

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

In the Matter of

TOWNSHIP OF NORTH BRUNSWICK,
Public Employer,

-and-

COUNCIL #73, A.F.S.C.M.E., AFL-CIO,
Petitioner,

Docket No. RO-77-174

-and-

LOCAL 11, I.B.T.,
Intervenor.

SYNOPSIS

The Director of Representation orders that a secret ballot election be conducted within thirty (30) days to determine whether the Public Employer's blue collar Public Works employees desire to be represented for the purpose of collective negotiations by the Petitioner, the Intervenor, or neither. The Director also orders that CETA employees be permitted to vote challenge ballots in the election. The Public Employer disputes the inclusion of CETA employees in the blue collar unit; and the Intervenor, which is presently the exclusive representative of employees in the blue collar unit, has requested a formal hearing to determine the eligibility of CETA employees prior to an election. The Director, however, noting the small number of CETA employees, finds that the dispute as to CETA employees is not of such substantial nature as to warrant a delay of the election. The Director determines that the Commission's post-election mechanisms are adequate to resolve the CETA dispute if the challenge votes of CETA employees are determinative of the outcome of the election. Alternatively, if an exclusive representative is certified as a result of a determinative election, a Clarification of Unit Petition may be filed by either the Public Employer or the certified exclusive representative in order to examine and resolve the issues relevant to the status of CETA employees.

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Appearances:

For the Public Employer, Jack Pincus, Esq.

For the Petitioner, Jack Merkel, Executive Director
Council #73, A.F.S.C.M.E.

For the Intervenor, Schneider, Cohen and Solomon, Esqs.
(Mr. Bruce Brafman, of Counsel)

DECISION AND DIRECTION OF ELECTION

On May 12, 1977, a timely petition for Certification of Public Employee Representative, supported by an adequate showing of interest, was filed with the Public Employment Relations Commission (the "Commission") by Council #73, American Federation of State, County and Municipal Employees, AFL-CIO (the "Council #73"). Council #73 seeks a unit of employees of the Public Works Department employed by the Township of North Brunswick (the "Township"), but excluding office clerical employees, supervisors as defined in the Act, administrative and managerial employees, police, firemen and all other employees. Local 11, International Brotherhood of Teamsters ("Local 11"), has intervened in this proceeding.

In accordance with N.J.A.C. 19:11-2.2, the undersigned caused an investigation to be conducted into the matters and allegations set forth in the petition to determine the facts. All parties were advised of their obligations under N.J.A.C. 19:11-2.6 (formerly, N.J.A.C. 19:11-1.12), and were afforded an opportunity thereunder to present documentary and other evidence, as well as statements of position, relating to the Petition. 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 after a hearing. Pursuant to N.J.A.C. 19:11-2.6(b)(3) (formerly, N.J.A.C. 19:11-1.12(c)) 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 Township of North Brunswick 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"), the employer of the employees described herein, and is subject to the Act's provisions.

3. Council #73, American Federation of State, County and Municipal Employees, AFL-CIO and Local 11, International Brotherhood of Teamsters are employee representatives within the meaning of the Act and are subject to its provisions.

4. Council #73 has filed a timely Petition before the Commission supported by an adequate showing of interest, requesting a secret ballot election to be conducted to determine if the employees in question desire to be represented for the purpose of collective negotiations by the Petitioner. Therefore, there is a question concerning the representation of public employees and the matter is appropriately before the undersigned for determination.

5. On May 17, 1977, Local 11 advised that it was the recognized negotiations representative for the Public Works Department employees. Local 11 subsequently submitted to the Commission a recently expired contract between the Township and Local 11 covering and limited to a unit consisting of Public Works employees. The undersigned granted Local 11 intervenor status on the basis of the recently expired negotiations agreement pursuant to N.J.A.C. 19:11-2.7.

6. There is no contract bar pursuant to N.J.A.C. 19:11-2.8 to the instant petition.

7. On May 31, 1977, the undersigned requested that the Township post certain standard notices to employees and provide to the Commission a statement of position with respect to the Petition. The Township certified that it posted the Commission's Notice to Public Employees, but it failed to submit a written statement of position as to the Petition.

8. On June 23, 1977, the Council #73 and Local 11 participated in an informal conference held by the staff member assigned to the case. The Township, although noticed, did not send a representative to the conference. The staff member contacted the Township attorney on the telephone during the conference. The attorney for the Township indicated that the Township had no objection to a secret ballot election being conducted by the Commission in order to determine the exclusive representative for the petitioned-for unit of employees. The Township's stated position on the petition was, in effect, that this was a dispute between the two unions and the Township would consent to an election. The Township agreed to the election procedures and July 20, 1977 as the date for an election.

