

D.R. NO. 2012-003

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

In the Matter of

TOWNSHIP OF RARITAN,

PUBLIC EMPLOYER,

-and-

Docket No. RO-2011-067

COMMUNICATION WORKERS OF AMERICA,

PETITIONER.

SYNOPSIS

The Deputy Director of Representation orders that the Communication Workers of America be certified as the exclusive representative of white collar supervisors and blue collar supervisors employed by the Township of Raritan based upon authorization cards. The Township objected to the unit description, specifically contesting the inclusion of the tax assessor and tax collector. The Deputy Director found that the performance of statutorily-mandated duties does not render a title ineligible for representation.

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PETITIONER.

Appearances:

For the Respondent, DiFrancesco, Bateman, Coley,
Yospin, Kunzman, Davis & Lehrer, attorneys (Richard
Flaum, of counsel)

For the Petitioner, Weissman and Mintz, attorneys
(Rosemarie Cipparulo, of counsel)

DECISION

On May 12, 2011, Communication Workers of America (CWA) filed a representation petition for certification by authorization cards, seeking to represent a unit white collar supervisors and blue collar supervisors of the Township of Raritan (Township).

The Township objects to the proposed collective negotiations unit, contending that the tax assessor and tax collector are statutorily created positions, and, therefore, ineligible for representation.

We have conducted an administrative investigation into this matter to determine the facts. N.J.A.C. 19:1-2.2. The disposition of the petition is properly based upon our administrative investigation. No substantial material facts are disputed. N.J.A.C. 19:11-2.2 and 2.6. I find these facts:

The petitioned-for employees are currently unrepresented. The Association seeks to represent all blue collar supervisors and white collar supervisors. At our request, the Township filed a list of 15 employees in the proposed unit. A sufficient number of authorization cards has been filed to certify the CWA as the majority representative of the petitioned-for unit.

The Township posted for ten days a Notice to Public Employees, supplied by the Commission. The Notice advises employees that the Association is seeking certification by a check of authorization cards. I know of no other labor organization seeking to represent these employees.

On July 13, 2011, the Township filed a letter setting forth its objections to the unit. On July 21, CWA filed a reply.

ANALYSIS

The New Jersey Employer-Employee Relations Act (Act) grants public employees the right to organize and collectively negotiate. N.J.S.A. 34:13A-5.3. The Legislature however, exempted certain categories of employees, such as confidential

employees and managerial executives, from the Act's rights and protections. N.J.S.A. 34:13A-3(f) and N.J.S.A. 34:13A-3(g).^{1/}

The Township contends that the tax assessor and tax collector are statutory officers, and should not be eligible for representation.^{2/} It argues that the Township has only limited control over these employees' duties, which are set by statute, specifically, N.J.S.A. 40A:9-141 and 165. These statutes give the Township authority to appoint, set salaries, and seek their suspension or reduction.^{3/} That N.J.S.A. 40A:9-165 provides for a limitation on salary reduction and parity with other municipal

1/ N.J.S.A. 34:13A-3(f) defines managerial executives as:

". . .persons who formulate management policies and practices, and persons who are charged with the responsibility of directing the effectuation of such management policies and practices. . . ." N.J.S.A. 14:13A-3(g) defines confidential employees as: "employees whose functional responsibilities or knowledge in connection with the issues involved in the collective negotiations process would make their membership in any appropriate negotiating unit incompatible with their official duties."

2/ The Township does not allege that the disputed titles fall within a statutory exclusion. It only alleges that the statutory structure of the titles makes them ineligible for representation.

3/ The Township also alleges that the tax assessor and tax collector must appeal disciplinary actions to the Tax Board rather than PERC, which demonstrates that these titles are outside PERC's jurisdiction and ineligible for representation. Since PERC does not have jurisdiction over any disciplinary appeals, I do not find this argument persuasive.

employees' increases does not preempt negotiations.^{4/} A statute or regulation will preempt employee rights guaranteed by the Act only when it sets terms and conditions of employment expressly, specifically and comprehensively. See, e.g., Bethlehem Tp. Ed., 91 N.J. 38, 44 (1982).

