

D.R. NO. 95-22

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

In the Matter of

NEWARK HOUSING AUTHORITY,

Public Employer

-and-

Docket No. CU-94-51

SKILLED TRADES ASSOCIATION,

Petitioner,

-and-

ESSEX COUNTY BUILDING TRADES COUNCIL,

Intervenor.

SYNOPSIS

The Director of Representation dismisses a Unit Clarification Petition filed by the Skilled Trades Association. The Association sought to add certain unspecified members of the Essex County Building Trades Council to its unit of permanent skilled crafts employees of the Newark Housing Authority. The Association argues that some of the Trades Council hiring hall employees work so regularly that they should be classified as permanent employees. The Director found that the parties mutually intended to exclude these workers when the unit was formed and that a Unit Clarification Petition cannot be used to change their employee representative.

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Appearances:

For the Public Employer
Windell Wilson, Chief of Labor Relations

For the Petitioner
Balk, Oxfeld, Mandell & Cohen, attorneys
(Nancy I. Oxfeld, of counsel)

For the Intervenor
Kroll & Gaechter, attorneys
(Raymond G. Heineman, of counsel)

DECISION

On May 13, 1994, the Skilled Trades Association filed a Petition for Unit Clarification with the Public Employment Relations Commission. The Association seeks to clarify its recently certified collective negotiations unit of crafts employees of the Newark Housing Authority to include certain other craft employees. The

Building Trades Council, which represents another crafts unit, intervened in this matter and objects to the removal of any crafts workers from its unit. The Housing Authority also objects to the proposed unit clarification.

We have conducted an administrative investigation concerning the facts surrounding the petition. N.J.A.C. 19:11-2.2. These facts appear:

In May 1992, the Commission certified the Skilled Trades Association (in Commission docket number RO-93-7) to represent a collective negotiations unit of:

All skilled trades maintenance personnel in the maintenance department employed by the Newark HA, excluding...employees covered under the rehabilitation department and craft-outside agreement....

After its certification, the Association negotiated its first contract with the Housing Authority on behalf of this unit, which further defined the unit as:

...permanent skilled trades maintenance personnel employed by the employer consisting of elevator mechanics, boilermakers, carpenters, electricians, masons, painters, plumbers, welders, roofers, oil burner mechanics, resilient floor repairmen, steamfitters and asbestos workers as certified in RO-93-7...

The Trades Council represents the "outside crafts" employees. These people belong to member trade unions in the Trades Council and are hired for "temporary" work through a union hiring hall. The Trades Council has a contract with the Housing Authority covering this unit. The unit is defined in the 1989-93 contract, as well as in

the yet unsigned 1993-96 contract, as:

...all employees engaged in the work covered by the terms of the Agreement employed by the employer, consisting of asbestos workers, bricklayers, carpenters, composition roofers, electrical workers, elevator constructors, ironworkers, laborers, lathers, operating engineers, painters, plumbers, tile workers, sheet metal workers, sprinkler fitters and steamfitters and boilermakers.

Scope of Work:

This agreement shall apply to all rehabilitation work on residential structures performed by the trades noted above.

For the purpose of this agreement, "rehabilitation" shall be defined to include all work including demolition, repair and alteration, on any existing structure which is intended for or supportive or predominantly residential use...

Before 1992, the Trades Council also represented the inside-crafts unit (as a separate unit) now represented by the Association.

The Association's unit consists of civil service certified, regular employees. The Association and the Authority agree that the contract term "permanent" refers to those positions certified through civil service, as opposed to "temporary" employees hired for a limited purpose (theoretically, the Trades Council unit members).

Originally, the difference between the two units could be easily identified by their department designation--the outside crafts people worked for the rehabilitation department, which performed work on demolition/reconstruction projects. The "permanent" employees worked in the maintenance department, doing routine maintenance and repair work. However, the Housing Authority states that over the last few years, the departmental distinction

has become eradicated and the two functions have become mixed together. That is, there is no longer a "maintenance department" and a "rehabilitation department."

Parties' Arguments

The Association asserts in its petition that,

...the Housing Authority has refused to recognize the Skilled Trades Association as the representative of numerous trades employees of the Newark Housing Authority who have been employed on a continuous basis, many for periods of over a year. The Skilled Trades Association requests that the Commission clarify the unit to include all skilled trades people employed by the Authority.

