

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Public Employer,

-and-

MEDICAL SECURITY OFFICERS ASSOCIATION,
Petitioner,

Docket No. RO-600

-and-

COUNCIL 63, AFSCME, AFL-CIO,
Intervenor.

DECISION

A hearing was held to resolve a question concerning the representation of certain employees of the State of New Jersey, classified as Medical Security Officers, employed within the Forensic Psychiatric Section of the Trenton Psychiatric Hospital. All parties were afforded full opportunity to present evidence, examine and cross-examine witnesses, and to argue orally. All parties filed post-hearing briefs. On March 28, 1974 the Report and Recommendations of Hearing Officer James W. Mastriani was served upon all parties, together with an Order transferring the case directly to the Commission for decision. The Medical Security Officers Association ("Association") and the State of New Jersey ("State") thereafter filed timely exceptions to certain findings and recommendations of the Hearing Officer. The Commission has considered the entire record, the post-hearing briefs, the Hearing Officer's Report and Recommendations, and the exceptions, and finds as follows.

In 1971, the Commission established the principle that units of state employees which are less than state-wide in scope are inappropriate for

purposes of collective negotiations. In re State of New Jersey (Neuro Psychiatric Institute, et al.), P.E.R.C. No. 50 (January 15, 1971). Among the units found appropriate, and in which an election was directed, was the Health, Care and Rehabilitation Services Unit proposed by the State, the composition of which was generally stated to be those employees engaged in para-medical and support functions for the health, care and rehabilitation of the physically or mentally ill or handicapped. P.E.R.C. No. 50, supra, page 5, footnote 4. The specific job titles to be included within the unit were subsequently agreed upon by the parties themselves, i.e., the State and the predecessor of Council 63, AFSCME ("AFSCME"). See P.E.R.C. No. 50, supra, p. 17. An election was conducted and AFSCME was certified on April 28, 1971. The parties entered into a two year collective agreement (June 30, 1972 through June 30, 1974), which by its terms covers the title Medical Security Officer.

A second state-wide unit relevant to the instant proceeding is the Law Enforcement Unit, represented by the New Jersey State Policemen's Benevolent Association ("PBA"). A consent election was conducted pursuant to the agreement of the parties, and certification of the PBA issued on February 9, 1972. The unit definition agreed upon by the parties, and contained in their two year collective agreement (July 1, 1973 through June 30, 1975) is essentially employees, other than state troopers, having law enforcement and police powers. The specific job titles covered by this definition were also agreed upon by the parties and set forth in their contract.

The instant controversy involves the applicability to Medical Security Officers of the statutory prohibition against the representation of policemen by an organization admitting non-policemen to membership.^{1/} The

^{1/} Section 7 of the Act, N.J.S.A. 34:13A-5.3, provides in pertinent part that
(Continued)

thrust of the Association's argument is that the Medical Security Officers are policemen within the meaning of the Act, cannot thus be represented by AFSCME in the Health, Care and Rehabilitation Services Unit, and must accordingly be placed in the PBA's Law Enforcement Unit. The State and AFSCME dispute the Association's contentions.

Resolution of this controversy is controlled by the principles laid down by the Appellate Division, and affirmed by the Supreme Court, in County of Gloucester v. Public Employment Relations Commission, 107 N.J. Super. 150 (App. Div. 1969), aff'd per curiam, 55 N.J. 333 (1970) (reversing In re County of Gloucester, Board of Chosen Freeholders, P.E.R.C. No. 11, August 20, 1969). In Gloucester, a local of the Teamsters petitioned for a unit of correction officers employed at the Gloucester County Prison. The County argued, among other things, that the correction officers perform a security function similar to policemen and should accordingly be denied representation by an employee organization that traditionally admits non-policemen to membership. The County pointed to N.J.S.A. 2A:154-3, which empowers county correction officers "to act as officers for the detection, apprehension, arrest and conviction of offenders against the law", as support of their argument. The Commission disagreed, however, construing the statutory prohibition literally. The Commission viewed the employees in question as "correction officers or prison guards" rather than "policemen", and with respect to the statutory powers conferred by N.J.S.A. 2A:154-3, simply indicated that the record did not show that "the correction officers actually are called upon to exercise the police powers conferred."

1/ (Continued)

"no policeman shall have the right to join an employee organization that admits employees other than policemen to membership."

