

P.E.R.C. NO. 88-85

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF MERCER,

Public Employer,

-and-

NEW JERSEY STATE POLICE BENEVOLENT
ASSOCIATION, LOCAL 167,

Docket No. RO-87-30

Petitioner,

-and-

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
LOCAL 2475, AFL-CIO,

Intervenor.

SYNOPSIS

The Public Employment Relations Commission dismisses a Petition for Certification of Public Employee Representative filed by the New Jersey State Police Benevolent Association, Local 167. The PBA sought to add juvenile detention officers employed by the County of Mercer to its unit of County correction officers. The Commission finds that the petitioned-for employees should remain in their existing unit because they are not "police."

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Intervenor.

Appearances:

For the Public Employer, McLemore & McElroy, Esqs.
(Paul McLemore, of counsel)

For the Petitioner, Wills & O'Neill, Esqs.
(G. Robert Wills, of counsel)

For the Intervenor, Donald B. Dileo, Staff Representative

DECISION AND ORDER

On September 16, 1986, the New Jersey State Police Benevolent Association, Local 167 ("PBA") filed a Petition for Certification of Public Employee Representative. The PBA is seeking to add juvenile detention officers employed by the County of Mercer ("County") to its unit of County correction officers. The juvenile detention officers are currently represented by the American

Federation of State, County and Municipal Employees, Local 2475, AFL-CIO ("AFSCME") in a broad-based unit of County employees.

The PBA contends that the juvenile detention officers are either "police" within the meaning of N.J.S.A. 34:13A-5.3 or "employees engaged in performing police services" within the meaning of N.J.S.A. 34:13A-15 and therefore should be severed from the existing unit.

Both AFSCME and the County contend these employees are not "police," do not perform police services, and should remain in their existing unit.

On February 10, 1987, the Director of Representation issued a Notice of Hearing.

On March 19 and 20, 1987, Hearing Officer Lorraine H. Tesauro conducted hearings. The parties examined witnesses and introduced exhibits. They also filed post-hearing briefs.

On January 2, 1988, the Hearing Officer recommended that the petition be dismissed. H.O. No. 88-4, 14 NJPER ____ (¶ ____ 1988). She concluded that the employees are not police because they do not have the statutory power to arrest, apprehend and detect. She further found juvenile officers do not perform police services because their duties are limited to restraining juveniles.

On January 20, 1988, the PBA filed exceptions. It contends that juvenile detention officers should be in the same unit as corrections officers because they perform similar duties. It contends that the statutory power of arrest should not be a

distinguishing factor because this power is "unused" and is less important than daily functions.

We have reviewed the record. The Hearing Officer's findings of fact (pp. 3-9) are accurate. We adopt and incorporate them here.

Under our settled law, the key factor in determining whether employees are "police" within the meaning of section 5.3 is whether they have the statutory power of arrest. Warren Cty., P.E.R.C. No. 86-111, 12 NJPER 357 (¶17134 1986). Gloucester Cty. v. PERC, 107 N.J. Super. 150 (App. Div. 1969), aff'd 55 N.J. 333 (1970) adopted this approach. There the Court held that county corrections officers were police within the Act's meaning. It relied principally on N.J.S.A. 2A:154-4 giving corrections officers statutory arrest powers:

The [statutory] 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.... [107 N.J. Super. at 157]

Here, we cannot say that juvenile corrections officers are police even assuming their duties are similar to county corrections officers. The key fact is that the Legislature distinguished between the two positions: juvenile officers do not have the

statutory power to arrest. Further, our Legislature has distinguished juvenile offenses from crimes: juvenile detention officers are part of the juvenile justice system -- corrections officers are part of the criminal justice system.

The PBA also contends that the juvenile officers are "employees engaged in performing police services" within the meaning of N.J.S.A. 34:13A-15. However, this would not permit the petitioned-for unit because the PBA cannot represent employees who are not police. N.J.S.A. 34:13A-5.3.

ORDER

The Petition for Certification of Public Employee Representative is dismissed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Reid, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey
March 18, 1988
ISSUED: March 21, 1988

H.O. NO. 88-4

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

In the matter of

COUNTY OF MERCER,

Public Employer,

- and -

NEW JERSEY STATE POLICE BENEVOLENT
ASSOCIATION, LOCAL 167,

Docket No. R0-87-30

Petitioner,

- and -

AFSCME, LOCAL 2475, AFL-CIO,

Intervenor.

