

D.R. NO. 91-11

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

In the Matter of

COUNTY OF SUSSEX,

Public Employer,

-and-

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO,

Docket No. RO-91-25

Petitioner.

-and-

SUSSEX COUNCIL #20, NEW JERSEY CIVIL
SERVICE ASSOCIATION affiliated with IFPTE,

Intervenor.

SUSSEX COUNTY JUDICIARY,

Public Employer,

-and-

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO

Docket No. RO-91-34

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SUSSEX COUNCIL #20, NEW JERSEY CIVIL
SERVICE ASSOCIATION affiliated with IFPTE,

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SYNOPSIS

The Director of Representation orders elections among separate units of County employees and Judiciary employees. He rejects the County's claim that the existing unit of County employees should now be expanded to include Welfare employees historically represented in a separate unit. The Director also approves the creation of a separate unit of Judiciary employees based upon the status of the Judiciary as a separate employer.

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Appearances:

For the Public Employer - County of Sussex,
Courter, Kobert, Laufer, Purcell & Cohen, attorneys
(Fredrick Knapp, of counsel)

For the Public Employer - Sussex County Judiciary,
Joan K. Josephson, Chief, Labor Relations
Administrative Office of the Courts

For the Petitioner
Stephen Weissman, attorney

For the Intervenor
Fox and Fox, attorneys
(Dennis J. Alessi, of counsel)

DECISION AND DIRECTION OF ELECTION

On September 5, 1990, Communications Workers of America, AFL-CIO, ("CWA") filed a Petition for Certification of Public Employee Representative with the Public Employment Relations Commission ("Commission"). The petition was timely filed and accompanied by a sufficient showing of interest.

CWA seeks to represent an existing collective negotiations unit of all classified, full-time and part-time, blue collar and white collar employees employed by the Sussex County Board of Freeholders.^{1/} The unit consists of approximately 570 employees and is currently represented by Sussex Council #20, New Jersey Civil Service Association, affiliated with IFPTE ("Council 20"). Council 20 has intervened in this matter based upon its current collective negotiations agreement, which expires on December 31, 1990, covering these employees. N.J.A.C. 19:11-2.7. Subsequent to its intervention, Council 20 advised us that it is now affiliated with IFPTE, AFL-CIO.

The Sussex County Judiciary has also intervened in this matter. It seeks to remove Judiciary employees from the County-wide unit. CWA agreed to seek a separate unit for the Judiciary employees and on September 14, 1990, it filed a representation

^{1/} CWA initially also sought a separate unit of civilian employees assigned to the County Sheriff (Commission Docket No. RO-91-26). However, on September 27, 1990, CWA withdrew its petition for a separate unit and agreed that Sheriff's employees should continue to be in the broad-based, County-wide unit.

petition for a separate negotiations unit of the 24 employees employed by the Judiciary.

The County does not object to a secret ballot election among the County's employees to determine their majority representative. However, the County argues that employees in the Division of Welfare, which are currently represented by CWA in a separate unit, should now be added to the County-wide unit and should be eligible to participate in the election.

Sussex Council 20 agrees that the petitioned-for unit of County employees is appropriate. It also does not object to the formation of a separate unit of employees employed by the Judiciary. However, it does not consent to an election for either unit. Sussex Council 20 contends that the Welfare Division employees already represented by CWA should not be accreted to the County unit at this time. It notes that there is no issue concerning representation of Welfare Division employees now before the Commission.

We have conducted an administrative investigation to determine the relevant facts. The disposition of the petition is properly based upon our administrative investigation. N.J.A.C. 19:11-2.2 and 2.6. These facts appear.

Sussex Council 20 has represented the County-wide unit of employees since at least 1968. All parties stipulated that there have been prior agreements and an established practice within the

meaning of the Act ^{2/} through which the existing collective negotiations unit has included professional employees and non-professional employees and supervisors and nonsupervisory employees.

The parties agree that the units include classified full-time and regularly employed part-time employees. Further, the parties agree that certain employees holding division head positions are confidential and/or managerial within the meaning of the Act and should be removed from the unit.

CWA was certified to represent non-supervisory employees of the Sussex County Welfare Board in 1971. There are about 70 Welfare Board employees. CWA has a collective negotiations agreement with the County Welfare Board covering welfare employees in effect until December 31, 1990.

In November, 1989, the County abolished the County Welfare Board as part of a structural reorganization. On January 1, 1990, the Welfare Board's functions and full complement of employees were transferred to the Welfare Division within the County Department of Human Services. The County then refused to adhere to the terms of CWA's existing collective negotiations agreement covering the

^{2/} The New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1.1 et seq. ("Act"), permits mixed units of supervisors and nonsupervisors and units of professional employees and nonprofessional employees where the collective negotiations unit existed and a majority representative represented unit employees in collective negotiations prior to the passage of the Act in 1968. See subsections 5.3 and 6 of the Act.

Welfare Division employees and attempted to establish new salary ranges for the Welfare Division employees.

