

D.R. No. 2007-10

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

In the Matter of

COUNTY OF GLOUCESTER,

Public Employer/Petitioner,

-and-

Docket No. CU-2007-005

CWA LOCAL 1085,

Employee Representative.

SYNOPSIS

The Director of Representation dismisses a clarification of unit petition filed by Gloucester County seeking to add employees formerly employed by the now abolished Gloucester County Board of Social Services and now employed by the County into other established County units. Local 1085 which represented the Board of Social Services employees and also represents employees in the County units at issue herein, opposed the petition arguing legal and factual reasons to keep the former Board employees in units separate from the established County units it represents. The Director held that based upon factual differences between many of the former Board titles and titles in the existing County units, and upon legal precedent, Local 1085 was entitled to represent the former Board employees in these separate units within the County system.

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Appearances:

For the Public Employer/Petitioner,  
Brown & Connery, attorneys  
(William Tambussi, of counsel)

For the Employee Representative,  
Richard A. Dann, President, CWA Local 1085

DECISION

On July 20, 2006, Gloucester County filed a Unit Clarification Petition seeking to merge negotiations units of the former Gloucester County Board of Social Services into other County employee units. All of the units are represented by CWA Local 1085.

Local 1085 opposes the petition. It reasons that the negotiations units the County asks to consolidate have significant bargaining histories, making consolidation inappropriate.

We have conducted an administrative investigation into this matter to determine the facts. N.J.A.C. 19:1-2.2. By letter

dated January 26, 2007, I advised the parties of my tentative findings and conclusions and invited responses. Neither party filed additional submissions. The disposition of the petition is properly based upon our administrative investigation. There are no substantial material facts in dispute which would require convening an evidentiary hearing. N.J.A.C. 19:11-2.2 and 2.6. Based upon the administrative investigation, I find the following facts:

Local 1085 had a collective negotiations agreement with the Social Services Board covering a rank-and-file employee unit and a separate supervisors unit for the period January 1, 2004 through December 31, 2006. There are about 160 Social Services employees between the two units. Local 1085 also had a multi-employer agreement for 2004-2006 with the County Board of Chosen Freeholders, the County Clerk, the Surrogate and the Sheriff. That agreement covers approximately 900 employees in the following units:

(a) Blue-collar and white-collar non-supervisory personnel employed by the Gloucester County Board of Freeholders. This unit is comprised of approximately 704 employees;

(b) Employees of the Gloucester County Row Officers (County Clerk, Sheriff, and Surrogate). This multi-employer unit consists of approximately 41 employees;

(c) Supervisory personnel employed by the Gloucester County Board of Freeholders. This unit is comprised of approximately 43 employees;

(d) Mosquito control employees.

The rank-and-file employees formerly employed by the Social Services Board have been represented by Local 1085 since November 1972; there are approximately 130 employees in that unit. The former Board's approximately 21 supervisors have been represented by Local 1085 since July 25, 1983.<sup>1/</sup>

In addition to the units covered in the County contract as outlined above, beginning in 1980, CWA has also represented two other units of County employees:

(1) Support employees of the Gloucester County Prosecutor. This unit is comprised of approximately 45 employees; and

(2) Employees of the Gloucester County Improvement Authority who work at the Shady Lane Nursing Home. This unit is comprised of approximately 78 employees.

The Mosquito Control employees, now part of the County contract, were employed by the Gloucester County Mosquito Commission and represented by CWA since 1980. After the County abolished the Mosquito Commission on December 31, 1989, the County assumed responsibility for mosquito control and became the

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<sup>1/</sup> There is also a negotiations unit comprised of higher-level supervisors which is represented by the International Brotherhood of Teamsters that is not included within the scope of the County's petition.

employer of the former Mosquito Commission personnel. The County continued to recognize Local 1085 as the majority representative of Mosquito Control employees, separate from the other County negotiations units, until CWA indicated in 2005 that it wished to consolidate the Mosquito unit with its main blue and white-collar unit.

