

D.R. NO. 2002-4

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

In the Matter of

TOWNSHIP OF PENNSAUKEN,

Public Employer,

-and-

NEW JERSEY FMBA LOCAL 364,

Docket No. RO-2001-68

Petitioner,

-and-

AFSCME COUNCIL 71, LOCAL 2278,

Intervenor.

SYNOPSIS

The Director of Representation dismisses a petition filed by FMBA Local 364 to sever a group of Emergency Medical Technicians from a broad-based blue and white collar unit of employees of Pennsauken Township represented by CWA. The Director finds that the petitioner failed to show that the incumbent has an unstable relationship with its unit members or the employer, or that the incumbent has not provided responsible representation pursuant to Jefferson Tp. Bd. of Ed., P.E.R.C. No. 61, NJPER Supp. 248 (¶61 1971).

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Appearances:

For the Public Employer
Toll, Sullivan & Luthman, attorneys
(David A. Luthman, of counsel)

For the Petitioner
Sam Bello, President

For the Intervenor
Susan Owens, Staff Representative

DECISION

On March 20, 2001, the New Jersey Firemen's Mutual
Benevolent Association Local 364 (FMBA) filed a timely^{1/}
Petition for Certification with the Public Employment Relations

^{1/} At the time of the filing of this petition, there was no
contract in effect covering the petitioned-for employees.
Therefore, pursuant to N.J.A.C. 19:11-2.8, the petition was
timely filed.

Commission (Commission). The FMBA seeks to represent a negotiations unit comprised of all regularly employed emergency medical services employees (EMTs) employed by the Township of Pennsauken (Township).

On March 29, 2001, the American Federation of State, County and Municipal Employees, Council 71, AFL-CIO (AFSCME) sought to intervene based upon its recently expired collective agreement covering the Township's civilian employees, including EMTs.^{2/} I approved the intervention on March 30, 2001.

N.J.A.C. 19:11-2.7.

Both AFSCME and the Township oppose the petition and object to the proposed severance of EMTs from AFSCME's broad-based unit. The Township objects to the formation of another collective negotiations unit, particularly one consisting of a single title. The Township argues that having to negotiate with the proposed unit would be unduly burdensome, especially since the petitioned-for employees are already represented in the broad-based unit, and AFSCME is willing to continue to represent them.

AFSCME argues that it has effectively represented the EMTs in negotiations since their inclusion in the existing blue and white-collar unit. AFSCME also asserts that it has encouraged

^{2/} The AFSCME agreement expired on December 31, 2000. AFSCME and the Township have postponed negotiations for a successor collective agreement pending resolution of the instant petition.

the EMTs to participate in AFSCME's local meetings, and that it has appointed one of the EMTs to its negotiations team for the successor agreement.

The FMBA argues that the facts in this employment and negotiations relationship distinguish this petition from other cases involving severance of employees from an existing unit. The FMBA generally asserts that because of the nature of their work in the community, the EMTs have "different needs and areas of protection." Therefore, the FMBA argues that because of its history and expertise in representing emergency service employees, including EMTs and firefighters, it is better equipped than AFSCME is to effectively represent the needs of the EMTs petitioned for here. Additionally, the FMBA asserts that AFSCME has failed to provide effective representation to the EMTs in contract negotiations and grievance processing. Finally, FMBA argues that since the EMTs were never given an opportunity to vote on whether they wished to be represented by AFSCME, they should now have a say in selecting their majority representative. Therefore, the FMBA maintains that the Commission should permit the EMTs to be represented in their own unit and an election should be directed.

We have conducted an administrative investigation into the petition. N.J.A.C. 19:11-2.2. The parties submitted facts and arguments at an investigatory conference on April 17, 2001. On May 1, 2001, the FMBA submitted additional materials. On May 25, 2001, AFSCME filed a response to the FMBA submission. On

August 30, 2001, I sent a letter to the parties setting forth the facts as they appeared and indicated that on the basis of our investigation I was inclined to dismiss the instant petition. I afforded the parties an opportunity to file a response. By letter dated September 10, 2001, the FMBA reiterated its argument that the EMT's should be severed from the existing unit and requested that I review the facts as initially presented and reconsider my determination of August 30, 2001. Neither party presented anything further for my consideration. Based upon the entire investigation in this case, I find the following facts:

Township employees are represented in four collective negotiations units as follows: (1) the Superior Officers Association represents police superior officers, (2) the Fraternal Order of Police represents rank-and-file police, (3) the Firemen's Mutual Benevolent Association represents paid firefighters and (4) AFSCME represents all non-supervisory blue and white-collar employees.

