

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

In the Matter of

TOWN OF WEST NEW YORK,

Public Employer,

-and-

Docket No. RO-2001-71

RETAIL, WHOLESALE AND DEPARTMENT STORE UNION,
DISTRICT COUNCIL, AFL-CIO-CLC, LOCAL 108,

Employee Representative.

SYNOPSIS

The Director of Representation directs an election among a single unit of crossing guards employed by the Town of West New York. The guards have been historically, specifically excluded from an existing CWA blue and white collar collective negotiations unit for close to 40 years. The Director finds that a strong community of interest exists among the guards while only a slight community of interest exists between the guards and the blue and white collar unit employees. He further finds that since virtually all other employees of the Town are represented, formation of this last single unit will not create undue unit proliferation or labor instability. Applying the balancing test set forth in State of N.J. and Professional Ass'n of N.J. Dept. of Education, P.E.R.C. No. 68, NJPER Supp. 273 (¶68 1972), rev'd NJPER Supp.2d 14 (¶7 App. Div. 1973), rev'd 64 N.J. 231 (1974), the Director determines that in this case the balance favors affording the petitioned-for employees the opportunity for representation in a single unit, rather than the Town's concern with undue unit proliferation and labor instability.

D.R. NO. 2002-1

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Appearances:

For the Public Employer
Murray, Murray & Corrigan, attorneys
(David F. Corrigan, of counsel)

For the Employee Representative
Oxford, Cohen, attorneys
(Sanford R. Oxford, of counsel)

DECISION AND DIRECTION OF ELECTION

On March 27, 2001, Local 108 of the Retail, Wholesale and Department Store Union, District Council, AFL-CIO-CLC (Local 108) filed a petition for certification with the Public Employment Relations Commission (Commission) seeking to represent all full and part-time crossing guards employed by the Town of West New York (Town). The petition was timely filed and supported by an adequate showing of interest.

The Town refuses to consent to an election, claiming that the petitioned-for unit is inappropriate. It argues that crossing guards share a community of interest with an existing broad-based

unit of the Town's blue-collar and white-collar employees represented by the Communications Workers of America (CWA). The Town further asserts that a separate unit of crossing guards would cause undue unit fragmentation and disrupt labor relations between the Town and its employees.

Local 108 argues that CWA has historically not sought to represent crossing guards and has contractually agreed with the Town to specifically exclude crossing guards from representation in the CWA unit. Local 108 maintains that by specifically excluding the crossing guards from the broad-based unit, the Town relinquished its claim that these employees must be included in the wall-to-wall unit. Finally, Local 108 argues that the crossing guards do not share a community of interest with the employees in the blue-collar and white-collar unit, and that given all of these circumstances, a separate unit of crossing guards is appropriate here.

We have conducted an administrative investigation into the petition. N.J.A.C. 19:11-2.2 and 2.6. Both parties submitted facts and arguments in support of their positions. The Town provided verbal and written responses to specific questions we posed to the parties. Local 108 confirmed answers to several of the same questions. There is no dispute regarding the parties' responses. Additionally, CWA was afforded the opportunity to participate in the investigation of this matter. CWA has not intervened in this petition^{1/} and has filed no submission. By letter dated July 3,

^{1/} N.J.A.C. 19:11-2.7

2001, we advised the parties of our understanding of the relevant facts and our intention to direct an election. The parties were given an opportunity to contest our factual and legal determinations. Neither party has filed a response. Our administrative investigation revealed the following facts.

FINDINGS OF FACT

The Town's employees are represented in four separate negotiations units. Two of the four units are police officers and police superiors, each represented by affiliates of the PBA. The remaining two units are the blue and white-collar unit and a supervisors unit, each represented by CWA locals. There are no other eligible, unrepresented employees except for the approximately 35 crossing guards petitioned for here by Local 108.

Since at least 1968, the Town's civilian employees were represented by Hudson Council #2 in separate units of blue-collar and white-collar employees. As a result of a secret ballot election, in June 1984 CWA was certified as the representative of the Town's blue-collar unit, and in September 1984, CWA was certified as the representative of the white-collar unit. Both certifications specifically excluded the crossing guards. Sometime after the original certifications of separate blue and white-collar units, the Town and CWA agreed to combine the two units into one wall-to-wall unit. The current, combined non-supervisory CWA unit contains approximately 245 employees.

