

D.R. NO. 88-3

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

In the Matter of

COUNTY OF CAMDEN,

Public Employer,

-and-

CAMDEN COUNTY HIGHWAY
SUPERVISORS' UNIT,

Petitioner,

-and-

LOCAL 2305, AFSCME,
COUNCIL 71, AFL-CIO,

Intervenor,

-and-

COUNCIL NO. 10, NJCSA,

Intervenor.

Docket Nos. RO-87-131
CU-87-32

DECISION

The Director of Representation dismisses a petition seeking to create a separate unit of Highway Department supervisors where there is an existing county-wide supervisory unit. The Director further clarifies an existing non-supervisory unit to exclude certain supervisory titles pursuant to N.J.S.A. 34:13A-5.3.

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For the Public Employer
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For the Petitioner
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For the Intervenor AFSCME, Council 71
John P. Hemmy, Associate Director

For the Intervenor Council #10, NJCSA
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(Mary L. Crangle, of counsel)

DECISION

The Camden County Highway Supervisors' Unit ("Supervisors' Unit") filed a Petition for Certification of Public Employee

Representative with the Public Employment Relations Commission ("Commission") seeking to represent certain supervisory employees employed by Camden County in the Highway Department ("County").^{1/}

A Clarification of Unit Petition was also filed with the Commission on December 18, 1986 (Docket No. CU-87-32) by Local 2305, affiliated with AFSCME, District Council 71 ("AFSCME"). The clarification petition seeks to exclude certain employees from the non-supervisory blue collar unit because they are supervisors within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq ("Act"). These petitions raise questions concerning the appropriateness of the petitioned-for unit and proper unit composition of the non-supervisory blue collar unit. Accordingly, these matters were considered together.

In accordance with N.J.A.C. 19:11-2.2(a), an administrative investigation was conducted into the matters and allegations involved in the two petitions in order to determine the facts. An informal conference was convened by a Commission staff agent on January 28, 1987. In attendance were the County's Personnel Director, the President and another representative of AFSCME, Local 2305, and a representative of AFSCME, District Council 71.

The investigation revealed the following:

^{1/} The County did not respond to the Commission's request to supply a list of employees in the proposed unit. Therefore, the adequacy of the showing of interest is presumed. See City of Newark, D.R. No. 85-24, 11 NJPER 344 (¶16126 1985).

The Camden County Highway Supervisors' Unit seeks to represent a unit comprised of the following job classes: (1) Supervisor, Roads; (2) Assistant Supervisor, Roads; (3) Road Construction Foreman; (4) Yard Supervisor; (5) Supervising Mechanic; (6) Traffic Maintenance Supervisor; and (7) General Supervisor, Roads. The first four titles listed above are included in a non-supervisory blue collar unit represented by Local 2305, affiliated with AFSCME, District Council 71 ("AFSCME"). The last three titles are included in a broad-based, County-wide supervisory unit represented by Camden Council No. 10, Supervisory Unit, N.J.C.S.A. ("Council 10").^{2/} The Supervisors' Unit argues that an election should be directed in the new unit because the petitioned-for employees are supervisors within the meaning of the Act and thus, should not be included in a unit with non-supervisory employees.

Approximately 13 of the petitioned-for employees are included in a unit of 100 non-supervisory, blue collar Highway and Park Commission employees. The remainder of the petitioned-for employees are in a County-wide unit of supervisors, which includes supervisors in the Highway Department. Thus, the petition seeks to remove certain employees from existing units to form a Highway Department supervisors' unit.

^{2/} Council 10 and AFSCME each submitted collective negotiations agreements between each of them, respectively, and the County. Both agreements contained recognition clauses which included some of the titles petitioned-for herein, as indicated above.

AFSCME requested to intervene in the representation petition, pursuant to N.J.A.C. 19:11-2.7. AFSCME submitted a copy of its most recently expired collective negotiations agreement with the County and a copy of a recent dues check-off list. AFSCME's request to intervene is approved. AFSCME contends that the employees who are the subject of this Petition are not supervisors within the meaning of the Act, although no evidence was proffered to support this claim. Further, AFSCME asserts that if the Commission finds the employees in question to be supervisors, then AFSCME agrees to represent them in a separate supervisory unit.^{3/}

Council 10 objects to the representation Petition because it alleges that it has an existing collective negotiations agreement with the County covering three of the titles (Supervising Mechanic, Traffic Maintenance Supervisor and General Supervisor Roads) listed in the Petition. Council 10 stated that this agreement was ratified by both parties prior to the filing of the representation petition and, therefore, should act as a bar to its processing. Council 10 submitted an unsigned, undated copy of an agreement which purportedly covers the period from January 1, 1986 through December 31, 1988.

