

D.R. No. 2011-4

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

In the Matter of

COUNTY OF MONMOUTH,

Public Employer,

-and-

TEAMSTERS LOCAL 701,

Docket No. RO-2010-056

Petitioner,

-and-

CWA LOCAL 1038,

Employee Representative.

SYNOPSIS

The Director of Representation dismisses a petition filed by Teamsters Local 701 seeking certification of a negotiations unit of "all mail clerks employed by the County of Monmouth." The Director found that there was an insufficient basis upon which to conclude that the County had previously voluntarily recognized the mail clerks as part of a broad-based blue collar unit represented by CWA Local 1038, who intervened on the petition, and that the petitioned-for unit was nevertheless an inappropriately narrow negotiations unit.

The Director stated that if after a reasonable period of time CWA Local 1038 does not file a timely representation petition to accrete the mail clerks into its blue collar unit or otherwise achieve representation of the mail clerks through recognition, Teamsters Local 701 may file another petition seeking to represent the mail clerks and the Director will reconsider the appropriateness of the petitioned-for unit at that time.

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Appearances:

For the Public Employer,
Steven W. Kleinman, Special County Counsel

For the Petitioner,
Cohen, Leder, Montalbano & Grossman, attorneys
(Paul A. Montalbano, of counsel)

For the Employee Representative,
Barry D. Isanuk, attorney

DECISION

On February 3, 2010, Teamsters Local 701 (Local 701) filed a representation petition seeking certification of a negotiations unit of "all mail clerks employed by the County of Monmouth" (County). The petition was supported by signed and dated authorization cards from a majority of employees in the proposed unit. The County opposes the petition, contending that in 2008 the mail clerks were recognized as part of a broad-based blue

the mail clerks were recognized as part of a broad-based blue collar unit represented by CWA Local 1038 (Local 1038).^{1/} The County argues that if the Commission determines that the mail clerks are not already included in the blue collar unit, the petitioned-for unit is inappropriate because the mail clerks share a community of interest with the titles in the blue collar unit.

We have conducted an administrative investigation into this matter to determine the facts. N.J.A.C. 19:1-2.2. By letter dated October 1, 2010, 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 make the following:

The County employs five people holding the title of mail clerk or senior mail clerk. Their job descriptions are virtually identical. Each title generally requires the delivering,

^{1/} The majority representative of the Monmouth County blue collar unit was previously CWA Local 1034, until CWA Local 1034 was divided into two separate locals and renamed, CWA Local 1036 and CWA Local 1038. The Monmouth County blue collar unit is represented by CWA Local 1038. We regard Local 1038's Counsel's April 13, 2010 letter to us, together with a copy of Local 1038's 2007-2010 collective agreement with the County as a request to intervene in this matter. N.J.A.C. 19:11-2.7.

receiving, sorting, distributing, and preparing of mail. The mail clerk and senior mail clerk titles have existed for more than 20 years. The mail clerks do not work in the same building as the blue collar employees represented by Local 1038, but they deliver mail to the buildings and grounds building and interact with the employees in that building while performing that task. The mail clerks have a different immediate supervisor than the employees in the blue collar unit, but they share third and fourth tier supervisors with the unit employees who work in the Division of Buildings and Grounds. The shared third tier supervisor is Robert Lahey, Superintendent of Buildings and Grounds. The shared fourth tier supervisor is William Wood, Director of the Department of Administrative Services and Public Safety. All are ultimately overseen by the County Administrator, Teri O'Connor.

The mail clerks, and most of the employees in the blue collar unit, work eight hours per day, Monday through Friday, with start times that are staggered between 6 a.m. and 8 a.m. All receive a 30 minute unpaid lunch period and two 15 minute paid breaks.

The annual salaries of the employees in the blue collar unit range from \$26,000 to \$57,600. They receive overtime compensation at the rate of time and one half pay for all hours worked in excess of eight hours per day or 40 hours per week. The mail clerks' annual salaries range from \$20,600 to \$34,041.

They do not receive compensation for hours worked in excess of eight hours per day or 40 hours per week; they are instead credited with "flex time" (time off that can be used later) for the additional hours worked.

The mail clerks receive many of the same fringe benefits as the blue collar employees. These include vacation time, sick time, holidays, health insurance, life insurance, bereavement leave, jury duty leave, military leave, prescription drug coverage, inclusion in the state pension plan, and eligibility to participate in a deferred compensation plan.

Some entry blue collar titles, such as building maintenance worker, groundskeeper, and security guard require minimal or no education and experience. Some titles require specialized training and skills such as plumber, carpenter, and electrician. The mail clerk title requires minimal or no education and experience, but applicants must first pass an exam issued by the New Jersey Civil Service Commission.

