D.R. NO. 86-19

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

In the Matter of

COUNTY OF HUNTERDON,

Public Employer,

-and-

HUNTERDON PROFESSIONAL/TECHNICAL EMPLOYEES,

Docket No. RO-86-100

Petitioner,

-and-

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO,

Intervenor.

Synopsis

The Director of Representation dismisses a Petition seeking to sever professional/technical employees from an existing county-wide unit. Citing Commission policy favoring broad-based units, and applying the severance standard as set fort in Jefferson Twp. Board of Education, P.E.R.C. No. 61 (1971), the Director found that no facts exist which would demonstrate either unit unstability or a failure to represent the petitioned-for employees.

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Appearances:

For the Public Employer
Daniel R. Hendi, Esq.

For the Petitioner
Barry Bourquin, Spokesperson

For the Intervenor
Steven P. Weissman, Esq.

DECISION

On January 16, 1986, the "Hunterdon Professional/Technical Employees" ("HPTE" or "Petitioner") filed a timely Petition for Certification of Public Employee Representative with the Public Employment Relations Commission ("Commission"). The HPTE seeks to represent a unit of employees limited to certain titles in the Planning and Engineering Divisions of the County of Hunterdon

("County"). The petition is supported by an adequate showing of interest.

The employees who are the subject of the petition are currently included in a broad-based, county-wide unit of all professional and nonprofessional employees, which is represented for purposes of collective negotiations by Communication Workers of America, AFL-CIO ("CWA"). CWA objects to the severence of employees from its existing unit and does not consent to an election.

The County takes a neutral position with regard to which employee organization will represent the group but indicates that it will consent to an election among the employees in the petitioned-for unit. In support of its position, the County argues that the concerns of professional employees could be better addressed in negotiations if professional employees were in a negotiations unit separate from other County workers.

I have caused an administrative investigation to be conducted into the matters and allegations raised by the parties in this matter. (See N.J.A.C. 19:11-2.6). I make the following findings:

Although the HPTE requests that a formal hearing be convened in order to provide HPTE with an opportunity to prove its claims, I find that there are no relevant facts in dispute which would warrant the convening of an evidentiary hearing in this matter. Therefore, pursuant to N.J.A.C. 19:11-2.6(c), the disposition of this matter is properly based upon the administrative investigation.

The Hunterdon County Board of Freeholders is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1.1 et seq. ("Act") and it is the employer of the employees who are the subject of this petition.

CWA is the exclusive representative of a broad-based, county-wide unit of employees. The recognition clause of the 1984-85 collective negotiations agreement between the County and CWA, Local 1035, describes the existing unit as follows:

> ... all present and future permanent, provisional and temporary positions, full-time and part-time, in all Departments of the County of Hunterdon, and all other positions wherein authorization has been given to the Union to act on behalf of employees in such positions.
>
> The appropriate bargaining unit shall consist of all employees of the County of Hunterdon, including Supervisors, (as recognized past practice of the Union), in any position, whether such employees are of provisional, permanent, or temporary or CETA status; excepting employees of the Board of Elections, Board of Parks and Recreation Commissioners, Probation Officers-Probation Department, Jail employees, Sheriff's Officers-Law Enforcement, Sanitary Inspectors-Health Department, County Detectives-Prosecutor's Office, Department Heads, any appointed or elected officials, Assistant County Engineer, Assistant County Road Supervisor(s), any employee the Parties agree is in a confidential position whose work is involved solely in the labor relations process.

The titles petitioned-for are all listed in "Schedule A-1", appended to the above-referred agreement, which lists covered job titles together with their designated salary ranges. The entire unit

consists of approximately 260 employees and has been in existence since about 1969.[1/]

The HPTE seeks to sever certain employees from the existing unit and proposes a separate unit consisting of the following titles:

Supervising Planner
Principal Planner
Senior Planner
Assistant Planner
Principal Community Service Planner
Senior Community Service Planner
Community Service Planner
Criminal Justice Planner
Senior Engineer
Assistant Engineer
Principal Engineers Aide
Senior Engineer Aide
Engineer Aide
Senior Construction Inspector
Planning Draftsman
Senior Planning Draftsman

The HPTE states that the basis for its request to sever these employees from the existing unit is (1) the petitioned-for titles lack a community of interest with the employees in the existing unit; (2) CWA has failed to adequately represent professional employees within the existing unit; (3) the present majority representative is unstable; (4) the construction of the Commission's rules regarding timely filings of petitions makes the filing of a petition for a broad-based unit impossible.

1/ The unit was originally represented by Hunterdon Council #16, New Jersey Civil Service Association, which affiliated with CWA in 1982.

