

D.R. NO. 93-10

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

In the Matter of

TOWNSHIP OF FAIRFIELD,

Public Employer,

-and-

EMPLOYEES OF FAIRFIELD TOWNSHIP,

Docket No. RD-93-4

Petitioner,

-and-

INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS, LOCAL 1158,

Incumbent Representative.

SYNOPSIS

In a decertification petition, the Director of Representation orders an election among the employees in the existing, certified unit to determine whether a majority wish continued representation by the incumbent union. The Director rejects the Township's argument that employees in recently created titles should be added to the unit and eligible to vote in the election. The Director finds a decertification petition is not an appropriate opportunity to expand the unit to include additional titles which the parties did not mutually intend to include in the unit.

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Appearances:

For the Public Employer
Burt Horowitz, attorney

For the Petitioners
Marie Bonessi, pro se

For the Incumbent
Gene Sette, Asst. Business Manager

DECISION AND DIRECTION OF ELECTION

On October 6, 1992, certain employees of the Township of Fairfield filed a Petition for Decertification with the Public Employment Relations Commission. The petition was accompanied by an adequate showing of interest. The employees seek to decertify Local 1158, International Brotherhood of Electrical Workers, as the exclusive negotiations representative of the Township's white collar employees.

All parties are willing to consent to a secret ballot election among the unit employees to determine whether a majority of unit employees wish to continue to be represented by the IBEW. However, the parties disagree about which employees should be permitted to vote in such an election.

The IBEW argues that voting should be restricted to employees in the existing, certified white collar unit. The petitioner and the Township both assert that all of the Township's non-supervisory white collar employees should be permitted to vote on the representation question.

We have conducted an administrative investigation into the issues raised by the petition. There appear to be no substantial and material facts in dispute which would warrant a hearing. N.J.A.C. 19:11-2.2 and 2.6. These facts appear.

The IBEW was certified on February 20, 1990, to represent a unit described in the certification as:

Included: White collar employees including administrative secretaries, senior secretaries, secretaries, principal clerk typists, senior clerk typists, principal bookkeeping machine operators, senior bookkeeping machine operators, assistants to the tax collector, fire prevention inspectors, building subcode officials, plumbing sub-code officials, principal engineer assistants, environmentalists, sanitarians, assistant superintendents of parks and recreation, and assistant to court clerk employed by the Township of Fairfield.

Excluded: All other employees including department of public works employes, chiefs-fire prevention, construction officials, superintendents of parks and recreation,

municipal clerks, municipal court clerks, municipal tax collectors, municipal treasurers, health officers, municipal engineers, administrators, municipal tax assessors, managerial executives, supervisors within the meaning of the Act, confidential, craft, police, professionals and all other employees employed by the Township of Fairfield.

The Commission issued this unit certification following a secret ballot election among the unit employees. This election was based upon a consent election agreement executed by the Township and the IBEW.^{1/}

Since the certification issuance, the Township created the following additional titles:

Property Maintenance Officer
Communications Operator
Clerk/Bookkeeper

The Township asserts that employees in these titles are non-supervisory, white collar employees and accordingly, should be permitted to vote. It asserts that it always considered these employees as part of the IBEW unit.

Additionally, the Township seeks to include in this unit employees in the following titles:

Assistant Municipal Treasurer
Senior Engineering Assistant/Zoning Officer
Zoning Officer

^{1/} The consent agreement originally signed by the parties did not include the phrase "white-collar employees" in the inclusion; it simply described the unit by the specific titles. I added this phrase after the parties signed the consent as a contingency of my approval. The parties were provided conformed copies of the consent agreement as modified.

These titles are apparently not new, but the employer asserts that they are white collar employees and argues that they should also be permitted to vote.

The Township never advised the IBEW of the creation of the new titles nor its position that any of the foregoing titles were appropriate for unit inclusion. Similarly, the IBEW never approached the Township seeking to add any of these titles to its existing unit.

An existing collective negotiations unit is not static -- it goes through evolutions as titles are abolished, new titles are created, employees are hired or transferred, or employees leave. However, neither party can unilaterally make changes to the existing unit structure. The unit can only be altered by bilateral agreement between the parties or by directive of this Commission. Ordinarily, it is the union's duty to police its unit and seek out new or additional titles it believes are appropriate for inclusion in its unit. Rutgers University, D.R. No. 84-19, 10 NJPER 284 (¶15140 1984). Alternatively, the employer may propose to the union new or additional titles which it believes fit within the certified unit. Neither party communicated such a request to the other party here. Titles are not automatically placed in the unit without the consent of both parties.

A Petition for Decertification is described by N.J.A.C. 19:11-1.3 as a petition which alleges that the certified or recognized employee representative "...no longer represents a

majority of the employees in the collective negotiations unit in which it is currently recognized or certified;..." Thus, the rule intends that it is the employees in the existing unit who may challenge the union's majority status.

While the employees in the additional titles may well be appropriate for inclusion in the white-collar unit, the issue here is whether those employees are eligible to vote in a representation election based upon a petition seeking an election in the existing negotiations unit. See Mt. Holly Tp. Bd. of Ed., D.R. No. 89-30, 15 NJPER 296 (¶20133 1989).

The Commission does not permit the parties to an existing relationship to use the filing of a petition for certification or decertification as an opportunity to alter the scope of the unit. Other than claims concerning statutorily excluded employees, it is Commission policy not to entertain requests to modify an existing collective negotiations unit during the pendency of a representation proceeding challenging the incumbent's majority status. County of Sussex, D.R. No. 91-11, 16 NJPER 572 (¶21251 1990); City of Newark, D.R. No. 85-24, 11 NJPER 344 (¶16126 1985); County of Essex, D.R. No. 85-25, 11 NJPER 439 (¶16150 1985); City of Hoboken, D.R. No. 85-4, 10 NJPER 597 (¶15276 1984). In each of the cited matters, we ordered an election among the employees in the existing unit.

Accordingly, I find that the employees in the additional titles not covered by the unit certification are not eligible to participate in the election. I direct that an election be conducted

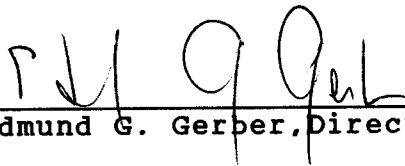
among the employees in the certified unit as described above. The employees in the unit shall vote on whether they wish to continue to be represented for purposes of collective negotiations by International Brotherhood of Electrical Workers, Local 1158.

The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, including those in the military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who resigned 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 us an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the certified unit described above, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by us no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously provided to the petitioner and to Local 1158, with a statement of service filed with us. We shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

The exclusive representative, if any, shall be determined by a majority of the valid votes cast in the election. The election shall be conducted in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: December 21, 1992
Trenton, New Jersey