

P.E.R.C. NO. 76-14

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF SUSSEX,
Public Employer,

-and-

NEW JERSEY WEIGHTS AND MEASURES,
P.B.A. LOCAL 203,
Petitioner,

Docket No. RO-704

-and-

NEW JERSEY CIVIL SERVICE ASSOCIATION,
SUSSEX COUNCIL NO. 20,
Intervenor.

SYNOPSIS

In accord with the Hearing Officer's Report and Recommendations, to which no exceptions were filed, the Commission dismisses a representation petition seeking to sever weights and measures officers from an existing overall county unit. Overruling an earlier unpublished decision, the Commission concludes that weights and measures officers are not policemen within the meaning of the Act, and are therefore not precluded from membership in the existing overall unit. The Commission finds no record evidence of unfair representation in the existing unit, and that the officers' continued inclusion in the existing unit is appropriate.

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NEW JERSEY CIVIL SERVICE ASSOCIATION,
SUSSEX COUNCIL NO. 20,
Intervenor.

DECISION

Pursuant to a Notice of Hearing to resolve a question concerning the representation of certain employees employed by the County of Sussex, ("Employer") a hearing was held January 17 and October 22, 1974 at which all parties were given the opportunity to present evidence, to examine and cross-examine witnesses, and to argue orally. On June 20, 1975, Hearing Officer Robert M. Glasson issued his Report and Recommendations which are attached hereto and made a part hereof. The Executive Director granted several requests for extensions of time in which to file exceptions. No exceptions have been filed, however.

The Commission has carefully considered the entire record and the Hearing Officer's Report and Recommendations, and, on the basis of the facts in this case, finds:

1. The County of Sussex is a Public Employer within the meaning of the New Jersey Employer-Employee Relations Act,

as amended, ("Act") and is subject to the provisions of the Act.

2. New Jersey Weights and Measures, P.B.A. Local 203 ("Petitioner") and the New Jersey Civil Service Association, Sussex Council No. 20 ("Intervenor") are Employee Representatives within the meaning of the Act and are subject to its provisions.

3. A Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission by the Petitioner seeking certification as the exclusive representative for purposes of collective negotiations of certain employees of the Department of Weights and Measures. The Public Employer refuses to recognize the Petitioner as the exclusive representative of the employees sought. Therefore, a question concerning representation of public employees exists and the matter is properly before the Commission for determination.

4. The Petitioner seeks to represent a unit of employees which it described as follows: All law enforcement officials employed by the County of Sussex, Department of Weights and Measures, including County Superintendent, Deputy Superintendent, and County Assistant Superintendent.^{1/} The requested unit includes three individuals.

1/ The parties stipulated that the County Superintendent is a supervisor within the meaning of the Act and accordingly should be excluded from the petitioned for unit. (Tr. Jan. 17, 1974, p. 29).

5. The petition was filed September 12, 1973. The one year contract then in effect (Employer Exhibit 2A, Schedule B, in evidence) between the Employer and the Intervenor was signed October 31, 1972 and expired December 31, 1973. N.J.A.C. 19:11-1.15(c) provides that, to be timely filed, a petition involving employees of a county must be filed not less than 90 days and not more than 120 days prior to the expiration date of the agreement. Therefore, the instant petition is a timely petition.

6. Since 1970 the employees sought herein have been included in an overall unit of all employees of the County of Sussex for which the Intervenor has been the exclusive representative. The Petitioner seeks to sever the above-listed employees from the existing unit, contending that they are policemen within the meaning of the Act and, therefore, that the Intervenor has no right to represent Weights and Measures Department employees in view of the fact that it admits employees other than policemen to membership.^{2/}

Petitioner relies on 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), wherein the Court found that county correction officers were policemen within the meaning of the Act and,

^{2/} N.J.S.A. 34:13A-5.3 provides, in pertinent part, "except where established practice, prior agreement, or special circumstances dictate the contrary no policemen shall have the right to join an employee organization that admits employees other than policemen to membership."

thus, could not be represented by an employee organization admitting employees other than policemen.

Petitioner also relies on City of Jersey City and Policemen's Benevolent Association, New Jersey Weights and Measures Local No. 203 and Local 1959, A.F.S.C.M.E., AFL-CIO, U.D. No. 30 (March 3, 1973), wherein Executive Director Nelligan found that assistant superintendents of weights and measures were policemen within the meaning of the Act. We affirmed that decision on July 20, 1973 following consideration of a Request for Review.

