

P.E.R.C. NO. 88-10

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MONMOUTH COUNTY,

Public Employer,

-and-

MONMOUTH COUNTY PARK RANGERS,
LODGE 105, F.O.P.,

Docket No. RO-86-22

Petitioner,

-and-

I.U.E., LOCAL 417,

Intervenor.

SYNOPSIS

The Public Employment Relations Commission dismisses a Petition for Certification of Public Employee Representative filed by the Monmouth County Park Rangers, Local 105, Fraternal Order of Police, seeking to represent all park rangers employed by Monmouth County and the Monmouth County Board of Recreation Commissioners. The Commission finds that the park rangers are not police and should remain in the existing broad-based unit represented by the International Union of Electronic, Technical, Salaried and Machine Workers, Local 417.

P.E.R.C. NO. 88-10

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MONMOUTH COUNTY and MONMOUTH COUNTY
BOARD OF RECREATION COMMISSIONERS,

Public Employer,

-and-

MONMOUTH COUNTY PARK RANGERS,
LODGE 105, FRATERNAL ORDER OF POLICE,

Docket No. RO-86-22

Petitioner,

-and-

INTERNATIONAL UNION OF ELECTRONIC,
ELECTRICAL, TECHNICAL, SALARIED AND
MACHINE WORKERS, LOCAL 417,

Intervenor.

Appearances:

For the Public Employer, Kenney & Kenney, Esqs.
(Malachi J. Kenney, of counsel; Frank J. McDonough, on the
brief)

For the Petitioner, Markowitz & Richman, Esqs.
(Stephen C. Richman, of counsel)

For the Intervenor, Birnbaum & Isanuk, Esqs.
(Barry D. Isanuk, of counsel)

DECISION AND ORDER

On September 20, 1985, the Monmouth County Park Rangers,
Local 105, Fraternal Order of Police ("FOP") filed a Petition for
Certification of Public Employee Representative. The FOP seeks to
represent all park rangers employed by Monmouth County and the
Monmouth County Board of Recreation Commissioners ("County"). Park
rangers are currently represented by the International Union of

Electronic, Electrical, Technical, Salaried and Machine Workers, Local 417 ("IUE") in a broad-based unit of non-supervisory blue and white collar employees of the Monmouth County park system.

The FOP contends the park rangers should be severed from the existing unit because they are "police" within the meaning of N.J.S.A. 34:13A-5.3. The County and IUE have opposed severance. Both contend that park rangers are not police and should remain in the existing broad-based unit.

On June 12, 1986, the Director of Representation issued a Notice of Hearing.

On September 11 and October 6, 1986, Hearing Officer Jonathon Roth conducted a hearing. The parties examined witnesses, introduced exhibits and argued orally. They also filed post-hearing briefs.

On April 28, 1987, the Hearing Officer issued his report. H.O. 87-14, 13 NJPER 403 (¶18157 1987). He found that park rangers are "police" because they have the statutory duty to make arrests under N.J.S.A. 40:12-6. Therefore, he recommended that they be severed from their existing unit and that an election be conducted to determine their majority representative. He relied on Cty. of Gloucester v. Public Employment Relations Commission, 107 N.J. Super. 150 (App. Div. 1969), aff'd 55 N.J. 333 (1970) and Warren Cty., P.E.R.C. No. 86-111, 12 NJPER 357 (¶17134 1986).

On May 18, 1987, IUE filed exceptions. It contends park rangers are not police because only a small portion of their work is related to law enforcement. It further asserts that the Hearing

Officer's ruling, if adopted, would mean that all park employees are police because N.J.S.A. 40:12-6 applies to all park employees.

On June 8, 1987, after receiving an extension of time, the County filed exceptions. It contends that the Hearing Officer erred in finding that N.J.S.A. 40:12-6 makes park rangers "police" because their power is limited to enforcing park "rules and regulations" and this power is merely incidental to their primary maintenance and cleaning responsibilities.

On June 17, 1987, the FOP filed its reply to exceptions and urged adoption of the Hearing Officer's report. It contends that the dispositive fact, under Gloucester Cty. and Warren, is that park rangers have statutory police responsibility and therefore the proportion of time spent in the exercise of the police function is irrelevant. It disagrees with the assertion that all park employees have statutory police power since only park rangers have been appointed by the Parks Commission to enforce rules and to preserve order.

We have reviewed the record. The Hearing Examiner's uncontested findings of fact (pp. 3-17) are accurate. We adopt and incorporate them here.