The blue collar employees wear uniforms, including shirts bearing the County logo and OSHA-compliant footwear, which the County provides pursuant to the collective negotiations agreement it signed with Local 1038. The employees are responsible for purchasing all other necessary clothing. The mail clerks do not wear uniforms.

The collective negotiations agreement signed by Local 1038 and the County for the blue collar unit extends from January 1,

2007 through December 31, 2010. The agreement was signed in 2007. The parties have not begun negotiations for a successor agreement. The recognition provision specifies that the unit includes 46 titles in the following divisions: highway, public buildings and grounds, traffic safety/engineering, central motor pool, bridge maintenance department, and shade tree. Excluded from the unit are managerial executives, confidential employees, supervisors, professional employees, police, clerical employees, and all others.

In 2008, the County purportedly "recognized" the mail clerks as part of the blue collar unit after Local 1038 submitted signed authorization cards from a majority of six employees then-working in the titles of mail clerk and senior mail clerk. Mid-contract negotiations commenced between the County and Local 1038 concerning mail clerks' terms and conditions of employment but the parties never reached an agreement. No contemporaneous document has been filed indicating the County's recognition of Local 1038 or CWA as the majority representative of mail clerks. Nor has any document been filed indicating the status of negotiations over the mail clerks' terms and conditions of employment. The County has neither collected union dues nor deducted agency fees from the mail clerks to remit to Local 1038.

Local 1038 has filed a letter advising that the County has already recognized the mail clerks as part of its blue collar unit and expressing its continued interest in representing them.

ANALYSIS

The County and CWA assert that the mail clerks were recognized as part of the unit, based upon the submitted authorization cards. Local 701 argues that the clerks were never included in the broad-based blue collar unit represented by CWA.

A negotiations relationship protected under our Act may arise even in the absence of a certification of election results or a formal recognition. N.J.A.C. 19:11-3.1. Although certification or full compliance with N.J.A.C. 19:11-3.1 provides a majority representative certain benefits, the absence of that entitlement does not expose an organization to unfair practices if a negotiations relationship otherwise exists. We so held in Salem City Bd. of Ed., P.E.R.C. No. 81-6, 6 NJPER 371, 372

(¶11190 1980):

These same preconditions [N.J.A.C. 19:11-3.1] do not necessarily have to be met before a negotiations obligation arises between a public employer and an employee organization which does represent a majority of the employees in an appropriate unit. Such an organization may have the right to negotiate but only so long as it can satisfy the employer that it represents a majority of the employees in the unit.

See also, New Jersey Transit Bus Operations, Inc., P.E.R.C. No. 86-21, 11 NJPER 520 (¶16182 1985); Atlantic Cty. Sewerage Auth., P.E.R.C. No. 81-91, 7 NJPER 99 (¶12041 1981). Additionally, in PBA Local 53 v. Town of Montclair, 131 N.J. Super. 505 (App. Div. 1974), vacated and remanded, 70 N.J. 130 (1976), the Appellate

Division held that an employee group could gain de facto status as a majority representative.^{2/} The holding of these cases accords with the holdings under the Labor-Management Relations Act, 29 U.S.C. §141 et seq. ("LMRA") that recognition need not be formal and may be inferred from conduct and circumstances.^{3/} See Morris, Developing Labor Law, (2nd Ed. 1983) at 507 (American Bar Association, Section of Labor and Employment Law); Employment Co-ordinator, ¶LR-26,604 (RNA); Laclede Cab Co., 236 NLRB 206, 98 LRRM 1426 (1978).

The County may have granted recognition to Local 1038 as the majority representative of mail clerks at some unspecified time in 2008. The facts indicate that the mail clerks have not received any contractual benefits and have not paid agency fees or membership dues to Local 1038. For purposes of this decision, I find that Local 701's petition is timely-filed because there is insufficient basis upon which to conclude that Local 1038

2/ The Supreme Court vacated and remanded the decision so that the Commission could exercise jurisdiction over that question. The Commission never addressed the issue because the case was resolved informally and withdrawn. Although Montclair is not binding precedent, the Commission agreed with its reasoning and elected to follow it.

3/ Our Supreme Court has held that the experiences and adjudications under the LMRA are appropriate guides in determining unfair practice cases because the language, content and purposes of the Act and the LMRA are substantially the same. In re Bridgewater Tp., 95 N.J. 235, 240-41 (1984); Galloway Tp. Bd. of Ed. v. Galloway Tp. Ass'n of Educ. Sec., 78 N.J. 1, 9 (1978); Lullo v. IAFF, 55 N.J. 409, 424 (1970).

represents mail clerks. Nevertheless, I also find that Local 701 seeks to represent an inappropriately narrow negotiations unit.

