P.E.R.C. NO. 87-7

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Public Employer,

-and- Docket No. RO-85-55

FRATERNAL ORDER OF POLICE,

Petitioner,

-and-

ESSEX COUNCIL NO. 1, N.J.C.S.A.,

Intervenor.

SYNOPSIS

The Public Employment Relations Commission dismisses a Petition for Certification of Public Employee Representative filed by the Fraternal Order of Police. The FOP sought to represent police guards employed by the City of Newark who are currently represented by Essex Council No. 2, N.J.C.S.A. The Commission finds, under the circumstances, that the continued placement of the guards in the existing broad-based unit is appropriate.

P.E.R.C. NO. 87-7

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Public Employer,

-and- Docket No. RO-85-55

FRATERNAL ORDER OF POLICE,

Petitioner,

-and-

ESSEX COUNCIL NO. 1, N.J.C.S.A.,

Intervenor.

Appearances:

For the Public Employer, Glenn A. Grant, Corporation Counsel (Lucille LaCosta-Davino, Asst. Corporation Counsel)

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

For the Intervenor, Fox & Fox, Esqs. (Frederic Knapp, of Counsel)

DECISION AND ORDER

On October 5, 1984, the Fraternal Order of Police ("FOP") filed a Petition for Certification of Public Employee Representative. The FOP seeks to represent "police guards" employed by the City of Newark ("City"). The police guards are currently included in a city-wide, white collar unit represented by Essex Council No. 1, N.J.C.S.A. ("Council 1"). Council 1 has intervened, pursuant to N.J.A.C. 19:11-2.7.

All parties submitted statements of position to the Director of Representation. The FOP contends that the petitioned-for unit is appropriate because the police guards are "policemen" within the meaning of N.J.S.A. 34:13A-5.3 and "employees engaged in performing police services" within the meaning of N.J.S.A. 34:13A-15 and therefore should not be in a unit with non-police employees. The City and Council No. 1 oppose the petition. Both contend that there is an existing agreement between them which bars the filing of the petition and that severance of "police guards" from the existing broad-based unit is inappropriate.

On February 13, 1985, the Director of Representation issued his decision directing a hearing. D.R. No. 85-15, 11 NJPER 152 (¶16067 1985). He first found that the petition was timely filed. He then determined that a hearing was required to answer the question whether police guards were "policemen" or "employees engaged in performing police services" within the meaning of the Act.

On July 12, 1985, Hearing Officer Richard C. Gwin conducted a hearing. The parties examined witnesses, introduced exhibits and argued orally. Council 1 and the City also filed briefs.

On March 17, 1986, the Hearing Officer issued his report and recommended decision. H.O. No. 86-4, 12 NJPER ___ (¶_____ 1986). He first found that the police guards were not "police" within the meaning of N.J.S.A. 34:13A-5.3, but were "employees engaged in performing police services" under N.J.S.A. 34:13A-15. He

concluded that this factor was not sufficient to warrant severing the seven police guards from the existing broad-based unit in view of the Commission's "strong preference for [such] units and a concomitantly strong distaste for an undue fragmentation of public sector negotiations units."

On March 23, 1986, the FOP filed exceptions. It contends that employees that perform police services are statutorily entitled to interest arbitration and therefore, they should be per se entitled to be in a separate unit.

On April 7, 1986, Essex Council No. 1 filed its response. It urges adoption of the Hearing Officer's recommendation.

We have reviewed the record. The Hearing Officer's findings of fact (pp. 3-5), none of which are excepted to, are accurate. We adopt and incorporate them here.

N.J.S.A. 34:13A-5.3, in pertinent part, provides that "no policeman shall have the right to join an employee organization that admits employees other than policemen to membership." Thus, the key issue is whether the police guards are "policemen." If they are, they are statutorily required to be severed from the existing unit. We conclude, however, that they are not. The phrase "policemen" has been consistently defined as meaning those officers that have the "statutory right and duty, in appropriate circumstances, to detect, apprehend and arrest." Cty. of Gloucester v. Pub. Emp. Rel. Comm., 107 N.J. Super. 150 (App. Div. 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). The plain and undisputed fact, however, is that these employees do not possess such power. Compare County of Warren, P.E.R.C. No. 86-111, 12 NJPER 357 (¶17124 1986).