AFSCME was certified as the majority representative of the Township's non-supervisory blue and white-collar employees in 1973. It has continuously represented these employees to the present. The unit consists of approximately one hundred employees. AFSCME's most recent contract with the Township covered the blue and white-collar employees for the period July 1, 1998 through December 31, 2000. Article I of the 1998-2000 agreement recognizes that AFSCME represents all of the titles listed on Schedule A, including EMTs.

In the fall of 1998, the Township hired four full-time EMTs. Shortly after their hire, the Township and AFSCME agreed to include the EMTs in AFSCME's collective negotiations unit.

On January 26, 1999, the Camden County Uniformed Fire Fighters Association, International Association of Firefighters, Local 3249, AFL-CIO (IAFF) filed a Petition for Certification seeking to represent the Township's EMTs. On August 26, 1999, I issued a decision finding that the EMTs share a community of interest with the Township's civilian employees and appropriately belong in the broad-based AFSCME unit. Therefore, I dismissed the IAFF petition. Pennsauken Tp., D.R. No. 2000-2, 25 NJPER 398 (¶30172 1999) (Pennsauken I).

On April 19, 1999, AFSCME and the Township executed a collective negotiations agreement covering the period January 1, 1998 through December 31, 2000. Salary ordinances implementing the terms of the parties' 1998-2000 agreement set forth the EMTs salary grades at Schedule E. Additionally, a March 2000 addendum to the negotiations agreement codifies additional employment terms for the EMTs, including work hours, overtime provisions, and leave entitlements. There are now eight regularly employed EMTs.

The FMBA represents the Township's firefighters and an ambulance driver who has historically been included in the FMBA fire unit. In this petition, the FMBA is not seeking to add the EMTs to the firefighters' unit.

The FMBA claims it has extensive expertise and provides specific services to EMTs state-wide. First, FMBA is affiliated with hospitals throughout New Jersey which provide training for EMTs to satisfy their certification requirements. Also, FMBA specializes in representing emergency service personnel only. Thus, the FMBA asserts that it possesses extensive knowledge of the job duties, safety issues and educational requirements of EMTs. In contrast, AFSCME locals represent a diversity of job classifications including registered nurses, licensed practical nurses, EMTs and various other blue and white-collar clericals, laborers and crafts employees.^{3/}

With regard to AFSCME's alleged ineffective representation, the FMBA asserts that AFSCME has not corresponded with EMTs concerning union business for lengthy periods of time; that EMTs have never received the AFSCME by-laws; that AFSCME never supplied them with information which they requested to prepare for successor negotiations; that EMTs have been misled concerning AFSCME's ability to provide continuing education services and training; and that AFSCME does not recognize or negotiate for the EMTs' unique safety concerns. Finally, the FMBA asserts that AFSCME would not permit EMTs to file a grievance concerning shift differentials.

^{3/} The FMBA asserts that a local AFSCME official has conceded that "AFSCME is unable to represent the needs of the Pennsauken emergency services personnel." However, AFSCME has not expressed any such inability to the Commission.

There is no dispute that AFSCME negotiated with the Township to add the EMTs to its existing negotiations unit. Additionally, it appears that AFSCME has negotiated wages, benefits and other terms and conditions of employment for the EMTs which are included in the parties' negotiations agreement. State and local AFSCME representatives have also met with at least one member of the EMT squad. AFSCME asserts that when the EMTs complained that they were not being informed of local AFSCME meetings, the local vice-president delivered meeting notices directly to the EMTs' work location. It also appears that AFSCME has encouraged and permitted the EMTs to attend meetings of the local even though all of the current EMTs have become full dues-paying members of FMBA Local 364, while they have declined membership in AFSCME. As to the claim that EMTs were misled about AFSCME's provision of training and recertification processing, it appears that AFSCME has negotiated terms with the Township which provide for payment to, and time off for EMTs to obtain recertification. As to the alleged failure of AFSCME with regard to allowing the EMTs to process a grievance, Article V of the parties agreement provides a grievance procedure which allows employees to initiate grievances with or without the union's assistance, up to step III of the procedure.

