

P.E.R.C. NO. 2009-10

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

COUNTY OF BURLINGTON,

Public Employer,

-and-

NEW JERSEY STATE PBA LOCAL 203,

Docket No. RO-2007-089

Petitioner,

-and-

COMMUNICATIONS WORKERS OF AMERICA,
LOCAL 1034,

Intervenor.

SYNOPSIS

The Public Employment Relations Commission granted requests for review of D.R. No. 2008-10 made by the County of Burlington and Communications Workers of America, Local 1034. The New Jersey State PBA Local 203 filed a petition to represent assistant superintendents and apprentice superintendents employed in the County's Weights and Measures Department. In D.R. No. 2008-10, the Director of Representation directed an election to sever these weights and measures employees from the existing non-law enforcement unit represented by CWA. At the request of the parties, the Commission issued a stay of the election pending review. The Commission holds that under Warren Cty., P.E.R.C. No. 86-111, 12 NJPER 357 (¶46 2008), given their statutory power to arrest, weights and measures employees are police within the meaning of the Act. The Commission orders the stay dissolved and the case remanded for proceedings in accordance with this decision.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Public Employer, Peter H. Nelson, County Solicitor (Kendall Collins, First Assistant Solicitor, of counsel)

For the Petitioner, Cohen, Leder, Montalbano & Grossman, attorneys (Bruce D. Leder, of counsel)

For the Intervenor, Weissman & Mintz, attorneys (Jason L. Jones, of counsel)

DECISION

On June 26, 2007, New Jersey State PBA Local 203 ("PBA") filed a representation petition accompanied by an adequate showing of interest, seeking to represent all assistant superintendents and apprentice superintendents employed by the County of Burlington ("County") in its Weights and Measures Department. The petitioning employees are currently represented by the Communications Workers of America, Local 1034 ("Local

1034" or "CWA") in a broad-based unit of all full-time County employees. Local 1034 intervened in this matter, based upon its expired 2003 through 2006 collective negotiations agreement with the County. N.J.A.C. 19:11-2.7.^{1/}

On May 16, 2008, based upon Warren Cty., P.E.R.C. No. 86-111, 12 NJPER 357 (¶17134 1986), the Director of Representation directed an election to sever "weights and measures" employees from the existing non-law enforcement unit currently represented by CWA. D.R. No. 2008-10, 34 NJPER 106 (¶46 2008). In his decision, the Director commented that the circumstances of the case may warrant a reassessment of Warren Cty. and that our 1986 ruling may not be completely dispositive of the issues presented.

Both the County and CWA sought and were granted extensions of time to file requests for review of the Director's decision. The County also sought a stay of the decision.

On May 28 and June 2, 2008, respectively, the County and CWA filed their requests for review. On June 3, the Commission Chairman, noting that all parties had consented, granted a stay of the election. By letter brief dated June 20, the PBA urged that the Commission deny the requests for review, or grant the requests for review and affirm the action of the Director.

^{1/} A successor agreement now extends from January 1, 2007 through December 31, 2010.

On September 11, 2008, the Chairman granted the requests for review. N.J.A.C. 19:11-8.2(a)(1). We now review the Director's decision.

Warren Cty. held that, given their statutory power to arrest (N.J.S.A. 51:1-106), weights and measures employees were "policemen" within the meaning of the Act. We followed and applied Gloucester Cty. v. PERC, 107 N.J. Super. 150, 158 (App. Div. 1969), aff'd 55 N.J. 333 (1970), holding that employees who possessed statutory arrest powers were police, even if they were unarmed and had not actually exercised that authority.

PBA Local 203 asserts that in keeping with the statutory restriction prohibiting police employees from joining an employee organization that admits non-police employees to membership, the assistant superintendent and apprentice superintendents must be represented in a separate unit because CWA admits non-police employees to membership. N.J.S.A. 34:13A-5.3.

The County argues that it, rather than the individual officers, has the discretion to decide whether weights and measures officers will exercise their statutory arrest powers. It asserts that it has never passed a resolution authorizing weights and measures officers to make arrests or otherwise directed them to do so during the 20 years they have been represented by CWA. The County additionally contends that weights and measures officers have not received police training

and are not armed. It concedes that Warren Cty. holds that, once it is determined that public employees have the power to make arrests, they cannot be in a unit with non-police, but urges that we reconsider that decision and make case-by-case determinations.

CWA argues that even assuming that weights and measures officers have statutory arrest powers, they are not police under the fact-intensive analysis used by the Commission in Camden Cty. Prosecutor, P.E.R.C. No. 2007-9, 32 NJPER 283 (¶117 2006), aff'd 394 N.J. Super. 15 (App. Div. 2007), where we held that assistant prosecutors were not performing police services.

The Director's decision discusses the statutory arrest powers of weights and measures officers; our decision in Warren Cty. and the Gloucester Cty. decision of the courts, that was and remains the governing precedent in determining whether a public employee fits within the Act's definition of a police officer.

Gloucester Cty. held that even though correction officers were not armed and had not been called upon to exercise their arrest powers, their statutory authority warranted classifying them as police.

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.
[107 N.J. Super. at 158.]

Weights and measures officers have statutory arrest power. When we decided Warren County, N.J.S.A. 51:1-106 read:

A weights and measures officer, on the violation of any of the provisions of this title within his view or presence, may without warrant arrest the offender and conduct him before the court having jurisdiction.

Shortly after our decision, N.J.S.A. 51:1-106 was amended by L. 1986, c. 167, §19, effective December 4, 1986, part of a comprehensive revision of the weights and measures laws. Two additional paragraphs were added. As amended, N.J.S.A. 51:1-106 now reads:

A weights and measures officer, on the violation of any of the provisions of this title within his view or presence, may without warrant arrest the offender and conduct him before the court having jurisdiction.

A weights and measures officer may order off-sale, issue stop-use or removal orders, or may seize and take possession of any commodity in package form, weight or measure, document or other item, when he has reason to believe that any provision of Title 51 of the Revised Statutes or any regulation adopted thereunder has been violated.

Any weights and measures officer, his employer, or the State shall not be liable for damages by reason of that seizure.

While the amendment gave officers additional powers to enforce weights and measures laws, the arrest powers in the first paragraph were neither altered nor removed. Thus, it is incontrovertible from a plain reading of N.J.S.A. 51:1-106 that weights and measures officers have the statutory power to arrest and that any discretion regarding its exercise rests with weights

and measures officers, not, as urged by the County, with a public employer.

Since weights and measures officers have statutory arrest powers we need not, as urged by CWA, apply the multi-faceted test used in Camden Cty. Prosecutor to find that assistant prosecutors were not performing police services.

Camden Cty. Prosecutor is distinguishable as we, and the Appellate Division, held that assistant prosecutors do not have statutory arrest powers. See 32 NJPER at 286; 394 N.J. Super. at 26. Because of the absence of statutory arrest power, we then considered other factors to determine whether assistant prosecutors performed police services. However, where the power to arrest is clear, examination of other indicia of police is unnecessary. Camden Cty. Prosecutor notes:

Following Gloucester, we have held that employees are "police" for purposes of section 5.3 if they have the statutory authority to make arrests, even if the authority is limited to a particular class of violations. Warren Cty., P.E.R.C. No. 86-111, 12 NJPER 357 (¶17134 1986). [32 NJPER at 285].

In administering the Act, we apply pertinent judicial decisions. See In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 22 (App. Div. 1977). Our continued adherence to Warren Cty. comports with Gloucester Cty. Absent legislative or judicial declarations that Warren Cty. was wrongly decided, we will continue to apply it.

Finally, we concur with the Director's determination to also sever weights and measures apprentices from the existing unit and allow them to vote in the directed election. See City of Newark, P.E.R.C. No. 88-24, 13 NJPER 727 (¶18274 1987).

ORDER

D.R. No. 2008-10 is affirmed. The stay issued by the Chairman is dissolved and the case is remanded back to the Director of Representation for proceedings in accordance with his decision.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Branigan, Buchanan, Fuller and Joanis voted in favor of this decision. None opposed. Commissioner Watkins was not present.

ISSUED: September 25, 2008

Trenton, New Jersey