The FOP argues, however, that the petitioned-for employees should, nevertheless, be severed because they are "employees engaged in performing police services" within the meaning of the interest arbitration statute, N.J.S.A. 34:13A-15. We disagree. Unlike the general proscription of police and non-police being in the same unit, our 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. Accordingly, even if we were to find that the police guards perform police services, that would not warrant severance into a newly-formed negotiations unit consisting of only seven employees under these circumstances where there has been a history of stable labor relations in a broad-based negotiations unit. State of New Jersey. See generally, Jefferson Township Bd. of Ed., P.E.R.C. No. 61 (1971).[1/]

1/ Absent such a history, however, the availability of interest arbitration would be a factor in support of a separate unit of employees engaged in performing police services. See County of Hudson, P.E.R.C. No. 84-85, 10 NJPER 114 (¶14049 1984). Furthermore, contrary to the F.O.P.'s argument, there is nothing in City of Newark, D.R. No. 81-18, 7 NJPER 3 (¶12002 1980) or City of Newark, D.R. No. 81-42, 7 NJPER 310 (¶12135 1981) that requires severance of a small number of employees from a broad-based unit simply because of the availability of interest arbitration that they presently do not enjoy.

ORDER

The petition is dismissed.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson, Smith and Wenzler voted in favor of this decision. Commissioners Hipp and Reid were not present.

DATED: Trenton, New Jersey
July 24, 1986
ISSUED: July 25, 1986

H.O. NO. 86-4

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

In the Matter of

CITY OF NEWARK,

Public Employer,

-and-

Docket No. RO-85-55

FRATERNAL ORDER OF POLICE,

Petitioner,

-and-

ESSEX COUNCIL NO. 1,
N.J.C.S.A.,

Intervenor.

SYNOPSIS

The Hearing Officer recommends the dismissal of an F.O.P. petition seeking certification of a unit of female prison guards employed by the City of Newark. The prison guards are currently represented by Essex Council 1 in its city-wide, white collar unit.

The Hearing Officer finds that the prison guards are not "police" within the meaning of N.J.S.A. 34:13A-5.3, but that they are "employees engaged in performing police services" within the meaning of the compulsory interest arbitration statute, N.J.S.A. 34:13A-15. The Hearing Officer recommends the extension of the severance standard adopted by the Commission for mixed units of firefighters and non-firefighters in County of Hudson, P.E.R.C. No. 84-85, 10 NJPER 114 (¶15059 1984). The Hearing Officer recommends dismissal based on a 15-year negotiations history, during which no conflict between the interests of prison guards and other Council 1 members and no incidents of irresponsible representation have occurred.

H.O. NO. 86-4

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

In the Matter of

CITY OF NEWARK,

Public Employer,

-and- Docket No. RO-85-55

FRATERNAL ORDER OF POLICE,

Petitioner,

-and-

ESSEX COUNCIL NO. 1,
N.J.C.S.A.,

Intervenor.

Appearances:

For the Public Employer, Rosalind Lubetsky Bressler
Lucille LaCosta-Davino, Esq.

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

For the Intervenor, Fox & Fox, Esqs.
(Fredric Knapp, Esq.)

HEARING OFFICER'S REPORT
AND RECOMMENDED DECISION

On October 5, 1984, the Fraternal Order of Police ("F.O.P.") filed a petition (RO-85-55) with the Public Employment Relations Commission ("Commission") seeking certification as the exclusive representative of a collective negotiations unit consisting of the (female) prison guards employed by the City of

Newark ("City"). The prison guards [1/] are currently included in a city-wide, white-collar unit represented by Essex Council No. 1, N.J.C.S.A. ("Council 1").

The F.O.P. asserts that the prison guards should be severed from Council 1's unit because they are "employees engaged in performing police services," within the meaning of the Compulsory Interest Arbitration Act, specifically, N.J.S.A. 34:13A-15. Council 1 argues that the guards do not perform police services and should remain in its unit. The City agrees with Council 1 and argues alternatively that the guards should not be severed even if found to perform police services. On the latter point, the City relies on a lengthy negotiations history with Council 1 and on the Commission's policy favoring broad-based units and avoiding undue fragmentation.

At an investigatory conference held October 15, 1984, the City and Council 1 raised a contract bar claim. The Director of Representation issued a decision on February 13, 1985 finding the petition timely and directing that a hearing be conducted to determine whether prison guards are "employees engaged in performing police services" within the meaning of N.J.S.A. 34:13A-15. D.R. No. 85-15, 11 NJPER 152 (¶16067 1985). On the same day, the Director issued a notice scheduling a pre-hearing conference for March 21, 1985 and hearing for April 3, 1985.

