

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

In the Matter of

CITY OF NEWARK,

Public Employer-Petitioner,

-and-

DOCKET NO. CU-79-14

POLICEMANS BENEVOLENT ASSOCIATION,  
LOCAL NO. 3,

Employee Representative.

SYNOPSIS

The Director of Representation, in a Clarification of Unit proceeding, determines whether certain employees represented by PBA, Local No. 3, are entitled to proceed to interest arbitration pursuant to the Police and Fire Compulsory Interest Arbitration Act, N.J.S.A. 34:13A-14 et seq.. The Director, in construing Act, concludes that the it is not limited solely to those employees who have been statutorily vested with the police powers of arrest, apprehension and detection, but it is applicable as well to those police department employees who perform police services. The Director finds that police department employees in Newark who are communications officers, linemen and the supervising police property clerk are not entitled to proceed to interest arbitration since they are not engaged in the performance of a police function. However, the Director finds that the identification officers, who are trained at the Police Academy in the science of criminal identification and apply the skills acquired through such training in the performance of their job responsibilities, are performing services police services and are entitled to interest arbitration.

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Appearances:

For the Public Employer-Petitioner  
Rosalind Bressler, Assistant Corporation Counsel

For the Employee Representative  
Sterns, Herbert & Weinroth, attorneys  
(Michael Herbert of counsel)

DECISION AND ORDER

On October 17, 1978, the City of Newark (the "City") filed a Clarification of Unit Petition with the Public Employment Relations Commission (the "Commission") raising a question concerning the identification of certain employees represented by the Policemans Benevolent Association, Local No. 3 (the "PBA") as either police or nonpolice personnel. The PBA currently represents a unit comprised of employees in the police department holding the titles of communication officer (formerly, police telephone and teletype operator),

identification officer, lineman, and supervising police property clerk.

The City maintains that these employees are not police personnel who are entitled to compulsory interest arbitration under N.J.S.A. 34:13A-14 et seq., since they do not possess statutory constabulary powers. The PBA asserts that these employees are police department personnel who perform police services and are entitled to compulsory interest arbitration. Consistent with its position, the PBA filed a Petition to Initiate Compulsory Interest Arbitration with the Commission's Division of Conciliation and Arbitration. The City asserts that these employees are entitled only to conventional negotiations rights.

Pursuant to a Notice of Hearing, <sup>1/</sup> a prehearing conference was held on October 25, 1979, before Hearing Officer Dennis J. Alessi, at which the PBA and the City agreed to waive an evidentiary hearing and a Hearing Officer's Report and Recommendations, and agreed to submit the matter directly to the undersigned based on stipulations of fact, joint exhibits and briefs. Stipulations of fact, including job descriptions, were submitted on February 20, 1980. The stipulations are attached hereto and made a part hereof. The parties further agreed to submit as joint exhibits the Rules and Regulations of the Newark Police Department and

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<sup>1/</sup> The undersigned determined that the instant identification question was appropriate for resolution in a Clarification of Unit proceeding.

the Manual of Procedures of the Police Division, Department of Public Safety. Briefs were submitted by the PBA and the City on March 24, 1980 and April 11, 1980, respectively.

The City, in its brief, contends that an examination of the arbitration statute's legislative history reveals an intent that the statute encompass only public employees providing those vital services whose interruption would be a threat to public safety and security. Based on the stipulated facts, the City argues that an interruption in the services performed by the employees in question would not disrupt the operation of the department or interfere with the department's performance of those services vital to public safety and security. The City argues that the Legislature intended the statute to encompass only those employees performing police services which involve the duties of detection, apprehension, arrest and conviction of criminals or duties in connection with the custody and punishment of violators of the law. In support thereof the City cites the law enforcement titles which are enumerated in the statute as eligible for interest arbitration and argues that each of the enumerated titles perform the duties described above.