Both the Public Employer and Intervenor dispute Petitioner's contention that these employees are policemen within the meaning of the Act. While they agree with Petitioner that the instant case is controlled by Gloucester, they urge a different result.

In Gloucester the Court examined the legislative rationale behind the statutory prohibition against policemen joining employee organizations that admit employees other than policemen to membership.

The Court stated that the Legislature was concerned with potential divided loyalty or split allegiance for law enforcement officers who might be called upon by the Public Employer to enforce rules against public employees and to protect an employer's property on the one hand and yet, on the other hand, to have a certain loyalty to fellow employees in the negotiations unit.

As noted above, Gloucester concerned correction officers. The Court found that the correction officers have general law enforcement powers "...to act as officers for the detection, apprehension, arrest and conviction of offenders against the law...."^{3/}

Weights and measures officers, on the other hand, do not have general law enforcement powers. Their powers of arrest, as discussed by the Hearing Officer, are limited specifically to violations of weights and measures statutes committed in their view.^{4/}

Given the limited powers of weights and measures officers, the Commission agrees with the finding of the Hearing Officer that Weights and Measures Department employees are not policemen within the meaning of the New Jersey Employer-Employee Relations Act. The absence of any record evidence that weights and measures employees might be placed "...in a conflicting position and create circumstances for possible divided loyalty or split allegiance" as discussed in Gloucester at page 157 supports this conclusion.

The Commission is mindful of the fact that this represents a reversal of the decision of the Executive Director in the earlier decision cited above. See In re City of Jersey City, supra. However, a careful reading of our decision in State of New Jersey and Medical Security Officer's Association and Council

^{3/} N.J.S.A. 2A:154-3

^{4/} N.J.S.A. 51:1-1 et seq.

63, A.F.S.C.M.E., AFL-CIO, P.E.R.C. No. 81, April 22, 1974, ^{5/}
 affirmed by the Appellate Division in an unpublished decision
 indicates that neither this Commission nor the Court regards
 an expansive reading of the Gloucester decision as appropriate
 or required. The facts in this case support the finding of the
 Hearing Officer that weights and measures employees are not po-
 licemen within the meaning of the Act and we adopt that finding. ^{6/}

Having found the employees in question not to be
 policemen within the meaning of the Act, the above-quoted statu-
 tory language which provides that, in the absence of certain
 unclaimed exceptions, no policemen shall have the right to join
 an organization that admits employees other than policemen to
 membership does not come into play in terms of the ability of
 the Intervenor to represent these employees.

7. While the Petitioner claims that the Intervenor has
 not represented employees in the Department of Weights and Mea-
 sures, the record does not support this contention. Employees

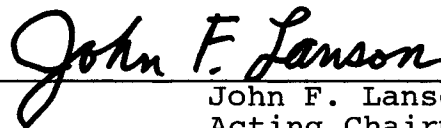
^{5/} State of New Jersey and Medical Security Officers Association
 and Council 63, AFSCME, AFL-CIO, Docket No. A-2528-73 (App.
 Div., March 26, 1975).

^{6/} It is noted that a contrary finding would not have been dis-
 positive. Even if the employees had been found to be police-
 men within the meaning of the Act, it would be necessary to
 determine that the unit sought was appropriate. Although
 this issue was not fully developed in the record before us, it
 is observed that the Commission has previously certified a
 County-wide law enforcement unit including weights and measures
 employees. See Bergen County Board of Chosen Freeholders and
 Bergen County Police, P.B.A. Local No. 49, P.E.R.C. No. 85
 (March 27, 1975). In that case, the status of weights and
 measures employees was not in dispute. Therefore, it is
 highly questionable whether we would find a unit composed
 exclusively of weights and measures officers to be appropriate.

in that Department are specifically included in the contracts negotiated between the Employer and the Intervenor since 1971 and there is no evidence nor even the claim that the circumstances which would justify severing the instant employees from the overall unit are present in this case. See Jefferson Township Board of Education, et al, P.E.R.C. No. 61 (October 21, 1971) and Board of Education of the Township of Cranford, et al, E.D. No. 74, 1 N.J.P.E.R. 23 (1975). Furthermore, the record indicates that the employees in that Department share a community of interest with other employees in the unit and that the inclusion of these employees in the County-wide unit is appropriate.

