

D.R. NO. 92-17

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

In the Matter of

CITY OF MILLVILLE,

Public Employer,

-and-

Docket No. CU-92-10

PBA LOCAL 213,

Petitioner.

SYNOPSIS

The Director of Representation clarifies a negotiations unit of firefighters, patrolmen and detectives represented by PBA Local 213 to exclude the title of firefighter. The title will be removed from the negotiations unit upon the expiration date of the current contract, pursuant to Clearview, because police may not be included in a unit with non-police as per N.J.S.A. 34:13A-5.3.

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Appearances:

For the Public Employer  
Gruccio, Pepper, Giovinazzi & DeSanto, attorneys  
(Lawrence Pepper, Jr., of counsel)

For the Petitioner  
Edmond Grennon, President

DECISION

On August 28, 1991, PBA Local 213 ("PBA") filed a petition for clarification of unit seeking to remove firefighters from a negotiations unit which also includes all patrolmen and detectives employed by the City of Millville ("City"). The PBA contends that the current unit is illegal because it contains both police and non-police employees.

There are approximately 60 police officers employed by the City. Of those, 42 are patrolmen and detectives. There are 5 firefighters. Patrolmen, detectives and firefighters have been together in one unit since its inception. The first collective bargaining negotiations agreement between the parties was negotiated

in 1970. The current contract expired on December 31, 1991.

The City objects to the petition. It argues that under the Supreme Court decision in Matters of State, 114 N.J. 316 (1988), firefighters should not be removed from units containing other public employees unless it can be shown that the firefighters are not receiving adequate representation or have not received adequate representation in the past. The City contends that in this case, no such evidence of inadequate representation has been presented, and further that a high degree of community of interest exists between firefighters and police employees.

The City also argues that although N.J.S.A. 34:13A-5.3 prohibits police employees from being in bargaining units with non-police employees, the situation in Millville falls within the established practice, prior agreement and special circumstances exceptions of the statute. The City points to the 21 year history of successful negotiations and a stable bargaining relationship between the City and the mixed unit and cites Englewood Bd. of Ed., P.E.R.C. No. 82-25, 7 NJPER 516 (¶12229 1981).

N.J.S.A. 34:13A-5.3 states, in pertinent part:

...and provided further, that, except where established practice, prior agreement, or special circumstances dictate the contrary, no policeman shall have the right to join an employee organization that admits employees other than policemen to membership.

In general, a post-1968 agreement does not constitute an established practice. Cumberland Cty. Coll., E.D. No. 4 (5/6/70).

...our prime concern is with the statutory

exception of "established practice" and "prior agreement." Upon careful analysis, we have concluded that the quoted phrases were intended to apply solely to circumstances in existence prior to the arrival of Chapter 303 [effective July 1, 1968]. We view and we are convinced that the Legislature viewed mixed units as inherently unworkable and therefore in most cases inappropriate. In order not to disturb those rare relationships involving mixed units which were crystalized prior to Chapter 303, and which managed to succeed despite the heavy odds against success, the exceptions of "established practice" and "prior agreement" were formulated. [West Paterson Bd. of Ed., P.E.R.C. No. 79 (1973)]

See also S. Plainfield, D.R. No. 78-18, 3 NJPER 349 (1977);  Tp. of Springfield, P.E.R.C. No. 85-88, 11 NJPER 138 (¶16061 1985); and Rutgers, P.E.R.C. No. 90-69, 16 NJPER 136 (¶21053 1990).

Here, the parties did not negotiate their first agreement until 1970. Although the City argues that this mixed unit, created only two years after Chapter 303 was effectuated, should be afforded this status in light of the stable 20 year history. As quoted above, the "prior agreement" and "established practice" language has been interpreted to specifically refer to relationships in existence prior to the enactment of Chapter 303, the original Public Employment Relations Commission Act.

Additionally, neither Matters of State nor Englewood are controlling. The issue is not whether firefighters may be removed from a longstanding mixed unit. The issue is police may not be included in a unit with non-police as per subsection 5.3. See City of Camden, P.E.R.C. No. 81-139, 7 NJPER 345 (¶12155 1981).

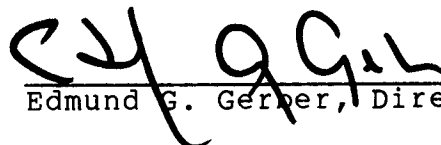
Accordingly, I find that the firefighters must be removed

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from the mixed unit represented by PBA Local 213 upon the expiration date of the current contract. See Clearview Bd. of Ed., D.R. No. 78-21, 3 NJPER 248 (1977).

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Edmund G. Gerber, Director

DATED: February 6, 1992  
Trenton, New Jersey