

D.R. NO. 98-9

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

In the Matter of

CITY OF NEWARK,

Petitioner,

-and-

NEWARK COUNCIL 21, NEWARK CHAPTER  
NEW JERSEY CIVIL SERVICE ASSOCIATION,

Docket No. CU-98-14

Respondent,

-and-

FRATERNAL ORDER OF POLICE, NEWARK  
LODGE NO. 12,

Intervenor.

SYNOPSIS

The Director of Representation dismisses the City of Newark's Clarification of Unit Petition finding that no "special circumstances" existed that would justify including civilians in a police negotiations unit represented by the FOP.

D.R. NO. 98-9

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

In the Matter of

CITY OF NEWARK,

Petitioner,

-and-

NEWARK COUNCIL 21, NEWARK CHAPTER  
NEW JERSEY CIVIL SERVICE ASSOCIATION,

Docket No. CU-98-14

Respondent,

-and-

FRATERNAL ORDER OF POLICE, NEWARK  
LODGE NO. 12,

Intervenor.

Appearances:

For the Petitioner  
Michelle Hollar-Gregory, Corporation Counsel  
(Hugo R. Ruiz, of counsel)

For the Respondent  
Fox and Fox, attorneys  
(Craig S. Gumpel, of counsel)

For the Intervenor  
Markowitz & Richman, attorneys  
(Stephen C. Richman, of counsel)

DECISION

On August 28, 1997, the City of Newark ("City") filed a  
Clarification of Unit Petition seeking to exclude certain titles

from Newark Council No. 21, NJCSA, IFPTE, AFL-CIO ("Council No. 21") and include them in a police unit represented by the Fraternal Order of Police, Newark Lodge No. 12 ("FOP"). The basis for the petition is an arbitration award and clarification issued by Arbitrator Louis A. Ordini dated March 20, 1997 and August 12, 1997 respectively.

The arbitration award and clarification concerned the displacement of four police officers who filled the position of FLSA clerk. The FLSA clerks performed purely clerical duties in the police department ensuring compliance with the Federal Fair Labor Standards Act. The City reassigned the four officers and hired four civilians to perform the FLSA clerk function pursuant to a federal grant program called COPS MORE. Despite the fact that the FLSA clerk position was now filled by civilians performing clerical tasks, the arbitrator found that the FLSA clerical positions would continue to be a part of the police negotiations unit represented by the FOP.

By its Clarification of Unit Petition, the City seeks to include in the FOP unit forty-three other employees in five different titles based on Arbitrator Ordini's reasoning and award. The five titles are police aide, principal timekeeper, typing, communications operator and communications operator trainee. As was first stated in Arbitrator Ordini's clarification, the City argues that the COPS MORE Grant Program constitutes a "special circumstance" under the New Jersey Employer-Employee Relations Act ("Act"), which would permit the FOP to represent police and non-police employees in one negotiations unit.

The FOP does not desire to represent any civilian employees. The FOP contends that as a labor organization that represents sworn police officers, it cannot represent non-police personnel as a matter of law. The FOP asserts it intends to appeal Ordini's award regarding the FLSA clerks.

Council No. 21 represents police aides, which the City seeks to remove and place in the FOP unit. Council No. 21 views this dispute as largely one between the City and the FOP and has taken no position with respect to whether individuals are performing FOP unit work.

While the Commission generally will grant deference to arbitration awards, the Commission has primary jurisdiction over the interpretation and implementation of the provisions of the Act. N.J.S.A. 34:13A-5.2, Ridgefield Park Ed. Assn. v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978) and Bergen Cty. Freeholders Bd. v. Bergen Cty Pros'r., 172 N.J. Super. 363, 369 (App. Div. 1980). Arbitrators can decide unit placement questions in resolving grievances. Moonachie Bd. of Ed., P.E.R.C. No. 97-13, 22 NJPER 324 (¶27164 1996). However, if an arbitrator's decision is repugnant to the Act, the Commission is not bound to follow that decision and has the responsibility to issue a determination in concert with the law. Camden Cty. Vo-Tech, P.E.R.C. No. 82-16, 7 NJPER 466 (¶12206 1981).

