

D.R. No. 2006-1

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

In the Matter of

TOWNSHIP OF WOODBRIDGE,

Public Employer,

-and-

WOODBIDGE PUBLIC SAFETY  
TELECOMMUNICATORS ASSOCIATION,

Docket No. RO-2005-082

Petitioner,

-and-

AFSCME COUNCIL 73, LOCAL 3044,

Intervenor.

**SYNOPSIS**

The Director of Representation dismisses a representation petition which sought to sever telecommunicators out of a long established broad-based white collar unit. Petitioner did not demonstrate that the incumbent union's relationship was unstable or that it failed to provide responsible representation as required under Jefferson Tp. Bd. of Ed.

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Appearances:

For the Respondent,  
Genova, Burns & Vernoia, attorneys  
(Timothy Averell, of counsel)

For the Petitioner,  
Mets & Schiro, LLP, attorneys  
(James Mets, of counsel)

For the Intervenor,  
Alice Weisman, attorney

**DECISION**

On February 9, 2005, the Woodbridge Public Safety  
Telecommunicators Association (Association) filed a timely<sup>1/</sup>

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<sup>1/</sup> At the time of the filing of this petition, there was no contract in effect covering the petitioned-for employees. Therefore, pursuant to N.J.A.C. 19:11-2.8, the petition was timely filed.

Petition for Certification with the Public Employment Relations Commission (Commission). The Association seeks to represent a negotiations unit of all public safety telecommunicators (telecommunicators) employed by the Township of Woodbridge (Township).

On February 28, 2005, the American Federation of State, County and Municipal Employees, Council 73, Local 3044 (Local 3044 or AFSCME) was permitted to intervene in this matter based upon its recently expired collective agreement covering a broad-based unit of the Township's clerical, custodial and engineering employees, including the telecommunicators.<sup>2/</sup> N.J.A.C. 19:11-2.7.

The Association asserts that the telecommunicators should be severed from the AFSCME unit because they have a distinct community of interest not shared with the rest of the unit. It also alleges that AFSCME has not provided the telecommunicators with responsible representation.

AFSCME opposes the petition. It maintains that it has adequately and consistently represented the telecommunicators for several years, and thus, there is no reason to sever that title from the existing unit.

The Township takes no position on the petition.

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<sup>2/</sup> The AFSCME agreement expired on December 31, 2004.

We have conducted an administrative investigation into the petition. N.J.A.C. 19:11-2.2. Specifically, we held a March 14, 2005 investigatory conference in this matter. Thereafter, the parties submitted written facts and arguments in support of their positions and, further, the Association submitted certifications from several telecommunicators, along with other documents, in support of its petition on April 27, 2005. On June 24, 2005, we notified the parties of our tentative findings and invited responses. None of the parties filed a response. Based upon our investigation of this case, the following facts appear:

Local 3044 has been the exclusive representative of a broad-based unit of clerical, custodial and engineering employees of the Township since 1978. The title of public safety telecommunicator has been in the unit from the very first agreement between the Township and Local 3044. The most recent agreement between the parties was effective from January 1, 2002 through December 31, 2004. The parties are negotiating a successor. Presently, the unit consists of approximately 168 employees, 18 of which are telecommunicators.

Telecommunicator Margaret Cook was president of Local 3044 for many years until her October 12, 2004 resignation from that position. As president, at the prior contract negotiations in October 2001, Cook asked AFSCME Council 73 Director Gerard Meara, if the telecommunicators could be recognized as a separate unit,

or a "sub local", yet continue to be represented by AFSCME. Meara put this proposed separate unit to a vote before the full membership; the membership rejected it, along with a seniority issue that pertained just to telecommunicators. According to Cook, since that time, the telecommunicators have been harassed by other Local 3044 members.

Prior to the expiration of the current agreement, at a May 2004 AFSCME Local 3044 Executive Board meeting, Cook was asked to submit a negotiations agenda for the telecommunicators to the negotiating committee. She was again asked at a September 2004 negotiations committee meeting to provide this agenda.

Thereafter, on September 21, 2004, during negotiations for a successor agreement, the telecommunicators notified AFSCME, in writing, of their desire to negotiate separately, yet still remain part of the union. The telecommunicators' request was based on the fact that the telecommunicators job has specific duties which distinguish it from other unit titles; specifically, its requirement to maintain law enforcement confidentiality, its round the clock work schedule, and its ability to respond to emergencies.