CWA then filed an unfair practice charge and requested interim relief. As Commission Designee, I determined that the Commission would likely find that the County was a successor employer to the abolished Welfare Board and ordered the County to continue to abide by the terms of the CWA's current contract with the old County Welfare Board and to continue to recognize CWA as the exclusive representative of Welfare employees. County of Sussex, I.R. No. 90-12, 16 NJPER 122 (¶21046 1990). It was also determined in the interim relief proceeding that the former Welfare Board Director, Sam Seamens, is now the Director of the new Welfare Division. The three administrative supervisors in the Division of Welfare continue to report to Seamens. All of the community of interest factors of Welfare employees remain the same. Their work, supervision and physical plant remain the same. The workloads, work locations, governmental mission and the general day-to-day operation of the entity remain unchanged. The contractual salaries for Welfare employees average about \$3,500 more than the salaries for comparable titles in the unit covered by the contract between the County and Council 20.^{3/} The County argues that Welfare employees

^{3/} I recognize that the interim relief proceeding is neither a final Commission determination nor was that litigation conducted in contemplation of the representation petition here. Nevertheless, I will consider the factual determinations as part of my overall investigation subject to an evidentiary proffer to the contrary.

have become part of the County employment structure, have similar titles and job functions as do employees in the existing unit and now share a community of interest with other county employees. It asserts that changed circumstances dictate their inclusion with the employees in the existing unit. The County was informed by letter that we were inclined to exclude the Welfare employees from the existing unit. The County objected and argued that the Welfare employees are now integrated into the existing county-wide unit. The County did not provide any additional evidence in support of this position. Rather, the evidence previously submitted in the unfair practice case demonstrates that Welfare employees are still a group with a separate identity.

The Commission has consistently held that, absent agreement by the incumbent representative to a consolidation of its existing unit into another unit, negotiations units with long and stable negotiations histories will not normally be disturbed if their separate identities can be maintained. See Passaic County, P.E.R.C. No. 87-123, 13 NJPER 298 (¶18125 1987) and Englewood Bd. of Ed., P.E.R.C. No. 82-25, 7 NJPER 516 (¶12229 1981).

In the present representation matter, CWA does not seek to consolidate the Welfare employees with the County-wide unit at this time. Further, based upon the record in the interim relief proceeding, it appears Welfare employees enjoy a community of interest among themselves as well as a long and stable history of negotiations in a separate unit.

Moreover, other than claims concerning statutorily excluded employees, it is Commission policy not to process requests to modify an existing collective negotiations unit during the pendency of a representation proceeding challenging the incumbent's majority status. City of Newark, D.R. No. 85-24, 11 NJPER 344 (¶16126 1985); County of Essex, D.R. No. 85-25, 11 NJPER 439 (¶16150 1985); City of Hoboken, D.R. No. 85-4, 10 NJPER 597 (¶15276 1984). In each of the cited matters, I ordered an election among the employees in the existing unit.^{4/} Here, no issue of the continued representation of CWA as the exclusive representative of an appropriate unit of Welfare employees is before us.

Based upon the foregoing, I find that the Welfare Division employees are not appropriate for inclusion in the petitioned-for unit at this time.

With regard to the petitioned-for unit of Judiciary employees, the Judiciary takes the position that all employees whose duties and responsibilities are necessary and integral to the functioning of the court system have been designated as "Judiciary employees". The Judiciary asserts that this group includes 14 employees in the Probation Department and 10 employees in the County Clerk's Office. The Judiciary has advised us that it will not permit its employees to continue to be included in a unit with employees employed by the County Board of Freeholders.

^{4/} If we were to include the Welfare employees in the unit at this time, as the County suggests, some 70 employees already represented by CWA would be eligible to participate in the election.

The Commission has previously stated that whenever the Judiciary determines that certain personnel are within the superintendence and control of the courts, a separate unit of such judicial employees is appropriate. See State of New Jersey, D.R. No. 81-34, 7 NJPER 209 (¶12093 1981), req. for rev. den. P.E.R.C. No. 81-127, 7 NJPER 256 (¶12115 1981). See also, Passaic County Court Judges, D.R. No. 82-26, 8 NJPER 13 (¶13006 1981) aff'd P.E.R.C. No. 82-92, 8 NJPER 233 (¶13097 1982), stay den. A-3208-81T2, 100 N.J. 352 (1985). Here, the Judiciary has agreed to an election among the petitioned-for unit of its employees. Further, where we determine that employees are employed by a separate employer, we will require the formation of separate collective negotiations units for the employees of each employer. We place employees of different employers in separate negotiations units because employees of different employers lack a fundamental basis of community of interest -- a common employer. See Camden County Bd. of Health Services Center, D.R. No. 89-36, 15 NJPER 379 (¶20161 1989).

Accordingly, as the petitioned-for units are appropriate, we direct that an election be conducted to determine the representational desires of the employees in the following units:

County Unit:

Included: All full time and regularly employed part-time employees employed by the Sussex County Board of Freeholders.

Excluded: unclassified employees, managerial executives, confidential employees, police

employees, division directors, and employees included in other collective negotiations units.

Judiciary Unit:

Included: All employees employed by the Sussex County Judiciary.

Excluded: Employees employed by the Sussex County Board of Freeholders, supervisors, professional employees, craft employees, police employees, confidential employees, managerial executives, probation officers, unclassified employees and employees included in other collective negotiations units.

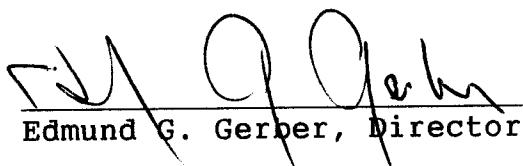
The election shall be conducted on Wednesday, October 24, 1990. Those eligible to vote must have been on the payroll as of the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, including those in the military service. Employees 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. 19:11-9.6, the County and the Judiciary are each directed to file with us an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the respective negotiations units, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility lists must be received by us no later than ten (10) days prior to the date of the election. A copy of the eligibility lists 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.

Eligible employees will vote on whether they wish to be represented for purposes of collective negotiations by Communications Workers of America, AFL-CIO, or by Sussex Council 20, NJCSA, affiliated with IFPTE, AFL-CIO, or by no representative. The exclusive representative, if any, shall be determined by a majority of the valid votes cast in each election. The elections shall be conducted in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Edmund G. Gerber, Director

DATED: October 12, 1990
Trenton, New Jersey