

D.R. NO. 2016-2

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

In the Matter of

CITY OF BRIDGETON,

Public Employer,

-and-

Docket No. RO-2015-024

EMTs/PARAMEDICS INT'L ASSN/NAGE/SEIU LOC 5000,

Petitioner.

SYNOPSIS

The Director certifies by card check a unit of all regularly employed emergency medical technicians, including regularly employed per diem emergency medical technicians. The Director found that the City provided an inadequate basis upon which to conclude that per diem emergency medical technicians are casual employees. Instead, the Director found that per diem emergency medical technicians possessed the requisite continuity and regularity of employment. Therefore, the title was eligible for representational rights under the Act.

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Appearances:

For the Public Employer,  
Gruccio, Pepper, DeSanto & Ruth, attorneys  
(Nichole Curio, of counsel)

For the Petitioner,  
(Frank Wagner)

**DECISION**

On December 12, 2014, the International Association of EMTs & Paramedics, IAEP NAGE SEIU Local 5000(Association) filed a petition seeking to represent all regularly employed full-time, part-time and per diem emergency medical technicians (EMTs)employed by the City of Bridgeton (City). The petition, seeking certification by card check, was accompanied by valid authorization cards signed by a claimed majority of employees in the petitioned-for titles. At the time of the filing, full-time and regularly employed part-time EMTs employed by the City of Bridgeton Fire Department EMS were represented by the New Jersey State Firefighters Mutual Benevolent Association (FMBA), which

subsequently disclaimed interest in the negotiations unit. The FMBA was certified as the majority representative of the unit on July 19, 2007. The City opposes the petition. It maintains that it does not employ part-time EMTs. It characterizes EMTs who work less than full-time as "per diem" and asserts that they are casual employees who are ineligible for representation. The Association claims that the City does not employ per diem EMTs, but instead employs part-time EMTs who should continue to be included in the petitioned-for unit.

We have conducted an administrative investigation. N.J.A.C. 19:11-2.2. By letter dated December 30, 2014, we notified the City of the petition, requested it to provide a list of employees identified in the petition, and to post a notice to public employees describing the petitioned-for unit. On January 5, 2015, the City provided the list of employees. Based on the City's list, we have determined that a majority of the petitioned-for employees timely signed valid authorization cards designating the Association as their representative for purposes of collective negotiations. N.J.A.C. 19:11-2.6(b).

On February 27, 2015, a conference was conducted among the parties. The incumbent majority representative, FMBA, disclaimed interest in continuing to represent full-time and regularly employed part-time EMTs, and therefore did not intervene in the instant representation proceeding. On March 9, 2015, we

circulated a proposed stipulation of appropriate unit, which described the unit as "all regularly employed emergency medical technicians employed by the City of Bridgeton." By letter dated March 10, 2015, the City objected to the inclusion of EMTs who work less than full-time. By letter dated March 16, 2015, we requested the City and the Association to submit position statements and supporting certifications regarding the appropriateness of the disputed per diem EMTs' inclusion in the unit. The parties timely submitted their position statements and supporting certifications. The City provided a certification from the City's Business Administrator, Dale Goodreau. The Association provided a certification from Association representative, Frank Wagner.

After reviewing the parties' submissions, I find that no disputed substantial and material facts warrant a formal hearing. N.J.A.C. 19:11-2.6(f). By letter dated July 22, 2015, I notified the parties of my tentative findings and conclusions. I invited the parties to file responses by the close of business on July 29, 2015. Neither party filed a response. I find the following facts.

The Board is a public employer within the meaning of the New Jersey Employer-Employee Relations Act ("Act"). N.J.S.A. 34:13A-1 et seq.

The City asserts that only full-time EMTs had been represented, historically. However, on July 19, 2007, we certified the FMBA as the majority representative for "all full-time and regularly employed part-time emergency medical technicians" employed by the City. The collective negotiations agreement between the City and the FMBA extended from July 1, 2011 through June 30, 2015. Its recognition clause refers generally to "EMS employees."

The Association's petition is timely filed. N.J.A.C. 19:11-2.8(c)3. Contracts with a term greater than three years are treated as three-year agreements, and do not bar the filing of representation petitions after the three-year term expires. N.J.A.C. 19:11-2.8(d). The FMBA's contract is for a term greater than three years, and its three-year term expired on July 1, 2014. Therefore, the Association's filing on December 12, 2014, is not time-barred.

By letter dated February 27, 2015, FMBA disclaimed its representational interest in the unit. Therefore, EMTs are not currently represented, and the Association is entitled to seek certification without election. We have determined that a majority of the petitioned-for EMTs timely signed valid authorization cards designating the Association as their representative for purposes of collective negotiations N.J.A.C. 19:11-2.6(b).

