

D.R. No. 2006-12

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

In the Matter of

CITY OF PATERSON,

Public Employer,

-and-

UNITED PUBLIC SERVICE
EMPLOYEES UNION,

Docket No. RO-2006-031

Petitioner,

-and-

AFSCME COUNCIL 52, LOCAL 2272,

Intervenor.

SYNOPSIS

The Director of Representation orders an election among employees in an existing unit of telecommunications operators and fire alarm operators employed by the City of Paterson. Although the incumbent representative disputes the size of the petitioned-for unit as compared with the historical unit, the Director is satisfied that the Petitioner is seeking an election in the existing unit and that the showing of interest is adequate to support the Petition. Accordingly, there is no basis to delay an election.

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Appearances:

For the Respondent,
Ruderman & Glickman, attorneys
(Steven S. Glickman, of counsel)

For the Petitioner,
Richard M. Greenspan, attorney
(Eric LaRuffa, of counsel)

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

DECISION AND DIRECTION OF ELECTION

On October 13, 2005, United Public Service Employees Union (UPSEU) filed a timely representation petition seeking a unit of "[a]ll public safety communications operators, police division and public safety communications operators and fire division dispatchers set forth in and covered by the agreement between the

City of Paterson and AFSCME Local 2272, Council 52." On November 2, 2005, AFSCME Council 52, Local 2272 (AFSCME) intervened in the representation petition based upon its most recent collective negotiations agreement with the City of Paterson (City), covering these employees for the period from July 1, 1999 through June 30, 2003.

AFSCME does not consent to an election. It disputes the scope of the historical unit as well as the number of unit employees estimated on the petition.^{1/}

We have conducted an administrative investigation into the petition. N.J.A.C. 19:11-2.2. Based upon our investigation, the following facts appear:

On July 24, 1986, the Commission conducted an election among approximately 51 public safety communications operators then represented by CSA Council 3 and fire alarm operators then represented by AFSCME (RO 86-128).^{2/}

1/ AFSCME initially also asserted a contract bar to the petition due to recently concluded negotiations between AFSCME and the City, but did not pursue this argument.

2/ Commission records indicate that, at the time the representation petition was being processed, the parties contemplated merging the two subject titles into one entitled public safety communications operator, pursuant to ordinance of the City of Paterson. However, the then-Director of Representation determined that this issue was not properly included in a consent agreement for a unit of existing titles, but should be resolved by the parties after the election.

On August 1, 1986, the Commission certified AFSCME, AFL-CIO, Local 2272 as the majority representative of "all police dispatchers and fire alarm operators employed by the City of Paterson."

On October 13, 2005, UPSEU filed the within representation petition. The number of unit employees the Petitioner estimated to be in the unit was listed as sixty-five, and was supported by an adequate showing of interest. After one adjournment at AFSCME's request, a Commission staff agent conducted an investigatory conference on November 14, 2005. The City did not provide a pre-conference eligibility list or certification that the Notice to Public Employees was posted.^{3/} Therefore, for purposes of the conference, the showing of interest in support was presumed adequate.

At the investigatory conference, AFSCME challenged UPSEU's estimate of the number of unit employees listed on the petition, asserting that it had received a computer generated dues deduction list from the City on September 8, 2005, containing 31 names.

AFSCME indicated that of the 31 names of employees on its dues list, 21 employees were in the telecommunicators/dispatch unit, and the remaining 10 were represented in another

^{3/} Subsequently, on December 29, 2005, the City provided a Certification that the Notice was posted on December 22, 2005.

unspecified AFSCME unit. Moreover, all 31 names had been designated as "Parks" employees by the City. AFSCME asserted that due to the discrepancy between the number of employees estimated on the petition (65) and AFSCME's understanding of the size of the unit based upon its September 8 dues list (21), a significant number of challenges could be raised preventing a valid election. AFSCME requested further Commission investigation of the scope of the historical bargaining unit.

AFSCME was directed to submit a supplemental written petition and/or documentation in support of its assertions by no later than November 17, 2005. A follow-up telephone conference call was scheduled for November 21.