In reversing, the Appellate Division found that the Commission's literal construction of the term "policemen" frustrated the legislative objective behind Section 7 of the Act. In the absence of a statutory definition of the term "policemen" or legislative history in that regard, the Court looked to the rationale for the statutory prohibition. Reading Section 7 of the Act together with the powers conferred by N.J.S.A. 2A:154-4^{2/} the Court held 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," 107 N.J. Super., at p. 157, and that "n/onrecourse by guards, in the past, to their reserved authority is no basis for assuming that they may not, in the future, be required to exercise such authority in order to prevent violations of the law," id., at p. 158. The Court characterized the Commission's approach as "incompatible with the reason and spirit of Section 7 of the Act" in that it violated an implicit legislative policy," id., at pp. 158-159. The Supreme Court affirmed "for the reasons given by the Appellate Division", 55 N.J., at p. 334.

In his Report and Recommendations, attached hereto and made a part hereof, the Hearing Officer recommends dismissal based upon the principles enunciated in Gloucester. We agree. The Hearing Officer finds that "based on the entire record of this proceeding...the medical security officer functions in a manner which more substantially involves security than either patient assistance or therapy", Report, p. 8. He concludes, however, that Medical

^{2/} N.J.S.A. 2A:154-4 is identical in all relevant respects to N.J.S.A. 2A:154-3 except that it applies to "correction officers of the State of New Jersey" rather than "county correction officers."

Security Officers cannot be deemed policemen within the meaning of the Act, as they lack the statutory power to detect, apprehend, arrest and convict offenders against the law, relied upon by the Appellate Division in Gloucester, Report, pps. 8-12.

The State's exceptions relate solely to the Hearing Officer's finding that Medical Security Officers function more substantially in the area of security than patient assistance and therapy.^{3/} The exceptions filed by the Association, on the other hand, deal exclusively with the Hearing Officer's reading of Gloucester, contending that the Hearing Officer has misinterpreted Gloucester as requiring a direct, statutory grant of police powers such as conferred upon correction officers. The Association stresses the Appellate Division's statements that "In current usage...the term 'policeman' is given a broad meaning", and that "the police of a state, in a comprehensive sense, embraces its whole system of internal regulation", 107 N.J. Super., at p. 157. The Commission is not persuaded by the Association's emphasis upon what clearly amounts to supportive dicta in Gloucester, obviously supplemental to the Court's holding with respect to the statutory grant of specific broad police powers. We find the Hearing Officer's interpretation of Gloucester to be correct.

The Association also draws our attention to the Court's quotation of the Supreme Court of Missouri that "the actual keeping and custody of prisoners confined in a jail is the performance of an inherent and naked police

^{3/} It is unnecessary to pass upon the State's exceptions, in view of our conclusion that Gloucester mandates dismissal, for the reasons discussed below. The Commission points out, however, that if the performance of security functions were deemed to be the crucial element in a determination as to police status under the Act - which under Gloucester is not the case - we would simply be concerned with the existence of this function, not its proportional relationship with other functions.

function", id., at p. 158, and its quotation from an earlier Appellate Division decision that "overseeing the custody and punishment of law violators is as much a part of law enforcement as undertaking the detection and apprehension of such violators", ibid.. The Commission views the foregoing as supportive dicta as well, and more importantly to relate to prison guards, not Medical Security Officers. We cannot equate "the keeping and custody of prisoners confined in a jail," or "overseeing the custody and punishment of law violators," with the function of the Medical Security Officers. We refer in this regard to the holding of the Supreme Court that "The Trenton Psychiatric Hospital, including the Forensic Section, is a hospital and not a correctional institution. N.J.S.A. 30:17-7, 30:4-160. Surely a hospital does not become a jail merely because convicts are admitted when they are ill." Singer v. State, 63 N.J. 319, 322 (1973).

The Association argues alternatively that even if Gloucester requires a statutory grant of police powers, the Medical Security Officers are nevertheless policemen by virtue of N.J.S.A. 30:4-116, entitled "Retaking Persons Leaving Without Discharge," which provides as follows:

"The chief executive officer of any state institution, or any subordinate officer or employee of the institution appointed by him in writing as a special officer, shall have power to arrest without warrant any inmate committed thereto by order of any court, who shall leave such institution, without first obtaining a parole or discharge, and return him or her to the institution. For purpose of retaking, the chief executive officer or special officer may go to any place either within or without this state, where the escaped inmate may be."