The PBA, in its brief, contends that the statement of policy embodied in the interest arbitration law and the language used to describe the scope of the statute's applicability evidences a legislative intent that the statute apply

not only to "policemen" who have the statutory authority to detect, apprehend and arrest criminals, but also apply to other employees who are engaged in performing police services. Applying this standard to the stipulated facts, the PBA contends that the employees in question are engaged in performing police services and, therefore, are entitled to interest arbitration. The PBA further argues that the specialized services performed by the employees in question are so integrally related to the performance of "core" police functions - i.e., the detection, apprehension and arrest of criminals - that they come within the purview of the arbitration statute as "employees engaged in performing police services." The PBA emphasizes that the statute must be liberally construed to effectuate its public policy and that the statutory listing of qualified titles does not preclude the addition of other titles which come within the statute's intent. The PBA alleges that an illegal job action by these employees would so disrupt the performance of "core" police functions that the fulfillment of the statute's public policy mandates granting interest arbitration to these employees. Finally, the PBA asserts that for nearly two years after the enactment of the arbitration statute the City continued to recognize these employees as members of a unit which also included "police officers". Since, under N.J.S.A. 34:13A-5.3, a unit of policemen cannot include nonpolice employees, the PBA argues that the City

has previously recognized the employees in question as being "policemen" and is estopped from arguing to the contrary. <sup>2/</sup> Upon the entire record of this proceeding the undersigned finds and determines as follows:

1. The City of Newark 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" or "EERA"), is the employer of the employees who are the subject of this Petition, and is subject to the provisions of the Act.

2. Policemans Benevolent Association, Local No. 3 is an employee representative within the meaning of the Act and is subject to its provisions.

3. The City, having filed a Clarification of Unit Petition with respect to communication officer (formerly, police telephone and teletype operators), identification officers, linemen and supervising police property clerk, has raised a question of identification which bears upon the composition of a collective negotiations unit and, therefore, the matter is appropriately before the undersigned for determination.

4. The PBA currently represents a recognized collective negotiations unit which includes the titles of communication officer, identification officer, lineman and supervising police property clerk.

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<sup>2/</sup> The City contends that its prior recognition of the PBA as representative of these titles in a unit consisting of "police officers" does not now preclude the City from refusing to proceed to arbitration for these titles.

5. The question presented in this Clarification of Unit Petition is one of first impression -- whether communication officers, identification officers, linemen and supervising police property clerks are entitled to interest arbitration under the Police and Fire Compulsory Interest Arbitration Act, N.J.S.A. 34:13A-14 et seq. The resolution of this question requires the study and interpretation of the underlying statute. Accordingly, the undersigned must be guided by certain well established principles of statutory construction.

The ultimate goal in statutory interpretation is to ascertain and to give effect to the intent of the legislature. General statutory intent controls the interpretation of specific provisions of a statute. Hackensack Water Co. v. Ruta, 3 N.J. 139 (1949); Mahoney v. Parole Bd., 10 N.J. 269 (1952); Knox v. Krause, 152 N.J. Super 278 (1977); Wollen v. Borough of Ft. Lee, 27 N.J. 408 (1958); Marsh v. Finley, 160 N.J. Super 193 (1978); Bd. of Ed. City of Plainfield v. City of Plainfield Ed. Assoc., 144 N.J. Super 521 (1976). Legislative intent may be determined by reviewing the nature of the subject matter dealt with; the motive which lead the Legislature to enact the statute i.e., the remedy which the Legislature sought to obtain; the public policy underlying the enactment; the particular provision in para materia with the statute as a whole i.e., the circumstances in which the statutory language is employed; the general context, frame and design of the whole

statutory system of which the enactment is a part. Fiscella v. Nulton, 22 N.J. Super 367 (1952); Lynch v. Borough of Edgewater, 14 N.J. Super 329, reversed 8 N.J. 279 (1951); Chiarello v. Guerin Special Motor Freight, 22 N.J. Super 431 (1952); Pfitzinger v. Bd. of Trustees of Public Employment Retirement System, 62 N.J. Super 589 (1960); State v. McCarthy, 123 N.J. Super 513 (1973).