8. Based upon the above findings that the employees of the Department of Weights and Measures are not policemen within the meaning of the Act; that there is no evidence that the Intervenor has failed in its obligation to responsibly represent these employees and, therefore, that the condition precedent to justify severing these employees from an existing unit has not been met; and that their continued inclusion in the overall unit is appropriate, the Commission concludes that this petition should be and is hereby dismissed.^{7/}

BY ORDER OF THE COMMISSION



John F. Lanson
Acting Chairman

DATED: Trenton, New Jersey
January 23, 1976

^{7/} The Executive Director has not issued a decision in this matter. Pursuant to N.J.A.C. 19:15-3.5, the Commission hereby transfers this case to itself for decision.

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NEW JERSEY WEIGHTS AND MEASURES
P.B.A. LOCAL 205

Docket No. RO-704

Petitioner

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NEW JERSEY CIVIL SERVICE ASSOCIATION
SUSSEX COUNCIL NO. 20

Intervenor

Appearances:

For the Public Employer

Frank J. Peterpaul, Esquire

For the Petitioner

John Vatasin

For the Intervenor

David I. Fox, Esquire

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

A Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission hereinafter the Commission, on September 17, 1973, by the Policemen's Benevolent Association, New Jersey Weights and Measures, Local 203, hereinafter the Petitioner seeking to represent all Law Enforcement Officials of the Sussex County Department of Weights and Measures. The petitioned-for-unit includes the titles of County Superintendent, Deputy County Superintendent and Assistant County Superintendent. ^{1/} On November 16, 1973, New Jersey Civil Service

^{1/} The parties stipulated that the County Superintendent is a supervisor within the meaning of the Act and accordingly should be excluded from the petitioned-for-unit. (Tr. 29)

Association, Sussex Council 20, hereinafter the Intervenor, advised the Commission that the petitioned-for employees are included in a unit covered by an existing collective negotiating agreement between the Board of Chosen Freeholders of the County of Sussex, hereinafter the Public Employer, and Council 20. On October 9, 1973, the Public Employer advised the Commission that the petitioned-for employees are presently represented by Council 20 and that the unit petitioned for is an inappropriate unit. Accordingly, there is a question concerning representation and the matter is appropriately before the Hearing Officer for Report and Recommendations.

Pursuant to a Notice of Hearing dated December 4, 1973, and an Order Rescheduling Hearing dated December 19, 1973, a formal hearing was held on January 19, 1974. Pursuant to an Order Scheduling Hearing dated October 3, 1974, a second formal hearing was held on October 22, 1974. ^{2/} At both hearings all parties were given an opportunity to examine and cross-examine witnesses, to present evidence, argue orally, and present briefs. Briefs have been filed by the Petitioner and the Public Employer. Upon the entire record in this matter, the Hearing Officer finds:

1. The Board of Chosen Freeholders of the County of Sussex is a Public Employer within the meaning of the New Jersey Employer-Employee Relations Act and is subject to the provisions of the Act.
2. The Policemen's Benevolent Association, New Jersey Weights and Measures, Local 203 and the New Jersey Civil Service Association, Council 20 are Employee Representatives within the meaning of the New Jersey Employer-

^{2/} The hearing was reopened pursuant to a request by the Intervenor to supplement the record with regard to the Commission's determination in West Paterson Board of Education, et al, P.E.R.C. No. 79.

Employee Relations Act and are subject to the provisions of the Act.

3. The Public Employer refuses to recognize the Petitioner as exclusive representative of certain employees; therefore, a question concerning representation of public employees exists and the matter is appropriately before the undersigned Hearing Officer for Report and Recommendations.

BACKGROUND

On June 30, 1970 the Public Employer, pursuant to the New Jersey Employer-Employee Relations Act, Chapter 303, Laws of 1968, adopted a resolution recognizing the Intervenor as the exclusive representative "for the employees of the County of Sussex, with the exception of the Sussex County Probation Officers..." ^{3/}

Subsequently, the parties executed collective negotiating agreements covering the calendar years 1971, 1972, 1973, 1974, and 1975. ^{4/}

The County of Sussex is governed by a three member Board of Chosen Freeholders which develops and implements labor relations policy for all County employees. Examination of the above agreements indicate that the employees petitioned for herein have been included in the unit; in fact, all parties stipulated at the hearing that the Intervenor, Council 20, has represented all employees of the County of Sussex since formal recognition was granted in 1970. ^{5/}

^{3/} Employer exhibit one in evidence.

^{4/} Employer exhibit two (a) in evidence. The 1974-75 agreement was executed on December 11, 1973 which is subsequent to the filing of the instant Petition.

