

D.R. NO. 88-29

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

In the Matter of

N.J. INSTITUTE OF TECHNOLOGY,
Public Employer,

-and-

DOCKET NO. RO-88-14

S.E.I.U., LOCAL 389, AFL-CIO,
Petitioner.

SYNOPSIS

The Director of Representation dismisses a petition seeking a narrow unit of unrepresented security guards. The Director finds that the most appropriate unit for representation of the guards is within the College's existing unit of blue-collar workers, with whom guards share a community of interest. Further, the College had not waived its right to object to the formation of a fragmented unit, since (a) the guard positions were created after the blue-collar unit was organized, (b) the College consistently sought to maintain its broad-based unit structures, and (c) there is no history of separate representation for guards.

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Appearances:

For the Public Employer
D'Maria, Ellis & Hunt, Esqs.
(Stephen Trimboli, of counsel)

For the Petitioner
Paul Pologruto, Business Rep.

DECISION

On August 18, 1987, Local 389, Service Employees International Union, AFL-CIO ("SEIU") filed a Petition for Certification with the Public Employment Relations Commission ("Commission"), seeking to represent all security guards employed by New Jersey Institute of Technology ("NJIT").^{1/}

NJIT opposes the Petition because it contends the SEIU is proposing a narrow unit limited to a single title.

^{1/} The Petition originally sought security guards, dispatchers, and watchmen. At the conference, NJIT advised that these employees all hold the title security guard/dispatcher.

We have conducted an administrative investigation in this matter to determine the facts. N.J.A.C. 19:11-2.2. The following facts appear:

NJIT employs approximately 850 employees, most of whom are organized into four broad-based units. Approximately 350 faculty and non-teaching professional employees are represented by the Professional Staff Association. Local 2282, American Federation of State, County and Municipal Employees ("AFSCME") represents a broad-based unit of approximately 130 blue-collar and technical employees, including operations employees, custodial and maintenance employees, laboratory technical employees, special service (e.g., printing and mailing) employees, and food service workers. There is a collective negotiations agreement currently in effect covering this unit through June, 1988. Office and Professional Employees International Union, Local 32 was recently certified to represent approximately 170 white collar employees. Additionally, the Fraternal Order of Police represents a unit of 15 campus police officers.^{2/} In addition to the 19 security guards who are the subject of this Petition, supervisory employees, administrators, and some para-professionals are unrepresented.

^{2/} As statutory police officers within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), these employees may not be included in a negotiations unit with non-police employees. N.J.S.A. 34:13A-5.3.

NJIT argues that the security guards do not comprise an appropriate, separate unit for purposes of collective negotiations. Rather, NJIT contends that the appropriate unit for representation of the guards would be the existing blue-collar unit represented by AFSCME, with whom they share a community of interest. NJIT asserts that its existing organizational structure of broad-based, generic units would be upset by permitting a unit limited to a single title to organize separately, and would lead to unit fragmentation.

SEIU asserts that (a) the guards enjoy a unique community of interest; (b) inclusion in a unit of blue-collar employees may present conflicts of interest because guards may be called upon to investigate activities of other employees; and (c) most security guards are represented in separate units throughout the State.

AFSCME does not assert a representational claim to the guards at this time. Rather, it claims that its existing blue-collar unit possesses a unique community of interest separate from any other NJIT employee groups.

AFSCME was certified to represent the blue-collar unit in January, 1974. In 1980, AFSCME filed a Petition seeking to represent the guards in its existing unit of blue-collar employees shortly after the security guard/dispatcher position was created. These employees voted in a Commission conducted election and they chose not to be represented.

In 1982, the International Federation of Technical/Professional Employees sought to represent the guards in a separate

unit. Although it believed a separate unit to be inappropriate, NJIT then consented to an election among the guards to bring the representation question to a quick resolution. Again, the guards chose not to be represented.

The parties have stipulated that security guards are not police within the meaning of the Act. Their principal responsibilities include parking lot control, control over admission to buildings, patrol of areas of the campus, and dispatching calls.

The guards are only required, as are employees in the blue-collar unit, to have a high school diploma or equivalent; their only training is received on the job. They are paid on the same salary scale as blue-collar employees, are eligible for overtime pay, and receive the same benefits package; they work a 40-hour work week on shifts, 12 months a year, similar to certain members of the existing blue collar unit; they work in common facilities with blue-collar employees. They are subject to the same administrative policies and labor relations control as other support staff. The guards are supervised by the police shift sergeant.

ANALYSIS

The issue here is whether the petitioned-for unit of 19 security guards is appropriate.

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). 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 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 the negotiations unit and 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).

