

D.R. NO. 86-22

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

In the Matter of

BURLINGTON COUNTY BRIDGE  
COMMISSION,

Public Employer,

-and-

DOCKET NO. RO-86-94

I.F.P.T.E., LOCAL 194-A,  
AFL-CIO,

Petitioner.

Synopsis

The Director of Representation orders an election in a unit consisting of all part-time employees employed by the Burlington County Bridge Commission. The Bridge Commission refused to consent to the election unless "casual" employees were expressly excluded; although, the parties agreed that the Bridge Commission employed no "casual" employees within the meaning of that term. It appearing that the petitioned-for unit is appropriate, the Director concluded that an election should be conducted among the employees in order to determine their representational status. Excluding casual employees here, in the abstract, would serve no purpose.

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Appearances:

For the Public Employer  
Parker, McCay & Criscuolo, Esqs.  
(Ronald J. Ianoale, of counsel)

For the Petitioner  
Frank Forst, Secretary-Treasurer

DECISION AND DIRECTION OF ELECTION

On January 3, 1986, a Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission ("Commission") by Local 194-A, International Federation of Professional and Technical Engineers, AFL-CIO ("Local 194-A"), which is seeking to represent certain employees employed by the Burlington County Bridge Commission ("Bridge Commission"). By its Petition, which is supported by an adequate showing of interest, Local 194-A seeks to represent a collective negotiations unit consisting of all employees of the Bridge Commission who normally work less than an eight-hour day and five-day week.

On January 21, 1986, Commission staff attorney, Marc Stuart convened an informal investigatory conference. The parties were prepared to sign an Agreement for Consent Election; however, a dispute arose over one issue - the Bridge Commission sought to exclude "casual employees" from the unit description. Local 194-A refused to exclude casual employees from the unit description.

I have conducted an administrative investigation into the matters and allegations involved in this Petition. See N.J.A.C. 19:11-2.6. Based upon the administrative investigation, I find and determine the following:

1. The disposition of this matter is properly based upon the administrative investigation, inasmuch as the parties have not placed in dispute any substantial and material factual issues which may more appropriately be resolved after an evidentiary hearing, pursuant to N.J.A.C. 19:11-2.6(c).
2. The petitioned-for unit consists of approximately nine employees. They are not presently represented by any other employee representative. The petitioned-for employees constitute a residual unit of employees of the Bridge Commission. Neither party disputes the appropriateness of the petitioned-for unit.
3. The Bridge Commission does not assert that any of the nine employees who presently constitute the petitioned-for unit are

"casual employees". Local 194-A asserts that there are no casual employees among the employees in the petitioned-for unit. However, the Bridge Commission argues that it could seek to utilize casual employees in the future and that such employees are not appropriate for inclusion in any negotiations unit. Local 194-A asserts that it is statutorily incorrect to expressly exclude casual employees.

5. In correspondence dated March 25, 1986, I advised the parties that I was inclined to issue a decision directing that a secret ballot election be conducted among the petitioned-for employees. I reminded the parties of their obligation to proffer any additional statements of position. Neither party chose to submit any additional information.

The Commission has addressed the issue of the appropriateness of units of employees who work less than full-time and has concluded that regular part-time employees are entitled to organize and collectively negotiate with their public employer. Thus, employees, although part-time, are entitled to rights under the Act so long as they meet the requisite continuity and regularity of employment tests enunciated by the Commission. See, Bridgewater-Raritan, D.R. No. 79-12, 4 NJPER 444 (¶4201 1978); In re Rutgers University, E.D. No. 76-35, 2 NJPER 176, aff'd P.E.R.C. No. 76-49, 2 NJPER 229 (1976), D.R. No. 77-5, 3 NJPER 12 (1976) (dismissed election objections), aff'd App. Div. Docket No. A-1652-76 (1977), certif. den. 76 N.J. 243 (1978); cf. In re Somerset Cty. College, D.R. 82-24, 8 NJPER 6 (¶13003 1981), aff'd

P.E.R.C. No. 82-68, 8 NJPER 106 (¶13043 1982), rev'd and rem'd. App. Div. Docket No. A-3629-81T2 (5/11/83); In re Borough of Avalon, H.E. No. 79-30, 5 NJPER 71 (¶10044 1979); In re State of New Jersey, E.D. No. 67, 1 NJPER 2 (1975).

The NLRB has identified "casual" employees as those lacking the necessary regularity and continuity of employment to be represented in a collective negotiations unit. See American Rice Growers Corp. Assn., 115 NLRB 275, 37 LRRM 1295 (1956), in which the Board distinguished between "casual" employees, and "seasonal" employees, the latter group possessing a sufficient regularity and continuity of employment to be represented, for the purpose of collective negotiations, by an employee organization.<sup>1/</sup>

There is no express statutory prohibition against the inclusion of casual employees from collective negotiation units. The Commission has however, on a case-by-case basis, fashioned tests to determine whether a certain class of employees have the requisite regularity and continuity of employment, and where such tests have not been met, employees have been excluded from negotiations units. See Rutgers, supra. Here, however, there are no employees whose regularity and continuity of employment are in dispute. One cannot, in the abstract, create a test for casual employees that can satisfy every employment contingency. Rather one must compare an employees

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<sup>1/</sup> See Lullo v. Int'l Assn. of Firefighters, Local 1066, 55 N.J. 409 (1970).

history against the definition to establish a meaningful test. Excluding casuals here in the abstract would serve no purpose.


Accordingly, I direct that a mail ballot election be conducted among the employees described above, pursuant to N.J.S.A. 34:13A-2.6(b)(3). Those eligible to vote are all part-time employees employed by the Burlington County Bridge Commission who were employed during the payroll period immediately preceding the date of this decision, including employees who did not work during that period because they were ill, on vacation, temporarily laid off, or in military service. 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 are ineligible to vote. All full-time employees, managerial executives, confidential employees, craft employees, professional employees, police employees, fire employees, supervisors within the meaning of the Act and all other employees are excluded from voting in this election.

I direct the public employer to simultaneously file with me and with the petitioner, an eligibility list consisting of an alphabetical listing of the names of all eligible voters together with their last known mailing addresses and job titles, pursuant to N.J.A.C. 19:11-9.6. The public employer shall also file with me an accompanying proof of service. I must receive the eligibility list no later than ten (10) days prior to the date of the mailing of the ballots. I shall not grant an extension of time within which to

file the eligibility list except in extraordinary circumstances. Ballots shall be mailed by the Commission to the eligible voters on May 29, 1986. Ballots must be received by the Commission by 9 a.m. on June 19, 1986. Ballots shall be counted by the Commission at 10 a.m. on June 19, 1986. Those eligible to vote shall vote on whether they wish to be represented for the purpose of collective negotiations by Local 194-A, I.F.P.T.E., AFL-CIO, or no employee organization.

The exclusive representative, if any, shall be determined by the majority of valid ballots cast by the employees voting in the election. The election shall be conducted in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION



Edmund G. Gerber, Director

DATED: May 5, 1986  
Trenton, New Jersey