

D.R. NO. 96-2

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

In the Matter of
COUNTY OF OCEAN,

Public Employer,

-and-

Docket No. RO-95-191

CWA, AFL-CIO, PRIMARY LEVEL SUPERVISORS UNIT,

Petitioner.

SYNOPSIS

The Director of Representation orders an election for a unit of seven primary level supervisors assigned to the Juvenile Detention Center employed by Ocean County. Although the Commission has a preference for broad-based, employer-wide units, Ocean County already has nineteen negotiations units of which six are narrowly defined. The establishment of this twentieth unit does not seem to create an undue hardship on the County.

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Appearances:

For the Public Employer,
Citta, Holzapfel, Millard & Zabarsky, attorneys
(James W. Holzapfel, of counsel)

For the Petitioner,
Dudley Burdge, Organizer

DECISION AND DIRECTION OF ELECTION

On March 14, 1995, CWA Primary Level Supervisors Unit, AFL-CIO filed a Petition for Certification of Public Employee Representative with the Public Employment Relations Commission. CWA seeks to represent a negotiations unit comprised of seven primary level supervisors employed by Ocean County and assigned to the Ocean County Juvenile Detention Center. The County opposes the petition asserting that the establishment of this unit would cause an undue fragmentation of negotiations units. The County asserts that these employees should be included in an existing white collar supervisory unit.

We have conducted an administrative investigation, the following facts appear. N.J.A.C. 19:11-2.2 and 2.6.

The petition is supported by an adequate showing of interest. Additionally, CWA Primary Level Supervisors Unit submitted a certification acknowledging their responsibilities to create a separate organizational entity from any organization representing non-supervisory employees.^{1/}

The County's employees are presently organized into nineteen negotiations units. CWA Local 1038 was certified as the majority representative for the blue collar employees on August 27, 1974. OPEIU Local 14 represents five negotiations units: the blue collar supervisors unit certified on August 3, 1976, engineering department employees, non-supervisory Juvenile Detention Center employees, a white collar employees unit certified on January 24, 1986, and a white collar supervisors unit certified on October 12, 1979.^{2/} Teamsters Local 97 represents a unit of communications operators certified on February 27, 1989. The Ocean County Construction Officials Association represents supervisory construction inspection officials. PESU Local 702 represents construction inspection sub-code officials and was certified on July 28, 1993. The Ocean County Corrections Professionals Association represents professional, non-supervisory employees in Corrections

^{1/} See Camden City, P.E.R.C. No. 82-89, 8 NJPER 226 (¶13094 1982) in which the Commission set forth an organization's responsibility to create a separate organizational structure to represent supervisors.

^{2/} Certified units were established through Commission-conducted elections resulting from consent election agreements between the parties rather than through directed election decisions.

and was certified on October 20, 1992. FMBA Local 98 represents a unit of assistant fire marshalls which was certified on December 10, 1993. PBA Local 258 represents sheriffs and corrections officers and sheriffs and corrections superior officers.

Additionally, four bargaining units exist at the Ocean County Prosecutor's Office^{3/} and there appears to be a unit of white collar county judicial employees represented by CWA.^{4/} CWA also represents a unit of professionals in the Ocean County Health Department.

The primary level supervisors at the Juvenile Detention Center are unrepresented. Other unrepresented county supervisory employees may exist, but they were not described by the County. The petitioned-for unit encompasses supervising juvenile detention officers and a head teacher. The parties agree that these employees are supervisory and professional employees within the meaning of the Act.

The duties of supervising juvenile detention officers are described in a New Jersey Department of Personnel job description dated February 23, 1989.^{5/} Under direction, they supervise a

^{3/} The Ocean County Prosecutor's Clerical Association represents county detectives, investigators and juvenile investigators. The Ocean County Sergeants Association represents prosecutor's sergeants and the Ocean County Prosecutors Superior Officers Association represents the lieutenant of county investigators and captain of county detectives.

^{4/} It is unknown if these are now state employees.

^{5/} No job description was submitted for the head teacher title.

group of three or more juvenile detention officers and may have responsibility for the complete operation and security of the juvenile facility on a given shift. The supervisor communicates the policies, procedures, and objectives of higher levels of supervision to subordinate officers on their shift. They revise established work schedules to meet changes in workload, assign officers to positions and assign tasks to new officers providing them with the experience and training required to perform their work. They informally recommend promotions, reassignments and other status changes of personnel and recognize outstanding performance of officers. They may determine priorities or schedule work for their shift. To qualify for this position, an employee requires three years of experience in the care and custody of juveniles or young inmates confined to an institution.

The primary level supervisors are supervised by Robert Coglin, Superintendent of Juvenile Detention. He is a department head reporting to the County administrator and to the Board of Freeholders. The employees work three shifts covering all 24 hours in a day and seven days a week.^{6/} Their work shifts are like those of the various police units, but these employees are not sworn officers. The petitioned-for employees work in a secure, locked facility surrounded by a security fence. They are physically separated from other county facilities. This separation allows for

^{6/} Employees in the white collar and blue collar supervisory units do not work three shifts.

very little interaction and interchange between the Juvenile Detention Center employees and other county employees. The current supervising juvenile detention officers were all promoted from the position of juvenile detention officer. Employees from other departments are unlikely to move into this positions' promotional ladder because of the experience required. The petitioned-for employees have received the same salary increases as other non-represented county employees. Additionally, in December 1994, the minimum salary was increased from \$24,500 to \$28,000 upon the recommendation of Superintendent Coglin. This action was taken within the department, not in the context of an overall review of supervisory salaries.