SYNOPSIS

A Hearing Officer finds that County juvenile detention officers are not police within the meaning of N.J.S.A. 34:13A-5.3, nor are they performing "police services" under N.J.S.A. 34:13A-15. Therefore, the Hearing Officer recommends that the Commission dismiss the PBA's petition to add the juvenile detention officers to its existing unit of correction officers.

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. 88-4

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

In the matter of

COUNTY OF MERCER,

Public Employer,

- and -

NEW JERSEY STATE POLICE BENEVOLENT
ASSOCIATION, LOCAL 167,

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Petitioner,

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AFSCME, LOCAL 2475, AFL-CIO,

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Appearances:

For the Public Employer
McLemore & McElroy, Esqs.
(Paul McLemore of Counsel)

For the Petitioner
Wills & O'Neill, Esqs.
(G. Robert Wills, of Counsel)

For the Intervenor
Donald B. Dileo, Staff Representative

HEARING OFFICER'S
REPORT AND RECOMMENDATION DECISION

On September 16, 1986 a timely Petition for Certification of Public Employee Representative, accompanied by an adequate showing of interest, was filed with the Public Employment Relations

Commission ("Commission") by County Law Enforcement, New Jersey State Police Benevolent Association, Local No. 167 ("PBA"). The PBA is seeking to add the juvenile detention officers, currently represented by American Federation of State, County and Municipal Employees ("AFSCME"), Local 2475, to its existing unit of correction officers. The parties disagree about whether the juvenile detention officers are police, or are engaged in police services, and consequently whether the unit is appropriate. The petitioned for employees are currently represented by AFSCME in a separate unit.

AFSCME intervened, pursuant to N.J.A.C. 19:11-2.7 and their intervention was approved.

On December 8, 1986, a decision issued, which was later rescinded, ^{1/} and the petition was the subject of a representation hearing in accordance with N.J.A.C. 19:11-6.2, et. seq. ^{2/}

On February 10, 1987 the Director of Representation issued a Complaint and Notice of Hearing. I conducted a hearing in this matter at which the parties were given an opportunity to introduce evidence, examine and cross-examine witnesses, and argue orally. Post-hearing memoranda of law were submitted. Based on the entire record I make the following:

^{1/} Mercer County, D.R. No. 87-12, 13 NJPER 51 (¶ 18020 1986).

^{2/} The PBA attorney filed a motion to reconsider the director of representation's decision. After reviewing the results of our investigation and the filed documents, the director rescinded his decision and remanded the petition for the hearing process to determine whether or not the employees in question perform police functions.

FINDINGS OF FACT

1. County of Mercer is the public employer of the employees subject to this petition; is a public employer within the meaning of the Act; and is subject to its provisions.

2. N.J. State PBA, Local 167, petitioner, and AFSCME, Local 1409, intervenor, are public employee representatives within the meaning of the Act and are subject to its provisions.

3. Juvenile detention officers are currently represented by AFSCME, Local 2475 (TA-60).^{3/}

4. AFSCME and the public employer are parties to the collective negotiations agreement (Exhibit J-1), dated January 1, 1985 through December 31, 1986, which covers the juvenile detention officers. The agreement (J-1) provides the following:

"1.1 - the employer recognizes the union as the sole and exclusive bargaining agent for the purpose of establishing salary, wages and hours and other conditions of employment for all its employees in the classifications listed under Appendix A [Juvenile Detention Officers]....

5. PBA No. 167 currently represents a unit of correction officers in the county separate and distinct from the juvenile detention officers that are presently represented by AFSCME. The juvenile detention officer status as law enforcement officers is at issue and will be resolved at this proceeding.

^{3/} 'TA' refers to transcript of March 19, 1987 and 'TB' refers to transcript of March 20, 1987.

6. The County objects to the Petition and argues that the juvenile detention officers are not police, and may not be included in a unit with correction officers.

7. AFSCME's position is that the juvenile detention officers are not police officers. AFSCME has never represented them as such and AFSCME has maintained a collective bargaining relationship for at least 10 years in representing the juvenile detention officers (TA-20).

8. The County employs 22 juvenile detention officers at the Mercer County Youth House. The Mercer County Youth House is a temporary holding facility for juveniles who are awaiting the action of juvenile court (TA-21). The youth house is a residential facility (TA-22) and the juvenile detention officers provide 24-hour coverage on three shifts.

Because this is a juvenile holding facility, the atmosphere is strictly residential (TA-29). There are individual sleeping rooms with heavy steel doors, classrooms, recreational areas, with the outside recreational area fenced in (TA-22), but the residents maintain freedom to roam throughout the institution.

