

D.R. NO. 96-11

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

In the Matter of  
COUNTY OF UNION,

Public Employer,

-and-

Docket No. RO-95-220

NEW JERSEY WEIGHTS AND MEASURES,  
PBA LOCAL NO. 203,

Petitioner,

-and-

UNION COUNCIL NO. 8, NJCSA,

Intervenor.

SYNOPSIS

The Director of Representation orders an election among three weights and measures employees who have been included in a non-police unit for more than 25 years without incident. The Director determined that the petitioning employees are "policemen" within the meaning of the Act and could not remain in the broad-based blue collar and white collar unit.

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Appearances:

For the Public Employer  
Apruzzese, McDermott, Mastro & Murphy, attorneys  
(Frederick T. Danser III, of counsel)

For the Petitioner  
Schneider, Goldberger, Cohen, Finn, Solomon, Leder &  
Montalbano, attorneys  
(James M. Mets, of counsel)

For the Intervenor  
Fox and Fox, attorneys  
(Stacey Rosenberg, of counsel)

DECISION AND DIRECTION OF ELECTION

On June 5, 1995, New Jersey Weights and Measures, PBA Local 203 filed a Petition for Certification of Public Employee Representative seeking to represent a unit of all three assistant superintendents of Weights and Measures employed by the County of Union. Union Council No. 8, NJCSA-IFPTE is the majority representative of the petitioned-for employees.

The County objects to the petition. It asserts that the petitioned-for employees have been included in the Union Council 8 broad-based unit for many years; that an election, the results of which re-certified it as majority representative, was conducted shortly before this petition was filed; that a separate unit of weights and measures employees is inappropriate; and that if the existing unit is inappropriate the most appropriate unit is the County-wide unit of police rank-and-file employees represented by PBA Local 73.

The County negotiates collectively with majority representatives of eight police units - four rank-and-file and four superior officer units of the County police (PBA Local 73), sheriff's officers (PBA Local 108), corrections officers (PBA Local 199), and County Prosecutor (PBA Local 250). The rank-and-file County police unit has about 35-40 employees. No majority representative of police employees has expressed an interest in representing the petitioned-for employees purposes of collective negotiations.

Union Council 8 also objects to the petition, and has intervened pursuant to N.J.A.C. 19:11-2.7(a). It represents a broad-based unit of blue collar employees and white collar employees, excluding "policemen, confidential employees, managerial executives and supervisors within the meaning of the Act."

Union Council 8 has long been the majority representative of the broad-based County unit from which the petitioner now seeks a severance. On April 27, 1995, Union Council 8 was again certified as the majority representative of "all regularly employed

non-supervisory blue collar and white collar employees...." The certification followed a secret ballot election conducted by the Commission on April 19, 1995 (Docket No. RO-95-168).

On November 13, 1995, I issued a letter tentatively finding that police employees could not remain in a unit with non-police employees and that the petitioned-for unit was appropriate and would not lead to "undue fragmentation." I was inclined to order a secret ballot election among the petitioning employees.

On November 30, 1995, Union Council 8 filed a letter objecting to the proposed election. Union Council 8 urged that an extensive history of including the petitioned-for employees in its unit, and that "statutory factors" including "established practice" and "prior agreement" warranted the continued inclusion of weights and measures employees in the unit. It also asserts that a stable labor relationship with the public employer and fair representation of the petitioned-for employees demonstrates that severance is not appropriate.

On January 8, 1996, Union Council 8 filed a letter and affidavit of Daniel Bragg, president of Council 8 from 1972-78 and 1987-94. He also was executive first vice president from 1967-72 and 1978-87. Bragg certifies that Council 8 has represented County blue collar employees and white collar employees, including the petitioned-for employees, since 1955. He certifies that Union Council 8 was certified as majority representative of the broad-based unit in 1970 and that weights and measures employees were then included in the unit. He certifies that in 1986 or 1987, he (on behalf of Union Council 8) represented weights and measures

employees pursuant to a Civil Service "desk audit" and that Union Council 8 was "instrumental in the creation of the title, assistant superintendent of weights and measures" and instrumental in securing "pay raises and/or additional compensation" for these employees. Bragg also certifies that he represented a weights and measures employee in a disciplinary matter and that Council 8 never "received any complaints regarding [the union's] representation." He certifies that as chief negotiator for Union Council 8 since 1970, he represented weights and measures employees. Finally, he certifies that Union Council 8 represented unit employees, including weights and measures employees, before 1968 regarding "terms and conditions of employment, Civil Service issues and informal wage negotiations...."

No other responses were filed.

#### 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 police to membership...." The Commission has determined that weights and measures employees are "policemen" within the meaning of the Act. Warren Cty., P.E.R.C. No. 86-111, 12 NJPER 357 (¶17134 1986).

The issue is whether the assistant superintendents of weights and measures are statutorily required to be severed from the existing unit. An immediate conclusion that "policemen" must be severed from a non-police unit fails to consider the three statutory exceptions. The Commission has noted that the statute is a "general

proscription [my emphasis] of police and non-police being in the same unit...." City of Newark, P.E.R.C. No. 87-7, 12 NJPER 606 (¶17228 1986). The purpose of the prohibition is to guard against an "inherent conflict of interest between employees entrusted with law enforcement functions and other employees against whom they may be called upon to act." Cty. of Hudson, P.E.R.C. No. 84-85, 10 NJPER 114, 117 (¶14049 1984). The Commission further advised in Warren Cty. that it will not inquire "whether there is an actual or potential conflict of interest with non-police employees. The legislature simply concluded that policemen were not to be in employee organizations with non-policemen." Id. at 358.

