

D.R. NO. 99-6

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

In the Matter of

BOROUGH OF RED BANK,

Employer,

-and-

IUE LOCAL 417,

Docket No. RO-99-27

Petitioner,

-and-

PESU LOCAL 702,

Intervenor.

SYNOPSIS

The Director of Representation orders an election for certain employees of the Borough of Red Bank over the objection of the incumbent union, PESU Local 702. PESU maintained that division supervisors who had been historically included in the non-supervisory unit should be removed and that the showing of interest was obtained by petitioner, IUE Local 417, under false pretenses. The Director rejected both claims.

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Appearances:

For the Employer, O'Connor & Kindt, attorneys
(Richard T. O'Connor, attorney)

For the Petitioner, Kevin P. Tauro, President

For the Intervenor, Guazzo, Rushfield & Guazzo, attorneys
(Mark C. Rushfield, attorney)

DECISION AND DIRECTION OF ELECTION

On September 4, 1998, the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL-CIO, Local 417 (IUE) filed a timely Petition for Certification of Public Employee Representative with the Public Employment Relations Commission (Commission). The IUE seeks to represent a unit of blue collar employees of the roads, parks, sanitation, maintenance and custodial departments and all office and clerical

employees of the Borough of Red Bank (Borough) for purposes of collective negotiations.

Since 1993, the petitioned-for employees have been represented by Public Employees Service Union, Local 702 (PESU). On September 17, 1998, PESU intervened in this matter based on its collective negotiations agreement with the Borough covering the period of January 1, 1996 through December 31, 1998.

In addition, PESU filed Article XX charges against IUE pursuant to the AFL-CIO Constitution. On September 29, 1998, I informed the parties that the processing of IUE's representation petition would be held in abeyance, as requested by AFL-CIO President John Sweeney, in order to allow the parties an opportunity to avail themselves of the AFL-CIO's Internal Disputes Process. On October 28, 1998, I was informed by AFL-CIO President Sweeney that the Article XX charges had been withdrawn. Consequently, the processing of the representation petition was reactivated and an informal conference was held on November 4, 1998.

At the conference, PESU refused to consent to a secret ballot election. It asserts that the title of division supervisor held by five employees in the unit, is supervisory within the meaning of the New Jersey Employer-Employee Relations Act, and is prevented by N.J.S.A. 34:13A-5.3 from continued inclusion in this non-supervisory unit. It also contends that the showing of interest which supports IUE's petition was obtained through false representations.

IUE requests that we direct a secret ballot election pursuant to N.J.A.C. 19:11-5.1 as soon as possible. It argues that division supervisors have been included in the unit since the PESU was certified to represent the unit in 1993 and that these employees are not supervisors within the meaning of the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq. IUE further argues that the duties of the division supervisors have not changed over the years and that neither PESU nor the Borough has ever filed a Clarification of Unit Petition seeking to remove these employees from the unit.

The Borough takes no position on the contested issues, but is willing to consent to the conduct of a secret ballot election.

I have conducted an administrative investigation of this matter in accordance with N.J.A.C. 19:11-2.2 and 2.6. On the basis of the administrative investigation I find the following facts:

On May 12, 1993, the Commission certified PESU as the majority representative for all office and clerical employees and all blue collar employees employed in the roads, parks, sanitation, maintenance and custodial departments of the Borough of Red Bank. Excluded from the unit were managerial executives, confidential employees, police, craft employees, professional employees, supervisors within the meaning of the Act and all other employees of the Borough of Red Bank.

From the time PESU was certified as majority representative to the present, division supervisors have been included in the negotiations unit. There are currently five division supervisors. Based on the employee list provided by the Borough, which has not been disputed by PESU or IUE, there are 79 employees in the petitioned-for unit, including division supervisors.

The showing of interest submitted by IUE is a petition which states: "I authorize IUE, AFL-CIO to act as my collective bargaining representative in all matters pertaining to all conditions of employment." The petition is signed by at least 30 percent of the employees in unit as required by N.J.A.C. 19:11-1.2.

PESU first raised its challenge to the showing of interest at the informal conference held by the Commission on November 4, 1998.

