

P.E.R.C. NO. 86-111

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF WARREN,

Public Employer,

-and-

Docket No. RO-85-101

NEW JERSEY WEIGHTS & MEASURES,  
P.B.A. LOCAL #280,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission overrules a previous Commission decision and finds that weights and measures law enforcement officials are "policemen" within the meaning of N.J.S.A. 34:13A-5.3 because they have the statutory duty to make arrests and therefore may not be in a negotiations unit with non-policemen.

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Appearances:

For the Public Employer, Harper & Hansbury, Esqs.  
(John Harper, of Counsel)

For the Petitioner, Dennis Druzba, Esq.

DECISION AND ORDER

On December 26, 1985, the New Jersey Weights & Measures P.B.A. Local No. 203 ("PBA") filed a Petition for Certification of Public Employee Representative. The PBA sought to represent this negotiations unit of Warren County employees: "all weights and measures law enforcement officials; County Superintendent, and Assistant County Superintendent." These employees are at present in a county-wide negotiations unit of all non-law enforcement employees. Council No. 17, NJCSA ("Council 17") represents that unit.

The County opposes severance of the weights and measures employees from the county-wide unit. Council 17 does not oppose severance.

The Director of Representation investigated the petition. He received statements and exhibits.

On August 29, 1985, the Director, based on his investigation, dismissed the PBA's petition. He specifically rejected the PBA's contention that these weights and measures employees were police officers within the meaning of N.J.S.A. 34:13A-5.3 who should not be included in a negotiating unit with employees who were not police officers. He relied on County of Sussex, P.E.R.C. No. 76-14, 2 NJPER 1 (1975) where the Commission held that weights and measures employees, whose powers of arrest were limited to violations of weights and measures statutes, should not be considered police officers under N.J.S.A. 34:13A-5.3.

On September 9, 1985, the PBA requested review. It asks us to hold that weights and measures employees are police officers under section 5.3. It relies on a 1973 memorandum by a Deputy Attorney General asserting that certain weights and measures employees of the State should be considered police officers. On January 9, 1986, the Chairman granted the request for review.

The sole issue we must decide is whether the petitioned-for weights and measures employees are "policemen" within the meaning of N.J.S.A. 34:13A-5.3. If they are, they may not continue to be in their current negotiations unit because it admits other than police to membership. Id. If they are not, their petition must be dismissed because of our State's policy in favor of broad-based negotiations units. State v. Prof. Assoc. of N.J., Dept. of Ed., 64 N.J. 231 (1974); Jefferson Township Bd. of Ed., P.E.R.C. No. 61

(1971). Resolution of this issue requires that we consider the viability of Sussex. There it was held that county weights and measures employees were not "policemen." Sussex based this conclusion on the fact that weights and measures officers "do not have general law enforcement powers." In doing so, the Commission reversed a decision by the then Executive Director in City of Jersey City and Policemen's Benevolent Association, New Jersey Weights and Measures, Local 203 and Local 1959, AFSCME, AFL-CIO, U.D. No. 30 (1973).

We have reconsidered Sussex and overrule it since we believe that weights and measures employees are "policemen." The language of the statute and Appellate Division precedent support this result.

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.

Weights and measures employees have the power to arrest within their jurisdiction. N.J.S.A. 51:1-106. In County of Gloucester v. Public Employment Relations Commission, 107 N.J. Super. 150 (App. Div. 1969), aff'd 55 N.J. 333 (1970), the Court determined that county corrections officers were policemen within the meaning of our Act. In part, the court relied 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 Bd. v. American Dist. Tel. Co., 205 F.2d 86, 89 (3 Cir. 1953). 107 N.J. Super. at 157.

We believe the foregoing is applicable here. Like corrections officers, the instant employees have been charged with the statutory duty to make arrests. Given this dispositive fact, we believe County of Gloucester is controlling in that they are indeed policemen. We recognize that our holding in Sussex distinguished Gloucester on the grounds that weights and measures employees, while possessing powers of arrest, did not have a conflict of interest with the other employees. We believe that once there is a finding that an employee has power of arrest, it is not necessary to extend the inquiry into 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. Further, we note that Sussex was decided before the passage of the Interest Arbitration Act in 1978. That Act expresses a strong legislative intent that police employees have a special identity. N.J.S.A. 34:13A-14; New Jersey Institute of Technology, P.E.R.C. No. 84-47, 9 NJPER 666 (¶14289 1983).

Therefore, our inquiry must be limited to whether these employees are "policemen" within the meaning of the Act. We conclude they are and should be in a unit of law enforcement officials.

ORDER

The petition is remanded to the Director of Representation for proceedings consistent with this opinion.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Johnson, Reid, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Hipp and Horan were not present.

DATED: Trenton, New Jersey  
April 18, 1986  
ISSUED: April 21, 1986