The crossing guard position has been in existence beginning sometime in the 1960's. Initially, the crossing guard position was treated as a "temporary" one. However, there are currently crossing guards who have held their positions since the 1970's. These "grandfathered" employees have pension and health benefits and have limited seniority rights. After the 1970's, these positions were no longer considered temporary. The guard positions have been regular employment positions for sometime.

CWA has never sought to represent the crossing guards and the existing collective negotiations agreement between CWA and the Town, covering the period July 1, 1998 through June 30, 2002, specifically excludes them from the recognition clause, as did all previous negotiations agreements.

Job Duties and Qualifications

The salaries for the employees in the CWA unit are set forth in the parties' negotiations agreement and salary ordinances. These salaries range from approximately \$15,000 to more than \$50,000 annually. In the last negotiations agreement, the CWA unit employees' salaries were increased from 3.4% to 4.5%, depending upon their base salary rate, over each year of the agreement. Blue and white-collar unit members receive health insurance, prescription, and dental benefits. There are no similar economic benefits for crossing guards except for the grant of pension and health benefits for those guards who have been employed since the 1970's.

The normal work week for the blue and white-collar employees is 40 hours with fixed start and end times between 6 a.m. and 5 p.m. Overtime assignment and pay is based upon seniority and job title. Job position openings for this unit are posted with the New Jersey Department of Personnel (DOP) and applicants are subject to DOP testing. The skill levels, education and training required for the blue and white-collar unit employees are varied. CWA unit employees are evaluated by the commissioners of their respective municipal departments pursuant to standard DOP evaluation criteria. The supervisory structure for the blue and white collar employees is a standard municipal structure including front-line supervisors, commissioners, and superintendents. Final disciplinary action is handled by the commissioners of the employees' respective departments.

Crossing guards currently earn \$7.50 per hour. The most senior guards have a current pro-rated annual salary of \$6,700. In 1999 and 2000 the crossing guards received an increase of \$1.00 per hour for both of those years.

The crossing guards work from September through mid-June each year, except for a few who work year round. They work a 20-hour workweek and report to their posts between 7:30 a.m. and 9:00 a.m., then leave and return between 11:30 a.m. and 12:30 or 1:00 p.m.. After 1:00 p.m., they leave and report back to their posts at 2:30 p.m. They remain there until approximately 3:15 p.m. at which time their workday ends. They do not work on school

holidays. Most of the guards are laid off in June and recalled when school starts in the fall.

There are no required skill levels or training requirements for the crossing guards, and there are no standard DOP evaluation criteria applied. The evaluation criteria used are "punctuality and time on the job." There is also no standard supervisory structure for crossing guards. To the extent the guards are supervised at all, their only management contact is with the commissioner of public safety in the context of evaluations or when disciplinary action is required.

Finally, the job duties of the CWA blue and white-collar unit employees and the crossing guards are not interchangeable. The crossing guards have virtually no interaction with CWA-unit employees during the work day. They do not share work locations, work facilities, locker rooms or lunch areas; and there are no common uniform requirements between the groups.

ANALYSIS

The issue here is whether, under the circumstances in this matter, the proposed unit of crossing guards is appropriate.

The Town argues that a separate unit of crossing guards is not appropriate. It contends that the crossing guards share a community of interest with blue and white-collar unit employees currently represented by CWA and, therefore, should become a part of that unit. It also asserts that permitting a unit limited to a

single occupational category would lead to undue unit fragmentation and undue disruption in labor relations between the Town and its employees.

Local 108 asserts that the crossing guard positions have existed from at least the late 1960's, long before CWA represented the existing blue and white collar unit. Further, Local 108 maintains that the CWA has not only never sought to represent these employees, but has joined with the Town in specifically excluding the crossing guards from the blue and white collar unit in successive collective negotiations agreements, including the current one. Therefore, Local 108 argues that the Town has relinquished its argument that the guards share a community of interest with the blue and white-collar employees and should be included in the wall-to-wall unit. It maintains that creation of a separate unit would not cause undue unit proliferation or disrupt the Town's labor relations. Local 108 also argues that the crossing guards' community of interest lies with their own separate unit.