The Board and County units have different bargaining histories and contract terms. For example, the County contract covers a much wider range of employee titles - approximately 584 - while the Board contract contains only about 53 titles. There are some clerical titles that overlap in both agreements; however, there are other titles unique to the Board contract, such as child support worker, human services specialist, social worker and investigator county welfare agency. The record indicates that 81 of the 130 rank-and-file social services employees have job titles that are unique to social services employees - that is, they do not overlap titles held by other County employees. Of the 18 supervisors formerly employed by the Board, 13 are in titles that do not overlap with other County employees.

There are also some differences in the terms of the Board and County agreements. Although the medical insurance, vacation and sick leave entitlement provisions are virtually identical, the Board contract provides more personal days, greater

flexibility regarding work schedules, broader bereavement leave coverage, as well as a higher cap on tuition reimbursements and payments for unused sick leave upon retirement. The grievance procedures in the two agreements also differ.

Salary ranges in the Board agreement have eight steps, with a 35% spread between the minimum and the maximum. By comparison, salary ranges in the County contract have ten steps, with a 27% spread between the minimum and maximum. Except for certain lower-paid titles such as clerk typist, job titles in the Board contract tend to have higher salary ranges than comparable titles in the County contract. Finally, both contracts provide for longevity bonuses, although the amounts differ.

In 2006, the County decided to abolish the County Board of Social Services and employ those employees directly, effective January 1, 2007. On that date, Board employees joined approximately 65 other County employees currently employed in the Department of Human Services, to form the new Department of Human and Social Services "DHSS". The current County Department of Human Services employees and the incoming Board employees will ultimately report to the soon-to-be hired Director of the new DHSS. It is the County's preference to place former Board employees on the County health insurance plan and allow them to participate in the County Section 125 flexible spending account plan. Further, the employment of the absorbed employees will be

governed by the terms of the County personnel policy and they will have access to the County Employee Assistance Program.

Given the reorganization, the County filed the instant petition seeking to merge the Social Services employees into the existing County negotiations units. The County argues that the former Social Services Board employees will have the same employer, share the same employment structure and share a fundamental community of interest. Additionally, the County maintains that as Local 1085 represents both the Social Services and County units, the merger will not eliminate the Social Services employees' freely chosen majority representative. At the conclusion of the units' merger, the County argues, Local 1085 will continue to represent Social Services employees albeit in one consolidated negotiations unit.

Local 1085 opposes the County's proposed consolidation of the units, claiming that the elected officers and negotiating committee members of the Social Services units wish to retain their existing negotiations unit. According to Local 1085, nine other New Jersey counties have eliminated their autonomous Board of Social Services, as Gloucester intends to do, and operate under the County; yet in each case, the former Board employee units continue to exist separately from the other County units.

Both the Board and County labor agreements expired on December 31, 2006. Local 1085 has notified the employees of its

intention to commence negotiations for each unit pursuant to N.J.S.A. 19:12-2.1(a).

#### ANALYSIS

The County argues that the Board employees should be merged into the County-wide units; unit consolidation is appropriate because the former Board and current County employees will share the same employer, employment structure and goals; thus, they will share a community of interest.

It is the statutory responsibility of the Commission to decide "in each instance which unit of employees is appropriate for collective negotiations". N.J.S.A. 34:13A-6d(3). See State of New Jersey and Prof. Assn. of NJ Dept. of Educ., 64 N.J. 231 (1974). The Commission must also define the negotiations unit "with due regard for the community of interest among the employees concerned." N.J.S.A. 34:13A-5.3. See W. Milford Bd. of Ed., P.E.R.C. No. 56, NJPER Supp. 218 (¶56 1971).

In State of New Jersey (Professional Ass'n), the Supreme Court endorsed the Commission's policy favoring broad-based, employer-wide, functional negotiations units. Id. at 241, quoting In re State of New Jersey (State Nurses Ass'n), P.E.R.C. No. 68, NJPER Supp. 273 (¶68 1972) at 275. However, the Commission has also made it clear that broad-based units are not preferred in every case, especially when a stable, viable long-



standing unit structure already exists. Englewood Bd. of Ed., P.E.R.C. No. 82-25, 7 NJPER 516 (¶12229 1981).

