

D.R. No. 2009-5

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

In the Matter of

TOWNSHIP OF EGG HARBOR,

Public Employer,

-and-

Docket No. RO-2008-080

NJ STATE FMBA,

Petitioner.

SYNOPSIS

The Director of Representation dismisses a petition for certification filed by the FMBA seeking to represent a unit of emergency medical technicians (EMTs). The Director found the proposed unit to be inappropriately narrow and would cause unnecessary unit proliferation. The unit sought was defined along occupational lines which runs counter to the Commission's preference for broad-based units. In addition, UWU, the majority representative of all other non-supervisory, civilian employees, was willing to represent the EMTs.

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Appearances:

For the Respondent,  
Gruccio, Pepper, DeSanto & Ruth, attorneys  
(Lawrence Pepper, Jr., of counsel)

For the Petitioner,  
Fox & Fox, attorneys  
(David I. Fox, of counsel)

DECISION

On June 6 and June 23, 2008, New Jersey State Firemen's Mutual Benevolent Association (FMBA), filed a representation petition and an amended petition for card check certification seeking to represent a negotiations unit of six full-time emergency medical services responders (EMS responders) employed by the Township of Egg Harbor (Township).

The Township opposes the petition. It asserts that a separate unit of EMS responders would create an administrative burden; that the EMS responders share a community of interest with another negotiations unit of blue collar and white collar

employees and specifically, with the dispatchers in that unit; and that the FMBA cannot represent the EMS responders because those responders are not entitled to compulsory interest arbitration. The Township asserts that the petitioning employees should be included in one of its existing units.

We have conducted an administrative investigation into the petition. N.J.A.C. 19:11-2.2. On June 24, 2008, the Township filed a letter opposing the petition and filed other materials on July 24, August 8, August 15, and September 9, 2008. On July 17, 2008, the FMBA filed a letter supporting its petition and filed other materials on July 23, August 7, and August 29, 2008. On July 22, 2008, the majority representative for the non-supervisory blue and white collar unit filed a letter expressing its willingness to represent the EMS responders. On October 7, 2008, I wrote to the parties, advising that I was inclined to dismiss the petition. They were provided an opportunity to reply. On October 17, 2008, the FMBA filed a letter reiterating its position. On October 29, the Township filed a responsive letter. Our review of all documents submitted reveals the following facts.

The Township currently has three negotiations units: a unit of patrol officers, sergeants and lieutenants; a unit of white collar supervisory employees, and a broad-based unit of non-supervisory, non-professional, blue and white collar employees.

The Township also employs 35 unrepresented employees, including the six EMS responders.

The FMBA asserts that EMS responders cannot be appropriately included in any existing unit. They are, the FMBA claims, neither supervisors nor police, and must be statutorily excluded from units with supervisors or police employees. N.J.S.A. 34:13A-6(d). The FMBA argues that EMS responders are professional employees that cannot be included in the non-professional, broad-based unit currently represented by the Government Workers Union/United Workers Union (UWU).

The FMBA also contends that the EMS responders and dispatchers do not share a common supervisor, and that the only interchange or interaction among the employees occurs when the dispatchers send the EMS responders to a destination. It further asserts that they do not share common work facilities and have different work shifts, uniform requirements and training from all other broad-based unit employees.

Finally, the FMBA alleges that the petitioned-for employees do not share a community of interest with any current bargaining unit because of the unique tasks they are required to perform. These tasks include: responding to emergencies in all weather conditions, performing life-saving techniques, and using training and personal judgment to provide patient care. In light of their unique responsibilities, the FMBA contends that it is better equipped to represent the EMS responders because it best

understands their job as emergency responders. It notes that the EMS responders do not wish to be represented by UWU, and argues that the UWU has no real interest in representing the EMS responders or has waived its right to do so.

The Commission is charged with determining in each instance the most appropriate collective negotiations unit. N.J.S.A. 34:13A-5.3 and 34:13A-6.6. The Commission favors structuring negotiations units along broad-based lines and has been reluctant to find appropriate units structured along occupational or departmental lines. The New Jersey Supreme Court first articulated this policy in State v. Professional Association of N.J. Dept. of Ed., 64 N.J. 231 (1974). The Court directed that a balance must be struck between the rights of public employees to choose a collective negotiations representative and the rights of public employers not to be burdened with an undue proliferation of negotiations units. We have often rejected narrowly-defined units where a broad-based unit was available. See, e.g., Jersey City, D.R. No. 84-6, 9 NJPER 556 (¶14231 1983) (unit composed exclusively of four sanitary inspectors found inappropriately narrow); NJIT, D.R. No. 88-29, 14 NJPER 148 (¶19060 1988) (narrow unit of security guards rejected where college had consistently maintained broad-based unit structure); 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);

E. Windsor Tp., D.R. No. 97-2, 22 NJPER 348 (¶27180 1996), adopted P.E.R.C. No. 97-68, 23 NJPER 51 (¶28035 1996) (proposed unit of four emergency medical technicians found to be inappropriately narrow); Pennsauken Tp., D.R. No. 2000-2, 25 NJPER 398 (¶30172 1999) (proposed unit of four emergency medical technicians found to be inappropriately narrow). Cf. UMDNJ, P.E.R.C. No. 84-28, 9 NJPER 598 (¶14253 1983) (residual faculty unit found appropriate where union twice before disclaimed interest in representing petitioned-for faculty); City of Passaic, D.R. No. 2004-1, 29 NJPER 393 (¶125 2003) (unit consisting of one title warranted where petitioned-for employees were unrepresented for a period of time, the unit would not risk further unit proliferation, and the incumbent representative had not expressed a willingness to represent the petitioned-for employees).

