

D.R. NO. 2014-2

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

In the Matter of

State of New Jersey,
Public Employer,

-and-

Docket Nos. CU-2012-026,
CU-2012-027, CU-2012-028,
CU-2012-029, CU-2012-030,
CU-2012-031, CU-2012-032,
and CU-2012-033

Communications Workers of America,
Petitioner.

SYNOPSIS

The Director of Representation clarifies State of New Jersey CWA units to include employees who were previously deemed confidential employees and excluded from the CWA. The Director finds that the State and CWA are in agreement that the petitioned-for employees should be included in CWA units.

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Appearances:

For the Respondent,
McElroy, Deutsch, Mulvaney & Carpenter, LLP, attorneys
(John J. Peirano, Esq., of counsel)

For the Petitioner,
Weissman and Mintz, attorneys
(Ira W. Mintz, Esq., of counsel)

DECISION

On June 5, 2012, the Communication Workers of America, AFL-CIO ("CWA") filed eight (8) representation petitions seeking to represent four thousand seven hundred twenty two (4722) State of New Jersey employees in titles which are, for the most part, included in units represented by the CWA, but who are currently excluded from the CWA because they are deemed confidential employees. The petitions seek to include those employees in one of four (4) units represented by the CWA that are assigned to Employee Relations Groups ("ERG") A, P, R, S, V, W, X, and Y.

The CWA relies upon the change to the statutory definition of "confidential employees" of the State of New Jersey, N.J.S.A. 34:13A-3(g)^{1/}, as a basis to clarify the existing units. No employee organization has sought to intervene in this matter pursuant to N.J.A.C. 19:11-2.7.

The State has taken the position that a petition seeking to include employees in ERGs V, W, X, and Y should not be processed, as the employees in those titles have never been represented by the CWA and the parties' contracts make clear that such titles were not intended to be included in the units represented by the CWA. In addition, the State contends that the petitions seeking to include employees in ERGs A, P, R, and S in existing CWA statewide units are overly broad because the CWA has not established that a change in circumstances has occurred that would warrant the inclusion of the petitioned-for employees in CWA units.

Since the filing of the petitions, we have conducted numerous in-person conferences and conference calls, and directed exchanges of correspondence aimed at resolving this matter. To date, a resolution concerning the petitioned-for employees has not been reached.

^{1/} The definition of "confidential employees" under the New Jersey Employer-Employee Relations Act ("Act") was modified by P.L. 2009, c. 314, effective January 18, 2010.

On May 6, 2013, the State sent the CWA, via email, a list of one hundred eighty five (185) employees the State would conditionally agree to include in the respective CWA bargaining units. The State noted that they provided the list to the CWA as part of settlement efforts. The list, which is attached, addressed employees with titles in ERGs A, P, R, and S, who would be included in CWA bargaining units as follows: seventy four (74) employees with titles in ERG A would be included in the CWA Administrative and Clerical Services Unit; seventy (70) employees with titles in ERG P would be included in the CWA Professional Unit; thirty six (36) employees with titles in ERG R would be included in the CWA Primary Level Supervisory Unit; and five (5) employees with titles in ERG S would be included in the CWA Higher Level Supervisory Unit.

On June 24, 2013, I wrote to the parties advising of my tentative findings and conclusions, and inviting responses. Neither the CWA nor the State filed a response.

The disposition of the 185 petitioned-for employees 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.

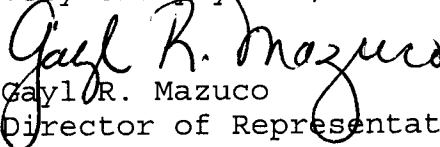
A clarification of unit petition is used to resolve questions concerning the composition of an existing collective negotiations unit within the framework of the Act or as set forth in the unit definition in a Commission certification or the parties' recognition agreement. The Commission is charged with determining in each instance what unit is appropriate. N.J.S.A. 34:13A-6; State of New Jersey and Professional Assn of N.J. Dept. of Ed., 64 N.J. 231, 240 (1974).

A year after the filing of these petitions, the parties have not resolved the status of the petitioned-for employees. CWA has invoked our jurisdiction to resolve the question of whether these employees are improperly designated as confidential employees. We are therefore tasked with investigating the petitions and making appropriate determinations as quickly as possible. N.J.A.C. 19:11-2.2. Resolving the status of these titles promotes the Commission's policy requiring that representation matters be processed as expeditiously as possible. State of New Jersey, D.R. No. 81-20, 7 NJPER 41 (¶12019 1980), aff'd P.E.R.C. No. 81-94, 7 NJPER 105 (¶12044 1981), mot. for recon. den. P.E.R.C. No. 81-95, 7 NJPER 133 (¶12056 1981), aff'd App. Div. Dkt. Nos. A-3274-80T1 and A-4164-80T1 (11/10/82). It is also in the best interests of the employees who will be affected by these determinations.

The State conditionally agrees that the one hundred and eighty-five (185) employees it has identified should be included in CWA units. The CWA has not objected to having these one hundred eighty five (185) employees included in their units. While I understand that the State's offer was conditional and made in an effort to settle the status of these particular employees, it appears that there is agreement by each party that these 185 employees should be in the union. A considerable amount of time has passed since the filing of the petitions. Inclusion of the 185 employees addresses approximately four (4) percent of the total number of the petitioned-for employees, a modest beginning at best.

Based upon the facts regarding the 185 petitioned-for employees and our case law, I clarify the existing units to include the one hundred and eighty-five (185) APRS employees listed in the State's correspondence of May 6, 2013.

Very truly yours,


Gayl R. Mazuco
Director of Representation

DATED: July 15, 2013
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 July 29, 2013.