

D.R. NO. 2004-1

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

In the Matter of

CITY OF PASSAIC,

Public Employer,

-and-

Docket No. RO-2003-055

TEAMSTERS LOCAL 97 OF N.J., AFL-CIO,

Petitioner.

SYNOPSIS

The Director of Representation orders that an election be conducted among Emergency Medical Technicians employed by the City of Passaic to determine whether they wish to be represented in collective negotiations by the petitioner Teamsters Local 97. The Director found that permitting the creation of a narrowly-defined unit comprised exclusively of one occupation was warranted where the employees at issue had remained unrepresented for a period of time, where approving the unit would not risk further unit proliferation, and where the incumbent representative had not expressed a willingness to represent the petitioned-for employees.

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Appearances:

For the Respondent,
Scarinci & Hollenbeck, attorneys
(Richard M. Salsberg, of counsel)

For the Petitioner,
Mets, Schiro & Kleinle, attorneys
(James M. Mets, of counsel)

DECISION AND DIRECTION OF ELECTION

On December 20, 2002, Teamsters Local 97, AFL-CIO, filed a representation petition with the Public Employment Relations Commission (Commission) seeking to represent a unit of approximately 25 emergency medical service technicians (EMTs), employed by the City of Passaic (City). The City opposes the petition and will not consent to a secret ballot election. The City argues that the petition seeks an overly narrow unit which would unduly increase the number of negotiations units in the City, and asserts that the existing broad-based, white-collar, non-supervisory negotiations unit is a more appropriate unit for

the EMTs. That unit is represented by the Passaic City Employees' Association (Association).

On January 9, 2003, the City posted a Notice to Employees about the petition, in places where notices are normally posted, which notified the Association of the petition. By letter of January 23, 2003, we notified the Association about the petition and invited it to intervene in this matter pursuant to N.J.A.C. 19:11-2.7. We advised the Association that its failure to respond would be construed as its disinterest in representing the EMTs. To date, the Association has not intervened or asserted any interest in representing these employees.

We have conducted an administrative investigation into the petition. N.J.A.C. 19:11-2.2. A conference was conducted by a Commission Staff Agent and the parties each submitted position statements. On July 29, 2003, we notified the parties of our tentative findings and conclusions and invited their responses. Neither party responded. Based on our investigation, we make the following:

FINDINGS OF FACT

The City negotiates with seven separate negotiations units: (1) a non-supervisory, white-collar unit, (2) a non-supervisory blue-collar unit, (3) a broad-based supervisors unit, (4) a crossing guards unit, (5) a firefighters' unit, (6) a fire officers' unit, and (7) a police officers' unit. The only

unrepresented employees are the EMTs, and those who are statutorily ineligible for membership in any unit (confidential employees and managerial executives).

The Association has been the majority representative of the City's white-collar unit for about ten years. The City and the Association are parties to a series of collective negotiations agreements, the most recent of which was effective from July 1, 1998 through June 30, 2002. The unit is composed of all full-time, white-collar, non-supervisory employees, excluding managerial, confidential, supervisory employees, police and uniformed firefighters, and part-time nurses aides in the Division of Health.

The City has employed EMTs for about 15 years in its fire department. During this period, no other employee organization has attempted to add them to its unit. On September 14, 1998, Teamsters Local 97 filed their first petition for certification seeking to represent these EMTs (Docket No. RO-99-35). That petition was ultimately withdrawn without a formal determination.

EMTs' job duties consist of driving or riding in an ambulance to a location to provide emergency medical treatment. At locations, EMTs must create safe traffic environments, assess the nature and extent of injury or illness, and establish priorities for emergency care. EMTs open and maintain patients' airways, give positive pressure ventilation and cardiac

resuscitation, stop bleeding, treat shock, immobilize fractures, and provide initial care to poison and burn victims. EMTs also search for medical identification, extricate patients from entrapment, radio for additional help or advice, prepare victims for transportation and care on the trip to hospital. EMTs may request advice from hospital emergency department or physicians and may deliver newborn infants. Upon arrival at the hospital, EMTs transfer patients to stretchers, carry or wheel patients into the hospital, and inform medical personnel about patients' conditions. EMTs prepare reports of trips and enter information into official logs.

EMTs must possess current and valid emergency medical technician certification issued by the New Jersey State Department of Health and Senior Services. They must be re-certified every three years, maintain current certifications in cardio-pulmonary-resuscitation (CPR) issued by the American Red Cross, American Heart Association or National Safety Council, be skilled in the use of defibrillators, and maintain "D" level or intermediate EMT training, the most advanced level for EMTs, next only to paramedics in difficulty and responsibility. EMTs must possess the ability to remain calm and deal with persons of all ages and to understand the special circumstances presented by infants, children, pregnant women, diabetic patients, allergic patients and geriatric patients.