9. There are no bars on the facility. It is strictly a holding facility (TA-22).

10. The job description for the juvenile detention officers (Exhibit J-4) is as follows:

Definition - Under the general direction of a supervisory employee, during an assigned tour of duty, controls the general conduct and behavior of juvenile residents; maintains discipline

Typical Tasks:

- (a) Transport juvenile residents to various locations outside the institution using a van or a car in order to assist residents in obtaining needed treatments, attend court, etc....
- (b) Supervises and/or participates in various recreational programs and activities....
- (c) Keeps continual track of [residents] in his/her immediate charge through periodic head counts and records in a log book, all movements of juvenile residents in areas both inside and outside the institution in order to be aware, at all times, of the whereabouts of juvenile residents....
- (d) Uses understanding to calm disruptive residents in a potentially dangerous situation and may physically restrain residents in order to prevent endangering the health and safety of the residents and others.

11. The juvenile detention officers wear uniforms, which include badges; however, the badges are not worn inside the facility pursuant to the superintendent's directive (TB-8). Badges can be worn outside for transporting juveniles.

12. The officers do not carry firearms because they are not licensed to carry firearms. They never receive any official firearms training. At the youth house, the juvenile detention officers carry handcuffs but no firearms.

13. The State of New Jersey does not require certification for a juvenile detention officer and consequently, there is no formal police training (TA-24). Training is limited to a two-week session on lessons in restraint and behavior modification. They do

not receive any self defense training such as boxing nor any inter-relating training (TB-18). Instructors for this session are laymen, social workers and psychologists. The course is not a requirement, but is provided as an instructional introduction for the incoming officers. It is offered at the correction officers academy and (TB-15) detention centers. They are required to have 24 hours of training every year in restraint.

14. In the instance of escape the juvenile detention officer has the authority to detain, restrict and restrain juveniles, but does not have the authority to apprehend, arrest or act in the capacity of a police officer. The juvenile detention officer is only given the authority to restrain, (TA-52; TB-22), and must then notify local police.

15. Juvenile residents require transporting to hospitals, dentists, private doctors and state hospitals at least two or three times a week (TB-19). Sheriff's officers transport the juveniles in the course of the day with the assistance of a juvenile detention officer. Night transporting of juveniles is done by the juvenile detention officers (TA-23).

16. The job duties of the County correction officer are described as follows:

Definition: Under supervision during an assigned tour of duty at a correctional facility; guards inmates serving court and post sentences for the commission of criminal offenses;

Standards:

Distinguishing Characteristics and

- (a) This position is found primarily in County Jails and Correction Centers.

The correction officer assigned to a correction center guards adult inmates serving long sentences.
- (b) In all instances the correction officer is responsible for the presence and conduct of the inmates.
- (c) Depending if the facility is minimum or maximum security, the county correction officer may have charge of as few as one or as many as several hundred inmates at one time.
- (d) County correction officers control the actual movements of inmates from one authorized area to another.
- (e) County correction officers receive initial training prior to full performances for formal programs.

Typical Tasks:

Consistently observes inmates to detect violations of institutional regulations ...

Keeps continual track of inmates in his/her immediate charge through periodic head counts and/or records in a log book all movements of inmates to the infirmary, work details, cell block area, visitation rooms or other assignments in order to be aware at all times of the whereabouts of inmates.

Physically restrains inmates when necessary, in order to prevent injuries to staff and other inmates and to maintain security.

Searches inmates cells and dormitories ...

Part of the job responsibilities of the correction officers is to maintain security and supervise inmates (TB-50).

17. The adult correction center procedures for an escaping resident is to secure the institution to take a head count and call the Trenton Police. Then the police will send cars and surround the building (TB-78).

18. The correction officer has the power to arrest (TB-80). The correction officers do not carry firearms on duty (TB-83), but the transporting officers may carry weapons (TB-84).

ANALYSIS

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 policemen to membership...

County of Gloucester v. Public Employment Relations

Commission, 107 N.J. Super 150 (App. Div. 1969) aff. 55 N.J. 33 (1970), defines the §5.3 term "policeman," as the employee having the statutory power to detect, arrest and apprehend offenders. See also In re State of N.J., P.E.R.C. No. 81 (1974) aff. App. Div. Docket No. A-2528-73 (3/27/75).

PBA asserts that the juvenile detention officers should not be represented by AFSCME, and instead are entitled to representation by the PBA because they are statutory policemen, or are engaged in performing police services within the meaning of the "Act." ^{4/}

^{4/} N.J. Employer-Employee Relations Act, N.J.S.A. 34:13A-15.

