

D.R. No. 2005-10

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

In the Matter of

BOROUGH OF RAMSEY,

Public Employer,

-and-

Docket No. RO-2005-039

TEAMSTERS LOCAL UNION NO. 469  
SUPERVISORY,

Petitioner.

**SYNOPSIS**

The Director of Representation directs an election in a unit of supervisory employees of the Borough of Ramsey. The employer objects to the inclusion of the Principal Public Works Manager in the proposed unit; it contends he is a managerial executive and confidential employee and that his inclusion in a unit of department heads he directly supervises creates a potential conflict of interest. The Director ordered that the Principal Public Works Manager vote subject to challenge.

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Appearances:

For the Respondent,  
Ruderman & Glickman, attorneys  
(Little E. Rau, of counsel)

For the Petitioner,  
Michael Broderick, Organizer

**DECISION**

On October 6, 2004, International Brotherhood of Teamsters, Local 469 (IBT) filed a timely Petition for Certification of Public Employee Representative, supported by an adequate showing of interest, with the Public Employment Relations Commission (Commission). On January 18, 2005, the IBT filed an amendment to its petition to reflect that its organization - Local 469, Supervisory - is one that admits only supervisors to membership. IBT seeks to represent supervisors employed by the Borough of Ramsey. The petitioned-for supervisors have never been

represented. IBT proposes to include department heads and the principal public works manager in the unit.

The Borough will not consent to an election in the proposed unit. It does not object to a supervisors unit but asserts that the principal public works manager is inappropriate for inclusion in the unit. It claims the principal public works manager is a managerial executive and confidential employee and that his inclusion in the unit with department heads he directly supervises would create a potential conflict of interest. West Orange Bd. of Ed. And Wilton, 57 N.J. 404 (1971).

We have conducted an administrative investigation into this matter to determine the facts. The disposition of the petition is properly based upon our administrative investigation, as there are no substantial material facts in dispute which would require convening an evidentiary hearing. N.J.A.C. 19:11-2.2 and 2.6. I find the following facts:

The IBT is seeking to organize a unit of supervisors composed of department heads employed by the Borough. The parties agree that the following nine titles containing one employee each are appropriately included in the negotiations unit: engineer, construction official, tax collector, building and grounds assistant superintendent, street assistant superintendent, water and sewer system superintendent, sanitary, court administrator, and fire official.

There is one title containing one employee in dispute: principal public works manager. IBT contends that the principal public works manager should be included in the unit because he does not have supervisory authority over other members of the proposed unit and does not participate in collective negotiations. The Borough, on the other hand, argues that the principal public works manager does in fact have the authority to hire, fire, or discipline other department heads; further, it asserts that he attends collective negotiations on behalf of the Borough.

#### ANALYSIS

There is no dispute that a unit of the Borough's supervisors is appropriate for collective negotiations. The parties disagree only about the inclusion of the principal public works manager in the proposed unit. Where the number of employees in dispute is small relative to the total number of eligible voters in the unit and the unit sought is otherwise appropriate, we will conduct an election and permit the disputed employee(s) to participate in the election subject to challenge. Borough of Leonia, P.E.R.C. No. 86-143, 12 NJPER 523 (¶17195 1986; State of New Jersey, D.R. 81-20, 7 NJPER 41 (¶12019 1980), req. for rev. den., P.E.R.C. No. 81-94, 7 NJPER 105 (¶12044 1981); Newark Housing Auth., D.R. No. 93-3, 18 NJPER 482 (¶23219 1992); Township of East Brunswick, D.R. No. 91-26, 17 NJPER 177 (¶22076 1991); Township of

Middletown, D.R. No. 91-10, 16 NJPER 532 (¶21234 1990); Morris  
Cty. Park Comm., D.R. No. 80-17, 6 NJPER 37 (¶11019 1979);  
Township of No. Brunswick, D.R. No. 78-4, 3 NJPER 260 (1977).

This process permits the conduct of a prompt election and resolution of the overall question concerning whether the employees desire representation while, simultaneously, preserving the parties' positions concerning the disputed issue.

Here, the parties agree that nine out of ten employees hold positions which are appropriately included in the petitioned-for negotiations unit. I find that the potential for one challenged ballot of ten possible voters is not an excessive number of challenged ballots and does not justify delaying the election. If the challenged ballot is determinative of the election results, post-election mechanisms are available to resolve the challenge, including an investigation, or hearing if necessary, to determine the status of the challenged voter. N.J.A.C. 19:11-10.3(k). If the employees do not vote to be represented by IBT, then the disputed title issue is academic. If IBT succeeds in obtaining a majority of the valid votes cast, then we will certify IBT as the majority representative and the parties may voluntarily resolve the status of the title or either party may file a clarification of unit petition asking us to determine the proper unit status of the disputed title. East Brunswick, Middletown, Leonia.

Accordingly, I find that the petitioned-for unit is appropriate and I direct that an election be conducted among the employees in the unit as follows:

Included: All regularly employed supervisory employees employed by the Borough of Ramsey, including department heads.

Excluded: All managerial executives, confidential employees and non-supervisory employees within the meaning of the Act; non-professional employees, craft employees, police employees, casual employees, and all other employees.

The principal public works manager may vote subject to the Commission's challenge ballot procedure. N.J.A.C. 19:11-10.3(e).

Employees shall vote on whether they wish to be represented for purposes of collective negotiations by Teamsters Local Union No. 469, Supervisory. The election shall be conducted no later than thirty (30) days from the date of this decision. Employees shall vote by mail ballot. 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. 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 supervisors, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by us not later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously provided to IBT 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



Arnold H. Zudick, Director  
Director of Representation

DATED: February 15, 2005  
Trenton, New Jersey

A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3.

Any request for review is due by February 28, 2005.