

D.R. No. 2007-7

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

In the Matter of

COUNTY OF UNION,

Public Employer,

-and-

Docket No. CU-2006-022

UNION COUNCIL NO. 8,
NJCSA, IFPTE, AFL-CIO,

Petitioner.

SYNOPSIS

The Director of Representation dismisses a Unit Clarification Petition seeking to add employees of the Board of Elections to the County-wide unit. The Director finds that the elections employees have been excluded from the unit for more than 30 years; therefore, a CU petition is inappropriate to add them to the unit.

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Appearances:

For the Respondent,
Schenck, Price, Smith & King, attorneys
(Kathryn Hatfield, of counsel)

For the Petitioner,
Loccke, Correia, Schlager, Limsky, Bukosky, attorneys
(Michael Bukosky, of counsel)

DECISION

On March 7, 2006, Union Council No. 8, New Jersey Civil Service Association, IFPTE, AFL-CIO (Council No. 8) filed a Petition for Unit Clarification (CU) with the Public Employment Relations Commission. Council 8 seeks to add approximately 24 employees assigned to the Board of Elections to its collective negotiations unit of blue and white-collar employees employed by Union County (County).

The County objects to the Petition. It maintains that these employees have long been treated as excluded from the unit and may not now be added through a Unit Clarification Petition.

We have conducted an administrative investigation into this matter to determine the facts. N.J.A.C. 19:1-2.2. By letter dated September 14, 2006, I advised the parties of my tentative findings and conclusions and invited responses. On October 6, Council 8 submitted a position statement. Due to an inaccuracy in my letter of September 14, Council 8 was given until December 11, 2006 to submit any additional statement. No other statement was provided. The disposition of the petition is properly based upon our administrative investigation. There are no substantial material facts in dispute which would require convening an evidentiary hearing. N.J.A.C. 19:11-2.2 and 2.6. Based upon the administrative investigation, I make the following:

FINDINGS OF FACT

Union Council No. 8 was first certified to represent the County's employees in 1970. Following secret ballot elections, the Commission certified Council 8 as the exclusive representative of the blue-collar unit on March 13, 1970, and certified it as the representative of the white-collar unit on July 2, 1970. Thereafter, the parties apparently agreed to consolidate the two groups into a single, broad-based unit. Following a challenge by a rival organization in 1995, Council 8 was recertified to represent the County unit on April 27, 1995. The certification described the unit as,

All regularly employed, non-supervisory blue
collar and white collar employees employed by

the County of Union, including those in the following departments: Operational Services, Runnells Specialized Hospital, Law, Administrative Services, Human Services, Finance, Public Safety, County Clerk, Sheriff, Register, Prosecutor, Surrogate, County Superintendent of Schools, Tax Board, and Extension Services, but excluding employees represented in other negotiations units, police, confidential employees, managerial executives, craft employees, professional employees, supervisors within the meaning of the Act, and all non-contractual employees.

In 2005, a rival organization - the Coalition of Civil Service Workers of Union County - challenged Council 8 for the representation of the County unit (Commission Docket No. RO-2005-12.) Council 8 prevailed in that election, and was again recertified to represent the County-wide unit on November 4, 2005^{1/}. That certification described the unit identically to that in the 1995 certification, except that parks maintenance employees, stationary engineers and employees of the Board of Social Services were added to the excluded language. Employees of the Board of Elections were not eligible voters in the 2005 election.

Over the last 35 years, Council 8 has negotiated many collective agreements covering the unit employees, the most

^{1/} My September 14 letter summarizing the facts inaccurately quoted the November 4, 2005 certification as including employees of the Superintendent of Elections instead of the Superintendent of Schools. By letter of December 1, 2006, we advised the parties of this typographical error and afforded them an additional period to respond to our letter as corrected. No additional submissions were received.

recent of which expired December 31, 2004. At the time this CU Petition was filed, Council 8 had just completed negotiations for a successor agreement with the County, and the parties signed a memorandum of agreement. The parties have since signed a successor contract for 2005-2007.

The County contends that the Board of Elections employees have never been part of Council 8's blue and white-collar unit, nor has Council 8 negotiated for the Board of Election employees. Council 8 acknowledges that these employees have not been treated as unit members in the past.

ANALYSIS

Union Council 8 contends that the Board of Elections employees share a strong community of interest with its broad-based unit employees, and should therefore be added to the unit. The County maintains that the Board of Elections employees have long been excluded from the unit; therefore Council 8 has waived its right to seek their inclusion by a unit clarification petition. Those arguments present two different issues. The first is whether the Board of Election employees are appropriate for inclusion in Council 8's unit. The second is, even assuming the Board of Election employees are appropriate for inclusion in Council 8's unit, through which Commission procedure must Council 8 seek the admission of those employees into its unit? I need to decide the second issue before considering the first.

In Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977), the then Director of Representation set forth the circumstances under which a unit clarification petition is appropriate. The Director stated:

Clarification of unit petitions are designed to resolve questions concerning the exact composition of an existing unit of employees for which the exclusive representative has already been selected Occasionally a change in circumstances has occurred, a new title may have been created . . . [or] the employer may have created a new operation or opened a new facility [which would make] a clarification of unit proceeding appropriate Normally, it is inappropriate to utilize a clarification of unit petition to enlarge or diminish the scope of the negotiations unit for reasons other than the above.

3 NJPER at 251.

In Rutgers University, D.R. No. 84-19, 10 NJPER 284 (¶15140 1984), the Director dismissed a petition to include titles historically excluded from the unit. The Director found that the majority representative must exercise due diligence in ferreting out titles that may have been omitted when the unit was first formed, and must file a unit clarification petition prior to execution of its second contract. In the event of a change in circumstances, it must bring a CU prior to the execution of its next successor contract following the change. Otherwise, a CU is inappropriate to add the titles/positions to the unit.

Citing Clearview and Rutgers, the Commission in New Jersey Transit, P.E.R.C. No. 2000-6, 25 NJPER 370 (¶30160 1999), reaffirmed its policies concerning the need to bring unit

clarification proceedings in a timely manner. In New Jersey Transit, the Commission found a CU inappropriate to add investigators, who had long been outside the unit, to the existing police unit, since no change in circumstances existed. The Commission reiterated that a majority representative has the responsibility to identify and petition for new titles during the contractual period in which they are established and before executing its next succeeding contract. N.J. Transit; Rutgers. See also Burlington Cty. College, D.R. No. 2004-6, 29 NJPER 426 (¶145 2003); Tp. Of Branchburg, D.R. No. 2004-2, 29 NJPER 396 (¶126 2003); Vernon Tp., D.R. No. 2002-3, 27 NJPER 354 (¶32126 2001); Lacey Tp. Bd. of Ed., D.R. No. 89-12, 15 NJPER 106 (¶20051 1989).

In accordance with the Commission's long line of cases limiting unit clarification to the above circumstances, in 2005, the Commission amended its Rules to make the requirements of CU filings more specific. N.J.A.C. 19:11-1.5(b) provides,

A Petition for clarification of unit shall contain: . . . (3) a statement by petitioner listing and explaining fully the reasons for the proposed clarification. The reasons may include:

- i. Changed circumstances;
- ii. Creation of a new position or title
- iii. Dispute over a title in a newly certified/recognized negotiations unit;
- iv. New operation or facility;
- v. Statutory exclusions
- vi. Any other reasons why the petition is appropriate.

Once the opportunity for a CU passes, a union may then only seek to enlarge its unit through a representation petition asking to accrete employees to an existing unit. N.J. Transit; Wayne Bd. of Ed., P.E.R.C. No. 80-94, 6 NJPER 54 (¶11028 1980). Such a petition must be supported by a showing of interest from the employees sought to be added, and an election or card check is conducted among the group of employees to be accreted. N.J.A.C. 19:11-1.1. The Commission will then exercise its jurisdiction to determine whether the unit sought shares the appropriate community of interest. N.J.S.A. 34:13A-6.

In this matter, the Union County Board of Elections employees have been treated as outside Council 8's county-wide unit for decades. Most recently, they were not among those eligible to vote in the 2005 secret ballot election in which Council 8 sustained its majority status. Council 8's petition has not identified any change in circumstances, or new title or operation, which might provide a basis for unit clarification.

In its June 26, 2006 statement of position, Council 8 acknowledged the petitioned-for titles had not been included in its unit, but argued that once it became aware they were not in the unit, presumably recently, it acted to accrete them to the unit. That argument is not persuasive to add the relevant employees into the unit through a CU petition. The petitioned-for employees have never been included in Council 8's unit, a period of over thirty years. Council 8 had ample opportunity to

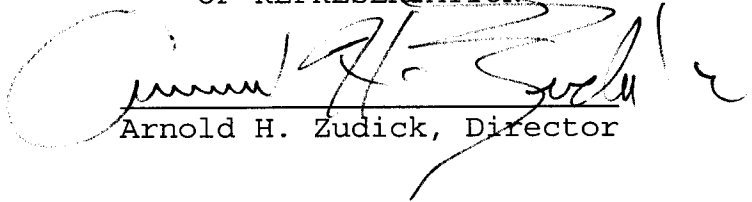
be aware of that fact prior to the elections in 1995 and 2005. In order to now seek to represent the Board of Election employees, Council 8 must file a representation petition.

Accordingly, I find that Council 8 has waived its right to include these employees in the unit through a unit clarification petition. Council 8's argument that they should be included in the unit because they are closely identified with unit employees, and share a community of interest among them, is not the primary issue before me now, and is not the only basis for considering accretion through a CU petition. Having concluded that a CU petition is the wrong procedural method to seek to represent the petitioned-for employees, it is unnecessary for me to decide now whether the Board of Election employees are appropriate for inclusion in Council 8's unit.

ORDER

Council No. 8's Petition for Unit Clarification is dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Arnold H. Zudick, Director

DATED: December 13, 2006
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 December 26, 2006.