

D.R. NO. 89-38

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

In the Matter of

MONMOUTH COUNTY JUDICIARY,

Public Employer,

-and-

Docket Nos. RO-89-112  
RO-89-120

COMMUNICATIONS WORKERS OF AMERICA,

Petitioner.

-and-

MONMOUTH COUNTY COURT OFFICERS' ASSOCIATION,

Petitioner.

SYNOPSIS

The Director dismisses a petition for a separate unit of court attendants and court aides. He finds that, absent a lengthy history of representation in a separate unit, court aides and attendants are more appropriately included in CWA's existing, broad-based unit of judiciary support personnel with whom they share a community of interest. Accordingly, the Director orders an election on CWA's petition to determine whether a majority of the attendants and aides wish to be represented within the existing CWA broad-based unit.

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Appearances:

For the Public Employer  
Administrative Office of the Courts  
by Joan Kane Josephson, Dir. of Labor Relations

For C.W.A  
Patricia Wallace, Representative

For Monmouth Court Officers' Association  
Shirley Shilling, Representative

DECISION AND DIRECTION OF ELECTION

On March 29, 1989, Communications Workers of America ("CWA") filed a Petition for Certification of Public Employee Representative (Docket No. RO-89-112) with the Public Employment Relations Commission ("Commission") seeking to represent a unit comprised of court aides and court attendants employed by the Monmouth County Judiciary ("Judiciary"). On April 14, 1989, CWA amended its petition to seek representation of the court aides and

attendants within the existing CWA Judiciary support staff unit. On April 28, 1989, the Monmouth County Court Officers' Association ("Association") filed a cross petition (Docket No. RO-89-120) seeking to represent the aides and attendants in a separate unit.

The Judiciary objects to the petition for a separate unit. It argues that the Judiciary's policy is to avoid unit fragmentation and these titles should be included in the existing negotiations unit of Judiciary support personnel. CWA agrees. The Association argues that a separate unit of aides and attendants is warranted by their distinct community of interest and the history of separate representation for these employees.

We have conducted an administrative investigation into the issues raised in this matter to determine the parties' positions and the relevant facts. N.J.A.C. 19:11-2.6. The following facts appear.

1. The existing CWA unit consists of 135 administrative and clerical employees of the Monmouth County Judiciary. Probation officers and court clerks have historically been represented in separate units.

2. From the mid-1970's, court attendants were represented in a separate unit. They worked under the supervision of the Sheriff. As a result of 1981 legislation designed to phase out the court attendant title, attendants were given the opportunity to become sheriff's officers. Some did. In 1982, all remaining court attendants were put into the sheriff's officers' unit, represented by the PBA. Aides have never been represented. On January 1, 1989,

court aides and attendants were assigned to the Judiciary's control and placed in the court's budget. Because they are not law enforcement personnel, the Judiciary pressed for the attendants' removal from the PBA unit. The PBA agreed and released the attendants from its unit effective January 1, 1989.

3. There are 25 court aides and 12 attendants. Court aides and attendants perform similar job functions. These include: escorting juries, setting up the courtroom, maintaining courtroom decorum, calling the court calendar, swearing in witnesses, directing litigants to the proper courtroom, escorting defendants, and occasionally assisting with defendant pat-downs.

4. Both court aides and court attendants (aides/attendants) have a 32.5-hour workweek. They receive five weeks vacation after the first year of employment. Their workday and vacation time are scheduled around the judges' needs.

5. The existing CWA unit employees have a 35 hour workweek, but overtime and vacation time is not dependent upon the court's schedule. CWA unit employees receive incremental vacation leave based upon years of service. Like court aides/attendants, all are salaried and eligible for overtime, which is usually paid in compensatory time.

Aides/attendants and CWA unit employees receive the same health benefits plan. The aides and attendants are uniformed; the CWA unit employees are not.

6. Both the aides/attendants and the existing CWA unit employees function to maintain the efficient operations of the court and work with the same judicial personnel. The aides/attendants report directly to the sheriff's office; CWA unit employees report directly to division supervisors; however, both groups are ultimately responsible to the assignment judge.

#### ANALYSIS

The Commission is charged with determining in each instance which unit is appropriate. N.J.S.A. 34:13A-6. Where more than one unit is potentially appropriate, the Commission must determine which unit configuration is most appropriate. State v. Prof. Assn. of N.J. Dept. of Ed., 64 N.J. 231 (1974) ("State Profs. Assn."). 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."

The Commission favors structuring negotiations units on a broad-based, employer-wide basis rather than along occupational or departmental lines. See N.J. Institute of Technology, D.R. No. 88-29, 14 NJPER 148 (¶19060 1988).<sup>1/</sup> The New Jersey Supreme Court affirmed this Commission policy and noted that such broad-based units streamline negotiations by reducing the potential for such problems as "competing demands, whipsawing and continuous negotiations..." State Profs. Assn. at 10.

