

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

In the Matter of

CITY OF ORANGE TOWNSHIP,

Public Employer,

-and-

COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO,

DOCKET NO. RO-85-28

Petitioner,

-and-

ORANGE MUNICIPAL EMPLOYEES BENEVOLENT
ASSOCIATION and ESSEX COUNCIL #1, NEW
JERSEY CIVIL SERVICE ASSOCIATION,

Intervenor.

SYNOPSIS

The Commission Designee, in direction an election among non-supervisory employees of the City of Orange Township, finds that neither an alleged no-raid agreement between the parties, nor a recent affiliation vote should bar or delay the processing of the petition to an election. In dismissing unsupported allegations concerning the Petitioner's showing of interest, the Commission Designee notes that the representational desires of employees are best measured in a secret ballot election.

Additionally, claims that certain titles are not appropriate for inclusion in the unit do not present a substantial factual dispute which would warrant the convening of a hearing at this time, when an overwhelming majority of the employees are undisputedly included in the unit. The parties may challenge the ballots of those employees in disputed titles at the election.

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Appearances:

For the Public Employer
Mulcahy & Wherry
(Gary Ruesch, of counsel)

For the Petitioner
Bernice Krawcyk, Representative

For the Intervenor
Fox & Fox
(Frederic M. Knapp, of counsel)

DECISION AND DIRECTION OF ELECTION

On September 10, 1984, a timely Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission ("Commission") by the Communications Workers of America, AFL-CIO ("C.W.A."). In its petition, the petitioner, who supplied an adequate showing of interest, seeks to represent all municipal employees employed by the City of Orange Township ("Township") currently represented by the Orange Municipal Employees Benevolent Association

and Essex Council #1, New Jersey Civil Service Association, joint representatives ("O.M.E.B.A./Essex Council #1"), excluding supervisors and managerial executives within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq. (the "Act").

The Township has taken the position that it is not opposed to a secret ballot election in this matter, provided that certain titles are excluded from the unit on the basis of their alleged managerial, confidential or supervisory status.

O.M.E.B.A./Essex Council #1, as joint exclusive representatives of the petitioned-for unit, have intervened in this matter, pursuant to N.J.A.C. 19:11-2.7, based on their current collective negotiations agreement with the Township for the period covering January 1, 1983 through December 31, 1984. O.M.E.B.A./Essex Council #1 object to a secret ballot election in this matter, and request that formal hearings be conducted concerning their claims.

The Administrator of Representation Proceedings has caused an administrative investigation to be conducted into the matters and allegations involved in the petition in order to determine the facts. Based upon the administrative investigation, I find and determine as follows:

1. The disposition of this matter is properly based upon the administrative investigation herein, it appearing that no substantial and material factual issues exist which may more appropriately be resolved after an evidentiary hearing. Pursuant to N.J.A.C. 19:11-2.6(b), there is no necessity for a hearing where, as here, no substantial and material factual issues have been placed in dispute by the parties.

2. The City of Orange Township is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq. is subject to its provisions and is the employer of the employees who are the subject of this petition.

3. The Communications Workers of America, AFL-CIO, and the Orange Municipal Employees Benevolent Association/Essex Council #1, New Jersey Civil Service Association are employee representatives within the meaning of the Act and are subject to its provisions.

4. O.M.E.B.A./Essex Council #1 are joint exclusive negotiations representatives of the petitioned-for employees, and are jointly parties to an agreement with the Township covering a negotiations unit described in the recognition clause of the current agreement as:

...administrative, clerical and maintenance employees, including school crossing guards, and meter maids, but excluding craft (skilled trades) employees, administrative employees in directorships, and police and firemen.

5. At an informal conference conducted by the assigned staff agent, the Township raised a question with regard to the appropriateness of including certain titles in the unit. All parties in this matter agreed that the following titles are excluded from the unit on the basis of their managerial, confidential or supervisory status:

Director of Public Works/Municipal Engineer
Public Works Superintendent
Superintendent of Parks & Public Property
Street Superintendent
Garage Superintendent
Chief Water Treatment Plant Operator
Director of Building Inspections and Code Enforcement
Planning Director
Court Administrator
Administrative Secretary - Department of Public Works

Affirmative Action-Personnel Officer
 Principal Personnel Clerk
 Principal Clerk/Secretary to Business Administrator
 Administrative Secretary - City Council
 Administrative Secretary - Police Department
 Administrative Secretary - Fire Department
 Accountant
 Drug Abuse Coordinator
 Senior Citizen Coordinator
 Director - Community Center
 Municipal Clerk
 All Administrative Secretaries not specifically enumerated herein.

