

D.R. NO. 87-12

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

In the Matter of

COUNTY OF MERCER,

Public Employer,

-and-

N.J. STATE P.B.A. LOCAL #167,

DOCKET NO. RO-87-30

-and-

A.F.S.C.M.E., LOCAL 2475,

Intervenor.

SYNOPSIS

The Director of Representation dismisses a Petition for Certification which seeks to represent county juvenile detention officers in a unit with police employees. Relying on County of Gloucester v. P.E.R.C., 107 N.J. Super 150 (App. Div. 1969), aff'd 55 N.J. 333 (1970), the Director finds that these employees are not police employees and accordingly may not be represented in a unit with police employees under N.J.S.A. 34:13A-5.3(g) and dismisses the Petition.

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In the Matter of

COUNTY OF MERCER,

Public Employer,

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N.J. STATE P.B.A. LOCAL #167,

DOCKET NO. RO-87-30

Petitioner,

-and-

A.F.S.C.M.E., LOCAL 2475,

Intervenor.

Appearances:

For the Public Employer
McLemore & McElroy, Esqs.
(Paul McLemore, of counsel)

For the Petitioner
Wills & O'Neill, Esqs.
(G. Robert Wills, of counsel)

For the Intervenor
Donald B. Dileo, Staff Representative

DECISION

On September 16, 1986, a Petition for Certification of Public Employee Representative, accompanied by an adequate showing of interest, was filed with the Public Employment Relations Commission ("Commission") by County Law Enforcement New Jersey State P.B.A. Local No. 167 ("Local No. 167"). By its Petition, the

PBA seeks to represent a unit described as "all juvenile detention officers and similar juvenile detention officers" employed by the County of Mercer ("County") at the Mercer County Youth House. The PBA seeks to add these employees to its existing unit of correction officers. The petitioned-for employees are currently in a separate unit comprised of juvenile detention officers at the Youth House and are represented by AFSCME Local 1409 ("AFSCME").

The County will not agree to add the petitioned-for employees to the existing unit of corrections officers and therefore, will not consent to an election.

AFSCME has intervened and does not agree that the petitioned-for employees should be added to the existing unit of corrections officers and therefore, will not consent to an election.

There are no substantial and material factual issues presented herein which would warrant the convening of an evidentiary hearing in this matter. Accordingly, this determination is properly based upon the administrative investigation conducted herein.

(N.J.A.C. 19:11-2.6) Our administrative investigation has revealed the following:

1. The petitioned-for unit consists of 22 juvenile detention officers. The petitioned-for employees are currently included in a separate unit composed only of juvenile detention officers and is represented for purposes of collective negotiations by AFSCME Local 1409.

2. There is a current collective negotiations agreement

covering these employees for the periods from January 1, 1985 through December 31, 1986, between the County and AFSCME, Local 1409.

3. The County and Local 1409 object to the proposed addition of juvenile detention officers to the existing unit of corrections officers.

4. The PBA asserts that the addition of juvenile detention officers to its existing unit is appropriate because these employees are police employees within the meaning of the Act. It contends that the job descriptions and responsibilities of county juvenile detention officers parallel those of county corrections officers. Both are trained at the county corrections officers' academy. Both are responsible for keeping their respective facilities secure and for maintaining custody over the residents of the facility. Juvenile detention officers at the Youth House maintain the custody of "juveniles who are deemed a threat to the physical safety of the community or are awaiting trial, sentencing or availability of space in a state facility". Correction officers maintain custody of adult inmates in county jails or corrections centers.

Both are required to conduct periodic head counts and to observe the movements of residents and inmates throughout the institutions. Both transport inmates or residents. Both conduct routine searches of inmates and residents and their rooms. Both are required to detect unusual sounds or smells to protect the security, safety and welfare of residents and inmates. Both routinely patrol

the institution for safety and security hazards including fires, smoke, broken pipes, unlocked doors and windows and broken locks. Both wear uniforms and badges.

The PBA stated that juvenile detention officers use handcuffs and other physical restraints. They do not carry and are not trained to use firearms or other weapons.

The juvenile detention officers stated they have no authority to detect, apprehend or arrest offenders against the law. When a juvenile escapes their custody, the local police are called in to arrest the individual. If a juvenile in their custody is caught committing a crime, juvenile detention officers only have the authority to detain the individual until the local police arrive to make an arrest. The County and AFSCME did not dispute this information.

5. The County and Local 1409 assert that juvenile detention officers are not police employees within the meaning of the Act. The County and Local 1409 maintain that juvenile detention officers may be distinguished from county correction officers because the former have custody of juvenile residents, while the latter have custody of "inmates serving court imposed sentences." They contend that the juvenile detention officer's job is to supervise and counsel wayward juveniles and not to guard convicted criminals. They contend that juvenile detention officers learn only restraining techniques and do not have the training or authority to detect, apprehend or arrest law offenders.

N.J.S.A. 34:13A-5.3 in pertinent part provides that:

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

The issue in this matter is whether juvenile detention officers are police employees under N.J.S.A. 34:13A-5.3. If they are police employees, then they may be represented by the PBA in a unit of police employees.

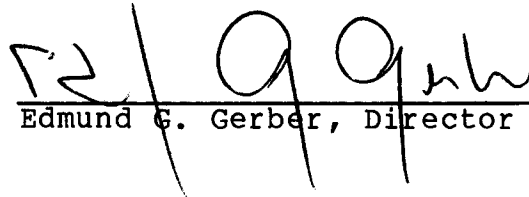
Police employees are those individuals who have the "right and duty, in appropriate circumstances, to detect, apprehend and arrest," offenders of the law. Cty. of Gloucester v. P.E.R.C., 107 N.J.Super. 150, 158 (App. Div. 1969), aff'd. 55 N.J. 333 (1970). In Gloucester, the court found that county correction officers were police employees within the meaning of the Act, based on their statutory power to detect, apprehend and arrest. (N.J.S.A. 34:13A-5.3). Because they were determined to be police employees, the court determined that they could not join an employee organization that represented employees other than police.

It is undisputed that the Mercer County juvenile detention officers do not have the power or authority to detect, apprehend or arrest offenders against the law, including the juvenile residents of the Youth House. At the investigatory conference, the Petitioner stated that juvenile officers did not have the power to apprehend a fleeing or "eloping" juvenile. The PBA further stated that in instances of escape, or where arrests were necessary, the role of

juvenile detention officers was to restrain individuals and to wait for the local police to arrive. Furthermore, juvenile detention officers have not, in the past, attempted to apprehend or arrest anyone already in their custody.

Based upon the foregoing, it appears that county juvenile detention officers are not police within the meaning of the Act. Accordingly, I find that the PBA's petition to add them to an existing unit of county corrections officers -- police employees -- is inappropriate. Therefore, the petition is hereby dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: December 8, 1986
Trenton, New Jersey