raising a question concerning the composition of a collective negotiations unit of police employees of the City of Trenton (the "City"), which the PBA represents. The PBA seeks the inclusion of employees in the titles of Senior Engineer, Garage Foreman, and

Supervisor of Police and Fire Signal Systems in its police employee unit. The employees are currently represented in collective negotiations units of non-police personnel represented by the American Federation of State, County and Municipal Employees, Locals 2281 and 2286 ("AFSCME").

The PBA argues that the employees in these three job titles, who work in the police garage of the City of Trenton, are functioning as police employees and therefore should be removed from the AFSCME units and placed in the police unit represented by the PBA. AFSCME and the City dispute this claim.

The undersigned has caused an administrative investigation to be conducted into the matters and allegations concerning the Petition.

On the basis of the administrative investigation, the undersigned finds and determines as follows:

1. The City of Trenton is a public employer within the meaning of the New Jersey Employer Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), is the employer of the employees who are functioning in the job titles which are the subject of this Petition and is subject to the provisions of the Act.

2. PBA Local No. 11 and AFSCME Locals No. 2281 and 2286 are employee representatives within the meaning of the Act and are subject to its provisions. The PBA is currently the exclusive representative of all uniformed and nonuniformed patrolmen and patrolmen/detectives employed by the City in its Division of Police but excluding sergeants, lieutenants, captains and deputy chiefs.

AFSCME Local No. 2281 is currently the exclusive representative of all blue and white collar supervisors within the meaning of the Act employed by the City. AFSCME Local No. 2286 is currently the exclusive representative of all nonsupervisory blue and white collar employees of the City.

3. The PBA seeks to add the job titles of Senior Engineer, Garage Foreman, and Supervisor of Police and Fire Signal Systems to its collective negotiations unit. The employees in the petitioned-for job titles are employed at the City of Trenton Police Garage and are represented by AFSCME Local No. 2281 and 2286.

4. The City and AFSCME oppose the PBA's Petition, arguing that the employees in the petitioned-for job titles are not police employees, are currently represented by AFSCME, and are covered by collective negotiations agreements with the City expiring December 31, 1982.

5. On April 2, 1982, the assigned Commission staff agent convened an informal conference among the parties. At the conference, and by letter of April 20, 1982, the Commission staff agent supplied the PBA with copies of pertinent Commission decisions.

The issue placed in dispute by the parties requires the undersigned to determine whether the employees in the petitioned-for job titles are statutory police employees or render police services.

The general issue of police identification was examined by the undersigned in In re City of Newark, D.R. No. 81-18, 7 NJPER 3 (¶ 12002 1980) ("Newark I"), and In re City of Newark, D.R. No. 81-42, 7 NJPER 310 (¶ 12135 1981) ("Newark II").

In Newark I, the undersigned noted that in 1977, the Legislature had amended the Act to provide for compulsory interest arbitration in police and fire departments. <sup>2/</sup> The Act had previously addressed police employees solely in the context of their representational rights by requiring, at N.J.S.A. 34:13A-5.3, that "policemen" could not be represented by employee organizations which represented nonpolicemen. The undersigned further pointed out that the courts and the Commission were called upon to define the term "policemen" which was not defined specifically in § 5.3.

The undersigned, after noting that the Commission had found that the definition of the term "policemen" in § 5.3 was specifically limited to those employees with statutory police powers, <sup>3/</sup> determined that the Police and Fire Compulsory Interest Arbitration Act was not limited solely to those employees who have been statutorily vested with the police powers of arrest, apprehension, and detection, but was applicable as well to those police department employees who perform police services. Accordingly, an examination of the job functions of the disputed titles was undertaken in order to determine whether the employees functioning in the disputed titles performed police services which are an integral element of the law enforcement process.

In Newark I, the undersigned determined that communications linemen, who are responsible for inspection, repair, construction, and maintenance of electrical lines and other related equipment in the

<sup>2/</sup> N.J.S.A. 34:13A-14 et seq.

