D.R. NO. 90-27

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

In the Matter of

RUTGERS, THE STATE UNIVERSITY,

Public Employer,

-and-

UNITED CRAFTS ASSOCIATES,

Petitioner,

Docket No. RO-90-132

-and-

AFSCME, COUNCIL 52, LOCAL 888,

Employee Organization.

SYNOPSIS

The Director of Representation dismisses a severance petition filed by craft employees of Rutgers. The Director determined that AFSCME, Local 888, the majority representative of the broad-based unit, including craft employees, had a "prior agreement" with Rutgers, signed in 1967, which acts to preserve the unit. See N.J.S.A. 34:13A-6(d).

The Director also determined that the petitioner had not alleged sufficient facts warranting a severance under Jefferson Tp. Bd. of Ed., P.E.R.C. No. 61, NJPER Supp. 248 (¶61 1971).

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Appearances:

For the Public Employer
Christine Mowry, Director, Office of Employee Relations

For the Petitioner
Robert Brennan and Bruce Smith, Co-Directors

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

DECISION

On March 2, 1990, the United Crafts Associates ("Petitioner") filed a petition seeking certification as the exclusive representative of about 160 "craft employees" of Rutgers, the State University of New Jersey ("Rutgers"). The petition was accompanied by an adequate showing of interest. The petitioned-for employees are currently represented by AFSCME Council 52, Local 888 ("AFSCME") in a unit of about 1200 maintenance and service

employees. Petitioner wants to sever the "craft" employees from the large unit and represent them in a separate negotiations unit.[1/]

On March 6, 7 and 8, 1990, a Commission staff agent mailed the parties a series of letters requesting, among other things, a summary of the history of the current unit, descriptions of the titles asserted to be "craft" within the meaning of N.J.A.C. 19:10-1.1(a)(8), and specifically, whether a "craft option" election had ever been conducted at Rutgers. The agent also asked for the parties' positions on the representation petition.

On March 23, 1990, AFSCME intervened by filing a copy of its 1986-89 collective negotiations agreement with Rutgers which covers the petitioned-for employees. N.J.A.C. 19:11-2.7(a).

On March 23 and 29, 1990, Rutgers and AFSCME filed statements, affidavits and other documents opposing the petition and the proposed unit. Rutgers and AFSCME asserted that craft employees

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1/ We conducted an administrative investigation into the parties' allegations and the issues raised by this petition. N.J.A.C. 19:11-2.2 and 2.6. The disposition of this matter is properly based upon our administrative investigation, as there are no substantial and material factual issues which may more appropriately be resolved after an evidentiary hearing. In the absence of a substantial and material factual dispute, a decision may be rendered without a hearing, based upon our administrative investigation. N.J.A.C. 19:11-2.6(b). Rochelle Park Tp. and Rochelle Park Superior Officers Ass'n and Rochelle Park PBA Loc. #102, D.R. No. 89-22, 15 NJPER 195 (¶20082 1989), aff'd App. Div. Dkt. No. A-5273-88T1 (3/19/90) and Morris Cty. Bd. of Social Services and Morris Coun. No. 6, NJCSA and District 1199J, D.R. No. 89-27, 15 NJPER 237 (¶20097 1989) req. for rev. den. P.E.R.C. No. 89-124, 15 NJPER 331 (¶20147 1989) aff'd App. Div. Dkt. No. A-4931-88T5 (3/22/90). Based upon the our investigation, these facts appear.

should not be severed from this long-established collective negotiations unit and that the pre-1968 negotiations relationship of the parties precludes severance of these employees from the unit. They also submitted copies of the results of a 1966 representation election and a 1967 memorandum of agreement. Rutgers also asserted that the petitioned-for employees are not "craft" within the meaning of the Commission's rules. N.J.A.C. 19:10-1.1.

On April 3, 1990, we issued a letter stating we intended to dismiss the petition because it appeared that Rutgers and AFSCME had a "pre-1968" negotiations agreement and because there was no evidence of unstable labor-management relations or that AFSCME had not responsibly represented its unit employees. We gave the parties an opportunity to respond by April 16, 1990.

On April 16, 1990, the Petitioner filed a response, arguing that AFSCME was not certified by the State of New Jersey to represent Rutgers craft employees and that there is "much animosity" between craft employees and AFSCME. Specifically, Petitioner asserts that AFSCME has permitted craft employee grievances to lag in time behind those concerning other unit employees; that it has "allowed" Rutgers to change craft titles without consulting craft employees; and in 1988, the AFSCME local union president stated that, "craft employees got theirs' last year - this year is our turn; a loaf of bread costs the same to custodians as to the trades..."

Rutgers and AFSCME have a negotiations relationship dating to 1966. AFSCME submitted a copy of a "certification of results" of a secret ballot election conducted by the American Arbitration Association on December 15, 1966. The election was the result of a December 3, 1966 consent agreement between Rutgers and AFSCME. The agreement for the election sets forth this description of the proposed unit:

> Including: All full time employees, and all regular part-time employees who are scheduled to work for twenty (20) hours or more per week, employed in the Division of Housing, the Division of Food Services and the Division of Physical Plant, and as farm workers, by the employer in the State of New Jersey.
>
> Excluding: All clerical employees, students, casual and temporary employees, part-time employees who are scheduled to work for less than twenty (20) hours per week, professional employees, supervisors as defined in the National Labor Relations Act, employees in the jurisdiction of other unions now employed as domestic help permanently assigned to work in the homes of officers of the employer, and all other employees of the employer.

