

D.R. NO. 90-22

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

In the Matter of

UNIVERSITY OF MEDICINE AND DENTISTRY
OF NEW JERSEY,

Public Employer,

-and-

LOCAL 6, INTERNATIONAL FEDERATION
OF HEALTH PROFESSIONALS,

Docket No. RO-90-98

Petitioner,

-and-

LOCAL 97, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS,

Intervenor.

SYNOPSIS

The Director dismisses a Petition for Certification which seeks to sever employees at a single Newark hospital facility from an existing, multi-site unit. The Petitioner claimed that the existing unit was expanded to include employees at other facilities without consent of the Newark employees; employees are unaware of the scope of the unit; employees have State Constitutional rights to choose their bargaining representative; the incumbent representative's majority status was never based upon employee free choice; and that the private sector favors separate single facility health care units.

The Director rejected all of these claims. Applying, Jefferson Tp. Bd. of Ed., P.E.R.C. No. 61, NJPER Supp 248 (¶61 1971), the Director finds no evidence of unit instability or irresponsible representation that would warrant disturbing the historically broad-based, multi-geographic existing unit structure.

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Appearances:

For the Public Employer
Robert J. DelTufo, Attorney General
(Alice Guttler, Deputy Attorney General)

For the Petitioner
Szaferman, Lakind, Blumstein, Watter & Blader
(Sidney H. Lehmann, of counsel)

For the Intervenor
Goldberger and Finn, Esqs.
(Howard Goldberger, of counsel)

DECISION

On October 26, 1989, Local 6, International Federation of Health Professionals (a.k.a. District 6, International Union of Industrial, Service, Transport and Health Employees) ("Local 6") filed a petition for certification of public employee representative (Docket No. RO-90-81) with the Public Employment Relations

Commission ("Commission") seeking to represent certain non-supervisory employees of the University of Medicine and Dentistry of New Jersey ("UMDNJ"). On November 3, 1989, I dismissed Local 6's petition filed in docket no. RO-90-81 because the showing of interest was inadequate. N.J.A.C. 19:11-1.2. On November 22, 1989, Local 6 filed a letter requesting that the Commission reconsider the dismissal of its petition. The Commission referred Local 6's request for reconsideration to the Director of Representation.

On December 5, 1989, I found that the dismissal of Local 6's petition was appropriate and denied the motion for reconsideration. Additionally, I advised the parties that I would process Local 6's November 21, 1989 letter requesting reconsideration as a new petition for certification, filed November 22, 1989, seeking to represent UMDNJ health care/service/operations and maintenance and clerical unit employees only at the University's Newark, New Jersey location. This matter was docketed as case number RO-90-98.

An administrative investigation was conducted in this matter. N.J.A.C. 19:11-2.6.

IBT Local 97 represents the existing broad-based, employer-wide negotiations unit of non-supervisory employees employed by UMDNJ. The unit consists of about 2,667 health care employees, service employees, operations & maintenance employees and clerical employees employed by UMDNJ on all of its campuses,

including Newark, Piscataway/New Brunswick, and Camden/Stratford. IBT Local 97 intervened in this matter based upon its July 1, 1986 through June 30, 1989 collective negotiations agreement covering this unit. N.J.A.C. 19:11-2.7.

Local 6 argues that since the filing of its initial petition on October 26, 1989, it has always sought to represent only the employees at UMDNJ's Newark facility. UMDNJ and IBT Local 97 argue that the petition should be dismissed for it seeks an inappropriate unit structure, contrary to the Commission's long-standing policy favoring broad-based, employer-wide negotiations units and disfavoring the severance of employees from existing broad-based units. They cite State of New Jersey and Professional Assn. of N.J., Dept. of Education, 64 N.J. 231 (1974), aff'g P.E.R.C. No. 68, NJPER Supp 273 (¶68 1972) and Jefferson Tp. Bd. of Ed., P.E.R.C. No. 61, NJPER Supp 248 (¶61 1971). Local 6 contends that Jefferson is inapplicable here.

* * * *

In Jefferson, the Commission stated:

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 redefinition 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.

