

P.E.R.C. NO. 94-45

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RUTGERS, THE STATE UNIVERSITY,

Respondent,

-and-

Docket No. IA-93-174

FRATERNAL ORDER OF POLICE,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission denies a motion to quash a Petition to Initiate Compulsory Interest Arbitration on behalf of patrol officers, detectives and sergeants employed by Rutgers, the State University. The petition was filed by the Fraternal Order of Police. Rutgers claims that its police department is not a "public police department" as defined by N.J.S.A. 34:13A-15. The Commission finds that without some evidence that the Legislature intended to do so, it will not carve out the exception from the interest arbitration law that Rutgers seeks.

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Appearances:

For the Respondent, Carpenter, Bennett & Morrissey,
attorneys (John J. Peirano, of counsel)

For the Petitioner, Smorodsky & Stawnychy, P.A., attorneys
(Petro R. Stawnychy, of counsel)

DECISION AND ORDER

On April 28, 1993, the Fraternal Order of Police ("FOP") filed a Petition to Initiate Compulsory Interest Arbitration on behalf of patrol officers, detectives and sergeants employed by Rutgers, The State University. On June 14, the employer filed a motion to quash the FOP's petition on the ground that the Rutgers University Police Department is not a "public police department" as defined by N.J.S.A. 34:13A-15.

The parties have filed briefs, affidavits and documents. We deny the employer's request for oral argument as the legal issues have been fully briefed.

N.J.S.A. 34:13A-14 et seq. declares that:

It is the public policy of the State that in public fire and police departments, where public employees do not enjoy the right to strike, it is requisite to the high morale of such employees and the efficient operation of such departments to afford an alternate, expeditious, effective and binding procedure for the resolution of disputes, and to that end the provisions of this act, providing for compulsory arbitration, shall be liberally construed.

N.J.S.A. 34:13A-15 defines "public police department" as:

[A]ny police department or organization of a municipality, county or park, or the State, or any agency thereof having employees engaged in performing police services including but not necessarily limited to units composed of State troopers, police officers, detectives and investigators of counties, county parks and park commissions, grades of sheriff's officers and investigators; State motor vehicle officers, inspectors and investigators of Alcoholic Beverage Commission, conservation officers in Fish, Game and Shell Fisheries, rangers in parks, marine patrolmen; correction officers, keepers, cottage officers, interstate escort officers, juvenile officers in the Department of Corrections and patrolmen of the Human Services and Corrections Departments; patrolmen of Capitol police and patrolmen of the Palisades Interstate Park Commission.

N.J.S.A. 34:13A-16 sets forth procedures for resolving an impasse in collective negotiations between a public fire or police department and an exclusive representative. Those procedures include the use of interest arbitration.

It is undisputed that Rutgers is a public employer under the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. See N.J.S.A. 34:13A-3(c). The interest arbitration statute was added to the Act in 1977. L. 1977, c. 85. To decide whether

this public employer is excluded from coverage under the interest arbitration statute, we begin with the statutory definition of public police department in N.J.S.A. 34:13A-15:

any police department or organization of a municipality, county or park, or the State, or any agency thereof having employees engaged in performing police services....

Under one reading of this definition, the interest arbitration statute applies to all "police departments" and to all "organizations of a municipality, county or park, or the State, or any agency thereof having employees engaged in performing police services." Applying the statute to police departments alone would have been insufficient to cover the employees the Legislature wanted covered since not all the titles specifically listed in N.J.S.A. 34:13A-15 are titles in police departments. Adding the second part of the definition appears to have been the Legislature's way of including those public employees who perform police services but who do not belong to police departments. Under this reading, the Rutgers Police Department is covered by the interest arbitration statute because it is a police department.

Rutgers urges another reading of the definition. Under that reading, the word "of" modifies "police department" as well as "organization" and thus a public employer's police department is not covered unless the public employer is a municipality, a county, a park, the State or an agency thereof. Rutgers argues that it does not fall within any of these categories and therefore its police officers and police department are outside the coverage of the interest arbitration statute.

While the wording of the statutory definition is subject to these two interpretations, we believe that the first interpretation is logically preferable. It explains why the language qualifying "organization" was added. Also, the words "performing police services" would appear to be redundant if they referred back to "police department" as well as "organization." We will assume, however, for purposes of the following discussion, that Rutgers' interpretation is correct and we will thus examine carefully how that interpretation would apply here.

Rutgers is not a municipality, a county, a park or the State and is not mentioned by name in N.J.S.A. 34:13A-15. It therefore argues that unless it is an "agency" of the State within the meaning of N.J.S.A. 34:13A-15, its police department is not a "public police department" and the interest arbitration provisions of the Act do not apply to its police officers.

