

D.R. NO. 2022-4

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

In the Matter of

TOWNSHIP OF HAMILTON,

Public Employer,

-and-

Docket No. CU-2021-004

TEAMSTERS LOCAL 331,

Petitioner.

SYNOPSIS

The Director of Representation dismisses a petition filed by the Township of Hamilton (Atlantic County) seeking to clarify a broad-based mixed white collar and blue collar unit represented by Teamsters Local 331 to exclude dispatchers. The Township did not assert the applicability of a statutory basis for exclusion, conflict of interest, instability, irresponsible representation, or changed circumstances. The Director found, under longstanding Commission precedent, that the dispatchers share a community of interest with the other unit employees and whatever differences they may have in terms and conditions of employment did not warrant their separation while Teamsters Local 331 continued to prefer representation in the combined unit

The Township argued that the Commission should adopt the National Labor Relations Board's recent tests for determining community of interest and appropriate units. The Director did not find that departure from the Commission's longstanding precedent was appropriate, as it has served the statutory policies well (which are different from private-sector considerations); avoided competing demands, whipsawing, continuous negotiations, and continuous agitation and uncertainty as to existing units; and was recently reaffirmed by the Commission.

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Appearances:

For the Public Employer,
Blaney and Karavan, P.A., attorneys
(William G. Blaney, of counsel)

For the Petitioner,
O'Brien Belland and Bushinsky, LLC, attorneys
(Kevin Jarvis, of counsel)

DECISION

On September 28, 2020, the Township of Hamilton (Township) filed a clarification of unit petition seeking to clarify a collective negotiations unit of white collar employees and blue collar employees represented by Teamsters Local 331 (Teamsters) to exclude about twelve communications officers/dispatchers. A investigatory conference originally scheduled for October 14, 2020 was adjourned on the request of the parties while they sought their own informal resolution. After their discussions were unsuccessful, an investigatory conference was held on November 18, 2020. During the conference, the Township confirmed

that it was only asserting that the communications officers lacked a community of interest with other employees in the unit (not that a conflict of interest or an applicable statute warranted their inclusion from the unit). On December 16, 2020, the parties filed and served their respective briefs and exhibits.^{1/} On December 30, Teamsters, but not the Township, filed and served a reply brief.

We conducted an administrative investigation to determine the facts. N.J.A.C. 19:11-2.2. Our review of the parties' submissions does not present substantial and material factual issues requiring an evidentiary hearing. N.J.A.C. 19:11-2.6(f). I find the following facts.

"Article 2 - Recognition" of the parties' 2018-2020 collective negotiations agreement (CNA) provides:

(A) The Township recognizes the Union as the sole and exclusive representative for the purpose of establishing salaries, wages, hours and other conditions of employment for all personnel under contract listed in the classifications herein, and for such additional classifications as the parties may later agree to include.

(B) The bargaining unit shall consist of the following titles:

^{1/} The Township provided a certification of Administrator Arch Liston. Teamsters provided a certification of the local president, Marcus King. Both parties provided a copy of the 2018-2020 CNA, and the Township has since submitted the 2021-2023 CNA, pursuant to N.J.S.A. 34:13A-8.2. The recognition article of the current CNA sets forth only minor changes to its predecessor that do not affect this decision.

White Collar

Clerk I-VI
 Violations Clerk I -VI
 Deputy Court Administrator I - VI
 TACO I-VI
 Finance Clerk I -VI
 Civilian Evidence Technician I-VI
 Communications Officer I - VI

Blue Collar

Laborer
 Maintenance I -IV
 Truck Driver/Laborer I - V
 Equipment Operator I - IV
 Public Works Lead

About eleven or twelve employees hold the title of Communications Officer in steps I-VI. Employees in this title are also known as 911 dispatchers; this decision will use the term "dispatchers" to identify communication officers. About forty to fifty employees are included in the unit. Dispatchers have been included in the unit for approximately 26 years.

Unlike other unit members, dispatchers have 24/7 staffing requirements, specialized training, and are closely aligned with the Township's emergency first responders. Dispatchers are referenced in several separate provisions from other unit members in various articles of the CNA, including Article 11 (Work Schedule), Article 12 (Overtime), Article 13 (Holidays), Article 14 (Vacations), Article 15 (Personal Days), Article 16 (Wages), Article 17 (Sick Leave), and Article 32 (Uniforms).^{2/}

^{2/} Article 14, 15, and 17 provide the same terms to dispatchers
 (continued...)