In 1977, the Legislature amended EERA to provide for compulsory arbitration in police and fire departments. The EERA had previously addressed police employees solely in the context of their representational rights by requiring, at N.J.S.A. 13A-5.3, that "policemen" could not be represented by employee organizations which represented nonpolicemen. Significantly, in this context, the courts and the Commission were called upon to define the term "policemen" which was otherwise not defined specifically in the EERA. Addressing this issue as the definition related to county correction officers, the Superior Court Appellate Division noted that county correction officers could exercise police powers by specific statutory authorization, and stated 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." Cty. of Gloucester v. PERC, 107 N.J. Super 150 (App. Div. 1969), aff'd 55 N.J. 333 (1970). The Commission



subsequently determined that the definition of the term "policemen" in §5.3 was specifically limited to those employees with statutory police powers. In re State of N.J., P.E.R.C. No. 81 (1974), aff'd App. Div. Docket No. A-2528-73 (3/26/75). Since it must be assumed that the Legislature was aware of its prior legislation on the issue and the judicial construction placed thereon, it follows that the Legislature, if it intended to limit the application of the interest arbitration amendment to those law enforcement employees who have the statutory authority to detect, apprehend and arrest criminals could have accomplished this objective by once again utilizing the term "policemen" in defining the coverage of the interest arbitration amendment. <sup>3/</sup> Instead, the statute defines the scope of its applicability by stating that a "public police department means any police department or organization of a municipality, county or park, or the state, or any agency thereof having employees engaged in performing police services." (emphasis added) N.J.S.A. 34:13A-15. The use of the general word "employees" rather than the more specific limited term "policemen", evidences an intended broader application of the statute. The Legislature was aware that in a police department there

<sup>3/</sup> Most interest arbitration statutes utilize the specific term "policemen." See for example, Act 111, L. 1968, Penna.; Ch. 9.2, title 28 L. 1970, Rhode Island. Where this term is used, the statute's applicability has been limited to law enforcement employees who have been statutorily granted the authority to investigate criminal activities and apprehend violators of the law. Hartshorn v. Cty. Allegheny, 83 LRRM 2660 aff'd 89 LRRM 2215 (1975).

are certain law enforcement duties, beyond the actual seeking out and physical restraining of criminal offenders, which are integral elements of the total process of detection, apprehension and arrest. The employees assigned to these duties are "performing police services," as are "policemen." Therefore, the use of the phrase "employees engaged in performing police services" indicates that the Legislature intended the statute to apply to those employees of a police department who perform those law enforcement duties which are integral elements of the total process of detecting, apprehending and arresting criminal offenders.

The Legislature included a list of some of the state, county and local law enforcement titles which are illustrative of the statute's ambit. N.J.S.A. 34:13A-15. <sup>4/</sup> The undersigned notes that not all of the listed titles have been vested with the statutory authority to make detections, apprehensions and arrests of criminal offenders. This is a further indication that the Legislature intended the statute to apply to other employees of police departments who perform duties which are integral elements of the department's overall law enforcement functions.

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<sup>4/</sup> The Assembly Committee's statement attached to Senate Bill No. 482, which eventually became the Arbitration Statute, stated that it was adopting certain amendments to clarify the Bill's language, specifically: "to delineate the principal job titles within the scope of 'public police departments'."

The Sponsor's statement attached to Senate Bill No. 482, which eventually became the Arbitration Statute, stated:

In the best interest of the citizens of this state, it is essential that the state establish a means of resolving conflict between public employers and their employees affecting the welfare of its citizens. Compulsory Arbitration is the only final resolve to these conflicts that would eliminate any and all slow downs, job actions, or out right strikes by employees providing these vital services.

The Senate Committee Statement attached to the Bill also speaks in terms of "employees of any public police department." In both instances the emphasis is placed on "employees" of police departments who perform "vital services," not merely "policemen" who seek out and physically restrain criminals. From these Statements it is evident that the purpose of the statute is to protect the public welfare by eliminating any labor unrest among those public employees of police departments who could disrupt the providing of vital law enforcement services. The preamble to the Statute describes it as: "an act providing for Compulsory Arbitration of labor disputes in public fire and police departments.

