

D.R. NO. 88-17

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

In the Matter of

ATLANTIC CITY HOUSING AUTHORITY,

Public Employer-Petitioner,

-and-

Docket No. CU-88-9

AFSCME, COUNCIL 71,

Employee Representative.

Synopsis

The Director of Representation clarifies the existing unit of blue collar employees of the Atlantic City Housing Authority, represented by AFSCME, Council 71, to exclude the Senior Home Service Aide. The Senior Home Service Aide has effectively hired another employee who is a member of the unit; therefore, this employee is a supervisor within the meaning of the Act. The Director further finds no basis to remove Home Service Aides from the blue collar unit. This title is a blue collar title which has a sufficient community of interest with the other employees in the unit to warrant its continued inclusion.

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Appearances:

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

For the Employee Representative
Emanuel Murray, Staff Rep.

DECISION

On September 16, 1987, the Atlantic City Housing Authority ("Housing Authority") filed a Clarification of Unit Petition with the Public Employment Relations Commission ("Commission") seeking to exclude the title Senior Home Service Aide from a bargaining unit represented by AFSCME, Council 71, composed of all blue collar employees of the Atlantic City Housing Authority. On September 25, 1987, the Housing Authority filed an amendment to its petition seeking to further exclude the title of Home Service Aide from the blue collar unit. On October 7, 1987, the Housing Authority filed a statement of position arguing that the inclusion of the Home Service Aides and the Senior Home Service Aide was not in its contemplation

on June 30, 1987, when the Authority entered into a voluntary consent agreement for a representation election. The election was conducted on July 29, 1987 and resulted in the certification, issued on August 6, 1987, of a unit of all blue collar employees of the Atlantic City Housing Authority.

The Housing Authority asserts that the Senior Home Service Aide and the Home Service Aides lack a sufficient community of interest with the other blue collar employees in the unit. The Housing Authority states that they have different supervisors, work hours, uniforms, skill requirements, pay methods, job functions and reporting systems from the other unit members. The Housing Authority further asserts that there is no immediate history of including the Senior Home Service Aide and the Home Service Aides in the blue collar unit and it alleges it never specifically agreed to include such "Homemaker Unit" employees as the Home Service Aides and Senior Home Service Aide in the blue collar unit. Finally, the Housing Authority argued that the Senior Home Service Aide is a supervisory position and should be excluded from the blue collar unit.

AFSCME, Council 71 opposes the Housing Authority's petition and asserts that the Housing Authority failed to make these arguments in the representation proceeding which led to the August 1987 certification of representative. It alleges that the all blue-collar unit is precisely what the parties agreed to. Both + Senior Home Service Aide and the Home Service Aides come withi

blue collar unit definition and are properly included within the unit, even though they were not included in the unit when it was represented by the Teamsters prior to 1987.

We conducted an administrative investigation into the matters and allegations involved in the petition in order to determine the facts. See N.J.A.C. 19:11-2.6(c). Based upon the administrative investigation, we find and determine the following:

1. The disposition of this matter is properly based upon the administrative investigation, inasmuch as the parties have not placed in dispute any substantial and material factual issues which may more appropriately be resolved after an evidentiary hearing, pursuant to N.J.A.C. 19:11-2.6(c).

2. The Atlantic City Housing Authority is a public employer within the meaning of the New Jersey-Employer Employee Relations Act, N.J.S.A. 34:13A-1 et seq., is subject to its provisions and is the employer of the Home Service Aides and the Senior Home Service Aides, the titles at issue in this petition. AFSCME, Council 71 is a public employee organization within the meaning of the Act and is subject to its provisions. AFSCME, Council 71 is presently the exclusive representative for collective negotiations of all blue collar employees of the Atlantic City Housing Authority.

The instant petition seeks to remove Home Service Aides and the Senior Home Service Aide (homemaker unit employees) from the blue collar unit. 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 NJ Dept. of Educ., 64 N.J. 231 (1974) ("Professional Association"), the Supreme Court explained that "due regard" did not mean exclusive reliance upon community of interest factors in unit determinations, but that the interest of the employer and public at large are also relevant factors. There, the Commission, affirmed by the Supreme Court, dismissed a representation petition through which the union sought to represent a narrow unit of registered nurses apart from a broad-based unit of professional employees. Subsequent decisions by the Commission have favored broad-based units and opposed undue unit fragmentation. Absent allegations of specific statutory prohibitions, such as a combined unit of supervisory and non-supervisory personnel, a unit of all blue collar employees of a Housing Authority is prima facie appropriate.

In Bd. of Ed. 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.

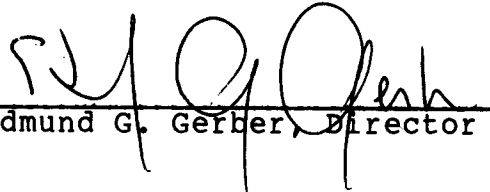
The Housing Authority argues that homemaker unit employees differ from the other blue collar employees of the Atlantic City Housing Authority in that the homemaker unit employees have different supervisors, work hours, uniforms, skill requirements, pay methods, job functions and reporting system. These differences, however, do not rise to the level of a lack of community of interest sufficient to warrant their exclusion from the blue collar unit. Differences necessarily exist between different categories of employees which do not require unit fragmentation where a sufficient community of interest otherwise exists to sustain the broad-based unit. See State v. Prof. Assoc. of NJ Dept. of Educ., supra, 64 N.J. at 231. The Housing Authority entered into a consent agreement for an election among all blue collar employees. Here, the Home Service Aides share a common employer with the other unit members and are blue collar employees of the Atlantic City Housing Authority, as are the other unit members. Moreover, there is no statutory basis for exclusion from the unit with regard to the Home

Service Aides.

The Senior Home Service Aide has effectively hired another employee who is a member of the unit. Therefore, we conclude that this employee is a supervisor within the meaning of the Act.

Accordingly, based upon the foregoing, we clarify the existing unit of blue collar employees employed by the Atlantic City Housing Authority to exclude the Senior Home Service Aide. However, we find no basis to remove the Home Service Aides from the blue collar unit. Thus, that portion of the Housing Authority's petition seeking to clarify the blue collar unit to exclude the Home Service Aides is dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: December 3, 1987
Trenton, New Jersey