By letter of September 22, 2004 to all telecommunicators, the AFSCME Executive Board rejected the request, noting that the telecommunicators are well represented, since they have both

Executive Board and negotiating committee presence. The Executive Board further stated:

. . . The President of our Union, Marge Cook, has been asked repeatedly at Executive Board meetings to provide an agenda for the specific interests of the dispatcher unit, which are to be limited to items which do not affect the rest of the bargaining unit. To ensure that the desires of the dispatchers are being fairly represented, the Executive Board has directed at our most recent meeting that a written ballot for each dispatcher item be provided with the votes and signatures of all individual dispatchers. Items with a majority approval of this group will be placed on the negotiating agenda.

The Executive Board also asked each telecommunicator to submit a negotiations agenda to the negotiations committee as soon as possible. Finally, the letter stated, "your cooperation in this matter is pivotal to our joint success in this upcoming negotiating session."

Thereafter, by e-mail to AFSCME Director Meara on October 6, 2004, Cook requested that the telecommunicators be released from the Local 3044 unit entirely, so that they could join another union. Cook indicated that severance was justified since telecommunicators are uniformed personnel with different hours and schedules and, as such, do not belong with the office workers in the unit. AFSCME rejected the telecommunicators' request.

Cook then abruptly resigned as Local 3044 president at an October 12, 2004 general membership meeting; Jeanne Catapane took her place. At that meeting telecommunicators Thomas M. McNamara,

Jr. and Jose Adolfo Lugo were asked to participate on the negotiations committee and to submit a negotiations agenda as soon as possible. Both Lugo and McNamara agreed to work with the Executive Board.

However, Lugo, McNamara and other telecommunicators claim they were met with animosity during this October 12, 2004 union meeting and even were asked why they were there. When McNamara started to explain why they were there and what their problems were, he received negative comments. Lugo was asked by the Executive Board what the telecommunicators wanted in upcoming negotiations and to express their concerns. Lugo, however, claims upon answering these questions, he was met with animosity and cross-examination. Finally, it was agreed at the meeting that Lugo would provide a list of the telecommunicators' phone numbers and pay scales, so that the bargaining committee would have that information going into negotiations.

According to Lugo, he was then asked about the meeting the next day and was labeled a "troublemaker" by some fellow employees. On October 20, 2004, Local 3044 Executive Board member Kelly Foley followed up with Lugo and stressed that she needed the pay scale list for negotiations. Lugo faxed the list to her later that day, stating:

Number wise (i.e. size and population) we are on par with the dispatchers from Edison, workload wise (i.e. call volume, number of jobs) we are more on par with New Brunswick

(in 2003 they were #1 in Middlesex County for crime statistics. We were #2, but not by far). We are looking to make more, hopefully something that will put us more in the middle, pay wise, to mirror the workload that we do. Thank you for your assistance with this. I'm sorry that I could be of no more help. I just do not have the seniority, time in the department, or wisdom to really be able to answer all the questions that I'm sure the rest of the executive board and local members will have. Thank you again, and good luck.

Between October 13 and 20, 2004, Executive Board member and Local 3044 President Catapane, along with Foley, pursued their request for the telecommunicators negotiations agenda, and participation on the negotiating committee, with Lugo and McNamara. However, no such agenda was ever submitted and negotiations then commenced on October 20, 2004. Finally, on October 29, 2004, Cook faxed three negotiations requests on behalf of the telecommunicators to AFSCME Staff Representative Alice Weisman.

#### **ANALYSIS**

The Commission has long held that severance from broad-based units may only occur under very limited circumstances. In Jefferson Tp. Bd. of Ed., P.E.R.C. No. 61, NJPER Supp. 248, 249 (¶61 1971) 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 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.

The Association claims that its unit is appropriate for severance under the standards set forth in Jefferson Tp. Bd. of Ed. It asserts that the telecommunicators lack a community of interest with the rest of the unit titles because they have different work schedules and terms and conditions of employment. For example, the telecommunicator's job has a law enforcement confidentiality component to it and sometimes requires the ability to respond to emergencies, duties which are lacking in other unit positions.

In addition, the Association claims that the telecommunicators have not been responsibly represented because they have been denied even the basic ability to propose changes in the collective agreement that would affect their seniority and vacation picks. Further, the Association contends that telecommunicators are "outcasts" within their own union, pointing out they were made to feel unwelcome at an October 12, 2004 Local 3044 meeting. The Association explains that the

telecommunicators met with animosity when, on September 22, 2004, they sought to negotiate their own separate agreement.