We are again faced with the question of whether employees in a certain classification are "policemen" under N.J.S.A. 34:13A-5.3. See e.g., Warren Cty.; City of Newark, P.E.R.C. No. 87-7, 12 NJPER 606 (¶17228 1986). The answer will resolve this representation case: if park rangers are "policemen" they may not continue to be in their current negotiations unit because it

includes employees besides police. N.J.S.A. 34:13A-5.3. But if they are not, the petition must be dismissed because of our State's policy favoring broad-based negotiations units. State v. Prof. Ass'n. of N.J. Dept. of Ed., 64 N.J. 231 (1974); Jefferson Tp. Bd. of Ed., P.E.R.C. No. 61 (1971). See generally Warren Cty.

The approach we and the court have used to make this determination is to examine the employees' statutory police powers. In Cty. of Gloucester, the Appellate Division determined that corrections officers were "policemen." It relied on N.J.S.A. 2A:154-4 which provides:

All correction officers of the State of New Jersey* * *shall,* * *in addition to any other power or authority, be empowered to act as officers for the detection, apprehension, arrest and conviction of offenders against the law.
[Emphasis added]

The Court reasoned that:

The quoted language is unambiguous and plainly vests in correction officers specific powers and duties commonly exercised by the police. When that statute is read with the aforementioned provision of N.J.S.A. 34:13A-5.3, we think it to be apparent 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.... [Id. at 157]

Likewise, in Warren Cty., we found that weights and measures officers are "policemen" because they also have the statutory power to make arrests for violations of the law, in that case Title 51.

In this case, the applicable statute provides:

The custodians, supervisors and assistants appointed by the board shall, while on duty and

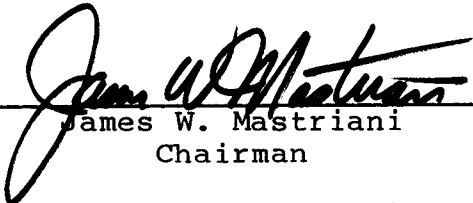
for the purpose of preserving order and the observance of the rules, regulations and by-laws of the board, have all the power and authority of police officers of the respective municipalities in and for which they are severally appointed.

We do not believe this statute makes these employees "policemen." The statute, by its very terms, limits the authority of park rangers as well as other park employees to enforcing park regulations. This limited authority is in marked contrast to Gloucester and Warren Cty. where the police power was granted to enforce statutes. We do not believe the Legislature intended that this limited authority is sufficient to make them "policemen." In fact, the Legislature, by separate statutory authority, authorized the creation of County park police and granted them police powers. N.J.S.A. 40:37-155. We believe this separate authorization evidences a legislative intent that those employees are "policemen." Conversely, park rangers are not park police. Finally, even if park rangers are "employees engaged in performing police services" within the meaning of the interest arbitration statute, see N.J.S.A. 34:13A-15, severance is not warranted since there has been a history of stable labor relations. Newark.

ORDER

The petition is dismissed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Reid and Smith voted in favor of this decision. None opposed. Commissioner Wenzler was not present.

DATED: Trenton, New Jersey

July 14, 1987

ISSUED: July 15, 1987

H.O. NO. 87-14

STATE OF NEW JERSEY
BEFORE A HEARING OFFICER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MONMOUTH COUNTY,

Public Employer,

-and-

DOCKET NO. RO-86-22

MONMOUTH COUNTY PARK RANGERS,
LODGE 105, F.O.P.,

Petitioner,

-and-

I.U.E., LOCAL 417,

Intervenor.

SYNOPSIS

A Hearing Officer of the Public Employment Relations Commission recommends that the Commission sever a unit of park rangers from a broad-based blue and white collar unit represented by IUE and employed by the County of Monmouth and Monmouth County Board of Recreation Commissioners, a joint employer. The Hearing Officer recommends that the petitioned-for employees represented by Lodge 105, FOP are "policemen" within the meaning of the Act. Accordingly, he also recommends that the Commission order an election in the newly carved unit.

A Hearing Officer's Report and Recommendations is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Report and Recommendations, any exception thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Officer's findings of fact and/or conclusions of law.

H.O. NO. 87-14

STATE OF NEW JERSEY
BEFORE A HEARING OFFICER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MONMOUTH COUNTY,

Public Employer,

-and-

DOCKET NO. RO-86-22

MONMOUTH COUNTY PARK RANGERS,
LODGE 105, F.O.P.,

Petitioner,

-and-

I.U.E., LOCAL 417,

Intervenor.

