

D.R. NO. 89-23

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

In the Matter of

VERNON TOWNSHIP,

Public Employer,

-and-

Docket No. RO-89-67

DISTRICT 65, U.A.W.,

Petitioner.

SYNOPSIS

The Director of Representation dismisses a petition filed by the UAW seeking to represent all special police employed by Vernon Township. The Director found that some of the petitioned-for employees were police within the meaning of the Act. Therefore, the UAW, as an employee representative which admits nonpolice into membership, was ineligible to represent police employees.

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Appearances:

For the Public Employer
Ruderman & Glickman, Esqs.
(Steven S. Glickman, of counsel)

For the Petitioner
Jaime Fontanez, Organizer

DECISION

On November 22, 1988, District 65 of the United Auto Workers ("UAW") filed a Representation Petition with the Public Employment Relations Commission ("Commission") seeking to represent all special police employed by Vernon Township ("Township"). The petition was supported by an adequate showing of interest.

The Township refuses to consent to a representation election. It claims that these employees are "police" under the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act") and therefore cannot be represented by an organization which also represents nonpolice employees. In response, the UAW contends that the petitioned-for employees are not police within the meaning of the Act. It maintains that an election should be ordered.

On December 12, 1988, a Commission staff agent conducted an investigatory conference with the parties. The following facts appear.

There are 16 special police and 25 regular police officers employed by Vernon Township. The regular police, who are represented by the PBA, work a full-time schedule. Regular police wear different colored uniforms than special police and are issued bullet-proof vests (which the special police are not).

The special police are employed on a part-time, as needed basis, and work mainly in conjunction with Action Park in the summer and Great Gorge in the winter. They are paid on an hourly basis. All special police are required to attend a recognized police training academy. The special police report directly to the senior officer on duty, which is usually the patrol sergeant of the regular police force. Ultimately, however, the special police are under the full control and command of the Chief of Police. There are no formal evaluations of the special police. Any disciplining of special police is done by the Chief. The hiring and firing of special police is done by the Township Committee, based on recommendations from the Chief.

Special police are divided into two groups -- Class 1 and Class 2. Of the 16 special police employed, six are Class 2 officers and ten are Class 1 officers. Class 2 officers carry firearms, while Class 1 officers carry batons. Only Class 2 officers are authorized to arrest and apprehend. None of the special police do investigation or detection.

The majority of the duties of the special police involve traffic and crowd control around Action Park and Great Gorge. These types of duties are also performed at school and municipal events such as concerts, sporting contests and parades. Occasionally, Class 2 officers are assigned as court clerks in the night court. Other than the occasional duty as court clerks, none of the special police have contact with prisoners. All special police officers are required to testify in court regarding traffic summonses they issue and to write reports, which are submitted to a police lieutenant, concerning incidents in which they are involved.

Special police do not patrol. Their only use of police vehicles is for transportation to their assignment location. Special police almost never work side-by-side with regular police officers. In some instances, special police are used to secure and guard crime scenes pending investigations or to divert traffic around accident scenes. If an incident occurs in front of them, Class 2 police officers could perform regular police work (arrest and apprehend), but would be required to call for back-up immediately.

It is undisputed that the Township employs special police officers pursuant to N.J.S.A. 40A:14-146.10. Thus, the issue in this case is whether the special police are police officers within the meaning of the New Jersey Employer-Employee Relations Act. If the special police are "police" within the meaning of the Act, the UAW, as an employee representative which admits nonpolice into

membership, would be ineligible to petition for and represent such police employees. N.J.S.A. 34:13A-5.3. Accordingly, the petition filed in the instant matter by UAW would then be subject to dismissal.

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

...Further, 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 policemen to membership.

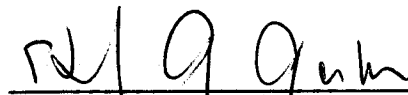
In Cty. of Gloucester Bd. of Chosen Freeholders v. P.E.R.C., 107 N.J. Super 150 (App. Div. 1969), aff'd per curiam 55 N.J. 333 (1970), the Court set forth the requirements for determining whether an employee is a police officer within the meaning of the Act. The Court held that employees authorized to make detections, apprehensions and arrests of law violators must be considered police employees within the meaning of the Act. Id. at 158-159. This standard has been consistently applied by the Commission. See Borough of Avalon, E.D. No. 75-23, 2 NJPER 59 (1976); Tp. of Ewing, D.R. No. 78-21, 3 NJPER 353 (1977); Tp. of Maple Shade, D.R. No. 79-10, 4 NJPER 440 (¶4199 1978), req. for review den. P.E.R.C. No. 79-32, 5 NJPER 26 (¶10017 1978); City of Vineland, D.R. No. 86-14, 12 NJPER 224 (¶17092 1986); Cty. of Mercer, D.R. No. 87-12, 13 NJPER 51 (¶18020 1986). See also Belmar Policemen's Benevolent Association, 89 N.J. 255 (1982), where the New Jersey Supreme Court held that where special police carry weapons and have the power to arrest, they are "police" for as long as they are on duty.

Here, we find that the six employees in the petitioned-for unit categorized as Class 2 special officers are police within the meaning of the Act.

Class 1 officers, however, may not be police. Although like Class 2 officers, they attend the police academy and are supervised by the Chief, Class 1 officers have no power to detect, apprehend or arrest law violators. Further, Class 1 officers do not carry guns. Their duties are limited strictly to crowd and traffic control and there is no indication that they ever perform responsibilities associated with regular police work.

Based on the foregoing, we find that the petitioned-for unit is not appropriate. The UAW, as an employee representative, is ineligible to represent police employees. Moreover, assuming without deciding that Class 1 officers are not police officers, the petitioned-for unit is not appropriate because it consists of both police and nonpolice employees. See N.J.S.A. 34:13A-5.3. Accordingly, the petition is dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Edmund G. Gerber
Director of Representation

DATED: March 27, 1989
Trenton, New Jersey