

P.E.R.C. NO. 94-113

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY
(DIVISION OF CRIMINAL JUSTICE),

Public Employer,

-and-

Docket No. RO-94-101

N.J. DIVISION OF CRIMINAL JUSTICE
STATE INVESTIGATORS,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission denies a request for review of the Director of Representation's decision dismissing a petition filed by the N.J. Division of Criminal Justice State Investigators seeking to represent state investigators. D.R. No. 94-19, 20 NJPER 201 (¶25096 1994). The Director found that under N.J.S.A. 52:17B-100, the petitioned-for employees are confidential employees within the meaning of the Act and thus do not enjoy the protections of the Act. N.J.S.A. 34:13A-5.3 provides, in part, that the protections of the Act shall not extend to confidential employees. Reading these two statutory provisions together, the Commission concludes that the Legislature intended that the protections of the Act not extend to the petitioned-for employees. Any claims arising under the New Jersey Constitution would have to be raised in another forum.

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Appearances:

For the Public Employer, Deborah T. Poritz, Attorney
General; Gayl R. Mazuco, Senior Deputy Attorney General

For the Petitioner, Loccke & Correia, P.A., attorneys
(Richard D. Loccke, of counsel)

DECISION AND ORDER

On January 24, 1994, the N.J. Division of Criminal Justice State Investigators filed a petition to represent "all state investigators within the Division of Criminal Justice who are sworn law enforcement officers employed by the State of New Jersey (Division of Criminal Justice)." The employer opposed the petition, contending that the petitioned-for employees are confidential employees within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").

On March 15, 1994, the Director of Representation dismissed the petition. D.R. No. 94-19, 20 NJPER 201 (125096 1994). He found

that under N.J.S.A. 52:17B-100, the petitioned-for employees are confidential employees within the meaning of the Act and thus do not enjoy the protections of the Act.

On April 4, 1994, petitioner requested review of the Director's decision. It contends that whatever was meant by the term "confidential" in N.J.S.A. 52:17B-100, it must be read as being subject to the definition set forth for all public employees in the Act. Further, petitioner claims that dismissing the petition takes away these employees' constitutional rights.

On April 22, 1994, the employer filed a statement opposing review. It contends that N.J.S.A. 52:17B-100 excludes state investigators from the terms of the Act. It further contends that the Legislature's determination that they are confidential employees does not take away these employees' constitutional rights as public employees.

Under N.J.A.C. 19:11-8.2, review will be granted only upon one or more of these grounds:

1. That a substantial question of law is raised concerning the interpretation or administration of the act or these rules;
2. That the director of representation's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of the party seeking review;
3. That the conduct of the hearing or any ruling made in connection with the proceeding may have resulted in prejudicial error; and/or
4. That there are compelling reasons for reconsideration of an important commission rule or policy.

N.J.S.A. 52:17B-100(b) provides:

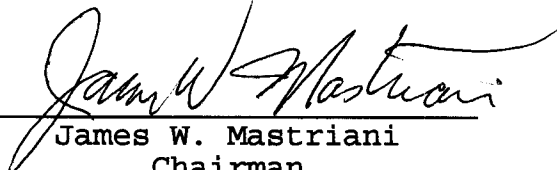
All employees of the division [of Criminal Justice], except for secretarial and clerical personnel, shall be in the unclassified service of the civil service of the State. All unclassified employees of the division shall be deemed confidential employees for the purposes of the "New Jersey Employer-Employee Relations Act," P.L.1941, c. 100 (C.34:13A-1 et seq.).

N.J.S.A. 34:13A-5.3 provides, in part, that the protections of the Act shall not extend to confidential employees. Reading these two statutory provisions together, we conclude that the Legislature intended that the protections of the Act not extend to the petitioned-for employees. Any claims arising under the New Jersey Constitution would have to be raised in another forum. Accordingly, we deny the petitioner's request for review.

ORDER

The petitioner's request for review is denied.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting, Klagholz and Regan voted in favor of this decision. Commissioners Bertolino and Smith voted against this decision. Commissioner Wenzler was not present.

DATED: May 25, 1994
Trenton, New Jersey
ISSUED: May 26, 1994