Appearances:

For the Public Employer
Kenney & McManus, Esqs.
(Malachi J. Kenney, of counsel)
(Frank J. McDonough, on the brief)

For the Petitioner
Markowitz & Richman, Esqs.
(Stephen C. Richman, of counsel)

For the Intervenor
Birnbaum & Isanuk, Esqs.
(Barry D. Isanuk, of counsel)

HEARING OFFICER'S REPORT AND RECOMMENDATION

On September 20, 1985, the Monmouth County Park Rangers, Lodge 105, Fraternal Order of Police ("FOP") filed a representation petition with the Public Employment Relations Commission ("Commission") seeking certification as the exclusive representative

of a collective negotiations unit composed of all park rangers employed by Monmouth County ("Board" or "Employer"). The park rangers were included in a broad-based unit of non-supervisory blue and white collar employees represented by International Union of Electronic, Electrical, Technical, Salaried and Machine Workers, Local 417 ("IUE").

The FOP asserts that park rangers should be severed from the IUE unit because they perform police functions and should be considered police within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.3. IUE asserted that the appropriate unit is composed of all employees in the current unit and that park rangers are not police officers within the meaning of the Act. Monmouth County asserts that it and the Monmouth County Board of Recreation Commissioners are joint employers, that petitioner is unable to demonstrate any unstable relationship between its employees and those in the larger broad-based unit and that the proposed unit is not composed of police within the meaning of the Act.

On February 27, 1986, the Administrator of Representation issued a letter to all the parties tentatively finding that the County park rangers are not police employees within the meaning of the Act and that no basis exists for the severance of the employees from the unit of all non-supervisory blue and white collar employees. He tentatively concluded that he would dismiss the petition in the absence of additional statements of position and

documents demonstrating that the petition should be processed. On March 21, 1986, the FOP submitted a statement of position together with documents again asserting that the proposed unit is composed of police officers within the meaning of the Act.

On June 12, 1986, the Director of Representation issued a Notice of Hearing. After several adjournments, I conducted a hearing in this case on September 11 and October 6, 1986, at which the parties were given an opportunity to introduce evidence, examine and cross-examine witnesses and argue orally. Post-hearing briefs were submitted by January 15, 1987.

Based on the entire record, I make the following:

FINDINGS OF FACT

The parties stipulated:

1. The public employer of the employees who are subject to this petition is the County of Monmouth and Monmouth County Board of Recreation Commissioners, a joint employer. Monmouth County and Monmouth County Board of Recreation Commissioners is a public employer within the meaning of the Act and is subject to its provisions.

2. Monmouth County Park Rangers, Lodge 105, FOP and IUE, Local 417 are employee representatives within the meaning of the Act and are subject to its provisions.

3. Park rangers are currently included in a unit of non-supervisory employees and white collar employees of the public employer.

4. Local 417 and the public employer are parties to a collective negotiations agreement running from January 1, 1986 to December 31, 1987, excluding park rangers during the pendency of this representation proceeding. The agreement covers a unit of all non-supervisory blue and white collar employees excluding park rangers.

5. Both Local 417 and the public employer object to an election among these employees because the petition seeks to sever park rangers from the existing appropriate unit.

6. There is no issue of inadequate representation to be offered in the course of this hearing.

7. The County has other units of law enforcement officers. The corrections officers are in two units - one supervisory and one non-supervisory. Sheriff's officers employed by the County are also in two units - one supervisory the other non-supervisory. There is also a unit of juvenile detention officers. Their status as law enforcement officers is not an issue to be resolved at this proceeding.

I find the following:

8. The County Park Ranger job description states that the ranger

under direction in a county park which may include golf courses, swimming, boating, skating, historical nature, camping, interpretive sports and any other recreational facility serving the public, performs a variety of routine maintenance repair and cleaning tasks; they operate varied types of light equipment necessary to perform such tasks: assist with minor construction

projects; enforce the laws, rules and regulations governing the park system; does related work as required. (R-2).

The job description also lists examples of work including assisting in the repair, maintenance and construction of buildings and equipment, loading and unloading materials and supplies, sweeping of park walks and paths, cutting and raking grass and brush, fertilizing soil, trimming and pruning trees, maintaining washrooms and other facilities in sanitary conditions, patrolling a county park to protect the grounds, buildings, recreational facilities and other areas; enforcing the rules, regulations and laws related to the operations of the park areas, receiving complaints and making investigations on matters involving the protection of persons and public property, noting dangerous or unusual conditions which may effect the safety of persons in the park or park property and taking suitable action to rectify the condition, enforcing the park regulations, apprehending and taking into custody violators of the law, issuing summonses for minor infractions of the laws governing the park system, giving testimony in court concerning violations and mishaps and writing simple reports and keeping necessary files (R-2).