However, the Association has not yet identified which employees, either by name or by position, it seeks to clarify as included in its unit.

At the investigatory conference conducted by the assigned staff agent, the Association clarified that the purpose of its petition is to include those Trades Council-represented craft employees who work so regularly and long-term that they should be considered "permanent" employees. The Housing Authority asserts that none of the employees represented by the Trades Council are in permanent positions; nor are they covered by the classified civil service system. Therefore, the Housing Authority argues, they are not part of the Association unit. It further contends that the Association's argument that many of the Trades Council positions should be converted to permanent, civil service positions might appropriately be made to the New Jersey Department of Personnel, but is not an appropriate issue for the Commission's Unit Clarification

process.

The Trades Council argues that its outside craft employees are specifically excluded by the terms of the 1992 Agreement for Consent Election and the Association's 1992 certification; therefore, the Trades Council argues, the Association has waived its right to seek any of the outside craft employees through a clarification of unit proceeding, regardless of how long-term or regularly they work.

* * *

For the reasons that follow, the Association's requested unit clarification cannot be granted.

First, the Association has failed to identify the specific positions and/or trade employees which it seeks to include in its unit. N.J.A.C. 19:11-1.5 requires a petitioner seeking a unit clarification to identify the specific category of employees it requests to be included in or excluded from the unit.

Second, assuming the Association was able to identify which positions it seeks to add to its unit, a unit clarification petition is inappropriate for use in these circumstances.

In Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977), we generally outlined the appropriate uses of unit clarification petitions:

The purpose of a clarification of unit petition is to resolve questions concerning the scope of a collective negotiations unit within the framework of the provisions of the Act, the unit definition contained in a Commission certification, or as set forth in the parties recognition agreement.

Normally, it is inappropriate to utilize a clarification of unit petition to enlarge or to diminish the scope of the negotiations unit for reasons other than the above, and ..[the question] relates primarily to identification....

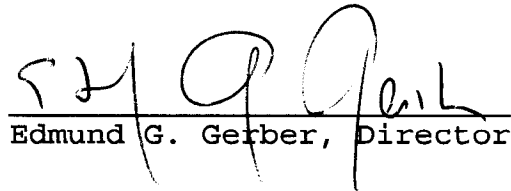
By its petition, the Association seeks to alter the composition of its unit to encompass all craft employees working regularly for the Authority. These employees, represented by the Trades Council, however regularly they might work, are not contemplated by the Association's certification or contract recognition clause, the latter of which defines the unit as permanent employees. The character of the unit cannot be altered through a Unit Clarification Petition. See Barnegat Tp. Bd. of Ed., D.R. No. 84-15, 10 NJPER 54 (¶15029 1983), in which we found that titles to be clarified into the unit must be identified as being within the scope of the existing unit; it is insufficient that a title may share a community of interest with existing unit. See also, State of New Jersey, Dept. of Higher Education, P.E.R.C. No. 85-77, 11 NJPER 74 (¶16036 (1985), in which the Commission found that, notwithstanding that "temporary" employees perform unit work, they are not unit employees as defined by the parties' recognition clause.

Moreover, the Association's certification specifically excludes all outside craft employees (those represented by the Building Trades Council) from the unit. Where the parties specifically agree to exclude positions from the unit when it is formed, neither party can use a unit clarification petition to put such employees back into the unit. Warren Township, D.R. No. 82-10,

7 NJPER 529 (¶12233 1981). To permit either party to do so would effectively deny such employees their statutory right to select their majority representative. Accordingly, absent a recent change in circumstances, members of the Trades Council outside crafts unit cannot appropriately be removed from the Trades Council unit and added to the Association's unit through a unit clarification proceeding. Rather, the Association's request to add these employees potentially raises a question concerning representation which may appropriately be resolved through the Commission's certification process. Wayne Bd. of Ed., P.E.R.C. No. 80-94, 6 NJPER 54 (¶11028 1980).

Based upon the foregoing, the Association's Petition for Clarification of Unit is dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: March 1, 1995
Trenton, New Jersey