^{5/} Tr. p. 95.

MAIN ISSUES

1. Are Weights and Measures Department employees policemen within the meaning of the New Jersey Employer-Employee Relations Act? [N.J.S.A. 34:13A-5.3]
2. If found to be policemen within the meaning of the Act, does established practice, prior agreement, or special circumstances dictate that Weights and Measures Department employees remain in the collective negotiating unit represented by the Intervenor? [N.J.S.A. 34:13A-5.3]
3. Is the unit sought the most appropriate unit for the purpose of collective negotiations "with due regard for the community of interest among the employees concerned"? [N.J.S.A. 34:13A-5.3 (7)]
4. Is the instant Petition timely filed pursuant to Section 19:11-1.15 of the Commission's Rules and Regulations?

POLICE ISSUE

POSITION OF THE PETITIONER

The Petitioner contends that the petitioned-for employees are police within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., as amended by Chapter 303, Laws of 1968 (hereinafter the "Act"); therefore, Intervenor, which admits employees other than policemen to membership has no right to represent Weights and Measures Department employees.

In support of it's contention that the petitioned-for employees are policemen, Petitioner relies on County of Gloucester v. Public Employment Relations Commission, 107 N.J. Super. 150 (Appellate Division 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). The Court in Gloucester found that county correction officers are empowered by statute "to act as officers for the detection, apprehension, arrest and correction of offenders against the law", N.J.S.A. 2A:154-3; therefore they could not be represented by an employee organization admitting employees other than police".

Petitioner also cites City of Jersey City and Policemen's Benevolent Association, N.J. Weights and Measures, Local No. 203, and Local 1959, A.F.S.C.M.E. AFL-CIO, U.D. No. 30 (March 2, 1973), wherein the Executive Director upheld the findings of the Hearing Officer that "Assistant Superintendents of Weights and Measures are policemen within the intendment of N.J.S.A. 34:13A-1 et seq and that the statutory exceptions regarding admission of policemen to membership do not apply". ^{6/}

POSITION OF THE PUBLIC EMPLOYER

The Public Employer ^{7/} contends that the petitioned-for Weights and Measures employees are not policemen within the intendment of the term as used in the Act. The Public Employer argues that the Court's finding in Gloucester is not dispositive of the issue of whether Weights and Measures employees are policemen within the meaning of the Act. In this regard, the Public Employer argues that the arrest powers of Weights and Measures employees are limited: the only law which they have the authority to enforce is N.J.S.A. 51:1-1 et seq which deals with weights and measurements; and they can only arrest for Title 51 violations committed in their view. In Gloucester, correction officers are granted broader authority, pursuant to N.J.S.A. 2A:154-4, which

^{6/} The Commission, after granting the City of Jersey City's request for review of the Executive Director's Decision and Direction of Election, affirmed the Executive Director's decision.

^{7/} The Public Employer and Intervenor have advanced similar arguments with respect to the above issue. Distinction will be made where appropriate.

empowers them to detect, apprehend, arrest and convict offenders against the law, without limitation.

In view of this limited authority, the Public Employer maintains that Weight and Measures employees could not be placed in a potential conflict of interest with other County employees by virtue of their membership in the same employee organization. The Public Employer analogizes the statutory policy excluding policemen from membership in an employee organization that admits non-police to the policy of the National Labor Relations Act, which precludes guards from joining a labor union if that organization includes members other than guards.

Finally, the Public Employer submits that the police prohibition was enacted because the legislature was concerned that in the event of employee unrest, the obligations of policemen to the municipality or the State would be incompatible with their obligations to the union. In this regard, the Public Employer points out that correction officers could be called upon to enforce laws of general application involving the protection of property or safety of persons against other employees; whereas, Weights and Measures employees could not experience "divided allegiance" since they do not have authority to enforce laws of general application.

DISCUSSION AND FINDING

The Act establishes as a general rule that, "the negotiating unit shall be defined with due regard for the community of interest among the employees concerned..." ^{8/} The Act contains several specific qualifications to the community of interest principle of which application of the following underlies the instant issue:

8/ N.J.S.A. 34:13A-5.3

...except where established practice, prior agreement or special circumstances dictate the contrary, no policemen shall have the right to join an employee organization that admits employees other than policemen to membership... 8/

The Petitioner's main argument is that the Weights and Measures employees are policemen within the meaning of the Act; thus, they cannot be represented by the Intervenor in the county-wide unit, and must accordingly be represented by Petitioner. The Public Employer and Intervenor dispute the Petitioner's contention.

