

D.R. NO. 86-3

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

In the Matter of  
COUNTY OF WARREN,

Public Employer,

-and-

DOCKET NO. RO-85-101

NEW JERSEY WEIGHTS & MEASURES,  
P.B.A. LOCAL #280,

Petitioner.

SYNOPSIS

The Director dismisses a Petition which seeks to sever weights and measures employees from an existing county-wide collective negotiations unit. The Director found that the weights and measures employees are not police under the New Jersey Employer-Employee Relations Act and that there is no other basis presented here which would warrant severance from an existing broad-based unit.

number of employees in the proposed unit totals three (3). Those employees are currently included in a county-wide unit of all non-law enforcement employees, which is represented by Warren Council No. 17, New Jersey Civil Service Association ("Council 17").

The County does not agree to the severance of these employees from the existing unit of county employees and therefore, does not consent to an election.

Council 17 has not filed a formal request to intervene in this Petition but has advised us that it does not agree to the removal of these titles from its existing unit.

There are no substantial and material factual issues presented herein which would warrant the convening of an evidentiary hearing in this matter. Therefore, the determination herein is properly based upon the administrative investigation conducted herein. Our administrative investigation (See N.J.A.C. 19:11-2.6) has revealed the following:

1. The County of Warren is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), is subject to its provisions and is the employer of the petitioned-for employees.

2. New Jersey Weights and Measures P.B.A. Local No. 203 is an employee organization within the meaning of the Act and is subject to its provisions.

3. The proposed unit consists of Weights and Measures employees (the superintendent and two assistant superintendents),

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Appearances:

For the Public Employer  
Harper & Hansbury, Esqs.  
(John Harper of counsel)

For the Petitioner  
Dennis Druzba, Esq.

DECISION

On December 26, 1984, 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 New Jersey Weights & Measures P.B.A. Local No. 203 ("PBA"). By its Petition, the PBA seeks to represent a unit described as, "all weights and measures law enforcement officials: County Superintendent, and Assistant County Superintendent" employed by the County of Warren ("County"). The

but excluding secretarial employees. The petitioned-for employees are currently included in a broad-based, county-wide unit of all non-law enforcement county employees which is represented for purposes of collective negotiations by Council 17.

4. The most recent collective negotiations agreement covering these employees was for the period January 1, 1983, through December 26, 1984, between the County and Council No. 17.

5. The County and Warren Council No. 17 object to the proposed severance of weights and measures employees from the existing unit.

6. The PBA asserts that severance is appropriate inasmuch as it alleges that these employees are police employees within the meaning of the Act.

7. The County contends that weights and measures employees are not police employees within the meaning of the Act.

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ANALYSIS OF THE ISSUES

N.J.S.A. 34:13A-5.3 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.

Accordingly, if the weights and measures employees are police employees within the meaning of the Act, they would then be

eligible for representation only by an organization that admits solely police to membership.<sup>1/</sup>

In In re Cty. of Gloucester v. P.E.R.C., 107 N.J. Super. 150 (App. Div. 1969), aff'd per curiam 55 N.J. 333 (1970), the Court looked to the power or authority of employees to act as law enforcement officers to make detection, apprehension and arrests in determining if said employees are police officers within the meaning of the Act. Such powers or authority might place employees in a conflicting position with fellow union members and create circumstances for possible divided loyalty or split allegiance.

In In re County of Sussex, P.E.R.C. No. 76-14, 2 NJPER 1 (1975), the Commission stated:

Weights and measures officers, ... do not have general law enforcement powers. Their powers of arrest are limited specifically to violations of weights and measures statutes committed in their view. Given the limited powers of weights and measures officers, the Commission finds that Weights and Measures Department employees are not policemen within the meaning of the New Jersey

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<sup>1/</sup> While such a determination would require the removal of the petitioned-for employees from the extant, county-wide unit represented by Council 17, it would not necessarily mean that the petitioned-for unit is the appropriate unit for representation of these employees. For example, if these employees were determined to be police employees, it might be determined to be appropriate to add these employees to an extant County law enforcement unit. However, under the circumstances of this matter, a determination concerning this issue is unnecessary.

Employer-Employee Relations Act. The absence of any record evidence that weights and measures employees might be placed "...in a conflicting position and create circumstances for possible divided loyalty or split allegiance" as discussed in Gloucester at page 157, supports this conclusion.

Sussex, supra, slip op. at 4-5 (Citations omitted).

Absent a specific showing that the weights and measures employees of Warren County have general law enforcement powers they would not be found to be police within the meaning of the Act and there would be no basis upon which to sever the instant weights and measures employees from the existing collective negotiations unit.<sup>2/</sup>

On August 14, 1985, I advised the parties that based upon the administrative investigation to date, the weights and measures

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<sup>2/</sup> The PBA's petition was filed five (5) days prior to the expiration of the agreement between the County and Council 17 and thus appears to be untimely. However, neither party has asserted the contract as a bar to the filing of this petition.

N.J.A.C. 19:11-2.8 provides:

During the period of an existing written agreement containing substantive terms and conditions of employment and having a term of three years or less, a petition for certification of public employee representative or a petition for decertification of public employee representative normally will not be considered timely filed unless; ... (2) In a case involving employees of a county or a municipality, any agency thereof, or any county or

(Footnote continued on next page)

employees in question do not have general law enforcement powers. Therefore, the petitioned-for unit is inappropriate for purposes of collective negotiations and there is no basis upon which to sever these employees from the existing unit. The parties were reminded of their obligations pursuant to N.J.A.C. 19:11-2.6 to present documentary and other evidence as well as statements of position, relating to the instant petition. The parties were further advised that in the absence of any substantial and material disputed factual issues, I would thereafter issue a decision dismissing the Petition. No additional submissions have been made by any party.

Accordingly, I find that the petitioned-for unit is inappropriate, and that there is no basis upon which to grant the severance of these employees from the existing county-wide unit. Therefore, the petition is hereby dismissed.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Edmund G. Gerber, Director

DATED: August 29, 1985  
Trenton, New Jersey

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(Footnote continued from previous page)  
municipal authority, commission or board, the petition is  
filed not less than 90 days and not more than 120 days  
before the expiration or renewal date of such agreement;...