Dispatchers are uniformed civilians. They work in a separate department in a physical location separate from other unit employees and have little or no interaction with them. The dispatchers work closely with police and other emergency services and have a separate supervisory chain of command. Dispatchers require advanced training distinct from other unit members.

Dispatchers work shifts and schedules to cover a 24/7 staffing need. By the terms of the CNA, other white collar unit employees work between the hours of 8:30 a.m. and 4:30 p.m. or 8:00 a.m. and 5:00 p.m., and blue collar employees work between 6:00 a.m. and 3:30 p.m. or 6:00 a.m. and 2:30 p.m. (summer hours). By comparison, dispatchers work 8.25 hours per day on a "4 on, 2 off" schedule, with the Township retaining the contractual right to alter the starting and stopping times of shifts after discussion with Teamsters. Two dispatchers work all shifts at all times. Available breaks are also different among white collar workers, blue collar workers, and dispatchers. Court personnel have a separate schedule.

* * * * *

Normally, it is inappropriate to utilize a clarification of unit petition to diminish the scope of the existing negotiations unit for reasons other than a showing of a statutory basis for

2/ (...continued)
as other white collar employees, which are different from the terms of blue collar employees.

exclusion, a conflict of interest, a change in circumstances in things like job duties that negate a community of interest or make a recognition provision inapplicable, or a showing that there has not been enough time to identify the appropriate status of the employees. Clearview Reg. H.S. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977); Avalon Boro., H.O. No. 84-11, 10 NJPER 149 (15075 1984) (finding employer's clarification of unit petition to exclude a particular title was inappropriate where there was no evidence of instability in the long negotiations history and there was no assertion of an applicable statutory exclusion, conflict of interest, or changed circumstances negating the community of interest), adopted P.E.R.C. No. 84-108, 10 NJPER 207 (¶15102 1984); Belleville Bd. of Ed., D.R. No. 86-23, 12 NJPER 482 (¶17184 1986) (holding that absent changed circumstances or statutory exclusion, it is not sufficient to allege a lack of community of interest as the basis for removing titles).

Cases where exclusion of existing titles is sought through a clarification of unit petition generally correlate with our cases regarding disputed "severance" representation petitions seeking to establish a new unit with only some of the titles from an existing unit. See, e.g., Bloomfield Tp. Bd. of Health, Bloomfield Tp., D.R. No. 2008-13, 34 NJPER 130 (¶56 2008). Severance cases require a showing of instability, irresponsible representation, a statutory basis for exclusion, conflict of

interest, or the end of an agreement for a multi-employer unit arrangement. Middlesex Cty. Sheriff's Office, D.R. No. 2020-15, 46 NJPER 478 (¶107 2020). With respect to matters of instability and irresponsible representation, and the relevance of the various kinds of community of interest factors that can be acknowledged, the Commission has explained:

The issue is correctly stated to be the appropriateness of the bus driver unit sought by the Teamsters. However, that question does not turn solely on whether there exists a community of interest among bus drivers. Undoubtedly, there is a kind of common interest among those of any group who perform the same duties. But the unit issue here cannot be determined by simply measuring the common interests of drivers, on to another, and ignoring other material facts, namely, that the drivers are part of an existing unit which is not on its face inappropriate and which has been the subject of two successive collective negotiations agreements. The statute requires that in defining units the Commission give "due regard" to community of interest. But, consideration must also be given to legislative intent and the statutory purpose which is declared to be, among other things, the promotion of permanent employer-employee peace or as Justice Francis phrased it "...establishment and promotion of fair and harmonious employer-employee relations in the public service."

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 re-

definition simply on a showing that one sub-category of employees enjoyed a community of interest among themselves. Such a 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.

Here we have a unit created by recognition, not demonstrated to be inappropriate, covered by two successive agreements, and represented by an organization not shown to have provided less than responsible representation. Under these circumstances, the Commission is not prepared to upset that relationship on the single premise that bus drivers enjoy a variety of common interests.