For the reasons stated below, I find that Arbitrator Ordini's award and clarification is repugnant to the Act and dismiss the City's Clarification of Unit Petition.

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

This subsection prohibits labor organizations which represent police employees from representing non-police employees.

In City of Gloucester v. Public Employment Relations Commission, 107 N.J. Super. 150 (App. Div. 1969) aff'd per curiam, 55 N.J. 333 (1970), the Court looked to the authority of employees to act as law enforcement officers, to detect, apprehend, or arrest offenders, in determining whether said employees are police officers within the meaning of the Act. Subsequently, the Commission determined that the definition of the term "policemen" in section 5.3 was specifically limited to those employees with statutory police powers. State of N.J., P.E.R.C. No. 81, 81 NJPER Supp 359 (1974), aff'd App. Div. Dkt. No. A-2528-73 (3/26/75).

In City of Newark, D.R. No. 81-18, 7 NJPER 3 (¶12002 1980), the City filed a clarification of unit petition seeking to exclude certain titles from the police bargaining unit then represented by the PBA on the grounds that they were not policemen within the meaning of the Act. The titles the City sought to exclude from the police bargaining unit were: communication officer, identification officers, linemen and supervisory police property clerk. There, we found that the Communication Officer, Linemen and Supervisory Police Property Clerk were not performing "police services," and were clarified out of the police employee unit.

Here, the City seeks to clarify its nonsupervisory police unit to include titles filled by civilians based on an arbitrator's award. No evidence has been proffered which indicates that these employees are sworn police officers with the power to detect, apprehend or arrest criminal offenders. The evidence adduced suggests the contrary; the communications operator and communications operator trainee positions now sought to be included in the police unit resemble the old communication officers title. Similarly, the principal timekeeper and typist titles are presumably clerical positions comparable to the old supervising police property clerk title. Both of these titles were clarified out of the police unit in 1980.

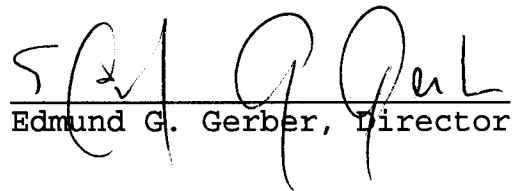
Further, I do not find any special circumstances to exist that would justify including civilian employees in a police negotiations unit. In Tp. of Maple Shade, D.R. No. 79-10, 4 NJPER 440 (¶4199 1978), aff'd P.E.R.C. No. 79-21, 5 NJPER 26 (¶10017 1978), the then Director of Representation did not find "special circumstances" warranting the inclusion of civilian dispatchers in a police unit. There, though the dispatchers worked in conjunction with the delivery of police services, the Director found that this fact alone did not require inclusion in the police unit, especially when there existed a non-police negotiations unit that could adequately represent the interests of the dispatchers.

Similarly, here, there is no reason why Council No. 21 cannot adequately represent the civilians hired pursuant to the COPS

MORE Grant Program. The Commission has consistently held that police and non-police should not be in the same unit. Tp. of Moorestown, D.R. No. 78-38, 4 NJPER 166 (¶4081 1978); City of Newark, D.R. No. 81-42, 7 NJPER 310 (¶12135 1981); City of Trenton, D.R. No. 83-14, 8 NJPER 589 (¶13274 1982) and Bor. of Paulsboro, D.R. No. 90-13, 16 NJPER 51 (¶21025 1989). Under the facts of this case, I see no reason to deviate from this standard.

Accordingly, I dismiss the Clarification of Unit Petition.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Edmund G. Gerber, Director

DATED: November 17, 1997  
Trenton, New Jersey