

D.R. No. 2011-2

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

In the Matter of

COUNTY OF GLOUCESTER,

Public Employer,

-and-

Docket Nos. RO-2008-066
& RO-2010-027

NEW JERSEY STATE FIREFIGHTER'S
MUTUAL BENEVOLENT ASSOCIATION,

Petitioner,

-and-

COMMUNICATIONS WORKERS OF AMERICA,
LOCAL 1085,

Intervenor.

SYNOPSIS

Pursuant to the Commission's decision in P.E.R.C. No. 2010-21, the Director of Representation dismisses two petitions for certification filed by the FMBA seeking to represent a unit of emergency medical services employees (EMS). In D.R. No. 2009-9, the Director found FMBA's first petition to be untimely, inappropriately narrow and counter to the Commission's preference for broad-based units. The Commission remanded the Director's decision to develop a record concerning the background of the formation of the County EMT unit.

The Director finds that the County and CWA agreed to include the disputed EMT title in the broad-based unit without following the Commission's established recognition or certification procedures. The Director finds the broad-based unit the most appropriate unit structure, dismisses both petitions filed by FMBA and grants CWA 90 days from the date of the decision to file a representation petition to properly include the dispatchers in that unit.

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Appearances:

For the Respondent, Brown & Connery, attorneys (William
M. Tambussi, of counsel)

For the Petitioner, Fox & Fox, LLP, attorneys (David I.
Fox, of counsel and Nora R. Locke, on the brief)

For the Intervenor, Weissman & Mintz, attorneys
(Rosemarie Cipparulo, of counsel)

DECISION

On September 24, 2009, the Commission granted a request for review of a decision dismissing the representation petition filed in Docket No. RO-2008-066 (D.R. No. 2009-9, 35 NJPER 35 (¶14 2009)) and remanded the matter to me to ". . . develop a record as to background of the formation of the County EMT unit."

Gloucester Cty., P.E.R.C. No. 2010-21, 35 NJPER 363, 364 (¶122 2009).

My decision had followed an investigation of a petition for certification filed on April 11, 2008 and amended on April 29, 2008, by the New Jersey State Firemen's Mutual Benevolent Association (FMBA) (RO-2008-066). The FMBA seeks to represent a negotiations unit of about 124 emergency medical services employees (EMS) of the County of Gloucester (County). The petition was accompanied by an adequate showing of interest.

I concluded that the petition was untimely because the title, emergency medical technician (EMT) was included in a recognition provision of the current collective agreement signed by the County and the Communications Workers of America, Local 1085 (CWA), extending from January 1, 2007 through December 31, 2011. I found that the EMT title and EMS employees referred to the same-employees. I wrote that the EMT title was among 300 titles set forth in an appendix to the agreement specifying salary scales, the number of work hours in a full-time work week and clothing payments to EMTs. Finally, I wrote that the petitioned-for unit was inappropriately narrow.

On February 26, 2009, the FMBA requested review. It argued that the CWA agreement should not bar its petition because at the time the agreement was signed, the EMTs had not yet been employed by the County; that the unit is not inappropriately narrow because the EMTs are new employees, and the County withdrew its objection to the proposed unit; that the unit is anticipated to

expand and the EMTs do not share a community of interest with the current CWA membership because they are emergency first responders and exposed to the hazards of emergencies; and because some of the EMTs were represented by the FMBA during the CWA negotiations and prior to the County becoming a regional service provider.

In its September 24 decision remanding the matter to me, the Commission also directed that I investigate whether the FMBA has an interest or claim in the representation of a new unit of County EMS employees. The Commission noted that if the County and its municipalities were consolidating services under the Uniformed Shared Services and Consolidation Act (USSCA), P.L. 2007, c.63, N.J.S.A. 40A:65-1 et seq., a provision of that Act authorizes the use our expertise and dispute resolution services.

On October 2, 2009, the FMBA filed a timely representation petition seeking an election for a unit of EMT/EMS employees of the County (dkt no. RO-2010-027). CWA has intervened. N.J.A.C. 19:11-2.7. The County filed a letter advising that although it prefers to negotiate with one broad-based unit, it does not object to the creation of a separate negotiations unit of the EMT/EMS employees. CWA has filed a letter, objecting to the severance of the EMS employees from its broad-based unit of County employees, and requesting that the petition be dismissed. The FMBA disputes that the EMTs are represented by CWA or that they share a community of interest with other County workers

represented by CWA in its broad-based unit. A supplemental investigation has changed my finding that the first petition was untimely, thereby focusing my attention upon the primary issue specifically, whether a separate unit of EMS employees is appropriate and should proceed to an election.