Finally, it is undisputed that during the current negotiations for a successor contract, a member of the EMT squad was named chairperson for that squad and has participated in

negotiations sessions on behalf of the EMTs, along with other unit chairpersons and the AFSCME negotiators.

ANALYSIS

The Commission is charged with determining in each instance the most appropriate collective negotiations unit. N.J.S.A. 34:13A-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 early in the Commission's history in State v. Professional Association of N.J. Dept. of Ed., 64 N.J. 231 (1974). The Court directed that a balance 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 undue proliferation of negotiations units.

In Pennsauken I, I determined that a unit limited to the Township's EMTs would be too narrow in scope and would unduly burden the Township with unit proliferation. I found that the Township's EMTs share a community of interest with other Township employees in the AFSCME unit, and that AFSCME was willing to represent them in the existing civilian unit. On those findings, I dismissed the earlier petition. The EMTs have in fact been added to the AFSCME broad-based unit and AFSCME has negotiated with the Township concerning their terms and conditions of employment.

Since the EMTs are now a part of the existing AFSCME unit, the appropriate analysis now centers on whether the FMBA has demonstrated a basis to sever EMTs from the AFSCME unit as it is currently comprised. The Commission has established a standard by which petitions requesting severance of employees from an existing unit must be evaluated. In Jefferson Tp. Bd. of Ed., P.E.R.C. No. 61, NJPER Supp. 248 (¶61 1971), the Commission stated:

The underlying issue is a policy one: assuming without deciding that a community of interest exists for the unit sought, should that consideration prevail and be permitted to disturb the existing relationship in the absence of a showing that such a relationship is unstable or that the incumbent organization has not provided responsible representation. We think not. To hold otherwise would leave every unit open for re-definition simply on a showing that one sub-category of employees enjoyed a community of interest among themselves. Such a course would predictably lead to continuous agitation and uncertainty, would run counter to the statutory objective and would, for that matter, ignore that the existing relationship may also demonstrate its own community of interest.

See also Mercer Cty., P.E.R.C. No. 89-112, 15 NJPER 277 (¶20121 1989); Sussex-Wantage Bd. of Ed., P.E.R.C. No. 88-113, 14 NJPER 346 (¶19133 1988); Middletown Tp. Bd. of Ed., P.E.R.C. No. 88-44, 13 NJPER 841 (¶18322 1987); Passaic Cty. Tech. and Voc. H.S. Bd. of Ed., P.E.R.C. No. 87-73, 13 NJPER 63 (¶18026 1986). Severance is appropriate only when the existing negotiations relationship is unstable or when the majority representative has not responsibly represented the petitioned-for employees.

AFSCME has been the representative for Township employees in a broad-based unit for over 20 years. Since mid-1999, the petitioned-for employees have also been included in the broad-based unit. There is no claim or showing on the information presented here that the collective negotiations relationship between AFSCME and the Township is unstable.^{4/}

The information provided by FMBA is intended to address the issue of whether AFSCME has responsibly represented the petitioned-for employees. The FMBA asserts that AFSCME is not capable of providing responsible representation and has not provided and will not provide responsible representation. In this regard, FMBA claims that AFSCME's alleged lack of expertise in representing emergency services personnel and alleged lack of knowledge of the special needs and areas of protection of concern to the EMTs has led to less than responsible representation of the EMTs in the two years that the petitioned-for employees have been in the AFSCME unit. For example, the FMBA asserts that AFSCME has not been able to properly train, or to direct the EMT's to the proper training required for certification or recertification, as would the FMBA. Even assuming that this function would be a responsibility of any negotiations representative, it appears that AFSCME has called the EMTs' need for

^{4/} We find unit instability where the existing unit includes employees supervising other unit employees, creating a conflict of interest. See, for instance, West New York, P.E.R.C. No. 87-114, 13 NJPER 277 (¶18115 1988); Woodbridge Tp., D.R. No. 96-19, 22 NJPER 216 (¶27116 1996).

meeting certification requirements to the Township's attention and has negotiated provisions for time and payment to EMTs to attend such training.