On November 15, 2005, the City submitted a two-page eligibility list containing 51 names. The list contained abbreviated titles which seemed to represent public safety telecommunicator operator trainees, public safety senior telecommunicator operators, communications operators, and senior communications operators. The showing of interest was checked against the revised list and found to be adequate. The staff agent contacted the City's counsel to discuss possible reasons for the difference in the City's list versus AFSCME's and UPSEU's estimates of the number of unit employees.

On November 18, AFSCME submitted its supplemental position reiterating the arguments concerning the estimated number of employees it raised at the investigatory conference. AFSCME

suggested that, based upon the dues deduction list, the petitioned-for unit might not be the same as what AFSCME had represented, or that UPSEU may have assumed that City employees were in the unit when in fact these employees were in other units represented by AFSCME. AFSCME again requested that the Commission continue to investigate the size and appropriateness of the petitioned-for unit.

On November 21, 2005, the City submitted a second revised eligibility list containing 72 names. The second list was dated November 1, 2005, and was identical to the first, two page list but contained a third page with 21 additional names. The third page also contained abbreviated titles which appeared to represent fire alarm operators, public safety senior telecommunications operators, fire alarm operators, and a senior clerk, who had not been included on the first list. The showing of interest was again checked and found to be adequate. That list was submitted to both organizations for their review.

During a telephone conference call among representatives of the City, AFSCME, UPSEU, and the staff agent on November 22, the City's counsel represented that the revised list constituted a complete and accurate representation of the employees in the unit historically represented by AFSCME. AFSCME continued to object to an election based upon its concerns about the scope of the unit and the accuracy of the employer's list. AFSCME was

directed to submit any further arguments in support of its position by November 28, 2005.

On November 28, AFSCME submitted additional arguments. AFSCME asserted that at least 41 of the names on the list the City submitted on November 21 did not appear on the dues deduction list it provided to AFSCME on September 8. Further, it noted that 21 of the employees named on the City's revised list had been hired in 2005, raising further questions concerning the accuracy of the list. It noted that the City's revised list contained the title of senior clerk, which it asserted was not a title within the subject negotiations unit. AFSCME again requested further investigation and analysis by the Commission concerning the size and scope of the historical unit.

On December 7, the staff agent wrote to the parties requesting the following information: each party's position on the titles included in the historical unit, whether part-time employees are included, and clarification of the meaning of the abbreviated titles on the eligibility list. AFSCME also requested to identify its other bargaining units within the City along with the scope of each.

Attached to the letter were two documents prepared by the staff agent. The first listed the following titles referenced in the collective agreement between AFSCME and the City and their location:

public safety fire and police communications operators
(cover page);

public safety communications operators - police division
(page 5);

public safety communications operators - division of fire
(page 5);

senior communications operators (page 6B);

communications operators (page 6B);

fire alarm operators (page 6B);

police dispatchers (page 6C),

Communications Operators certified for EMD and 911 (page
6D);

senior communications operators - police division (page 8);

police communications operators (page 12B) and

fire communications operators (page 12B).

The second document listed the abbreviated titles included
on the employer's November 21 list, along with their likely
translation and the employees listed for each title. The titles
were:

P S Tel Comm Opr Tra (Public Safety Telecommunicator
Operator Trainee) - 31 employees;

P S Sr Tel Comm Opr (Public Safety Senior
Telecommunicator Operator) - 9 employees;

P S Telecommunicator (Public Safety Telecommunicator) -
2 employees;

Communications Opr (Communications Operator) - 3
employees;

Senior Comm Oper (Senior Communications Operator) - 1
employee;

P S Tel Comm Oper PE - 11 employees; Fire Alarm Oper
(Fire Alarm Operator)- 14 employees; and

Senior Clerk - 1 employee.

The document noted that, of the preceding titles, public safety telecommunicator operator trainee, public safety senior telecommunicator operator, "P.S. tel comm oper PE" and senior clerk did not appear to be referenced in the collective agreement between AFSCME and the City.

The parties were directed to provide the requested information by no later than Friday, December 16, 2005.

On December 16, AFSCME submitted a response to the staff agent's December 7 letter. AFSCME provided copies of the recognition clauses from other bargaining units it represents in the City of Paterson, but did not provide any further information concerning titles in the historical unit.

