

D.R. No. 2006-7

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

In the Matter of

STATE OF NEW JERSEY,
MONTCLAIR STATE UNIVERSITY,

Public Employer,

-and-

Docket Nos. RO-2005-104
CU-2005-36

INTERNATIONAL ALLIANCE OF THEATRICAL
AND STAGE EMPLOYEES LOCAL 632,

Petitioner,

-and-

INTERNATIONAL FEDERATION OF PROFESSIONAL
AND TECHNICAL EMPLOYEES LOCAL 195, AFL-CIO,

Petitioner-Intervenor.

SYNOPSIS

The Director of Representation dismisses a representation petition filed by IATSE Local 632 seeking an election for all regularly employed stagehands employed by Montclair State University, a State institution. IFPTE Local 195, the current majority representative of certain State employees, including employees of State colleges, intervened in the petition, asserting that the stagehand title was similar to those covered under its current collective agreement. IFPTE also filed a clarification of unit petition seeking to include the stagehands in its existing unit.

The Director found that in light of bill A-3816, which, on July 7, 2005, amended N.J.S.A. 34:13a-5.10 of the Public Employer-Employee Relations Act to limit the number of collective negotiations units for civilian employees to ten existing units, the Commission was without jurisdiction to issue a determination that the unit sought by IATSE's petition is appropriate, since such a determination could create an eleventh bargaining unit.

The Director found insufficient information to determine whether the stagehands should be included in IFPTE's existing unit, but noted that bill A-3816 legislation permits the State to place titles within one of the ten existing bargaining units, subject to challenge through the Commission's clarification of unit procedure. Since the State had not acted to place the stagehands within any of the ten existing bargaining units, the Director found there is nothing to challenge through IFPTE's current petition.

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Appearances:

For the Public Employer,
Peter Harvey, Attorney General
(Geri Benedetto, Deputy Attorney General)

For the Petitioner IATSE
Kroll, Heineman & Giblin, attorneys
(Raymond Heineman, of counsel)

For the Petitioner IFPTE
Oxford, Cohen, attorneys
(Arnold Shep Cohen, of counsel)

DECISION

On April 7, 2005, the International Alliance of Theatrical and Stage Employees, Local 632, AFL-CIO (IATSE) filed a timely representation petition seeking to represent all regularly

employed, full and part-time stagehands employed by Montclair University, an institution of the State of New Jersey (State). These employees are unrepresented. On April 28, 2005, the International Federation of Professional and Technical Engineers, Local 195 (IFPTE) intervened in the petition. IFPTE is the current majority representative of certain full-time and part-time permanent, provisional and unclassified employees of the State of New Jersey, including certain employees at the State's nine colleges. IFPTE asserted that the petitioned-for employees share titles that are similar to those covered under its current agreement, which is effective from July 1, 2003 through June 30, 2007. On April 26, 2005, IFPTE filed a clarification of unit petition seeking to add the Montclair stagehands to its existing unit.

The State opposed both petitions, asserting that the stagehands are temporary, casual employees not eligible for representation in any bargaining unit. Moreover, the State asserted that since the stagehand title had been in existence since 1980, IFPTE's clarification of unit petition was untimely.

An investigatory conference was held on May 11, 2005. The parties submitted supplemental position statements by June 15, 2005. On July 7, 2005, Acting Governor Richard J. Codey signed bill A-3816 into law, which amended our Act at 34:13A-5.10 and now limits the number of collective negotiations units for

civilian employees of the State of New Jersey to ten existing units. The State argued that in light of the legislation, the representation petition filed by IATSE was moot and should be dismissed by the Commission as a matter of law. Moreover, the State reiterated its position that the stagehands should not be included in IFPTE's collective negotiations unit through a clarification of unit petition.

On July 29, 2005, we advised IATSE and IFPTE of the State's position and requested responses. Responses were received by August 18, 2005. IATSE urges that because its petition was filed prior to the enactment of the legislation, that the Commission issue a determination under the substantive law in effect on the date the petition was filed. IFPTE asserts that IATSE's petition for a separate unit be dismissed.

N.J.S.A. 34:13A-5.10 provides, in pertinent part, as follows:

b. (1) There shall be only ten collective negotiations units for civilian employees of the Executive Branch of State Government. The units shall be as follows: administrative and clerical; professional; primary level supervisory; high level supervisory; operations, maintenance and services; crafts; inspection and security; health care and rehabilitation services; State colleges and universities; and State colleges and universities adjuncts.

(2) An existing or newly established title that is not assigned managerial, executive or confidential duties...may be placed in one of the ten collective negotiations units for civilian employees by the Governor's Office of Employee Relations. Such placements may be challenged through a unit

clarification procedure pursuant to the rules of the Public Employment Relations Commission.

ANALYSIS

N.J.S.A. 34:13a-5.10 prohibits additional negotiations units for civilian State employees. Despite IATSE's request that we not apply that law to its petition, there is no provision therein indicating that it is merely prospective in nature. The Commission is, therefore, now without jurisdiction to issue a determination that the unit sought by IATSE's petition is appropriate, since such a determination could create an eleventh collective negotiations unit. Therefore, IATSE's petition is dismissed.

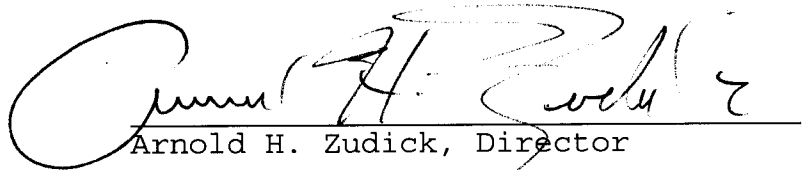
IFPTE's CU petition seeks to add the stagehands to its existing unit. The State replies that the stagehands are casual workers and therefore not appropriate for inclusion in any unit. Insufficient factual information has been placed before me to determine whether stagehands are organizable, and if so, whether they might appropriately be included in the IFPTE unit, and if so, whether a unit clarification is the appropriate vehicle to accomplish that result.

N.J.S.A. 34:13A-5.10b(2) permits the State to place new or existing titles into existing units and any representative of one of the ten existing negotiations units seeking the titles may challenge any such placements through a clarification of unit petition. Since the State has not recently acted to place the

petitioned-for stagehands in any unit, there is presently nothing to challenge pursuant to 34:13A-5.10b(2). IFPTE, therefore, has 30 days to advise me whether it will attempt to proceed with or withdraw its clarification of unit petition.

In the absence of a response, the clarification of unit petition will be dismissed. N.J.A.C. 19:11-2.3

BY ORDER OF THE DIRECTOR OF
REPRESENTATION



Arnold H. Zudick, Director

DATED: December 7, 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 December 20, 2005.