

D.R. NO. 2005-2

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

In the Matter of

BOROUGH OF SOMERVILLE,

Public Employer,

-and-

SOMERVILLE PROFESSIONAL FIREFIGHTERS Docket No. RO-2004-018
ASSOCIATION,

Petitioner,

-and-

OPEIU LOCAL 32,

Intervenor.

SYNOPSIS

The Director of Representation dismisses a representation petition filed by an independent organization seeking to sever certain fire suppression titles from an existing broad-based unit in the Borough of Somerville. The Borough and existing majority representative opposed the severance, citing undue unit proliferation and a community of interest of the titles within the existing unit. The Director found no evidence of unstable labor-management relations, or irresponsible representation by the majority representative. Under these circumstances, the Director found that severance was not warranted.

D.R. NO. 2005-2

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

In the Matter of

BOROUGH OF SOMERVILLE,

Public Employer,

-and-

SOMERVILLE PROFESSIONAL FIREFIGHTERS
ASSOCIATION,

Docket No. RO-2004-018

Petitioner,

-and-

OPEIU LOCAL 32,

Intervenor.

Appearances:

For the Public Employer,
Ruderman & Glickman, attorneys
(Steven S. Glickman, of counsel)

For the Petitioner,
Barry Van Horn, President

For the Intervenor,
Steven M. Tully, Business Manager

DECISION

On August 13, 2003, the Somerville Professional Firefighters Association (Association) filed a representation petition with the Public Employment Relations Commission (Commission) seeking to become the majority representative of all employees engaged in fire suppression, employed by the Borough of Somerville (Borough). The proposed unit includes the fire official,

superintendent of fire maintenance, assistant superintendent of fire maintenance, and the code enforcement/housing inspector ("housing inspector"), and indicates that there are four employees in the proposed unit. Currently, these employees are represented by Local 32, OPEIU (Local 32 or OPEIU) in a blue-collar and white-collar supervisory negotiations unit. Local 32 intervened in the petition based upon its recent collective negotiations agreement. N.J.A.C. 19:11-2.7.

Both the Borough and Local 32 oppose the petition and will not consent to an election. The Borough objects to the formation of another negotiations unit along narrowly defined lines. OPEIU asserts that the titles share a community of interest with other unit titles, and that it has fairly represented the petitioned-for employees. Both the Borough and OPEIU assert that these employees' job duties do not include fire suppression.

We have conducted an administrative investigation into the petition. N.J.A.C. 19:11-2.2. The parties attended an investigatory conference and submitted position statements on September 4, 2003, April 14, 2004, May 7, 2004, and July 19, 2004. In correspondence dated August 10, 2004, I advised the parties that I was inclined to dismiss the petition and set forth the basis upon which I arrived at that conclusion. I provided the parties with an opportunity to respond. None of the parties

filed a response. Based upon the administrative investigation, we make the following findings.

On March 18, 1994, the Commission certified a unit of all full-time and regular part-time white collar and blue collar supervisory employees. In 1997, OPEIU became the exclusive majority representative of this unit. The Borough and OPEIU have had a series of collective agreements. The titles which are the subject of the petition and now represented by OPEIU have been in the blue and white unit for ten years.

The Borough maintains a volunteer fire department. All of the petitioned-for employees are trained firefighters who respond to fire calls. In addition, there are unpaid volunteers who also respond to fire alarms.

The Borough appointed Barry Van Horn as its fire official on August 2, 1993. Van Horn performs inspections under the Borough's uniform fire safety code (based on state regulations). He completes necessary inspections, and reviews and makes recommendations on all permit applications. In addition, Van Horn responds to fire alarms and calls. He is also a member of the Borough's volunteer firefighting force.

Thomas Calabrese is the superintendent of fire maintenance; Patrick Weston is the assistant superintendent of fire maintenance. Their pay is based upon their responsibilities in these titles. Their duties include the maintenance of all

firefighting equipment and apparatus and the safety of the volunteer firefighters. Calabrese and Weston also respond to fire calls, and also serve as volunteers.

Milton VanDerveer is the housing inspector. He is responsible for inspecting multi-family housing within the Borough and enforcing the housing code. The Association asserts that part of the reason VanDerveer was hired was due to his possession of aerial ladder equipment skills needed by the volunteer fire department. VanDerveer also responds to fire calls as a volunteer.

As to the performance of fire suppression, the Association asserts that because these employees are on duty during the day, and are trained firefighters, they regularly respond to fire alarms and calls. Moreover, they assert that their training in certain equipment enables the Borough to more effectively respond to fire calls. The Association asserts that in many cases the petitioned-for employees are the first and sole responders to fire alarms and that the response by the volunteer firefighters would be ineffective at saving lives and property. The Association states that from November 1, 2002 through March 31, 2004, there were 595 alarms in the Borough, 269 of which occurred during the workday. In each of those daytime alarms, at least two pieces of fire suppression equipment were operated which otherwise would not have been used.