The Township also contended that certain other titles might fall within one or more of the statutorily exempt categories. The Township objected to the continued inclusion in the unit of the following titles (without agreement to said exclusion by the other parties):

Assistant Municipal Engineer
 Water Meter Foreman
 Sewer Foreman
 Water Foreman
 Street Foreman
 Meter & Billing Supervisor
 Public Health Nurse Supervisor
 Registrar of Vital Statistics/Administrative Clerk
 Chief Sanitary Officer
 Recreation Supervisor
 Social Casework Supervisor
 City Purchaser

Additionally, at the conference, the parties reserved their rights to propose additional titles for exclusion after review of the employer's eligibility list.

6. O.M.E.B.A./Essex Council #1 object to a secret ballot election in this matter and allege as the basis for their objections, the following: (a) fraudulent misrepresentations were made to individuals who signed authorization cards for C.W.A.; (b) there is a no-raid agreement between C.W.A. and the subordinate councils of the State Civil Service Association; (c) C.W.A. has attempted to have the O.M.E.B.A. affiliate with it; (d) there were certain irregularities in voting

procedures during an election of officers of O.M.E.B.A.: (e) certain employees represented themselves as spokespersons or officers of O.M.E.B.A.: and (f) O.M.E.B.A./Essex Council #1 has indicated that 13 of the titles petitioned for herein (in addition to those listed above) should be excluded from the unit.

The issues raised herein will be addressed seriatum. First, N.J.A.C. 19:11-1.2(a)(8) requires that:

"...Petitions for certification of public employee representative shall be accompanied by a showing of interest as defined in N.J.A.C. 19:10-1.1(a)(25) of not less than thirty (30) percent of the employees in the unit alleged to be appropriate."

N.J.A.C. 19:10-1.1 defines showing of interest as:

"...a designated percentage of public employees in an allegedly appropriate negotiations unit or a negotiations unit determined to be appropriate, who are members of an employee organization or have designated it as their exclusive negotiations representative... When requesting certification, such designations shall consist of authorization cards or petitions, signed and dated by employees, normally within six months of the filing of the petitions, authorizing the employee organization to represent such employees for the purpose of collective negotiations..."

In the instant matter, the authorization and designation cards submitted with the petition contain clear language indicating that the signer "hereby designates the Communications Workers of America as my collective bargaining representative." Thus, it would appear clear that the cards indicate support for C.W.A., not a desire for an affiliation between O.M.E.B.A. and C.W.A. I am satisfied that the showing of interest is proper and sufficient on its face to support the petition.

As the Director of Representation stated in In re Jersey City Medical Center, D.R. 83-19, 8 NJPER 642 (¶ 13308 1982):

The submission of a showing of interest by a Petitioner is an administrative requirement for the purpose of ensuring that sufficient interest exists among employees on behalf of the petitioner to warrant the expenditure of Commission resources in processing the Petition. 1/ It is uniquely an administrative concern, and questions relating to its validity must be raised in a proper manner. Unless good cause exists to the contrary, challenges questioning the validity of a showing of interest are to be raised prior the informal conference and should be embodied in the challenging party's response to the Commission's initial request for positional statements.

Consistent with N.J.A.C. 19:11-2.1 2/ the undersigned engages in a separate review of claims regarding the propriety of the showing of interest. 3/ Documentary and other evidence in support of such claims shall be filed within 72 hours of the raising of the challenge.

In the instant matter, no evidence has been submitted in support of the claim that the showing of interest was collected through fraudulent means. I am satisfied that a question concerning the representational desires of the employees has been raised and that that question can best be answered by the conduct of a secret ballot election by this Commission.

With regard to the issue of a "no-raid" agreement between C.W.A. and the subordinate councils of the State Civil Service Associa-

1/ In re Woodbridge Tp. Bd. of Ed., D.R. No. 77-9, 3 NJPER 26 (1977).

2. N.J.A.C. 19:11-2.1 provides:

The showing of interest shall not be furnished to any of the parties. The director of representation shall determine the adequacy of the showing of interest and such decision shall not be subject to collateral attack.

3/ See In re City of Jersey City, E.D. No. 76-19, 2 NJPER 30 (1976).

tion, the Commission is not empowered to resolve such disputes. Further, I am aware that the Commission has, in certain instances, permitted a representation petition to be pended for a brief period in order to permit parties to seek resolution of the alleged breach of a no-raid agreement in another forum. ^{4/} It should be noted that here, in any event, a similar period of time to permit the pursuit of a resolution of the no-raid issue in another forum has already elapsed.

