

P.E.R.C. NO. 2005-72

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MONMOUTH UNIVERSITY,

Respondent,

-and-

Docket Nos. CO-2005-075
CU-2005-011

WEST LONG BRANCH PBA LOCAL NO. 141,

Charging Party/Petitioner.

SYNOPSIS

The Public Employment Relations Commission dismisses an unfair practice charge and a clarification of unit petition filed by West Long Branch PBA Local No. 141. The charge alleges that the University violated the New Jersey Employer-Employee Relations Act when it unilaterally removed the position of police captain from its collective bargaining unit. The petition asks that the position be restored. The University responded that it is a private employer not subject to the Act or the Commission's jurisdiction. The Commission concludes that Monmouth University does not come within the statutory definition of a public employer and the Commission has no jurisdiction over these disputes.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Respondent, McElroy, Deutsch, Mulvaney &
Carpenter, LLP, attorneys (John Peirano, of counsel)

For the Charging Party/Petitioner, Loccke & Correia
P.A., attorneys (Michael A. Bukosky, of counsel)

DECISION

On September 22, 2004, West Long Branch PBA Local No. 141, the recognized majority representative of all supervisory police officers employed by Monmouth University, filed an unfair practice charge (CO-2005-075) and a clarification of unit petition (CU-2005-011). In its charge, the PBA alleges that the University violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1), (2), (3), (5) and (7),^{1/} when it unilaterally removed the position of

^{1/} These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (2) Dominating or interfering with the formation, existence or administration
(continued...)

police captain from its collective bargaining unit. In its petition, the PBA asks that the position be restored.

The University responds that it is a private employer not subject to the Act or our jurisdiction.

The Director of Unfair Practices and Representation consolidated the charge and petition and conducted an administrative investigation. On March 1, 2005, he dismissed them. D.U.P. No. 2005-8 and D.R. No. 2005-11, 31 NJPER 31 (¶15 2005). He concluded that Monmouth University is not a public employer within the meaning of the Act so the Commission is without jurisdiction to consider the merits of the charge or petition.

On March 14, 2005, the PBA filed an appeal pursuant to N.J.A.C. 19:14-2.3 and a request for review pursuant to N.J.A.C. 19:11-8.3. It argues that the employees in question possess full police powers and perform police duties and responsibilities that may be performed only by public employees; to the extent the

1/ (...continued)
of any employee organization. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative. (7) Violating any of the rules and regulations established by the commission."

University maintains a police department, it acts as a public employer; we found that police officers identically appointed under Title 18A^{2/} are public police officers; these police officers meet the statutory definition of public police officer for purposes of participation in the Police and Firemen's Retirement System ("PFRS"), N.J.S.A. 43:16A-1;^{3/} the Legislature intended the definition of public employer and public employees under the Act to be liberally construed; and we need not determine that Monmouth University is a public employer to determine that it acts as an agent or representative of the State of New Jersey in deploying police officers.

On March 30, 2005, the employer filed a response opposing the appeal and request for review. It asserts that the Director correctly determined that we lack jurisdiction because the University is not a public employer and because the National Labor Relations Board ("NLRB") is vested with exclusive jurisdiction over labor disputes involving the University, thus preempting us from exercising any jurisdiction.

^{2/} N.J.S.A. 18A:6-4.2 enables any institution of higher education to appoint police officers for the institution. Such police officers possess all regular police powers, subject to any limitations imposed by the governing body of the institution. N.J.S.A. 18A:6-4.5.

^{3/} The PBA notes that the question as to whether these police officers may participate in the PFRS is not an issue in this case.

On April 5, 2005, the PBA filed a letter responding to some of the employer's arguments. On May 6, the PBA submitted a February 2005 decision of the New York State Court of Appeals. We will review that decision over the University's objection.

The PBA has a right to appeal the dismissal of its unfair practice charge. N.J.A.C. 19:14-2.3(b). Its request for review raises the same issue so we will grant review in the unit clarification case. N.J.A.C. 19:11-8.2.

Our unfair practice and representation jurisdiction is limited to public employers and public employees. See N.J.S.A. 34:13A-5.4; 34:13A-6(d). N.J.S.A. 34:13A-3(c) defines public employee to mean:

any person holding a position, by appointment or contract, or employment in the service of a public employer, except elected officials, members of boards and commissions, managerial executives and confidential employees.

To be a public employee, a person must hold a position or employment in the service of a public employer.

N.J.S.A. 34:13A-3(c) defines public employer to mean:

the State of New Jersey, or the several counties and municipalities thereof, or any other political subdivision of the State, or a school district, or any special district, or any authority, commission, or board, or any branch or agency of the public service.

To be a public employer, an employer must come within this statutory definition. Monmouth University is a private, non-profit New Jersey corporation. It does not come within the statutory definition of public employer.

The PBA argues that although the University is a private employer in many respects, by appointing police officers it nevertheless acts as an instrumentality, representative or agent of the State. However it cites no legal authority for that proposition.^{4/} The PBA also argues that "police services are ipso facto services performed by public employees." We disagree. N.J.S.A. 18A:6-4.2 permits any institution of higher education, public or private, to appoint police officers for the institution. That statute does not suggest that appointees of private universities are public employees. Our jurisdiction does not turn on the nature of the duties performed, but on the nature of the employer. These employees work for a private employer and therefore are not subject to the jurisdiction of this State agency.

The PBA relies on Rutgers, The State Univ., P.E.R.C. No. 94-45, 19 NJPER 579 (¶24275 1993), aff'd 21 NJPER 45 (¶26029 App. Div. 1994), certif. den. 140 N.J. 276 (1995), but in that case, it was undisputed that Rutgers is a public employer under the Act. The only issue was whether the Rutgers Police Department is excluded from coverage under the interest arbitration statute.

^{4/} The NLRB will assert jurisdiction over any private non-profit college or university with a gross annual revenue of not less than \$1 million and annual interstate purchases in excess of \$50,000. See, e.g., Tufts College, 229 NLRB 523 (1977) (determining structure of police officer bargaining unit of private non-profit college). Monmouth University meets these jurisdictional requirements.

We concluded that it is not, and the Appellate Division affirmed. Contrary to the PBA's assertion, the legal status of Rutgers police and Monmouth University police is not identical. For many, but not all purposes, Rutgers is an agency or instrumentality of the State. 19 NJPER at 580. Monmouth University is not an agency or instrumentality of the State for any purposes. We therefore have no jurisdiction over these disputes and accordingly dismiss the charge and petition.^{5/}

ORDER

The unfair practice charge and the clarification of unit petition are dismissed.

BY ORDER OF THE COMMISSION



Lawrence Henderson
Chairman

Chairman Henderson, Commissioners Buchanan, DiNardo, Katz and Mastriani voted in favor of this decision. Commissioners Fuller and Watkins were not present. None opposed.

DATED: May 26, 2005
Trenton, New Jersey
ISSUED: May 26, 2005

5/ Alderson v. New York State College of Agriculture and Life Sciences at Cornell Univ., 4 N.Y.3d 225 (2005), a case the PBA relies on, is distinguishable. Cornell University was found not categorically exempt from compliance with the Freedom of Information Law because it managed four "statutory colleges" supported by public funds and the information requested concerned use of those public funds.