The senior county park ranger job description states that the senior ranger performs a variety of the more difficult or technical construction, maintenance repair and cleaning tasks, operating various types of light equipment and taking the lead over a small unit of county park rangers. The senior ranger also

enforces the laws, rules and regulations governing the park system and does related work as required. Any of the examples of work listed in the senior county park ranger job description are identical to those in the park ranger description. Like the former description, part of the requirements of the job include safeguarding buildings and grounds, issuing summonses, making arrests and prosecuting violators (R-1).

9. N.J.S.A. 40:12-6 is entitled, "Control of grounds; preservation of order; assistants." The statute provides:

The board of recreation commissioners shall have full control over all lands, playgrounds and recreation places acquired or leased under the provisions of sections 40:12-1 to 40:12-9 of this Title and may adopt suitable rules, regulations and the by-laws for the use thereof, and the conduct of all persons while on or using the same; and any person who shall violate any of such rules, regulations or by-laws shall be deemed and judged to be a disorderly person.

The custodians, supervisors and assistants appointed by the Board shall, while on duty and for the purpose of preserving order and the observance of the rules, regulations and by-laws of the Board, have all the power and authority of police officers of the respective municipalities in and for which they are severally appointed.

The Board may appoint a secretary or a clerk, and such number of custodians, supervisors and assistants for the several playgrounds and recreation places under its control as they shall think necessary and fix and determine their salaries.

10. Bruce Gollnick is Assistant Director of the Monmouth County Park System. He has been employed there since 1971 and was promoted to Superintendent of Parks in or around 1974. He served in

that position for approximately ten years and was eventually promoted to Assistant Director. As Assistant Director, Gollnick has the responsibility to manage the Park System (TA 9). Park rangers are provided manuals at the start of their employ. The most recent manual is dated 1985. The Board submitted the 1980 manual into evidence. Gollnick asserted that the 1980 draft was substantially identical to the 1985 draft (R-5). The manual contains guidelines and standards of performance including maintenance and operations, visitor contact, general rules of professional conduct, emergency procedures, relationships with local authorities, rules and regulations/enforcement authority, levels of enforcement including verbal warning, courtesy warning citation, removal from park, summons, and arrest. The arrest section provides the statute recited in finding of fact number 9 followed by a warning stating: "the words while on duty mean just that. Rangers that linger in the park after their tour of duty is over or see a rule violation while they are leaving the park no longer have police authority or protection that they had while on duty." The "level of enforcement" escalates from verbal encounter to courtesy warning to removal from park. The manual also states that the last action any ranger should take is that of arrest. Sometimes however, "arrest is necessary to remove a potentially dangerous person from the park and prevent injury to ourselves and our park visitors. Whenever an arrest is instituted, local police should be called in to assist" (R-5).

Gollnick is familiar with park ranger duties because he oversees the day-to-day operations and maintenance of the parks (TA 24). He claimed that 80% of park ranger duties are devoted to maintenance and upkeep of the properties including mowing grass, cleaning facilities and making minor repairs. 20% of the park rangers' time is devoted to dealing with visitors including dispensing information to the general public, rendering first aid and enforcing park rules and regulations (TA 24-27). Gollnick asserted that the basis of the 80/20 estimate are surveys and "a broad number that we utilize in interviews in describing the rangers functions to the public and prospective employees" (TA 26).

11. The fifteen parks where rangers are employed vary in size from 100 to 700 acres. Freehold Park is the smallest and the largest is Hartshorn Woods. Holmdel Park receives the most visitors; annual estimates range from 750,000 to 1,000,000 (TA 31-33). The park system provides uniforms to rangers including work pants, work shirts, work jackets, work shoes, boots and hats. The dress uniform consists of dress pants, dress shirt, dress jacket, tie and badge. Rangers usually wear their badges at all times. The work uniform is a tan shirt, green pants and a green jacket. A patch appears on the shoulder of the jacket and matches the work uniforms that are distributed to maintenance employees (TA 70-72). The dress uniform has tow collar ornaments with initials "MC" ("Monmouth County") on one side and "PS" (Park Service") on the other side. Rangers wear work uniforms more often than dress

uniforms. The work uniform is worn three to four days and the dress uniform is worn one to two days (TA 74). Rangers also may carry a radio, operate pickup trucks, light grounds equipment, mowing equipment, tractors, front-end loaders and automobiles. The park system does not maintain any vehicle resembling a patrol car with flashing warning lights. No park has a detention center (TA 102).

