

D.R. NO. 85-2

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE ADMINISTRATOR OF REPRESENTATION PROCEEDINGS

In the Matter of

OCEAN COUNTY BOARD OF HEALTH,

Public Employer-Petitioner,

-and-

DOCKET NO. RE-84-3

COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO,

Employee Representative.

SYNOPSIS

The Administrator of Representation Proceedings dismisses an employer-filed Petition for Certification of Public Employee Representative which is premised on the claim that the existing unit of employees has diminished to a single employee. The Administrator determines that the Petition raises novel issues before the Commission concerning negotiations responsibilities and that the issues are best suited for consideration under the Commission's unfair practice proceedings, should a refusal to negotiate claim arise.

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Appearances:

For the Public Employer-Petitioner
Berry, Kagan, Privetera & Sahradek, attorneys
(Seymour J. Kagan of counsel)

For the Employee Representative
Michael Ash, Staff Representative, CWA, AFL-CIO

DECISION

On December 8, 1983, the Ocean County Board of Health ("Board") filed a Petition for Certification of Public Employee Representative with the Public Employment Relations Commission ("Commission") ^{1/} questioning the Communications Workers of America, AFL-CIO's ("CWA") status as a majority representative of employees

^{1/} The Board initially requested its Petition to be treated as a Petition for Decertification of Public Employee Representative. Commission rules do not permit the filing of employer petitions for decertification. Employers question the majority status of employee representatives through employer certification petitions. The Board herein has not objected to the treatment of its Petition as an employer-filed certification petition. Under either procedure an election among unit employees is contemplated.

in the unit described below. ^{2/} The Board seeks a declaration that CWA is no longer a majority representative since the size of the employee unit has declined from five employees, when first recognized, to a single employee. The parties' collective negotiations agreement expired March 31, 1984.

CWA opposes the Board's Petition.

In accordance with N.J.A.C. 19:11-2.6, the undersigned solicited and received statements of positions from the petitioner and public employee representative relating to the matters and allegations set forth in the Petition. On the basis of the administrative investigation, 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 an evidentiary hearing. Pursuant to N.J.A.C. 19:11-2.6(b) 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 Ocean County Board of Health is a public employer within the meaning of the New Jersey Employer-Employee Relations

^{2/} Article I of the collective negotiations agreement recognizes CWA as the majority representative for personnel holding non-supervisory "Social Worker and Program Specialist/Care for the Medically Indigent titles; but excluding managerial executives, supervisory personnel, confidential personnel, part-time personnel working less than a twenty hour work week, temporary 80-day personnel, seasonal personnel and any personnel represented by other bargaining units."

Act, N.J.S.A. 34:13A-1 et seq. ("Act") and is subject to the provisions of the Act.

3. The Communications Workers of America, AFL-CIO is an employee representative within the meaning of the Act, and is subject to its provisions.

4. The Board seeks a declaration that CWA may no longer act as the majority representative of a unit whose size has declined to a single employee. The Board argues that under this circumstance the unit has lost the essential component of collectivity. It appears that the Board seeks a permanent revocation of CWA's status as majority representative. ^{3/}

5. The Board does not claim that it has objective considerations to believe that the employee involved has disclaimed support of CWA.

6. CWA does not dispute the fact that a single employee currently comprises the unit. However, it contends that the employee's position remains within the list of titles which constitute the appropriate negotiations unit and that its representative status should not be disturbed. Alternatively, CWA asserts that the employee position could be inserted into another collective negotiations unit represented by CWA.

For the below reasons the undersigned determines that the instant Petition should be dismissed. An employer-filed certifi-

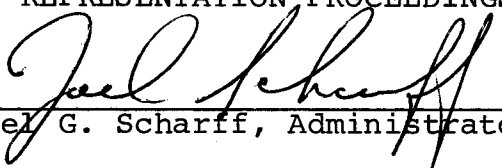
^{3/} The record does not suggest whether the current unit size is likely to be permanent or temporary. However, this factual issue is not germane to the disposition of this representation matter.

cation petition initiates a procedure made available to employers who encounter genuine conflicting claims of representation by employee organizations or who are confronted with evidence of majority employee dissatisfaction with the continuation of a currently designated negotiations agent.

In the instant matter, the Board is essentially seeking a determination as to its existing responsibilities to negotiate with a representative whose unit has diminished to a single employee. The extent of a designated representative's rights in this context is as yet an unchartered area of PERC law. A number of extraneous factors could affect the determination of the Board's responsibilities. It is not at all apparent to the undersigned that a permanent revocation of CWA's status as exclusive representative is the appropriate course in this matter but it is clear that the employee representation election required by the certification petition procedure is not the basis upon which to determine CWA's status and rights. Appropriate consideration of the issues, instruction to the parties and remedies can be achieved through the Commission's unfair practice procedures, should CWA allege that a Board refusal to negotiate is a violation of the Act.

The instant Petition is dismissed.

BY ORDER OF THE ADMINISTRATOR
OF REPRESENTATION PROCEEDINGS


Joel G. Scharff, Administrator

DATED: August 6, 1984
Trenton, New Jersey