

D.R. NO. 2016-5

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

In the Matter of

NORTHWEST BERGEN COUNTY UTILITIES
AUTHORITY,

Public Employer,

-and-

Docket No. RO-2016-020

NORTHWEST BERGEN COUNTY UTILITIES
AUTHORITY NON-SUPERVISORY EMPLOYEE
GROUP,

Petitioner,

-and-

INTERNATIONAL BROTHERHOOD OF TEAMSTERS
LOCAL 11,

Intervenor.

SYNOPSIS

The Director finds that the showing of interest is adequate to support the petitioner's representation petition. Moreover, pursuant to N.J.A.C. 19:11-2.6(c)3, the Director directs a secret ballot election among the employees in the petitioned-for unit.

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Appearances:

For the Respondent,
Eric M. Bernstein & Associates, LLC, attorneys
(Eric M. Bernstein, of counsel)

For the Petitioner,
(Daniel Sacharoff, pro se)

For the Intervenor,
Kroll Heineman Carton, attorneys
(Curtis Jameson, of counsel)

DECISION

On November 11, 2015, the Northwest Bergen County Utilities Authority Non-Supervisory Employee Group ("Employee Group") filed a representation petition seeking to represent non-supervisory

employees employed by the Northwest Bergen County Utilities Authority ("Authority") in the following titles: lab technician, maintenance mechanic, incinerator operator, plant operator, utility stock clerk, pump station operator, collection system operator, building and grounds maintenance, meter maintenance technician, maintenance man (incinerator), electrician, laboratory analyst, operations and maintenance helper, laborer, buildings and grounds operations and maintenance, and principal laboratory analyst. The petition seeks certification by an election. N.J.S.A. 34:13A-5.3.

The petitioned-for employees are currently represented for the purposes of collective negotiations by IBT Local 11 (Local 11), which was certified as the majority representative on September 27, 2013, for "[a]ll non-supervisory plant employees employed by the Northwest Bergen County Utilities Authority," but excluding "[m]anagerial executives, confidential employees and supervisors within the meaning of the Act; craft employees, police, casual employees, clericals, secretarial's, professional employees, and all other employees employed by the Northwest Bergen County Utilities Authority." (RO-2014-007) Local 11 opposes the petition, and declines to sign a consent for election.

We have conducted an administrative investigation to determine the facts. N.J.A.C. 19:11-2.2. No disputed

substantial and material facts warrant a formal hearing.

N.J.A.C. 19:11-2.6(f). Based upon our investigation, the following facts appear. On November 18, 2015, we requested that the Authority provide a list of employees identified in the petition, and to post a notice to public employees describing the petitioned-for unit. N.J.A.C. 19:11-2.4 On November 24, 2015, the Authority provided the list of employees and advised that it posted the notice on November 19, 2015. Based on the Authority's list, the petition is accompanied by an adequate showing of interest. N.J.A.C. 19:11-2.1.

The current majority organization, Local 11, sought to intervene in the matter on December 3, 2015. Intervention was granted on December 15, 2015. N.J.A.C. 19:11-2.7.

On December 4, 2015, the parties attended an investigatory conference. At the conference, the parties were advised that the Employee Group's representation petition was supported by an adequate showing of interest. Pursuant to N.J.A.C. 19:11-4.1, we sought an agreement by the parties for a consent to the conduct of a secret ballot election. The Authority took no position on the proposed election. Local 11 refused to consent to an election.

The Authority is a public employer within the meaning of the New Jersey Employer-Employee Relations Act ("Act"). N.J.S.A. 34:13A-1 et seq.

Local 11 objects to an election, and argues that the Employee Group may have misrepresented itself to the unit members in order to secure the showing of interest. Local 11 did not submit any affidavits in support of its position.

A showing of interest is an administrative requirement intended to ensure that sufficient interest exists among employees to warrant the use of Commission resources in processing the petition. Jersey City Medical Center, D.R. No. 83-19, 8 NJPER 642, 643 (¶13308 1982). N.J.A.C. 19:11-2.1 provides that the Director of Representation shall determine the adequacy of the showing of interest and such decision shall not be subject to collateral attack. We have also long held that "it is inappropriate in a representation forum to permit parties to litigate allegations that authorization cards have been procured by fraud, misrepresentation, or coercion or that they have been revoked or that they are stale. Rather, we have determined that the best method to discover employees' true choice as to which organization, if any, they wish to designate as their negotiations representative is by providing employees a secret ballot election." Borough of Paramus, D.R. No. 95-11, 21 NJPER 25, 26 (¶26015 1994); Essex Cty., D.R. No. 85-75, 11 NJPER 433 (¶16149 1985); City of Orange Tp., D.R. No. 85-10, 11 NJPER 33 (¶16018 1984); Jersey City Medical Center; Woodbridge Tp. Bd. of Ed. D.R. No. 77-9, 3 NJPER 26 (1977).

The Commission in Hudson County Community College, P.E.R.C. No. 85-117, 11 NJPER 369 (¶16131 1985), explained the basis for preferring the conduct of a secret ballot election to address alleged irregularities with the showing. It held that

N.J.A.C. 19:11-2.1 provides that the Director shall determine the showing of interest and prohibits a collateral attack on that determination. See State of New Jersey, P.E.R.C. No. 81-94, 7 NJPER 105 (¶12044 1981). This regulation embodies the practice of the National Labor Relations Board which also prohibits hearings or appeals concerning such a determination. Morris, The Developing Labor Law (2nd Ed. 1983) at 343-344; R. Gorman, Basic Text on Labor Law (1970) at 42; Guide for Hearing Officers in NLRB Representation Proceedings (1975) at 10. It reflects the Commission's and the NLRB's shared belief that the best method for correcting any alleged errors in showing of interest determinations is a secret ballot election, State of New Jersey, supra. [11 NJPER at 370.]

The showing of interest is adequate to support the Employee Group's representation petition. Therefore, pursuant to N.J.A.C. 19:11-2.6(c)3, I direct a secret ballot election among the employees in the petitioned-for unit.

The election shall be among the employees in the following appropriate unit:

Included: All non-supervisory plant employees employed by the Northwest Bergen County Utilities Authority.

Excluded: Managerial executives, confidential employees and supervisors within the meaning of the Act; craft employees, police, casual employees, clericals, secretarials, professional employees, and all other

employees employed by the Northwest Bergen County Utilities Authority.

Eligible employees will vote on whether they wish to be represented by the Employee Group, Local 11, or no representative. The election shall be conducted in accordance with the Commission's rules. The election shall be conducted no later than forty-five (45) days from the date of this decision. 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 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 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 employees organization with a statement of serviced 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 period 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.

Very truly yours,

/s/ Gayl R. Mazuco
Gayl R. Mazuco
Director of Representation

DATED: February 8, 2016
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 18, 2016.