12. The Board issues a pamphlet containing rules and regulations governing the use of county parks and recreation areas (R-3). The regulations place restrictions on alcoholic beverage consumption, group meetings, refuse disposal, lighting fires and fireworks. One section is entitled "Disorderly Persons" and prohibits "loitering conduct" which "disturbs a person of ordinary sensibilities or which obstructs free passage of pedestrians at any of the facility buildings or walkways." This section also states:

Where there is conduct violative of the above section or any part thereof, there must in addition be a refusal by the persons engaged in such conduct to obey an order by any agents or officers of the Board of Recreation Commissioners to move on before a charge under these regulations may be prosecuted.

A "note" on the back of the pamphlet states:

Employees of the Board of Recreation Commissioners are vested with police authority and empowered to make arrests for violations of County Park rules and regulations. Rules applying to special conditions or situations within an individual County Park or Recreation Area may be supplemental to the above. When special rules apply, they will be posted in the affected areas. These rules and regulations are promulgated in accordance with provisions of the New Jersey Revised Statutes Title 40, Chapter 12-6....

On June 20, 1983, the Monmouth County Board of Recreation Commissioners passed a resolution concerning visitor safety and protection (R-4). It calls for the promulgation of rules, regulations and by-laws, the adoption of a complaint/summons form and procedures and the assessment of fines and other appropriate penalties for violations of the rules. It lists the responsibilities of the County Park ranger in enforcing the rules and regulations. Section 3.2 states, "the Board recognizes the importance of these enhancing responsibilities and shall provide the county park ranger with specialized training and equipment for this purpose as required by the New Jersey Police Training Commission" (R-4). The resolution includes the Board's delegation of authority to the secretary director to authorize the purchase of defensive equipment which includes a 23-26 inch plain hardwood baton, commercial police-type handcuffs, a handcuff case and baton holder. The resolution also states that "no other defensive equipment or weapon or any kind is authorized or approved for carrying or use."

13. In 1981, the Police Training Commission approved an eighty-hour course for park rangers, pursuant to N.J.S.A. 40:12 et seq. (R-7). Gollnick testified that before 1981, the Police Training Commission sent a letter to the Park system stating that since park rangers had police powers under the statute, they would have to be trained under the auspices of the Police Training Commission at an appropriate facility (TA 39). The directive in R-7 contains an order that rangers or anyone having powers under

N.J.S.A. 40:12-6 would have to obtain appropriate training at a police training facility.

The program approved by the Police Training Commission differed from the program provided to municipal police officers (TA 40). Police candidates must take a ten-week course in order to be commissioned as officers. The park ranger program was approximately two weeks or eighty hours. It offered courses entitled, working with juveniles, defensive training, report writing and knowledge of the criminal justice system. Moreover, the program did not provide any firearms training and no training in Title 39 (motor vehicle code) (TA 41).

After 1981, the police training program offered to park rangers expanded to approximately 124 hours (TA 43). An in-house training program requires park rangers to take courses in orientation ranger skills, first aid, firefighting and ice rescue. All rangers hired within the past three years have taken courses concerning safety, fire and first aid skills. Rangers must also take the "Rangering Skills" series of courses at the Police Academy. These courses include the park ranger philosophy, enforcement of park system rules and regulations, patrol procedures and techniques, patrol practices, youth relations, narcotics, arrest, search and seizure, defensive tactics, criminal statutes, evidence, and introduction to criminal justice/court room testimony (R-8). Rangers must also take maintenance skill courses including proper use of hand tools, special tools and techniques, tractor

operation and maintenance, truck operation and maintenance, snow plowing, and forklift operation course. Park rangers must complete the training program within 18 months of their hiring date (TA 94).

The Board issues summons books to the park rangers.

Rangers do not have to call the municipal police force in order to remove a visitor from the park. They frequently issue warnings to visitors who are illegally parked in one of the County parks (TA 90).

14. Robert Browne is a Senior County Park Ranger who has been employed by the park system for approximately 20 years (TA 106). He has issued summonses for parking violations, handcuffed park visitors who have been involved in assaults, detained visitors and advised them that they are under arrest (TA 111, 114). Browne also described an incident in August 1985 in which he handcuffed an individual who was involved in an assault and transferred the suspect to the Wall Township Police Department for the purpose of pressing charges.