1/ The parties also refer to the title as "police guards."

After two postponements, a hearing was conducted on July 12, 1985. The parties were given the opportunity to examine and cross-examine witnesses, introduce exhibits and argue orally. The F.O.P. waived its right to file a brief but argued orally at the conclusion of the hearing. Council 1 and the City filed briefs, the last of which was received on August 16, 1985.

FINDINGS OF FACT

1. The City is a public employer within the meaning of the Act and is subject to its provisions.

2. The F.O.P. and Council 1 are public employee representatives within the meaning of the Act and are subject to its provisions.

3. The City employs seven prison guards at its Green Street detention facility. The guards work in the cell block area where female prisoners are detained. They provide 24-hour coverage on three shifts. Two guards usually work each shift.

4. The guards search and shower female prisoners when they are brought to the facility. They log-in prisoners' personal property. The guards feed the prisoners and see to their personal needs. They maintain logs and prisoner service sheets. Approximately one-half of the guards' time is spent escorting prisoners to court. The job description for guards follows:

DEFINITION: Under direction, guards and searches individuals legally apprehended; does related work as required.
EXAMPLES OF WORK: Helps to maintain order and discipline

among prisoners; searches prisoners; assists police officers in the questioning of prisoners; gives needed first aid in case of accidents; gives testimony in court; escorts prisoners to institutions; receives visitors and ascertains their wants, and prepares accurate reports of significant activities and conditions.

REQUIREMENTS:

1. Ability to read, write, speak and understand English sufficiently to perform the duties of this position.

2. Some knowledge of the methods likely to be effective in dealing with varied type of prisoners.

3. Ability to understand, remember, and carry out oral and written directions; to deal courteously and effectively with varied types of persons; to note significant facts and conditions by observations; to remain cool and decisive in emergency situations; to prepare clear, sound, accurate, informative and legible reports and to perform simple clerical tasks.

4. Good health and freedom from disabling physical and mental defects which would impair the proper performance of the required duties or which might endanger the health and safety of oneself or others.

Prior to April, 1985, prison guards had the title of "police matron." Their duties did not change with the title. T pp 7-10, C-3.

5. Prison guards wear uniforms, which include badges and patches. Two of the seven guards were trained at the police academy in self-defense, first aid and report writing. The remaining five were not sent to the academy. Police guards (and before them, matrons) have not been trained at the academy since 1973. None of the guards is trained in the use of firearms. None carries a weapon.

6. Prison guards have participated in a small number of arrests over the last several years, usually when contraband was found in the possession of a prisoner. The guards have typically been assisted in the arrest process by a police officer. It does not appear that prison guards have ever arrested anyone not already in police custody. T pp. 27-30.

7. Newark police officers assigned to the male section of the cell block do essentially the same things for male prisoners that prison guards do for female prisoners. Approximately one-half of the police officers working in the male cell block area are assigned there temporarily. It is considered light duty. Officers not permitted to carry firearms may be temporarily assigned to the cell block. T pp. 65, 88.

8. Council 1 was certified as the exclusive majority representative of the city-wide, white-collar unit on April 15, 1971 (PERC Docket No. RO-78). Court attendants, court clerks and secretaries, some of whom work at 31 Green Street, are also included in the unit. The record reveals no conflicts between the interests of prison guards and other Council 1 members during the units' 15-year negotiations history and no incidents of guards receiving irresponsible representation

9. Like other members of Council 1's white collar unit, prison guards belong to the City's pension plan. T p. 85.

10. No New Jersey statute grants these prison guards the power to detect, apprehend or arrest offenders.

ANALYSIS

N.J.S.A 34:13A-5.3 provides that, "... except where established practice, prior agreement or special circumstances dictate the contrary, no policemen shall have the right to join an employee organization that admits employees other than policemen to membership..." Relying on City of Gloucester v. P.E.R.C., 107 N.J.

Super. 150 (App. Div. 1969), aff'd 55 N.J. 333 (1970), the Commission has defined "policemen", within the meaning of section 5.3, as employees with the statutory power to detect, arrest and apprehend offenders. In re State of New Jersey, P.E.R.C. No. 81 (1974) aff'd App. Div. Docket No. A-2528-73 (3/26/75).

The prison guards do not have statuory police powers. Thus, section 13A-5.3 does not, on its own, prohibit their continued inclusion in Council 1's unit. In re County of Sussex, P.E.R.C. No. 76-14, 2 NJPER 1 (1976); compare In re Borough of Avalon, E.D. No. 76-23, 2 NJPER 59 (1976); In re Ewing Township, D.R. No. 78-21, 3 NJPER 353 (1977); In re Township of Maple Shade, D.R. No. 79-10, 4 NJPER 440 (1979).