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<sup>1/</sup> See also State of New Jersey, P.E.R.C. No. 68; South Plainfield Bd. of Ed., P.E.R.C. No. 46 (1970); Bergen County Bd. of Freeholders, P.E.R.C. No. 69 (1972); Piscataway Tp. Bd. of Ed., P.E.R.C. No. 84-124, 10 NJPER 272 (¶15134 1984).

In making unit determinations, we must also consider the general statutory intent of promoting stable and harmonious employer-employee relations. The desires of the employees and the desires of the parties, while relevant, are not paramount. We consider the totality of circumstances of the particular case, including the history of negotiations and the extent of organization of the employer's employees. Township of Teaneck, P.E.R.C. No. 88-20, 13 NJPER 483 (¶18270 1987); Passaic County Board 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).

This case involves the appropriate unit structure for 42 aides/attendants. The Association argues that the aides/attendants should comprise a separate unit because they historically negotiated separately from other employees. In certain circumstances, the Commission has found that a long established, stable history of negotiations in separate units favors preservation of single units over consolidation. Englewood. Here, there is no compelling history of representation which dictates maintaining a separate unit. Although court attendants had their own unit at one time, they had been included in a broad-based unit from 1982 through 1988. Court aides, which comprise 60% of the unit, have never been represented. Thus, there is no long, stable history of separate representation for the petitioned-for employees which warrants preservation.

We further find that aides/attendants share an overall community of interest with other judicial support personnel. They share a common employer -- the Monmouth County Judiciary. They share a common goal: the efficient operation of the court system. They also share common work facilities, a common compensation plan, common health benefits, similar skill levels and similar, although not identical, working hours. While they do not perform the same duties and aides/attendants are uniformed, these differences are not sufficient to destroy their overall community of interest.

Where, as here, we find that unrepresented employees more appropriately belong in an existing, overall, broad-based unit, a request to represent the group separately will normally fail. See N.J. Institute of Technology, D.R. No. 88-29, 14 NJPER 148 (¶19060 1988); Tp. of Teaneck; Camden Bd. of Ed., P.E.R.C. No. 87-53, 12 NJPER 847 (¶17326 1986); County of Camden, D.R. No. 88-3, 13 NJPER 663 (¶18251 1987); Bd. of Ed. of the City of Camden and Camden City School Psychologists, E.D. No. 76-32, 2 NJPER 123 (1976).

Based upon the foregoing, we find that the petitioned-for inclusion of aides/attendants in the existing Judiciary support staff unit is appropriate.<sup>2/</sup> The facts presented in this matter

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<sup>2/</sup> The Assistant County Counsel submitted a letter requesting that we consider including the aides in the existing court clerks' unit. However, no facts or arguments have been submitted which suggest that the inclusion of the aides/attendants in that unit would be more appropriate than

indicate no exceptional circumstances or long negotiations history of a separate unit of the aides/attendants to warrant creation of a separate unit. Rather, there exists a community of interest with the existing CWA Judiciary support staff unit.

Accordingly, we dismiss the Association's petition for a separate unit and order an election among court aides and court attendants to determine whether a majority wish to be represented by CWA; we are inclined to order an election in the following unit:

Included: All court aides and court attendants to be added to the existing unit of all support staff employees employed by the Monmouth County Judiciary.

Excluded: All supervisors, managerial executives, confidential employees, police employees, professional employees, craft employees, all employees in other negotiations units, all other employees of the Monmouth County Judiciary and all other employees.

Eligible employees will vote on whether they wish to be represented by Communications Workers of America, AFL-CIO. If a majority of the voting employees vote in favor of such representation, then court aides and court attendants will be added to the existing CWA unit of Judiciary support personnel. If a

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2/ Footnote Continued From Previous Page

their inclusion in the Judiciary support staff unit. Further, the majority representative of the court clerks' unit has not petitioned to add the aides/attendants to its unit, and the Judiciary has not argued that the court aides/attendants be added to the clerks' unit; in fact, the Judiciary has argued that the aides/attendants be included in the Judiciary support staff unit. Accordingly, we reject the proffered suggestion.



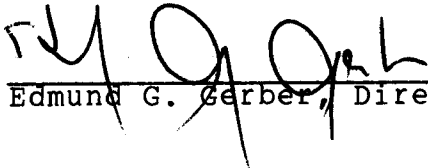
majority of the voting employees do not vote in favor of such representation, then an appropriate certification of results will issue indicating the employees (court aides and court attendants) have voted against representation.

The election shall be conducted no later than 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 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. Those ineligible to vote are employees who resigned or who 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. 19:11-9.6, the Monmouth County Judiciary is directed to file with us an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the unit, 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 CWA 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 guidelines set forth in Judges of Passaic County, 100 N.J. 352 (1985) and the Commission's rules.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Edmund G. Gerber, Director

DATED: June 14, 1989  
Trenton, New Jersey