We recognize that there are many situations which call for us to re-examine the appropriateness of existing bargaining units and proposed consolidation of units. Since Englewood, for instance, the Commission has repeatedly been asked to consider consolidation of educational support staff units with each other and with teacher units.<sup>2/</sup> And, less frequently, employers consolidate or regionalize operations, leading to a re-examination of the appropriate unit. School District of the Chathams, D.R. No. 89-2, 14 NJPER 525 (¶19223 1988) [consolidation of support staff of two previously separate districts into a single unit.] While we consider whether a community of interest exists between the groups to be consolidated, that is not the only factor. We also consider the history of representation of the respective units, whether the incumbent representatives are different organizations and whether the organizations seek to preserve their units, negotiated differences in their terms and conditions of employment, and whether the proposed combined entity is virtually required because the employees have functionally been so intermingled that

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2/ See Bordentown Reg. Bd. of Ed., P.E.R.C. No. 84-126, 10 NJPER 276 (¶15136 1984), aff'd 11 NJPER 337 (¶16122 App. Div. 1985); Piscataway Bd. of Ed., P.E.R.C. No. 84-124, 10 NJPER 272 (¶15134 1984); Ridgefield Bd. of Ed., P.E.R.C. No. 85-103, 11 NJPER 281 (¶16102 1985).

their separate identities are lost. We also consider whether the maintenance of separate units will interfere with the employer's ability to run its operations effectively.

In Englewood, the Commission refused to order the proposed consolidation of longstanding separate units of school board teachers, aides, secretaries, and custodial employees into one unit, finding that consolidation was inappropriate where there was a 12-year bargaining history between the school board and separate units, and there were no claims of a lack of stability or effective representation. The Commission explained:

This instant proceeding does not involve a de novo unit determination, nor an addition of unrepresented employees into an existing unit. Rather, the Commission must decide whether to permit a new unit configuration solely through election procedures in the face of an existing appropriate unit structure. In this instance the unit was created through Certification, and a successful negotiating relationship has existed for a period of twelve years; absent any compelling circumstances or justification other than that the petition on its face may constitute an appropriate unit which is broader in scope, we find no basis for disturbing the existing unit structure. [7 NJPER 519]

Relying in part on Englewood, the then-Director of Representation declined to order consolidation of negotiations units in a situation parallel to the present case. See County of Sussex, D.R. No. 91-11, 16 NJPER 572 (¶21251 1990). There, the County abolished its Welfare Board and assumed the role of

employer, just as Gloucester County intends to do with its Board of Social Services. As in the present case, Sussex County sought to consolidate the Welfare employees into the existing County-wide unit, arguing that they shared a community of interest with those employees, since they were now part of the County employment structure and had similar titles and job functions.

The then-Director, however, disagreed and wrote:

The Commission has consistently held that, absent agreement by the incumbent representative to a consolidation of its existing unit into another unit, negotiations units with long and stable negotiations histories will not normally be disturbed if their separate identities can be maintained. See Passaic County, P.E.R.C. No. 87-123, 13 NJPER 298 (¶18125 1987) and Englewood Bd. of Ed., P.E.R.C. No. 82-25, 7 NJPER 516 (¶12229 1981).

In the present representation matter, CWA does not seek to consolidate the Welfare employees with the County-wide unit at this time. Further, based upon the record in the interim relief proceeding, it appears Welfare employees enjoy a community of interest among themselves as well as a long and stable history of negotiations in a separate unit.

[16 NJPER 573]

Similarly, in Passaic County, P.E.R.C. No. 87-123, 13 NJPER 298 (¶18125 1987), recon. den. 13 NJPER 483 (¶18179 1987), the Commission refused to consolidate a separate unit of bridge department employees into a County-wide unit of all blue-collar public works department employees, upon the County's abolition of its bridge department. The Commission explained:

The record indicates that the former bridge department employees have certain skills beyond those of laborers. However, our Supreme Court has approved our policy of favoring broad-based units and rejecting claims for units organized along occupational or departmental lines. State and Professional Ass'n of N.J. Dept. of Ed., 64 N.J. 231 (1974). Thus, absent other factors, we would not certify a separate unit merely because the employees had traditional trade skills.

Here, however, the skilled bridge department employees were excluded from the original unit of blue collar employees. They then organized separately and have had a five year history of separate representation. The Hearing Examiner found that this history does not compel continuation in a separate unit because the bridge department is no longer a distinguishable group. While we agree that the history of separate organization must be weighed against the rationale for broad-based units, under the facts of this case we disagree with her conclusion.