AFSCME argues that the telecommunicators should not be permitted to sever from the unit. It claims that the Township and Local 3044 have a long-standing relationship which has resulted in successful bargaining for many years. Moreover, AFSCME claims that for many years the local union president was, in fact, a telecommunicator - Margaret Cook - and during her tenure, AFSCME filed grievances for telecommunicators and aggressively bargained on their behalf. Additionally, during the current round of contract negotiations, the current Local 3044 president, along with other Executive Board members, repeatedly reached out to the telecommunicators, specifically asking them to attend union meetings, provide contract proposals, and participate on the negotiations team.

The Association claims that severance of the telecommunicators from the AFSCME unit is appropriate for three reasons: 1) the telecommunicators lack a community of interest with the rest of the bargaining unit; 2) there has been a lack of responsible representation by Local 3044 and, 3) there is bargaining unit instability. However, in applying the Jefferson Tp. standards, I find that the facts do not support severance.

First, the Commission has had a long-standing preference for broad based units and disfavors unit organization along the

lines of a single occupation, department or job title. This approach has been endorsed by the New Jersey Supreme Court in State v. Prof. Assn. of N.J. Dept. of Ed., 64 N.J. 231 (1974). We have rejected separate units of police dispatchers even where the unit is being organized de novo, finding instead that they are more appropriate for inclusion in a broad-based civilian unit. Warren Cty., D.R. No. 95-14, 25 NJPER 43 (¶26026 1994); Wall Tp., D.R. No. 94-24, 20 NJPER 209 (¶25101 1994); Boro of Pitman, D.R. No. 94-16, 20 NJPER 115 (¶25060 1994); Point Pleasant, D.R. No., 91-27, 17 NJPER 208 (¶22087 1991); Winslow Tp., D.R. No. 87-24, 13 NJPER 208 (¶18087 1987). Here, while there may be distinctions between the Woodbridge telecommunicators and other Township employees in terms of hours and job responsibilities, we, nevertheless, assume that after 27 years of inclusion in the same unit the titles share a community of interest. Moreover, as Jefferson holds, once a unit is established, we assume the continued community of interest among the unit employees in the existing unit structure, and will not normally retest for community of interest. In fact, we have rejected severance requests from employee groups based upon claims of some unique community of interest far more significant than the present case. Compare, Mercer County, P.E.R.C. No. 89-112, 15 NJPER 277 (¶20101 1989), (rejecting the severance of registered nurses from a county-wide blue and white collar unit);

and State of N.J. and N.J. State FMBA, CWA, and IFPTE Locs. 1037 and 195, P.E.R.C. No. 86-98, 12 NJPER 206, (¶17081 1986), rev'd 222 N.J. Super. 475 (App. Div. 1988), rev'd and PERC order reinstated sub nom. In re Matters of State, 114 N.J. 315 (1989), (declining to sever firefighters from broad-based State-wide units, even where the firefighters would otherwise have been entitled to interest arbitration). Accordingly, we will not disturb an existing unit based upon competing interests among various subsets of existing units. To do so would lead to constant unit redefinition and labor instability. Jefferson. Rather, we will only consider whether there is unit instability or whether the incumbent has failed to provide responsible representation.

Here, the Association alleges that the incumbent's failure to responsibly represent the telecommunicators should entitle them to their own unit.

Under our Act, the duty of fair representation requires that the majority representative not act arbitrarily, discriminatorily, or in bad faith. Vaca v. Sipes, 386 U.S. 171, 87 S.Ct. 903, 64 LRRM 2369 (1967); Belen v. Woodbridge Tp. Bd. of Ed., 142 N.J. Super. 486 (App. Div. 1976); N.J.S.A. 34:13A-5.4 (b) (1). However, in applying the Jefferson standards, we review the parties' entire relationship, not just isolated events. Passaic Cty. Tech. & Voc. H.S. Bd. of Ed., P.E.R.C. No. 87-73, 13

NJPER 63 (¶18026 1986). A finding that the incumbent organization has breached its duty of fair representation on one occasion does not necessarily mean that employees must be severed from the existing unit. Passaic Cty. Tech. & Voc. H.S. Bd. of Ed.

Here, the Association's argument that there has been a lack of responsible representation warranting severance, is unpersuasive. In Cty. of Camden, D.R. No. 81-3, 6 NJPER 415 (¶11209 1980), the Director of Representation permitted severance of a group of registered nurses from an existing county-wide unit, where the majority representative had not informed the nurses that it was not seeking arbitration of one grievance and refused to disclose reasons for refusing to arbitrate another. Neither situation applies in the instant case. Indeed, for many years telecommunicator Margaret Cook served as Local 3044 president and during that time, Local 3044 filed grievances on behalf of the telecommunicators. Further, the telecommunicators have been in the unit since its inception, AFSCME has successfully bargained on their behalf since 1978, reaching several collective negotiations agreements with the Township since that time, and AFSCME has invited the telecommunicators to participate in negotiations.

