

P.E.R.C. NO. 2007-10

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

UNION COUNTY PROSECUTOR,

Respondent,

-and-

Docket No. IA-2006-086

UNION COUNTY ASSISTANT
PROSECUTORS' ASSOCIATION,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission grants the Union County Prosecutor's motion to dismiss a Petition to Initiate Compulsory Interest Arbitration filed by the Union County Assistant Prosecutors' Association. The Prosecutor asserts that the assistant prosecutors are not covered by the Police and Fire Public Interest Arbitration Reform Act, N.J.S.A. 34:13A-14 et seq. Applying the analysis of the duties, responsibilities, required training, and limited statutory police powers of assistant prosecutors in Camden Cty. Pros., P.E.R.C. No. 2007-9, 32 NJPER ____ (¶ ____ 2006), to the facts in this case, the Commission dismisses the Association's petition.

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, Schenck, Price, Smith & King, LLP,
attorneys (Kathryn V. Hatfield, of counsel)

For the Petitioner, Picillo Caruso O'Toole, P.C.,
attorneys (Juan C. Fernandez, of counsel)

DECISION

On May 30, 2006, the Union County Assistant Prosecutors' Association filed a Petition to Initiate Compulsory Interest Arbitration. On June 19, 2006, the Union County Prosecutor moved to dismiss the petition, asserting that the assistant prosecutors are not covered by the Police and Fire Public Interest Arbitration Reform Act, N.J.S.A. 34:13A-14 et seq.

The parties have filed briefs, exhibits and certifications. These facts appear.

In 1997, the Prosecutor's Office recognized the Association as the majority representative of its assistant prosecutors. The parties have entered into a series of collective negotiations

agreements, the latest of which expired on December 31, 2005.

When the parties were unable to reach agreement on a successor agreement, the Association filed the instant petition.

The job description for an assistant prosecutor states:

GENERAL STATEMENT:

Under direction, performs varied legal tasks and other work involved in investigating and preparing criminal cases for presentation to a grand or petit jury. Performs assignments related to accomplishing the county prosecutor's obligation to use all reasonable and lawful diligence for the detection, arrest, indictment and conviction of offenders against the law. Serves in the position at the pleasure of the county prosecutor pursuant to statute.

EXAMPLES OF WORK

Performs legal research tasks related to the criminal law.

Represents the State of New Jersey in court on appeals and motions brought by the State or defense counsel in criminal matters.

Directs and supervises the performance of duties of members of the county prosecutor's investigative staff in criminal investigations, trial preparation and criminal trials.

Maintains on call responsibility with regard to a variety of officer operations.

Responds to inquiries from local, State and Federal law enforcement agencies.

Attends meetings at the direction of the county prosecutor or members of his staff.

Performs training functions with regard to other legal and investigative staff members and for local law enforcement officers.

Assists in the formulation and implementation of office policy.

Interacts with other law enforcement entities with regard to ongoing investigations or trials.

Prepares and presents criminal investigation cases to the grand jury.

Prepares and presents criminal cases in court as the representative of the State of New Jersey as to adult and juvenile offenders.

Insures the orderly administration of criminal case files and the criminal calendar to which he/she is assigned.

Performs relates [sic] tasks with regard to accomplishing the county prosecutor's obligation to use all reasonable and lawful diligence for the detection, arrest, indictment and conviction of offenders against the law.

Assistant prosecutors do not receive any formal police training. While they are authorized to carry firearms, N.J.S.A. 2C:39-6, they do not undergo mandatory training for their use. They do not wear uniforms or wear their badges in public. The vast majority of assistant prosecutors are primarily involved in the legal aspects of the job.

The Manual of Administrative Policies and Procedures for Members of the Union County Prosecutor's Office provides that an assistant prosecutor "serves in any capacity ordered by the Prosecutor to assist him in the fulfillment of prosecutorial

obligations." By contrast, County detectives and County investigators assist the Prosecutor and his assistants "in the detection and apprehension of criminals.

Assistant prosecutors must carry their identification whether on or off duty.^{1/} The photo identification cards state:

State of New Jersey
County of Union
Office of the Prosecutor
POLICE
[Name]
Assistant Prosecutor
Is duly appointed for Union County and under
the provisions of N.J.S. 2A:157
thru 2A:158 has full police powers
in all criminal matters.
Signature of the Union County Prosecutor

Assistant prosecutors have either assisted or supervised in the location and interrogation of witnesses, the collection of evidence, and searches of property. They have been subjected to harassment, threats and other assaults as a result of their enforcement of the criminal laws. Some assistant prosecutors have conducted arrests and searches of prisoners.

We have today issued a decision involving assistant prosecutors in Camden County. Camden Cty. Prosecutor, P.E.R.C. No. 2007-9, ___ NJPER ___ (¶ _____ 2006) There, as here, the employer argued that assistant prosecutors do not engage in

^{1/} The Association states that assistant prosecutors are required to carry a law enforcement badge. However, in the photocopies submitted to us, the "badge" appears more like a photo identification card than a police officer shield.

performing police services and are therefore not entitled to interest arbitration. Our analysis in that decision is fully applicable here. The facts are the same in all material ways and the parties have made similar legal arguments. Applying the analysis of the duties, responsibilities, required training, and limited statutory police powers of assistant prosecutors in Camden Cty. Prosecutor to the facts in this case, we likewise dismiss the Association's petition.

One additional fact raised by the Association warrants a response. Assistant prosecutors assigned to the investigative and legal divisions must carry their photo identification card at all times. That card indicates that the prosecutors are "POLICE" with "full police powers." This fact suggests that under certain circumstances, assistant prosecutors may exercise certain police powers. We know, for example, that they may be present at crime scenes and may arrest suspects. Nevertheless, this one additional fact does not change our analysis of the relevant statutory scheme and our conclusion that although some assistant prosecutors may sometimes participate in more traditional police activities, the unit as a whole does not perform police services and is not entitled to interest arbitration.

ORDER

The Union County Prosecutor's motion to dismiss the Petition to Initiate Compulsory Interest Arbitration is granted.

BY ORDER OF THE COMMISSION

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

ISSUED: August 10, 2006

Trenton, New Jersey