

D.R. NO. 91-13

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

In the Matter of

SOUTH BRUNSWICK TOWNSHIP,

Public Employer,

-and-

FMBA LOCAL 90,

Docket No. RO-91-54

Petitioner,

-and-

AFSCME, LOCAL 2242, AFL-CIO,

Incumbent.

SYNOPSIS

The Director of Representation dismisses a representation petition seeking to sever firefighters from their current blue and white collar collective negotiations unit. The Director determined that the majority representative's alleged failure to secure certain benefits for the petitioning employees in negotiations does not meet the severance standard in Jefferson Tp. Bd. of Ed., P.E.R.C. No. 61, NJ Supp 248 (¶61 1971).

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Appearances:

For the Public Employer,
Ruderman & Glickman, attorneys
(Mark S. Ruderman, of counsel)

For the Petitioner
Joseph Pawlak, President

For the Incumbent
Susan Mae Ragland, Staff Rep.

DECISION

On October 1, 1990, the Fireman's Mutual Benevolent Association, Local 90 ("FMBA") filed a petition for certification of public employee representative seeking to represent a collective negotiations unit of three fire prevention inspectors employed by South Brunswick Township ("Township"). The petition was accompanied by an adequate showing of interest.

Fire prevention inspectors are currently included in a unit of blue collar employees and white collar employees represented by

the American Federation of State, County and Municipal Employees, Local 2242 ("AFSCME"). AFSCME has intervened in this matter. N.J.A.C. 19:11-2.7. Both the Township and AFSCME oppose the petition.

On October 23, 1990, the parties attended an investigatory conference where they presented facts and stated their positions. On October 31, 1990, we issued a letter tentatively dismissing the petition and asking for written responses. No responses were filed.

AFSCME has represented the fire prevention inspectors since 1983 in a mixed unit of both firefighters and non-firefighters. The petitioning employees inspect "all non-residential occupancies for compliance with nationally recognized fire prevention standards", review building plans, investigate causes of building fires and inspect multiple housing units. The inspectors are also volunteer firefighters in the Township.

The Township Administrator oversees the fire official and fire prevention inspectors, and the personnel and purchasing departments. The Township negotiates with collective negotiations units of police officers, police superior officers, department of public works employees and white collar supervisors. Most employees, including the inspectors, work in the Municipal Building.

The Township and AFSCME assert that no grievances have been filed by the fire prevention inspectors. The Township asserts that

no other employment concerns of the inspectors have been brought to its attention. AFSCME asserts that no inspector has sought to file a grievance.

The fire prevention inspectors filed a certification asserting that during the last round of negotiations, they informed the AFSCME negotiations committee of their need for on-call pay, a clothing allowance and paid overtime meal periods. The committee stated that it would investigate their concerns. It later reported to the inspectors that they were not required to be on-call. The committee never advised the inspectors about their two other concerns.

The fire prevention inspectors have filed a "severance" petition. In Jefferson Tp. Bd. of Ed., P.E.R.C. No. 61, NJ Supp 248 (¶61 1971), the Commission described its concerns about such petitions:

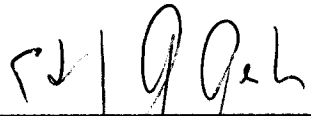
The question is a policy one: Assuming without deciding that a community of interest exists for the unit sought, should that consideration prevail and be permitted to disturb the existing relationship in the absence of a showing that such relationship is unstable or that the incumbent organization has 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 a 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. [Id. at 249].

Severance is appropriate only when there is a record of unstable labor-management relations or when the majority representative has

not responsibly represented its unit employees. The Supreme Court has also determined that firefighters in units containing both firefighters and non-firefighters are not entitled to severance unless the record demonstrates either unstable labor relations or irresponsible representation. State of N.J. and N.J. State FMBA, CWA, and IFPTE Locs. 1037 and 195, P.E.R.C. No. 86-98, 12 NJPER 206 (117081 1986), rev'd 222 N.J. Super. 475 (App. Div. 1988), rev'd and PERC order reinstated sub nom. In re Matters of State, 114 NJ 315 (1989).

We do not believe that severance is warranted. No facts suggest that the negotiations relationship between the Township and AFSCME is unstable nor that AFSCME has failed to responsibly represent the fire prevention inspectors. Although the inspectors may have legitimate negotiations concerns, a majority representative has broad discretion in deciding how to address those matters in collective negotiations. Vaca v. Sipes, 386 U.S. 171, 64 LRRM 2369 (1967). At worst, the facts suggest that the majority representative was impolitic in dealing with the inspectors' concerns during the recent negotiations. Its omissions do not support a finding that the petitioner should be "severed" under the Jefferson Tp. standard. Accordingly, the petition seeks an inappropriate unit and is dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Edmund G. Gerber, Director

DATED: November 16, 1990
Trenton, New Jersey