

D.R. No. 2009-9

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

In the Matter of

COUNTY OF GLOUCESTER,

Public Employer,

-and-

NJ STATE FMBA,

Docket No. RO-2008-066

Petitioner,

-and-

COMMUNICATIONS WORKERS OF AMERICA,
LOCAL 1085,

Intervenor.

SYNOPSIS

The Director of Representation dismisses a petition for certification filed by the FMBA seeking to represent a unit of emergency medical services employees (EMS). The Director found the petition to be untimely based upon the existence of a current collective bargaining agreement between the County and CWA covering the petitioned-for employees. Moreover, the Director found the proposed unit, defined along departmental lines, to be inappropriately narrow and counter to the Commission's preference for broad-based units.

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Appearances:

For the Public Employer,
Brown & Connery, attorneys
(William M. Tambussi, of counsel)

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

For the Intervenor,
Weissman & Mintz, attorneys
(Rosemarie Cipparulo, of counsel)

DECISION

On April 11 and 29, 2008, the New Jersey State Firemans Mutual Benevolent Association (FMBA) filed a representation petition and amended petition seeking certification by election of a negotiations unit of 124 part-time and full-time emergency

medical services employees (EMS employees) of the Gloucester County Board of Chosen Freeholders (County).

On May 22, 2008, the Communications Workers of America, Local 1085 (CWA) intervened in this matter, based upon its current collective negotiations agreement with the County extending from January 1, 2007 through December 31, 2011. The petitioned-for job title is included in the recognition provision of the agreement.

CWA disputes the petition, contending that the EMS employees were recently accreted to its broad-based unit; that it has already negotiated terms and conditions of employment for the petitioning employees; and that the EMS employees are paying union dues or representation fees, pursuant to the terms of the agreement.

CWA also asserts that the petition should be dismissed because it is barred by its own current collective agreement with the County. N.J.A.C. 19:11-2.8(c) and (d). The CWA asserts that the petition is untimely.

The FMBA seeks to represent the petitioned-for titles in a separate unit. It asserts that EMS employees hired by the Board have unique skills and job responsibilities not contemplated during the collective negotiations process. The FMBA contends that other New Jersey communities have established separate bargaining units for EMS employees. It asserts that the petition is not barred because the EMS employees were neither employed nor

contemplated for employment when the County and the CWA negotiated their agreement.

The County initially objected to the petition, asserting that it should not bear the administrative burden of negotiating with multiple units. The County later asserted that it would not object to the creation of a separate negotiations unit of EMS employees, if the Commission deemed it appropriate.

On June 27, 2008, I issued a letter to the parties, tentatively finding that FMBA's petition is untimely and advising that the next open period for timely filing would be 90 to 120 days before December 31, 2009. N.J.A.C. 19:11-2.8(d). I requested replies by July 7, 2008.

On August 25, 2008, the FMBA wrote a letter, arguing that the contract bar rule should not be applied because the CWA acted in bad faith while negotiating its collective agreement with the County. On October 1, 2008, the CWA filed a reply, writing that the FMBA presented no facts supporting its claim of bad faith.

We have conducted an administrative investigation into the petition. N.J.A.C. 19:11-2.2. The parties filed letters, certifications, and other documents supporting their respective positions. Based upon my review of those materials, I find the following facts.

CWA has been the certified majority representative of a broad-based unit of County employees since 1980 and has negotiated several collective agreements with the County. The

current agreement was signed on November 15, 2007 and extends from January 1, 2007 through December 31, 2011. The recognition provision specifies that the CWA is:

the exclusive representative for the purpose of collective bargaining with respect to rates of pay, wages, hours, and other terms and conditions of employment for all full-time employees in the Blue and White Collar, Supervisory, and Row Office bargaining units, including craft employees, Mosquito Control employees, and investigators in the Medical Examiner's Office.

Appendix II ("Titles and Scales") of the agreement lists emergency medical technician (EMT) among more than 300 titles represented by the CWA and sets forth its salary scale and number of hours in a full-time workweek. I infer that "EMS" and "EMT" refer to the same employees. Appendix III ("Clothing Provisions") provides emergency medical technicians \$150.00 in clothing payments each January and July. EMTs are the only emergency response employees provided a uniform allowance under the agreement.