Local 701 argues that the mail clerks should be provided a separate negotiations unit because they share only a slight community of interest with the blue collar unit. Local 701 cites these facts; the mail clerks have their own work facility, separate from the facilities used by the employees represented in Local 1038's blue collar unit; they have different supervisors than the employees in the blue collar unit; and, they have a separate pay scale.

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 in State v. Professional Association of N.J. Dept. of Ed., 64 N.J. 231 (1974). The Court directed that a balance must 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 an undue proliferation of negotiations units. We have often rejected narrowly-defined units where a broad-based unit was available. See, e.g., 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); Camden Bd. of Ed., P.E.R.C. No.

87-53, 12 NJPER 847 (§17326 1986); Pennsauken Tp., D.R. No. 2000-2, 25 NJPER 398 (§30172 1999); Warren Cty., D.R. No. 95-14, 21 NJPER 43 (§26026 1994); Wall Tp., D.R. No. 94-24, 20 NJPER 209 (§25101 1994); NJIT, D.R. No. 88-29, 14 NJPER 148 (§19060 1988); Jersey City, D.R. No. 84-6, 9 NJPER 556 (§14231 1983); Cf. UMDNJ, P.E.R.C. No. 84-28, 9 NJPER 598 (§14253 1983) (residual faculty unit found appropriate where the majority representative of the broad-based unit twice before disclaimed interest in representing petitioned-for faculty); City of Passaic, D.R. No. 2004-1, 29 NJPER 393 (§125 2003) (unit consisting of one title warranted where petitioned-for employees were unrepresented for a period of time, the unit would not risk further unit proliferation, and the incumbent representative had not expressed a willingness to represent the petitioned-for employees); Bergen Pines Cty. Hospital, D.R. No. 87-3, 12 NJPER 619 (§17234 1982) (unit of physicians and dentists appropriate where virtually all organizable employees were organized into 12 separate, narrowly defined units and there was no all-inclusive, broad-based professional unit).

In Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404 (1971), our Supreme Court set forth certain relevant factors in making a community of interest determination:

In the private sector, the cases regard unity of interest, common control, dependent operation, sameness in character of work and unity of labor relations as pointing to common interest. They regard similarity of obligation to the employer as a factor; likewise similarity of working conditions; they consider the possible disruptive effect on

employer-employee relations if the employees involved are admitted to one unit. They decide whether the group involved will operate cohesively as a unit; whether the unit will probably be effective in the public quest for industrial peace. [Id. at 420-421]

A community of interest may be indicated by such factors as a common employer, common goals among the petitioned-for employees, employees' compensation, fringe benefits, hours of work, work facilities, educational requirements, supervision and evaluation. State of New Jersey (State College Locals), D.R. No. 97-5, 24 NJPER 295(¶29141 1996).

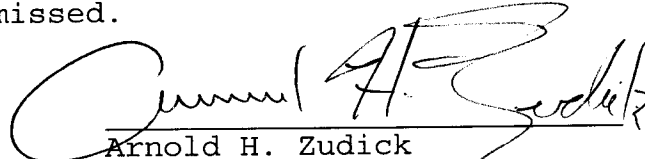
I find that the mail clerks share a community of interest with the employees in the blue collar unit. They earn similar salaries, work similar hours, and receive many of the same fringe benefits. That their principal work space differs from that of other employees in the blue collar unit does not diminish the community of interest they all share. See Boonton Bd. of Ed., D.R. No. 2008-14, 34 NJPER 144 (¶61 2008). For example, mail clerks interact with other blue collar employees when delivering the mail. Although they report to different immediate supervisors than any of the other 46 titles which presently comprise the blue collar unit, the mail clerks share third and fourth tier supervisors with some unit employees and all are ultimately overseen by the County Administrator.

I dismiss the petition because Local 701 seeks to represent an inappropriate unit. If after a reasonable period of time Local 1038 does not file a timely representation petition to accrete the

mail clerks into its blue collar unit or otherwise achieve representation of those employees through recognition, Local 701 may file another petition seeking to represent the mail clerks and the Director of Representation will reconsider the appropriateness of the petitioned-for unit at that time. See UMDNJ, P.E.R.C. No. 84-28, 9 NJPER 598 (¶14253 1983); State v. Prof. Assn. of N.J. Dept. Of Ed., 64 N.J. at 253.

ORDER

The petition is dismissed.


Arnold H. Zudick
Director of Representation

DATED: October 21, 2010
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 November 1, 2010.