[Jefferson Tp. Bd. of Ed., P.E.R.C. No. 61, NJ Supp. 248, (¶16 1971) (footnotes omitted).^{3/}]

3/ Though we have applied the Jefferson Tp. Bd. of Ed. severance standard repeatedly in our cases, actual instability and irresponsible representation warranting severance appears to have only been found by the Commission once, in Camden Cty., D.R. No. 81-3, 6 NJPER 415 (¶11209 1980), and the granting of severance in that case may have actually had more to do with the statutory basis of a lack of a prior professional option. See Mercer Cty., P.E.R.C. No. 89-112, 15 NJPER 277 (¶20121 1989) (distinguishing Camden Cty.). Even factual findings of isolated breaches of the duty of fair representation have been found not to warrant severance. Passaic Cty. Tech. & Voc. H.S. Bd. of Ed., P.E.R.C. No. 87-73, 13 NJPER 63 (¶18026 1986); Sussex-Wantage Bd. of Ed., P.E.R.C. No. 88-113, 14 NJPER 346 (¶19133 1988). Conflict of interest, statutory bases for exclusion, and separate employers have been the principal reasons we have granted severance. It appears that the Commission's broad view of community of interest and its promotion of labor peace as a factor in unit determination has made the possible identification of a narrower community of interest of a subset of unit employees to be an insignificant factor in practice.

The Township does not assert an applicable statutory exclusion or a conflict of interest involving the dispatchers, nor does it aver that instability, inadequate representation, or changed circumstances negate the dispatchers' community of interest with other unite employees. The Township's main argument is that the Commission should explicitly change its precedent regarding community of interest. Our cases suggest that community of interest plays some role in determining whether a clarification of unit petition seeking to exclude an existing title is appropriate; that precedent, in light of the Township's argument, is reviewed below.

The Commission is responsible for determining the appropriate collective negotiations unit when questions concerning representation of public employees arise. N.J.S.A. 34:13A-6(d). When more than one unit is potentially appropriate, the Commission must decide which unit configuration is the most appropriate. State v. Prof'l Ass'n of N.J. Dep't of Educ., 64 N.J. 231, 257 (1974) (State Professional). The Act mandates that the Commission define the negotiations unit "with due regard for the community of interest among the employees concerned." N.J.S.A. 34:13A-5.3. "What is called for on the part of the Commission is 'due regard for', not exclusive reliance upon such community of interest." State Professional at 257.

In State Professional, the Supreme Court upheld the

Commission's use of other policy considerations, including the interests of the employer and the public at large, when the Commission determined that it would generally give preference to broad-based units. Id. The Commission is reluctant to form units along occupational or departmental lines. Newark State Operated Sch. Dist., P.E.R.C. No. 2018-39, 44 NJPER 383 (¶108 2018).

The reasoning for the Commission's preference was based on the policy considerations of the Act for stability and harmony^{4/} that would be jeopardized by a multiplicity of units caused by fragmentation and the likelihood of attendant problems of competing demands, whipsawing, and continuous negotiations. State Professional at 241. As to the contrary suggestion that the special problems and interests of employees in a broad-based unit would be submerged and inadequately dealt with by the common representative, the Court explained:

[T]his is always a problem where discrete categories are placed in a common negotiating unit. It must be assumed, however, except where shown to the contrary in a particular case, that the common representative will perform its duty fairly in respect of all within the unit and exercise its good faith judgment as to when or whether different characteristics within the group warrant different demands. [State Professional at 64 N.J. 258]

In West Milford Bd. of Ed., P.E.R.C. No. 56, NJPER Supp.

^{4/} See N.J.S.A. 34:13A-2.

218, 219 (¶56 1971), the hearing officer explained that differences in the availability of tenure, leave, insurance, and pension, and the unavoidable competition for the same limited public dollars do not constitute a conflict of interest nor detract from a community of interest. The Commission adopted the hearing officer's conclusion that a community of interest existed among teachers, aides, and office personnel despite disparities in job qualifications, working conditions, benefits, and hours, because they all performed functions immediately related or necessarily adjunct to the education function of the employer.

In education cases, we have stated bluntly that "a community of interest exists among virtually all non-supervisory employees". Newark State Operated Sch. Dist., D.R. No. 2018-12, 44 NJPER 195, 199 (¶57 2017), req. for rev. den. P.E.R.C. No. 2018-39, 44 NJPER 383 (¶108 2018). We have applied this broad approach for other employers as well. Gloucester Cty. Sheriff, D.R. No. 93-17, 19 NJPER 183 (¶24090 1993) (applying the same broad view that would join guidance counselors and custodians in finding that a community of interest existed between corrections and sheriffs officers despite no interchangeability or contact on a daily basis), req. for rev. den. P.E.R.C. No. 93-118, 19 NJPER 353 (¶24159 1993); Eastampton Tp., D.R. No. 94-1, 19 NJPER 404 (¶24178 1993) (finding community of interest among blue and white collar employees working in and out of the municipal complex).

