

D.R. No. 2013-2

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

In the Matters of

CITY OF CAMDEN HOUSING AUTHORITY,

Public Employer/Petitioner,

-and-

Docket Nos. RO-2012-58,
RE-2012-003 and CU-2012-025

AFSCME COUNCIL 71, LOCAL 3974,

Employee Organization/Petitioner.

SYNOPSIS

AFSCME Council 71, Local 3974 (Council 71) filed a representation petition for card check certification seeking to represent a unit of supervisors employed by the City of Camden Housing Authority (Authority). Council 71's petition was accompanied by a list of employee names in eligible titles and authorization cards from a majority of the petitioned-for employee. The Authority did not provide a complete list of employees for the petitioned-for unit.

The Authority opposed certification of Council 71 and refused to consent to a stipulation of appropriate unit. The Authority contended the negotiations unit Council 71 petitioned to represent should not be certified because it is inconsistent with a expired collective negotiations agreement with Council 71, Local 3441, a non-supervisory unit. In addition, the Authority filed a unit clarification petition and a representation petition. The unit clarification petition sought to exclude the supervisor of maintenance repairs, boiler room specialist and warehouse supervisor from Council 71, Local 3974 and the Authority's representation petition seeks certification by election of the identical three titles and asserts there is only one employee in the unit, as two of the three titles are vacant.

The Director found that Council 71 met the requirements of the Act and certified Council 71's petitioned-for negotiations unit based upon its authorization cards. The Director also found that an expired collective negotiations agreement specifically excluding a title from a unit of non-supervisory employees does not prohibit another employee organization from seeking to represent that title in a unit of supervisors. In addition, the Director dismissed the Authority's unit clarification petition since the purpose of a clarification of unit petition is not to enlarge or diminish the scope of a unit based upon size, but to determine whether a title is contemplated within a unit definition. Finally, the Director dismissed the Authority's representation petition for an election since no "unit" exists for which to conduct an election. The Director noted that an employer's omission or refusal to provide facts cannot delay or otherwise impede the representation process.

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AFSCME COUNCIL 71, LOCAL 3974,

Employee Organization/Petitioner.

Appearances:

For the Public Employer,
Lisa Hendricks Richardson, Esq.

For the Employee Organization,
Joseph Waite, Staff Representative

DECISION

On April 24, 2012, AFSCME Council 71, Local 3974 ("Council 71") filed a representation petition for card check certification seeking to represent a unit of supervisors employed by the City of Camden Housing Authority ("Authority"). On May 4 and June 15, 2012, Council 71 filed amendments to its petition. The second amended petition ("petition") was accompanied by a list of employee names in eligible titles and authorization cards from a majority of the petitioned-for employees. No other labor organization claims interest in representing the employees.

The Authority objects to the processing of Council 71's petition and refuses to sign a Stipulation of Appropriate Unit form.

We have conducted an administrative investigation into this matter to determine the facts. N.J.A.C. 19:11-2.2. By letter dated August 14, 2012, I advised the parties of my tentative findings and conclusions and invited responses. Specifically, I wrote that I was inclined to rely upon Council 71's proposed unit description and list of employees because the Authority had not objected to either one.

On August 24, 2012, the Authority filed a letter objecting to the procedural history outlined in my August 14 letter. The Authority also asserted in its letter that the Director's certification of an "overly broad" unit of "regularly employed supervisory employees employed by the Housing Authority" was "beyond its [the agency's] jurisdiction" and objected to the certification of a unit that was inconsistent with a recently expired collective negotiations agreement with Council 71, Local 3974. The Authority did not object to either the validity of the cards or list of employees submitted by Council 71 with its petition.

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:

FINDINGS OF FACT

On May 4 and June 15, 2012, Council 71 filed amended representation petitions setting forth the following proposed negotiations unit^{1/}:

Unit included:

All supervisory employees employed by the Housing Authority of the City of Camden, including executive assistant, principal housing manager, sr. housing manager, housing manager, assistant housing manager, homemaker service supervisor, tenant selection supervisor, supervising account clerk, sr. supervising maintenance repairer, supervising maintenance repairer, boiler supervisor, boiler specialist, and warehouse supervisor.

Unit excluded:

All managerial executives, confidential employees, non-supervisory employees, professional employees, police employees, craft employees and all other employees employed by the Housing Authority of the City of Camden.

By letters dated May 9, 2012 and June 28, 2012, the Director of Representation requested from the Authority a statement of position indicating whether the employer agreed to the proposed negotiations unit, and whether there was any objection to

^{1/} The June 15 petition amended the May 4 petition by changing the number of employees in the petitioned for unit from three(3) to twelve (12). The May 4 petition was faxed to the Authority on May 9, 2012 and the June 15 petition was faxed to the Authority on June 28, 2012.

certification of the unit by card check. On July 27, 2012, a Commission staff agent sent the parties a proposed Stipulation of Appropriate Unit. Council 71 returned a signed copy of the Stipulation of Appropriate Unit. The Authority refused to sign the stipulation. The Authority submitted letters on May 24 and July 27, 2012 objecting to Council 71's card check petition.

