

D.R. NO. 87-14

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF REPRESENTATION

In the Matter of

COUNTY OF ATLANTIC,

Public Employer,

-and-

A.F.S.C.M.E., DISTRICT COUNCIL 71,
LOCAL 2252,

DOCKET NO. RO-87-31

Petitioner,

-and-

TEAMSTERS UNION LOCAL 331,

Intervenor.

SYNOPSIS

The Director of Representation directs an election among employees in Atlantic County's Department of Health and Institutions to determine whether they desire to be represented in collective negotiations by AFSCME, Council 71, Local 2252, AFL-CIO; Teamsters Union Local 331, or neither. The Director rejects the incumbent's (Local 331's) assertions that Council 71's petition inappropriately seeks to sever health care employees from a larger white-collar unit and that a recent County reorganization necessitates a re-examination of the appropriateness of the unit sought by Council 71.

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Appearances:

For the Public Employer
Pachman and Glickman, Esqs.
(Martin R. Pachman, of counsel)

For the Petitioner
Mario DiFurio, Staff Representative

For the Intervenor
Markowitz & Richman, Esqs.
(R. David Walk, of counsel)

DECISION AND DIRECTION OF ELECTION

On September 17, 1986, AFSCME, District Council 71, AFL-CIO ("Council 71"), filed a petition seeking certification as the exclusive representative of all institutional employees in the health care unit employed by the County of Atlantic ("County"). Teamsters Local 331 ("Local 331") was certified as the exclusive

representative of the collective negotiations unit sought by Council 71 on March 17, 1981, and has been granted intervenor status in this proceeding pursuant to N.J.A.C. 19:11-2.7.

On October 2, 1986, an informal conference was held and an investigation was begun.^{1/} Local 331 claims that Council 71 inappropriately seeks a severance of health care employees from a larger, broad-based unit. In support of its claim, Local 331 filed copies of its collective negotiations agreements for 1981-1983 and 1984-1986 covering titles that were certified in three separate units in 1981: one unit consists of the County's judiciary employees; one of its clerical employees; and one of its health care employees.

On October 14, 1986, the parties were requested to submit material documenting Local 331's negotiations history with the County. They were also invited to file by October 22, 1986 position statements concerning the appropriateness of the unit sought by Council 71.

The results of the investigation follow.

On March 17, 1981, Local 331 was certified as the exclusive representative of three negotiations units of white-collar employees

^{1/} Local 331 was represented at the informal conference by new counsel and was given until October 10, 1986 to submit either its consent to a secret ballot election or a statement of its position that an election should not be conducted. Local 331 filed a position statement on October 9, 1986, challenging the appropriateness of the negotiations unit sought by Council 71.

of the County. In RO-81-162, Local 331 was certified to represent all health care services employees of the County. In RO-81-161, it was certified to represent all clerical employees of the County. In RO-81-77, it was certified to represent all white-collar employees of the County Judiciary.

Thereafter, the County and Local 331 negotiated one collective negotiations agreement covering the three units certified in 1981. Those negotiations began shortly after the certifications.

In the recognition clause of the two agreements submitted by Local 331 (covering the terms 1981-1983 and 1984-1986) "employees" are defined as "...employees in the certified bargaining unit set forth in PERC certification No. RO-81-77; RO-81-161; RO-81-162." "Employer" is defined as "...the various public employers set forth under Agreement, negotiating through the Offices of the County of Atlantic and whose signature appears (sic) in the execution clause of this Agreement."

Council 71 asserts that the fact the County and Local 331 negotiated one contract to cover the three units certified in 1981, does not translate into a finding that the three units have, in fact, become one. It emphasizes that the agreement covers more than one unit and more than one employer. Council 71 cites a 1980 decision by the Director of Representation in support of its position that it must petition to represent health care facility employees separately. See, County of Atlantic, D.R. No. 81-19, 7 NJPER 39 (¶ 12018 1980) (hereinafter "County of Atlantic").

Council 71 points out that, prior to the certification of the three Local 331 units in 1981, AFSCME had represented the same titles in two units: AFSCME Local 2309 represented institutional (health care) employees and Local 2252 represented clerical and judiciary employees. Prior to 1980, AFSCME negotiated separate contracts for each of its units.

