

D.R. NO. 2023-4

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

In the Matter of

BOROUGH OF RUMSON,

Public Employer,

-and-

Docket No. RO-2023-004

LOCAL 196, INTERNATIONAL FEDERATION OF
PROFESSIONAL AND TECHNICAL
ENGINEERS, AFL-CIO,

Petitioner.

SYNOPSIS

The Director of Representation issues a Certification of Representative to IFPTE Local 196, AFL-CIO, for a negotiations unit described as including blue-collar employees of the Borough of Rumson and excluding statutory supervisors but not explicitly excluding foremen. The Director found the broad-based unit description was more appropriate than the Borough's proposed description which would have limited the inclusionary language to specific titles and specifically excluded foremen, which the Borough contended were statutory supervisors. The Director explained the Commission's preference for broad-based units and reluctance to form units along occupational lines and found that Local 196 had not consented to a narrower description. The Director declined to explicitly exclude the foremen in the unit description because their status as statutory supervisors (which are explicitly excluded) was not yet resolved and was unnecessary to resolve as Local 196 had provided authorization cards from a majority of the employees on the Borough's list regardless of whether the two foremen were counted or not, and a subsequent clarification of unit petition could resolve their status.

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Appearances:

For the Respondent,
Cleary, Jacobbe, Alfieri, Jacobs, LLC, attorneys
(Adam S. Abramson-Schneider, of counsel)

For the Petitioner,
Weissman and Mintz, LLC, attorneys
(Annmarie Pinarski, of counsel)

DECISION

On July 29, 2022, Local 196 of the International Federation of Professional & Technical Engineers, AFL-CIO (Local 196) filed a representation petition seeking certification by card check as a majority representative. Local 196 originally petitioned to represent a collective negotiations unit of "all blue and white collar employees employed by the Borough of Rumson," excluding "supervisors, managers, guards and any other statutory exclusions." Local 196 provided a sufficient showing of interest based on the estimated number of employees on the petition.

The Borough provided a list of employees with their titles, explicitly advising that it did not include professionals, sub-code officials, deputy tax collectors, court administrators, special police officers, police officers, public works forepersons, crossing guards, dispatchers, and seasonal summer camp employees on the list under the assumption that Local 196 was not actually seeking to represent those groups.

The list was forwarded to Local 196, which clarified that it was not actually seeking to represent white collar employees -- only blue collar employees. A new list removing the white collar employees was provided by the Borough and forwarded to Local 196.

During an investigatory conference on August 8, 2022, the assigned staff agent repeated which groups were not included on the list, and counsel for Local 196 indicated that it should be acceptable to Local 196. The staff agent confirmed that Local 196 had provided signed authorization cards from a majority of the employees on the list.

After the conference, the staff agent sent a draft stipulation of appropriate unit to be signed by the parties so that they could stipulate in writing that the described unit was appropriate. This description included all blue collar employees but explicitly excluded the groups that the parties appeared to have agreed to exclude, as well as statutory exclusions, such as "supervisor" within the meaning of the New Jersey

Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq.

(Act). The staff agent asked to be advised of any reasons for a delayed receipt of a mutually signed stipulation beyond August 9, 2022.

This original version of the stipulation was signed by Local 196 but the Borough requested changes. Specifically, the Borough wanted to change the exclusion of public works forepeople to "foremen"; to also exclude public works superintendents; and to limit the inclusion of blue collar employees to "public works" blue collar employees. A new version of the stipulation with these proposed changes was sent to Local 196.

Local 196 objected to adding the prefatory and limiting words, "public works" to "blue collar employees" because it believed that that refinement would exclude certain other sought blue collar employees, such as custodians. Counsel for Local 196 advised that the other proposed changes to the stipulation were acceptable. The Borough explained that although custodians were classified under "public works" it would agree to a stipulation that did not include the words, "public works" preceding "blue collar employees."