The disputed titles all primarily perform duties other than fire fighting. The Petitioner maintains that they should be allowed to form a separate unit because their particular needs as firefighters will be better addressed than in the mixed unit in which they are currently placed.

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). There, 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.

The Association has filed a "severance" petition. In Jefferson Tp. Bd. of Ed., P.E.R.C. No. 61, NJ Supp. 248, (¶16 1971), the Commission described its concerns about such petitions:

The question 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 relationship is unstable or that the incumbent organization has not provided responsible representation. We think not. To hold otherwise would leave every unit open to redefinition 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 counters to the statutory objective and would, for that matter, ignore that the existing relationship may also demonstrate its own community of interest. Id. at 249.

Severance is appropriate only where there is a record of unstable labor-management relations, or where the majority representative has not responsibly represented its unit employees. We find unit instability where the existing unit includes employees supervising other unit employees, creating a conflict of interest. See West New York, P.E.R.C. No. 87-114, 13 NJPER 277 (¶18115 1988) (petition to sever superior officers into separate unit was granted where superior officers' authority to initiate disciplinary action against subordinate unit officers created substantial conflict of interest).

The Supreme Court has also determined that firefighters in units containing both firefighters and non-firefighters are not entitled to severance unless the record demonstrates either unstable labor relations or irresponsible representation. See State of N.J. and N.J. State FMBA, CWA, and IFPTE Locs. 1037 and 195, P.E.R.C. No. 86-98, 12 NJPER 206, (¶17081 1986), rev'd 222 N.J. Super. 475 (App. Div. 1988), rev'd and PERC order reinstated sub nom. In re Matters of State, 114 N.J. 315 (1989).

We have applied this policy consistently over a period of almost twenty years. In Hudson County, P.E.R.C. NO. 84-85 , 10 NJPER 114 (¶15059 1984), the Commission dismissed a fire union's petition seeking to sever six hospital firefighters from a county-wide unit, where there was no evidence showing that the incumbent union failed to adequately represent the firefighters. The fact that firefighters are ineligible for interest arbitration under N.J.S.A. 34:13A-14 as long as they are included in a unit with non-firefighting personnel does not warrant creating a separate unit. The Commission noted there that the legislative history indicated that the Interest Arbitration Statute was not intended to disturb existing unit structures.

In Cty. of Essex, P.E.R.C. NO. 87-69 , 13 NJPER 12 (¶18009 1986), we dismissed a fire union's petition seeking to sever firefighters from a broad-based unit, where there was a long history of successful representation of firefighters in an existing unit, and where the evidence failed to show that firefighters shared significantly greater community of interest among themselves than among non-firefighters in the existing unit. Similarly, in So. Brunswick Tp., D.R. No. 91-13, 17 NJPER 9 (¶22006 1990), we dismissed a fire union's petition which sought to sever three fire prevention inspectors from an existing blue-collar and white-collar unit of municipal employees. We found that, in the absence of unstable labor relations or

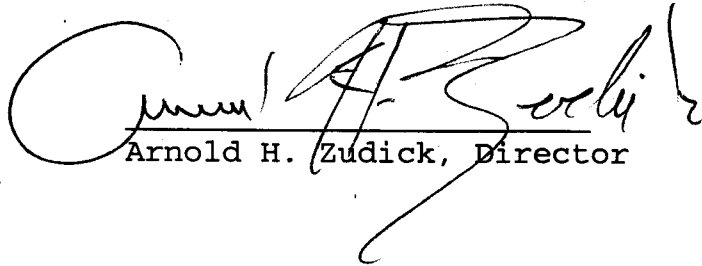
irresponsible representation, fire fighters are not entitled to sever from a unit of non-fire employees.

Applying these standards to this case, I do not believe that severance is warranted. OPEIU has represented these employees for seven years. No facts suggest that the negotiations relationship between the Township and OPEIU is unstable, and no evidence demonstrates that OPEIU has failed to responsibly represent the petitioned-for titles. Although these titles may have negotiations concerns, a majority representative has broad discretion in deciding how to address those matters in collective negotiations. See Vaca v. Sipes, 386 U.S. 171 (1967). Even if the facts showed that these employees had paid fire suppression duties, legal precedents instruct us to strike the balance in favor of preserving a long-standing stable bargaining unit. Like Hudson, Essex and So. Brunswick, there is no evidence in this case which suggests irresponsible representation or an unstable negotiations unit. Accordingly, I dismiss the petition because it seeks an inappropriate unit.

ORDER

The petition is dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Arnold H. Zudick, Director

DATED: September 2, 2004
Trenton, New Jersey

A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3.

Any request for review of this decision is due by September 16, 2004.