The Commission is charged with the responsibility of determining the appropriate unit for negotiations. N.J.S.A. 34:13A-6(d). Where more than one unit structure is potentially appropriate, the Commission must determine which unit configuration is most appropriate. State of N.J. and Professional Ass'n of N.J. Dept. of Education, P.E.R.C. No. 68, NJPER Supp. 273 (¶68 1972), rev'd NJPER Supp. 2d 14 (¶7 App. Div. 1973), rev'd 64 N.J. 231 (1974) ("Professional Ass'n").

N.J.S.A. 34:13A-5.3 requires that negotiations units be defined "with due regard for the community of interest among the employees concerned." However, in making unit determinations, we must consider the general statutory intent of promoting stable and harmonious employer-employee relations. The Commission has long favored units structured along broad-based, functional lines and has been reluctant to approve units of employees in a single occupational group. In Professional Ass'n, the Supreme Court endorsed the Commission's broad-based unit approach but directed that a balance be struck between the rights of public employees to negotiate collectively and the public employer's rights not to be burdened with undue proliferation of negotiations units. Thus, the desires of the employees and the parties, while relevant, are not paramount. We consider the totality of circumstances of the particular case, including the structure and history of existing units and the extent of organization of the employer's employees. Bordentown Reg. Bd. of Ed. and Bordentown Reg. Ed. Ass'n, P.E.R.C. No. 84-126, 10 NJPER 276 (¶15136 1984), aff'd 11 NJPER 337 (¶16122 App. Div. 1985); Tp. of Teaneck, P.E.R.C. No. 88-20, 13 NJPER 483 (¶18270 1987); Passaic Cty. Bd. of Freeholders, P.E.R.C. No. 87-141, 13 NJPER 483 (¶18179 1987); Englewood Bd. of Ed., P.E.R.C. No. 82-25, 7 NJPER 516 (¶12229 1981).

Generally, the inclusion of crossing guards in units with other municipal workers is neither rare nor routine. Some municipal units have included crossing guards, but it is just as common to

find crossing guards excluded from municipal units. The Commission has found that units limited to crossing guards are appropriate.^{2/} Likewise, the Commission has approved units of other job categories of employees, including broad-based blue and white collar units, which have specifically excluded school crossing guards.^{3/}

In the instant matter, I find that the community of interest between crossing guards and employees in the blue and white-collar unit is slight. They do not share the same work facilities, work hours, or work year. There are significant differences between the guards and the unit employees currently represented by the CWA with regard to their duties, required qualifications, rates of pay, seniority rights, training, evaluation, chain of command, and work uniforms. They do not

^{2/} City of Rahway, D.R. No. 83-9, 8 NJPER 538 (¶13247 1982) (school crossing guards are regular, part-time employees and comprise an appropriate unit); City of Atlantic City, D.R. No. 78-31, 4 NJPER 56 (¶4027 1977) (election directed in separate unit of crossing guards); City of Newark, D.R. No. 78-25, 3 NJPER 391 (1977) (contract covering white-collar unit insufficient to support intervention in unit of crossing guards; election directed in guards unit); Town of Kearny, D.R. No. 78-3, 3 NJPER 259 (1977) (election ordered in unit of crossing guards).

^{3/} Irvington Tp., D.R. No. 94-17, 20 NJPER 16 (¶25061 1994) (election ordered in municipal unit excluding crossing guards); Bor. of Point Pleasant Beach, D.R. No. 87-4, 12 NJPER 657 (¶17247 1986) (direction of election in separate unit of blue and white collar employees specifically excluding crossing guards); Cranford Tp., D.R. No. 86-26, 12 NJPER 566 (¶17214 1986) (election ordered in blue and white collar unit excluding crossing guards).

service the same clients nor share the same job goals. They have virtually no interaction with each other. Therefore, on the basis of all of these differences vis-a-vis the blue and white-collar employees, the terms and conditions of employment for the crossing guards appear to be distinct and removed from those of the CWA existing unit. I find that the unique community of interest among these crossing guards is clear, while their community of interest with the existing blue and white-collar unit is not.^{4/}