N.J.S.A. 34:13A-14 states that:

It is the public policy of this state that in public fire and police departments, where public employees do not enjoy the right to strike, it is requisite to the high morale of such employees

and the efficient operation of such departments to afford an alternate, expeditious, effective and binding procedure for the resolution of disputes, and to that end the provisions of this Act, providing for Compulsory Arbitration, shall be liberally construed.

From the Sponsor's and Committees' statements attached to the original Bill, and from §14 which mandates a liberal construction thereof, it is clear that the Legislature was not concerned simply with providing interest arbitration to specific law enforcement titles which fall within the definition of "policemen". Rather, there was a comprehensive concern for the effective and efficient operations of police departments as a whole, to insure that these departments perform in an uninterrupted manner all those vital law enforcement services which affect the public welfare. From the above analysis it appears that the arbitration statute was intended to apply to public employees in police departments who are engaged in providing those vital services which are an integral element of the total process of detecting, apprehending and arresting criminals.

Since the objective of the legislation was to insure the continuous delivery of law enforcement services to the public, it is reasonable to conclude that in addition to "policemen" the Legislature intended interest arbitration to

apply to certain other police department employees to the extent necessary to guarantee the noninterruption of vital law enforcement services. As discussed earlier, "police services" encompass more than the actual seeking out and physical restraining of criminal offenders. There are employees of police departments who do not have the statutory authority and power of "policemen", but who do perform law enforcement duties which are integral elements of the total process of detecting, apprehending and arresting criminals. Employees who perform such duties are vital to a police department's ability to provide uninterrupted, basic law enforcement services. Therefore, to limit interest arbitration only to those employees of police departments who fall within the limited definition of "policemen", would frustrate and be contrary to the Legislature's goal of insuring the uninterrupted, efficient and effective operation of police departments for the public safety.

Accordingly, the undersigned shall now examine the job functions of the disputed titles in order to determine whether the employees functioning in these titles perform police services which are an integral element of the law enforcement process. The undersigned emphasizes that the application of this standard involves a factual determination and evaluation, on a case-by-case basis, of the specific

duties and responsibilities of the title(s) in question. <sup>5/</sup>  
The undersigned notes the parties' stipulation that "no specific statute empowers these 'Employees' to act as officers for the detection, apprehension, arrest and conviction of offenders against the law." (Stipulation 22).

#### Identification Officers

Identification officers perform the following functions: (1) interview persons for a physical description and other information relating to the identity of criminals; (2) photograph persons for investigations and identification; (3) fingerprint persons for identification purposes; (4) analyze, index, classify and file fingerprints according to certain filing systems; (5) search files for prior records; (6) photograph scenes of crimes; (7) search for and lift latent prints with fingerprint powder; (8) fingerprint dead and partially decomposed bodies for identification purposes; (9) assist with the exchange of information between other law enforcement authorities; (10) testify in court as a fingerprint expert; (11) maintain files of identification cards, wanted circulars, modus operandi files and other similar records. Identification officers must have considerable

<sup>5/</sup> The undersigned specifically rejects the PBA's argument that the City is estopped from filing this Clarification of Unit Petition due to its having previously accepted the inclusion of the titles in question in a unit representing "policemen." Under the decision in In re Clearview Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977) an employer generally may file a clarification of unit petition at any time alleging that the previous inclusion of certain titles in a collective negotiations unit is contrary to the dictates of the Act, and therefore, must now be excluded.

knowledge of the problems and methods involved in: (1) taking and classifying fingerprints of persons for identification purposes; and (2) interviewing and photographing persons for investigations and identifications. Identification officers work in police headquarters and devote approximately 10% of their time to field services. Identification officers were recently required to attend the Newark Police Academy and received the same training in the new criminal code as did employees holding the title of police officer. Finally, identification officers work round-the-clock tours of duty seven days a week as do "policemen."

From the above facts, it is apparent that identification officers perform services which are integral to criminal detection. The identification officers receive training in the police science of criminal identification at the police academy and apply the skills acquired through such training in the performance of their job responsibilities. The undersigned concludes therefore that identification officers perform police services and are included in the coverage of the interest arbitration statute.