N.J.S.A. 13A-15 defines "Public police department" as:

> ... any police department or organization of a municipality, county or park, or the State, or any agency thereof having employees engaged in performing police services including but not necessarily limited to units composed of State troopers, police officers, detectives and investigators of counties, ... correction offficers [and] keepers. (emphasis added)

The Commission has not interpreted the phrase, "employees engaged in performing police services," but has indicated that its scope is broader than the definition of "policemen" under section 13A-5.3. New Jersey Institute of Technology, P.E.R.C. No. 84-47, 9 NJPER (14289 1983), footnote 4 at p 667.

The Director of Representation did interpret the language in City of Newark, D.R. No. 81-18, 7 NJPER 3 (¶12002 1980). In Newark, supra., the Director pointed to the Legislature's use of the

phrase "employees engaged in performing police services" in section 13A-15, rather then the more specific and limited term "policemen" in section 13A-5.3, as an indication of a broader application of the statute. The Director also relied on the Legislature's goal of ensuring the uninterrupted and efficient operation of police departments and concluded that:

> "the Legislature intended the statute to apply to those employees of a police department who perform those law enforcement duties which are integral elements of the total process of detecting, apprehending and arresting criminal offenders." 7 NJPER at 5.

The Director emphasized that the application of this standard requires a careful, case-by-case examination of the specific duties and responsibilities of the titles in dispute. Ibid at pp 5,6.

I conclude that the prison guards are "engaged in performing police services". Section 13A-15 specifies "keepers" in its list of employees performing police services. The common meaning of the term is, "one that keeps: as a: protector ... warden ... custodian." "Keep", as a noun, means, "custody, charge ... one whose job is to keep or tend ... prison, jail". Webster's New Collegiate Dictionary, 150th Anniversary Edition, 1981, G & C Merriam Co. "Keeper" is not defined in the compulsory arbitration statute. The term does appear in Chapter 8 of Title 30 (County and

Municipal) Penal Institutions, and refers to one charged with the custody and care of prisoners. 2/

Lending support to a finding that prison guards perform police services, is dicta from the Superior Court's opinion in Gloucester, supra:

> "And, as stated by the Supreme Court of Missouri, certainly, the actual keeping and custody of prisoners confined in a jail is the performance of an inherent and naked police function." 107 N.J. Super at 158. citations omitted.

The Superior Court also refers to the law enforcement function of employees responsible for the detention and custody of prisoners in State v. Grant, 102 N.J. Super. 164 (App. Div.), certif. den. 53 N.J. 62 (1968):

> "overseeing the custody and punishment of law violators is as much a part of law enforcement as undertaking the detention and apprehension of such violators." 102 N.J. Super. at 168, quoted in Gloucester at 107 N.J. Super 158.

The Commission referred to both of these Superior Court cases in State of New Jersey, supra., where it concluded that Medical Security Officers employed at the Trenton Psychiatric Hospital were not "policemen" within the meaning of section 13A-5.3

2/ Interpreting N.J.S.A. 30:8-11, Duties of Jail Matrons and N.J.S.A. 30:8-18, Custody of jails in certain counties of second and fifth class repealed by L. 1984, c. 209, §2, eff. Dec. 10, 1984) the Superior Court held that the matron of a county jail, who was in charge of female inmates and supervised by the sheriff of a second class county was a "jail keeper" and entitled to be compensated at the same rate as the county's court attendants. Raff v. Passaic County, 162 A 720, 10 N.J. Misc. 1133 (1932).

because they lacked statutory police powers. The Commission noted, however, that it viewed "... the foregoing (quotations from Gloucester) as supportive dicta ... and more importantly to relate to prison guards, not medical security officers." The Commission added that, "we cannot equate, 'the keeping and custody of prisoners confined in a jail' or 'overseeing the custody and punishment of law violators', with the function of Medical Security Officers." P.E.R.C. No. 81, slip op. at p. 6.

I conclude that the "keeping and custody of prisoners confined to a jail," is precisely the duty of the City's prison guards. This function and the inclusion of "keepers" in the statute's definition of police department leads me to recommend that the Commission find that prison guards are "employees engaged in performing police services."

The remaining issue is whether the guards should be severed from Council 1's unit. I conclude that they should not and recommend that the petition be dismissed.