The County takes no position on the appropriateness of the unit sought by Council 71. It asserts that the decision to negotiate one contract covering the three Local 331 units in 1981 was based on reasons of convenience and practicality. Prior to Local 331's representation of the three units, the County negotiated separate agreements with AFSCME covering the same titles. The County does not assert that the Council 71 filing could result in undue unit fragmentation or create a burden on it in collective negotiations. It is significant that the judiciary employee unit is included in the multi-unit contract. See, Judges of Passaic County and Local #153, OPEIU and Council #3, NJCSA, and Passaic Cty Clerks Ass'n and County of Passaic, D.R. No. 82-26, 8 NJPER 13 (¶13006 1982), P.E.R.C. No. 82-92, 8 NJPER 233 (¶13097 1982), req. for stay to App. Div. den. A-3208-81T2, 100 N.J. 352 (1985).

On November 14, 1986, we advised the parties that we were inclined to find the unit sought by Council 71 appropriate and to direct an election therein. We invited the parties to file additional materials and position statements by the close of business on November 21, 1986.

On November 21, 1986, Local 331 filed a position statement opposing the direction of an election. Local 331 asserts that the three white collar units "acted together as one unit...;" that an election could lead to undue fragmentation: that the unit sought by Council 71 is not identical to the unit certified in RO-81-162; and that the case cited by Council 71, County of Atlantic, has no precedential value to the question of unit appropriateness.

When it filed its petition for certification, Council 71 described the unit it sought as including "all institutional employees in the Health Care Unit employed by the County." At the exploratory conference, the unit description was changed to include "all institutional employees of the County's Department of Health and Institutions at Meadowview, the County Kitchen, Harbor Fields and the County Jail." The unit description was changed because it was discovered that, effective January 1, 1986, the County changed the lines of supervision at two of its facilities (Harbor Fields and the County Jail). Prior to January 1, 1986, the cooks working at these facilities had reported to on-site supervisors. As of January 1, 1986, however, the cooks were directed to report to a supervisor within the County's Department of Health and Institutions. The change affected three employees. The unit sought by Council 71 consists of approximately 103 employees and is not otherwise affected by the County's reorganization at those two facilities.

ANALYSIS

The case cited by Council 71, County of Atlantic, involved a petition filed by Local 331 originally seeking to represent all employees of the County. At the time, AFSCME Locals represented units of the County's Welfare Board employees (Local 2303), institutional employees (Local 2309), and its judiciary and clerical employees (Local 2252). Local 331 then amended its petition after the expiration of the open period to seek the extant units. The Director dismissed the petition, as amended, because when originally filed it was not supported by an adequate showing of interest. 7 NJPER at 40, 41. See also, Holmdel Twp. Board of Education, D.R. No. 80-29, 6 NJPER 120 (¶ 11065 1980).

Local 331 later filed timely petitions supported by sufficient showings of interest, seeking separate units of the County's judiciary, clerical and health care employees. All parties entered consent agreements that were approved by the Commission and resulted in the certifications of three distinct negotiations units in 1981.

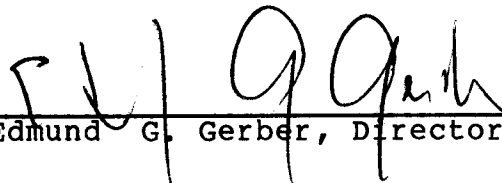
The County does not assert that a hardship would result from the Council 71 petition and any subsequent negotiations with the affected employee unit. The recognition clause in the two Local 331 agreements makes specific references to three distinct units. Prior to Local 331's representation of these units, the County negotiated a separate contract for its health care unit employees.

The County's decision to realign the supervision of three of its employees does not change the essential character of the unit

nor does it warrant a hearing to determine the appropriate unit. Further, the employees at issue hold titles historically represented in the health care unit. The County merely changed their supervisors, thus bringing the employees into the Department of Health and Institutions. The showing of interest submitted by Council 71 is not affected by the addition of three employees to the unit.

Accordingly, I direct that an election be conducted no later than thirty (30) days from the date of this decision to determine whether employees in the petitioned-for unit desire to be represented in collective negotiations by AFSCME, District Council 71, AFL-CIO; Teamsters Union Local 331, or neither.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: December 17, 1986
Trenton, New Jersey