EMTs' working conditions include a high level of personal risk, the use of specialized equipment and vehicles, and the performance of physically and emotionally demanding work. Unlike the City's administrative employees, EMTs work 12-hour shifts, 24 hours per day, 7 days per week, 365 days per year. Moreover, EMTs report directly to the fire department and police personnel, not to the City administration. Their interaction with the Association's non-supervisory, white-collar employees -- whose functions are primarily clerical in nature -- is minimal.

ANALYSIS

The issue here is whether, under the circumstances in this matter, the proposed unit of EMTs is appropriate.

Local 97 argues that a unit of EMTs is appropriate and the petition should be processed to an election. It also argues that EMTs are professional employees within the meaning of the Act, and, therefore, have a statutory right to be in a unit separate from non-professional employees. N.J.S.A. 34:13A-5.3 and 6. The City opposes the petition. It argues that Commission case law and policy favor broad-based units and that a unit comprised exclusively of EMTs will lead to undue unit proliferation, and burden the City with additional collective negotiations. For the reasons that follow, I find that, under the circumstances presented by this case, a unit comprised exclusively of EMTs is appropriate and an election is ordered.

The Commission is charged with the responsibility of determining the appropriate unit for negotiations. N.J.S.A. 34:13A-6(d). Where more than one unit structure is potentially appropriate, the Commission must determine which unit configuration is most appropriate. State of N.J. and Professional Ass'n of N.J. Dept. of Education, P.E.R.C. No. 68, NJPER Supp. 273 (¶68 1972), aff'd 64 N.J. 231 (1974) ("Professional Ass'n").

N.J.S.A. 34:13A-5.3 requires that negotiations units be defined "with due regard for the community of interest among the employees concerned." However, in making unit determinations, we must consider the general statutory intent of promoting stable and harmonious employer-employee relations. The Commission has long favored units structured along broad-based, functional lines and has been reluctant to approve units of employees in a single occupational group. In Professional Ass'n, the Supreme Court endorsed the Commission's broad-based unit approach but directed that a balance be struck between the rights of public employees to negotiate collectively and the public employer's right not to be burdened with undue proliferation of negotiations units. Thus, the desires of the employees and the parties, while relevant, are not paramount. We consider the totality of circumstances of the particular case, including the structure and history of existing units and the extent of organization of the

employer's employees. Bordentown Reg. Bd. of Ed. and Bordentown Reg. Ed. Ass'n, P.E.R.C. No. 84-126, 10 NJPER 276 (¶15136 1984), aff'd 11 NJPER 337 (¶16122 App. Div. 1985); Tp. of Teaneck, P.E.R.C. No. 88-20, 13 NJPER 483 (¶18270 1987); Passaic Cty. Bd. of Freeholders, P.E.R.C. No. 87-141, 13 NJPER 483 (¶18179 1987); Englewood Bd. of Ed., P.E.R.C. No. 82-25, 7 NJPER 516 (¶12229 1981).

In applying the Professional Ass'n balancing test, the Commission generally favors a broad-based unit structure and is reluctant to approve a unit composed of a single title or occupational group. See, e.g., Kearny Bd. of Ed., D.R. No. 2001-4, 27 NJPER 68 (¶32030 2000) (separate unit of classroom aides rejected where other aides still unorganized); Jersey City, D.R. No. 84-6, 9 NJPER 556 (¶14231 1983) (unit of sanitary inspectors found inappropriate where other professional employees unrepresented); NJIT, D.R. No. 88-29, 14 NJPER 148 (¶19060 1988) (narrow unit of security guards rejected where college had consistently maintained broad-based units and title was recently created); Warren Cty., D.R. No. 95-14, 21 NJPER 43 (¶26026 1994) (proposed unit of 15 dispatchers inappropriate); Wall Tp., D.R. No. 94-24, 20 NJPER 209 (¶25101 1994) (proposed unit of six or seven dispatchers inappropriate). Where we have been asked to consider a residual group of employees who have been left out of a broad-based unit, we have rejected such units of separate job

categories where the petitioned-for units were determined to have a strong community of interest with an existing broad-based units; the incumbent representative was willing to represent the petitioned-for employees in a wall-to-wall unit; or the positions were created after the formation of the wall-to-wall unit and the employer did not waive its right to insist on broad-based units. See Tp. of E. Windsor, P.E.R.C. No. 97-68, 23 NJPER 51 (¶28035 1996), aff'g D.R. No. 97-2, 22 NJPER 348 (¶27180 1996); NJIT; Camden Bd. of Ed., P.E.R.C. No. 87-53, 12 NJPER 847 (¶17326 1986); Camden Bd. of Ed., E.D. No. 76-32, 2 NJPER 123 (1976).