Additionally, the FMBA argues that AFSCME has not provided the petitioned-for employees with effective representation by failing to provide the EMTs with the local's by-laws and information about local meetings. An employee organization has no legal obligation to provide non-members with its constitution and bylaws since those documents are a function of union membership. I find that questions of internal union matters related to union membership cannot support an allegation of unreasonable or irresponsible representation in the context of a Petition for Certification. See Middletown Tp. Bd. of Ed., D.R. No. 99-5, 25 NJPER 1 (¶3000 1998). Moreover, even though the EMTs are not dues-paying AFSCME members, AFSCME has encouraged and allowed the EMTs to attend the local's membership meetings.

The FMBA also asserts that AFSCME discouraged the EMTs from filing a grievance over shift differential. The parties' negotiated grievance procedure allows employees to initiate their own grievances and carry them through the second step. There is no allegation that these employees could not have done so here. Moreover, no unfair practice charge was filed alleging that AFSCME breached its duty of fair representation by preventing EMTs from filing their own grievance. See Carteret Ed. Ass'n (Radwan), P.E.R.C. No. 97-146, 23 NJPER 390 (¶28177 1997). Further, even

assuming that it could be shown that AFSCME was asked to investigate a legitimate contractual violation and it failed to do so arbitrarily or in bad faith, we consider the totality of the representative's conduct -- not just one instance of negligence or inadequate representation -- to decide whether the incumbent's conduct is so egregious to warrant severance. See Passaic. I find under the facts here that AFSCME has not engaged in conduct which would warrant the EMTs' severance from the extant unit.

The FMBA alleges that some of the EMTs' needs differ from other AFSCME unit employees. Even competing interests at the negotiations table do not justify severance. In Clifton Bd. of Ed., D.R. No. 80-18, 6 NJPER 38 (¶11020 1980), the Director of Representation addressed this issue:

[I]n situations where two groups of employees within the same unit have different views of economic or non-economic interest, the undersigned has declined to find a conflict of interest. Rather, this not infrequent occurrence raises an issue of "competing interests" and, therefore, does not warrant the severance of employees from an appropriate unit.

Where different classifications of employees within a negotiations unit have different views of economic interest, it is understandable that the views of the minority are often not favored and not accepted. A majority representative's responsibility is to assure, however, that the views of the minority are responsibly considered. [Id. at 39-40.]

While the FMBA has asserted that AFSCME failed to provide the EMTs with information to prepare for successor collective negotiations and has not responded to the EMTs' safety concerns, the

facts establish that AFSCME representatives have included an EMT in negotiations, the EMTs have presented AFSCME with negotiations proposals and AFSCME has advocated on their behalf through negotiations with the Township.

Finally, the FMBA argues that because EMTs were not given an opportunity to vote on whether they wished to be represented in the AFSCME unit, they should be permitted to chose their own representative (presumably in their own unit) now. We determined in Pennsauken I that the only appropriate representation for EMTs was in the existing broad-based unit currently represented by AFSCME. Therefore, any election conducted in 1999 among the EMTs would have been limited to whether they wished representation by AFSCME in the existing unit. Any historical defects in the recognition of the unit must be addressed at the time, and cannot be cured later by voiding the recognition. Harvey Cedars Borough, D.R. No. 99-17, 25 NJPER 151 (¶30068 1999). No unfair practice charge was filed challenging the Township's inclusion of the EMTs in the AFSCME unit at the time the title was included in the unit.

Based upon all of the foregoing, I find that the petitioned-for employees have been responsibly represented by AFSCME. Moreover, they continue to share a community of interest with the other existing AFSCME unit employees, and a single unit of EMTs would cause undue unit proliferation for the Township. Therefore, I dismiss the instant petition.

ORDER

The FMBA's petition is dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION

Stuart Reichman, Director

DATED: October 2, 2001
Trenton, New Jersey