NJPER Supp at 249.

The Commission has applied the Jefferson standards in cases where the petitioning employee organization seeks to sever employees from an existing broad-based negotiations unit, as in this case. See County of Mercer, P.E.R.C. No. 89-112, 15 NJPER 277 (¶20121 1989); Middletown Tp. Bd. of Ed., P.E.R.C. No. 88-44, 13 NJPER 841 (¶18322 1987); and Hudson County, P.E.R.C. No. 84-85, 10 NJPER 114 (¶15059 1984).

Local 6 initially argued that the proposed unit limited to employees at the Newark facilities is appropriate and Jefferson does not apply. It asserted that (1) the Newark facility has 1,350 employees and is large enough to have its own unit; (2) there is no long, well-established bargaining history in a multi-campus unit of UMDNJ employees; (3) UMDNJ employees are being deprived of their State constitutional rights to be represented by an organization of their own choosing because they were never given an election to decide if they wished to be represented by IBT Local 97. Local 6 contends that if the Jefferson standard were applied, the "...relationship (would be) unstable because the Newark employees do not even know that they are being represented by an employee organization that must consider the interests of employees at other facilities." Local 6 did not initially argue that the incumbent organization failed to provide responsible representation.

On January 19, I wrote to the parties indicating that, on the basis of the long-standing principles stated by the Commission in Jefferson and State of New Jersey, the petitioned-for unit appeared inappropriate and I intended to dismiss Local 6's petition.^{1/} I further noted that even if Newark campus employees lacked knowledge of the scope of the unit, this circumstance does not constitute evidence of an unstable relationship as contemplated by Jefferson.

I offered the parties an opportunity to reply. Local 6 responded with an additional position statement and affidavits.

Local 6 argues that (1) the bargaining history between UMDNJ and the Teamsters was, until recently, limited to the Newark campus as a self-contained unit; (2) the scope of the unit was expanded to include employees at other facilities (i.e., Piscataway/New Brunswick and Camden) without the consent of the Newark unit employees; (3) many Newark unit employees do not know that employees from other campuses are in the unit; (4) employees have a right under the State constitution to choose their bargaining representative; and (5) there is no "existing relationship" as characterized by Jefferson to be preserved because IBT Local 97's status as the current majority representative was never based upon

^{1/} For the same reasons, assuming that Local 6's initial petition was supported by an adequate showing of interest and thereby otherwise viable, that petition also would have been dismissed since, according to Local 6, it too sought to represent employees at only UMDNJ's Newark facility. See Jefferson.

employee free choice. Local 6 also asks that the Commission conduct a hearing to investigate the question of how IBT Local 97 succeeded IBT Local 286 as the exclusive majority representative. Local 6 has for the first time asserted that IBT Local 97 failed to properly represent the employees at the Newark facilities. Additionally, it argues that the National Labor Relations Board favors separate units for health care employees which are limited to a single facility, unless there is a legitimate negotiations history of multi-facility bargaining or clear proof of functional integration and common supervision.

The Commission certified IBT Local 286 as the exclusive majority representative of a negotiations unit consisting of all health care, service, operations & maintenance and clerical employees of UMDNJ on September 10, 1971. See College of Medicine and Dentistry of the State of New Jersey, E.D. No. 36, NJPER Supp 508 (¶127 1971). The certification was issued after the conduct of a secret ballot election among among UMDNJ (then College of Medicine and Dentistry) health care, service, operations & maintenance and clerical employees. As stated in that decision, the election was conducted among unit employees working at a number of locations, including the Martland Hospital complex in Newark (the largest group), East Orange, Jersey City and a second location in Newark. This unit was never, as claimed by Local 6, limited solely to Newark employees. The negotiations unit first certified in 1971 included unit employees at other UMDNJ facilities.

Both the description of the certified unit and the actual negotiations experience of the contracting parties (UMDNJ and the IBT) demonstrate that the unit was a broad-based, multi-campus unit from its inception. The unit description language indicates it was never intended to be a one-campus unit -- the language encompasses all UMDNJ employees in unit employment categories, regardless of their work location.

