

P.E.R.C. NO. 2011-69

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF GLOUCESTER,

Respondent

-and-

Docket Nos. RO-2008-066

RO-2010-027

NEW JERSEY STATE FIREMEN'S
MUTUAL BENEVOLENT ASSOCIATION

Petitioner,

-and-

COMMUNICATIONS WORKERS OF AMERICA,
LOCAL 1085

Intervenor.

SYNOPSIS

The Public Employment Relations Commission grants the Communications Workers of America, Local 1095's request for review of D.R. 2011-2 and denies the New Jersey State Firemen's Mutual Benevolent Association's request for review. In that decision, the Director found that the County and CWA agreed to include Emergency Medical Technicians in the County-wide broad-based CWA negotiations unit without following the Commission's established recognition or certification procedures. The Director dismissed the representation petitions filed by the FMBA citing the Commission's preference for broad-based units and gave CWA 90 days to file a representation petition to include the EMT title. The Commission holds that the CWA unit is the appropriate unit and that the CWA does not have to file a representation petition as the EMTs appropriately accreted into the unit.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Respondent, Brown & Connery, attorneys (William M. Tambussi, of counsel)

For the Petitioner, Fox & Fox, LLP, attorneys (David I. Fox, of counsel and Nora R. Locke, on the brief).

For the Intervenor, Weissman & Mintz, attorneys (Steven P. Weissman, of counsel).

DECISION

On October 4, 2010, Communications Workers of America, Local 1085, filed a request for review of Gloucester Cty., D.R. No. 2011-2, 36 NJPER 436 (¶170 2010). On October 12, New Jersey State Firemen's Mutual Benevolent Association filed a separate request for review of D.R. No 2011-2. In that decision, the Director of Representation found that the County and CWA agreed

to include the disputed Emergency Medical Technician ("EMT") title in the County-wide, broad-based negotiations unit without following the Commission's established recognition or certification procedures. The Director dismissed both petitions filed by FMBA, finding the broad-based unit to be the most appropriate unit structure. Finally, he granted CWA 90 days from the date of the decision to file a representation petition to properly include the EMTs in its County-wide unit.

This case has a complex factual and procedural history. In 2006, the Board of Freeholders began considering regionalizing emergency medical services ("EMS") that were being provided by the municipalities within the County. In May 2007, the County announced a plan for a regional EMS operation, offering services to participating municipalities within the County. By August, ten municipalities had agreed to participate in the proposed County-wide EMS operation.

CWA has been the certified majority representative of a County-wide, broad-based unit since 1980 and has negotiated several collective agreements with the County. The nature of the work performed by unit members is extremely broad. The unit includes over 300 titles such as laborers, secretaries, social workers, nurses, IT professionals, park rangers and 911 dispatchers.

On August 14, 2007, the County and CWA entered into a successor collective negotiations agreement that included salaries and hours for EMTs who were to be employed by the County, though none had been hired by that date. Effective October 1, between 115 and 135 EMTs became employed by the County. On November 15, the County and CWA signed their current agreement, with a term of January 1, 2007 to December 31, 2011. The EMT title is included in the recognition clause of the agreement.

On April 11 and 29, 2008, FMBA petitioned to represent the County EMTs.^{1/} On May 22, CWA intervened, asserting that the EMT title was included in its current collective negotiations agreement with the County. On February 19, 2009, after an investigation, the Director of Representation dismissed the FMBA's petition. Gloucester Cty., D.R. 2009-9, 35 NJPER 35 (¶14 2009). He found the petition was untimely because the current collective negotiations agreement between the County and CWA covering the EMTs was a contract bar. The Director also found that the proposed unit, which was defined along departmental

^{1/} The County initially opposed the petition asserting that the EMTs were already represented by CWA and the addition of another unit would be an administrative burden. The County later rescinded its opposition stating that it would not object to the creation of a new unit if we deemed it appropriate.

lines, was inappropriately narrow and counter to the Commission's preference for broad-based units.

On February 26, 2009, FMBA requested review of the Director's decision. It argued that the unit is not inappropriately narrow because the EMTs are new employees and the unit is anticipated to expand. It further argued that EMTs do not share a community of interest with the current CWA membership because they are emergency first responders and exposed to the hazards of emergency situations.

CWA responded that its contract with the County bars the FMBA's petition because the EMTs were hired prior to the execution of the current agreement. It further asserts that the EMTs share a community of interest with the other professional titles in the CWA unit. On September 24, 2009, we granted a request for review of D.R. 2009-9 and remanded the matter to the Director to develop a record as to the background of the formation of the County EMT unit. Gloucester Cty., P.E.R.C. No. 2010-21, 35 NJPER 363, 364 (¶122 2009).

