

D.R. NO. 94-17

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

In the Matter of

TOWNSHIP OF IRVINGTON,

Public Employer,

-and-

AFSCME, COUNCIL 52, AFL-CIO,

Docket No. RO-94-92

Petitioner,

-and-

IRVINGTON MUNICIPAL EMPLOYEES' ASSOCIATION,

Intervenor.

SYNOPSIS

The Director of Representation orders an election among all white collar employees and blue collar employees employed by the Township. Over objections filed by the incumbent intervenor about the petitioner's showing of interest, the Director determined that the showing is adequate and that an election shall be conducted.

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Appearances:

For the Public Employer  
McCormack, Petrolle & Matthews, attorneys  
(Michael A. Petrolle, of counsel)

For the Petitioner  
Richard Gollin, Executive Director

For the Intervenor  
Cifelli & Davie, attorneys  
(Kenneth P. Davie, of counsel)

DECISION AND DIRECTION OF ELECTION

On December 29, 1993, AFSCME, Council 52, AFL-CIO, filed a petition for certification of public employee representative seeking to represent "all full-time and part-time white collar and blue collar" employees of the Township of Irvington. The petition was accompanied by a showing of interest.

On January 19, 1994, the Township filed a list of about 254 unit employee names. Copies of the list were then provided to the

petitioner and the incumbent representative organization, the Irvington Municipal Employees' Association ("IMEA"), which intervened, pursuant to N.J.A.C. 19:11-2.8. The petitioner was provided three business days to perfect its showing of interest, pursuant to N.J.A.C. 19:11-1.2 and 19:11-2.1.

On January 24, 1994, AFSCME filed an additional showing of interest, pursuant to the public employer's list of employees. The showing complies with N.J.A.C. 19:11-1.2.

On January 27, 1994, the IMEA filed a letter advising that a shop steward of IMEA was "representing" the petitioner and "numerous individuals who signed the [ ] petition were allegedly misled by [the shop steward] or were confused...." Attached to the letter were some names and signatures of Township employees who did not allegedly receive an explanation of what he or she "actually signed" i.e., the showing of interest. The IMEA also objects to the opportunity afforded the petitioner to perfect the showing of interest.

The Township does not object to an election, does not dispute the unit description and was willing to sign a consent agreement for an election among unit employees.

The recognition clause of the most recent expired collective negotiations agreement describes the unit as; "all full-time and part-time white collar and blue collar employees of the Township, but excluding managerial executives, policemen, firemen, confidential employees, school crossing guards, temporary employees and CETA employees." No party objects to this description.

N.J.A.C. 19:11-2.1 provides that the Director shall determine the showing of interest and prohibits a collateral attack on that determination. See State of New Jersey, P.E.R.C. No. 81-94, 7 NJPER 105 (§12044 1981); Hudson Cty. Comm. Coll., P.E.R.C. No. 85-117, 11 NJPER 369 (§16131 1985). The regulation copies the practice of the National Labor Relations Board, which also prohibits hearings or appeals concerning such a determination. Morris, The Developing Labor Law (2nd ed. 1983) at 343-344; Guide for Hearing Officers in NLRB Representation Proceedings (1975) at 10. It reflects the Commission's and the NLRB's shared belief that the best method for correcting any alleged errors in showing of interest determinations is a secret ballot election. State of New Jersey.

In this case, the cards on their face authorize AFSCME to represent signatories for collective negotiations and squarely meet the Commission's rules for a valid showing of interest. The IMEA alleges that some signatories were mistaken, confused, etc., and did not realize that their cards would be used to support a petition for a representation election on behalf of the petitioner. In effect, the IMEA is asserting that an employee who authorizes an employee organization to represent him or her immediately should not be presumed to want that organization to have an opportunity to gain representative status through an election. That is an insufficient basis for challenging a showing of interest and, in any event, employees who no longer support AFSCME may vote against that organization if a secret ballot election is held. See Hudson Cty. Comm. Coll. Accordingly, I dismiss the IMEA's objections and order

that an election be conducted in this matter in the petitioned-for unit as follows:

Included: All full-time and regular part-time white collar employees and blue collar employees employed by the Township of Irvington.

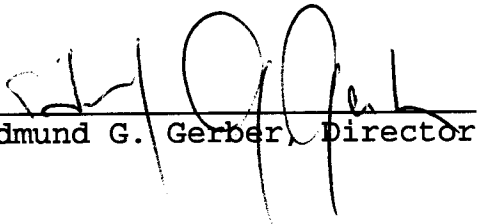
Excluded: Police officers, firefighters, school crossing guards, CETA employees, temporary employees, confidential employees and managerial executives within the meaning of the Act.

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 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 organization 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: February 2, 1994  
Trenton, New Jersey