When an employer staffs new facilities with employees in similar or identical titles who perform duties similar to those performed by employees in the existing unit, the employees at the new facility may properly be accreted to the existing unit. This is particularly true where, as here, the unit is described in the certification as a broad-based, employer-wide unit (e.g., "all employees employed by the College of Medicine and Dentistry of New Jersey, ...including...health care, service, operations & maintenance and clerical employees....") rather than as a unit limited to the employees of a single facility of the employer. Had UMDNJ and the IBT not reached an agreement concerning unit status, a unit clarification petition could have been filed with the Commission to add the employees at the new facilities to the existing unit. See Clearview Regional Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977). Contrary to Local 6's assertion, employees in an existing unit do not normally determine the scope of the unit by a representation election.

Local 6 also questions whether the relationship between IBT Local 97 and UMDNJ is one which should be preserved against this severance attempt pursuant to Jefferson. Local 6 intimates that because Local 97 succeeded Local 286 without the conduct of a representation election, the collective negotiations relationship between UMDNJ and IBT Local 97 is tainted. I disagree. Local 6 alleges no facts which support its contention of "impropriety" and the Commission's rules and decisions recognize that valid collective negotiations relationships may be created through means other than representation elections. N.J.A.C. 19:11-3.1 and Collingswood Bd. of Ed., P.E.R.C. No. 86-50, 11 NJPER 694 (¶16240 1985); New Jersey Transit, P.E.R.C. No. 86-21, 11 NJPER 520 (¶16182 1985); Salem City Bd. of Ed., P.E.R.C. No. 81-6, 6 NJPER 371, (¶11190 1980); accord, PBA Local 53 v. Town of Montclair, 131 N.J. Super 505 (App. Div. 1974). Further, this issue is not appropriately raised in Local 6's representation petition. Any challenge to the propriety of the employer's grant of recognition -- effectively replacing IBT Local 286 with IBT Local 97 -- should have been raised in an unfair practice charge; the propriety of the recognition may not be litigated in the context of a petition to sever employees from the existing employer-wide unit.

The recognition clauses of the 1983-86 contract (executed in 1984) and the 1986-89 contract between UMDNJ and IBT Local 97 show that IBT Local 97 has been the recognized majority representative since at least 1984. IBT Local 97 and UMDNJ have had

an existing relationship covering a broad-based, multi-facility unit for at least 5 years. IBT Local 286 had a contractual relationship with UMDNJ covering a broad-based, multi-facility unit for at least ten years before that. The scope and composition of the collective negotiations unit has remained essentially unchanged: it was and continues to be a broad-based, employer-wide unit of non-supervisory health care/service/operations & maintenance and clerical employees. Here, Local 6 seeks to dismantle a long-standing collective negotiations unit.

Local 6 further argues that under private sector case law, the proposed unit is appropriate as a single facility unit. Local 6 cites Samaritan Health Services, Inc., 238 NLRB No. 56, 99 LRRM 1551 (1978), to support its single facility unit argument. Samaritan is inapposite. It involves the formation of new negotiations units, not the severance of employees from an existing, employer-wide unit and there was "no negotiations history in a more comprehensive unit," as is present here. Samaritan, at 1558. Further, while we may be guided by private sector precedent, we are not bound by it. Lullo v. Int'l Ass'n of Firefighters, Local 1066, 55 N.J. 409 (1970).

Unlike the private sector where both single-facility and multi-facility units may be equally appropriate, the New Jersey Supreme Court has stated that the Commission must determine the most appropriate unit for collective negotiations in disputed cases. State of New Jersey and Professional Assn. of N.J., Dept. of

Education, 64 N.J. 231 (1974), aff'g P.E.R.C. No. 68, NJPER Supp 273 (¶68 1972). The Supreme Court stated that it was appropriate to reject units constructed along departmental or occupational lines in favor of broad-based, multi-facility, generically-composed units. Here, the Newark campus employees share occupational titles, pay grades, fringe benefits and job functions with employees at other UMDNJ facilities.