Sometime before October 1, 2007, the County considered creating a new county-wide emergency medical services division. On or about August 14, 2007, the County Director of Human Resources, James B. Cannon, issued a memorandum to CWA Local 1085 President Richard Dann, confirming that ". . . the hours of work for EMTs will be pursuant to the enclosed schedule that [CWA] agreed to." Attached to the memorandum was a schedule for "Gloucester County Emergency Medical Services."

Another memorandum dated August 14, 2007 from Cannon to Dann "confirm[ed] that new EMT employees will be brought into the County at the entry level of Scale 11." On or about October 1, 2007, the County created its Emergency Medical Services division and began hiring EMS employees to work in it.

ANALYSIS

The FMBA's representation petition is untimely and must be dismissed. N.J.A.C. 19:11-2.8(c) provides in a pertinent part:

During the period of an existing written agreement containing substantive terms and conditions of employment and having a term of three years or less, a petition for certification of public employee representative or a petition for decertification of public employee representative normally will not be considered timely filed unless:

In a case involving employees of a county or a municipality, any agency of a county or municipality or any county of municipal authority, commission or board, the petition is filed not less than 90 days and not more than 120 days before the expiration or renewal date of such agreement.

N. J. A.C. 19:11-2.8(d) provides in a pertinent part:

For the purpose of determining a timely filing, an agreement for a term in excess of three years will be treated as a three-year agreement and will not bar a petition any time after the end of the third year of the agreement . . .

The CWA and the County signed an agreement extending from January 1, 2007 through December 31, 2011, a five year period. For the purpose of determining the timeliness of the FMBA's petition, I find that the County and CWA collective agreement has

an expiration date of December 31, 2009. N.J.A.C. 19:11-2.8(c) and 19:11-2.8(d). Accordingly, a timely representation petition could be filed not more than 120 days and not less than 90 days before December 31, 2009. I conclude that the FMBA's petition is untimely.

The FMBA contends that the Commission should not apply the "contract bar" rule because the collective agreement ". . . does not impart sufficient stability to the bargaining relationship." Frank Hager, Inc., 230 NLRB 476, 96 LRRM 1117 (1977). In Hager, the NLRB determined that a disputed bargaining agreement was "not a product of bargaining, collective or otherwise" and was in part, coerced. By contrast, the County and CWA conducted good faith negotiations for a myriad of titles and employees, including the EMS employees, resulting in an executed agreement covering numerous mandatorily negotiable subjects. Application of the contract bar rule in this case is reasonable and appropriate.

The FMBA also argues that the EMT employees should be severed from CWA's broad-based unit and permitted to be represented in a separate unit. The Commission has long favored broad-based negotiations units and has been reluctant to approve units structured along departmental lines. See Egg Harbor Tp., D.R. No. 2009-5, 34 NJPER 416 (¶128 2008), citing Jersey City, D.R. No. 84-6, 9 NJPER 556 (¶14231 1983). The Commission has found that a community of interest exists among civil service

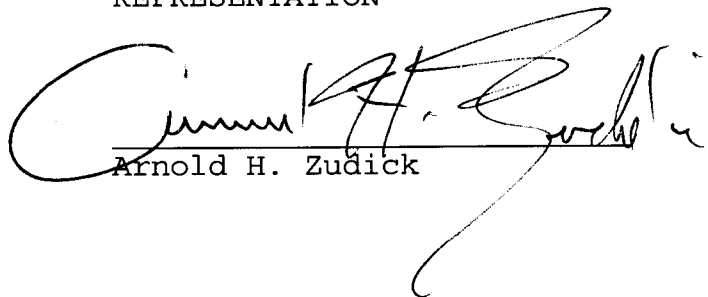
employees in a broad-based bargaining unit. Egg Harbor; E. Windsor Tp., D.R. No. 97-2, 22 NJPER 348 (¶27180 1996).

Like the emergency medical technicians in Egg Harbor, EMS and other County employees in the broad-based unit here share the occupational goal of maintaining public safety and providing 24-hour services. EMS employees work alongside other units within the County's Emergency Response department. Under these circumstances, and noting the Commission's policy disfavoring the administrative burdens caused by unit proliferation, it appears FMBA's petitioned-for unit is inappropriately narrow.

ORDER

The petition is dismissed.

BY ORDER OF THE DIRECTOR OF
REPRESENTATION



Arnold H. Zudick

DATED: February 19, 2009
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 March 2, 2009.