In its May 24 and July 27 correspondence, the Authority asserts that the titles set forth in the representation petition are inconsistent with "the titles negotiated and agreed to in the recently expired collective bargaining agreement . . ." between the Authority and Council 71. Specifically, the Authority argues that the title, "assistant housing manager" was removed by agreement between Council 71, Local 3441 and the Authority.^{2/} Thus, the Authority contends that since the title, assistant housing manager, was not previously included in any negotiations agreement, the Commission cannot process a card check representation petition for employees in that title. In other words, the Authority argues that because the title was excluded from the non-supervisory unit by agreement with Council 71, Local 3441, the title cannot now be included in the supervisory unit represented by Council 71, Local 3974.

^{2/} Local 3441 is the majority representative of the non-supervisory unit employed by the Authority.

On May 25, 2012, the Authority filed a clarification of unit petition (Docket No. CU-2012-025) and a representation petition (Docket No. RE-2012-003). The clarification of unit petition sought to exclude the supervisor of maintenance repairs, boiler room specialist and warehouse supervisor from AFSCME Council 71, Local 3974, representative of the proposed supervisory unit. The Authority's clarification of unit petition states as follows:

Petitioner's reasons for proposed clarification of unit:

The Boiler Room Specialist and Warehouse Supervisor positions are vacant (as of January 13, 2012 and March 1, 2003, respectively), and the Supervisor of Maintenance Repairs position will be vacant upon the incumbent's intended retirement in or about September 2012. The employer will not be hiring for these titles. Notwithstanding, there is only one (1) member in this unit which by default negates it as a viable and legitimate collective bargaining unit.

The representation petition filed by the Authority seeks certification by election of the identical three titles and asserts there is only one employee in the unit, as two of the three titles are vacant.

On July 30, 2012, a Commission staff agent conducted a telephone conference with the parties concerning Council 71's representation petition to determine the scope of the appropriate unit for collective negotiations, and confirm whether there was any objection to certification based upon the check of

authorization cards. In addition, the Authority was asked to provide an alphabetized list of employees in the unit described in the petition, together with contact information for any organization claiming an interest in representing any employees in the proposed unit.

On July 31, 2012, the Authority returned a signed certification of posting. It acknowledged that no other employee organization has claimed an interest in representing any of the employees in the petitioned-for unit within the previous twelve months. The Authority also provided a list of employees setting forth only the names of three assistant housing managers. The Authority's list does not include any other petitioned-for titles. Council 71 has provided a list of proposed unit employees in the petitioned-for titles.

ANALYSIS

On July 19, 2005, the Legislature amended the New Jersey Employer-Employee Relations Act ("Act"), N.J.S.A. 34:13A-5.3 to authorize the Commission to certify a majority representative where: (a) a majority of employees in an appropriate unit have signed authorization cards designating that organization as their negotiations representative; and (b) no other employee representative seeks to represent those employees. See N.J.A.C. 19:11-2.6(b).

The Authority's objections to Council 71's card check petition are misplaced. The Legislature has determined that a check of an organization's authorization cards signed by a majority of employees in an appropriate unit is a lawful method to determine a majority representative. A recognition provision in an expired collective negotiations agreement specifically excluding a title (i.e., assistant housing manager) from a unit of non-supervisory employees does not prohibit another employee organization from seeking to represent that title in a unit of supervisors.

Our review of Council 71's authorization cards shows that it has submitted cards from a majority of the petitioned-for employees. Moreover, the Authority does not challenge the validity of the cards submitted by Council 71 with its petition. The authorization cards demonstrate the petitioning employees' desire to be represented by the Council in collective negotiations. Accordingly, Council 71 is entitled to a certification based upon a card check, regardless of the Authority's failure to submit a signed Stipulation of Appropriate Unit and regardless of any expired collective negotiations agreements between the Authority and AFSCME, Council 71, Local 3441, the representative of the non-supervisory unit. See Passaic County Prosecutor's Office, D.R. No. 2006-15, 32 NJPER

107 (¶51 2006); Atlantic County Prosecutor's Office, D.R. No. 2007-2, 32 NJPER 264 (¶108 2006).

We also dismiss the Authority's clarification of unit petition. The purpose of a clarification of unit petition is to resolve questions concerning the scope of a collective negotiations unit within the framework of the Act or as set forth in the unit definition in a Commission certification or the parties' recognition agreement. Normally, it is inappropriate to use a clarification of unit petition to enlarge or diminish the scope of a negotiations unit for reasons other than these. Typically, a clarification is sought as to whether a particular title is contemplated within the scope of the unit definition. Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977).