The performance of statutorily-mandated duties does not automatically render a title ineligible for representation. See Teaneck Tp., D.R. No. 2009-3, 34 NJPER 268 (¶96 2008); Bergen Cty. Util. Auth., D.R. No. 91-20, 17 NJPER 130 (¶22052 1991); Borough of Leonia, D.R. No. 86-24, mod. P.E.R.C. No. 86-143, 12 NJPER 523 (¶17195 1986). Under the above statutory scheme, the Township retains certain discretion and authority over the terms and conditions of employment of these two petitioned-for titles. In my view, its control is not so extensive as to make collective negotiations meaningless.

Based upon all of the circumstances, I find that the following unit is appropriate:

Included: All regularly employed non-professional and professional, white collar supervisors and blue collar supervisors, including township planners, assistant township engineers, foremen, sub code officials, fire official, tax assessor, tax

^{4/} This subsection provides: "The governing body of a municipality...shall fix and determine salaries...paid to the officers of the municipality....No such [salary] ordinance shall reduce the salary or deny without good cause an increase...given to all other officers...to any tax collector...tax assessor...."

collector, treasurer, and court administrators employed by the Township of Raritan.

Excluded: All managerial executives, confidential employees, and non-supervisors within the meaning of the Act, casual employees, craft employees, police employees, and all other employees employed by the Township of Raritan.

The CWA has met the requirements of the Act and is entitled to certification based upon its authorization cards from a majority of the unit employees. N.J.S.A. 34:13A-5.3.

ORDER

I certify Communication Workers of America as the exclusive representative of the unit described above, based upon its authorization cards.^{5/}

BY ORDER OF THE DEPUTY
DIRECTOR OF REPRESENTATION


Jonathan Roth

DATED: September 6, 2011
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 September 16, 2011.

^{5/} An appropriate Certification of Representative will issue with this decision.

**STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION**

In the Matter of	>	
	>	
TOWNSHIP OF RARITAN,	>	
Public Employer,	>	
	>	
-and-	>	DOCKET NO. RO-2011-067
	>	
CWA LOCAL 1040,	>	
Petitioner.	>	
	>	

**CERTIFICATION OF REPRESENTATIVE
BASED UPON AUTHORIZATION CARDS**

In accordance with the New Jersey Employer-Employee Relations Act, as amended, and the Rules of the Public Employment Relations Commission, we have conducted an investigation into the Petition for Certification filed by the above-named Petitioner. The Petitioner has demonstrated by card check that a majority of the unit employees described below have designated the Petitioner as their exclusive representative for purposes of collective negotiations, and, no other employee organization has expressed a valid interest in representing these employees.

Accordingly, **IT IS HEREBY CERTIFIED** that

CWA LOCAL 1040

is now the exclusive representative of all the employees included below for the purposes of collective negotiations with respect to terms and conditions of employment. The representative is responsible for representing the interests of all unit employees without discrimination and without regard to employee organization membership. The representative and the above-named Employer shall meet at reasonable times and negotiate in good faith with respect to grievances and terms and conditions of employment as required by the Act.

UNIT: Included: All regularly employed non-professional and professional, white collar supervisors and blue collar supervisors, including township planners, assistant township engineers, foremen, subcode officials, fire official, tax assessor, tax collector, treasurer, and court administrators employed by the Township of Raritan.

Excluded: All managerial executives, confidential employees, and non-supervisory employees within the meaning of the Act; casual employees, craft employees, police employees, Public Works Superintendent, Township Engineer, Construction Official/Fire Sub Code Official, and all other employees employed by the Township of Raritan.

DATED: September 6, 2011
Trenton, New Jersey



Jonathan Roth, Deputy Director of
Representation

Attachment:

Certification of Representative dated: September 6, 2011

In the Matter of

TOWNSHIP OF RARITAN

-and-

CWA LOCAL 1040

Docket No. RO-2011-067

Service on the following:

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