The employee organizations also agreed to the election procedures, and a definition of the unit to be set out in the Agreement for Consent Election. The unit was defined as follows: Included: All public works employees including CETA employees employed by the Township of North Brunswick, and Excluded: All other employees including professional employees, clerical employees, police officers, firefighters, craft, confidential employees, managerial employees and supervisors within the meaning of the Act."

9. On June 24, 1977, Agreements for Consent Election were mailed to all parties requesting their signatures. On July 12, 1977 the staff member assigned to the case contacted the Township attorney who then advised her that the Mayor would not sign the Agreement for Consent Election as long as CETA employees were included in the Agreement.

The staff member then contacted Council #73 and Local 11. While Council #73 indicated its willingness to sign an Agreement for Consent Election without specific reference to CETA employees, Local 11, the incumbent representative, would not agree to consent to an election without specific inclusion of CETA employees.

The Commission has been advised that there are approximately five CETA employees among the approximately 45 employees in the petitioned-for unit.

10. The undersigned has further caused an investigation to be conducted into the records of previous representation matters placed before the Commission with respect to the petitioned-for employees. Commission records indicate that a collective negotiations relationship has existed between the employees petitioned-for herein and the Township of North Brunswick at least since 1973. The employees were then represented by Chapter III, Local 196, American Federation of Technical Engineers, AFL-CIO. On October 31, 1973, John Bassarab filed a petition on behalf of Teamsters Local 11 to represent these employees. However, it appeared that the petition was untimely filed inasmuch as employees were covered by a contract when the petition was filed. Thereafter, Mr. Bassarab executed a request for withdrawal of the petition on December 14, 1973. When the instant Petition was filed, Teamsters Local 11 represented these employees by virtue of a grant of recognition that apparently occurred subsequent to the above-mentioned withdrawal request.

11. On August 2, 1977, the undersigned notified all parties that on the basis of the investigation to date, it appeared that the petition was timely filed, that the parties refused to consent to a secret ballot election in a historically recognized collective negotiations unit because of the status of the CETA employees, and that the parties had not raised any dispute as to the appropriateness of the Department of Public Works Unit. The undersigned advised the parties of the facts, supra, as of that date, and stated that in the absence of any substantial and material

disputed factual issues warranting an investigatory hearing, he would thereafter issue a decision. The undersigned also analyzed for the parties the legal principles that appeared to be applicable to the circumstances presented herein, which are set forth in the discussion, infra, and advised that on the basis of the facts presented and the relevant principles, he intended to direct an election among the employees. No party has proffered any further evidence, and neither the Township nor Counsel #73 has submitted a statement of position subsequent to the undersigned's letter. On August 11, 1977, Local 11 filed a statement of position requesting that C.E.T.A. employees be specifically included in the unit definition and requesting the opportunity to present evidence at formal hearing. In part, Local 11 states, "In the case at bar, the status of C.E.T.A. employees is ambiguous and could only be clarified in the minds of those individuals preparing to vote by a specific inclusion of C.E.T.A. employees in the unit description. C.E.T.A. employees should not be left to question their own eligibility to vote."

In consideration of all of the facts and argument presented, the undersigned, for the reasons below, shall direct that an election be directed herein at this time.

It appears from the above facts that a negotiations history has existed between the employer and various representatives of the employees in the collective negotiations unit for several years. There is no dispute that the generically described unit of employees petitioned-for herein - i.e. all (blue collar) Public Works Department personnel employed by the Township of North Brunswick - is the same unit of employees which has been historically recognized by the Township as appropriate and which is currently represented by Local 11.

The issue in dispute relates solely to the C.E.T.A. employees. This issue is whether certain blue collar workers in the Department of Public Works employed under C.E.T.A. program are public employees contemplated within the scope of the unit definition herein. The Commission's policy with respect to the processing of Petitions for Certification of Public Employee Representatives, filed in circumstances similar to the instant matter, is stated in In re Township of Dover, E.D. No. 63. There, the Executive Director refused to approve an Agreement for Consent Election in a unit consisting of blue collar employees of the Township's Department of Streets and Sewers, where the parties specifically agreed to exclude EEA employees from the unit description, inasmuch as he was not satisfied that these employees should be excluded. Accordingly, the Executive Director directed an election among the employees, permitting EEA employees to vote subject to challenge. The Executive Director stated:

"EEA employees may vote subject to challenge. These challenges, if determinative, will be resolved in accordance with the Commission's

usual procedures. If the challenges are not determinative, the status of these employees may be resolved by a clarification of unit petition filed by either party in accordance with the Commission's Rules, assuming that a certificate of representative issues."