Physical plant" employees include the petitioned-for craft employees, notwithstanding minor title changes (e.g. "carpenter" to "carpenter/maintenance mechanic"). The certification of results shows that 471 employees voted in favor of representation and 165 voted against representation.

On May 3, 1967, Rutgers and "AFSCME Local Union No. 888" signed a "memorandum of understanding" for the "purpose of establishing conditions under which employees...shall be employed to work for Rutgers...." The recognition clause includes employees of

the "Division of the Physical Plant." The agreement contains a grievance procedure, a layoff and recall procedure and provisions concerning deduction of union dues, seniority and leaves of absence. The contract has an expiration date of May 3, 1968. The agreement was executed by representatives of Rutgers and AFSCME.

N.J.S.A. 34:13A-6(d) states that the Commission,

> shall decide in each instance which unit of employees is appropriate for collective negotiations, provided that, except where dictated by established practice, prior agreement or special circumstances, no unit shall be appropriate which includes (1) both supervisors and nonsupervisors, (2) both professional and nonprofessional employees unless a majority of such professional employees vote for inclusion in such unit or (3) both craft and noncraft employees unless a majority of such craft employees vote for inclusion in such unit (emphasis added).

In West Paterson Bd. of Ed., P.E.R.C. No. 77, NJPER Supp. 333 (¶77 1973), the Commission interpreted "prior agreement" to refer to a written executed agreement between a public employer and employee organization which was signed before the Act became law in 1968. See also Freehold Reg. Bd. of Ed., D.R. No. 78-41, 4 NJPER 182 (¶14090 1978). The term "prior agreement" was "intended by the legislature to preserve the composition of a pre-Act negotiations unit which, if formed subsequent to the date of the Act, would otherwise be inappropriate." [Freehold at 183].

Before Chapter 303 was enacted in 1968, Rutgers and AFSCME signed a "prior agreement" as a "memorandum of understanding" setting terms and conditions of employment for a collective

negotiations unit which included the petitioned-for employees. Even assuming that the petitioned-for titles are "craft" within the meaning of N.J.A.C. 19:10-11.1(a)(8) and that they were never given the option to vote on whether they wished to be included in a unit with noncraft employees, under the circumstances here, the pre-Act negotiations unit should be preserved.

In New Jersey Turnpike Auth., P.E.R.C. No. 24, NJPER Supp. 86 (¶24 1969), the Commission determined that "special circumstances" warranted the continued inclusion of craft employees in a unit of toll collectors and maintenance employees without a separate election. Craft employees had been included in a broad-based unit from 1961 to 1964, when an injunction issued prohibiting the Turnpike Authority from negotiating labor agreements. When the injunction was voided in 1968 (after the Act was passed), the Commission determined that the composition of the historical mixed unit should be preserved. I do not perceive any significant difference between the "special circumstances" in New Jersey Turnpike Auth. denying craft employees a craft option vote and thus preserved the mixed unit and the "prior agreement" in this case. N.J.S.A. 34:13A-6(d). No "State" certification could issue on any unit formed before 1968. Further, the legislature intended to preserve those units when it enacted N.J.S.A. 34:13A-6(d). Petitioner has not asserted any facts which properly question the legitimacy of the unit or the agreement signed in 1967.

Petitioner also asserts that the proposed unit should be severed from the current broad-based unit. Severance is appropriate only when there is a record of unstable labor-management relations or when the majority representative has not responsibly represented its unit employees. Jefferson Tp. Bd. of Ed., P.E.R.C. No. 61, NJPER Supp. 248 (¶61 1971); Cty. of Mercer, P.E.R.C. No. 89-112, 15 NJPER 277 (¶20121 1989).

Petitioner asserts for the first time that the proposed unit be severed under the Jefferson standard. That certain grievances filed by craft employees were not processed as quickly as those concerning noncraft unit employees falls far short of showing that AFSCME has not responsibly represented all unit employees. Petitioner has not asserted any facts suggesting that AFSCME's conduct caused the alleged delay or that AFSCME was irresponsible in causing any delay in processing.

A public employer does not violate the Act by merely creating or abolishing job titles. Rahway Valley Sewerage Auth., P.E.R.C. No. 89-37, 14 NJPER 654 (¶19275 1988); No. Hunterdon Reg. H.S. Dist., P.E.R.C. No. 86-55, 11 NJPER 707 (¶16245 1985); see also Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78 1981). Petitioner has alleged no more than a change in "craft" titles. Even assuming that Rutgers had a duty to negotiate changes, I find that Petitioner's allegation that AFSCME "allowed" the changes does not, without more, mean it violated its duty to responsibly represent "craft" employees.

Finally, the Petitioner asserts that it is entitled to severance because AFSCME sought a wage increase for other unit employees after securing an increase for craft employees in the previous year. A majority representative may act within a wide range of reasonableness in making concessions in order to obtain salary increases or other benefits for the overall unit. PBA Local 119, P.E.R.C. No. 84-76, 10 NJPER 41 (¶15023 1983); see also Belen v. Woodbridge Tp. Bd. of Ed., 142 N.J. Super 486 (App. Div. 1976); and Hamilton Tp. Bd. of Ed., P.E.R.C. No. 79-20, 4 NJPER 476 (¶4215 1978). Petitioner concedes that AFSCME secured wage increases for craft employees in a previous contract year; securing wage increases for other unit members in the succeeding year does not suggest that AFSCME acted irresponsibly.

Based upon the foregoing, I conclude that the composition of the historical, mixed craft/noncraft unit should be preserved and that the Petitioner has not satisfied the Jefferson severance standards. Accordingly, the petition is dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION

Edmund G. Gerber
Director of Representation

DATED: April 30, 1990
Trenton, New Jersey