By letter dated December 29, 2005, the City asserted that the following titles are included in the bargaining unit: public safety telecommunications operator trainee; public safety telecommunications operator; public safety senior telecommunications operator; communications operator; senior communications operator; fire alarm operator; and senior clerk. Additionally, the City explained, the designation "PE" following some titles identified the individual in that title as a permanent employee. UPSEU did not submit a response.

By letter dated February 10, 2006, we advised the parties that we were satisfied that the Petition is adequately supported by a showing of interest, that the UPSEU seeks to represent the historical telecommunicators/dispatch unit covered by AFSCME's

contract, and that we intend to direct an election among the petitioned-for employees. AFSCME responded by letter of February 22, 2006, raising the same concerns about the lack of clarity of the size and scope of the unit, and objecting to our proposed inclusion of the title senior clerk in the unit, pointing out that senior clerks are neither part of the historical unit nor part of the petitioned-for unit.

ANALYSIS

N.J.A.C. 19:11-2.6(3) ("Investigation of petition; disposition") empowers the Director of Representation to:

Issue a decision directing an election in an appropriate unit, if it appears to the Director of Representation that there is reasonable cause to believe that a valid question concerning representation exists in an appropriate unit and that an election reflecting the free choice of the employees in the appropriate unit will effectuate the policies of the Act.

While the cover page of the most recent collective agreement between AFSCME and the City indicates that the unit consists of "public safety fire and police communications operators", the recognition clause does not specify the scope of the unit, and the agreement contains no list specifying the titles included. However, several titles are mentioned and incorporated by reference in the agreement.

On August 19, 1986, the Commission certified a unit of "all police dispatchers and fire alarm operators employed by the City of Paterson." It is unclear whether all of the titles on the

November 21 eligibility list are specifically referenced in the most recent collective agreement between AFSCME and the City; however, the titles mentioned in that agreement, and set forth by the City in its December 29 letter, are arguably consistent with that unit definition. Therefore, I find that the employee list submitted by the City reasonably reflects the historical unit, with the exception of the senior clerk(s), which will be discussed below.

Here, only the incumbent disputes the scope of the unit. Accordingly, I see no reason not to proceed with an election forthwith. Although some confusion may remain concerning which titles are specifically included in the unit, to proceed with a hearing now to clarify that issue would cause undue delay in employee choice. An election now will preserve the employees' free choice of their majority representative.

Accordingly, based upon the above facts and analysis, I order that an election be conducted among employees in the following appropriate unit:

Included: All public safety telecommunications operator trainees; public safety telecommunications operators; public safety senior telecommunications operators; communications operators; senior communications operators; and fire alarm operators employed by the City of Paterson.

Excluded: Managerial executives, confidential employees and supervisors within the meaning of the Act; professional employees, police employees, casual employees, and all other employees of the City of Paterson.

The Petitioner has not petitioned for clerks, nor does the existing telecommunicators unit include clerks, and in fact, clerical employees may be represented separately in another AFSCME unit. Accordingly, we will not expand the existing unit to clerks.

ORDER

I order an election among the employees in the unit described above to determine whether they wish to be represented by UPSEU, or by AFSCME Local 2272, Council 52, AFL-CIO, or by no employee representative.

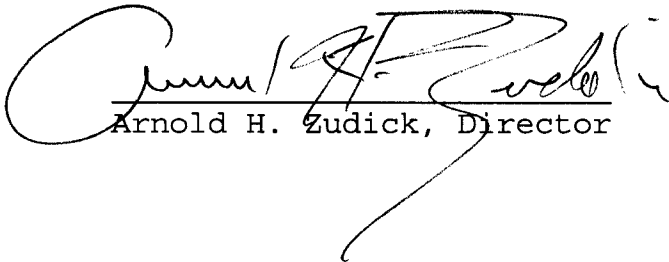
The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, including those in the military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who resigned or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

Pursuant to N.J.A.C. 19:11-10.1, the public employer is directed to file with us an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the unit described above, together with their last known mailing

addresses and job titles. In order to be timely filed, the eligibility list must be received by us no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously provided to both employee organizations with a statement of service filed with us. We shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

The exclusive representative, if any, shall be determined by a majority of the valid votes cast in the election. The election shall be conducted in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Arnold H. Zudick, Director

DATED: March 9, 2006
Trenton, New Jersey

A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3.

Any request for review is due by March 22, 2006.