

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

In the Matter of

ESSEX COUNTY BOARD OF CHOSEN  
FREEHOLDERS,

Public Employer,

-and-

DISTRICT 15, IAM AND AW, AFL-CIO,

Docket No. RO-77-100

Petitioner,

-and-

ESSEX COUNTY EMPLOYEES ASSOCIATION,

Intervenor.

SYNOPSIS

The Director of Representation dismisses a petition filed by District 15 seeking a collective negotiations unit consisting of certain craft and non-craft employees of the Essex County Highway Division. The employees sought by the petitioner are currently represented in a county-wide unit of blue and white collar employees including craft personnel by the Essex County Employees Association. The Director, in dismissing the petition discusses the Commission's policy of favoring broad-based collective negotiations units, of county-wide scope in resolving contested matters, and also discusses the narrow circumstances under which employees contained in a collective negotiations unit may be severed from that unit. The Director determines that the standards for severance have not been met by the petitioner.

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Appearances:

For the Public Employer, Goldberger, Siegel  
and Finn, Esqs.  
(Mr. Howard A. Goldberger, of Counsel)

For the Petitioner, Mr. John Gatti

For the Intervenor, Mr. Daniel Fortunato

DECISION

On December 3, 1976, a Petition for Certification of Public Employee Representative (Docket No. RO-77-100), supported by an adequate showing of interest, was filed with the Public Employment Relations Commission (the "Commission") by District 15, IAM & AW, AFL-CIO ("District 15"), which seeks a secret ballot election with respect to a proposed unit of approximately 175 craft and non-craft employees of the Essex County Highway Division. Essex County Employees Association (the "Association"), which has submitted a recent written agreement covering employees sought to be included in the proposed unit, has been granted intervenor status in this matter.

In accordance with N.J.A.C. 19:11-2.6, the undersigned has caused an investigation to be conducted into the matters and allegations set forth in the Petition in order to determine the facts. All parties were advised of their obligations under N.J.A.C. 19:11-2.6 (formerly N.J.A.C. 19:11-1.12), and were afforded an opportunity thereunder to present documentary and other evidence, as well as statements of position, relating to the Petition. On the basis of the administrative investigation herein, the undersigned finds and determines as follows:

1. The Essex County Board of Chosen Freeholders (the "County") is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., as amended (the "Act"), is the employer of the employees who are the subject of this Petition, and is subject to the Act's provisions.
2. District 15, International Association of Machinists and Aerospace Workers, AFL-CIO and Essex County Employees Association are employee representatives within the meaning of the Act and are subject to its provisions.
3. The Petitioner is seeking to represent a unit of employees employed in the Highway Division of the County consisting of certain craft and non-craft titles.
4. The petitioned-for employees have been and are currently represented by the intervenor-Association in an overall Countywide unit of white collar and blue collar employees including craft personnel.<sup>1/</sup>

<sup>1/</sup> After a secret ballot election was conducted by the Commission, the Association was certified on October 20, 1970, as the exclusive negotiations representative of the below-indicated unit of public employees: all craft employees of Essex County, and all other Essex County employees, including temporary employees, but excluding Department of Public Works craft titles in the boiler room, employees in County Hospitals, County Correction Officers, identification officers, court attendants, probation officers, court clerks, and all professional employees, supervisors within the meaning of the Act, managerial executives, and police.

(Continued)

5. The unit sought to be represented by Petitioner is less than countywide in scope and represents an attempt to sever the petitioned-for employees from the existing, countywide blue and white collar unit.

6. The Association states that it will consent to a secret ballot election herein and that it seeks to appear on the ballot should an election be held herein.

7. The County states that it will not consent to a secret ballot election herein. The County contends that the petitioned-for employees are and have been represented in collective negotiations by the Essex County Employees Association. The County further contends that no justification exists for severing the petitioned-for employees from the existing unit and that the existing unit is the most appropriate unit. The County requests that the instant petition be dismissed.

8. Because there is no agreement among all parties to consent to a secret ballot election, a dispute exists and the instant matter is appropriately before the undersigned for determination.

9. At an ~~informal~~ conference conducted by the undersigned's representative on March 28, 1977, the parties were informed of the Commission's policy favoring the establishment of broad based, functional units and the rejection of claims of particular occupations or departmental groupings for separate status. The conferees discussed various court and Commission decisions supporting this policy.

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1/ (Continued)

A July 22, 1977 letter to the parties from the undersigned incorrectly stated the unit description as contained in the Commission's certification; however, the error contained therein is irrelevant to the disposition of the matter herein. Further, it would appear that the Association has represented this unit of employees in collective negotiations with the County since the issuance of the above-referenced certification.