We have conducted a supplemental administrative investigation of the first petition. N.J.A.C. 19:11-2.2. That investigation also concerns the second petition. The parties filed letters, certifications, and other documents supporting their respective positions. Based upon my review of those materials, I find the following facts.

In 2006, the Gloucester County Board of Chosen Freeholders began considering regionalizing emergency medical services which were being provided by the municipalities within the County. In May, 2007, the County announced a plan for a regional EMS operation, offering services to participating municipalities within the County. By August, 2007, ten municipalities had agreed to participate in the proposed county-wide EMS (Emergency Medical Services) operation. On August 14, 2007, the County and CWA entered into an agreement concerning salaries and hours for EMTs who were to be employed by the County, though none had been hired by that date. On or about September 30, 2007, the Gloucester County EMS unit was established. Between 115 and 135 EMTs were employed by the County, effective October 1, 2007.

On November 15, 2007, the County and CWA signed their current collective negotiations agreement, retroactive to January 1 of that year.

CWA has submitted a copy of a September 30, 2007 agreement to provide basic life support services, signed by representatives of the County and each of the ten municipalities pursuant to the Interlocal Services Act, N.J.S.A. 40:8A-1 et seq.

The FMBA argues that by forming a County-wide EMS unit, the County and the municipalities on April 3, 2007, consolidated services under the Uniform Shared Services Consolidation Act (USSCA), P.L. 2007, c.63, N.J.S.A. 40A:65-1 et seq., six months before the County EMS unit was created. The USSCA provides at 40A:65-18:

- a. When a joint meeting merges bargaining units that have current contracts negotiated in accordance with the provisions of the New Jersey Employer-Employee Relations Act, P.L. 1941, c. 100 (C34:13A-1 et seq.), the terms and conditions of the existing contracts shall apply to the rights of the members of the respective bargaining units until a new contract is negotiated, reduced to writing, and signed by the parties as provided pursuant to law and regulation promulgated thereunder.

The FMBA argues that in August, 2007, "many" of the EMTs who would later be included in the County unit were represented for purposes of collective negotiations by it as set forth in collective agreements signed by several separate municipalities. For example, EMTs employed by the Borough of Glassboro were represented by the Glassboro Career EMT Association, affiliated

with the New Jersey State FMBA as Local 394. The FMBA submitted a collective agreement signed by the Borough of Glassboro and the Glassboro Career EMT Association, extending from January 1, 2004 through December 31, 2009. Now, about 21 former Glassboro EMTs are employed by the County. The FMBA argues that the negotiated terms and conditions of employment under the several municipal collective agreements to which it was a signator should "apply" to the EMTs first employed by the County in October, 2007.

CWA denies that it and the County contemplated the USSCA. It also notes that the Interlocal Services Act was not repealed until November 1, 2007, more than one month after the initial ten municipalities had executed EMS agreements with the County. Therefore, CWA asserts, the Commission should conclude that the creation of the Gloucester County EMS was not subject to the USSCA.

CWA also disputes that "many" of the EMTs hired by Gloucester County were previously represented by FMBA. CWA asserts that of all the municipalities which originally joined the County EMS, only the six EMTs in the Glassboro Career EMT Association were represented. On September 25, 2007, the Borough of Glassboro posted a notice advising of its intention to recognize FMBA Local 394 as the exclusive representative of the EMTs upon the expiration of the 10 day posting period. See N.J.A.C. 19:11-3.1(b). CWA asserts, however, that Glassboro laid off all six EMTs in the unit, effective September 30, 2007 (prior

to the expiration of the 10 day posting period). As a result, CWA asserts, no employees were in a unit that could be represented, and any purported "recognition" is a nullity. CWA asserts that even if the FMBA had represented the six Glassboro EMTs, five of whom were hired by the County the same day they were laid off by Glassboro, its interests would extend to those five only.

Finally, CWA asserts that the EMTs were properly accreted into its broad-based unit with the County. It maintains that EMTs currently comprise only about 20% of its broad-based unit, and considering the predominance of employees it already represents, the new employees were appropriately accreted into the unit, obviating its need to file a representation petition.

ANALYSIS

Our investigation of this matter upon remand shows that the County and CWA agreed to include the disputed EMT title in the broad-based unit without following established recognition or certification procedures. See N.J.A.C. 19:11-3.1; 19:11-1.2. Each set of procedures demands an affirmative demonstration that the majority representative has been "freely chosen" by a "majority" of employees. In this case, the County and CWA determined the representational status and terms and conditions of employment of 20% or more of ostensible unit employees before they were hired. Since the EMTs did not have an opportunity to demonstrate their representation interests, the collective

agreement, specifically, the recognition provision adding them to the unit, should not have barred the processing of the first petition.

