

D.R. NO. 81-40

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

In the Matter of

CITY OF BAYONNE,

Public Employer,

-and-

DOCKET NO. RO-79-230

LOCAL 440, INTERNATIONAL FEDERATION
OF LABOR UNIONS,

Petitioner,

-and-

COUNCIL 52, AFSCME, AFL-CIO

Intervenor.

SYNOPSIS

The Director of Representation dismisses a petition filed by certain blue-collar employees seeking their removal from a larger unit and separate representation since they failed to produce substantial and material factual issues to support a claim of irresponsible representation or an unstable existing relationship.

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Appearances:

For the Public Employer
Apruzzese & McDermott
(Maurice J. Nelligan, Jr., of counsel)

For the Petitioner
Schneider, Cohen, Solomon & DiMarzio
(Paul A. Montalbano, of counsel)

For the Intervenor
Rothbard, Harris & Oxfeld
(Barry A. Aisenstock, of counsel)

DECISION AND ORDER

A Petition for Certification of Public Employee Representative was timely filed on June 27, 1979 with the Public Employment Relations Commission (the "Commission") by Local 440, International Federation of Labor Unions (the "Petitioner"), with respect to a proposed unit of approximately 55 nonsupervisory blue collar employees of the City of Bayonne Sanitation Department (the "City").

By letter dated July 2, 1979, Local 2261, Council 52, American Federation of State, County & Municipal Employees, AFL-CIO ("AFSCME") moved to intervene herein, based upon a collective negotiations agreement between the City and Local 2261, covering all nonsupervisory blue and white collar City employees, which expired December 31, 1978. AFSCME has stated that a salary agreement was reached between it and the City for calendar year 1979 and has further submitted a negotiated 1980-82 Agreement. Accordingly, pursuant to N.J.A.C. 19:11-2.7, AFSCME's request to intervene has been approved.

The undersigned has caused an administrative investigation to be conducted into the matters and allegations set forth in the Petition in order to determine the facts. Efforts by the assigned Commission staff agent to resolve the instant matter informally have been unsuccessful, and the parties have been apprised of the applicable Commission caselaw regarding the standards for severance of employees from established negotiations units.

Based upon the administrative investigation, the undersigned finds as follows:

1. The disposition of this matter is properly based upon the administrative investigation herein, it appearing that no substantial and material factual issues exist which may more appropriately be resolved after an evidentiary hearing. Pursuant to N.J.A.C. 19:11-2.6(c), there is no necessity for a hearing where, as here, no substantial and material factual issues have been placed in dispute by the parties.

2. The City of Bayonne is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), is the employer of the employees who are the subject of this Petition, and is subject to the provisions of the Act.

3. Local 440, International Federation of Labor Unions and Local 2261, Council 52, American Federation of State, County & Municipal Employees, AFL-CIO, are employee representatives within the meaning of the Act and are subject to its provisions.

4. Petitioner is seeking to represent a unit comprised of certain employees of the City of Bayonne, more specifically, a unit comprised of nonsupervisory blue collar employees employed in the City's Sanitation Department.

5. The petitioned-for employees have been, and are currently represented by AFSCME in a city-wide unit of nonsupervisory white collar and blue collar employees. 1/

Currently, these employees are covered by a contract between the City and AFSCME for the period from January 1, 1980 to December 31, 1982.

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

1/ The 1977-78 contract indicates the current unit covers, among others, nonsupervisory white collar and blue collar employees, city-wide, as follows: all clerical employees, telephone operators, sanitation employees, public works employees, water/sewage maintenance employees, sewage plant operators, parks and recreation employees and watchmen.

7. Petitioner here seeks to separate a group of blue collar Sanitation Department employees from the extant city-wide unit of blue collar and white collar employees, based primarily upon its claim that AFSCME, the incumbent representative, has failed to provide proper representation to the blue collar employees in the Sanitation Department. In support of its position, Petitioner has made the following assertions: (a) AFSCME failed to negotiate a contract for 1979; (b) Gerald Timoldi, who served as president of the incumbent AFSCME local (Local 2261), held a supervisory position with the City. The net effect of this situation is alleged to have been harmful to unit members; (c) Sanitation Department employees work an eight hour day whereas many city employees work a six hour day. During negotiations, Local 2261 sought flat dollar increases for all employees despite differences in hours worked; (d) There are separate units of other municipal employees which have been permitted, and which would appear to be appropriately part of the city-wide unit (library employees and school crossing guards); and (3) Local 2261 would not permit effective discussion among Sanitation Department employees regarding negotiations proposals nor would it permit such employees to submit to it proposals for negotiations with the City.

8. The City and AFSCME have entered into Agreements covering the city-wide unit of nonsupervisory blue collar and white collar employees for calendar year 1979 and for 1980-82.

9. Gerald Timoldi worked as Street Foreman while serving as president of AFSCME, Local 2261. Timoldi is no longer

president of AFSCME, Local 2261; nor is the title of Street Foreman in the above-referenced negotiations unit.

10. Forty-hour employees are not unique to the Sanitation Department. The City employs 35-hour employees and 40-hour employees throughout City government.