The Association argues that this statute at least amounts to "reserved statutory authority to arrest and apprehend" within the purview of Gloucester. Furthermore, a rather lengthy Memorandum from the Medical Director

of Trenton State Hospital, entitled "Procedures in the Event of an Escape from Vroom Building /Forensic Section/", was submitted with the Association's post-hearing brief as evidence of the designation of Medical Security Officers pursuant to the quoted statute. It is far from clear that the Memorandum accomplishes this purpose. In any event, without passing upon the propriety of such an evidentiary submission subsequent to the close of a hearing, suffice it to say that the Commission cannot equate the limited power to return an escaped psychiatric patient with the far-reaching general authority of correction officers, relied upon in Gloucester, to act as officers for the detection, apprehension, arrest and conviction of offenders against the law.

In view of the Commission's disposition of this matter, it is unnecessary to pass upon various other contentions raised by the parties during the course of the proceedings, and accordingly all findings and conclusions of the Hearing Officer, not specifically excepted to and discussed above, are hereby adopted pro forma. The Medical Security Officers are not policemen within the meaning of the Act, and the petition is hereby dismissed.

BY ORDER OF THE COMMISSION



John F. Lanson
Chairman

DATED: Trenton, New Jersey
April 22, 1974

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY
Public Employer

and

Docket No. RO-600

MEDICAL SECURITY OFFICER'S ASSOCIATION
Petitioner

and

COUNCIL #63, A.F.S.C.M.E., AFL-CIO
Intervenor and Party
to the Contract

Appearances:

For the Public Employer:
Edward F. Ryan, Esquire

For the Petitioner:
Pellettieri and Rabstein, Esqs.
By Ira C. Miller, Esquire

For the Intervenor: *
Sterns and Greenberg, Esqs.
By Michael J. Herbert, Esquire

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

A Petition was filed on February 1, 1973 by the Medical Security Officer's Association on behalf of medical security officers employed by the State of New Jersey seeking severance from an existing statewide unit of Health, Care, and Rehabilitation Services employees represented in a certified negotiating unit by Council #63, AFSCME, AFL-CIO.

The Petitioner contends that the medical security officers are police 1/ officers and, therefore, not properly included within a unit

* Appearances for Council #63, AFSCME, AFL-CIO are as follows: Peter J. Moralis and Mark Neimeiser, Representatives of Council #63, on August 20, 1973; William S. Greenberg, Esquire, on September 18, 1973; and Michael J. Herbert, Esquire, on October 19, 1973, and on the brief.

1/ Central to the issue herein is the question, what constitutes a policeman? For the purpose of clarifying the issue, the Hearing Officer finds and will substantiate later in this report that in order to find an employee to be a policeman, he must, pursuant to statute, possess or exercise police powers. County of Gloucester, Board of Chosen Freeholders v. Public Employment Relations Commission, 107 N.J. Super 150 (1969), affirmed, 55 N.J. 333 (1970).

(Health, Care, and Rehabilitation Services) represented by an employee representative (Council #63) which admits non-police to membership, pursuant to statutory prohibition. 2/ Petitioner asserts their proper placement should be in an existing statewide law enforcement unit represented by P.B.A. Local 105, an employee representative which admits only police officers to membership. 3/ The law enforcement unit consists mainly of employees within the State of New Jersey correctional institutions. The Petitioner, alternatively, while not conceding a lack of police status, asserts that a lack of community of interest with the remainder of the unit warrants the severance of medical security officers into a separate negotiating unit.

Formal hearings in this matter were held before the undersigned Hearing Officer on August 20, September 18, and October 19, 1973. During these proceedings all parties were given full opportunity to present testimony, cross-examine witnesses, argue orally, and to file briefs. Post-hearing briefs were submitted by all three parties and received December 4, 1973.

The Public Employer and Council #63 dispute the contention of the Petitioner that they fall within a police definition, and therefore, oppose Petitioner's attempt for severance. The Public Employer would not oppose the severance of the medical security officers if they are found to be police,

2/ N.J.S.A. 34:13A-5.3 "...except where established practice, prior agreement, or special circumstances dictate the contrary, no policeman shall have the right to join an employee organization that admits employees other than policemen to membership."