We have found that the duties of the bridge department employees have not changed. What has changed are their titles and their line of supervision. Because separate representation will not interfere with the County's ability to effectuate its main rationale for reorganization -- the reorganization of supervision -- we find, under these facts, that a separate SEIU unit of employees who work on bridges and repair storm drains remains appropriate. [13 NJPER 300-301]

In the Passaic, Englewood and Sussex cases, there were long histories of separate units, and each incumbent organization objected to the unit consolidation. I note however, that Passaic, Englewood and Sussex all involved situations where the

group to be accreted and the broad-based unit were represented by different organizations. While CWA Local 1085 objects to the consolidation of its units, there is no risk to its status as the bargaining agent of the employees, whether they are in a consolidated unit or separate units.

On the other hand, like Passaic and Sussex, here the Social Services employees unit appears to continue to be a separate identifiable group. While the Social Services administrative support employees may have titles and functions in common with other County employees, a majority of the employees have titles that are unique to social services. It is unlikely, therefore, that the jobs of the former Social Services employees' will be fungible with those of other County jobs, thus blurring their unit identity with other county workers.<sup>3/</sup> Additionally, like Passaic, the employer here has not presented any facts which would demonstrate that continued separate units for the social services employees will interfere with its ability to effectuate its main rationale for reorganization -- common supervision. While the County may seek to match up the new employees' health benefits or other terms and conditions of employment with other County units, there is nothing prohibiting the parties from

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<sup>3/</sup> Compare this situation to the regionalization of a school district where teachers from separate schools would more likely become an integrated workforce and their separate unit identities would necessarily be lost.

placing those issues on the table during negotiations for a successor agreement.

Based on the above, I will not consolidate the Social Services employees into the County-wide units. The Board units have been represented by Local 1085 for over 20 years; specifically, Local 1085 has represented the Board rank-and-file unit since 1972 and the Board supervisory unit since 1983. Further, there has been a long and stable history of negotiations in both Board units, and the negotiations for these units have always been conducted separately from the County units. In addition, there is no claim of a lack of stability or effective representation. See Englewood Bd. of Ed. Moreover, while the Board will no longer exist, the distinct duties performed by the Board unit employees will continue to be performed and their separate identities will remain. Accordingly, I find these Board employees share a community of interest among themselves. See Sussex County and Passaic County. Finally, retaining the current units will not interfere with the County's right to reorganize and operate a different management structure, employing the Social Services employees directly. Passaic County.

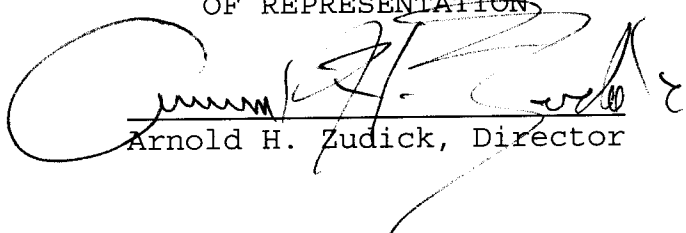
The County argues that unlike Sussex County and Passaic County, its employees will not lose the majority representative of their own choosing after the merger. Local 1085 would still represent the Board employees, but in a consolidated, broad-based

unit. However, Sussex County and Passaic County make clear that the decision whether to consolidate negotiations units cannot be foisted upon an incumbent representative with a long and stable negotiations history if the unit's separate identity can be maintained. Just as the Gloucester County Mosquito Commission employees were permitted to remain in a separate bargaining unit represented by Local 1085 after the County abolished the Mosquito Commission and until Local 1085 agreed to consolidate them into the main blue and white collar County unit, I will not force the Social Services employee units to merge into the County unit and disturb the existing unit structures and the way in which Local 1085 has collectively negotiated for over thirty (30) years. Therefore, I dismiss the County's Petition to merge negotiations units of the former Gloucester County Board of Social Services into other County employee units.

ORDER

The County's Petition for Unit Clarification is dismissed.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION



Arnold H. Zudick, Director

DATED: February 16, 2007  
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 February 27, 2007.