The employer introduced R-6, an incident analysis dating back to 1960 (R-6). Gollnick defined an incident as "anything out of the ordinary that occurs within the park" (TA 34). Such reports could be filed for a rule and regulation violation, the occurrence of a fire, a burglar alarm sounding, first aid treatment for a park visitor or for a missing person, etc. R-6 also categorizes the number of summonses issued, number of visitor requests for police assistance and arrests made. In 1981, 540 reports were recorded,

385 summonses were issued, 83 requests for police assistance were made and 21 arrests were made. In 1982, 547 incidents occurred, 251 summonses were issued, 128 requests for police assistance were made and 28 people were arrested. The number of incidents increased in 1983 to 674, 336 summonses were issued, 155 requests for police assistance were made and 23 people were arrested. In 1984 and 1985 the number of incidents reported were 654 and 678, respectively. The number of summonses issued were 384 and 548 respectively, and the number of requests for police assistance were 118 in 1984 and 112 in 1985. In 1984 21 arrests were made and the final data were not available for the number arrests made in 1985 (R-6). Gollnick issued summons books to all park rangers. The municipal police force does not have to be called for park ranger to remove a visitor. The Park Commission also makes available additional defensive training at the Police Academy (TA-90).

Rangers do not generally issue summonses based on information and belief; they issue summonses only for illegalities which they personally observe (TA-84). Browne asserted that summonses have been issued under information and belief. For example, in late August 1986, the Chief life guard at Seven Presidents Park in Long Branch advised the park rangers that a visitor was swimming in a non-designated area. After he repeatedly requested the swimmer to leave the area, the Chief life guard requested that the rangers issue a summons to the swimmer. One of the rangers issued a summons and the Chief life guard signed it

(TA-139). Gollnick asserted that an incident report is filed for every summons issued. Park rangers are directed to request the assistance of police in any matter involving drugs, juvenile delinquency and incidents concerning criminal statutes (TA-36). Gollnick was not sure if the arrests charted in R-6 were made by County Park system employees (TA-37). Gollnick emphasized that park rangers are instructed to resolve problems at the lowest possible level. The lowest level is to provide advice and information to park visitors. The next level requires rangers to issue a courtesy warning in writing. The last level of enforcement is removal from the park. The level of physical force a ranger may use is discussed in the training program. If a visitor resists, rangers are advised to call for local police to handle the matter. Rangers are generally discouraged from using force in any form. However, the park rangers are not prohibited from using force (TA-57). Force is considered appropriate when someone reacts with hostility or threatens bodily harm to the ranger or a park patron (TA-59).

Firearms are not issued to park rangers and the park system does not authorize a ranger to use his own firearm while on duty (TA-74). Furthermore, park rangers belong to the New Jersey Public Employee Retirement System and do not belong to any police or firefighter pension system.

Browne asserted that he once placed marijuana confiscated from a visitor in Seven Presidents Park in a Long Branch police department evidence envelope and transported the package to the

police department (TA-16). Browne asserted that park rangers issue summonses under Title 40 (cross-referencing Title 39) and the summons itself is marked "traffic violations" under Title 39 (TA-110). Summonses are often issued for alcoholic beverage possession in county parks.

Browne arrested an adult and two juveniles for narcotics possession on or about July 21, 1985 at Seven Presidents Park. He had not previously made any narcotics arrests. He called the Long Branch Police Department to transport the suspects to the station, where he completed a uniform crime report (TB-20). Browne was uncertain about how many other arrests he made over the past three years. He acknowledged that no rule required park rangers to fill out a uniform crime report (TB-27). One of Browne's duties is to collect money from the admission booth and the deposit it at the bank. Browne viewed answering questions from the public about schedules as a law enforcement function. He also claimed that litter collection and cleaning the latrines was a law enforcement function (TB-52, 53).

David Compton has been employed by the park system for eleven years and has been superintendent of the Monmouth Park System for more than one year. Between 1975 and 1977 Compton was assigned to Holmdel Park and he estimated that park rangers devoted 80% of their efforts to maintenance tasks and 20% to dealing with the public, including providing assistance and enforcing park rules and regulations (TB-62, 60). In breaking down the latter estimate,

Compton asserted that about 75% of the ranger efforts was devoted to dispensing information and 25% was devoted to issuing written warnings and summonses (TB-64). In the winter months, 95% of the park rangers' efforts were devoted to maintenance functions and 5% to dispensing information and enforcing park rules and regulations. According to Compton, rangers have broader responsibility than other park employees to issue summonses because it "falls more in their day to day job performance than the others" (TB-83).