The City asserts that it employs no part-time EMTs, only full-time and per diem EMTs. In support of its position, Business Administrator Goodreau certifies that the City has approximately ten full-time EMTs, which it supplements with a pool of approximately seven other EMTs, which the certification describes as "per diem" employees. The City pays the per diem EMTs at an hourly rate, and provides no other benefits or compensation.

All part-time/per diem EMTs submit their availability schedules to the City's fire department by the fifteenth of each month. Goodreau certifies that the EMS Supervisor reviews their availability information and schedules personnel where needed for the following month. He certifies that the shifts are distributed as equitably as possible among the per diem EMTs. Goodreau further certifies that the City does not guarantee that per diem EMTs will receive any work at all. He also certifies that "[t]here are certainly times where the per diem EMTs are available for many shifts but assigned to few or no shifts during the month."

Full-time EMTs work 2184 hours per year. There are twenty-six (26) pay periods in a year, and eighty-four (84) hours in a pay period.<sup>1/</sup>

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<sup>1/</sup> From these figures, we infer that full-time EMTs work forty-two hours per week. Therefore, each full-time EMT is  
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Regarding the number of hours per diem EMTs work, the City provides two measures. First, Goodreau certifies that in January and February 2015, per diem EMTs were assigned a total of eleven shifts, and therefore only covered 132 hours out of the possible 1,416 hours for that two month period. Second, Goodreau certifies that "the per diem EMTS averaged 312 work hours per year as compared to the 2,184 hours worked by the full-time EMTs."

In contrast, the Association characterizes EMTs who work less than full-time as "part-time" employees, who possess the requisite regularity and continuity of employment with the City to warrant their inclusion in the petitioned-for unit. In his certification, Association representative Frank Wagner identifies by name the twelve (12) part-time EMTs employed by the City during the calendar year 2014, the number of pay periods each of those EMTs worked, the total number of hours they worked, and their average hours per pay period. These twelve employees averaged the following number of hours per pay period during the calendar year 2014: 19.98, 39.95, 11.75<sup>2/</sup>, 21.35, 23.84, 20.11,

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1/ (...continued)  
entitled to two hours of overtime per week. Although it is inappropriate to include overtime hours to calculate the total hours worked by full-time employees, it has no discernable impact on the ensuing analysis and conclusions.

2/ The Association's certification identifies Donald Hymer as having worked seventeen (17) pay periods for a total of  
(continued...)

38.69, 20.65, 27.25, 21.27, 47.50, and 26.25. Three of these twelve part-time EMTs are no longer employed with the City. Three other part-time EMTs appear to be mid-year hires by the City; one employee was hired in May 2014 while two others were hired in October 2014.

Additionally, the Association notes that the disputed EMTs share a community of interest with the full-time EMTs. Wagner certifies that the disputed EMTs have the same job requirements, orientation and job training as the full-time EMTs. He also certifies that all EMTs have the same working conditions. All EMTs report to the same location in Bridgeton for work, use the same vehicles, and follow the same standard operating procedures. Wagner certifies that the disputed EMTs share the same supervisors and chain of command as full-time EMTs.

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). 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. The New Jersey Supreme Court has affirmed the Commission's policy

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2/ (...continued)  
199.75 hours during calendar year 2014 and calculates his average to be 28.58 hours. However, based on the information provided by the Association, the average hours worked per pay period actually computes to 11.75.



favoring broad-based negotiations units. State v. Prof'l Ass'n of N.J. Dep't of Educ., 64 N.J. 231 (1974).

Public employees who are employed with sufficient regularity and continuity are eligible for representation under our Act. State of New Jersey, D.R. No. 87-25, 13 NJPER 326 (¶18136 1987)(directing representation election among part-time faculty to determine whether a majority wished to be included in existing unit of full-time faculty). "Regularity of employment is a measure of how frequently the employee works -- the recurrence of employment." Id. at 327. "Continuity of employment . . . runs to the relative 'permanency' of the employment, and the degree of stability within the unit." Id.

In contrast, casual employees "work on an occasional or sporadic basis; their contact with the employer is too tenuous and infrequent to warrant inclusion into the same unit with regular employees." Mt. Olive Bd. of Ed., P.E.R.C. No. 82-66, 8 NJPER 102 (¶13041 1982). Therefore, our case law precludes casual employees, who are hired on a "limited, non-recurring basis," from obtaining collective negotiations rights. State of New Jersey, 13 NJPER at 327. See also State of New Jersey (William Paterson Univ.), 25 NJPER 148 (¶30067 1999)(musicians working approximately fifty-two hours annually were casual employees not afforded collective negotiations rights).