11. Most City employees are included in one of the existing units for collective negotiations; there are a limited number of negotiations units and they are as follows:

1. Nonsupervisory police officers
2. Supervisory police officers
3. Nonsupervisory firefighters
4. Supervisory firefighters
5. School crossing guards
6. Nonsupervisory blue and white collar employees
7. Supervisory blue and white collar employees

12. Petitioner has made general contentions that Local 2261 limited effective discussion of negotiations proposals by sanitation employees and that it would not permit such employees to submit proposals for negotiations with the City, but has failed to submit documentary and other evidence in support thereof.

13. Petitioner has made various allegations concerning the incumbent's negotiations and administration conduct which are not specific to sanitation employees; rather, these allegations concern claims of failure of responsible representation to the entire unit.

Unit determinations are made within the framework of the general statutory intent and purpose of promoting permanent employer-employee peace, 2/ or as the New Jersey Supreme Court has

2/ See, N.J.S.A. 34:13A-2.

stated "... the establishment and promotion of fair and harmonious employer-employee relations in the public sector." 3/

The Commission has favored the formation of negotiating units in the public sector along broad-based, functional lines rather than by distinct occupational groupings. 4/ 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, 5/ the Commission stated:

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

3/ See, Bd. of Ed. of W. Orange v. Wilton, 57 N.J. 404 (1971).

4/ In State of N.J. v. Prof. Assn. of N.J. Dept. of Ed., 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 N.J. (Neuro-Psychiatric Institute, et al.), P.E.R.C. No. 50 (1971); In re Bd. of Chosen Freeholders of the Cty. of Burlington, P.E.R.C. No. 58 (1971); In re Bergen Cty. Bd. of Chosen Freeholders, P.E.R.C. No. 69 (1972); and, especially, In re State of N.J. (Prof. Assn. of N.J. Dept. of Ed., et al.), P.E.R.C. No. 68 (1972).

5/ In re Jefferson Tp. Bd. of Ed., P.E.R.C. No. 61 (1971); See also, In re City of Camden, D.R. No. 78-26, 3 NJPER 396 (1977); In re Somerset Cty., D.R. No. 78-42, 4 NJPER 198 (¶ 4099 1978); In re Cty of Middlesex, D.R. No. 79-8, 4 NJPER 396 (¶ 4178 1978), In re Cty of Hudson, D.R. No. 79-11, 4 NJPER 442 (¶ 4200 1978); In re Mercer Cty. Prosecutor, D.R. No. 79-18, 5 NJPER 60 (¶ 10039 1979); In re N.J. Institute of Technology, D.R. No. 79-22, 5 NJPER 102 (¶ 10056 1979).

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 face inappropriate and which has been the subject of two successive collective negotiations agreements.

... 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 subcategory of employees enjoyed a community of interest among themselves. Such a course would predictably lead to continuous agitation and uncertainty, that 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. (Emphasis added).

In In re Essex Cty., D.R. No. 78-16, 3 NJPER 336 (1977), the undersigned stated that unit determinations must 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.

In In re Bd. of Ed. W. Milford, P.E.R.C. No. 56, at p. 3, (1971), the Commission stated that "the measure of fair representation is ultimately found at the negotiating table, in the administration of the negotiated agreement and in the processing of grievances."

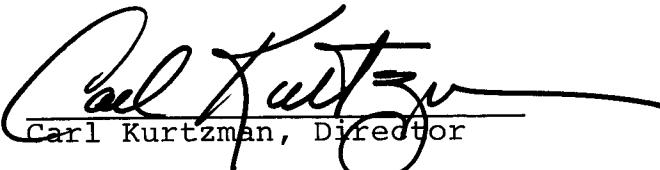
In view of the existing Commission policy concerning unit definition, the unit sought by Petitioner is inappropriate. In order

to justify its requested severance, the Petitioner has asserted that the incumbent has failed to provide responsible representation to sanitation employees. However, the Petitioner has failed to satisfy the minimal requirements established by the Commission in severance matters, as discussed above. Many of the Petitioner's contentions allege a failure of responsible representation to the entire unit and therefore do not provide a basis to alter the unit structure by separating out the sanitation employees. In collective negotiations, the majority representative is afforded a wide discretion. General contentions regarding a failure to properly represent, which lack factual specificity and which are unaccompanied by documentary or other evidence, are insufficient to justify further processing of severance petitions.

In correspondence dated January 9, 1981, the undersigned advised the parties of the results of the administrative investigation and the analysis of the issues, supra. The parties were advised of their responsibilities, under N.J.A.C. 19:11-2.6 to submit specific factual contentions, documentary and other evidence, including a statement of position, raising substantial and material factual issues which would warrant the convening of a hearing pursuant to Section 19:11-1.12(c) of the Commission rules. Petitioner was advised that in the absence of a withdrawal request or the submission of the required materials, the undersigned would dismiss the instant Petition. No further submission has been provided by the petitioner. Accordingly, in the absence of a withdrawal request and in the absence of any substantial and material factual

issues warranting the convening of an evidentiary hearing, the undersigned dismisses the instant Petition.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Carl Kurtzman, Director

DATED: May 15, 1981
Trenton, New Jersey