

D.R. NO. 2000-2

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

In the Matter of

TOWNSHIP OF PENNSAUKEN,

Public Employer,

-and-

Docket No. RO-99-103

IAFF LOCAL 3249,

Petitioner,

-and-

AFSCME COUNCIL 71,

Intervenor.

SYNOPSIS

The Director of Representation dismisses a petition for certification filed by the IAFF seeking to represent a unit of emergency medical technicians (EMTs). The Director found the proposed unit to be inappropriately narrow and would cause unnecessary unit proliferation. The unit sought was defined along occupational lines which runs counter to the Commission's preference for broad-based units. In addition, AFSCME, the majority representative of all other non-supervisory, civilian employees, was willing to represent the EMTs.

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Appearances:

For the Public Employer
Toll, Sullivan, Luthman & Bilotti, attorneys
(David A. Luthman, of counsel)

For the Petitioner
John F. Pilles, Jr., attorney

For the Intervenor
Szaferman, Lakind, Blumstein, Watter & Blader, attorneys
(Sidney H. Lehmann, of counsel)

DECISION

On January 26, 1999, the Camden County Uniformed Fire
Fighters Association, International Association of Fire Fighters,
Local 3249, AFL-CIO (IAFF) filed a timely^{1/} Petition for

^{1/} At the time of the filing of this petition, there was no
current contract in effect. Therefore, pursuant to N.J.A.C.
19:11-2.8, the petition was timely filed.

Certification with the Public Employment Relations Commission (Commission). The IAFF seeks to represent a negotiations unit comprised of four full-time emergency medical technicians (EMTs) employed by the Township of Pennsauken (Township).

On February 16, 1999, the American Federation of State, County and Municipal Employees, Council 71, AFL-CIO (AFSCME) sought to intervene based upon its recent collective agreement covering a broad-based unit of the Township's blue and white collar non-supervisory, civilian employees. I approved the intervention on February 18, 1999. N.J.A.C. 19:11-2.7.

Both AFSCME and the Township oppose the representation petition and refuse to consent to a secret ballot election. AFSCME and the Township maintain that sometime prior to the filing of the petition, they agreed that AFSCME would represent the EMTs as part of its broad-based non-supervisory unit.^{2/}

The Township also asserts that it does not want to be required to negotiate with another unit, especially in light of the fact that the AFSCME unit already exists and is willing and able to represent the EMTs. The Township further argues that the petition seeks an inappropriately small and narrow negotiations unit.

AFSCME contends that it has represented all non-supervisory, non-uniformed employees of the Township in various titles for over 20 years. AFSCME further argues that EMTs have a

^{2/} Neither party asserted a recognition bar pursuant to N.J.A.C. 19:11-2.8.

community of interest with titles it already represents and at least one of the EMTs has been paying dues to AFSCME.

We have conducted an administrative investigation into the petition. N.J.A.C. 19:11-2.2. The parties submitted facts and argument at an investigatory conference on February 17, 1999. On February 23, 1999, the Township submitted additional materials. On February 25 and April 16, 1999, AFSCME filed supplemental information.^{3/}

By letter dated July 14, 1999 I summarized the parties positions and the evidence and advised the parties of my intention to dismiss IAFF's representation petition on the grounds that the unit sought was inappropriately narrow. I provided the parties an additional opportunity to forward evidentiary materials. On July 20, 1999, AFSCME filed a concurrence in support of dismissing the petition. On August 6, 1999, the IAFF filed a supplemental submission. As a result of our administrative investigation, I find the following facts.

^{3/} At IAFF's request, we temporarily suspended processing of its petition to permit the two AFL-CIO organizations to process claimed violations of Articles 20 and 21 of the AFL-CIO Constitution.

To date, we have not been advised that proceedings have been formally initiated before an AFL-CIO umpire. However, on May 21, 1999 IAFF requested us to proceed with its representation petition.