The result is that essentially all employees of a particular employer are found to share a community of interest if there is not a conflict of interest or statutory exclusion, although even employees of different employers may be found to share a community of interest. Bergen Cty. Sheriff, Bergen Cty., P.E.R.C. No. 84-98, 10 NJPER 168 (¶15083 1984); Ocean Cty. Sheriff, P.E.R.C. No. 99-70, 25 NJPER 117 (¶30051 1999), aff'd 26 NJPER 170 (¶31067 App. Div. 2000); Camden Cty. Health Services Center, D.R. No. 89-36, 15 NJPER 379 (¶20161 1989); Bloomfield Tp. Bd. of Health, Bloomfield Tp., D.R. No. 2008-13, 34 NJPER 130 (¶56 2008).

The Commission's broad view of community of interest means that many possible unit configurations may be appropriate, and the Commission considers other factors, including breadth, to determine the most appropriate unit.^{5/} See Holmdel Tp. Bd. of

^{5/} Although our cases sometimes refer to a particular proposed unit as being "inappropriately" narrow, it should be noted that those units were inappropriate under the weighing of the factors in those particular cases compared to other possible units, and not necessarily per se inappropriate under all factual scenarios. A narrow unit description that might not be the most appropriate unit in one case may be found to be appropriate in another. Compare E. Windsor Tp., P.E.R.C. No. 97-68, 23 NJPER 51 (¶28035 1996) (finding narrow EMT unit inappropriate where there were no facts indicating incumbent of broader white-collar unit was unwilling to represent them and the employer had not waived objection to placement of the newly created title, but noting that should the incumbent be unwilling, the Commission may reconsider appropriateness) with City of Passaic, D.R. No. 2004-1, 29 NJPER 393 (¶125 2003) (finding
(continued...))

Ed. D.R. No. 2020-12, 46 NJPER 285 (¶70 2019) (noting that although clerical employees in the same office may have a stronger community of interest with each other than with other clerical employees in the district, there would still be a community of interest with the latter and the balance of other factors weighed in favor of the broad-based unit).

In New Jersey Turnpike Auth., D.R. No. 2005-14, 31 NJPER 36 (¶18 2005), the Director explained the various factors the Commission has considered when determining whether a narrow unit is appropriate.^{5/} These factors include the structure and history of existing units; the community or conflict of interest with existing units; the incumbent's willingness to represent the petitioned-for employees; whether the employees have tried to organize and remained unrepresented for a period of time; whether the employer waived its rights explicitly or implicitly by already accepting other unit structures; and whether the proposed unit structure could lead to an undue number of additional units

5/ (...continued)
EMT unit appropriate where titles existed before employer and white collar unit representative agreed to exclude them, they had long been unrepresented, and there was low risk of further proliferation because the they were the last unrepresented titles).

6/ Although the Township's petition seeks to exclude dispatchers from the Teamster's unit and does not specifically seek to place them in a separate unit, the Township notes that it does not oppose representation of the dispatchers by Teamsters in a separate unit.

along similar lines. New Jersey Turnpike Auth; Holmdel Tp. Bd. of Ed. D.R. No. 2020-12, 46 NJPER 285 (¶70 2019). In New Jersey Turnpike Auth, the Director dismissed the petition for a proposed unit of unrepresented Parkway maintenance division managers because the incumbent of an existing broad-based managers unit was willing to represent them, there was a community of interest with the existing unit, other small residual units did not exist, and further proliferation along divisional lines would otherwise be possible. New Jersey Turnpike Auth.

Depending on the posture of the case, some factors have significantly more importance than others, such as the existence of an established unit or the desires of the employees, although other factors may also be discussed for thoroughness. See Bridgeton Bd. of Ed., D.R. No. 2019-6, 45 NJPER 140 (¶36 2018) (in the absence of an existing incumbent representative for the employees sought to be added to an established unit by a card check petition, the Director determined that other factors were at least sufficiently in balance to make the unit preference of the employees the controlling factor; but the Director also explained that in the absence of that factor, the same unit would have been found more appropriate based on the remaining factors). Cf. 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) (“[I]n given cases some factors are emphasized over others, with still

others regarded as insignificant; in other fact settings the weight given the same indicators may be substantially altered. It is essentially a question of weighing the facts in each case and deciding what will best serve the statutory policy.”), rev'd NJPER Supp.2d 14 (¶7 App. Div. 1973), rev'd 64 N.J. 231 (1974) (reinstating Commission decision).