The interest arbitration statute does not define "agency." Nor does it declare whether Rutgers is an agency of the State for purposes of coverage under the statute. Rutgers argues that it is significant that N.J.S.A. 34:13A-15 does not mention any educational institutions. However, that section's list of titles, which includes police officers, was added as a committee amendment "to delineate the principal job titles within the scope of 'public police department.'" It was not an attempt to list all public employers covered by the Act. Statement to Senate No. 482, Assembly Labor, Industry and Professions Committee, December 6, 1976.

The legislative history is also silent on the question of whether this public employer and its police department are covered by the interest arbitration statute. We turn therefore to court decisions interpreting other statutes to see what light they shed on whether Rutgers is a State agency for purposes of interest arbitration.

Our Supreme Court has declared that Rutgers is a "full-fledged state agency." Rutgers v. Piluso, 60 N.J. 142, 157 (1972). It did so in deciding that the Legislature intended to protect Rutgers from local land use regulations so that its growth and development as a public university for the benefit of all the people of the State would not be thwarted. See also Rutgers v. Kugler, 110 N.J. Super. 424, 427, 434 (Law Div. 1970), aff'd 58 N.J. 113 (1971) (Rutgers is state agency or state alter ego, although not subject to competitive bidding statutes). Other cases hold that Rutgers is an instrumentality of the State, Kovats v. Rutgers, The State Univ., 822 F.2d 1303, 1310 (3d. Cir. 1987); Rutgers is substantially an alter ego of the State to which the State can donate land and appropriate money without offending the constitutional prohibition against gifts or appropriations to private corporations or associations, Trustees of Rutgers College in New Jersey v. Richman, 41 N.J. Super. 259, 298 (Ch. Div. 1956); Rutgers is a public entity for purposes of the State's Tort Claims Act, Fuchilla v. Layman, 109 N.J. 319 (1988); N.J.S.A. 59:1-3 (comment); and Rutgers' property is "property of the State of New

Jersey" exempt from property taxes, Rutgers, The State Univ. v. Piscataway Tp., 1 N.J. Tax 164, 171 (1980). See also N.J.S.A. 18A:65-2 (Rutgers is an "instrumentality" of the State for purposes of operating the State University).

But just as there are cases stating that Rutgers is a State agency, there are cases stating that it is not. For example, Rutgers is not an arm of the State entitled to Eleventh Amendment immunity. Kovats. And unlike other state agencies, Rutgers is not subject to Civil Service laws, id.; N.J.S.A. 18A:65-25(i), may not be covered by the Administrative Procedures Act, Kovats, and may not be a state administrative agency under a rule stating that appeals may be taken as of right to the Appellate Division, Cohen v. UMDNJ, 240 N.J. Super. 188 (Ch. Div. 1989).^{1/}

Reading these cases together, one cannot conclude that Rutgers is or is not a State agency for all purposes. There is no universal definition of state agency or universal interpretation of Rutgers' status that can be mechanically applied to cover all cases. Instead, the courts have addressed the status of Rutgers on a case-by-case basis and have resolved the question of whether a particular statute applies to Rutgers by considering both the

^{1/} Rutgers relies on a Michigan Court of Appeals case which held that the police officers of Eastern Michigan University were not covered by Michigan's interest arbitration statute. Ypsilanti Police Officers Ass'n v. Eastern Michigan Univ., 62 Mich. App. 87, 233 N.W.2d 497 (Ct. App. 1975). However, the Michigan statute only covers police departments of a "city, county, village or township." It does not cover the State or any agency of the State. Thus, the Michigan court's holding has no relevance here.

purposes of that statute and the purposes of the Rutgers legislative charter. In re Executive Comm'n on Ethical Standards, 116 N.J. 216 (1989). In trying to harmonize competing statutory schemes, the courts have examined and balanced the different interests.

In Ethical Standards, for example, our Supreme Court was called on to decide whether a conflicts of interest law that covered any independent State instrumentality or agency applied to Rutgers. If the conflicts law applied, a law professor conducting a clinical program could not have appeared before the Council on Affordable Housing, a State administrative agency. Rather than mechanically decide the case on definitional grounds, the Court asked whether an appearance before the Council by a Rutgers professor would evoke the legislative concerns that produced the conflicts provisions, and whether applying the law to Rutgers would frustrate the purposes of the State university's charter. Despite a dissenting opinion that claimed that Rutgers was unequivocally a State instrumentality covered by the conflicts law, id. at 231, the majority held that this type of legal representation was not within the legislative purposes of the conflicts law and that a contrary interpretation would disadvantage Rutgers academically. Id. at 227, 229. Statutory purposes, rather than definitions, controlled.