The Commission recently applied the balancing test as set forth in Professional Ass'n and observed that "the right of employees to organize may sometimes outweigh the preference for broad-based units." Op. of E. Windsor, P.E.R.C. No. 97-68, 23 NJPER 51 (¶28035 1996). Moreover, the Director of Representation found in Cty. of Bergen (Bergen Pines Hospital), D.R. No. 87-3, 12 NJPER 619 (¶17234 1986), that a separate unit of physicians and dentists was appropriate where no other organization had sought to include them in existing units and virtually all of the employer's other employees were organized. In so finding, the Director noted that

^{4/} In cases where the Commission has declined to approve units of separate job categories, the units petitioned for were determined either to have a strong community of interest with existing professional, blue collar or clerical units; the incumbent representative was willing to represent the petitioned-for employees in a wall-to-wall unit; or the positions were created after the formation of the wall-to-wall unit. See NJIT, D.R. No. 88-29, 14 NJPER 149 (¶19060 1988); Camden Bd. of Ed. and Camden City School Psychologists, 2 NJPER 123 (1976); Camden Bd. of Ed., 12 NJPER 847 (¶17326 1986).

"...unit fragmentation is a relative consideration depending upon the circumstances in which it arises" and concluded that where all of the other employees were already included in other existing units it did not seem "an undue hardship on the employer" to have a final negotiations unit established. Similarly, in Ocean Cty., D.R. No. 96-2, 21 NJPER 301 (¶26192 1995), we also approved a "narrow" unit of supervisors where it appeared that, as the "final" unit to be organized, further unit fragmentation was unlikely.

Thus, in the instant matter, in balancing the rights of crossing guards to choose representation against the right of the employer to enjoy labor stability and be free from undue unit proliferation, I find that the balance tips in favor of permitting the petitioned-for employees to be represented in their own unit. Moreover, the risk addressed by the Supreme Court in Professional Ass'n that by permitting units to form along occupational lines would raise the potential for "competing demands, whipsawing and continuous negotiations..." is minimal here. It is unlikely that the formation of a crossing guard unit will foster unit proliferation here since virtually all of the Town's organizable employees are already organized.^{5/} As a result, the crossing guards would establish the last unit with which the Town may potentially be required to negotiate.

^{5/} In contrast, Professional Ass'n was decided in the context of the first professional employee group seeking representation, where there was a potential for many other employee groups to follow, possibly resulting in multiple negotiations units of professional employees.

Finally, the Act favors collective representation for public employees who so desire it. It is undisputed that the Town's crossing guards have remained unrepresented since the 1960's. Crossing guard positions existed prior to the formation of the blue-collar and white-collar units; CWA has never sought to represent them; and the Town and CWA opted to specifically exclude them from representation in the wall-to-wall unit for close to four decades.^{6/} Thus, I find, on balance, that permitting the crossing guards an opportunity to be represented for purposes of collective negotiations, should they so desire, outweighs the risk of unit proliferation or an undue burden upon the Town.

On the basis of all of the foregoing, I find that a crossing guards unit is appropriate and I direct an election among the employees in the petitioned-for unit, which is comprised as follows:

Included: All full-time and regularly employed part-time crossing guards employed by the Town of West New York.

Excluded: Managerial executives, confidential employees and supervisors within the meaning of the Act; craft employees, professional employees, police employees, casual employees, blue and white collar unit employees and all other employees of the Town of West New York.

^{6/} See also UMDNJ, P.E.R.C. No. 91-2, 16 NJPER 431 (¶21183 1990) (approving a separate unit of nurses); UMDNJ, P.E.R.C. No. 84-28, 9 NJPER 598 (¶14253 1983) (separate unit of allied health faculty appropriate where there were significant differences between petitioned-for faculty and teaching faculty and representative of teaching faculty had rejected representation of allied health faculty).

The election details shall be set within 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 units, 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 the employee organization 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

Stuart Reichman, Director

DATED: July 17, 2001
Trenton, New Jersey

D.R. NO. 2002-1

14.

July 3, 2001

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Re: Town of West New York
-and-
RWDSU UFCW Local 108
AFL-CIO CLC
Docket No. RO-2001-71

Gentlemen: