

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

In the Matter of

NEW JERSEY TURNPIKE AUTHORITY,

Public Employer,

-and-

Docket No. RO-2004-097

PARKWAY MANAGERS' ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation dismisses a representation petition filed by the Parkway Managers Association, which seeks to represent a unit of maintenance division managers employed by the New Jersey Turnpike Authority in the Garden State Parkway Division. The Director finds that the proposed unit is too narrow, and that the existing broad-based managers unit represented by AFSCME is the appropriate unit for many of the titles. The Director finds that if the new unit were approved, there would be a significant risk of undue unit proliferation; that the Turnpike Authority has no other residual units and opposes the formation of this one; that the representative of a broad-based managers unit has expressed a willingness to represent the petitioned-for titles, and that a strong community of interest exists between the petitioned-for titles and the existing unit. The Director rejects the Managers Association's argument that, in maintaining the existing negotiations units, the Legislature intended to keep all potential negotiations units distinct along Parkway and Turnpike lines, but only intended that it would not disturb the existing unit structure and negotiated agreements.

D.R. No. 2005-14

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Appearances:

For the Public Employer,
Genova, Burns & Vernoia, attorneys
(Brian W. Kronick, of counsel)

For the Petitioner,
Mets & Schiro, LLP
(Leonard C. Schiro, of counsel)

DECISION

On January 21, 2004, the New Jersey Turnpike Authority Manager's Association, American Federation of State, County and Municipal Employees, Local 3914 (AFSCME), filed a Petition for Unit Clarification (Docket No. CU-2004-015) with the Public Employment Relations Commission (Commission), seeking to clarify its negotiations unit at the New Jersey Turnpike Authority (Turnpike or Turnpike Authority). The CU petition seeks to include new Turnpike employees in management titles grades 13 through 16, who were formerly unrepresented and employed by the New Jersey Highway Authority, Garden State Parkway (Parkway). On

May 3, 2004, the Parkway Manager's Association (Managers Association) filed a Petition for Certification (Docket No. RO-2004-097)^{1/} seeking to represent a unit of about 40 former Parkway managers who are now employed by the Turnpike's maintenance division.

The Turnpike Authority opposes the Managers Association petition and will not consent to a secret ballot election. The Authority argues the proposed separate unit of Parkway maintenance managers is too narrow and that some of the petitioned-for employees are statutorily exempt from representation in any negotiations unit.

Since AFSCME's CU petition and the Association's RO petition overlap in seeking to represent some of the same titles, the Manager's Association RO petition acts as a cross petition to AFSCME's CU petition. By letter of May 18, 2004, we notified AFSCME about the representation petition. We have conducted an administrative investigation of facts regarding the RO petition. On February 17, 2005, we notified the parties of our tentative findings and invited responses. Neither party filed a response. N.J.A.C. 19:11-2.2 and 2.6. There being no substantial or material factual issues in dispute, the disposition of this matter is based on the following:

^{1/} The Managers Association had filed and withdrawn an identical petition, docketed as Docket No. RO-2004-058, on December 15, 2003 and March 15, 2004, respectively.

FINDINGS OF FACT

Background

The New Jersey Turnpike Authority and New Jersey Highway Authority were separate authorities charged with management and direction of the two toll roadways: the New Jersey Turnpike and the Garden State Parkway, respectively. In July 2003, the Turnpike Authority absorbed the Parkway pursuant to amendments to N.J.S.A. 27:23-1 et seq. With respect to the existing negotiations units, the Legislature intended to maintain the existing structures. N.J.S.A. 27:23-42(b)(3) provides:

The officers and employees of the Highway Authority are transferred to the [Turnpike] authority and shall become employees of the authority until determined otherwise by the authority.

. . . The employees shall retain all of their rights and benefits under existing collective negotiations agreements or contracts until such time as new or revised agreements or contracts are agreed to. All existing employee representatives shall be retained to act on behalf of those employees until such time as the employees shall, pursuant to law, elect to change those representatives.

Consequently, the Turnpike Authority now has collective agreements with eight negotiations units, three existing Turnpike units (listed first below); and five former Parkway units:

1. International Federation of Professional and Technical Engineers (IFPTE) Local 194, AFL-CIO: Turnpike non-supervisory administrative, maintenance and toll employees.

2. IFPTE Local 200: Turnpike tolls and maintenance primary level supervisors.
3. AFSCME Local 3914: Turnpike higher level supervisors, managers and administrative supervisory employees.
4. IFPTE Local 196: Parkway non-supervisory toll collectors and maintenance employees.
5. IFPTE Local 193 (TSA): Parkway supervisory toll collectors.
6. IFPTE Local 193 B: Parkway non-supervisory craft technicians.
7. IFPTE Local 193 C: Parkway maintenance crew supervisors.
8. International Brotherhood of Teamsters Local 97: Parkway administrative staff.

The unrepresented employees of the Parkway have been fully integrated into the Turnpike Authority organizational structure. They are now subject to the same health insurance plan, sick leave policy, holiday schedule, and all other policies and procedures. The following steps have been taken to integrate the operations of both organizations: the engineering, finance, purchasing, legal, human resources, technical and administrative services departments have been completely integrated. There is one chief engineer, director of finance, director of purchasing, director of law, director of human resources, director of technical and administrative services. All engineering personnel for both roadways work in the Parkway's Woodbridge headquarters; all finance and purchasing department personnel now work in the

Turnpike Authority's East Brunswick headquarters. The payroll and human resource systems have been merged into one system. Although the merger did not join the two roadways' maintenance and tolls operations, all purchasing/leasing and acquisition of equipment, materials and supplies are now shared.

The manager positions sought by the Managers Association are all assigned to the Parkway's maintenance division and include:

1. Area manager
2. Assistant building manager
3. Crew manager
4. District manager
5. Engineers
6. Equipment manager
7. Equipment specialist
8. Executive secretary
9. Field supervisor
10. Landscape architect
11. Maintenance administrative coordinator
12. Maintenance administrative manager
13. Maintenance coordinator
14. Maintenance roadway manager
15. Manager sign structures
16. Motor pool administrator
17. Office administrator
18. One call coordinator

AFSCME seeks to add the following former Parkway titles to its existing managers' unit^{2/}:

2/ According to its recognition clause, AFSCME's existing unit consists of:

management employees in full-time and permanent positions across all divisions, including: assistant manager, telecommunications, chief drafter, construction supervisor (seven positions), environmental coordinator, environmental supervisor, general foreman (six positions), manager of local area
(continued...)

1. Accounting assistant manager (1)^{2/}
2. Area manager (6)
3. Assistant building maintenance manager (1)
4. Audit Supervisor (1)
5. Audit Supervisor -ADP (1)
6. Building Maintenance Manager (1)
7. Construction Manager (1)
8. Crew Manager (6)
9. District Equipment manager (3)
10. District Manager (3)
11. District Superintendent (3)
12. Engineer (1)
13. FDN/CCF Administrator (1)
14. Funding Administrator (1)
15. General Services Manager (1)
16. Landscape Architect (1)
17. Land Surveyor (1)
18. Maintenance Administrative Manager (1)
19. Maintenance Fleet Specialist (1)

2/ (...continued)

network, manager of administration and application support, assistant general projects, budget coordinator, coordinator microprocessor systems, engineer, telecommunications, general foreman area manager facilities, general project engineer, landscape architect, manager buildings administration, manager environmental quality and resources, manager right of way, manager tolls inventory and staffing, project engineer (five positions), project engineer facilities, project engineer specifications, project manager tech, telecom and electronics, ETC systems manager, senior systems project manager, assistant supervising engineer highway construction, senior project engineer, (three positions), superintendent facilities, and administrator purchasing office services interchange manager (ten positions), maintenance systems supervisor, manager assistance division (two positions), manager office services, manager police services, one call coordinator, project engineer structural engineering, project supervisor (three positions), project supervisor structural engineering, systems project coordinator.

3/ Numbers within parentheses indicate the estimated number of employees holding the title.

20. Maintenance Roadway Manager (1)
21. Manager Sign Structures (1)
22. Payroll Supervisor (1)
23. Principal Engineer (3)
24. Revenue Control Manager (1)
25. Roadway Services Administrator (1)
26. Senior Engineer (3)
27. Systems Analyst (1)
28. System Supervisor (2)
29. Telecommunication Manager (1)
30. Toll Equipment Supervisor (1)
31. Web Systems Supervisor (1)

Thus, there is overlap between the titles the Managers Association and AFSCME seek to represent.

ANALYSIS

The issue presented by the Managers Association representation petition is whether the proposed unit of maintenance division managers is appropriate.

The Turnpike argues that the Managers Association's petition seeks too narrow a unit which will result in undue unit proliferation and fragmentation. It asserts that the existing broad-based managers unit represented by AFSCME is the appropriate unit for many of the titles sought by the Managers Association. The Authority also argues that some of the petitioned-for titles supervise other titles proposed for inclusion, or are managerial executives or confidential employees within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1.1 et seq. (Act). The Turnpike Authority further asserts that the petitions are not ripe, that its absorption of the Garden State Parkway is too recent, and that

changes in the merged organization continue to occur and evolve, which will affect unit placement.

The Managers Association argues that the Legislature intended to keep the negotiations unit structure separate along pre-existing Parkway and Turnpike Authority organizational lines. It argues that the proposed unit of Parkway maintenance managers is, therefore, appropriate. AFSCME claims that the titles it seeks are identical in function and/or title to those in its unit and that, therefore, they, belong in its unit. It argues that its CU petition is, therefore, the appropriate petition to add the disputed titles. For the reasons that follow, I agree with the Turnpike Authority that the proposed unit composed exclusively of maintenance division managers is too narrow and could lead to undue unit proliferation. Accordingly, I dismiss the RO petition.

The Commission is charged with the responsibility of determining the appropriate unit for negotiations. N.J.S.A. 34:13A-6(d). Where more than one unit structure is potentially appropriate, the Commission must determine which unit configuration is most appropriate. State of N.J. and Professional Assn. of N.J. Dept. of Education, P.E.R.C. No. 68, NJPER Supp. 273 (¶68 1972), rev'd. NJPER Supp. 2d 14 (¶7 App. Div. 1973), aff'd 64 N.J. 231 (1974) ("Professional Assn.").

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 Commission has long favored units structured along broad-based, functional lines, and has been reluctant to approve units of employees in a single occupational group. In Professional Assn., the Supreme Court endorsed the Commission's broad-based unit approach, but directed that a balance be struck between the rights of public employees to negotiate collectively and the public employer's right not to be burdened with undue proliferation of negotiations units. Thus, the desires of the employees and the parties, while relevant, are not paramount. We consider the totality of circumstances of the particular case, including the structure and history of existing units and the extent of organization of the employer's employees. Bordentown Reg. Bd. of Ed. and Bordentown Reg. Ed. Assn., P.E.R.C. No. 84-126, 10 NJPER 276 (¶15136 1984), aff'd 11 NJPER 337 (¶16122 App. Div. 1985); Tp. of Teaneck, P.E.R.C. No. 88-20, 13 NJPER 722 (¶18270 1987); Passaic Cty. Bd. 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).

In applying the Professional Assn. balancing test, the Commission generally favors a broad-based unit structure and is reluctant to approve a unit composed of a single title or occupational group. See, e.g., Kearny Bd. of Ed., P.E.R.C. No. 2005-42, 30 NJPER 514 (¶171 2005) (separate unit of full-time classroom aides rejected where part-time aides still unorganized); Warren Cty., D.R. No. 95-14, 21 NJPER 43 (¶26026 1994) (proposed unit of 15 dispatchers inappropriate); Wall Tp., D.R. No. 94-24, 20 NJPER 209 (¶25101 1994) (proposed unit of six dispatchers inappropriate); NJIT, D.R. No. 88-29, 14 NJPER 148 (¶19060 1988) (narrow unit of security guards rejected where college had consistently maintained broad-based units and title was recently created); and Jersey City, D.R. No. 84-6, 9 NJPER 556 (¶14231 1983) (unit of sanitary inspectors inappropriate where other professional employees unrepresented). Where we have been asked to consider a residual group of employees, we have rejected units along single job categories where the petitioned-for units were determined to have a strong community of interest with an existing broad-based unit; where the incumbent representative was willing to represent the petitioned-for employees in a broad-based unit; where the positions were created after the formation of the broad-based unit, and where the employer did not waive its right to insist on broad-based units. See Tp. of E. Windsor, P.E.R.C. No. 97-68, 23

NJPER 51 (¶28035 1996), aff'g D.R. No. 97-2, 22 NJPER 348 (¶27180 1996) (East Windsor); NJIT; Camden Bd. of Ed., P.E.R.C. No. 87-53, 12 NJPER 847 (¶17326 1986); Camden Bd. of Ed., E.D. No. 76-32, 2 NJPER 123 (1976).

In East Windsor, the Commission rejected a proposed unit of emergency medical technicians (EMTs) based upon the incumbent representative's willingness to represent the EMTs in its broad-based unit. There, the employer had not waived its right to object to the separate unit since the EMT title was recently created. Conversely, the Commission has found that the balance tips in favor of granting a residual unit its right to be represented separately where approving the unit would not risk further unit proliferation, where the employees have tried to organize but have remained unrepresented for a period of time, and where the incumbent representative has not expressed a willingness to represent the petitioned-for employees. For example, in UMDNJ, P.E.R.C. No. 91-2, 16 NJPER 431 (¶21183 1990), the Commission approved a unit of nurses, finding that the creation of a large separate unit of professional nurses there did not portend a proliferation of small, single occupation professional units. In Ocean Cty., D.R. No. 96-2, 21 NJPER 301 (¶26192 1995), we also approved a narrow unit of supervisors where it appeared that, as it was the final unit to be organized, further unit fragmentation was unlikely. And, in Bergen Pines

Cty. Hospital, D.R. No. 87-3, 12 NJPER 619 (¶17234 1982), we found a unit of physicians and dentists appropriate. The physicians/dentists employee group existed before other negotiations units of professionals organized, and the employer had already accepted the organization of eleven negotiations units, many composed of single professional groups. In UMDNJ, P.E.R.C. No. 84-28, 9 NJPER 598 (¶14253 1983), the Commission approved a residual faculty unit finding it appropriate where the appropriate broad-based unit had twice disclaimed interest in representing the petitioned-for faculty. In Town of W. New York, D.R. No. 2002-1, 27 NJPER 339 (¶32121 2001), we approved a separate unit of crossing guards, rejecting the employer's claim that permitting the unit would create unit fragmentation. There, the community of interest between crossing guards and the City's white collar unit was not clear-cut, the incumbent representative was unwilling to represent the guards, and the risk of unit proliferation was slight, since the proposed unit appeared to be the last of the Township's unrepresented employees.

Applying the standards outlined above to these facts, I find that the balance must be struck against the formation of an additional separate unit composed exclusively of Parkway maintenance division managers. There is a significant risk here of further unit proliferation inasmuch as many of the Garden State Parkway managers have never been organized and, in the

future, could seek to form their own residual units along division lines. The evidence shows that the Turnpike Authority has no small residual units in its negotiations unit configuration and is resisting the formation of this small unit. Further, the representative of a broad-based managers unit has expressed a willingness and interest in representing many of the titles the Association has petitioned for, and, in fact, is actively seeking to add them to its existing unit. It appears that a strong community of interest exists between the petitioned-for titles and the unit represented by AFSCME. I am not persuaded by the Managers Association's argument that, in maintaining the existing negotiations units, the Legislature intended to keep all potential negotiations units distinct along Parkway and Turnpike lines, but only that it would not disturb the existing unit structure and negotiated agreements.

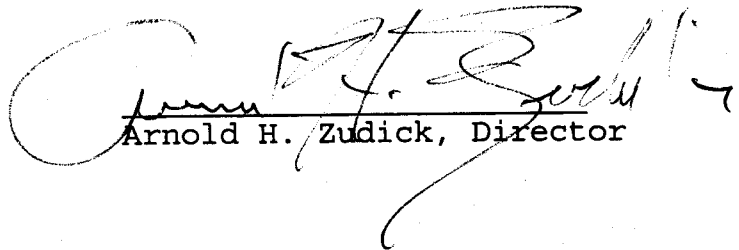
Since the titles petitioned for by the Association were unorganized and, therefore, not in any existing negotiations unit, I do not believe that N.J.S.A. 27:23-42(b)(3) was intended to mandate a separate unit structure for those titles. The determination of unit placement for those titles should, therefore, be decided based upon the application of the above discussed community of interest standards and law.

Based on the above, I dismiss the representation petition filed by the Parkway Managers Association.^{4/} Processing of AFSCME's CU petition to determine which employee titles are appropriate for inclusion in its existing unit will continue, and if necessary, will be decided separately.

ORDER

The RO petition is dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Arnold H. Zudick, Director

DATED: March 8, 2005
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 is due by March 21, 2005.

^{4/} Having decided to dismiss the RO petition because the proposed unit is too narrow, I decline to decide the managerial executive status, confidential status, or supervisory status of specific titles in this decision.