N.J.S.A. 34:13A-6(d) provides that the Commission shall determine the appropriate unit for collective negotiations.<sup>2/</sup> N.J.S.A. 34:13A-5.3 states that negotiations units shall be defined with due regard for community of interest. However, pursuant to the decision of the New Jersey Supreme Court in State of New Jersey v. Professional Association of N.J. Department of Education,<sup>3/</sup> giving due regard to community of interest does not require exclusive reliance be placed thereon. Unit determinations are made within the framework of the general statutory intent and purpose of promoting permanent employer-employee peace,<sup>4/</sup> or as the New Jersey Supreme Court has stated "...the establishment and promotion of fair and harmonious employer-employee relations in the public sector."<sup>5/</sup>

The Commission has favored the formation of negotiating units in the public sector along broad based, functional lines rather than by distinct occupational groupings.<sup>6/</sup> The undersigned particularly notes that the Commission has applied the broad-based, functional unit principle in making unit determinations for units of county employees.<sup>7/</sup>

<sup>2/</sup> In State of N.J. v. Professional Association of N.J. Department of Education, 64 N.J. 231 (1974), the Supreme Court stated that where the proposed unit is contested, the Commission is obligated in disputed matters to determine the most appropriate unit for collective negotiations.

<sup>3/</sup> Id.

<sup>4/</sup> See, N.J.S.A. 34:13A-2.

<sup>5/</sup> See, Board of Education of West Orange v. Wilton, 57 N.J. 404 (1971).

<sup>6/</sup> In State of N.J. v. Professional Association of New Jersey Department of Education, 64 N.J. 231 (1974), the Supreme Court endorsed the Commission's adoption of the concept of broad-based, functional negotiating units, See also, In re State of New Jersey (Neuro-Psychiatric Institute, et al), P.E.R.C. No. 50 (1971), In re Board of Chosen Freeholders of the County of Burlington, P.E.R.C. No. 58 (1971), In re Bergen County Board of Chosen Freeholders, P.E.R.C. No. 69 (1972), and In re State of New Jersey (Prof. Association of N.J. Department of Education, et al.) P.E.R.C. No. 68 (1972).

<sup>7/</sup> See In re Board of Chosen Freeholders of the County Burlington, P.E.R.C. No. 49 (1971), and In re Bergen County Board of Chosen Freeholders, P.E.R.C. No. 69 (1972). See also In re Union County Board of Chosen Freeholders, E.D. 49 (1974), and In re Union County Board of Chosen Freeholders, E.D. No. 68 (1975).

Unit determinations must also be reflective of the Commission's pronouncements which assert that an established structure for negotiations should not be altered or upset by the filing of a severance petition except for clear and compelling reasons. The Commission has given extensive consideration to the question of severance of a relatively small group of employees from an established, broad-based unit.

In In re Jefferson Township Board of Education, <sup>8/</sup> the Commission

noted:

"The issue is correctly stated to be the appropriateness of the bus driver unit sought by the Teamsters. However, that question does not turn solely on whether there exists a community of interest among bus drivers. Undoubtedly, there is a kind of common interest among those of any group who perform the same duties. But the unit issue here cannot be determined by simply measuring the common interests of drivers, one to another, and ignoring other material facts, namely, that the drivers are part of an existing unit which is not on its fact inappropriate and which has been the subject of two successive collective negotiations agreements.

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...The underlying question is a 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 relationship is unstable or that the incumbent organization has not provided responsible representation. We think not. To hold otherwise would leave every unit open to re-definition simply on a showing that one subcategory 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."

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10. On July 22, 1977, the undersigned advised the parties of the results of the investigation and of the above analysis, and stated that on the basis of the investigation to date it appeared that the unit sought by the Petitioner was inappropriate. All parties were advised of their obligations under N.J.A.C. 19:11-2.6 (formerly N.J.A.C. 19:11-1.12), and were

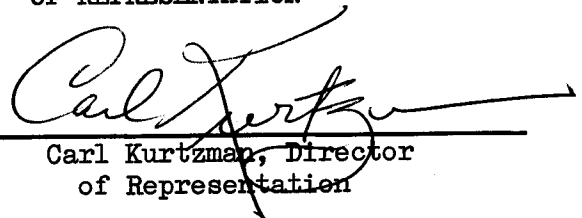
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8/ In re Jefferson Township Board of Education, P.E.R.C. No. 61 (1971).

afforded an opportunity thereunder to present documentary and other evidence including statements of position relating to the Petition. The Petitioner was advised specifically that in the absence of a withdrawal request, or in the absence of any substantial and material factual issues which would warrant the convening of a hearing pursuant to N.J.A.C. 19:11-2.6, the instant petition might be dismissed. The undersigned has not received a reply from any party to his July 22, 1977 letter. Furthermore, the undersigned notes that no withdrawal request has been received from the Petitioner. After having carefully considered the entire record herein, including oral and written submissions of the parties, and it appearing that no substantial and material factual issues are in dispute which may more appropriately be resolved after a hearing, and after consideration of this matter in the context of existing Commission policy concerning unit definition for county employees and the Commission's severance standards, the undersigned concludes that the unit sought by Petitioner is inappropriate.

Accordingly, the instant petition is hereby dismissed.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION



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Carl Kurtzman, Director  
of Representation

DATED: October 25, 1977  
Trenton, New Jersey