The Act entrusts the Commission with the responsibility of supervising the voluntary mediation of public sector employer-employee disputes towards the end of achieving labor stability. N.J.S.A. 34:13A-2. Subsection 6(d) specifically empowers the Commission to resolve questions concerning representation of public employees by conducting a secret ballot election or using any other appropriate method to ascertain the free choice of the employees. When a question concerning representation

arises, the Commission must decide in each instance which unit of employees is the appropriate unit for collective negotiations. In re State of New Jersey, P.E.R.C. No. 68 (1972), aff'd State of New Jersey and Professional Association of New Jersey Dept. of Education, 64 N.J. 231 (1974) ("Professional Association").

Pursuant to N.J.S.A. 34:13A-5.3, the Commission defines the appropriate unit with due regard for the community of interest among the concerned employees. A community of interest determination encompasses a multitude of factors. In re Englewood Bd. of Ed., P.E.R.C. No. 82-25, 7 NJPER 516 (¶12229 1981) ("Englewood"); In re State of New Jersey, P.E.R.C. No. 68 (1972); In re Board of Education of West Milford, P.E.R.C. No. 56 (1971).

The Commission has long expressed, and the New Jersey Supreme Court early endorsed, a strong preference for broad-based units and a concomitantly strong distaste for an undue fragmentation of public sector negotiations units. Professional Association, supra. The Commission has also made clear that a long and productive history of negotiations in a broad-based unit weighs especially heavily in favor of not narrowing the composition of that unit. See In re Jefferson Twp. Bd. of Ed., P.E.R.C. No. 61 (1971).

The interest arbitration statute establishes a procedure for resolving negotiations impasses between police (and fire) departments and exclusive representatives. The process includes mediation, fact-finding and compulsory interest arbitration. The public policy behind the statute is stated at N.J.S.A. 14:13A-14:

> " It is the public policy of the State that in public fire and police departments, where public employees do not enjoy the right to strike, it is requisite to the high morale of such employees and the efficient operation of such departments to afford an alternate, expeditious, effective and binding procedure for the resolution of disputes, and to that end the provisions of this act, providing for compulsory arbitration, shall be liberally construed."

The issue of whether units are per se inappropriate if comprised of employees performing police services and employees who do not, is one of first impression. The Commission has, however, addressed the issue of whether the interest arbitration statute entitles firefighters to be severed from a broad-based unit, despite traditional factors favoring their continuation in that unit. County of Hudson, P.E.R.C. No. 84-85, 10 NJPER 114 (¶15059 1984)("Hudson").

In Hudson, supra. the Commission examined the legislative history of the interest arbitration statute and concluded that it did not automatically entitle firefighters to be severed from an existing unit including non-firefighters. The Commission emphasized, however, that the statute:

> "... is certainly a potent consideration in determining whether, under all the circumstances, a separate unit should be formed in order to effectuate the overriding goal of labor stability. The public policy, N.J.S.A. 34:13A-14, behind the interest arbitration statute is that compulsory interest arbitration promotes labor stability and lessens the chance of a disruption of vital police and firefighting services by providing a peaceful and

> terminal channel for the resolution of employer-employee representative negotiations disputes. Given this public policy, it would be wrong in determining whether firefighters should be excluded from a mixed unit to limit our inquiry to traditional severance standards. Instead, we believe the Legislature's recognition that pre-existing mixed units of firefighters and non-firefighters may continue to be appropriate and its endorsement of compulsory interest arbitration as a means of ensuring labor stability may both be accommodated by establishing a presumption that firefighters should be severed from a mixed unit unless the record shows, under all the circumstances, that labor stability, as evidence by a long history of successful negotiations and adequate representation, would be better served by their continued inclusion in that unit. Among the factors to be considered are the length and stability of the negotiations history concerning the mixed unit; the adequacy of representation and incidents of unfair representation affecting firefighters in that unit; the composition and community of interest of the mixed unit; and the nature of services rendered by the employees in question." Hudson, supra, slip op. at pp. 11,12.

In Hudson, the Commission found severance was not approriate due to: (1) a long history of successful negotiations in the broad-based mixed unit; (2) a complete absence of evidence of irresponsible representation; (3) a readily apparent community of interest between the firefighters and the other members of the negotiations unit; and (4) the minimal nature of the employees' firefighting services.