N.J.A.C. 19:11-2.1 provides:

The showing of interest shall not be furnished to any of the parties. The Director of Representation shall determine the adequacy of the showing of interest and such decision shall not be subject to collateral attack.

Where a decision is made as to whether to count an authorization card in a showing of interest, one must look to the plain language on the face of the showing of interest card. Essex Cty., D.R. No. 85-25, 11 NJPER 433 (¶16149 1985). Jersey City Medical Center, D.R. No. 83-19, 8 NJPER 642, 643 (¶13308 1982), stated:

The submission of a showing of interest by a Petitioner is an administrative requirement for the purpose of ensuring that sufficient interest exists among employees on behalf of the petitioner to warrant the expenditure of Commission resources in processing the petition. In re Woodbury Tp. Bd. of Ed., D.R. No. 77-9, 3 NJPER 26 (1977). It is uniquely an administrative concern, and questions relating to its validity must be raised in a proper manner. Unless good cause exists to the contrary, challenges questioning the validity of a showing of interest are to be raised prior to the informal conference and should be embodied in the challenging party's response to the Commission's initial request for positional statements.

* * *

Consistent with N.J.A.C. 19:11-2.1, the undersigned engages in a separate review of the claims regarding the propriety of the showing of interest. See In re City of Jersey City, E.D. No. 76-19, 2 NJPER 30 (1976). Documentary and other evidence in support of such claims shall be filed within 72 hours of the raising of the challenge.

Here, the language on IUE's showing of interest petition clearly and plainly states the purpose of the document. PESU did not raise an objection to the showing of interest until the informal conference held on November 4, 1998. At the conference, the Commission staff agent instructed PESU that it must promptly submit evidence to support its claim that the showing of interest was secured by fraudulent representations. The staff agent thereafter followed up by letter telefaxed to the parties on November 6, 1998, and instructed them to submit by 5:00 p.m., November 10, 1998, all materials they wished the Commission to consider. PESU submitted no materials. Moreover, I note that:

The object of an investigation [into a challenge of the showing of interest] is not to ascertain whether the petitioning party still has the same support it did when it filed, or even to resolve each challenge to the showing of interest raised by the objecting party. The true desires of the employees involved, which is the essential question to be resolved, will best be ascertained by the holding of an election, not by drawn out evidentiary hearings. [City of Jersey City, E.D. No. 76-19, 2 NJPER 30, 32 (1976).]

Based upon the administrative investigation and case law, I find that the showing of interest is adequate to support the petition. The question concerning the representational desires of the employees raised herein can best be answered by the conduct of a secret ballot election.

It is Commission policy not to process requests to modify an existing collective negotiations unit during the pendency of a representation proceeding challenging an incumbent union's majority status. It is Commission policy to process representation petitions to election as rapidly as possible. Essex Cty.; Hoboken, D.R. No. 85-4, 10 NJPER 598 (¶15276 1984); State of New Jersey, D.R. No. 81-20, 7 NJPER 41 (¶12019 1980), adopted P.E.R.C. No. 81-94, 7 NJPER 105 (¶12044 1981) mot. for recon. den. P.E.R.C. No. 81-95, 7 NJPER 133 (¶12056 1981). In Essex Cty., the Director of Representation ordered an election among the employees of the existing unit over the objection of the incumbent union that certain employees who had been included in the extant unit for over 14 years be removed from the unit before an election would take place.

I see no reason to deviate from established precedent and delay the conduct of this election. Having found the showing of interest to be adequate and the petition otherwise valid, I direct that an election be conducted in the petitioned-for unit as follows:

Included: All blue collar employees employed in the roads, parks, sanitation, maintenance and custodial departments and all office and clerical employees of the Borough of Red Bank.

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

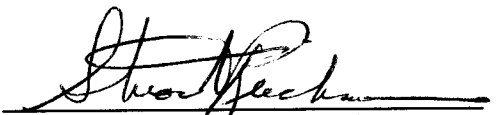
The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation 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. 19:11-10.1, 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 units, 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 employee organizations 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


Stuart Reichman, Director

DATED: November 18, 1998
Trenton, New Jersey