The Petitioner makes the following allegations in support of its claims: (a) "By nature, organizations comprised of heterogenic polarized groups of divergent sizes are inherently unstable." Professional and technical employees cannot get effective representation within the existing unit because the organization is dominated by blue collar employees and clerical employees, who together constitute a majority of the unit. The majority's control of the organization results in a union negotiations team comprised of three blue collar workers and one clerk. Finally, the CWA has traditionally negotiated flat dollar wage increases for each unit employee in its contract settlements. The HPTE contends that such wage increases are of greater benefit to unit members at lower salary levels and are of significantly lesser benefit to employees at higher salary levels. (b) The CWA has failed to act upon the County's request for range changes for the titles which are the subject of this Petition. (c) In negotiations for the 1986-1987 contract, certain monetary concerns of the blue collar group (overtime assignments) were achieved by sacrificing a greater percentage increase for the entire unit which would have benefited professional employees who are the top end of the salary ranges.

Barry Bourquin, the spokesperson for HPTE, alleges that he was denied access to the CWA in that he was not permitted to attend a union meeting at which the terms of the 1986-1987 contract were discussed. He further alleges that CWA has rejected his application for membership in CWA.

By contrast, CWA alleges that the existing unit is a broad-based, county-wide unit and is the appropriate unit for purposes of collective negotiations of the subject employees and argues that there is no valid basis to support the severance of the requested employees from the extant unit. The CWA denies that it refused to negotiate changes in the designation of salary ranges of the affected titles; rather, it states that it responded to such requests by insisting that such negotiations take place within the overall context of negotiations for a successor agreement and that they also include a re-evaluation of all other salary range placements.

* * *

Under the circumstances presented herein, I find that the negotiations unit sought by the petitioner is inappropriate.

The Petitioner seeks to represent professional employees in a separate unit limited to two categories of employees -- planners and engineers. In its statement of position, the County encourages the separation of professional employees from the existing unit and the formation of a separate unit for professional employees.

While both the HPTE and the employer cite reasons for the removal of professional employees from the existing unit, the Petitioner does not seek to represent a broad-based unit of professional employees. The Commission favors broad-based, employer-wide units rather than narrowly defined units organized along occupational or departmental lines. In State of N.J. and

Professsional Assoc. of N.J. Dept. of Educ., 64 N.J. 231 (1974), it was found that state-wide units consisting of a single profession i.e. nurses or teachers, was not the most appropriate unit. Rather it was found that all professional employees should be brought into one state-wide unit. The Commission has applied the concept of broad-based negotiations unit structure to units of county employees. In re Cty. of Warren, D.R. No. 84-13, 9 NJPER 703 (¶14306 1983); and In re Cty. of Morris, D.R. No. 82-55, 8 NJPER 297 (¶13130 1982).

At the informal conference conducted in February, the HPTE was advised of the Commission's policy favoring broad-based units, and was further advised that the Commission has consistently rejected requests to sever narrowly defined units from an existing unit unless there is a showing of unit instability or irresponsible representation by the majority representative.

Assuming that the petitioned-for titles are professional, there are clearly other professional employees employed by the County. However, the HPTE complains that it is unable to petition for a broad-based professional unit[2/] because of the requirements of the Commission's rules for the timely filing of petitions.[3/]

2/ I am making no determination here as to whether such a petition would otherwise be appropriate under all the factors present in this matter.

3/ N.J.A.C. 19:11-2.7 provides that a petition for certification may be filed when there is no current contract in effect, or alternatively, not less than 90 and not more than 120 days prior to the expiration of the current contract.

However, the Commission's rules governing the filing of representation petitions must be read in conjunction with its rules on showings of interest, which provide that a showing of interest may be signed as much as six (6) months before the filing of the petition. Therefore, it is possible that a petitioning organization could begin collecting a showing of interest in support of a representation petition as early as 10 months prior to the expiration of the current contract. The Petitioner had every opportunity to amend its petition to seek a broad-based unit of professional employees, but it never did so.

Here, the existing unit of all County employees is comprised of blue collar and white collar, professional and non-professional employees (approximately 260). To permit the HPTE to carve out a unit limited to approximately 11 employees in the Divisions of Planning and Engineering would not be consistent with Commission policy. Further, there is a long history of negotiations in the existing unit, a factor which the Commission must consider and which mitigates against granting the requested severance. See In re Englewood Bd/Ed, D.R. No. 81-22, 7 NJPER 81 (¶12019 1981).

Moreover, the Commission has previously established and clearly enunciated a standard by which cases requesting severance of employees from an existing unit must be determined. In In re Jefferson Tp. Bd/Ed, P.E.R.C. No. 61 (1971), the Commission stated:

> The underlying question is 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 a relationship is unstable or that the incumbent organization has not provided responsible representation. We think not. To hold otherwise, would leave every unit open for re-definition 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 counter to the statutory objective and would, for that matter, ignore that the existing relationship may also demonstrate its own community of interest.