^{3/} AFSCME claims to have represented the contested positions in its unit for 18 years. However, it neither asserted nor proved a pre-1968 established practice or prior agreement pursuant to N.J.S.A. 34:13A-5.3.

The County has not asserted any contract bar to the representation petition. The County has agreed that the employees who are the subject of the petition are supervisors. However, the County objected to the formation of a separate unit of highway supervisors and contended that the petitioned-for employees should be included in the existing supervisory unit. In support of its position, the County cited the petitioned-for employees' supervisory status and asserted that the creation of an additional unit would lead to a proliferation of collective negotiations units.

The following questions are presented by the two petitions and the parties' position statements:

1. Whether an alleged collective negotiations agreement bars a certification petition seeking to sever employees who are now members of the supervisory unit represented by Council 10. See N.J.A.C. 19:11-2.8(c).

2. Whether it is appropriate to sever the petitioned-for employees that are now included in Council 10's unit.

3. Whether the employees who are now in the unit represented by AFSCME are supervisors within the meaning of the Act; if so, whether they should be removed from AFSCME's existing unit; and whether it is appropriate to sever the petitioned-for titles now included in the unit represented by AFSCME?

4. Whether the unit sought by the representation petition is the most appropriate unit for collective negotiations, under the circumstances of this case.

I. Timeliness

N.J.A.C. 19:11-2.8(c) provides:

During the period of an existing written agreement containing substantive terms and conditions of employment and having a term of three years or less, a petition for certification of public employee representative...normally will not be considered timely filed unless: ...

2. In a case involving employees of a county or municipality.... The petition is filed not less than 90 days and not more than 120 days before the expiration or renewal date of such agreement;

The Commission has held that, in order for an agreement to operate as a bar to the filing of a petition under N.J.A.C. 19:11-2.8(c), the agreement must be in writing and executed by the contracting parties prior to the filing of the petition. See Transport of New Jersey, D.R. No. 82-38, 8 NJPER 154 (¶13067 1982); City of Vineland Police Department, D.R. No. 82-53, 8 NJPER 53 (¶13147 1982). See also Appalachian Shale Products Co., 121 NLRB No. 149, 42 LRRM 1506 (1958). Further, when ratification is an express condition of the agreement, then ratification must occur prior to the filing of the petition. County of Middlesex, P.E.R.C. No. 81-1, 6 NJPER 355 (¶11179 1980), req. for rev. denied, P.E.R.C. No. 81-29, 6 NJPER 439 (¶11224 1980).

Although Council 10 contends that its agreement with the County was ratified and implemented prior to the filing date of the representation petition, no evidence of this contention was submitted. The agreement submitted by Council 10 was unexecuted. The County did not object to the Petition on the basis of

timeliness. Therefore, we find that the petition is timely filed with regard to the titles presently in Council 10's supervisory unit.^{4/}

II. Supervisory status

The Supervisors' Unit contends that the employees who are presently in the unit represented by AFSCME, and who are the subject of the clarification and representation petitions, are supervisors within the meaning of the Act. Accordingly, it argues that these employees should not be included in a unit with their subordinates because of the conflicts of interest inherent in that situation.

The Supervisor, Roads supervises and works with a group of employees engaged in the maintenance, repair, resurfacing and/or construction of roads. Typically, each Supervisor, Roads has from 4 to 8 subordinate employees and is assisted by an Assistant Supervisor, Roads. Their duties include selecting individuals for specific tasks and assigning tasks to be performed; explaining work methods, procedures, and quality/quantity requirements; reviewing work while in progress or upon completion, and changing work plans, assignments and methods, as necessary. The duties of the Road Construction Foreman and Yard Foreman were stated as being substantially similar to those of the Supervisor, Roads.

^{4/} No objections were raised concerning the timeliness of this petition with regard to the titles presently in AFSCME's non-supervisory unit.

