

D.R. No. 2012-12

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

In the Matter of

CAMDEN COUNTY MUNICIPAL  
UTILITIES AUTHORITY,

Public Employer,

-and-

UNITED FOOD AND COMMERCIAL  
WORKERS UNION, LOCAL 1360,

Docket No. RO-2012-042

Petitioner,

-and-

OFFICE AND PROFESSIONAL EMPLOYEES  
INTERNATIONAL UNION, LOCAL 32

Intervenor.

SYNOPSIS

The Director of Representation orders a mail ballot election among the petitioned-for non-supervisory employees of the public employer represented by OPEIU, Local 32. The petitioner, UFCWU, Local 1360, represents the employer's supervisory employees.

The incumbent/intervenor objected to the petition. The name of the petitioner was amended and a certification was filed attesting to the independence of that organization from the employee organization representing supervisors (Camden certification). The Director disagreed with the incumbent that a new showing of interest was required, under the circumstances. The Director ordered the election as the best method to determine the representational desires of the petitioned-for employees.

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Appearances:

For the Public Employer,  
Laurence E. Rosoff, Solicitor

For the Petitioner,  
Mets, Schiro & McGovern, LLP  
(Kevin McGovern, of counsel)

For the Intervenor,  
Markowitz & Richman, attorneys  
(Matthew Areman, of counsel)

DECISION AND DIRECTION OF ELECTION

On January 12, 2012, United Food and Commercial Workers Union, Local 1360 (UFCWU) filed a representation petition seeking to represent a collective negotiations unit of all "full-time and part-time mechanics, sewer plant operators, pump station

attendants, payroll accounting clerks, typists, tractor trailer drivers, electricians, sewer plant repairers, pump station operators, SR customer service representatives, accounting clerk typists, and cashiers" employed by the Camden County Municipal Utilities Authority (Authority). The petition sought certification by card check and was supported by an adequate number of cards. N.J.A.C. 19:11-1.2. On January 25, 2012, UFCWU amended its petition to seek certification by election.

On January 31, 2012, Office and Professional Employees International Union, Local 32 (OPEIU) filed a letter seeking to intervene as the majority representative of the petitioned-for employees, together with its expired collective negotiation agreement with the Authority extending from January 1, 2008 through December 31, 2011. OPEIU also wrote that it did not consent to an election and questioned the adequacy of the showing of interest and timeliness of the petition. On February 2, 2012, OPEIU's request to intervene was approved. N.J.A.C. 19:11-2.7.

On February 1, 2012, the Authority posted our Notice to Employees regarding UFCWU's representation petition. N.J.A.C. 19:11-2.4.

On February 3, 2012, OPEIU filed another letter, setting forth its objections to the petition. Relying upon N.J.S.A. 34:13A-5.3 and City of Camden, P.E.R.C. No 82-89, 8 NJPER 226 (¶13094 1982), OPEIU asserts that UFCWU already represents the

Authority's supervisory employees and cannot also represent the petitioned-for non-supervisory employees without filing a "Camden certification." It also writes that on January 18, 2012, it signed a memorandum of agreement with the Authority, setting forth terms and conditions of employment, thereby rendering the petition untimely and barring its further processing.

On February 8, 2012, we conducted an investigatory conference at which the parties presented their positions and submitted documents. N.J.A.C. 19:11-2.2. At the conference, the Authority refused to consent to an election. Later on the same date, we wrote to the parties, directing them to file any other statements and/or documents supporting their respective positions. N.J.A.C. 19:11-2.6.

On February 14, 2012, UFCWU, Local 1360 CCMUA Non-Supervisory Employee Association (UFCWU NSEA) filed an amended petition, together with a certification of a named unit employee who is also a member of the petitioner's leadership committee. The certification provides that the petitioning organization maintains a separate organizational structure from the organization that represents the Authority's supervisory employees. The certification also provides that UFCWU NSEA, rather than the majority representative of any supervisory employees, will

". . . manage, direct and otherwise control negotiations, grievance processing and other matters covering the Authority's non-supervisory employees." The UFCWU NSEA also asserts that its petition is timely because the memorandum of agreement has not been signed or ratified by either the Authority or OPEIU.

On February 14, 2012, the Authority filed a letter, writing that the petitioner must submit a Camden certification to insure that it has a separate organizational structure from UFCWU. The Authority also requests that the petitioner certify other facts.

On February 15, 2012, OPEIU filed a letter reiterating that section 5.3 of the New Jersey Employer-Employee Act, N.J.S.A. 34:13A-1 et seq. and Camden prohibit an employee organization from representing both supervisory and non-supervisory employees of one and the same public employer. It also argues that the amended petition must be accompanied by a new showing of interest. OPEIU did not respond to UFCWU NSEA's contention that no memorandum of agreement has been signed or ratified by the Authority, and it did not reiterate that the petition is time-barred. No current memorandum of agreement has been proffered and no facts suggest that the Authority and OPEIU have signed such a document.