In the second petition (Docket No. RO-2010-27), the FMBA repeats that the County EMTs should be represented in a separate negotiations unit. Similarly, CWA reiterates that the EMTs are included in its broad-based unit. The County has expressed a tepid preference for negotiations with a single, broad-based unit. I find that both petitions must be dismissed because they do not seek to represent the most appropriate unit, under the circumstances.

In Egg Harbor Tp., D.R. No. 2009-5, 34 NJPER 416 (¶128 2008), a representation case also concerning a petitioned-for unit of emergency medical responders, I cited the Commission's obligation to decide in contested cases the most appropriate collective negotiations unit. N.J.S.A. 34:13A-5.3; 6.6. The Commission favors structuring negotiations units along broad-based lines and has been reluctant to find appropriate units structured along occupational or departmental lines. State v. Professional Association of N.J. Dept of Ed., 64 N.J. 231 (1974). In Egg Harbor Tp., I dismissed the petition seeking a separate unit of EMS responders, finding that the most appropriate unit was an existing broad-based unit of blue collar and white collar employees.

In my previous decision on the first petition, I noted that a community of interest exists among civil service employees in a broad-based negotiations unit. See E. Windsor Tp., D.R. No. 97-2, 22 NJPER 348 (¶27180 1996). I also noted that like emergency medical technicians in Egg Harbor Tp., EMS employees and other County employees in the broad-based unit share the occupational goal of maintaining public safety and providing 24-hour services. EMS employees work alongside other units within the County's Emergency Response department. Noting the Commission's policy disfavoring the administrative burdens caused by unit proliferation, I found that FMBA's petitioned-for unit is inappropriately narrow.

That analysis remains appropriate. The EMTs are not entitled to a separate unit. There is an existing broad-based unit in the County, and though the County does not specifically aver that it is the most appropriate unit, we reaffirm that a broad-based unit is the most appropriate unit structure. See Camden Bd. of Ed. (Camden Psychologists), 12 NJPER 847 (¶17326 1986) (election directed upon Commission's determination that most appropriate unit for school psychologists was broad-based professional unit, despite union's lack of desire to represent them; separate unit found to be inappropriate).

Although FMBA maintains that it represents "many" of the EMTs initially employed by the County in the new EMS unit, it has provided scant evidence of that assertion. Only five EMTs hired

by the County on October 1, 2007 were previously represented (in that instance, by the Glassboro Career EMT Association). No evidence demonstrates that the FMBA was the majority representative of those employees, and some facts suggest that an anticipated recognition by the employer of an affiliation with FMBA was never perfected.

Based upon all of the facts, I find that the inclusion of the EMS employees in the CWA's broad-based unit did not bar the filing of the FMBA's initial petition. I also find that both petitions seek to represent an inappropriate negotiations unit. In order to effectuate the representation rights of the petitioning employees in keeping with our duty to find the most appropriate unit, I order that the EMTs employed by Gloucester County be given the opportunity to demonstrate whether they wish to be included in the County's broad-based unit or remain unrepresented. Camden Bd. of Ed. The EMTs are not included in the broad-based unit, effective the date of this decision. CWA will have 90 days from the date of this decision to file a representation petition, supported by an adequate showing of interest, to secure an election among the EMTs on whether they wish to be represented by the union in the existing broad-based unit. Alternatively, CWA may file a petition supported by authorization cards from a majority of EMTs seeking to be included in its broad-based negotiations unit. The current

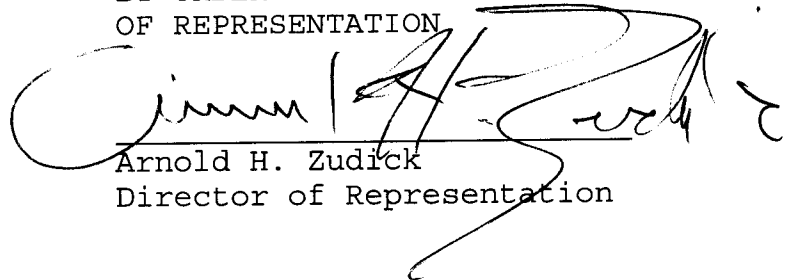
contract will continue to act as a bar to petitions by any other organizations.

If CWA chooses not to file the petition within the time period specified by this decision, the employees will remain unrepresented for the balance of the agreement. CWA will not be able to file a petition concerning them until the appropriate regulatory open period before the contract expiration, consistent with Egg Harbor and Camden Bd. of Ed.

ORDER

RO-2008-66 and RO-2010-27 are dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Arnold H. Zudick
Director of Representation

DATED: September 17, 2010
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 September 27, 2010.