None of the positions in question hires employees, discharges employees or effectively recommends such actions. However, they have the authority to give oral warnings of a disciplinary nature and have effective authority to recommend more severe forms of discipline. The Camden County Highway Supervisors Unit asserted that the petitioned-for supervisors are involved, on a weekly basis, in incidents of oral warnings and/or the informal adjustment of grievances with subordinates. Such grievances occasionally involve the intervention of the shop steward and often center around the appropriateness of work assignments made by a supervisor from the petitioned-for group (or a higher level supervisor).

N.J.S.A. 34:13A-5.3 provides in relevant part:

...nor, except where established practice, prior agreement or special circumstances dictate the contrary, shall any supervisor having the authority to hire, discharge, discipline or to effectively recommend the same, have the right to be represented in collective negotiations by an employee organization that admits non-supervisory personnel to membership....

Further, N.J.S.A. 34:13A-6(d) states:

The division shall decide in each instance which unit of employees is appropriate for collective negotiation, provided that, except where dictated by established practice, prior agreement, or special circumstances, no unit shall be appropriate which includes (1) both supervisors and nonsupervisors,...

See Cherry Hill Department of Public Works, P.E.R.C. No. 30 (1970). Further, in Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404 (1971), the Supreme Court determined that an employee may possess authority

from his/her employer that can create a substantial conflict between the interests of that individual and others in the same negotiations unit. The Court reasoned that employees should not be placed in a position of choosing between duties required by one's employer and loyalties owed to members of one's negotiations unit.

Here, the subject employees do not have authority to hire employees or to make effective hiring recommendations. The County's hiring process is governed by the rules and procedures set forth by the New Jersey Department of Personnel (formerly Civil Service). The petitioned-for employees have no role in the screening or final selection of employees for hiring purposes.

Disciplinary actions are usually initiated by first line supervisors. All discharges are determined and carried out by the County Personnel Director, in conjunction with the department head. The General Supervisor and Department Director have signatory authority on written reprimands and suspensions. With respect to less severe forms of discipline, the petitioned-for employees initiate various disciplinary actions. They are expected to bring incidents of misconduct and insubordination to the General Supervisor's attention, and they have the authority to issue oral warnings to other unit employees. Their recommendations are given weight by their superiors.

Informal grievances are often resolved at the first line supervisory level. Occasionally, such complaints will escalate to the level of a formal grievance and will involve the shop steward

and higher levels of County management. The distribution of work assignments are the responsibility of the employees who are the subject of these petitions. Complaints from the road department employees are frequently brought to the Supervisor, Roads and Assistant Supervisor, Roads, regarding work assignments and are resolved by the employees in those positions. Where work assignment disputes arise, the petitioned-for employees are often at odds with the union which presently represents them (AFSCME). Work assignment disputes must be resolved on the spot as they affect productivity.

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Based upon the foregoing, we find that the subject employees make effective recommendations concerning discipline and hence, are supervisors within the meaning of the Act. Further, these employees have a significant role in the creation and resolution of work assignment disputes. Consequently, there are potential and actual substantial conflicts of interest with other unit employees, similar to that contemplated in Wilton, supra. Thus, we conclude that the petitioned-for employees presently in AFSCME's non-supervisory unit are supervisors within the meaning of the Act and that their presence in the non-supervisory unit has engendered conflicts of interest. Accordingly, these positions should be removed from AFSCME's non-supervisory negotiations unit.

5/ The Supervisors Unit cites as an example of a work assignment grievance a dispute concerning the choice of employee for snow removal duties. These duties entail many hours of overtime and, pursuant to contractual requirements, they must be assigned on a seniority basis.

III. Severance from an existing unit

When considering petitions which seek to sever employees from appropriate existing units, the Commission has consistently followed the standard articulated in Jefferson Tp. Bd. of Ed., P.E.R.C. No. 61 (1971):

The question is a policy one: Assuming without deciding that a community of interest exists for the unit sought, should that consideration prevail and be permitted to disturb the existing relationship in the absence of a showing that such relationship is unstable or that the incumbent organization has not provided responsible representation. We think not. To hold otherwise would leave every unit open to redefinition simply on a showing that one sub-category of employees enjoyed a community of interest among themselves. Such course would predictably lead to continuous agitation and uncertainty, would run counter to the statutory objective and would, for that matter, ignore that the existing relationship may also demonstrate its own community of interest.
Jefferson Township, at 4.