James Giglio has worked in the park system for twenty years and was originally hired as a park maintenance person. He was next promoted to principal park ranger and in 1977 he became supervising county park ranger (TB-102). He testified that there is greater emphasis on enforcement of rules and regulations today than years ago. Park rangers are responsible for determining the cash report, signing-in campers, keeping track of cash receipts, collecting refuse, cleaning the park, performing road maintenance and filling pot holes. Routine maintenance includes mowing, cleaning buildings, making repairs and litter collecting (TB-108-109). Giglio was in Seven Presidents Park from 1979 to 1982 and served as supervising park ranger. In his estimate, during the busy summer months rangers devoted 20% to 25% of their efforts to visitor contact. Over the entire year the park ranger would devote considerably less time to that contact, amounting to perhaps 5% (TB-110). Giglio stated that approximately 10% of his activities directly involved law enforcement. He is mostly involved in administrative duties such as creating work schedules and assigning rangers to various locations.

Considering all of the testimony and evidence, I find that park rangers spend no more than 20% of their summer work hours in "visitor contact", including dispensing information, issuing warnings and summonses and making arrests. I also find that they devote 80% of their efforts to maintenance tasks, including cleaning, mowing and inspecting park areas.

ANALYSIS

The sole issue I must decide is whether the petitioned-for park ranger employees are "policemen" within the meaning of N.J.S.A. 34:13A-5.3. That section states:

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.

If the park rangers are policemen, they may not continue to be in their current negotiations unit because it admits employees other than police to membership. If they are not, their petition must be dismissed because of New Jersey's policy in favor of broad-based negotiations units. State v. Prof. Assn. of New Jersey, Dept. of Education, 64 N.J. 231 (1974); County of Warren, P.E.R.C. No. 86-111, 12 NJPER 357 (¶17134 1986); Jefferson Township Bd. of Ed., P.E.R.C. No. 61 (1971).^{1/}

^{1/} Park rangers are among those "employees engaged in performing police services" within the meaning of the interest arbitration statute, N.J.S.A. 34:13A-15. Their inclusion in

The phrase "policeman" has been consistently defined as meaning those officers that have the "statutory right and duty, in appropriate circumstances, to detect, apprehend and arrest." County of Gloucester v. Public Employment Relations Commission, 107 N.J. Super 150 (App. Dive. 1969), aff'd 55 N.J. 333 (1970); State of New Jersey, P.E.R.C. No. 81 (1974), aff'd App. Div. Docket No. A-2528-73 (3/26/75); City of Newark. In this case, the Board-appointed custodians, supervisors and assistants

shall, while on duty and for the purpose of preserving order and observance of the rules, regulations and by-laws of the Board, have all the power and authority of police officers of the respective municipalities in and for which they are generally appointed. N.J.S.A. 40:12-6.

R-3 states that "employees of the Board of Recreation Commissioners are vested with police authority and empowered to make arrests for violations of County Park rules and regulations." R-4 contains a nearly identical provision and authorizes distribution of "defensive" equipment, including batons and handcuffs.

1/ Footnote Continued From Previous Page

the statute does not require the Commission to sever the proposed unit because the Legislature "simply has not precluded employees engaged in performing police services from being in a broad-based unit with employees who do not engage in such services." City of Newark, P.E.R.C. No. 87-7, 12 NJPER 606 (¶17228 1986). Severance may also be unwarranted under the statute because park rangers are in a newly-formed negotiations unit and there has been no showing of unstable labor relations in the broad-based unit Id. See also Jefferson Twp. Board of Education.

The Board argued in its post-hearing brief that the park rangers are employed to enforce rules (i.e., Board rules and regulations) and not laws; their responsibilities do not fit the "classic" definition of law enforcement, "the detection, apprehension and arresting of criminal offenders." Ranger rule enforcement authority is limited by park policy and the statutory prohibition against off-duty enforcement. The park ranger's enforcement function is allegedly the "preservation of order through explanation, guidance, persuasion and presence." The Board also asserts that it opted to cloak rangers with limited authority rather than general authority under N.J.S.A. 40:37-154 or 40:37-203.^{2/}

2/ 40:37-154 - Park police; establishment; rules and regulations

The commission may appoint and establish a constabulary to preserve order in the parks and parkways under its control, and to secure the enforcement of the rules and regulations passed and enacted by it, and may organize the constabulary into a police system to be known as "the park police of the county of".