Even assuming that Local 3044 has been neglectful at the bargaining table with respect to proposing changes that would

affect telecommunicators' seniority and vacation picks as the Association claims, this would not warrant a finding that there has been a lack of responsible representation or instability under Jefferson Tp., which would warrant disturbing the existing unit configuration. Indeed, proof of mere negligence, standing alone, does not suffice to prove a breach of the duty of fair representation. Middletown Tp. Bd. of Ed., D.R. No. 99-5, 25 NJPER 1 (¶300 1998); Service Employees International Union, Local No. 579, AFL-CIO, 229 NLRB 692, 95 LRRM 1156 (1977). Further, the Commission has found with regard to a union's duty in contract negotiations that the complete satisfaction of all employees is hardly to be expected. A wide range of reasonableness must be allowed an employee representative in serving the unit it represents. Middletown Tp. Bd. of Ed.

Thus, a breach of the duty of fair representation in regard to contract negotiations exists when the exclusive representative makes a deliberate decision to cause a unit member economic harm. Middletown Tp. Bd. of Ed.; Union City, P.E.R.C. No. 82-65, 8 NJPER 98 (¶13040 1982).

Here, there has not been a deliberate decision by AFSCME to cause economic harm to the telecommunicators. Indeed, AFSCME has successfully bargained on their behalf since 1978, reaching several agreements with the Township since then. While the Association claims that Local 3044 has failed to represent

telecommunicators adequately because it refused their request for separate negotiations, this does not demonstrate irresponsible representation or a breach of the duty of fair representation. Rather, Local 3044 did not grant this request because it made the decision in good faith that this was not in the best interests of the majority of the unit. Middletown Tp. Bd. of Ed. I note that while rejecting the telecommunicators' request, Local 3044 specifically asked them to provide a negotiations agenda and further asked them to participate on the negotiations committee.

The Association also claims that unit instability and lack of responsible representation is shown by the fact that the telecommunicators were met with animosity and were made to feel unwelcome at an October 12, 2004 union meeting. As indicated in certifications submitted by several telecommunicators, they were questioned as to why they were there and met with negative comments. However, general feelings of discomfort or of intimidation are subjective characterizations, and do not run to the issues of responsible representation or unit stability. Middletown Tp. Bd. of Ed. In any event, at this meeting, telecommunicators Lugo and McNamara were asked what the telecommunicators wanted in the upcoming negotiations and what their concerns were. It was also agreed at that meeting that Lugo would provide a pay scale list covering the telecommunicators for the bargaining committee to take into

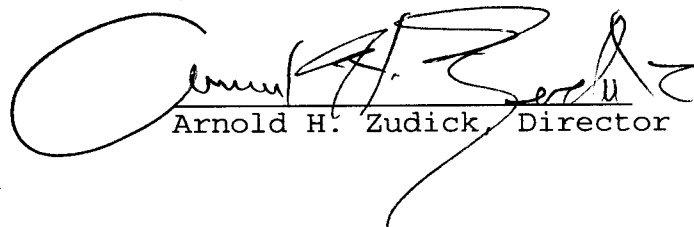
negotiations. A week later, Local 3044 representatives followed up with Lugo and McNamara about the pay scale list for negotiations, and both were invited to participate on the negotiating committee. Eventually, on October 29, 2004, after negotiations commenced, the telecommunicators did present three negotiations proposals for the bargaining committee. Under these circumstances, I cannot find unit instability or irresponsible representation by Local 3044, even if some telecommunicators were made to feel uncomfortable at the October 12, 2004 union meeting. Tp. of Pennsauken, D.R. No. 2002-4, 27 NJPER 384 (32142 2001); Middletown Tp. Bd. of Ed.

Based on the above, I do not find that the Association has met the Jefferson Tp. standards for severance. It appears from this record that the petitioned-for employees have been responsibly represented by Local 3044 and that there is no instability in the unit. Accordingly, I dismiss the instant petition.

**ORDER**

The Association's petition for certification is dismissed.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION



Arnold H. Zudick, Director

DATED: July 14, 2005  
Trenton, New Jersey

A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3.

Any request for review is due by July 27, 2005.