<sup>3/</sup> In re State of New Jersey, P.E.R.C. No. 81 (1974), aff'd App. Div. Docket No. A-2528-73 (3/26/75); also see Cty. of Gloucester v. P.E.R.C., 107 N.J. Super. 150 (App. Div. 1969), aff'd 55 N.J. 333 (1970).

department's communication system were not police with statutory police powers, nor were they engaged in rendering police services. Similarly, in Newark II, the undersigned found that the Police Signal System Superintendent and the Chief Communications Officer were not statutory police and not engaged in rendering police services. In both Newark I and II, the undersigned removed from the existing negotiations units those employees who neither had the statutory police powers of detection, apprehension or arrest nor were engaged in rendering police services which would qualify them for coverage under the impasse procedures of the interest arbitration statute.

In the instant matter, the job functions of the Supervisor of Police and Fire Signal Systems and Senior Engineer, which involve communications electronics, would appear to be similar, if not identical to the positions noted in Newark I and II.

In addition, it appears to the undersigned that the position of Garage Foreman, the functions of which are essentially related to automobile repairs, is not involved in the performance of police services which are an integral element of the law enforcement process.

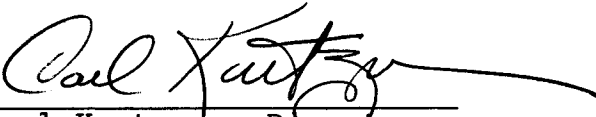
Therefore, for the above reasons, it appears to the undersigned that the employees in the positions of Senior Engineer, Garage Foreman, and Supervisor of Police and Fire Signal System are not police employees within the meaning of the Act and should not be placed in a collective negotiations unit represented by the PBA. <sup>4/</sup>

<sup>4/</sup> The undersigned notes that the disputed titles have been in existence for a considerable period of time and that the PBA had not previously sought to represent these titles. In prior determinations, the undersigned has found that an employee organization which has "slept" on its rights to assert a representational interest in employees titles is precluded from utilizing a clarification of unit petition to achieve their inclusion in the existing  
(Continued)

On July 12, 1982, upon receipt of the undersigned's preliminary analysis of the above factual and legal issues pertaining to this matter, the PBA requested that the undersigned "merge" the instant matter with a second clarification of unit petition it has filed for the purposes of an evidentiary hearing. The PBA, however, although provided with the opportunity, has not raised substantial and material factual issues relating to the employment of the instant personnel which would distinguish this matter from the factual analysis in the Newark cases. Accordingly, a factual evidentiary hearing is not warranted in this matter, nor would consideration of this matter in conjunction with the factual issues affecting other types of personnel facilitate administrative review or promote administrative economy. Accordingly, the PBA's request is denied. <sup>5/</sup>

For the reasons cited above, the undersigned determines that the PBA unit may not include employees in the titles of Senior Engineer, Garage Foreman, and Supervisor of Police and Fire Signal Systems.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Carl Kurtzman, Director

DATED: September 30, 1982  
Trenton, New Jersey

<sup>4/</sup> (Continued)  
collective negotiations unit. See In re Clearview Reg. H.S. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977); In re Wayne Bd. of Ed., D.R. No. 80-6, 5 NJPER 422 (¶ 10221 1979), aff'd P.E.R.C. No. 80-94, 6 NJPER 54 (¶ 11028 1980); In re State of New Jersey, D.R. No. 80-8, 5 NJPER 454 (¶ 10229 1979), aff'd. P.E.R.C. No. 80-65, 5 NJPER 538 (¶ 10277 1979); and In re Bergen Pines Hospital, D.R. No. 80-20, 6 NJPER 61 (¶ 11034 1980). In the

4/ (Continued)

instant matter, the undersigned has addressed the substantive issue because the employees in the disputed titles are alleged to be police employees who are entitled to coverage under the Interest Arbitration Act. Since the undersigned, in 1980 and 1981, first identified the criteria for ascertaining police employee status in the light of the provisions of Chapter 85, the PBA's instant Petition, filed February 1982, is considered a timely petition for the purpose of identifying police status.

5/ A Notice of Hearing has issued with regard to the second Clarification of Unit petition, CU-82-76.