The Commission has favored structuring negotiations units along broad-based, functional lines and has been reluctant to find appropriate units which are structured along occupational or departmental lines.^{3/}

This case involves a small residual group of 19 security guards. In deciding whether to grant requests for certification of residual units, the Commission must balance the rights of public

^{3/} See State of New Jersey, P.E.R.C. No. 68; South Plainfield Bd. of Ed., P.E.R.C. No. 46 (1970); Bergen Co. Bd. of Freeholders, P.E.R.C. No. 69 (1972); Piscataway Tp. Bd. of Ed., P.E.R.C. No. 88-124, 10 NJPER 272 (¶15134 1984); Bordentown Reg. Bd. of Ed., P.E.R.C. No. 84-126, 10 NJPER 276 (¶15136 1984), aff'd App. Div. Dkt. No. A-4503-83T6 (4/4/85); Ridgewood Bd. of Ed., P.E.R.C. No. 82-14, 7 NJPER 462 (¶12204 1981).

employees who desire representation against the effect such organization will have on the employer's overall labor stability. Where the Commission finds that a residual employee group more appropriately belongs in an existing, overall, broad-based unit, a request to represent the residual group separately will fail, absent exceptional circumstances. See 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) ("Camden I");

An exception was found in Bergen Pines County Hospital, D.R. No. 87-3, 12 NJPER 619 (¶17234 1982), where we found a unit of physicians and dentists appropriate. There, virtually all organizable employees were organized into 12 separate, narrowly defined units. The physicians/dentists employee group pre-existed the organization of all of the collective negotiations units and there was then no all-inclusive, broad-based professional unit in which to include these employees. We rejected the employer's argument that permitting doctors to organize separately into a twelfth negotiations unit could lead to unit fragmentation.

In University of Medicine and Dentistry of New Jersey, P.E.R.C. No. 84-28, 9 NJPER 598 (¶14253 1983), we approved the formation of a residual unit of graduate faculty where the graduate faculty employee group pre-existed the organization of the broad-based faculty unit. In UMDNJ, the representative of the

existing, broad-based faculty unit twice refused to represent the graduate faculty employees, and the community of interest between the residual unit and the broad-based unit was weak.

Here, there are four broad-based units organized along generic, college-wide lines. NJIT has previously rejected claims for separate, narrowly defined units.^{4/}

The blue-collar unit encompasses all types of blue-collar employees: custodians, operations and maintenance employees, food service workers, technicians and printing/mailing service employees. The security guards work a similar work week and work year to employees in the blue-collar unit; both groups have similar expectations concerning compensation and benefits. Control of labor relations and personnel policies are centralized. The level of skill and training for security guards is similar to that for blue collar employees. Therefore, we are inclined to find that the security guards have a strong community of interest with the blue-collar unit.^{5/}

SEIU asserts that guards are represented separately in other public employee units throughout New Jersey. Unlike the Labor Management Relations Act, U.S.C. §141 et seq., the New Jersey Employer-Employee Relations Act does not prohibit a mixed unit of

^{4/} See New Jersey Institute of Technology, D.R. No. 79-22, 5 NJPER 102 (¶10056 1979).

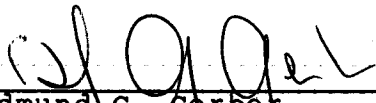
^{5/} Although SEIU asserts that a conflict of interest exists between the guards and other employees, it has not proffered facts which support this contention.

guards and non-guards, but rather, prohibits mixed units of police employees and non-police employees. N.J.S.A. 34:13A-5.3. In fact, guards, like many other employee groups, are sometimes represented in separate units; however, they are also represented in mixed units with other (non-guard) employees. See Jersey City Medical Center, D.R. No. 81-36, 7 NJPER 227 (¶12098 1981), request for review den., P.E.R.C. No. 81-148, 7 NJPER 387 (¶12174 1981) Further, there is no history here of negotiations with a separate guards unit which would negate the appropriateness of including these employees in the extant blue-collar unit. Cf. Englewood Bd. of Ed. Further, NJIT did not waive its right to object to a separate guards unit because the guard/dispatcher title did not exist at the time the blue collar unit was formed. Cf. Bergen Pines.

There remain several unrepresented categories of employees at NJIT. If this small unit is permitted to organize separately, it will enhance the potential for unit fragmentation among other employee groups. Moreover, unlike UMDNJ, the existing unit representative, AFSCME, has not refused to represent the petitioned-for employees; in fact, it promptly sought to represent the guards in its existing blue-collar unit soon after the employees were hired. See Camden I.

Based upon the foregoing, the petitioned-for unit of guards is inappropriate. Rather, we find that the most appropriate unit for representation of the security guards is AFSCME's existing blue-collar unit. Accordingly, the petition is dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Edmund G. Gerber
Director of Representation

DATED: January 28, 1988
Trenton, New Jersey