This matter does not concern the duty of fair representation. No facts suggest that Council 8 has failed to fairly represent the petitioning employees in grievance processing and in collective negotiations. Belen v. Woodbridge Tp. Bd. of Ed., 142 N.J. Super 486 (App. Div. 1976).

No "prior agreement" - a written and executed contract between the public employer and public employee organization entered before 1968 - has been produced which requires the continued inclusion of these weights and measures employees in Council 8's unit. West Paterson Bd. of Ed., P.E.R.C. No. 77, NJPER Supp 333 (¶77 1973) and West Paterson Bd. of Ed., P.E.R.C. No. 79, NJPER Supp 352 (¶79 1973).

Nor do the facts prove an "established practice", a term defined in West Paterson, P.E.R.C. No. 77, NJPER Supp 333 (¶77 1973). The Commission wrote that it is a relationship preceding the 1968 passage of the Act involving,

an organization regularly speaking on behalf of a reasonably well-defined group of employees seeking improvement of employee conditions and resolution of differences through dialogue (now called negotiations) with an employer who engaged in the process with an interest to reach agreement.

Id. at 336.

Union Council 8 produced an affidavit which indicates that it spoke on behalf of certain County employees, including the petitioned-for employees, concerning "employee conditions." The facts in this record do not reveal that a "dialogue" ensued between the County and Union Council 8 with an intent to reach agreement.

Cases involving "special circumstances" are rare and are applied to "unusual situations" which warrant, at least until the expiration of a collective agreement, the continued inclusion of personnel, who should rightfully be removed from the unit. (See, for example, N.J. Turnpike Auth., P.E.R.C No. 24, NJPER Supp 86 (¶24 1969), where the Commission determined that special circumstances warranted the inclusion of craft personnel in a unit including non-craft maintenance employees).

A case can be made that "special circumstances" justify the continued inclusion of the assistant superintendents of weights and measures in the existing unit. The parameters of weights and measures employees' police jurisdiction are narrow and arguably pose a de minimus conflict. See N.J.S.A. 51:1-106. Nor is the public employer asserting that an actual or potential conflict exists. Finally, their inclusion in this non-police unit for more than 25 years without problems bespeaks a de facto community of interest.

However, no Commission case permits the inclusion of

"policemen" in a unit with non-police employees. The key issue is whether the disputed employees are "policemen." "If they are, they are statutorily required to be severed from the existing unit." City of Newark, 12 NJPER at 607. (The Commission dismissed a petition filed by the FOP on behalf of 7 police guards employed to oversee prisoners at a jail. The Commission determined that the guards, included in a broad-based white collar unit that also included court attendants and court clerks, were not "policemen" -- though they performed police services -- and were not severed from the existing unit).

This case is not an exception to the general rule. Weights and measures employees are "policemen." Accordingly, they cannot remain in Union Council 8's non-police unit.

No "undue fragmentation" will result from the establishment of a separate unit. That concern, expressed by the Supreme Court in State of New Jersey and Prof. Assn. of N.J. Dept. of Education, 64 N.J. 231 (1974), applies in cases in which a significant number of employees of an employer are unrepresented. Unlike Professional Association, the establishment of a separate unit "would not open a Pandora's box" of proliferating county police units. UMDNJ and NJEEA, P.E.R.C. No. 84-28, 9 NJPER 598 (¶14253 1983). The County has not identified any other unrepresented police employees. Establishment of the petitioned-for unit would bring the total of established police units to nine, but cannot lead to the organization of a multitude of units of police employees along parochial lines of interest. Professional Assn. and UMDNJ.

A secret ballot election among the weights and measures



employees will effectuate the purposes of the Act. Leaving these employees no opportunity to select a majority representative until one of the existing police unions steps forward would place them in a worse position than exists currently. Accordingly, I direct that a secret mail ballot election be conducted among all full-time and regular part-time weights and measures employees of the County of Union. They shall vote on whether they wish to be represented for purposes of collective negotiations by New Jersey Weights and Measures, PBA Local 203 or no representative.

The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, including those in the military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who resigned or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

Pursuant to N.J.A.C. 19:11-10.1, the public employer is directed to file with us an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the units, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by us no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously provided to the employee organization with a statement of service

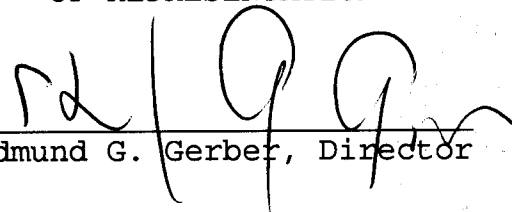
D.R. NO. 96-11

9.

filed with us. We shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

The exclusive representative, if any, shall be determined by a majority of the valid votes cast in the election. The election shall be conducted in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION



Edmund G. Gerber, Director

DATED: March 18, 1996  
Trenton, New Jersey