In representation cases where more than one unit is appropriately broad and the incumbent representative hasn't vigorously opposed a possible change in unit composition, we have generally let the preference of the employees be the deciding factor for unit determination. Paterson Bd. of Ed., D.R. No. 91-14, 17 NJPER 17 (¶22010 1990).^{7/}

Differences in duties and qualifications, and in employee's terms and conditions, have not detracted from a finding of community of interest. State of New Jersey, D.R. No. 97-5, 24 NJPER 295, 297 (¶29141 1996) (“Varying degrees of expertise in an area, varying levels of training, and different job duties are traditionally not significant community of interest factors when compared to shared goals, the central authority which controls

^{7/} As noted in Englewood Bd. of Ed., P.E.R.C. No. 81-100, 7 NJPER 141 (¶12061 1981) at Footnote 5, such self-determination elections were influenced by In re Globe Machine and Stamping Co., 3 NLRB 294, 1A LRRM 122 (1937) and are sometimes referred to as Globe elections. See also NLRB v. Raytheon Co., 918 F.2d 249 (1st Cir. 1990) (holding as proper the NLRB's use of employee preference as a consideration in determining appropriate bargaining units).

their working conditions and work environment."), req. for rev. den. P.E.R.C. No. 97-81, 23 NJPER 115 (¶28055 1997); Essex Cty. College, D.R. No. 93-15, 19 NJPER 131 (¶24064 1993) (noting that occupational differences between professionals and non-professionals, for which the Commission has approved combined units, are at least as great as differences between blue collar and white collar employees, and thus determining that the factors relevant in determining appropriate unit structure were sufficiently in balance to permit the desires of the employees to control); Bergen Community College, D.R. No. 2006-14, 32 NJPER 72 (¶37 2006) (finding community of interest despite differences in educational background, working conditions, funding sources, and contractual provisions, and that differences did not outweigh policy favoring broad-based units); Gloucester Cty. Sheriff, D.R. No. 93-17, 19 NJPER 183 (¶24090 1993) ("The fact that there is generally no interchangeability or contact between corrections and sheriffs officers on a daily basis is not dispositive of a lack of community of interest."), req. for rev. den. P.E.R.C. No. 93-118, 19 NJPER 353 (¶24159 1993); E. Windsor Tp., D.R. No. 97-2, 22 NJPER 348 (¶27180 1996) (community of interest found between dispatchers and EMTs despite differences in hours, schedules, work facilities, uniform requirements, and training; lack of interchange of duties and infrequent interaction; and different immediate supervisors, because both titles worked for

the same employer under shared management authority); Morris Cty. Voc. Sch. Bd. of Ed., D.R. No. 2002-8, 28 NJPER 165 (¶33059 2002) ("Employees' disparate work hours are not sufficient to overcome a finding of community of interest."), req. for rev. den.

P.E.R.C. No. 2002-58, 28 NJPER 219 (¶33075 2002) (noting that Director explained why there was community of interest despite Board's argument that employees had highly-defined and different duties, different training, different work locations, different supervisors, and little to no interaction with each other); Gloucester Cty., D.R. No. 2007-10, 33 NJPER 45 (¶18 2007) ("While the County may seek to match up the new employees' health benefits or other terms and conditions of employment with other County units, there is nothing prohibiting the parties from placing those issues on the table during negotiations for a successor agreement."); Randolph Tp., D.R. No. 97-8, 23 NJPER 145 (¶28070 1997) ("The fact that certain employees are presently receiving health benefits while others are not does not mean they lack a community of interest; nor should it be inferred that unit inclusion automatically entitles any group to receive the benefits of the other unit members. Should the Association prevail in securing representation rights for these employees, the parties must negotiate over terms and conditions of employment for each unit position."); Somerset Cty., D.R. No. 2009-14, 35 NJPER 170 (¶64 2009) ("Differences in wages and

benefits are primarily the result of the negotiated agreement between the County and the previous majority representative. Neither of these factors persuade me that hourly part-time employees do not share a community of interest with all other regularly employed professionals in the unit.”)^{8/}