Applying the Hudson standards, the Commission has recently held that certain supervisory and non-supervisory firefighters should not be severed from existing broad-based units of State employees. State of New Jersey and N.J.F.M.B.A., P.E.R.C. No. 86-98, 11 NJPER _____ (¶_____ 1986)("NJFMBA").

In Hudson and NJFMBA, the Commission relied on the Legislature's qualification of the definition of a fire department. When introduced, Senate Bill No. 482 defined "Public fire department" as, "...any department of a municipality, county, fire district or the State or any agency thereof having employees engaged in firefighting." 3/ This definition was amended, apparently on the recommendation of the Office of Employee Relations, 4/ by adding the following language: "provided that such firefighting employees are included in a negotiating unit exclusively comprised of firefighting employees." This amendment addressed the limited situation where firefighting employees were included in broad-based units with non-firefighting employees, and sought to avoid the chaos that would result if some unit members were permitted access to binding interest arbitration while others were not. Ibid.

The Legislature did not, however, qualify the definition of "police department", as it did "fire department". A review of the November 22, 1976 letter from the Office of Employee Relations to

---

3/ Similarly, the definition of police department as it first appeared in Senate Bill No. 482, was: "...any police department or organization of a municipality, county or park, in the State, or any agency thereof, having employees engaged in performing police services."

4/ See letter dated November 22, 1976 from the Director of the Office of Employee Relations to the Assembly Labor Industry and Professions Committee, and an Inter-Communication from the Deputy Director of the Office of Employee Relations to the Special Counsel to the Governor. Both documents are in the Governor's Counsel file on Senate Bill No. 482.

the Assembly Committee (footnote 4) reveals that a problem was not anticipated because the Employer-Employee Relations Act prohibited mixed units of police and non-police employees. The only amendment to the definition was the addition of a list delineating the principal job titles within the scope of "public police department."5/

The Legislature was obviously aware of the statutory prohibition against units of police and non-police employees. The cases establishing the definition of "police" within the meaning of section 13A-5.3 as those employees possessing statutory powers of arrest, apprehension and detection had been decided prior to the introduction of Senate Bill No. 482. The Legislature nevertheless established a broader standard for determining which employees were

---

5/ The Fourth Official Copy Reprint of Senate No. 482, dated December 6, 1976, contains the definition that was ultimately incorporated into the Bill when it was adopted:

> "Public police department" means any police department or organization of a municipality, county or park, or the State, or any agency thereof having employees engaged in performing police services including but not necessarily limited to units composed of State troopers, police officers, detectives and investigators of counties, county parks and park commissions, grades of sheriff's officers and investigators; State motor vehicle officers, inspectors and investigators of the Alcoholic Beverage Commission, conservation officers in Fish, Game and Shell Fisheries, rangers in parks, marine patrolmen; correction officers, keepers, juvenile officers in the Department of Corrections and patrolmen of the Human Services and Corrections Departments; patrolmen of Capitol police and patrolmen of the Palisades Interstate Park Commission.

See also Assembly Labor, Industry and Professional Committee, Statement to Senate No. 482, dated December 6, 1976.

qualified for the rights conferred by the compulsory interest arbitration statute. Unlike its treatment of firefighters, the Legislature provided no guidance for the question of whether employees who perform police services (but who are not police within the meaning of §13A-5.3) should be severed from an existing broad-based unit.

Strong policy arguments can be made both for and against severance. Supporting severance is the legislative goal of maintaining vital police services by providing a compulsory resolution of interest disputes. On balance, however, I suggest that the Act's overall goal of providing stability in public sector labor relations is best served by application of the standards adopted by the Commission in Hudson.

In recommending the extension of the Hudson severance standards, I emphasize the limits of its application. If employees currently in a broad-based non-police unit are found to be engaged in the performance of police services then a presumption that they should be severed is established and is rebutted only if the record shows that, under all the circumstances, labor stability as evidenced by a long history of successful negotiations and adequate representation, would be better served by their continued inclusion in that unit.

The record in this case shows a 15-year negotiations history unmarred by any conflict between the interests of prison guards and other unit members or by any incidents of unfair

representation. The prison guards share a community of interest with other unit members, including court attendants, court clerks, and secretaries who work at the City's detention facility. Finally, while prison guards perform the vital function of the keeping and custody of prisoners, they do not possess the law enforcement functions of arrest, apprehension and detection that formed the basis of the statutory exclusion found in §13A-5.3.

Accordingly, I conclude that severance is inappropriate and recommend that the petition be dismissed.

Richard C. Gwin
Hearing Officer

DATED: March 17, 1986
Trenton, New Jersey