AFSCME asserts that the existing unit structure is appropriate and the Petition should be dismissed. It further asserts that the juvenile detention officers are not police, and therefore cannot be represented by the PBA, which has police (correction officers)^{5/} as members.

The County asserts that the petitioned-for unit is inappropriate, that these employees are not police within the meaning of the Act, and that they are not engaged in performing police services.

Are Juvenile Detention Officers
"Police" Within the Meaning of
N.J.S.A. 34:13A-5.3 ?

The first issue to be addressed is whether the juvenile detention officers are police within the meaning of the Act. Thus, if I find that they are, then AFSCME is prohibited by N.J.S.A. 34:13A-5.3 from representing them. See Gloucester County, supra, and City of Camden, P.E.R.C. 81-139, 7 NJPER 345 (¶ 12155 1981). Here, I find that the juvenile detention officers are not police within the meaning of §5.3. They do not have the power to arrest, apprehend and detect, as opposed to the correction officers that are empowered to act as police officers.

The Court in Gloucester, and the Commission, approached the definition of "policeman" pursuant to job functions and by examining the employee statutory police powers. Gloucester determined that

^{5/} Gloucester, supra found that correction officers are police.

"correction officers" were "policemen" by relying on N.J.S.A. 2A:154-4 which provides for all correction officers in the State of N.J. "to be empowered to act as police officers." The Court found that the correction officers have specific powers and duties commonly exercised by police.

The PBA asserts that the job functions of juvenile detention officers are similar to those of county correction officers, and therefore, juvenile detention officers, like correction officers, should be found to be police employees.

First, in comparison, N.J.S.A. 2A:154-4 does not specifically list juvenile detention officers among those officers possessing such police powers.

Second, there is sufficient testimony to establish that the Mercer County juvenile detention officers do not have the power or authority to detect, apprehend or arrest offenders against the law inclusive of the juvenile residents at the youth house. Pursuant to the job description of the juvenile detention officers they are under the general direction of a supervisory employee with an assigned course of duty to control and watch the behavior traits of the residents of the youth house. In an instance of a fleeing or escaping juvenile, the juvenile detention officers must notify and wait for the local police. Although they have the authority to restrain, they do not have the authority to apprehend, detect or arrest a fleeing juvenile. They must wait for the local police. Based upon the foregoing, I find that juvenile detention officers are not police employees.

Do the Juvenile Detention Officers
Perform "Police Services" Under 34:13A-15,
And, If So, What is the Appropriate Unit?

PBA asserts that the juvenile detention officers are engaged in performing "police services" under 5.4, and thus are entitled to interest arbitration. The PBA also asserts that they are appropriate for inclusion in the unit with the correction officers.

The Commission considers these proposals with a broader scope pursuant to N.J.S.A. 34:13A-5.3, and a case-by-case examination of the specific duties and responsibilities of the titles in dispute aids in determining whether the employees do perform police services. N.J.I.T., P.E.R.C. No. 84-47, 9 NJPER (¶ 14289 1983) at page 667; City of Newark, D.R. No. 81-18, 7 NJPER 3 (¶ 12002 1980), stated in part:

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

Recently the Commission, in Monmouth County Park Rangers, P.E.R.C. No. 88-10, 13 NJPER 647 (¶18244 1987) dismissed a petition for certification of public employee representative filed by the Local 105, F.O.P.. Local 105 was seeking to represent all park rangers employed by Monmouth County and the Monmouth County Board of Recreation Commissioners. The Commission found 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 419.

The Hearing Officers' initial recommendation was to find that the Park Rangers were police and that they have the statutory duty to make arrests under N.J.S.A. 40:12-6 and recommended severance from the existing unit with an election to follow.

In reversing the Hearing Officer's conclusions, the Commission followed the definition of policemen, and examined the statutory police powers, pursuant to Gloucester, supra ^{6/} to find that the statute does not make the park rangers policemen, but the statute limits the authority of the park rangers, as well as other park employees, to enforcing park regulations. The Commission further states that the legislature, by separate statute, authorized the creation of the County Park Police and granted them police powers and the Commission believed that the separate authorization evidenced a legislative intent that those employees were policemen. Conversely the Commission decided, that park rangers are not park police.

The issue to be decided at hand, is whether the petitioned-for juvenile detention officers are considered to perform police services within the meaning of N.J.S.A. 34:13A-15.

County juvenile detention officers are not among those employees considered to be engaged in performing police services as indicated in the interest arbitration statute, N.J.S.A. 34:13A-15.

^{6/} Gloucester provides in part that "all correction officers of the State of N.J. 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."