As further expanded upon in Clearview, the purpose of the clarification of unit process is to resolve ambiguities concerning the composition of an existing negotiations unit as it relates to the identification of titles within a general classification for employees. The clarification of unit process is appropriate where circumstances have occurred which change a title's job functions or a new title has been created, from which we might find that the change or new title could be identified within the parties' described unit. However, absent changed circumstances, where the parties specifically agree to add and exclude titles from the unit, a clarification of unit petition is

inappropriate and will be dismissed. Wayne Tp. Bd. of Ed., P.E.R.C. No. 80-94 6 NJPER 54 (¶11028 1980); Warren Tp., D.R. No. 82-10, 7 NJPER 529 (¶12233 1981).

In the instant case, the Authority has filed a clarification of unit petition seeking to exclude the title, supervisor of maintenance repairs from the petitioned-for supervisory unit because it is the only title currently filled, and only one employee is currently in the title. The Authority asserts there cannot be a unit of only one employee. The purpose of a clarification of unit petition is not to enlarge or diminish the scope of unit based upon size, but rather to determine whether a title is contemplated within a unit definition. The Authority's petition is not appropriate for review and is dismissed.

The Authority also filed a companion representation petition asserting that there is only one employee in the negotiations unit (i.e. supervisor of maintenance repairs) and seeking an election to determine majority status. N.J.A.C. 19:11-1.4 requires that a petition for certification by a public employer sets forth an employer's ". . . good faith doubt concerning the majority status of the representative of its employees."

We agree that a negotiations unit cannot be comprised of one employee. Borough of Shrewsbury, P.E.R.C. No. 79-42, 5 NJPER 45 (¶10030 1979), aff'd 174 N.J. Super. 25 (App. Div. 1980), certif. den. 85 N.J. 129 (1980). In this case, no "unit" exists; Council

71 is petitioning to represent a new unit which includes the supervisor of maintenance repairs. In these circumstances, I find the Authority's representation petition is prematurely filed and must be dismissed.

I also rely upon the list of named employees in the petitioned-for titles provided by Council 71, in the absence of a dispute or varying list provided by the Authority. N.J.S.A. 34:13A-5.3 guarantees the right of public employees to ". . . form, join or assist any employee organization." An employer's omission or refusal to provide facts cannot delay or otherwise impede the representation process.

Finally, I disagree with the Authority that the Commission does not have jurisdiction to certify a unit of "regularly employed supervisors." Where the parties cannot stipulate to an appropriate unit, we determine which unit is appropriate for collective negotiations. N.J.S.A. 34:13A-6(d); see also State of N.J. and Prof. Assn. of N.J. Dept. of Educ., 64 N.J. 231 (1974). A unit of supervisory employees is contemplated by the Act. N.J.S.A. 34:13A-5.3. Accordingly, we define the appropriate unit here in the absence of an agreement by the parties to stipulate to an appropriate unit.

I find that the following unit is appropriate:


Included: All regularly employed supervisory employees, including but not limited to executive assistant, principal housing manager, senior housing manager, housing

manager, assistant housing manager, homemaker service supervisor, tenant selection supervisor, supervising account clerk, senior maintenance repairer, supervising maintenance repairer, boiler supervisor, boiler specialist, and warehouse supervisor employed by the Housing Authority of the City of Camden.

Excluded: Managerial executives, confidential employees and non-supervisors within the meaning of the Act; professional employees, craft employees, police, casual employees, and all others employed by the Housing Authority of the City of Camden.

ORDER

I certify AFSCME Council 71, Local 3974, as the exclusive representative of the unit described above, based upon its authorization cards^{3/}.



Gayl R. Mazuco
Director of Representation

DATED: September 7, 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 September 17, 2012.

^{3/} The formal certification is attached.

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

In the Matter of

CITY OF CAMDEN HOUSING AUTHORITY,
Public Employer,

-and-

AFSCME CO 71, LOCAL 3974,
Petitioner.

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> DOCKET NO. RO-2012-058
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**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

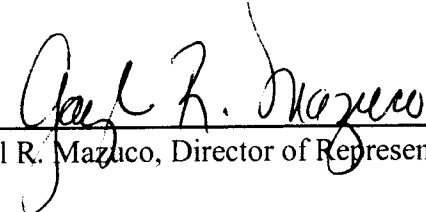
**AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES,
COUNCIL 71, LOCAL 3974**

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 supervisory employees, including but not limited to executive assistant, principal housing manager, senior housing manager, housing manager, assistant housing manager, homemaker service supervisor, tenant selection supervisor, supervising account clerk, senior maintenance repairer, supervising maintenance repairer, boiler supervisor, boiler specialist, and warehouse supervisor employed by the Housing Authority of the City of Camden.

Excluded: Managerial executives, confidential employees and non-supervisors within the meaning of the Act; professional employees, craft employees, police, casual employees, and all others employed by the City of Camden Housing Authority.

DATED: September 7, 2012
Trenton, New Jersey



Gayl R. Mazucco, Director of Representation

Attachment:

Certification of Representative dated: September 7, 2012

In the Matter of

CITY OF CAMDEN HOUSING AUTHORITY

-and-

AFSCME CO 71, LOCAL 3974,

Docket No. RO-2012-058

Service on the following:

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Joseph Waite, Staff Representative
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