In Mt. Olive Bd. of Ed., P.E.R.C. No. 82-66, 8 NJPER 102 (¶13041 1982) the Commission adopted a standard for determining casual employment. The Commission upheld the Director of Representation's decision not to count the ballots of three substitute bus drivers who worked less than one-sixth ( $1/6$ ) of the average number of hours worked by the regular full-time and part-time bus drivers. The Commission explained that "although mathematical formulae may not always govern questions of casual status," the substitute bus drivers whose ballots had been challenged worked too infrequently to be eligible for representation in a unit of full-time and part-time bus drivers. Id. at 103.

For the reasons below, I find that the disputed EMTs are not casual employees. Therefore, those EMTs whom the City labels as per diem employees are eligible for representation in a unit with the full-time EMTs because they meet the test of continuity and regularity of employment.

The City provides an inadequate basis upon which to conclude that the disputed EMTs are casual employees. As noted above, to support its contention that the disputed EMTs are casual employees that fail to meet the Commission's one-sixth threshold, Administrator Goodreau certifies that they worked an average of 312 hours during calendar year 2014 compared to the 2,184 hours worked by full-time EMTs. Administrator Goodreau also certifies

that the disputed EMTs covered a total of 132 hours out of 1416 hours during the two-month period of January and February 2015.

However, group hourly averages and group totals of hours worked in a particular time period by EMTs provide little to no insight regarding the regularity and continuity of employment for each employee in the disputed title. See University of Medicine and Dentistry of New Jersey, P.E.R.C. No. 91-002, 16 NJPER 431 (¶21183 1990)(expressly declining to look to the average hours of per diem nurses as a group). If we relied on group averages or totals for a determination of "casual" employment, we would risk awarding or denying representation rights in circumstances where a few employees have a very high or very low number of working hours relative to the rest of employees in the group. I also do not rely on the City's figures from January and February 2015, since they only reflect hours worked by employees after the representation petition was filed on December 12, 2014.

Turning to the specific figures provided by the Association in its certification, all but one disputed EMT meet the one-sixth threshold. Based on the Association's certifications, the average hours per pay period that each of the disputed EMTs worked ranged from a low of 11.75 to a high of 47.50. Given that there are eighty-four (84) hours in a pay period for full-time EMTs, only those EMTs who worked less than an average of 14 hours (representing 1/6 of full-time hours)per pay period during

calendar year 2014 are casual employees under the analytical framework set forth in Mt. Olive Bd. of. Ed.

Although the City emphasizes that the per diem EMTs' work is offered on an as-needed basis, that factor is not necessarily a hallmark of casual employee status. We have previously recognized that public employees who are offered work on an as-needed basis--regardless of whether that employee is labeled as "substitute," "per diem", or "temporary" - - may be entitled to representational rights under our Act. See e.g., Orange Bd. of Ed., D.R. No. 92-037, 18 NJPER 373 (¶23165 1992)(substitute custodians who worked at least 40 days during a school year and continued to work as substitute custodians are appropriately included in unit of custodial and maintenance employees); University of Medicine and Dentistry of New Jersey, supra (adopting hearing officer's recommendation to include per diem nurses who had worked at least one-sixth of full-time hours in a professional nurses unit).

Additional considerations demonstrate the appropriateness of the petitioned-for unit. No facts indicate that the inclusion of the per diem EMTs would cause instability in the petitioned-for unit. Based on the certified working hours for calendar year 2014, the City regularly depends on the per diem EMTs to deliver emergency medical services. Moreover, there is no dispute that the EMTs working less than the full-time EMTs have the same

qualifications and perform the same duties under the same supervision in the same workplace as the full-time EMTs.

In sum, I find that those per diem EMTs who have worked at least one-sixth of the time worked by full-time EMTs and who express a willingness to continue to accept EMT assignments are not casual employees. Therefore, they are eligible for representation under our Act. Accordingly, I find that the following unit is appropriate for collective negotiations:

**Included**: All regularly employed full-time and part-time emergency medical technicians, including regularly employed per diem emergency medical technicians employed by the City of Bridgeton.

**Excluded**: Managerial executives, confidential employees and supervisors within the meaning of the Act; craft employees, professional employees, police, casual employees and all other employees employed by the City of Bridgeton.

The Association has met the requirements of the Act, and it is entitled to certification based upon the authorization cards from a majority of the employees in the petitioned-for titles.

ORDER

I certify International Association of EMTs & Paramedics, IAEP NAGE SEIU Local 5000 as the exclusive representative of the unit described above, based upon its authorization cards.<sup>3/</sup>

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/s/Gayl R. Mazuco  
Director of Representation

DATED: July 31, 2015  
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 August 10, 2015.**

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<sup>3/</sup> An appropriate Certification of Representative will issue with this decision.