Here, the Supervisors' Unit seeks to include three titles in the petitioned-for unit which are presently included in an existing, broad-based supervisory unit represented by Council 10. The Supervisors' Unit neither alleges nor proffers evidence that the existing supervisory unit is unstable, nor that Council 10 has been irresponsible in its representation of the employees sought to be severed. In the absence of allegations and evidentiary support concerning instability and irresponsible representation, we find that the employees currently in Council 10's supervisory unit should not be severed from the existing supervisors' collective negotiations unit.

IV. Most appropriate unit

The Supervisors' Unit here seeks the creation of an additional unit for collective negotiations. The County objects to the petitioned-for unit, contending that the new unit would be inappropriate; however, it acknowledges that the removal of those supervisory employees who are in AFSCME's non-supervisory unit is appropriate. AFSCME objects to the potential disturbance of its existing unit implied by the creation of the new unit. AFSCME asserts that if a new highway department supervisory unit is determined appropriate by the Commission, then AFSCME should represent that new unit.^{6/}

N.J.S.A. 34:13A-5.3 requires that negotiations units be defined by the Commission "with due regard for the community of interest among the employees concerned." In State v. Prof. Assn. of N.J. Dept. of Education, 64 N.J. 231 (1974) ("Prof. Assn."), the Supreme Court explained that "due regard" did not mean exclusive reliance upon community of interest factors in unit determinations, but that the interests of the employer and public at large are also relevant factors. There, the Commission, affirmed by the Supreme Court, dismissed a representation petition seeking to represent a narrow unit of registered nurses apart from a broad-based unit of

^{6/} We note that because several of AFSCME's affiliate locals presently represent non-supervisory employees of the County, a separate supervisory local would be required if AFSCME would seek to represent any unit of County supervisory employees.

professional employees. Subsequent decisions by the Commission have favored broad-based units and opposed unwarranted unit fragmentation.

In Board of Education of the City of Camden and Camden City School Psychologists, E.D. No. 76-32, 2 NJPER 123 (1976), the Executive Director dismissed a petition seeking to represent school psychologists in a separate unit from other professionals. He stated:

Finally, as noted by the Hearing Officer, the desire of the employees, while a factor to be considered, is not dispositive. The Commission, charged with determining the most appropriate unit in disputed cases, must consider the overall context of the situation. As noted previously, the Board has a collective negotiations relationship with six or eight units of employees. The Board must negotiate with each of these units. The CEA represents almost all professional, non-supervisory employees of the Board. While it is true that the CEA has stated that it does not desire to represent the psychologists, that does not mean that the psychologists alone constitute a separate unit. In this regard, it is noted that the Commission, in disputed cases, aware of its duty to foster stable and harmonious labor relations in the public sector, has adopted a clear policy of finding broad-based units to be appropriate, rejecting the claims of particular occupations or professions for separate status. [citations omitted].
Camden, supra, at 125.

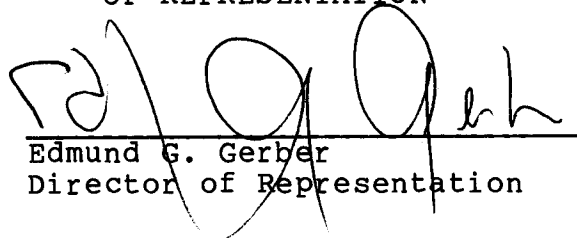
Here, none of the parties alleges that a conflict of interest exists between the employees sought by the Petition and those in Council 10's supervisory unit. Indeed, there are certain significant common interests between the Highway Department supervisors and the larger, county-wide unit of supervisory

employees. All share similar duties and responsibilities with respect to the distribution of assignments, the resolution of grievances and the initiation of disciplinary action. Creating another unit for one department's first-line supervisors would not advance the purposes of efficient and harmonious labor relations, where an appropriate, broad-based, county-wide supervisory unit already exists.

Based upon the Commission's preference for broad-based, employer-wide units, and the existence of such a unit here, we find that the most appropriate unit for the employees who are the subject of the representation petition is Council 10's existing supervisory unit. Accordingly, the Supervisors' Unit's petition is dismissed.

Under the facts presented herein, the existing, non-supervisory unit represented by AFSCME is clarified to exclude the titles of Supervisor, Roads; Assistant Supervisor, Roads; Road Construction Foreman; and Yard Supervisor.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Edmund G. Gerber
Director of Representation

DATED: July 24, 1987
Trenton, New Jersey