Moreover, a community of interest among employees in an existing broad-based unit is presumed. In South Plainfield Bd. of Ed., P.E.R.C. No. 46, NJPER Supp 160 (¶46 1970), the Commission dismissed a petition to sever nurses from a broad-based professional employee unit. The Commission stated:

...It is not enough to observe that nurses enjoy a community of interest among themselves...The issue is whether their interests are so distinct from those with whom they were formerly grouped as to negate a community of interest....It is axiomatic in labor relations that in determining an appropriate unit or in achieving an agreement, the specific wishes of each group may not always be satisfied. If the desires of each group of employees were to be given controlling weight, complete chaos would result since, in any appropriate unit, there are groups whose interests are at some variance to the total complement of the unit and there are employees or categories of employees who do not want the designated representatives to represent them for purposes of collective negotiations... Were all such groups whose needs were not met permitted to obtain separate representation or none at all, the concepts of an appropriate unit for collective negotiations and the exclusivity of majority representation would soon disappear to be replaced by individual or group dealings. ...the existence of some dissatisfaction by members of the unit will not constitute a basis

to separate or sever a dissatisfied group from an appropriate unit. (Citations omitted).

South Plainfield, NJPER Supp at 161.

I find that the Commission's long-standing policy stated in Jefferson concerning severance of employees from an existing unit applies here. Absent unit instability or a failure to responsibly represent the petitioned-for employees, I will not disturb an existing unit structure because one group of employees seeks alternative representation.

Local 6 also argued that, because certain Newark campus employees were unaware that employees from other UMDNJ campuses were included in their negotiations unit, IBT Local 97 has not provided responsible representation and/or that IBT Local 97's relationship with the employer was unstable. I disagree. Employees' ignorance of the scope or the size of their unit does not prove either instability or irresponsible representation.

Local 6 provided affidavits from employees who indicate that they are unaware of any grievances taken to arbitration by IBT Local 97 in the past "four or five" years. Employees also assert that IBT Local 97 bargained away its union participation on a parking advisory committee and that shop stewards were not kept appraised of contract negotiations. Assuming the truth of all these assertions, they do not indicate a lack of responsible representation sufficient to warrant disturbing the existing unit. In Passaic Cty. Tech. & Voc. H.S. Bd. of Ed., P.E.R.C. No. 87-73, 13 NJPER 63, 65 (¶18026 1986), the Commission stated :

determining whether an incumbent organization has provided responsible representation entails a


review of the parties' entire relationship, not just isolated occurrences.

See also Middletown Tp. Bd. of Ed., P.E.R.C. No. 88-44, 13 NJPER 841 (¶18322 1987), aff'g D.R. No. 84-11, 13 NJPER 765 (¶18291 1987). Accordingly, I find that the Local 6 has not made a prima facie showing that IBT Local 97 has failed to responsibly represent UMDNJ's Newark campus employees. Local 6 has not alleged or demonstrated a sufficient lack of responsible representation or unit instability under Jefferson to warrant removing the Newark campus employees from the employer-wide unit.

Finally, Local 6 maintains that denying its petition would result in depriving employees of their constitutional right under Article 1, paragraph 19 of the New Jersey State Constitution to be represented by an organization of their own choosing. The constitutional validity of collective negotiations in public employment was sustained in Lullo. The statutory majority representative is the exclusive representative of all employees within a negotiations unit. The desire of the employees is not the sole factor in determining representation. The representational desires of employees must be balanced against the preservation of a stable, existing unit to insure harmonious employer-employee labor relations. N.J.S.A. 34:13A-2. Should these employees desire to exercise their right to change their statutory majority representative, they may do so by filing a timely petition for an appropriate negotiations unit -- in this case, the existing, broad-based, employer-wide negotiations unit.

Based upon the foregoing, I dismiss the petition seeking to sever UMDNJ's Newark employees from the existing non-supervisory, broad-based, employer-wide unit.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Edmund G. Gerber
Director of Representation

DATED: March 26, 1990
Trenton, New Jersey