The police system shall consist of a chief and such subordinate officers as may be deemed necessary and proper for the enforcement of the rules and regulations of the commission within the parks and parkways, and the proper protection of public property therein.

The commission may establish proper rules and regulations for the appointment, control and management of the members of the constabulary, and for the securing of proper discipline and efficiency among the members thereof.

40:37-203. - Park police; powers of arrest

The members and officers of the park police may arrest on view and without warrant, and conduct before the nearest police magistrate of the municipality in which the arrest is

Their limited authority is consistent with their limited police academy training and relatively small percentage of effort devoted to contact with the general public.

I reject the Board's arguments and find that park rangers are "policemen" within the meaning of the Act. In County of Warren, the Commission determined that weights and measures employees were "policemen" because they had the power to arrest under N.J.S.A. 51:1-106:

Arrest without warrant

A superintendent, assistant superintendent, or inspector on the violation of any of the provisions of this Title within his view may without warrant arrest the offender and conduct him before the court having jurisdiction in the municipality where the arrest is made or the offense committed.

The Commission also cited County of Gloucester, in which the Court found that county corrections officers (who did not carry firearms)

2/ Footnote Continued From Previous Page

made, or a police magistrate of a neighboring municipality, any persons found violating the rules and regulations enacted by the commission for the protect, preservation, regulation and control of the parks and parkways, and all property and other things therein, and in addition shall have all the powers conferred by law on police officers or constables in the enforcement of the laws of this state and the apprehension of violators thereof.

were policemen within the meaning of our Act. The Court relied in part on the statute giving officers the power to arrest and said:

The quoted language is unambiguous and plainly vests in correction officers specific powers and duties commonly exercised by the police. When that statute is read with the aforementioned provision of N.J.S.A. 34:13A-5.3, we think it to be apparent 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. Compare the analogous policy fostered by 29 U.S.C.A. §159(b), which precludes guards from joining a labor union if that organization includes member employees other than guards/National Labor Relations Board v. American Dist. Tel. Co., 205 F.2d 86, 89 (3 Cir. 1953).
107 N.J. Super at 57.

The Commission found that the weights and measures employees' statutory duty to make arrests was dispositive of their status as "policemen."

N.J.S.A. 40:12-6 confers the same or broader police authority to the designated Board employees than N.J.S.A. 51:1-106 confers to weights and measures employees, who may statutorily "arrest" offenders. Although the duties of the park rangers are circumscribed by Board policies (e.g., favoring ranger verbal warnings to patrons over arrests and limiting ranger authority to their work hours) their statutory power is coextensive with that provided to police officers in the respective municipalities. Nothing in the record established any limitation of police authority in any municipality. In light of the Commission's decision in

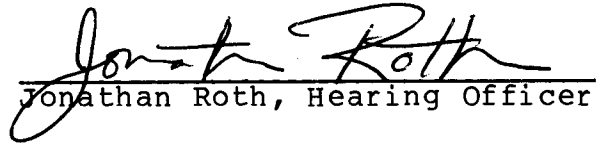
County of Warren and the statutory police authority of employees under N.J.S.A. 40:12-6, park rangers do not need to fit the "classic" definition of law enforcers and do not need to be cloaked with the plenary authority of other statutes (e.g., N.J.S.A. 40:37-203) in order for them to be "policemen" within the meaning of our Act.

Park rangers receive 124 hours of training at the Police Training Academy and take numerous in-house training courses, including arrest, search and seizure, evidence and an introduction to court room testimony. Rangers have also issued summonses, handcuffed and arrested park visitors, been involved in assaults and transferred suspects to local police authorities for the purpose of pressing charges. R-6 contains an approximate calculation of the number of annual incidents, summonses issued and arrests made over past years. Even if this data demonstrates that park rangers are engaged in "visitor contact" for 20% or less of their working hours, it also shows that they fulfill their statutory obligations. These facts warrant the conclusion that the park rangers have in fact performed police duties.

RECOMMENDATION

I recommend that the Commission find that Monmouth County park rangers and senior park rangers are "policemen" within the meaning of the Act, that the petitioned-for unit is appropriate and that an election should be directed in which they may choose to be

represented in collective negotiations by Lodge #105, Fraternal Order of Police or no representative.^{3/}


Jonathan Roth, Hearing Officer

DATED: April 28, 1987
Trenton, New Jersey

^{3/} In keeping with the Commission decision in City of Newark, I recommend that the proposed unit be severed from the broad-based blue and white collar unit and an election be directed to determine the rangers' representational desires.