On August 9, 2022, the staff agent forwarded a new draft stipulation to be signed by the parties. It was signed by the Borough the same day. On August 10, 2022, counsel for Local 196 advised of an issue recently brought to her attention; that the

list did not include some names of employees that Local 196 was seeking to represent. The Borough didn't include those employee names on the list because they are assertedly "foremen".

Local 196 confirmed that it is seeking to represent foremen, also contending that they are not statutory supervisors. Accordingly, Local 196 requests that "foremen" be removed from the list of exclusions and that the continuing exclusion of "supervisors within the meaning of the Act" suffices, with the question as to whether the foremen actually perform duties that would exclude them as supervisors under the Act to be resolved by the parties later either voluntarily or through a subsequent clarification of unit petition.

Another version of the stipulation was forwarded to the Borough with these proposed changes on August 11, 2022. Counsel for the Borough protested that Local 196 had already "agreed" to exclude the foremen, which the Borough believes are statutory supervisors. Counsel for the Borough further argued that given the confusion as to which titles were included, the inclusionary language of the stipulation should list specific titles rather than broadly refer to blue collar employees.

Local 196 objects to defining the unit by listing as "included" specific titles and reiterates that the exclusion of statutory supervisors will suffice to exclude the foremen, if they are statutory supervisors.

On August 12, 2022, the staff agent requested written position statements (with any factual assertions by way of certification). The staff agent asked the parties to address (1) whether a unit description that does not reference foremen but excludes statutory supervisors is appropriate and (2) whether the supervisory status of foremen must be resolved in this representation matter before a certification of majority status for Local 196's sought blue collar unit can be issued. The staff agent advised the parties that Local 196 had provided authorization cards from a majority of employees whether foremen were counted as part of the unit or not.

On August 17, 2022, both parties filed letters, but neither submitted certifications. The Borough argues (1) that it previously sought to have foremen specifically excluded in the unit description and that counsel for Local 196 "consented" to this exclusion and the employee list provided by the Borough without objections during the conference; (2) that counsel for Local 196 "concurred" in a telephone call with Borough counsel that foremen should be excluded after the allegedly supervisory duties of the foremen were explained by Borough counsel; (3) that four days after the stipulation was "ordered" by the staff agent to be executed, counsel for Local 196 now refused to consent to the exclusion of foremen or provide a reason for the refusal; (4) that not specifically including foremen in the list of excluded

titles will cause negotiation delays because the Borough will not know which titles are included or excluded and will not be able to negotiate economic and non-economic terms of employment for the vast majority of the unit (19 employees) because the disputed supervisory status of the two foremen will have a major effect on overall terms of the contract; and (5) that the specific titles to be included in the unit should be set forth in the unit description and not be open-ended because Local 196 allegedly caused an employee from the list provided by the Borough in the title of recycling guard to resign after Local 196 allegedly told him he was not part of the unit, and the open-ended draft stipulation has created "havoc" on the operations of the department of public works.^{1/}

Local 196 argues (1) that the unit description provided in the last draft stipulation (excluding statutory supervisors but not explicitly excluding foremen) is appropriate and corresponds to the Commission's preference for broad-based units and reluctance to form units along occupational or departmental lines; (2) that Local 196 has met the requirements for certification by providing valid authorization cards from a majority of employees in the sought blue-collar unit regardless

^{1/} Specifically, the Borough would limit the inclusionary language of the unit description to the titles of laborer, custodian, mechanic, assistant foremen, part-time fire custodian, and part-time EMS custodian.

of whether foremen are counted or not, based on their disputed supervisory status; and (3) that the dispute over the supervisory status of the foremen can be resolved voluntarily by the parties after a Certification of Representative issues or through the filing of a clarification of unit petition pursuant to N.J.A.C. 19:11-1.5(b) (3) (iii), which provides that reasons for proposed clarification may include a dispute over a title in a newly certified negotiations unit.

