

D.R. No. 2011-1

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

In the Matter of

COUNTY OF BURLINGTON

Public Employer,

-and-

PBA LOCAL 203,

Docket No. RO-2007-089

Petitioner.

-and-

CWA LOCAL 1034,

Intervenor.

SYNOPSIS

The Director of Representation dismisses a representation petition filed by PBA Local 203 seeking to sever weights and measures employees from a broad-based unit represented by CWA Local 1034. The case was reversed remanded in CWA, Local 1034 v. N.J. State PBA Local 203 and Burlington Cty., 412 N.J. Super. 286 (App. Div. 2010). The Court overruled the Commission's earlier decision in this matter and its precedent, Warren Cty., P.E.R.C. No. 86-111, 12 NJPER 357 (¶17134 1986).

The Director determined that the petitioning employees' duties did not place them in a "conflicting position" with other current unit employees or create circumstances for "possible divided loyalty" or "split allegiance."

D.R. No. 2011-1

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

In the Matter of

COUNTY OF BURLINGTON

Public Employer,

-and-

PBA LOCAL 203,

Docket No. RO-2007-089

Petitioner.

-and-

CWA LOCAL 1034,

Intervenor.

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 March 11, 2010, the Appellate Division issued CWA, Local
1034 v. NJ State PBA Local 203 and Burlington Cty., 412 N.J.
Super. 286 (App. Div. 2010), reversing and remanding to the
Commission for "further [discretionary] proceedings" its

decision^{1/} that certain weights and measures employees are "policemen" within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), entitling them to representation in a separate collective negotiations unit. The Court disavowed "a per se rule based upon authority to arrest, no matter how narrow its scope. . .", overruling Warren Cty., P.E.R.C. No. 86-111, 12 NJPER 357 (¶17134 1986).

The Court reiterated the rationale of an earlier decision, County of Gloucester v. PERC, 107 N.J. Super. 150 (App. Div. 1967), aff'd 55 N.J. 333 (1970), holding that corrections officers are "policemen" within the meaning of the Act because they are statutorily provided ". . . specific powers and duties commonly exercised by the police," implicating a potential for conflict and divided interests. 107 N.J. Super. at 157. In its current decision, the Court instructed the Commission to address,

. . . whether the exercise of these employees' limited authority to arrest for a violation of the weights and measures law [N.J.S.A. 51:1-106], alone or in combination with their other duties and responsibilities, would 'place them in a conflicting position and create circumstances for possible divided loyalty or split allegiance' if they were to join a union that accepted members who were not policemen. [412 N.J. Super. 295-296]

^{1/} Burlington Cty., P.E.R.C. No. 2009-10, 34 NJPER 247 (¶85 2008).

The Court cautioned that unless such a reason could be articulated, based upon the Legislature's purpose in adopting N.J.S.A. 34:13A-5.3 or some other provision of the Act, the Commission would ". . . exceed its statutory authority by extending the scope of the Act's limitation on a policeman's right to join a union of public employees who are not commonly understood to be policemen or treated as such in other statutes that apply to policemen." 412 N.J. Super. 296.

On April 29, 2010, I wrote to the parties, providing them an opportunity to file letters and documents reacting to the Court's decision. Replies were filed by June 3, 2010. Both the County and CWA continue to oppose the petition, the latter asserting that the disputed titles, apprentice superintendent and assistant superintendent of weights and measures, are not engaged in the performance of "police services"; are not entitled to interest arbitration; and have no potential conflict with titles in its broad-based negotiations unit.

PBA Local 203 contends that the petitioning employees perform a "law enforcement function", specifically, they protect the "consuming public." It also asserts that their community of interest lies in their role ". . ." to identify, prevent and if necessary, respond to instances where offenses have been committed and violations have occurred." It contends that no other County employee is similar to a weights and measures

employee; they act "independently" and are exclusively granted statutory arrest power. N.J.S.A. 51:1-105.

The PBA asserts that like police officers, weights and measures employees ". . . have a direct responsibility and impact for enforcing the applicable laws detecting legal violations of those within their purview. . ." The petitioning employees' tasks include inspecting gas pumps, home heating meters, supermarket scanners, etc. They may also be required to appear in court as expert witnesses. Finally, and on the matter of "split allegiance" or "divided loyalty", the PBA contends:

While it is unlikely (although not impossible) that weights and measures [employees] will be testing and investigating businesses owned by other County employees, it is highly probable that they will have interactions in their official capacities with businesses owned by an individual who is related to a County employee. The conflict of interest might rear its ugly head. [PBA reply, p. 6]

The parties have not contested the facts set forth in my previous decision (D.R. No. 2008-10, 34 NJPER 106 (¶46 2008)). Those facts are incorporated here by reference.

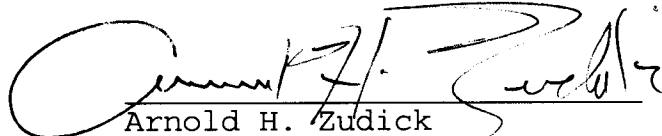
The Court wrote that these weights and measures employees' statutory arrest power alone was "insufficient to deem them 'policemen' within the intendment of [the Act]." 412 N.J. Super. 296. Nor do any facts suggest that during the 20 years in which they have been represented by CWA in its broad-based unit, they ever exercised or attempted to exercise arrest power. The County

has restricted their authority, directing them to refer possible arrests to local police or the County prosecutor. The petitioning employees have not received police academy training and do not carry firearms.

The fact of their inclusion in CWA's unit for so long a time without any indicia of conflict or instability bespeaks their community of interest with that unit. The PBA's assertion of a "conflict of interest" with their fellow negotiations unit members is speculative, at best.

For all these reasons and in keeping with the Court's remand of this case, I dismiss the petition filed by PBA Local 203.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Arnold H. Zudick
Director of Representation

DATED: August 6, 2010
Trenton, New Jersey

A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3.

Any request for review is due by August 19, 2010.