3/ At the hearing, an appearance was made by Mr. Joseph Baranyi, President of PBA, Local 105. Mr. Baranyi, a correction officer, testified that the PBA was organized solely for the benefit of employees with law enforcement and police powers and that PBA Local 105 voted unanimously to accept the medical security officers into Local 105 if it could be demonstrated that these employees do possess or exercise police powers and that Local 105 cannot have any specific interest in the medical security officers until such determination be made.

although it does not concede that the Commission has jurisdiction to determine this question. The State raises a contract bar 4/ to the alternative unit contention of the Petitioner but does not contend that the bar should operate in the event that the medical security officers are found to possess or exercise police powers.

Council #63 asserts that the contract bar should operate regardless of the disposition of the police question. Inferentially, this position appears to be based on the statutory exceptions which, if found to exist, would overcome the statutory prohibition of commingling police and non-police within a single negotiating unit.

The State of New Jersey and Council #63, AFSCME, AFL-CIO, are parties to an existing agreement governing employees within the Health, Care, and Rehabilitation Services unit, developed by the parties, pursuant to PERC #50. 5/ In that decision, the Commission found that proposed units less than Statewide in scope were inappropriate for the purposes of collective negotiations. The Health, Care, and Rehabilitation Services unit consists of employees employed by the State of New Jersey in a multitude of statewide titles, 6/ including the title of medical security officer.

The Public Employer and Council #63 oppose the contention that medical security officers possess or exercise police powers. The Employer cites a lack of statutory grant of police powers. Further opposition is based on their employment within a hospital rather than a jail and that the medical security officers attend to and provide custodial functions for patients rather than prisoners and, therefore, function in a similar fashion to

4/ Commission Exhibit Number 2. Labor Agreement, State of New Jersey and Council #63, AFSCME, AFL-CIO, Health, Care, and Rehabilitation Services unit, June 30, 1972 - June 30, 1974.

5/ PERC 50, State of New Jersey, et al, January 15, 1971.

6/ A listing of classifications within the unit is contained in the labor agreement referred to in Footnote 4.

institutional attendants. The State asserts that the medical security officers discharge responsibilities which involve patient psychiatric therapy a consideration which overrides the performance of tasks normally associated with security or custody. The Petitioner argues the opposite, that the medical security officer is the substantial equivalent of the correction officer employed in a penal institution, provides police type of security and custodial functions traditionally associated with correction officer work and, therefore, like correction officers, 7/ should be found to be police officers, and placed within the statewide law enforcement unit. In order to digest these positions it is essential to examine the duties of the medical security officer and the functions of the institution where they are employed.

There are approximately 150 medical security officers employed by the State of New Jersey, all of whom are employed within the Forensic Psychiatric Section of the Trenton Psychiatric Hospital, formerly entitled the Vroom Building. 8/ The Vroom Building has two functionally distinct units. The New Jersey State Prison at Trenton maintains a rehabilitation unit within the Vroom Building which houses "incurable" prisoners within a maximum security jail. This section is within the Division of Correction and Parole of the Department of Institutions and Agencies, State of New Jersey. The prisoners housed within this unit are attended to and under the custody of correction officers. The other unit, and the section on which this case focuses, is the Forensic Psychiatric Section of the Trenton State Hospital, a maximum security facility. 9/ This facility is within the Division of Mental Health and Hospitals, Department of Institutions and Agencies. The

7/ County of Gloucester, Supra.

8/ Singer v. State, 63 N.J. 319.

9/ Singer Supra at p. 322.

Forensic Section, where the medical security officers are employed, houses individuals, who in their residence, are legally classified as patients. Patients include those with civil status, who, under court order, are sent to the Forensic Section for psychiatric treatment, convicted criminals undergoing sentence who are in need of psychiatric treatment or observation, individuals who are pending trial where a question exists as to their mental competency, and individuals who have been acquitted of crimes by reasons of insanity or who were not competent to stand trial by reason of insanity. 10/ Patients are not segregated based on civil or criminal status. 11/ The courts have held that mere safe custody without treatment is unconstitutional and insufficient reason to confine an individual in the Forensic Section. 12/

Although both units are housed within the Vroom Building, there is little if any functional relationship between the two sections. Mr. Richard Burd, assistant supervising medical security officer, 13/ testified that firearms for correction officers within the readjustment unit are housed in a combination safe within the Forensic Section in the custody of supervising and assistant supervising medical security officers. The firearms are not within the custody of the medical security officers themselves nor is there authority for recourse to their use by medical security officers. Mr. Burd concedes that the reason for custody of the firearms is the Vroom Building's physical layout rather than for their potential use by any one within the Forensic Section. Movements in and out of the prison section are made through the Forensic Section again because of the physical layout of the Vroom Building.