In E. Windsor Tp., the Commission sustained the Director of Representation's dismissal of a representation petition seeking to represent four emergency medical technicians (EMTs). There, the Township opposed the petition, asserting that it already negotiated with five different unions and the addition of another negotiations unit would create an administrative burden. It maintained that if the EMTs desired representation, they should be represented by the employee representative certified to represent all other civilian employees in the Township's police department. In upholding the Director's decision, the Commission

affirmed the community of interest found to exist with other public safety civilian unit employees (including dispatchers), reiterated its policy favoring broad-based units and found that narrowly defined units of one occupational group is generally inappropriate.

The facts of this case and the functions of the dispatchers here are analogous to those of the dispatchers in E. Windsor Tp. Like the dispatchers and EMTs in E. Windsor Tp., the EMS responders share a community of interest with the dispatchers in the UWU unit by supporting the public safety mission of the Township and providing services 24-hours-per-day, 7-days-per-week. Both titles work for the same employer under shared management authority. The EMS responders' immediate supervisor is the director of ambulance services. Ten other division or department heads supervise the remaining broad-based unit employees. All director/division heads, including the director of ambulance services, report directly to the township administrator. Differences in work hours and schedules, the lack of interchange of duties and infrequent interaction among the EMS responders and other organized employees are insufficient to overcome the Commission's policy favoring broad-based units. Wall Tp.

I am not inclined in this case to deviate from long-established precedent and Commission policy. Unlike the facts in City of Passaic, in this case, the UWU (on July 22,

2008) filed a letter expressing its willingness to represent the EMS responders, if the Director found that they were appropriately placed in the broad-based unit. Like E. Windsor Tp., where we have already found a unit of EMT's to be inappropriately narrow, a separate unit for the EMS responders is inappropriate.

No evidence shows that the EMS responders are professional employees who are "excluded" from the broad-based unit. N.J.A.C. 19:10-1.1 defines "professional employee" as,

. . . any employee whose work is predominantly intellectual and varied in character, involves the consistent exercise of discretion and judgment, and requires knowledge of an advanced nature in the field of physical, biological, or social sciences, or in the field of learning. The commission will also consider whether the work is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time. The term shall also include any employee who has acquired knowledge of an advanced nature in one of the fields described above, and who is performing related work under the supervision of a professional person to qualify to become a professional employee as defined herein. The term shall include, but not be limited to, attorneys, physicians, nurses, engineers, architects, teachers and the various types of physical, chemical and biological scientists.

The EMS responders do not meet this definition. The job is not "predominantly intellectual." The title does not apparently require an undergraduate or graduate degree. The Township



mandates only that EMS responders have a basic EMT certificate and a valid New Jersey driver license. These requirements are not comparable to those obtained by the holders listed as examples in the code section.

The FMBA maintains that EMS responders would be appropriately placed in a separate bargaining unit, citing City of Passaic. In Passaic, the Director found that the petitioned-for EMT unit was appropriate; the certification however, excluded professional employees from the unit. One must infer that the EMTs in Passaic were not professional employees. The duties and responsibilities of EMS responders in this matter are not distinguishable from those in Passaic, but in Passaic, the more appropriate unit did not express interest in representing the affected employees.

The Township has not waived its right to object to a separate unit of EMS responders merely because those employees were not included in UWU's unit. The EMS title was not created until October 2007, and did not exist at the time the UWU unit was formed. See NJIT, D.R. No. 88-29, 14 NJPER 148 (¶19060 1988). Additionally, the Township has not permitted proliferation in the past. Cf. Bergen Pines Hospital, D.R. No. 87-3, 12 NJPER 619 (¶17234 1986) (residual unit of physicians approved; twelfth and final unit of Hospital employees would not lead to significant additional unit fragmentation). The Township does not object to the EMS responders being included in the unit

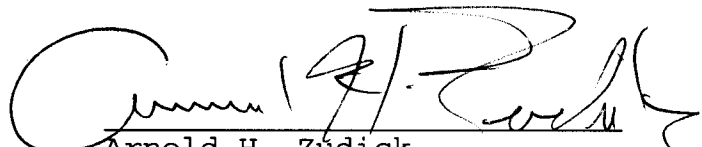
represented by UWU and appears to be willing to waive any procedural objections to such an accretion. The issue before me however, is not whether it is more appropriate to include the EMS responders in the UWU unit, but whether the FMBA's proposed unit of only EMS responders is an appropriate unit. At this time, it is not.

Under these circumstances, I find that the petitioned-for unit is inappropriately narrow and would unduly proliferate the number of units over which the Township would have to collectively negotiate. I further find that the EMS responders share a community of interest with the employees of the UWU unit. Accordingly, I dismiss FMBA's representation petition.

ORDER

The petition is dismissed.

BY ORDER OF THE DIRECTOR OF  
REPRESENTATION

  
Arnold H. Zúdice

DATED: November 18, 2008  
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 November 28, 2008.