

D.R. No. 78-21

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

In the Matter of

TOWNSHIP OF EWING,

Public Employer,

-and-

DOCKET NO. CU-76-24

POLICEMEN'S BENEVOLENT ASSOCIATION,
LOCAL NO. 111,

Petitioner.

SYNOPSIS

The Director of Representation, on the basis of a Stipulation of Facts by the parties, finds and determines that a Police Dispatcher/Special (police) Officer performs a vital police function and has reserved police powers which create a conflict of interest with other Township personnel and which conflict is the underlying reason for the statutory separation of police and non-police personnel, see N.J.S.A. 34:13A-5.4. The Director's decision in this matter is predicated upon the decision and the holding of the Commission's [Executive] Director in In re Borough of Avalon, and the determination of the New Jersey Supreme Court in County of Gloucester v. PERC et al.

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Appearances:

For the Public Employer,
Dietrich, Allen & St. John, Esqs.
(Mr. Charles P. Allen, Jr., of Counsel)

For the Petitioner,
Lefkowitz, O'Hara & Wallack, Esqs.
(Mr. Howard G. Golden, of Counsel)

DECISION

On November 21, 1975, a Clarification of Unit Petition was filed with the New Jersey Public Employment Relations Commission (the "Commission") by Policemen's Benevolent Association, Local 111 (the "Local"), seeking a clarification of the unit status of the title Civilian Police Dispatcher, established pursuant to Section 21.01 of the Township of Ewing (the "Township").

The undersigned has caused an investigation to be conducted into the matters and allegations involved in the Petition. On June 29, 1976 and on January 11, 1977, the authorized representatives of the parties entered into Stipulations of Fact, setting forth all relevant data and requesting that the Director of Representation issue a decision in this matter, pursuant to N.J.A.C. 19:11-6.7, without convening an evidentiary hearing. The aforementioned stipulations are attached hereto and made a part hereof.

The undersigned has considered the Stipulations of Fact and has accepted the stipulations as the record in this matter. Accordingly, the undersigned finds and determines as follows:

1. The Township of Ewing is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), is the employer of the employee in question, and is subject to the provisions of the Act.

2. The Policemen's Benevolent Association, Local No. 111 is an employee representative within the meaning of the Act and is subject to its provisions.

3. The disputed title is presently not represented for the purposes of collective negotiation. Local 111, which represents a negotiations unit of Township police, seeks the inclusion of the disputed title in its negotiating unit. The Township has declined Local 111's request, contending that the disputed title is not a police officer within the meaning of the Act and may not properly be included in a negotiations unit of police in accordance with N.J.S.A. 34:13A-5.3. Thus, there is a dispute concerning composition of Local 111's unit and the matter is properly before the undersigned for decision.

4. The sole issue presented herein for determination is whether a particular employee of the Township, holding the Civil Service title Civilian Police Dispatcher, may properly be included in the negotiations unit represented by Petitioner, either as a police officer within the meaning of the Act or because "special circumstances" warrant his inclusion in the aforementioned bargaining unit.

5. The Civilian Police Dispatcher is a radio dispatcher in the Township's Police Department. While on duty, he is uniformed in a manner similar to that of regular Township police officers and is armed with a .38 caliber revolver. The

purpose of arming the dispatcher is to enable him to defend himself while on duty. His authority to carry a firearm is predicated on his appointment as a special (police) officer under N.J.S.A. 40A:14-146. While not called upon to exercise the police powers invested by virtue of appointment under N.J.S.A. 40A:14-146, the parties have stipulated that these powers are reserved to the disputed title. He works the same shifts or schedules as the police department and is subject to "on-call" status as a dispatcher. All other regularly assigned police dispatchers employed by the Township are full-time Township police officers.

6. The title in question is supervised by the police superior officer on duty, subject ultimately to the authority of the Chief of Police and the Township Committee. He is subject to the Rules and Regulations of the Police Department, although his discipline procedures are governed by Civil Service Rules.

7. In In re Borough of Avalon, E.D. No. 76-23, 2 NJPER 59, (1976) the Executive Director of the Commission determined that police communications dispatchers who were also appointed as special (police) officers under N.J.S.A. 40A:14-16 were police within the meaning of the Act, and that they could remain in a police negotiating unit. ^{1/} The decision in Avalon rested on the determination of the New Jersey Supreme Court in County of Gloucester v. PERC et al, 107 N.J. Super 150 (1969), aff'd. 55 N.J. 333 (1970), that even the reserved, unexercised authority of unarmed correction officers to detect, apprehend, and arrest under appropriate circumstances, was sufficient to establish police status within the meaning of the Act.

^{1/} The duty of the Executive Director to issue decisions in representation matters has been transferred to the Director of Representation Proceedings. See N.J.A.C. 19:11-7.4.

8. The undersigned finds and determines that the decision in the instant matter is also governed by the precepts set down in Avalon and Gloucester. The reserved authority of the disputed title under N.J.S.A. 40A:14-146 to perform police functions under appropriate circumstances and the authority to defend himself on duty by force of arms and inter alia to protect police department property is a naked assertion of police authority.^{2/} The record also indicates that the Civilian Police Dispatcher performs the same functions as dispatcher as would be assigned to all other regularly assigned full-time police officers performing the dispatching function. In the course of these functions the dispatcher becomes a vital link in the communication of vital information to police officers necessary for the protection of the public and the Township's property. Further, the extent of his firearms' training and the requirement that he carry a firearm on duty combined with his authorities as a special police officer convinces the undersigned that he could very well be called upon in the performance of his regularly assigned dispatching functions to protect the Township's personnel and the property at Police Headquarters, where necessary. Thus, the Civilian Police Dispatcher's vital police functions and reserved authority create a conflict of interest with other Township personnel, which conflict is the underlying reason for the statutory separation of police and non-police personnel. Accordingly, for all the above-stated reasons, viewed in their entirety, the undersigned concludes that the Civilian Police Dispatcher herein-
volved is, in fact, a police officer within the intendment of the Act and appropriately belongs in Local 111's negotiations unit.

^{2/} The use of special officers to provide special protection for vital installations is consistent with the purpose of N.J.S.A. 40A:14-16. See State v. Jones, 4 N.J. Super 599, at 608 (Law Div. 1949), rev'd on other grounds 4 N.J. 207 (1950), rearg. denied 4 N.J. 374 (1950), and an opinion of the Attorney General of the State of New Jersey addressed to Mr. Ralph P. Shaw, Chief Examiner and Secretary of the Department of Civil Service, dated June 23, 1976.

9. In view of the fact the parties have, by contract, reserved to the Commission the determination of the proper unit placement of the disputed title, the undersigned finds, in accordance with the policy enunciated in In re Clearview Regional High School Board of Education, D.R. No. 78-2, 3 NJPER 247 (1977), that the disputed title shall immediately be included in Petitioner's collective negotiations unit.

BY ORDER OF DIRECTOR
OF REPRESENTATION



Carl Kurtzman, Director
of Representation

DATED: November 3, 1977
Trenton, New Jersey