10/ Singer, Supra at p. 322. Also see Petitioner exhibit number 2, a breakdown of resident population.

11/ Singer, Supra at p. 323.

12/ In re DD, 118 NJ Super 7. See also NJSA 2A; 163-2, which directs a person in confinement under commitment, indictment, or any person who was found to be insane at the time of the commitment of his offense to be ordered into safe custody and directed to the N.J. State Hospital at Trenton for the purpose of restoring the individual to reason.

13/ As an assistant supervising medical security officer, Mr. Burd is not included within the Health, Care and Rehabilitation Services unit represented by Council #63 and he testified that he is not a member of the Medical Security Officers' Association.

Mr. Burd testified that in the event of an emergency within the readjustment unit the medical security officers would stand perimeter defense of the Forensic Section to prevent a spill-over. However, this defense would not result in the use of firearms. Based on the above facts, the Hearing Officer finds little if any significant relationship between these two sections other than their physical proximity and no evidence which would warrant a finding of police powers based on their physical proximity within the Vroom Building.

Testimony concerning the job duties of the medical security officer was offered through Mr. Burd. Dr. Michael Rotov, a Psychiatrist and Deputy Division Director, Division of Mental Health and Hospitals, Department of Institutions and Agencies, a witness of the Public Employer, testified as to the role and objectives of the Forensic Section and his perception of the responsibilities of the medical security officers as they relate to the overall objectives of the institution.

The testimony of these two witnesses depicts an inherent contradiction in the function of a medical security officer, out of which the instant dispute appears to have arisen. Mr. Burd, a witness of the Petitioner, seeks a finding that the medical security officers are police but concedes that they work in a hospital and attend to patients who are entitled to and receive psychiatric treatment. Dr. Rotov testified that he believes the medical security officers should not reside within a unit represented by a police organization but concedes that the security and custody of inmates is an important function of the medical security officers and he concedes that their employment involves this "obvious duality."

The functions and duties of the medical security officers mirror the institution in which they work. The Forensic Section is a hospital which possesses maximum security features and as such, resembles a jail. 14/ It has 14/ Petitioner's Exhibits #1A, 1B, 1C, 1D and 1E. Photographs of the Forensic Section.

three floors with 12 wings or tiers. Manual and electronic control centers provide tight security. Inmates are housed in locked cells.

The medical security officer performs tasks associated with both the medical and the security aspects of the facility. They observe the mental and physical condition of the patients and inform physicians if potential or actual abnormal characteristics exist in patient behavior. They dispense oral medication upon orders of a physician and assist nurses in certain tasks. A medical security officer may also be required to perform tasks traditionally associated with those of an institutional attendant; for example, feeding, undressing, and bathing a patient when the patient is unable to perform these tasks himself. A prerequisite for hire as of January 1973 is one year's experience as an attendant in a mental institution. The medical security officer's are clothed in institutional white uniforms.

Dr. Rotov testified that the medical security officer is a link in a team system which provides for the psychiatric therapy for patients. He testified that the medical security officer should be part of a nursing plan whereby they would fulfill therapeutic objectives set forth by physicians in the treatment of patients. He concedes, however, that he does not know if nursing plans involving the medical security officer are in existence.

The medical security officer, however, does perform certain functions which cannot reasonably be related to either treatment or therapy and which are closely associated with pure custody and security. Prior to January 1973, one year's experience in security work was permissible as a prerequisite for hire as a medical security officer. The medical security officers may laterally transfer into a correctional institution as a correction officer and have done so in the past. They control the manual and electronic control centers and cells. Daily patient counts are made for the purpose of accountability and prevention of suicides. The medical security officer transports convicted

criminals to county courts and parole offices and may make use of belts and cuffs as security measures. They perform security and surveillance tasks such as conducting patient searches, making security inspections of bars, windows and locking systems and supervising the inmates during recreation, meal, and shower periods.

Each party emphasizes what it feels to be the crucial nature of medical security work. Mr. Burd perceives the medical security officer to be policemen in a jail setting despite his acknowledgement that convicts are patients in a hospital. Dr. Rotov perceives their function as an integral link in institutional patient therapy but has testified that the security aspects of the medical security officer's job cannot be minimized.

