

D.R. NO. 81-8

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

In the Matter of

COUNTY OF MIDDLESEX,

Public Employer,

-and-

COUNCIL 73, AMERICAN FEDERATION
OF STATE, COUNTY & MUNICIPAL
EMPLOYEES, AFL-CIO,

DOCKET NOS. RO-80-178
RO-80-191

Petitioner,

-and-

MIDDLESEX COUNCIL #7, NEW JERSEY
CIVIL SERVICE ASSOCIATION,

Intervenor.

SYNOPSIS

The Director of Representation, on the basis of an administrative investigation, dismisses a Petition seeking to represent certain foremen and assistant foremen who are currently included in a negotiations unit comprised of non-supervisory personnel. In an earlier Commission proceeding, these employees were found not to be supervisors, and the Petitioner has not alleged that any change has occurred in their duties since that time. Further, the Petitioner has not specified instances of alleged improper representation directed at the petitioned-for employees.

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Appearances:

For the Public Employer
Henry Orszulski, Labor Relations Specialist

For the Petitioner
Carlton Steger, Representative

For the Intervenor
Borrus, Goldin & Foley
(James Clarkin, III of counsel)

DECISION

On April 23, 1980, a Petition for Certification of Public Employee Representative, supported by an adequate showing of interest, was timely filed with the Public Employment Relations Commission (the "Commission") by Council 73,

American Federation of State, County and Municipal Employees, AFL-CIO ("AFSCME"), Docket No. RO-80-178. Subsequently, the Petition was amended on May 13, 1980, seeking the exclusion of certain allegedly supervisory employees (foremen & assistant foremen) from the proposed unit. Simultaneously, Supervisory Employees Local, AFSCME, AFL-CIO, Council 73 ("Supervisors Local, AFSCME") filed a Petition seeking to represent a separate unit consisting of foremen and assistant foremen of the Department of Highways & Bridges of Middlesex County, Docket No. RO-80-191.

On June 20, 1980, AFSCME advised the Commission that it intended to withdraw the Petition filed for blue collar employees in the Department of Highways & Bridges (RO-80-178). Subsequently, by letter dated July 10, 1980, the undersigned acknowledged AFSCME's intention to withdraw that petition, and therefore, not having been advised to the contrary by AFSCME, that matter is hereby deemed withdrawn and the case closed.

On June 4, 1980, Middlesex Council #7, New Jersey Civil Service Association ("Council 7") was granted intervenor status in this matter based upon the submission of a recently expired agreement covering the petitioned-for employees.

The undersigned has caused an administrative investigation into the matters concerning the Petitions in order to determine the facts.

On the basis of the administrative investigation herein, the undersigned finds and determines as follows:

1. The disposition of this matter is properly based upon the administrative investigation herein, it appearing that no substantial and material factual issues exist which may more appropriately be resolved at a hearing. Pursuant to N.J.A.C. 19:11-2.6(b), there is no necessity for a hearing where, as here, no substantial and material factual issues have been placed in dispute by the parties.

2. The County of Middlesex (the "County") is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), is the employer of the employees who are the subject of this Petition, and is subject to the provisions of the Act.

3. The American Federation of State, County & Municipal Employees, AFL-CIO, Council 73 and Middlesex Council #7, New Jersey Civil Service Association, are employee representatives within the meaning of the Act and subject to its provisions.

4. AFSCME Supervisors Local petitioned to represent a separate unit of Highways and Bridges Department foremen and assistant foremen, excluding nonsupervisory employees. ^{1/}

^{1/} By letter dated July 31, 1980, AFSCME indicated that it now believed that a unit of all blue collar foremen would be the most appropriate unit.

AFSCME asserts that (1) the petitioned-for employees are supervisors within the meaning of the Act; and (2) that the petitioned-for group has not been properly represented by the incumbent organization.

5. Council 7 was initially certified by the Commission in 1970 as the exclusive representative of a unit of all blue collar employees (Department of Parks, Department of Highways & Bridges, and the Department of Public Property) including titles, up to and including the Road Foremen level, and excluding supervisors within the meaning of the Act. The election in that matter was conducted by the Commission pursuant to an Agreement of Consent Election entered into by the County, Council 7 and AFSCME in which all parties agreed to the description of the collective negotiations unit. In 1973, the Commission conducted a second election among employees in the above unit pursuant to an Agreement of Consent Election in which all parties again stipulated to the appropriateness of the unit described above. That election resulted in the recertification of Council 7 as the exclusive representative.

6. The County and Council 7 object to the Petition for Highways & Bridges Department foremen and assistant foremen, maintaining that: (1) these employees are not supervisors within the meaning of the Act; (2) even if they are determined to be supervisors, a narrow unit of blue collar supervisors of a single department is inappropriate;

and (3) severance of the petitioned-for employees from the existing unit is inappropriate. Therefore, the parties have not entered into an agreement for consent election, a dispute exists and the matter is properly before the undersigned for determination.

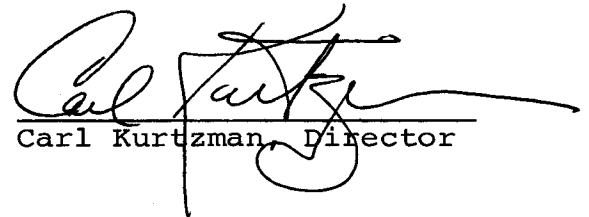
Although AFSCME alleges that the foremen and assistant foremen are supervisors as defined under the Act, in that they allegedly can effectuate discipline, this very claim of supervisory status has previously been addressed by the Commission in 1978. See In re Cty. of Middlesex, D.R. No. 79-8, 4 NJPER 390 (¶ 4178 1978). At that time, the undersigned adopted a Hearing Officer's Report, finding that the foremen and assistant foremen were not supervisors within the meaning of the Act. While AFSCME now contends that these employees have supervisory authority, no new circumstances have been presented demonstrating that these employees are working in a different capacity or have different responsibilities than they had at the time of the first hearing. Therefore, there is no need to hold a new evidentiary hearing to re-examine the same issue.

Further, AFSCME claims that the incumbent representative "has not fairly represented the employees in the Department of Highways and Bridges at the negotiating table, in the administration of the agreement or in the processing of grievances." Although AFSCME was specifically given an additional opportunity to do so, AFSCME failed to detail

that conduct constituting alleged improper representation which would exclusively apply to the foremen and assistant foremen, as opposed to claims of improper representation that applies to all blue collar employees, or all employees in the Highways & Bridges Department.

Therefore, the undersigned determines that AFSCME has failed to show any new circumstances concerning alleged supervisory status of foremen and assistant foremen which would warrant the convening of an evidentiary hearing and, further, that AFSCME has failed to proffer specific factual material which would establish the need for severance of a subgroup of employees from an existing appropriate unit. 2/ Therefore, the Petition is hereby dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: August 28, 1980
Trenton, New Jersey

2/ This determination is applicable whether the subgroup is limited to foremen and assistant foremen of the Highways & Bridges Department, or alternatively, whether the subgroup consists of all county blue collar foremen and assistant foremen.