The record does not support a finding that the juvenile detention officers perform police services or are employees engaged in performing police services. The functions of the juvenile detention officers in the interest of detaining, watching over, providing guidance or providing assistance for the juvenile residents do not suggest that the juvenile detention officers may be equated to prison guards who are guarding inmates.

The County argued in its post-hearing brief that the statutory policy with respect to juveniles is to "correct and rehabilitate rather than to punish." See State in Interest of D.G.W., 70 N.J. 488 (1976). The County provided passage from State v. Monahan, 15 N.J. 34, 45 (1954) supporting that statutory policy by stating:

"Centuries of history indicate that the pathway lies not in unrelenting and vengeful punishment, but in persistently seeking and up routing the causes of juvenile delinquency and in widening and strenghtening the reformative process through socially enlightened movements."

The County believes that the philosophy reflected in that passage is embodied in the purpose of N.J.S.A. 2A:40-4A-20, i.e., the Code of Juvenile Justice. Further, the County states that the juvenile detention officers are part of the juvenile justice system, as opposed to the correction officers that are a part of the criminal justice system, as are all law enforcement officers.

In quoting from the Code of Juvenile Justice, "the objective of the officer is to preserve the unit of the family,

...be consistent with the protection of the public interest...;" and "to separate juveniles from their family environment only when necessary for their health, safety and welfare, or in the interest of public safety."

The County indicates that the statute constructing a juvenile justice system authorizes the State to take and continue custody of children who commit an offense against the State. Their argument is premised on the basis that in order to determine whether or not juvenile detention officers are engaged in performing police services, one needs to look at the context of which those services are performed and if the Code of Juvenile Justice dictates the matter in which the juvenile detention officer is to carry out his function in the interest of protecting, taking in custody and securing, then the juvenile detention officer functions as a guardian rather than a guard.

The PBA relies very strongly on the City of Newark and Fraternal Order of Police, P.E.R.C. No. 87-7, 12 NJPER 606 (¶ 17728 1986). The PBA addresses the Commission's finding that the guards involved in the City of Newark do not have statutory police power and their function was to maintain the custody of female prisoners, the same way that the Mercer County juvenile detention officers maintain custody over their juveniles. In comparison, Newark determined that the female prison guards' power to arrest was latent and that these individuals were performing police functions.

Arguably, the juvenile detention officers and the correction officers are distinguished by their statutory powers. Newark established the criteria for determining how individuals engage in performing police functions. The juvenile detention officers do not perform police services.

In reviewing the testimony and the factual submissions by the parties pertaining to the powers of the juvenile detention officers, and the daily activities as outlined in the job descriptions (J-3), it is difficult to draw the line as to the primary function of a juvenile detention officer as opposed to that of a County correction officer which clearly is an employee engaged in performing police services. See, Gloucester. Although the determination may be a slight difference between the amount of authority empowered to that of a juvenile detention officer, the determination is based on the limits of the juvenile detention officers and their actual responsibilities as depicted by Commission standard and past precedent pertaining to those employees allegedly engaged in police services.

Definitively, the juvenile detention officers serve the purpose of fulfilling the juvenile justice system warrant of maintaining child offenders of the law in custody. The adult correction center officers are given specific statutory powers and authority, whereas the juvenile detention officers are not. This clearly creates the distinction between the two types of officers.

I reject the PBA argument and find that the juvenile detention officers are devoid of any specific statutory powers pertaining to police services/functions.

Juvenile detention officers have received no more and no less than 24 hours of behavior modification training and intermittent seminars on custody, and self defense. The job description does not call for nor require an individual to be trained in any way to be a juvenile detention officer.

The amount of incidents in which the juvenile detention officers have to restrain individuals as far as eloping or escaping juveniles is minimal. The amount of control the juvenile detention officer is empowered to administer within the facility is limited to breaking up fist fights, etc., but any major offenses, such as escaping, fleeing, assault or inflicting bodily harm, must be reported to the local police and the local police must administer their authority in apprehending, detecting and restraining the juvenile. The facts in this matter do not warrant the conclusion that the juvenile detention officers are they engaged in performing police services.

RECOMMENDATION

I recommend the Commission find the following:

1. The juvenile detention officers in the County of Mercer are not police within the meaning of the Act;
 2. The juvenile detention officers do not engage in police services pursuant to N.J.S.A. 34:13A-15;
 3. The petitioned-for unit is not appropriate for inclusion in the existing county correction officers unit represented by PBA.
- I further recommend that the petition be dismissed.

Lorraine H. Tesauro
Lorraine H. Tesauro
Hearing Officer

DATED: January 2, 1988
Trenton, New Jersey