

D.R. No. 2006-16

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

In the Matter of

COUNTY OF HUDSON,

Petitioner,

-and-

Docket No. CU-2006-014

AFSCME COUNCIL 52, LOCAL 2306,

Employee Representative.

SYNOPSIS

The Director of Representation clarifies a unit of non-supervisory welfare employees represented by AFSCME Local 2306 to exclude an employee who performs internal affairs duties. The Director notes that the parties have agreed to exclude the employee from the unit while he performs such duties based on the potential for a conflict of interest.

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Appearances:

For the Petitioner,  
Scarinci & Hollenbeck, attorneys  
(Mitchell Levine, of counsel)

For the Employee Representative,  
Kathleen Mazzouccolo, attorney

DECISION

On November 15, 2005, the Hudson County Division of Welfare (County) filed a Petition for Unit Clarification.<sup>1/</sup> The County seeks a ruling from the Commission that one of its investigators is properly excluded from the collective negotiations unit of non-supervisory welfare employees represented by AFSCME Local 2306.

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<sup>1/</sup> Initially, AFSCME filed a CU petition (Docket No. CU-2006-2) on August 3, 2005, regarding the Investigator title. AFSCME withdrew its petition on November 18, 2005. The Division subsequently filed what it had termed a "counter clarification of unit petition." AFSCME has also filed a desk audit with the New Jersey Department of Personnel as well as a grievance regarding the subject investigator.

Within the Welfare Division, AFSCME represents employees in the following titles: Social Worker, Human Services Specialist I, II, and III, Clerk Transcriber, Clerk Typist, Account Clerk, Clerk Stenographer, Clerk, Telephone Operator, Senior Clerk Transcriber, Senior Clerk, Senior Account Clerk, Senior Clerk Typist, Senior Clerk Stenographer, Senior Office Appliance Operator, Principal Clerk, Office Appliance Operator, Data Control Clerk, Data Entry Machine Operator, Investigators, Social Service Aides. Excluded are supervisory titles and Messengers, both permanent and temporary.

The title Investigator-Welfare Agency is one of the titles represented by AFSCME. James Fisher is one of several employees holding that title. In addition to his regular duties as investigator, Fisher acts in an internal affairs-type capacity, investigating potential misconduct by staff members who are also represented by AFSCME. The fact that Fisher functions in this capacity is not disputed by either party. Moreover, the parties agree that these job responsibilities create a potential conflict of interest justifying the exclusion of Fisher's individual position from AFSCME's unit. In its letter dated February 2, 2006, AFSCME states:

James Fisher, the employee currently holding the title of Investigator, County Welfare Agency, who has been assigned the responsibility of investigating the alleged misconduct of other staff members, is not, and has not, been paying either dues or agency fee assessments to the Union, nor is the Union seeking such dues or fees from him.

The Union agrees that inclusion in a bargaining unit of a person performing such duties would ordinarily create a conflict of interest that may warrant the person's exclusion from the unit. As noted, Mr. Fisher currently pays neither dues nor Agency fee (sic) to the Union. In this case, the Union has long recognized that a Senior Investigator performing such duties would be excluded from the Local 2306 bargaining unit. This title (Senior Investigator), however, is now included in the AFSCME Local 1697 (Supervisors) bargaining unit. The Union's primary contention in initially bringing its CU petition was that the individual assigned these duties was an Investigator, not a Senior Investigator, and that the assigned duties were outside the scope of the Investigator title. This issue however, falls under the jurisdiction of the NJ Department of Personnel and is, to our knowledge, currently being investigated by that agency.

As a final matter, the grievance filed on September 28, 2005 seeks "full recognition" of the inclusion of the Investigator title in the Local 2306 bargaining unit. This issue actually relates to the question of whether the duties assigned to Mr. Fisher are properly within the Investigator title, which will ultimately be answered by the NJ Department of Personnel, and should dispose of the grievance.

At this point, we believe that there is no current dispute with respect to Mr. Fisher's status that would warrant PERC's continued jurisdiction.

Additionally, on March 1, 2006, AFSCME reiterated its position that ". . . an employee performing the subject duties would ordinarily be excluded from the Union due to a conflict of interest." AFSCME also advised that ". . . the New Jersey Department of Personnel commenced a desk audit with respect to

whether Mr. Fisher was being assigned duties consistent with this permanent title of Welfare Investigator. The NJDOP has exclusive jurisdiction over this issue, and we are awaiting its determination, which should be dispositive."

The County maintains that the pendency of the NJDOP desk audit and the grievance create a dispute between the parties which necessitates a determination by PERC. The County claims that the desk audit and grievance are ". . . an attempt to evade a proper determination and hide behind the guise of civil service to circumvent the jurisdiction of PERC . . ." The County further claims that AFSCME's position in its February 2 letter ". . . is nothing more than pretext."

The New Jersey Employer-Employee Relations Act empowers the Commission to determine in each instance the appropriate unit for collective negotiations. A clarification of unit petition is used to resolve questions concerning the composition of an existing collective negotiations unit. N.J.A.C. 19:11-1.4; Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248, 251 (1977). Either party may request that we determine whether certain titles or employee positions are statutorily prohibited from inclusion in the unit. For example, confidential and managerial executives may not be included in any negotiations unit. N.J.S.A. 34:13A-5.3. Additionally, the Act inherently embodies restrictions on the inclusion of personnel with conflicts with other unit members. See Bd. of Ed. Of W. Orange

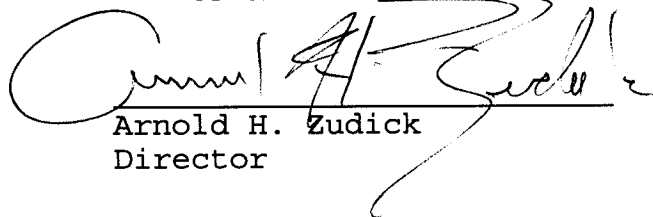
v. Wilton, 57 N.J. 404, 416 (1971). A clarification of unit petition may be used for such a claim. Here, the parties agree that the job title Investigator is and continues to be appropriately included in the unit; however, the parties also agree that the internal affairs duties assigned to Fisher create a potential for conflict of interest if his position were included in the unit with other employees. Accordingly, the parties have appropriately agreed to exclude his position from the AFSCME unit so long as he continues to perform such duties.

Accordingly, the unit represented by AFSCME is hereby clarified to exclude James Fischer's Investigator position assigned to internal affairs.

ORDER

Effective immediately, AFSCME's unit is clarified to exclude James Fischer's Investigator position assigned to internal affairs.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION



Arnold H. Zudick  
Director

DATED: April 27, 2006  
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 May 10, 2006.