Historically, about the only time otherwise minor considerations have figured significantly in clarification of unit cases is where recognition provisions of two existing units could encompass a newly-created title, the two representatives desired to represent the title, and the opportunity to determine the preference of the employees through an election was unavailable. See Hamilton Tp. Bd. of Ed., D.R. No. 2004-14, 30 NJPER 93 (¶37 2004) (although newly revised title performed some similar duties of a secretarial unit seeking inclusion by a clarification of unit petition, Director found a greater community of interest with a broad-based unit because the title primarily performed duties similar to that unit and had more similarity in licensing, job requirements, and job knowledge).^{9/}

^{8/} Differences in negotiable terms and conditions of employment would be an especially problematic factor on which to base unit determinations. Negotiations would be hampered if a majority representative feared that any negotiated distinction between titles in a contract could result in severance.

^{9/} If a title did not fit within the language of a recognition provision of a unit or where its inclusion was effectively waived by the failure of the employee organization to

(continued...)

In University of Medicine and Dentistry of New Jersey, P.E.R.C. No. 84-28, 9 NJPER 598 (¶14253 1983) (UMDNJ), the Commission acknowledged that although the existing broader unit may have had a community of interest with the petitioned-for employees and that the similarities standing alone would otherwise make the unit appropriate, it would consider significant differences "if the balance of all relevant factors so indicated." In UMDNJ, the Commission found that there was no undue risk to existing labor stability because the proposed unit would only change the number of units from seven to eight and would not lead to a multitude of other units. The Commission also found that the petitioned-for employees would be left without a practical opportunity to be represented when they had been twice rebuffed by the incumbent of the broader unit. In light of these other factors, the Commission looked to the significant differences between the employees and found a separate unit to be appropriate, but noted that it was not

9/ (...continued)
represent it during the administration of a contract and before executing a subsequent contract, the title could not be added to such unit through a clarification of unit petition prior to the enactment of N.J.S.A. 34:13A-5.15, which provides for inclusion on the basis of the performance of unit work regardless of title or hours worked as set forth in a recognition provision. Instead, the employee organization could only add such title to the unit by agreement with the employer or through a Commission certification of majority status pursuant to a timely-filed representation petition.

foreclosing the possibility of consolidation if the balance of the other factors changed. See also Camden Bd. of Ed., P.E.R.C. No. 87-53, 12 NJPER 847 (¶17326 1986) (distinguishing UMDNJ and dismissing petition for separate unit of unrepresented psychologists when they had not unconditionally sought representation by the incumbent of existing professionals unit).

In contested cases, we have generally found dispatchers to be more appropriately included in broader-based units. Wall Tp., D.R. No. 94-24, 20 NJPER 209 (¶25101 1994) (dismissing petition for dispatcher-only unit because they shared a strong community of interest with blue collar employees and white collar employees and worked for the same employer under shared management authority, despite different hours and schedules due to a rotating shift, lack of interchange of duties, and infrequent interaction); Winslow Tp., D.R. No. 87-24, 13 NJPER 208 (¶18087 1987); Pt. Pleasant Boro., D.R. No. 91-27, 17 NJPER 208 (¶22087 1991); Pitman Boro., D.R. No. 94-16, 20 NJPER 115 (¶25060 1994); Warren Cty., D.R. No. 95-14, 21 NJPER 43 (¶26026 1994); Town of Morristown, D.R. No. 95-18, 21 NJPER 61 (¶26042 1995); Fair Lawn Boro., D.R. No. 2013-4, 39 NJPER 235 (¶81 2012). Contrast Washington Tp., D.R. No. 86-15, 12 NJPER 226 (¶17093 1986) (directing election for unit of dispatchers sworn as special police officers and excluding non-police, where unit placement

issue was not contested).^{10/}

Under this precedent, I find that the dispatchers in this case share a community of interest with the other employees in the unit represented by Teamsters. Whatever differences dispatchers may have in terms and conditions of employment compared with other unit employees do not warrant their separation while Teamsters continue to prefer representation in the combined unit. In the absence of differences establishing a statutory basis for exclusion, or a conflict of interest, or facts demonstrating instability or irresponsible representation (none of which the Township asserts) the current unit should remain intact.