The HTPE alleges that the incumbent representative here, the CWA, has not provided responsible representation to professional employees in that during the negotiation for the 1984-85 contract, CWA agreed to an across-the-board dollar increase for all unit members. The HTPE alleges such an increase confers a lesser benefit to higher salaried employees and provides a greater monetary benefit to employees in titles at the lower end of the salary structure. The Commission has previously addressed the issue of "competing demands" from various segments of a collective negotiations unit as a basis to sever certain employees from an existing unit. In In re Clifton Bd/Ed, D.R. No. 80-18, 6 NJPER 38 (¶11020 1980), the Director of Representation noted:

> ...in situations where two groups of employees within the same unit have different views of economic or non-economic interest, the undersigned has declined to find a conflict of interest. Rather, this not infrequent occurrence raises an issue of "competing interests" as opposed to "conflict of interest" and, therefore,

> does not warrant the severance of employees from an appropriate unit. Clifton, at p. 39.4/

Further, Clifton specifically holds that for an organization to reject a percentage formula and choose instead to accept a flat across-the-board increase is not an indicia of irresponsible representation.

In the context of a challenge to a union's representation in the negotiations of a collective agreement, the United States Supreme Court stated:

> Inevitably differences arise in the manner and degree to which the terms of any negotiated agreement affect individual employees and classes of employees. The mere existence of such differences does not make them invalid. The complete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion.

Ford Motor Co. v. Huffman, 346 U.S. 330, 338 (1953); See also Humphrey v. Moore, 375 U.S. 335 (1964). This test has been specifically adopted by the Commission in In re Lawrence Twp. PBA Local 119, P.E.R.C. No. 84-71, 10 NJPER 41 (¶ 15023 1983); In re City of Union City, P.E.R.C. No. 82-65, 8 NJPER 98, 99 (¶ 13040 1982).

Other pertinent Commission and court decisions set forth the similar proposition that:

4/ See also, In re Mercer County Prosecutor, D.R. 79-18, 5 NJPER 60 (¶10039 1979). Compare, In re Twp. of Springfield, D.U.P. No. 79-13, 5 NJPER 14 (¶10008 1978).

> ... a negotiated agreement that results in a detriment to one group of employees as opposed to other unit members, i.e. a lesser salary increase than the other employees or a longer work day than others, does not establish a breach of duty of fair representation on the part of the majority representative. Absent clear evidence of bad faith or fraud, unions have been permitted to make temporary compromises that may adversely affect certain members of a negotiations unit for the benefit of all unit members or a majority of these individuals.

In re Hamilton Tp. Ed. Assn., P.E.R.C. No. 79-20, 4 NJPER 476, 478 (¶4215 1978). See also, Belen v. Woodbridge Tp. Bd. of Ed., 142 N.J. Super 486 (App. Div. 1976) and McGrail v. Detroit Fed. of Teachers, 82 LRRM 2623 (Mich. Cir. Ct. 1973).

In the instant matter, there is no evidence presented that the CWA failed to provide responsible representation to members of the unit. Pursuant to the contract negotiated for the 1984-1985 years, all employees received an across-the-broad increase in pay for each year. In the 1985-1986 negotiations, all employees received a 5% across-the-board increase for each year of the contract. While the HPTE suggests that the union could have secured a greater percentage increase if it had abandoned its demand for overtime assignments for blue collar workers, I find that this is mere speculation, and in any event does not demonstrate irresponsible representation by CWA.

With regard to the petitioner's claims that CWA failed to negotiate certain range changes for the planning department and engineering department titles, it appears that the County requested that CWA negotiate certain range change adjustments for titles in

those departments. CWA responded that it was willing to negotiate range changes but wanted to include the title negotiations in the overall negotiations for the parties' successor agreement; it did not want to handle those matters piecemeal.[5/] The range changes of the employees affected by this Petition, as well as certain other County employees, were negotiated and agreed upon by the County and CWA as part of the 1986-87 collective negotiations agreement. In fact, the 1986-87 agreement provides for the range changes to the affected employees as proposed.

Finally, the HPTE alleges that CWA refused to admit Barry Bourquin, the HPTE chief spokesperson, to membership in CWA. The Commission has previously held that, while an employee organization cannot reject an application for membership for arbitrary reasons, it has no obligation to admit an employee who seeks to replace that organization as the majority representative with a rival organization. See In re Communications Workers of America, P.E.R.C. No. 86-78, 12 NJPER 91 (¶17032 1986). I also find that there is nothing improper in CWA's refusal to admit Mr. Bourquin into a union

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5/ I note that this allegation is also contained within an unfair practice charge filed by Barry Bourquin, the chief spokesperson for the HTPE, and Carolyn Neighbor, one of the other employees in the proposed unit. In that unfair practice proceeding, the Hearing Examiner issued a report on February 14, 1986, wherein he concluded that CWA's conduct concerning the negotiations of range changes did not amount to a breach of its duty of fair representation to the charging parties. Accordingly, the Hearing Examiner granted a motion for summary judgement. Those issues will not be reexamined here.

meeting. It is well settled that attendance at union meetings is a right belonging only to members of the organization. Further, these factors are not relevant to the issue of whether the petitioned-for employees should be permitted to sever from the existing unit and form a separate unit.

Based upon the foregoing, I decline to grant the HPTE's requested severance of employees from the extant unit. The petition is hereby dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION

Edmund G. Gerber, Director

DATED: April 11, 1986
Trenton, New Jersey