The Hearing Officer based on the entire record of this proceeding finds that the medical security officer functions in a manner which more substantially involves security than either patient assistance or therapy. 15/ This finding, however, is not dispositive of the issue herein.

The Petitioner sees the function of the medical security officer as the substantial equivalent of a correction officer. The courts have held that correction officers possess police powers pursuant to statute. 16/ The Petitioner seeks a finding that medical security officers are policemen based on the alleged similarity between the two classifications.

In a prior Commission decision 17/ the Commission held that county correction officers were not policemen and could be represented by an employee

15/ In this determination the Hearing Officer has relied more on Petitioner Exhibit #5, Nonmanagerial Performance and Improvement Report, Department of Institutions and Agencies, State of New Jersey, which sets forth job performance standards and the testimony thereto, rather than the N.J. Department of Civil Service job classification for the medical security officer, Commission Exhibit #3.

16/ County of Gloucester, Supra.

17/ PERC No. 11, County of Gloucester, Board of Chosen Freeholders and Teamsters Local Union No. 676, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. August 20, 1969.

representative which admitted non-police to membership. In that matter the Commission found that correction officers were neither armed nor called upon to exercise police powers:

"It is recognized by the Commission that the correction officers are authorized to exercise police powers pursuant to N.J.S.A. 2A:154-3. However, the record makes clear that these correction officers are not policemen and that their duties involve the security and related duties associated with confinement of prisoners. The correction officers' duties involve the general supervision of the inmates of the prison, the feeding of the inmates and their transfer between cells at the Gloucester County Prison. The correction officers are not armed. Nor does the record indicate that the correction officers actually are called upon to exercise the police powers conferred by the aforementioned statute. There is no indication that they perform any activities outside of the normal range of duties enumerated above with the exception of transporting prisoners, which, according to record testimony, is performed 'Very seldom'. In performing their normal duties, the men in question are correction officers or prison guards and they are not policemen within the meaning of the Act. The Legislature's failure to limit the representation rights of all employees who have the authority to exercise police powers, and its limited proscribing of only the rights of 'policemen' in Chapter 303, Laws of 1968 must be read literally. Accordingly, since these correction officers are not 'policemen' and do not customarily or normally exercise police functions or authority the proscription in the Act regarding 'policemen' is not applicable to these correction officers."

In this matter of County of Gloucester, the courts reversed the Commission and found correction officers in possession of reserved police powers pursuant to statute and the court was not persuaded by the logic set forth in the Commission decision. The court held that 'nonrecourse by guards in the past in their reserved authority is no basis for assuming that they may not in the future be required to exercise such authority in order to prevent violations of the law.'

There is no evidence in the record nor can the Hearing Officer find similar statutory police powers residing in the medical security officer classification. While they do perform tasks which may be termed naked security, within a setting similar to a penal institution, the medical security officer is not empowered as is the State correction officer 18/ to act under appropriate circumstances as a police officer for the detection, apprehension, arrest, and conviction of offenders against the law. While in emergency situations they may resort to billy clubs, they are not authorized nor is it contemplated that there would be resort to firearms. There is no statutory authority which provides actual or reserved police powers to medical security officers on the basis of that they provide custody and security for patients who may also be convicts.

I feel that the Commission in its determination of what constitutes a police officer should be guided by the statutory considerations which were found to exist in Gloucester. In addition to the absence of a statutory grant of police powers there is no evidence that the medical security officers should be severed from the unit in which they are presently included based on considerations of conflict of interest with the remainder of the unit or with the employer on the basis of their present inclusion. A contract bar exists for any unit contention other than the police issue.19/

The Hearing Officer, therefore, finds and recommends to the Commission that a medical security officer is not a police officer based on fact that they are neither empowered to act as a police officer for the detection, apprehension, arrest, and conviction of offenders against the law

18/ N.J.S.A. 2A:154-4. "All correction officers of the State of New Jersey... shall,...in addition to any other power or authority, be empowered to act as officers for the detection, apprehension, arrest and conviction of offenders against the law."

19/ P.E.R.C. Rules and Regulations, N.J.A.C. Sec. 19:11-1.15.

nor authorized to bear arms.