The Petitioner, Public Employer, and Intervenor agree that resolution of the instant issue is controlled by the principle enunciated by the Appellate Division, and affirmed by the Supreme Court, in Gloucester; however, as previously discussed, for different reasons.

In Gloucester, a local of the Teamsters petitioned for a unit of correction officers employed at the Gloucester County Prison. The County argued, among other things, that the correction officers perform a security function similar to policemen and should accordingly be denied representation by an employee organization that traditionally admits non-policemen to membership. The County pointed to N.J.S.A. 2A:154-3, which empowers correction officers "to act as officers for the detection, apprehension, arrest and conviction of offenders against the law", in support of this argument. The Commission disagreed, however, construing the statutory prohibition literally. The Commission viewed the employees in question as "correction officers or prison guards" rather than "policemen", and with respect to the statutory powers conferred by N.J.S.A. 2A:154-3, simply indicated that the record did not show that "the correction officers actually are called upon to exercise the police powers conferred."

In reversing, the Appellate Division found that the Commission's literal construction of the term "policemen" frustrated the legislative objective behind Section 7 of the Act. In the absence of statutory definition of the term "policemen" or legislative history in that regard, the Court looked to the rationale for the statutory prohibition. Reading Section 7 of the Act together with the powers conferred by N.J.S.A. 2A:154-4 ^{9/} the Court held that "the Legislature was seriously concerned with preventing law enforcement officers, authorized to make detections, apprehensions and arrests, from joining an employees' union which might place them in a conflicting position and create circumstances for possible divided loyalty or split allegiance", and that "nonrecourse by guards, in the past, to their reserved authority is no basis for assuming that they may not, in the future, be required to exercise such authority in order to prevent violations of the law". The Court characterized the Commission's approach as "incompatible with the reason and spirit of Section 7 of the Act" in that it violated an implicit legislative policy". The Supreme Court affirmed "for the reasons given by the Appellate Division", 55 N.J., at p. 334. ^{10/}

In Gloucester, the Court viewed the legislative motive behind the statutory prohibition as relating to the prevention of a conflict of interest between a policemen's function to arrest and apprehend violators of the law on one hand, and on the other hand his loyalty to co-unionists. The Court did not feel compelled to illustrate the obvious conflict which

^{9/} N.J.S.A. 2A:154-4 is identical in all relevant respects to N.J.S.A. 2A:154-3 except that it applies to "correction officers of the State of New Jersey" rather than "County correction officer".

^{10/} State of New Jersey, and Medical Security Officers Association, and Council 63, AFSCME, AFL-CIO, P.E.R.C. No. 81 (April 22, 1974).

would manifest itself in such a situation; however, the Court did cite in this regard "the analagous policy fostered by 20 U.S.C.A., Section 159 (6), which precludes guards from joining a labor union if that organization includes member employees other than guards". ^{11/}

Section 9 (b) of the National Labor Relations Act ^{12/} states in part:

...The Board shall decide in each case whether, in order, to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, and subdivision thereof: Provided, that the Board shall not... (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards. (Emphasis mine)

The Court, in Gloucester, indicated that they were "unaided by any specific explication or definition of 'policemen' in the legislative history of the statute in question, and therefore, turn to the "most universal effectual way of discovering the true meaning of a law, when the words are dubious", which is "by considering the reason and spirit of it; or the cause which moved the legislator to enact it". ^{13/} The Court

^{11/} Gloucester, supra, at P. 157.

^{12/} 49 Stat. (1935), as amended by Public Law No. 101, 80th Cong., 1st Sess. 1947 and Public Law No. 257, 86th Cong., 1st Sess., 1959; 29 U.S.C. Section 151-68; F.C.A. Section 151-68

^{13/} Gloucester, supra, at page 156.

read N.J.S.A. 2A:154-3; which empowers correction officers "to act as officers for the detection, apprehension, arrest and conviction of offenders against the law", together with the Act's prohibition against policemen joining an employee organization admitting employees other than police, and found that:

...we think it apparent that the Legislature was seriously concerned with preventing law enforcement officers, authorized to make detections, apprehensions and arrests, from joining an employees' union which might place them in a conflicting position and create circumstances for possible divided loyalty or split allegiance. 14/ (Emphasis mine)

The key phrases, as emphasized above, are "divided loyalty" and "split allegiance".