ANALYSIS

Our Rules contemplate that clarification of unit petitions may be filed to resolve disputes over titles in newly certified units. N.J.A.C. 19:11-1.5(b) (3) (iii). In our efforts to resolve questions concerning representation expeditiously, we can determine majority status regardless of the unit placement status of a subset of employees, we have done so and deferred the unit placement question for voluntarily resolution by the parties or through a subsequent clarification of unit petition, if necessary. Holmdel Tp. Bd. of Ed., D.R. No. 2020-12, 46 NJPER 285 (¶70 2019) ("Whether using COPA's or the Board's count of non-confidential employees, COPA has submitted valid authorization cards from a majority. Any determination of confidential status could be determined by a later clarification of unit case."); Livingston Library, D.R. No. 2004-15, 30 NJPER 123 (¶45 2004) (directing election where eligibility of 1 of 5

employees was in dispute and explaining that resolution of disputed ballots would occur in the representation case only if outcome determinative; if not determinative, a certification could issue with the status disputes resolved in a later clarification of unit case).

I need not, in this representation proceeding, opine on what constitutes good faith negotiations regarding the unit while the supervisory status of the foremen remains disputed.

The unit sought by Local 196, described by the last unsigned draft stipulations is:

Included: All blue-collar employees regularly employed by the Borough of Rumson.

Excluded: Managerial executives, confidential employees, and supervisors within the meaning of the Act; craft employees, professional employees, casual employees, and police, including special police officers; white collar employees, subcode officials, deputy tax collectors, court administrators, crossing guards, dispatchers, seasonal summer camp employees, and public works superintendents; and all other employees of the Borough of Rumson.

Units described by broad reference to blue collar employees are appropriate.^{2/} The broad-based unit sought by Local 196 is more appropriate than the unit suggested by the Borough that would be limited to specific titles; the Commission has a preference for broadly described units and a reluctance to form

^{2/} Park Ridge Boro., D.R. No. 80-42, 20 NJPER 43 (¶25013 1980).

them along occupational lines. Holmdel Tp. Bd. of Ed.

I find that Local 196 has met the requirements for certification as the majority representative of its appropriate and sought-after unit. I confirm that Local 196 has provided valid authorization cards from a majority of the employees on the list provided by the Borough regardless of whether the foremen are counted or not. The Borough has not challenged the validity of the cards.

I do not find that Local 196 consented to a unit description and list that excludes foremen. The purpose of the draft stipulation of appropriate unit is to confirm in writing by way of signatures from authorized representatives that the described unit is not contested as inappropriate. The parties never signed matching copies of a stipulation draft, and Local 196 subsequently made it clear that it was not agreeing to the explicit exclusion of foremen. Similarly, I do not find as binding counsel for Local 196's alleged concurrence on a telephone call with Borough counsel that foremen are performing statutory supervisory duties. I make no findings in this representation case as to the duties of foremen.

Parties are not required to sign a stipulation of appropriate unit. A jointly signed stipulation indicates a voluntary and mutual understanding of an appropriately-described unit. The assigned staff agent did not "order" the stipulation

to be executed and had not set a deadline beyond which the unit description would be deemed uncontested before Local 196 objected to the explicit exclusion of foremen. The staff agent merely requested to be informed of any issues that would cause the certification not to be signed by August 9, 2022. Counsel for Local 196 indicated that she left a message for Borough counsel on August 10, 2022, regarding the Local 196's objection to excluding foremen. On August 11, 2022, the staff agent also relayed Local 196's objection to Borough counsel, who confirmed having already spoken with counsel for Local 196 regarding the issue. I thus do not find, as the Borough apparently claims, that Local 196 had not provided a reason for its refusal to sign a stipulation excluding foremen four days after August 9, 2022. I find no undue delay in Local 196's objections, and, as previously noted, Local 196 was not required to sign a stipulation with which it disagreed.

ORDER

I certify IFPTE Local 196, AFL-CIO, as the exclusive representative of the unit described above, based upon its authorization cards.^{3/}

/s/ Jonathan Roth
Jonathan Roth
Director of Representation

DATED: August 25, 2022
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 6, 2022.

^{3/} The formal certification is attached.