The undersigned is not convinced that the circumstances herein are such as to support a deviation from the Commission's usual procedures.

The Dover decision, although issued in the context of a dispute as to ~~EEA~~ employees, is representative of the Commission's policy that when a disputed factual issue as to the voting eligibility of certain employees is not substantial and material under the circumstances presented, an election should proceed with the disputed employees being afforded the opportunity to vote subject to challenge. The undersigned has, therefore, examined the circumstances presented herein and the issue in dispute in terms of both its substantiality and materiality.

Considering the size of the unit in question and the small number of CETA personnel in dispute, the undersigned finds that the CETA issue is not of such substantial nature as to delay the conduct of an election at this time. Moreover, the circumstances presented herein, combined with the Executive Director's previously expressed concern for the exclusion of CETA-type personnel from negotiating units, convinces the undersigned that an election should proceed. Here there exists a valid question concerning the representation of employees in a currently existing negotiations unit, and the majority status of the incumbent representative is in dispute. While the undersigned is aware that allowing CETA employees to vote a challenge ballot leaves the question as to their eligibility in doubt, he is also concerned with the need for determining, without undue delay, the choice of exclusive representative by the vast majority of potential voters whose eligibility to vote is not in dispute. Accordingly, the challenge ballot mechanism provides CETA voters with the opportunity to cast ballots in the election and at the same time allows non-disputed voters the opportunity, as is likely here, to resolve the question concerning representation in as expeditious a manner as possible. Such a procedure is preferable to the delay inherent in conducting formal proceedings as to CETA employee eligibility prior to an election. It also provides adequate notice to CETA employees as to the circumstances under which they may cast ballots in the election. If the votes of challenged personnel are determinative of the election, post election mechanisms are available to thoroughly examine the dispute as to CETA personnel and to issue an appropriate determination. In the absence of CETA votes being determinative of the election and assuming that a certification of representative issues, the opportunity will still be available for either the public employer or the majority representative to file a clarification of unit petition to resolve the dispute.

Accordingly, the undersigned, having carefully considered the entire record and the oral and written submissions of the parties, and it appearing that no substantial and material factual issues are in dispute which may more appropriately be resolved after a hearing, finds that the disposition of this matter is properly based upon the administrative investigation herein. The undersigned finds that the parties have not agreed to a consent election in a historically recognized collective negotiations unit because of the status of CETA employees. There is no dispute as to the appropriateness of the Department of Public Works Unit. Since the number of CETA employees is small, and since this is the sole issue in dispute, the undersigned directs that an election be conducted. Those eligible to vote will be all public works employees employed by the Township of North Brunswick, and excluded: All other employees including professional employees, clerical employees, police officers, firefighters, craft, confidential employees, managerial employees and supervisors within the meaning of the Act. CETA employees may vote subject to challenge. Those challenges, if determinative will be resolved in accordance with the Commission's usual procedures. If the challenges are not determinative, the status of these employees may be resolved by a clarification of unit petition filed by either party in accordance with the Commission's Rules, assuming that a certification of representative issues.

The election shall be conducted no later than thirty (30) days from the date set forth below.


Those eligible to vote are employees set forth above who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation, or temporarily laid off, including those in military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

Pursuant to N.J.A.C. 19:11-9.6, the Public Employer is directed to file with the undersigned an election eligibility list consisting of an alphabetical listing of the names of all eligible voters together with their last known mailing addresses and job titles. The Public Employer shall also provide a list containing the names, mailing addresses, and job titles of CETA personnel. Such lists must be received no later than ten (10) days prior to the date of the election. Copies of these lists shall be simultaneously filed with Council #73 and Local 11 with a statement of service to the undersigned. Failure to comply with the foregoing shall be grounds for setting aside the election upon the filing of proper post-election objections pursuant to the Commission's rules.

Those eligible to vote shall vote on whether they desire to be represented for the purposes of collective negotiations by Council #73 AFSCME, Local 11 Teamsters, or neither.

The exclusive representative, if any, shall be determined by the majority of valid ballots cast by the employees voting in the election. The election directed herein shall be conducted in accordance with the provisions of the Commission's Rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Carl Kurtzman, Director
of Representation

DATED: August 16, 1977