

P.E.R.C. NO. 2010-21

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF GLOUCESTER,

Respondent,

-and-

Docket No. RO-2008-066

NEW JERSEY STATE FIREMEN'S
MUTUAL BENEVOLENT ASSOCIATION,

Petitioner,

-and-

COMMUNICATIONS WORKERS OF AMERICA,
LOCAL 1085,

Intervenor.

SYNOPSIS

The Public Employment Relations Commission grants the New Jersey State Firemen's Mutual Benevolent Association's request for review and remands a representation matter to the Director of Representation for further investigation as to whether the FMBA has an interest or claim in the representation of a new unit of EMS employees in the County of Gloucester. The Commission holds that if the new EMS unit was the product of regionalization or consolidation of services, further consideration will need to be given as to whether the EMS employees appropriately accreted into the Communications Workers of America broad-based unit.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

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

For the Petitioner, Fox & Fox, LLP, attorneys (David I. Fox, of counsel and Nora R. Locke, on the brief).

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

DECISION

On April 11, and 29, 2008, the New Jersey State Firemen's Mutual Benevolent Association (FMBA) petitioned to represent a negotiations unit of 124 emergency medical services employees (EMS) employed by the County of Gloucester. The petition was accompanied by an adequate showing of interest.

The County initially opposed the petition asserting that the EMTs were already represented by the Communications Workers of America, Local 1085 (CWA) and the addition of another unit would be an administrative burden. The County later rescinded its opposition stating that it would not object to the creation of a new unit if we deemed it appropriate.

On May 22, 2008, the CWA intervened in the matter asserting that the EMT title was included in its current collective negotiations agreement with the County extending from January 1, 2007 through December 31, 2011. The petitioned-for title is included in the recognition clause of the CWA's agreement.

On February 19, 2009, after an investigation, the Director of Representation dismissed the petition. D.R. 2009-9, 35 NJPER 35 (¶14 2009). He found that the petition was untimely based upon the existence of the current agreement between the CWA and County covering the petitioned-for EMTs.^{1/} The Director, citing

^{1/} N.J.A.C. 19:11-2.8(c) provides in 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

(continued...)

the Commission's preference for broad-based units, also said that the petitioned-for unit appeared to be inappropriately narrow.

On February 26, 2009, the FMBA requested review of the Director's decision. It argues that the CWA's agreement should not bar its petition because at the time the agreement was made, the EMTs had not yet been employed by the County. The agreement is dated August 14, 2007 and the EMS Unit was formed on October 1, 2007. The FMBA further argues that the unit is not inappropriately narrow because: the EMTs are new employees; the County has withdrawn its objection to the proposed unit; the unit is anticipated to expand and the EMTs do not share a community of interest with the current CWA membership because they are emergency first responders and exposed to the hazards of emergency situations; and some of the EMTs were represented by the FMBA during the CWA negotiations and prior to the County becoming a regional service provider.

1/ (...continued)

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 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 responds that its contract bars the petition because the EMTs were hired prior to the execution of the current agreement; the CWA agreement covers more than 300 titles including those in the Emergency Services Division in which the EMTs are assigned; the FMBA has failed to provide appropriate legal citations for its positions; and the EMTs share a community of interest with the other professional titles in the CWA unit including: teachers, engineers, accountants, juvenile detention officers, public health investigators, nurses, public health epidemiologists, nurse practitioners and landscape architects. It further asserts that other titles in its unit are exposed to the elements and hazards of exposure similar to the EMTs.

The FMBA responds that because the proposed unit concerns a new and unique situation involving the regionalization of EMT services, there has been a drastic change in the nature of the EMS Division requiring that the "contract bar" not apply. In the event that a contract bar is appropriate, the FMBA seeks clarification of the Director's decision in that if a "contract bar" is present the appropriateness of the unit should not have been addressed by the Director and the FMBA should be permitted to re-file its petition during the open period beginning in September 2009.

A party may request review of a decision by the Director of Representation. Under N.J.A.C. 19:11-8.2, a request for review will be granted only for one or more of these compelling reasons:

1. A substantial question of law is raised concerning the interpretation or administration of the Act or these rules;
2. The Director of Representation's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of the party seeking review;
3. The conduct of the hearing or any ruling made in connection with the proceeding may have resulted in prejudicial error; and/or
4. An important Commission rule or policy should be reconsidered.

The FMBA does not reference these standards, and it has not filed a stand-alone document setting forth its specific reasons that warrant granting its request for review. N.J.A.C. 19:11-8.3. Nevertheless, we grant the request and remand this matter to the Director of Representation to develop a record as to background of the formation of the County EMT unit.

Where there is a dispute, the Commission has the burden to explore and resolve whether the petitioned-for unit is appropriate. See N.J.S.A. 34:13A-6(d); State of N.J. and Professional Ass'n of N.J. Dept. of Education, 64 N.J. 231, 257 (1974). Whether via an administrative investigation or a hearing, our rules provide the authority for an exploration of all relevant facts and issues. See N.J.A.C. 19:11-2.6; N.J.A.C.

19:11-6.3(a). The Director did not definitively rule on the appropriateness of the unit, which requires a careful review of the facts in each case. N.J.S.A. 34:13A-6(d). As noted above, the record before us is insufficient as to the facts and information presented to the Director. Thus, a more complete inquiry is warranted so that we may make the appropriate determinations.

On August 14, 2007, the CWA and County signed a five-year agreement extending from January 1, 2007 through December 31, 2011. The FMBA alleges that until October 1, 2007, when the County began treating EMTs as part of the overall unit of its employees represented by the CWA and began hiring EMS employees, some of the EMTs were employed by municipalities and were represented by the FMBA.^{2/}

On this record, we are unable to determine the previous interest or claims that the FMBA may have had in connection with the representation of these employees. We remand this matter to the Director to investigate the background of the asserted transformation of EMTs, who the FMBA alleges it represented as municipal employees, who are now apparently employed by the County and represented by the CWA in a broad-based unit. We note

^{2/} If the County and municipalities were consolidating services under the Uniform Shared Services and Consolidation Act ("USSCA"), P.L. 2007, c. 63, N.J.S.A. 40A:65-1 et seq., then provisions of that Act authorizing the use of our expertise and dispute resolution services may be pertinent.

that the Director has the authority to require further submissions from the parties on all pertinent factual and legal contentions, including the impact of the USSCA or other related laws.^{3/}

ORDER

The FMBA's request for review is granted. The matter is remanded to the Director of Representation for consideration and determination of the issues discussed in the foregoing opinion. We make no ruling at this time on any unit definition issues.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Branigan, Buchanan, Colligan, Fuller, Joanis and Watkins voted in favor of this decision. None opposed.

ISSUED: September 24, 2009

Trenton, New Jersey

^{3/} If EMTs were added to the existing unit represented by the CWA pursuant to a consolidation of services agreement, the Director's findings as to timing and the appropriateness of the unit might be affected. Moreover, as the County-CWA agreement has a duration of five years ending December 31, 2011, open periods for filing representation periods would occur between September 2 and October 2, 2009 and after December 31, 2009. See N.J.A.C. 19:11-2.8(c)(2) and (d).