Absent any definitive wording in the statutory text supporting Rutgers' interpretation, any meaningful assistance in the legislative history, or any controlling authority in the caselaw, we now apply the analysis approved by Ethical Standards. We analyze

first the purposes of the interest arbitration statute and whether they will be served or disserved by holding that this police department is covered by that statute. We analyze next the purposes of Rutgers' legislative charter and whether they will be compromised by holding that the Rutgers Police Department is subject to the interest arbitration statute.

The purposes of the interest arbitration statute are expressed in N.J.S.A. 34:13A-14. The Legislature has determined that it is "requisite to the high morale of [public police and fire department] employees and the efficient operation of such departments to afford an alternate, expeditious, effective and binding procedure for resolution of negotiations disputes." To that end, the Legislature provided for interest arbitration for public police departments and commanded that the provisions of the Act be liberally construed.

These police perform most traditional police functions. Subject to certain limitations, they possess "all the powers of policemen and constables in criminal cases and offenses," N.J.S.A. 18A:6-4.5; have the power to "enforce the laws regulating traffic and the operation of motor vehicles," N.J.S.A. 18A:6-4.7; and may carry concealed weapons, N.J.S.A. 18A:6-4.8. There are some

differences between these police officers and others,^{2/} but they are immaterial to the basic point that Rutgers police officers perform the type of police services covered by the interest arbitration statute.

The other side of the balance requires us to examine whether applying the interest arbitration law to Rutgers would interfere with Rutgers' educational mission as established in its legislative charter. Unlike a conflicts of interest law that would have prevented a law professor from educating students, the collective negotiations process in general and the terminal procedure of interest arbitration in particular do not interfere with Rutgers' educational mission. These police officers do not deliver any educational services and, in any event, educational and governmental policy matters are not mandatorily negotiable and may not be submitted to interest arbitration. See Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978); see also Paterson Police PBA v. Paterson, 87 N.J. 78 (1981).

Rutgers is concerned because its fiscal position, including the amount spent on employee compensation, affects tuition levels;

^{2/} Compare N.J.S.A. 2C:39-6(a)(7)(a) with 2C:39-6(c)(10) providing for different exemptions from the prohibition against carrying concealed weapons. Given these differences, Rutgers argues that the Legislature recognized that Rutgers police are distinct from municipal police. However, some of the titles enumerated in N.J.S.A. 34:13A-15, such as conservation officers and marine police, have had their power to carry weapons similarly restricted.

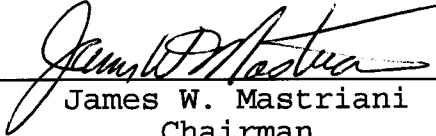
and because some of its income is derived from factors besides State funding such as tuition and grant funding. We share those concerns and so must an interest arbitrator. Arbitrators must consider eight statutory factors in rendering an arbitration award. Those factors include the interests and welfare of the public and the financial impact on the governing unit, its residents and taxpayers. N.J.S.A. 34:13A-16(g) (1) and (6); see also N.J. State PBA, Loc. 29 v. Irvington, 80 N.J. 271 (1979); Hillsdale PBA Local 207 v. Hillsdale and Washington Tp. v. N.J. State PBA, Loc. 206, ___ N.J. Super. ___ (1993), certif. granted ; Fox, Morris Cty. Sheriff v. Morris Cty. PBA Local 151, ___ N.J. Super. ___, pet. for certif. pending. The concerns and interests of the employer, the employee organization, and the public must be fully considered by the arbitrator before issuing an interest arbitration award.

Rutgers asserts that "interest arbitration is an extraordinary remedy provided by the Legislature to insure the public would not be deprived of critical, emergency types of services" (Brief at 27). It urges that the limited nature of the remedy should not be expanded by administrative action. To the contrary, the fact that the Rutgers police department delivers traditional police services, together with our reading of N.J.S.A. 34:13A-15 and the pertinent caselaw, convinces us that the Legislature did not intend to exclude this police department from the interest arbitration law. Without some evidence that the Legislature intended to do so, we will not carve out the exception from the interest arbitration law that Rutgers seeks.

ORDER

The motion to quash the interest arbitration petition is denied.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Grandrimo, Regan, Smith and Wenzler voted in favor of this decision. None opposed. Commissioner Goetting abstained.

DATED: October 25, 1993
Trenton, New Jersey
ISSUED: October 26, 1993