#### Communication Officers

The stipulated record herein details the following duties performed by communications officers: (1) receives by radio or telephone police alarms for wanted persons, stolen cars, or escaped prisoners; (2) prepares a teletype

tape of such information and transmits it via teletype; (3) enters information regarding arrests and crimes into a central computer; (4) searches the computer's memory to retrieve previous criminal records and match current information with past records for identification purposes; (5) maintains logs of all information received and transmitted; (6) keeps files of escaped prisoners, wanted persons and stolen cars. Communications Officers are required to have some knowledge of: (1) the proper procedures used in taking and transmitting accurate teletype messages; (2) the rules and regulations of the New Jersey State Police regarding the transmitting and receiving of teletype messages; (3) the state's criminal law and police procedures. Communications officers are assigned squad designations as are employees holding the title of police officer, and are designated hours and days of work in round-the-clock tours of duty, seven days a week.

Communications officers are an important link in the communications channels of the police department. At issue before the undersigned, however, is not the relative importance of communications functions, but whether the individuals performing such tasks are engaged in a police service. As opposed to the services of identification officers, communications officers are not trained in a specific police science. Although their services require some general knowledge of criminal law and police procedures, as well as a knowledge of State Police regulations regarding the transmittal and receipt of teletype



messages, their work involves the application of technical and administrative skills which are nonpolice in nature -- teletype transmissions, computer operation, filing and logging of information. The undersigned concludes, therefore, that communications officers are not engaged in providing police services and are not included in the coverage of the interest arbitration statute.

#### Supervising Police Property Clerk

The supervising police property clerk performs the following duties: (1) supervises the receiving, registration and custody of all confiscated property; (2) maintains reports on the location of all stored items presented to him by police officers; (3) keeps records concerning the recovery, retention and safeguarding of lost, stolen, abandoned or unclaimed property; (4) arranges auctions of various properties; (5) maintains the continuity of evidence; (6) retains custody of money received from auctions and found money; (7) maintains an inventory of all stationery supplies for the department; (8) supervises the destruction of weapons, drugs, records, and old badges authorized for destruction. The supervising police property clerk is required to have two years of clerical experience and only works during normal business hours.

The supervising police property clerk is responsible for recording and storing various materials and evidence. The performance of this responsibility requires clerical

experience. No police science skill is required of this function. Thus, although the position requires the work of a responsible individual, it involves the performance of a clerical, not police, service. The undersigned concludes, therefore, that the supervising police property clerk is not included in the coverage of the interest arbitration statute.

#### Linemen

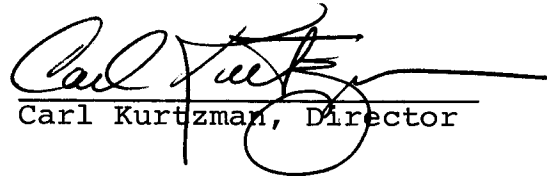
Linemen are responsible for the inspection, construction, repair, rebuilding and maintenance of electrical lines and other related equipment which are part of the department's communications system. Linemen string wires and cables, test equipment and store equipment. One year experience in linework, electrical repair and maintenance work is required to obtain the position. Linemen must have some knowledge of construction standards for serial circuits, know the National Electric Safety Code, and have a knowledge of looping out, tracing out, and keeping track of circuits.

Through its communications system the police department is able to perform its police function. However, the individuals who inspect, repair, rebuild and maintain the electrical lines and other equipment of the communications system are not performing a police service. The undersigned concludes, therefore, that linemen are not included in the coverage of the interest arbitration statute.

Accordingly, for the above reasons, the undersigned clarifies the instant unit as follows: identification officers

are entitled to impasse procedures under the interest arbitration statute; communications officers, the supervising police property clerk, and linemen are not entitled to the impasse procedures under the interest arbitration statute and are removed from the instant unit. 6/

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION



Carl Kurtzman, Director

DATED: December 2, 1980  
Trenton, New Jersey

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6/ The unit placement of the communications officers, the supervising police property clerk and linemen should be addressed by the interested parties forthwith. In the event of a dispute, the matter should be filed with the Commission for an expedited determination.