The Township acknowledges the Commission's historically broad view of community of interest but argues that the Commission's approach has been so expansive that it has swallowed the statutory requirement to define units "with due regard for the community among the employees concerned." N.J.S.A. 34:13A-5.3. The Township argues that the Commission, at least in the instant matter, should adopt the narrower view recently adopted by the National Labor Relations Board (NLRB) in the cases of Boeing Co., 2019 L.R.R.M. 336891, 368 NLRB No. 67 (September 9, 2019) and PCC Structurals, Inc., 210 LRRM 1325, 365 NLRB No. 160 (December 15, 2017) which overturned Specialty Healthcare &

^{10/} The dispatchers at issue in the instant case are civilians.

Rehab. Ctr. of Mobile, 357 NLRB 934, 191 LRRM 1137, 357 NLRB No. 83 (August 26, 2011), enfd. sub nom. Kindred Nursing Centers East, LLC v. NLRB, 727 F.3d 552 (6th Cir. 2013), which itself had purported to overturn Park Manor Care Center, Inc., 305 NLRB 872, 139 LRRM 1049, 305 NLRB No. 135 (December 18, 1991).

As explained above, "due regard" for community of interest does not mean exclusive reliance upon that factor alone in determining appropriate units. State Professional at 257. We give due regard when we exclude those employees whose duties create a substantial conflict of interest. West Orange Bd. of Educ. v. Wilton, 57 N.J. 404, 425-427 (1971) (explaining that if actual or potential conflict of interest is created, community of interest is not present). The Commission's broad view of community of interest simply means that many possible unit configurations may be appropriate, and the Commission considers other factors to determine the most appropriate. This approach has essentially been consistent throughout the history of the Commission and has served the statutory policies well, policies which differ from private-sector considerations. (This history has also been more consistent and predictable than the NLRB's).

The Township's proposal would lead to the consequences sought to be avoided by the Commission in Jefferson Tp. Bd. of Ed., where every unit would be open to re-definition simply on a showing that one sub-category of employees enjoyed a community of

interest among themselves, leading to continuous agitation and uncertainty and running counter to statutory objectives.

The Township points out that because of the differences between dispatchers and the rest of the unit, the CNA contains unique and distinct terms to address these differences, which it argues creates an unwieldy "contract within a contract" that complicates negotiations and application of the CNA. The Township argues that placing the dispatchers into a separate unit would improve efficiency of the Township's operations as well as foster good labor relations.

It is not clear how negotiating separate agreements would be more efficient and less unwieldy than negotiating separate provisions within a single CNA, which has successfully been done for years. If the Township's expectation of improved efficiency and simplicity in negotiations is based on an assumption that only employees in a particular unit have a say in ratification of a particular CNA covering that unit, this would not necessarily be the case if Teamsters represents both units, as the procedures for executing a contract in the name of Teamsters depends on its constitution and bylaws, an internal union matter. Even if that were the case, and it is further assumed that the Township would be able to reach agreement on separate CNAs quicker, that may be because, as Teamsters argues, the negotiating power of both units would be weakened as the separate units would be smaller,

allowing the Township to "divide and conquer." If dispatchers can be appropriately severed from the unit solely on the basis of community of interest, then other individual titles may also be severed from the unit. The problems of competing demands of the units, whipsawing, and continuous negotiations would be more likely. State Professional at 241.

The Commission has reaffirmed its preference for a broad view of community of interest in relatively recent cases. See Newark State-Operated Sch. Dist., P.E.R.C. No. 2018-39, 44 NJPER 383 (¶108 2018); Somerset Cty., P.E.R.C. No. 2014-88, 41 NJPER 55 (¶15 2014) (declining to reconsider preference for broad-based units and denying employer's request for review). The Legislature has also seemingly expressed its preference for a broad view of community of interest. See N.J.S.A. 34:13A-5.10 (declaring that broad-based Executive Branch units have contributed to stability of labor relations and avoided disruption of services to the public); N.J.S.A. 34:13A-5.15 (creating new method of inclusion on basis of the performance of any work performed by unit members, regardless of title or hours requirements previously set by agreement, and without reference to other factors like skills, education, training, common supervision, location, interchange, benefits, etc.).

Accordingly, I do not find that departure from the Commission's longstanding broad view of community of interest and

preference for broad-based units in the New Jersey public sector is appropriate. I find no basis to clarify the broad-based unit represented by the Teamsters to exclude the dispatchers.

ORDER

The Township's petition for clarification of unit is dismissed.

/s/ Jonathan Roth
Jonathan Roth
Director of Representation

DATED: June 27, 2022
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 08, 2022.