An additional contention of the Medical Security Officers' Association is that medical security officers either possess police powers or that the legislature has implicitly recognized same through the introduction of Chapter 156, P.L. 1973, an amendment to the Police and Firemen's Retirement System. 20/ This legislation permits the enrollment of medical security officers into this pension system based on their inclusion within a listing of titles in that statute. Specifically, the statute permits the enrollment of employees 'with police powers and holding one of the following specific titles,' one of which is 'medical security officer.'

Also in evidence, 21/ along with the law, is a memo from John A. McGarrity, Assistant Director, Division of Pensions, to 'All Officer Employees of the State with Police Powers Holding the Titles Listed in the Material Transmitted Herewith,' dated June 12, 1973. The memo includes an application for membership into the New Jersey Police and Fireman's Retirement System. Mr. Burd testified that the application was received by the Medical Security Officers. The employer argues that this statute cannot provide employees with police powers who already do not possess them by statute and rejects an interpretation that Chapter 156 is evidence that the medical security officers are policemen. In support of this position the State offers into evidence 22/ a memo from Edmond P. Mattei, Executive Assistant, Division of Pensions, to John S. Eberhardt, Chief, Bureau of Personnel Services, Department of Institutions and Agencies, with specific reference to the eligibility of medical security officers to enroll or to transfer membership into the Police and Firemen's Retirement System. This memo, dated September 14, 1973, indicates

20/ Petitioner Exhibit #8. Senate Bill #2310. Chapter 156, P.L. of NJ, 1973.
21/ Petitioner Exhibit #9.
22/ Public Employer Exhibit #2.

that the State, despite having previously submitted applications for membership to medical security officers has not permitted them to enroll in the Police and Firemen's Retirement System on the basis of the State's position that they do not possess police powers and, therefore, are ineligible for admittance.

The Hearing Officer feels that the Commission is without jurisdiction to interpret a pension statute for the purpose of determining eligibility. Within the context of the police issue, I find that the statute cannot be interpreted as a grant of police powers, reserved or otherwise. Having found no statutory grant of police power the determination of the police issue should not hinge on an interpretation of a pension statute or based on an allegation of implicit legislative acknowledgement of police power.

The Hearing Officer, therefore, finds based on the entire record of this proceeding that:

1. The State of New Jersey is a public employer and, therefore, subject to the provisions of the New Jersey Employer-Employee Relations Act.
2. Council #63, AFSCME, AFL-CIO, Intervenor and Party to the existing contract, is an employee representative within the meaning of the Act.
3. The Medical Security Officers' Association, Petitioner, herein is an employee representative within the meaning of the Act solely for the purpose of determining their status relating to the issue of whether or not they possess or exercise police powers. 23/


23/ Despite having stipulated that the Medical Security Officers' Association is an employee representative within the meaning of the Act, the public employer asserts in its brief that the petition be dismissed based on an alleged failure of the petitioner to qualify as a labor organization or representative. This position is based on the stated desire of the petitioner, that the medical security officers be transferred into the existing statewide law enforcement unit. The Hearing Officer rejects this (footnote continued next page)

4. As a dispute exists concerning the composition of an appropriate negotiating unit and the representation of public employees, the matter is properly before the Hearing Officer for Report and Recommendation to the Executive Director.
5. A contract bar exists with respect to any issue herein other than whether or not the medical security officers are policemen within the meaning of the Act.
6. Having found the medical security officers not to possess or exercise police powers it is unnecessary to examine the alternative unit contention of the petitioner that the medical security officers be servered based on a lack of community of interest with the remainder of the employees in the existing negotiating unit.
7. The medical security officers do not possess or exercise police powers, and, therefore, cannot be found to constitute policemen within the meaning of the Act.

RECOMMENDATION

Based on the above findings of fact, the Hearing Officer respectfully recommends the dismissal of the petition filed by the Medical Security Officers' Association, and their continued inclusion in the existing unit of Health, Care, and Rehabilitation Services.

RESPECTFULLY SUBMITTED


James W. Mastriani
Hearing Officer

DATED: March 28, 1974
Trenton, New Jersey

23/ (footnote continued)

argument. The Public Employer and Council #63 have urged a limitation of this proceeding solely to the police issue. Further, the statutory definition of "employee representative" is very broad and includes "any organization, agency, or person authorized or designated by a public employer, public employee, group of public employees, or public employee association to act on its behalf and represent it or them." NJSA 34:13A-3(e)