Township employees are represented in four collective negotiations units as follows: (1) the Superior Officers Association represents police superior officers, (2) the Fraternal Order of Police represents rank-and-file police, (3) the Firemen's Mutual Benevolent Association represents paid firefighters and (4) AFSCME which represents all non-supervisory blue and white collar employees.

AFSCME was certified as the majority representative of all non-supervisory blue and white-collar employees of the Township in 1973. It has continuously represented these employees to the present. The unit consists of approximately one hundred employees.

AFSCME's most recent contract with the Township covered the blue and white collar employees for the period July 1, 1994 through December 31, 1997. On February 3, 1999 the Township and AFSCME signed a Memorandum of Agreement for the period of January 1, 1998 through December 31, 2000.^{4/} Article I of the 1994-1997 Agreement recognizes that AFSCME represents all of the titles listed on Schedule A and "any others as the parties may later agree to include." Schedule A, appended to the collective agreement, consists of approximately 70 separate blue and white-collar job titles.

^{4/} The Memorandum of Agreement was signed after the IAFF's representation petition was filed, and hence, cannot bar the processing of the petition under N.J.A.C. 19:11-2.8.

Two job titles listed in Schedule A of the agreement are communications operator and communications operator trainee. These jobs contribute toward the public safety mission of the Township. The communication operators and trainees support and supplement the Township's police and fire departments, and work a 24-hour, 7-day-a-week schedule.

In the fall of 1998, the Township hired four full-time EMTs. Shortly after their hire, the Township and AFSCME agreed to include the EMTs in AFSCME's collective negotiations unit. One EMT, Ms. Judith Ritzinger, was a clerk with the police department and continues to have dues deducted from her pay for AFSCME since becoming an EMT.^{5/}

The EMTs also contribute toward the public safety mission of the Township. Like the communications operators and trainees, the EMTs supplement the Township's police and fire departments, and work a 24-hour, 7-day work schedule. The EMTs also operate municipally owned vehicles and equipment as do truck drivers and other equipment operators already in the AFSCME unit. EMT's receive the same benefits and are paid on the same salary classification guide as AFSCME unit employees.

The FMBA represents the positions of firefighter and ambulance driver. The ambulance driver and the EMTs perform the same duties.

^{5/} There is a question as to whether Ritzinger sought to discontinue her dues to AFSCME. This question need not be resolved to reach my decision to dismiss IAFF's representation petition.

IAFF argues that the EMTs are unrepresented for the purposes of collective negotiations. It contends that AFSCME has not yet specifically negotiated terms and conditions of employment for this title. Moreover, IAFF asserts that the EMTs should have a say in selecting their majority representative and that they more closely share a community of interest with the firefighters represented by the FMBA than anyone else. Therefore, IAFF maintains that the Commission should direct a secret ballot election for a unit of EMTs.

The Township objects to the formation of a small unit based on one title. It considers it unnecessarily burdensome to have to negotiate with the proposed unit, especially in light of the fact that there already exists a broad-based unit represented by AFSCME.

AFSCME maintains that it already represents the EMTs in a broad-based unit it has successfully represented for over 20 years. AFSCME contends that the EMTs have a community of interest with other employees in its unit and are paid on a salary classification paralleling unit employees' schedules already established in its contract.

ANALYSIS

The Commission is charged with determining in each instance the most appropriate collective negotiations unit. N.J.S.A. 34:13A-5.3 and 34:13A-6.6. The Commission favors structuring negotiations units along broad-based lines and has been reluctant to