With regard to the claim that the petitioner should be barred from filing this petition because it has allegedly attempted to recently cause an affiliation between itself and O.M.E.B.A., I find no such prohibition contained within the Commission Rules. The Commission's policy is to provide for the expeditious processing of a representation petition to an election where there are no procedural bars to the processing of the petition. It would appear that the commencement of the Commission's election processes is the appropriate means through which an employee organization may seek to become the exclusive representative of specified employees. The election bar provision contained in the Commission's rules at Section 19.11-2.8(a) contemplates an election conducted by this Commission; it is applied in situations where employees have, within the past twelve (12) month period, opted in a PERC-conducted election for no representation and are thus barred from returning to the Commission to seek a second election for a period of 12 months.

With regard to objection (d) set forth above, I see no nexus between an internal O.M.E.B.A. election and the petition herein. Regarding objection (3), (confusion among unit employees concerning the

^{4/} See, In re State of New Jersey, P.E.R.C. 81-94, 7 NJPER 105 (¶ 12044 1981), mot for recon den, P.E.R.C. No. 81-95, 7 NJPER 133 (¶ 12056 1981), affmd App. Div. Nos. A-3275-80T2 and A-4164-80T3 (11/10/82).

identity of O.M.E.B.A. spokespersons), such a contention would appear, at least in part, to be an internal problem of O.M.E.B.A. Further, such a contention does not appear to be a sufficient basis upon which to block (or delay) an election in this matter.

O.M.E.B.A./Council #1 and the Township are each raising objections to the inclusion of certain titles in the petitioned-for unit. However, it appears that even without counting the employees in the disputed titles, there remains a substantial group of employees whose unit eligibility is not in dispute. Accordingly, the purposes of the Act would best be effectuated if an expeditious election were provided, wherein the parties may challenge the ballots of those employees who are alleged to be statutory inappropriate for continued inclusion in the unit.

In view of the foregoing, I find that a question concerning representation exists, that the issues raised herein are not of a substantial nature, therefore, the matter is appropriate for the conduct of an election in the collective negotiations unit of: all non-supervisory municipal employees, including administrative, clerical and maintenance employees, school crossing guards and meter maids, but excluding craft employees, police, firemen, administrative employees in directorships, managerial employees, confidential employees, and supervisors within the meaning of the Act and excluding Director of Public Works/Municipal Engineer, Public Works Superintendent, Superintendent of Parks & Public Property, Street Superintendent, Garage Superintendent, Chief Water Treatment Plant Operator, Director of Building Inspections and Code Enforcement, Planning Director, Court Administrator, Administrative Secretary - Department of Public Works,

Affirmative Action-Personnel Officer, Principal Personnel Clerk, Principal Clerk/Secretary to Business Administrator, Administrative Secretary - City Council, Administrative Secretary - Police Department, Administrative Secretary - Fire Department, Accountant, Drug Abuse Coordinator, Senior Citizen Coordinator, Director - Community Center, Municipal Clerk, All Administrative Secretaries not specifically enumerated herein.

Pursuant to N.J.A.C. 19:11-2.6(b)(3), I direct that an election be conducted in the above-described unit of employees. N.J.S.A. 34:13A-6(d). The election shall be conducted no later than thirty (30) days from the date set forth below.

Those eligible to vote are the employees set forth above who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation, or temporarily laid off, including those in military service. Employees must appear in person at the polls in order to be eligible to vote. 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.

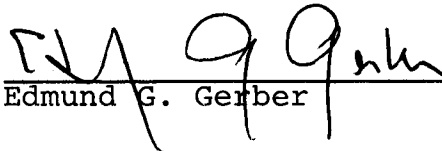
Pursuant to N.J.A.C. 19:11-9.6, the Public Employer is directed to file with me and with the employee organizations, an eligibility list consisting of an alphabetical listing of the names of all eligible voters, including employees voting subject to challenge, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by me no later than ten (10) days prior to the date of the election. A copy

of the eligibility list shall be simultaneously filed with the employee organizations with statement of service to me. I shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

Those eligible to vote shall vote on whether or not they desire to be represented for the purpose of collective negotiations by the Communications Workers of America, AFL-CIO, or by Orange Municipal Employees Benevolent Association/Essex Council #1, New Jersey Civil Service Association or neither.

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 provisions of the Commission's rules.

BY ORDER OF COMMISSION DESIGNEE


Edmund G. Gerber

DATED: December 6, 1984
Trenton, New Jersey