As previously stated, resolution of the instant issue is controlled by the principle enunciated by the Appellate Division and affirmed by the Supreme Court in Gloucester. After examining the entire record and applying the principle in Gloucester, the undersigned finds that the Weights and Measure employees are not policemen. The Hearing Officer agrees with the position of the Public Employer "that the policemen provision was enacted because the legislature was concerned that in the event of employee unrest, the obligation of policemen to the municipality or the State would be incompatible with their obligation to the union. Were police officers to be called upon to enforce the law against fellow union members, they might experience a divided allegiance".

Weights and Measures employees are charged with the responsibility of enforcing N.J.S.A. 51:1-1 et seq which prescribes standards of weight, measure, volume, etc. N.J.S.A. 51:1-2 defines weights and measures:

"Weight and measure" or weights and measures" includes any weight, measure, scale beam, patent balance, spring scale, person-weighting machine operated for profit, steelyard, tape, counter measure, receptacle of any kind, or any other

14/ Gloucester, supra, at page 157.

instrument or apparatus and accessories connected therewith used in weighing or measuring any commodity, fluid, or article of merchandise or person.

Petitioner relies on N.J.S.A. 51:1-106, which authorized Weights and Measures employees to arrest an offender who violates any provision of Title 51 "within his view".

A superintendent, assistant superintendent, or inspector on the violation of any of the provisions of this Title within his view may without warrant arrest the offender and conduct him before the Court having jurisdiction in the municipality where the arrest is made or the offense committed.

Nowhere in Title 51 is there any additional law enforcement power granted to Weights and Measures officers. The severely limited power of arrest granted to Weights and Measures officers restricted solely to Title 51 enforcement does not approach the broad police powers reserved to correction officers who are empowered by statute "to act as officers for the detection, apprehension, arrest and conviction of offenders against the law". ^{15/}

The power of arrest of Weights and Measures officers is limited solely to violations of the above-cited weights and measures statute and the undersigned submits that the legislature did not intend to exclude employees from inclusion in negotiating units on such a limited basis where such employees have no legal authority for the enforcement of any other civil or criminal statute nor to arrest any individual for violation of same.

There does not appear to be any circumstances under which Weights and Measures employees would be placed in a situation "which might place them in a conflicting position and create circumstances for possible divided loyalty or split allegiance". ^{16/}

^{15/} N.J.S.A. 2A:154-3.

^{16/} Gloucester, supra, at page 157.

Not one example of "divided loyalty or split allegiance", actual or potential, has been offered with respect to the duties, authorities and responsibilities possessed by Weights and Measures Department employees. The undersigned is persuaded that the situation that would warrant the exclusion of certain employees from a negotiating unit of fellow employees is that in which the employees were charged with the responsibility to enforce against fellow employees and other persons rules and/or laws to protect the property of the employer or to protect the safety of persons on the employer's property. The record is devoid of any evidence which would indicate that Weights and Measures Department employees possess authorities, duties and responsibilities "which might place them in a conflicting position and create circumstances for possible divided loyalty or split allegiance." 17/

Accordingly, the undersigned finds that Weights and Measures Department employees are not policemen within the meaning of the New Jersey Employer-Employee Relations Act. Having found that the petitioned-for employees are not policemen within the meaning of the Act, the undersigned recommends the continued inclusion of the Weights and Measures Department employees in the existing recognized negotiating unit. 18/

17/ Gloucester, supra, at page 157

18/ In view of the finding that the petitioned-for employees are not policemen within the meaning of the Act, the undersigned does not find it necessary to analyze the heretofore delineated issues; however, with respect to the issue—If found to be policemen within the meaning of the Act, does established practice, prior agreement, or special circumstances dictate that Weights and Measures Department employees remain in the collective negotiating unit? [N.J.S.A. 34:13A-5.3—the undersigned finds, pursuant to, West Paterson Board of Education, and West Paterson Education Association, P.E.R.C. No. 79 (December 28, 1973), that the record does not support the Public Employer/Intervenor's position that "established practice" and "prior agreement" dictate that Weights and Measures Department employees remain in the collective negotiating unit represented by the Intervenor. Neither party argued that the third exception [special circumstances] should be considered.

RECOMMENDATION

The undersigned respectfully concludes that the unit petitioned for is inappropriate and recommends that the Petition in this instant matter be dismissed.

RESPECTFULLY SUBMITTED

Robert M. Glasson

Robert M. Glasson
Hearing Officer

Dated: June 20, 1975
Trenton, New Jersey