The County asserts that the primary level supervisors at the Juvenile Detention Center share a community of interest with the white collar supervisory unit represented by OPEIU Local 14. They have the County as a common employer, share common goals, and are salaried. Despite these broad assertions, the County did not provide any specific evidence of such community of interest factors. Additionally, OPEIU Local 14 has not sought to add this residual group to their existing unit nor have they sought to intervene in this proceeding.^{7/}

^{7/} OPEIU Local 14 was notified of this petition through a letter from me on March 16, 1995.

ANALYSIS

The New Jersey Supreme Court has affirmed the Commission's holding that broad-based, employer-wide units are appropriate for employee representation. Such units streamline negotiations by reducing the potential for such problems as "competing demands, whipsawing and continuous negotiations..." that result from bargaining with numerous small units. State of N.J. and Prof. Assn. of N.J. Bd. of Ed., 64 N.J. 231 (1974), aff'g P.E.R.C. No. 68, at 10.

In disputed cases, the Commission decides which unit of employees is most appropriate for collective negotiations. State of N.J. The Commission must define the appropriate unit "with due regard for the community of interest among the employees concerned...Community of interest...encompasses many factors..." West Milford Bd. of Ed., P.E.R.C. No. 56, NJPER Supp. 218 (¶56 1971). The Commission ultimately weighs the facts and concerns of the employer, employee representatives and the public in deciding what unit structure promotes the statutory goals of labor stability. State of N.J. As the Commission noted in U.M.D.N.J., P.E.R.C No. 84-28, 9 NJPER (¶14253 1983):

...It is necessary to balance the need to find the most appropriate collective negotiations unit against the right of the public employees who desire to obtain such representation.

In that matter, the representative of the existing negotiations unit did not seek to represent the employees in dispute. The Commission found that to deny the employees representation indefinitely because an existing negotiations unit does not desire to represent them is inconsistent with the purposes

of the Act. U.M.D.N.J.; Bergen Cty. (Bergen Pines Hospital), D.R. No. 87-3, 12 NJPER 619 (¶17234 1986); Bergen Cty. (Bergen Pines Hospital), D.R. No. 90-20, 16 NJPER 171 (¶21070 1990). Here, I also find that the right of representation outweighs the employer's concern for undue unit fragmentation.

Moreover, unit fragmentation is a relative consideration depending on the circumstances in which it arises. Here, the County has recently consented to elections in four, narrowly-defined units subsequent to the establishment of the broad blue and white collar, and blue and white collar supervisory units. Additionally, the County already has another narrowly-defined supervisory unit of supervisory construction inspection officials. Furthermore, there is also a unit specifically comprised of non-supervisory Juvenile Detention Center employees. These employees are supervised by the employees in the petitioned-for unit. The establishment of this unit and the unit of professional, non-supervisory corrections employees indicates the employer's willingness to have separate corrections units of non-police employees. The County did not assert that the employees in each of these units should have been included in the existing blue collar, white collar, blue collar supervisory, or white collar supervisory units. Since the County already has six, narrowly-defined units within their configuration of nineteen negotiations units, it does not seem an undue hardship on the employer to have another unit established. See Bergen Cty. (Bergen Pines Hospital), D.R. No. 87-3, 12 NJPER 619 (¶17234 1986);

Bergen Cty. (Bergen Pines Hospital), D.R. No. 90-20, 16 NJPER 171 (¶21070 1990). Compare N.J.I.T., D.R. No. 88-29, 14 NJPER 148 (¶19060 1988) (where the employer consistently rejected claims for separate, narrowly-defined units).

Accordingly, the petitioned-for unit of primary level supervisors at the Juvenile Detention Center is appropriate and I direct that a mail-ballot election be conducted among the unit described as follows:

Included: All regular primary level supervisors including the supervising juvenile detention officers and the head teachers at the Juvenile Detention Center employed by Ocean County.

Excluded: All managerial executives, confidential employees, police, fire employees, craft employees, non-professional employees, non-supervisory employees within the meaning of the Act, casual employees, employees in other negotiations units and all other employees employed by Ocean County.

Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, including those in the military service. Employees who resigned or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date are ineligible to vote.

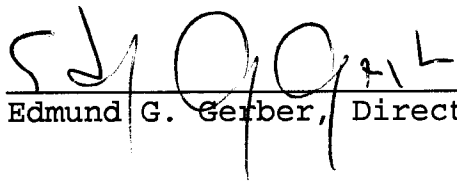
Pursuant to N.J.A.C. 19:11-9.6, the public employer is directed to file with us an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the units, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by us no later than August 8, 1995, ten (10) days prior to the date the ballots will be mailed. A copy of the eligibility list shall be simultaneously provided to the employee organization with a statement of service filed with us. We shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

The employees shall vote on whether they wish to be represented for purposes of collective negotiations by the CWA Primary Level Supervisors Unit, AFL-CIO.

Ballots shall be mailed by the Commission to the eligible voters on August 18, 1995. Ballots must be received at the Commission's post office box by 10 a.m. on September 8, 1995. Ballots shall be counted by the Commission at 11 a.m. on September 8, 1995.

The exclusive representative, if any, shall be determined by a majority of the valid votes cast in the election. The election shall be conducted in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: July 20, 1995
Trenton, New Jersey