find appropriate units structured along occupational or departmental lines. The New Jersey Supreme Court first articulated this policy early in the Commission's history in State v. Professional Association of N.J. Dept. of Ed., 64 N.J. 231 (1974). The Court directed that a balance be struck between the rights of public employees to choose a collective negotiations representative and the rights of public employers not to be burdened with undue proliferation of negotiations units. We have often rejected narrowly-defined units where a broad-based unit was available. See, e.g., Jersey City, D.R. No. 84-6, 9 NJPER 556 (¶14231 1983) (unit composed exclusively of sanitary inspectors found inappropriately narrow); NJIT, D.R. No. 88-29, 14 NJPER 148 (¶19060 1988) (narrow unit of security guards rejected where college had consistently maintained broad-based unit structure); Warren Cty., D.R. No. 95-14, 21 NJPER 43 (¶26026 1994) (proposed unit of 15 dispatchers inappropriate); Wall Tp., D.R. No. 94-24, 20 NJPER 209 (¶25101 1994) (proposed unit of six or seven dispatchers inappropriate); E. Windsor Tp., D.R. No. 97-2, 22 NJPER 348 (¶27180 1996), adopted P.E.R.C. No. 97-68, 23 NJPER 51 (¶28035 1996) (proposed unit of four emergency medical technicians found to be inappropriately narrow). Cf. UMDNJ, P.E.R.C. No. 91-2, 16 NJPER 431 (¶21183 1990) (unit of nurses approved); UMDNJ, P.E.R.C. No. 84-28, 9 NJPER 598 (¶14253 1983) (residual faculty unit found appropriate where union twice before disclaimed interest in representing petitioned-for faculty).

In E. Windsor Tp., the Commission upheld the Director of Representation's dismissal of a representation petition seeking to represent four EMTs. There, the Township opposed the petition, asserting that it already negotiated with five different unions and the addition of another negotiations unit would create an administrative burden. It maintained that if the EMTs desired representation, they should be represented by the employee representative certified to represent all other civilian employees in the Township's police department. In upholding the Director's decision, the Commission affirmed the community of interest found to exist with other public safety civilian unit members (which included dispatchers), reiterated its policy favoring broad-based units and found that narrowly defined units of one occupational group to be generally inappropriate.

The facts of the instant case are strikingly similar to those in E. Windsor Tp. The function of the communications operators and trainees, here, are analogous to the dispatchers in E. Windsor Tp. Like the dispatchers and EMTs in E. Windsor Tp., the EMTs, here, share a community of interest with the communications operators and trainees in the AFSCME unit in that they support the public safety mission of the Township, supplement the efforts of the police and fire departments, and provide services on a 24-hour, 7-day-per-week basis. In addition, the EMTs in the case at bar work with municipal vehicles and equipment, and are paid in accordance with the salary schedule contained in AFSCME's contract.

I find no reason in this case to deviate from long-established precedent and Commission policy. Here, the

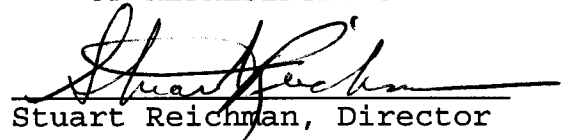
representative of the existing broad-based civilian unit is willing to represent the EMTs. The Township has not waived its right to argue against unit proliferation since the title was recently created, and the Township has not permitted proliferation in the past. Cf. Bergen Pines Hospital, D.R. No. 87-3, 12 NJPER 619 (¶17234 1986) (residual unit of physicians approved; twelfth and final unit of Hospital employees would not lead to significant additional unit fragmentation.) Furthermore, the issue before me is not whether it is more appropriate to include the EMTs in the FMBA unit, but rather whether the IAFF's proposed unit of only EMT's is an appropriate unit.

Under these circumstances, I find that the unit sought by the petition is too narrow in scope and would unduly burden the Township with unit proliferation. I further find that the EMTs share a community of interest with the employees of the AFSCME unit. Accordingly, I dismiss IAFF's representation petition.^{6/}

ORDER

The Petition for Certification is dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Stuart Reichman, Director

DATED: August 26, 1999
Trenton, New Jersey

^{6/} I need not address the issue of whether AFSCME already represents the EMTs nor analyze this case as a severance petition to reach my conclusion.