

D.R. NO. 91-35

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

In the Matter of

STATE OF NEW JERSEY
(DIVISION OF N.J. RACING COMMISSON),

Public Employer,

-and-

Docket No. RO-91-143

C.W.A., AFL-CIO,

Petitioner.

SYNOPSIS

The Director of Representation dismisses a petition brought by the CWA, AFL-CIO to represent certain veterinarians. Although the Director found the veterinarians are employees of the State of New Jersey, albeit their salaries are funded by the private race tracks, the petition was not timely filed.

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Appearances:

For the Public Employer
Robert J. DelTufo, Attorney General
(Michael L. Diller, Deputy Attorney General)

For the Petitioner
Joy Schulman, Staff Rep.

DECISION

On February 28, 1991, CWA Local 1034 filed a representation petition with the Public Employment Relations Commission in which it seeks to represent veterinarians employed by the New Jersey Racing Commission, a Division of the Department of Law and Public Safety of the State of New Jersey.

The State questions whether the Racing Commission is the employer of the veterinarians within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A et seq.

The Act at subsection 3(c) defines "employer" and "public employer" as follows:

(c) The term "employer" includes an employer and

any person acting, directly or indirectly, on behalf of or in the interest of an employer with the employer's knowledge or ratification, but a labor organization, or any officer or agent thereof, shall be considered an employer only with respect to individuals employed by such organization. This term shall include "public employers" and shall mean the State of New Jersey, or the several counties and municipalities thereof, or any other political subdivision of the State, or a school district, or any special district, or any authority, commission, or board, or any branch or agency of the public service.

N.J.S.A. 5:5-37 provides that the Racing Commission shall appoint a "... state veterinarian and such associate state veterinarians as the (Racing) Commission deems necessary ... to serve at the pleasure of the (Racing) Commission. The compensation of these officials shall be fixed by the (Racing) Commission and shall be paid weekly by the holder of a permit at whose horse race track the official shall serve..."

Since the State does not provide the funds for the veterinarians salaries, it questions whether it is the public employer.

In ascertaining employer status, the Commission looks to who controls the hiring, firing, work schedule, promotions, discipline, evaluations, vacations, hours of work and scheduling, and wage and benefits. That is, it looks to the control of labor relations. The Commission has routinely held the source of funding for salaries will not by itself determine who is the employer. See generally, County of Morris, P.E.R.C. No. 86-15, 11 NJPER 491 (¶16175 1985); Ocean County Prosecutor, D.R. No. 82-29, 8 NJPER 60

(¶13024 1981); Bonnie Bray Child Care Counselors Assn., D.U.P. No. 80-7, 5 NJPER 457 (¶10231 1979); Newark Housing Development and Rehabilitation, D.R. No. 80-2, 5 NJPER 328 (¶10175 1979); Bergen County Freeholders Bd. v. Bergen County Prosecutor, D.R. No. 78-34, 4 NJPER 104 (¶4047 1978), P.E.R.C. No. 78-77, 4 NJPER 220 (¶4110 1978), aff'd 172 N.J. Super 363 (App. Div. 1980); Mercer Freeholder Bd. and Mercer County Prosecutor, P.E.R.C. No. 78-77, 4 NJPER 220 (¶4110 1978), aff'd. 172 N.J. Super 411 (App. Div. 1980); Mercer County Superintendent of Elections, D.R. No. 78-37, 4 NJPER 147 (¶4069 1978), aff'd P.E.R.C. No. 78-78, 4 NJPER 221 (¶4111 1978); Passaic County Board of Chosen Freeholders, D.R. No. 78-29, 4 NJPER 8 (¶4006 1977); Cape May County Guidance Center, D.R. No. 78-19, 3 NJPER 350 (1977); and ARA Services, Inc., E.D. No. 76-31, 2 NJPER 112 (1976).

N.J.S.A. 5:5-37 vests authority in the Racing Commission to function as the employer of these veterinarians, the "permit holders" or race tracks only provide the funds for the veterinarians salaries as set by the Racing Commission. It is apparent that the Racing Commission has the control of labor relations and is the public employer of the veterinarians.

This inquiry does not end here, however. It is not disputed that the veterinarians are professional employees and have a community of interest with other state professional employees. Therefore, the veterinarians should be placed in the State-wide professional unit.

The appropriate time to bring a petition to add the veterinarians to the existing unit of professionals is controlled by N.J.A.C. 19:11-2.8(c)(1) which provides in relevant part:

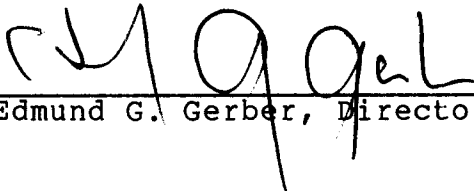
(c) During the period of an existing written agreement containing substantive terms and conditions of employment and having a term of three years or less, a petition for certification of public employee representative or a petition for decertification of public employee representative normally will not be considered timely filed unless:

1. In a case involving employees of the State of New Jersey, any agency thereof, or any State authority, commission or board, the petition is filed not less than 240 days and not more than 270 days before the expiration or renewal date of such agreement;

Accordingly, a separate unit of veterinarians is inappropriate and assuming CWA intended that its petition seeks to add the veterinarians to the existing professional unit, the petition is not timely filed.

Accordingly, the petition is dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: June 25, 1991
Trenton, New Jersey