On September 17, 2010, the Director issued D.R. No. 2011-2, finding that the County and CWA agreed to include the disputed EMT title comprising approximately 20% of the broad-based unit without following the Commission's established recognition or certification procedures. The Director found the broad-based unit to be the most appropriate unit structure, and he dismissed

both petitions filed by the FMBA. He granted CWA 90 days from the date of the decision to file a representation petition to properly include the EMTs in its County-wide, broad-based unit. CWA's and FMBA's requests for review of D.R. 2011-2 followed and are the subject of this matter.^{2/}

A party may request review of a decision by the Director of Representation. Under N.J.A.C. 19:11-8.2, a request for review will be granted only for one or more of these compelling reasons:

1. A substantial question of law is raised concerning the interpretation or administration of the Act or these rules;
2. The Director of Representation's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of the party seeking review;
3. The conduct of the hearing or any ruling made in connection with the proceeding may have resulted in prejudicial error; and/or
4. An important Commission rule or policy should be reconsidered.

CWA is seeking review under the first factor described above
- i.e. a substantial question of law is raised concerning the

^{2/} The County submitted that "as a general rule, [it] would prefer to bargain with one broad based unit provided that the appropriate community of interest exists. However, should it be determined that employees of the newly formed Emergency Medical Services Department of Gloucester County constitute an appropriate separate bargaining unit, [it] does not object to the creation of that separate bargaining unit. [It] takes no position as to which union should represent this separate bargaining unit and does not oppose an election to determine such representative."

interpretation or administration of the Act. CWA asserts that the EMT titles were properly included in the broad-based unit. CWA also seeks a stay of the Director's finding that as of the date of his decision, the EMTs would no longer be represented by CWA pending an election.

In response to CWA's request for review, the FMBA responds that the EMTs were not properly included in the County's broad-based unit. It separately seeks review of D.R. 2011-2 under factor one above and contends that if the EMTs vote not to have CWA as their union, the FMBA should have a right to petition for the title either immediately or during the open period. It further asserts that CWA does not meet the legal requirements for a stay.

CWA replies that while EMTs may have unique job characteristics, those distinctions do not prevent the EMTs from having a community of interest with other employees in the County-wide unit.

On August 14, 2007, the County and CWA entered into an agreement concerning salaries and hours for EMTs who were to be employed by the County. On October 1, between 115 and 135 EMTs became County employees. On November 15, the County and CWA signed the current collective negotiations agreement covering the County-wide, broad-based negotiations unit. That agreement has a term of January 1, 2007 to December 31, 2011. The EMT title is

included in the recognition clause of the agreement. Accretion is the process of adding newly created positions to an existing unit where there is an appropriate community of interest between the new employees and the employees in the existing unit.

Accretion may be accomplished through a voluntary recognition by the public employer or, where appropriate, through an accretion election. Fair Lawn Bd. of Ed., D.R. No 78-22, 3 NJPER 389

(1977). Here, the Director found that the EMTs shared a community of interest with the other employees in the County-wide, broad-based unit - - specifically, that the EMTs and various other County employees share the goals of maintaining public safety and providing 24-hour services. Gloucester Cty., D.R. 2009-9. Given this finding, accretion of the EMTs into the County-wide, broad based unit was appropriate. The fact that the EMTs comprise approximately 20% of the unit is not a bar to accretion since the accreted employees do not jeopardize the majority status of CWA. NLRB v. Stevens Ford, Inc., 773 F.2d 468, 472 (2d. Cir. 1985). By virtue of the County and CWA signing the collective negotiations agreement on November 15, 2007 with the EMT title included in the contractual recognition clause, the parties achieved voluntary recognition of the EMTs as members of the County-wide, broad-based unit. Parties may best ensure the protections of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., by utilizing the Act's certification

or recognition procedures^{3/} to achieve status as the majority representative of a collective negotiations unit. However, nothing in the Act requires parties to use those procedures.

Finally, we deny FMBA's request for review of the Director's decision based on its assertion that it should have the right to petition for the EMT title. FMBA's request for review does not raise a substantial question of law concerning the interpretation or administration of the Act. N.J.A.C. 19:11-8.2. The Commission's preference for broad-based units and reluctance to form units along occupational or departmental lines is well established. State v. Professional Ass'n of N.J. Dept. of Ed., 64 N.J. 231 (1974); See also Egg Harbor Tp., D.R. No. 2009-5, 34 NJPER 416 (¶128 2008). Accordingly, the Director's determination that the EMTs would not be included in the County-wide, broad-based unit pending an election is reversed, and his dismissal of FMBA's petition to represent the EMTs is affirmed. CWA's request for a stay is rendered moot.^{4/}

ORDER

D.R. 2011-2 is reversed in part regarding the Director's finding that the EMTs would not be included in the County-wide,

^{3/} See N.J.A.C. 19:11-3.1; 19:11-1.2.

^{4/} We note that because the subject agreement covers a term greater than three years, it will not act as a bar to any petition for certification to represent the entire unit filed after January 1, 2010. N.J.A.C. 19:11-2.8 (d).

broad-based unit pending an election. D.R. 2011-2 is affirmed in part regarding the Director's dismissal of FMBA's petitions to represent the EMTs.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Colligan, Eskilson, Kregel and Voos voted in favor of this decision. None opposed. Commissioner Eaton recused herself.

ISSUED: March 31, 2011

Trenton, New Jersey