On February 16, 2012, an amended notice to public employees was provided to the Authority for posting. N.J.A.C. 19:11-2.4.

We have received a signed "amended certification of posting," dated February 16, 2012.

On March 2, 2012, I wrote to the parties, advising of my tentative findings and conclusions and inviting responses. No party filed a response. The disposition of the petition is properly based upon our administrative investigation. 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. Based upon the administrative investigation, I make the following determination.

Section 5.3 generally prohibits supervisors from being represented in collective negotiations by an employee organization that admits non-supervisory personnel to membership. Camden declares that a majority representative of non-supervisory police personnel of a public employer is "not qualified" to represent superior officers. The Commission determined that ". . . employees are entitled to know that the organization they are voting for is the organization they will have if selected by a majority." Id., 8 NJPER at 227. To that end, the Commission required that an organization wishing to appear on a ballot in such contexts must certify certain facts: 1) as the organization now exists, it has no non-supervisory employee members, and 2) if selected by the employees, it, and not the majority representative of the non-supervisory (police) employees, will

control negotiations and contract administration concerning supervisory personnel. Overall, the Commission was concerned about facts “. . . evidencing a present illegal organizational structure.” Id.

In this case, our concern for section 5.3's prohibition was triggered by a civilian employee organization admitting supervisory personnel to membership initially seeking to represent civilian non-supervisory personnel of one and the same public employer. An amended petition naming a separate employee organization from one that currently represents supervisors has been filed, together with a certification attesting to its independence within the mandate of Camden. Accordingly, we are satisfied that no facts indicate that UFCWU NSEA is an unlawful organizational structure.

We disagree with OPEIU that the amended petition must be accompanied by a new showing of interest. I note initially that the Director determines the adequacy of the showing and that this decision is not subject to collateral attack. N.J.A.C. 19:11-2.1. The purpose of a representation election is to provide public employees the opportunity to make a free and fair choice about whether they wish to be represented by a labor organization.

A showing of interest is an administrative requirement to ensure that sufficient interest exists among employees on behalf

of the petitioner to warrant the expenditure of Commission resources in processing the petition. Woodbury Tp. Bd. Of Ed., D.R. No. 77-9, 3 NJPER 26 (1977). In this matter, the language on each card plainly states the document's purpose. The cards were signed by at least 30% of the employees in the proposed unit, as confirmed by our review of the list of employees provided by the Authority. Under these circumstances, I will not require UFCWU NSEA to file new cards, which would cause unnecessary delay to the process.

The Commission has long held that the best method to measure employees' representational preferences is by conducting a secret ballot election. Accordingly, I find that the showing of interest is adequate to support the representation petition filed by UCFWU NSEA. A secret mail ballot election shall be conducted so that the petitioned-for employees can freely choose their majority representative, if any. Harvey Cedars Bor., D.R. No. 99-10, 25 NJPER 151 (¶30068 1999); Red Bank Bor., D.R. No. 99-6, 25 NJPER 6 (¶30001 1998). The election shall be among the employees in this appropriate unit:

Included: All regularly employed non-supervisory blue and white collar employees, including full time and part time mechanics, sewer plant operators, pump station attendants, payroll accounting clerks, typists, tractor trailer drivers, electricians, sewer plant repairers, pump station operators, SR customer service representatives, accounting clerk typists,



and cashiers, of the Camden County Municipal Utilities Authority.

Excluded: Managerial executives, confidential employees, supervisors within the meaning of the Act, police, casual employees, and all other employees of the Camden County Municipal Utilities Authority.

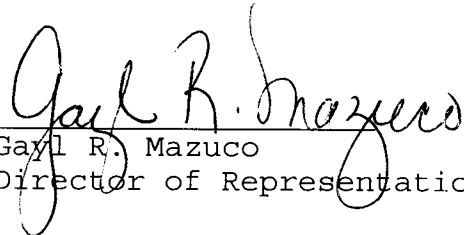
The mail ballot election shall be conducted and the ballots tallied not later than 45 days from the date of this decision. Eligible voters are those employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, 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 promptly file with us an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the unit, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by the Director no later than 10 days before the date of the election. In a mail ballot election, the date of the election shall be the date on which the ballots are scheduled to be mailed. 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 parties may be provided an opportunity to agree upon dates of the mail ballot election and designations on the ballot, within the time periods set by this decision, subject to my approval. The assigned staff agent will convene a conference call among the parties for this purpose. In the absence of an agreement among the parties, I shall determine the dates of the mail ballot election, the time and place of the counting of the ballots, and the designations on the ballot. N.J.A.C. 19:11-5.1.

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.

  
Gail R. Mazuco  
Director of Representation

DATED: March 20, 2012  
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 March 30, 2012.