In East Windsor, the Commission rejected a proposed unit of EMTs based upon the incumbent representative's willingness to represent the EMTs in its broad-based unit. Additionally, the employer had not waived its right to object to the separate unit since the EMT title was recently created. However, in dismissing the petition, the Commission observed "the right of employees to organize may sometimes outweigh the preference for broad-based units." The Commission concluded that, should the incumbent fail to come forward to represent the EMTs, the Commission would reconsider a petition for a separate unit.

Conversely, the Commission has found that the balance tips in favor of granting a residual unit its right to be represented separately where approving the unit would not risk further unit proliferation, the employees have remained unrepresented for a

period of time, and the incumbent representative has not expressed a willingness to represent the petitioned-for employees. For example, in Bergen Pines Cty. Hospital, D.R. No. 87-3, 12 NJPER 619 (¶17234 1982), we found a unit of physicians and dentists appropriate. The physicians/dentists employee group existed before other negotiations units of professionals organized, and the employer had already accepted the organization of eleven negotiations units, many composed of single professional groups. See also, UMDNJ, P.E.R.C. No. 91-2, 16 NJPER 431 (¶21183 1990) (unit of nurses approved), and UMDNJ, P.E.R.C. No. 84-28, 9 NJPER 598 (¶14253 1983) (residual faculty unit found appropriate where broad-based unit had twice disclaimed interest in representing petitioned-for faculty).

Similarly, in Ocean Cty., D.R. No. 96-2, 21 NJPER 301 (¶26192 1995), we also approved a "narrow" unit of supervisors where it appeared that, as the "final" unit to be organized, further unit fragmentation was unlikely.

In Town of W. New York, D.R. No. 2002-1, 27 NJPER 339 (¶32121 2001), I recently approved a separate unit of crossing guards, rejecting the employer's claim that permitting the unit would create unit fragmentation. I found that the community of interest between crossing guards and the City's white collar unit was not clearcut, the incumbent representative was unwilling to represent the petitioned-for crossing guards, and the risk of

unit proliferation was slight, since the proposed unit appeared to be the last of the Township's unrepresented employees.

In the instant matter, I find that the balance must be struck in favor of permitting the EMTs to have their own unit. The EMT title was in existence at the time the Association became the representative of the white-collar unit. The City and the Association apparently mutually agreed to exclude EMTs from that unit when it was formed. The record does not indicate that the City has taken any action to try to include the EMTs in the white-collar unit since that time. The City has waived its right to argue against unit proliferation since a long period of time has passed since the title was created, and the City has permitted proliferation in the past; for example, the blue and white collar employees are in separate negotiations units and there is nothing in this record which indicates that, in the past, the City proposed to add the EMTs to the existing non-supervisory unit. Further, there is a low risk of additional unit proliferation along occupational lines since the EMTs are the only remaining unrepresented group employed by the City.

Additionally, the community of interest between EMTs and white collar employees is slight. They do not share the same work facilities, work hours, and work year. There are significant differences between EMTs and white-collar employees represented by the Association with regard to their duties,

training, required certification, qualifications and chain of command. They do not service the same clients nor share the same job goals. They have virtually no interaction with each other. Therefore, on the basis of these differences, the terms and conditions of employment for EMTs are distinct and sufficient to overcome the Commission's policy favoring broad-based units. West New York at 341.

Moreover, the EMTs have remained unrepresented for a long period of time -- fifteen years. There does not appear to be a risk of fragmentation or instability to the City's negotiations structure by adding this unit. Finally, the EMTs filed a petition four years ago seeking to be represented for collective negotiations; that petition was not successful. Continuing to deny these employees representation rights is inconsistent with the tenets of the Act. On balance, the rights of these public employees who desire representation outweighs the effect such organization will have on the employer's overall labor stability.

The City relies on East Windsor and Pennsauken Tp., D.R. No. 2000-2, 25 NJPER 398 (¶30172 2000), in support of its position that an EMT unit is inappropriate. In East Windsor and in Pennsauken Tp., the representative of the existing, broad-based unit was willing to represent the EMTs and the employers had not waived their right to argue against unit proliferation since they had resisted proliferation in the past.

Accordingly, based upon all of the above, I order that an election be conducted among employees in the following appropriate unit:

Included: All regularly employed emergency medical services technicians employed by the City of Passaic.

Excluded: All managerial executives, confidential employees and supervisory employees within the meaning of the Act; police employees, craft employees, professional employees, casual employees, employees represented in other collective negotiations units and all other employees.

Employees shall vote on whether they wish to be represented for purposes of collective negotiations by Teamsters Local 97 of N.J., AFL-CIO. The election shall commence no later than thirty (30) days from the date of this decision and shall be conducted by mail ballot. 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. Ineligible to vote are 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.

Pursuant to N.J.A.C 19:11-10.1, 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 unit, 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 ten (10) days prior to the date of the election. 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 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

A handwritten signature in black ink, appearing to read "Stuart Reichman", written over a horizontal line.

Stuart Reichman, Director

DATED: August 21, 2003
Trenton, New Jersey