

D.R. NO. 91-15

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

In the Matter of

BOROUGH OF FAIR LAWN,

Public Employer,

-and-

Docket No. RO-91-59

THE DEPARTMENT HEADS ASSOCIATION
OF THE BOROUGH OF FAIR LAWN,

Petitioner.

SYNOPSIS

The Director of Representation directs a representation election among all professional and non-professional department heads employed by the Borough of Fair Lawn where the employer has refused to consent to an election. An election is also directed among the professional employees to determine whether or not they wish to be included in a unit with non-professional employees.

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Appearances:

For the Public Employer
DeMaria, Ellis, Hunt & Salsberg, attorneys
(Richard H. Bauch, of counsel)

For the Petitioner
Loccke & Correia, attorneys
(Michael Rappa, of counsel)

DECISION AND DIRECTION OF ELECTION

On October 2, 1990, the Department Heads Association of the Borough of Fair Lawn ("Association") filed a Petition for Certification of Public Employee Representative with the Public Employment Relations Commission ("Commission"). The petition was amended on October 9, 1990. The Association seeks to represent a unit of nine professional and non-professional department heads including the Chief Health Officer, Borough Engineer, Superintendent of the Department of Public Works, Director of Human Services, Tax Collector, Tax Assessor, Superintendent of the Department of Recreation, Borough Treasurer and Borough Clerk employed by the Borough of Fair Lawn ("Borough") and excluding all other Borough of Fair Lawn employees.

The Borough has refused to consent to an election.

It appears that there are no factual issues in dispute. The petitioned-for employees are unrepresented. The petition is supported by an adequate showing of interest. The Borough has set forth no facts indicating that the unit is in any manner inappropriate or that an election should not be conducted. Thus, there appears to be no basis to deny the petitioned-for employees the representation rights guaranteed to them under the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.3. See Stone Harbor, D.R. No. 89-5, 14 NJPER 625 (¶19261 1988); Essex Cty. Welfare, D.R. No. 88-13, 13 NJPER 801 (¶18305 1987); Winslow Tp., D.R. No. 87-8, 12 NJPER 784 (¶17298 1986).

The parties have agreed that the Borough Treasurer is a managerial executive and that the Borough Clerk is a confidential employee. As such, they are appropriately excluded from any negotiations unit. The parties have also agreed that the Borough Engineer and the Chief Health Officer are professional employees.

Accordingly, we direct that an election be conducted in a unit comprised as follows:

Included: All professional and non-professional department heads including the Chief Health Officer, Borough Engineer, Superintendent of the Department of Public Works, Director of Human Services, Tax Collector, Tax Assessor and Superintendent of the Department of Recreation employed by the Borough of Fair Lawn.

Excluded: All managerial executives, confidential employees, police, craft employees, Borough Treasurer, Borough Clerk and all other employees employed by the Borough of Fair Lawn.

For purposes of this election, two voting groups are established:

Voting Unit 1: All non-professional department heads including Superintendent of the Department of Public Works, Director of Human Services, Tax Collector, Tax Assessor, Superintendent of the Department of Recreation employed by the Borough of Fair Lawn excluding all professional employees, managerial executives, confidential employees, police, craft employees, Borough Treasurer, Borough Clerk and all other employees employed by the Borough of Fair Lawn.

Voting Unit 2: All professional department heads including Chief Health Officer and Borough Engineer employed by the Borough of Fair Lawn excluding all non-professional department heads, managerial executives, confidential employees, police, craft employees, Borough Treasurer, Borough Clerk and all other employees employed by the Borough of Fair Lawn.

A secret ballot election shall be conducted among the eligible employees in the two voting groups described above.

Professional employees (Voting Unit 2) shall vote on whether they wish to be included in a unit with non-professional employees (Voting Unit 1). Professional employees and non-professional employees shall vote on whether they wish to be represented for purposes of collective negotiations by the Department Heads Association of the Borough of Fair Lawn. If a majority of the voting professional employees (Voting Unit 2) votes

for inclusion in a unit with non-professional employees (Voting Unit 1), then the ballots of the professional employees shall be tallied together with the ballots of the non-professional employees and an appropriate certification shall issue covering both Voting Units 1 and 2 together. If a majority of the voting professional employees (Voting Unit 2) does not vote for inclusion in a unit with non-professional employees (Voting Unit 1), then the ballots of the professional employees shall be counted separately from those of the non-professional employees and appropriate, separate certifications shall issue for each voting unit.

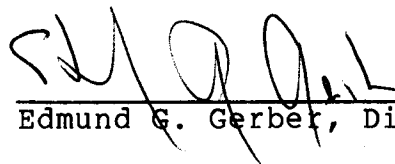
The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, including those in the 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 us an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the units, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be

received by us no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously provided to the employee organization with a statement of service filed with us. We shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

The exclusive representative, if any, shall be determined by a majority of the valid votes cast 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: December 12, 1990
Trenton, New Jersey