

D.R. NO. 2003-3

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

In the Matter of

BOROUGH OF BOGOTA,

Public Employer,

-and-

Docket No. RO-2002-82

LOCAL 108 RWDSU, UFCW, AFL-CIO,

Petitioner.

**SYNOPSIS**

The Director of Representation orders an election among a unit of all crossing guards. The Employer had refused to consent to an election, stating that it had concerns about the validity of the showing of interest supporting the representation petition. The Director found that the Employer's opposition to the petition was unsupported by any specific reasons related to the showing of interest, and did not constitute a sufficient basis to deny employees representational rights under the Act.

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Appearances:

For the Public Employer  
Contant, Atkins, Rogers, Fede & Hills, attorneys  
(Andrew T. Fede, of counsel)

For the Petitioner  
Michael Mesa, organizer

**DECISION AND DIRECTION OF ELECTION**

On April 29, 2002, Local 108 RWDSU, UFCW, AFL-CIO (Local 108) filed a Petition for Certification with the Public Employment Relations Commission (Commission) seeking to represent a unit of all crossing guards employed by the Borough of Bogota (Borough). The Borough objects to the petition. It claims it has concerns about the validity of Local 108's showing of interest supporting its petition.

An administrative investigation was conducted to determine the facts, in accordance with N.J.A.C. 19:11-2.2(a). Based upon the investigation, the following facts appear:

Local 108 filed a valid, timely representation petition with the Commission, seeking to represent the Borough's crossing guards, who are currently unrepresented. Accompanying the petition was a showing of interest signed by employees. In accordance with Commission Rules, I have reviewed the showing for its contents, the statements set forth therein and the percentage of employees who have signed it. I have found the showing of interest to be sufficient to warrant the processing of the petition. N.J.A.C. 19:11-2.1.1<sup>1/</sup>

On May 14, 2002, an investigatory conference was conducted by a Commission staff agent. There are approximately 12 regularly employed crossing guards and four substitute crossing guards in the proposed unit. Local 108 does not seek to represent substitute crossing guards as the parties agree they are not regularly employed. The Borough refused to consent to a secret ballot election to be conducted among the employees. Processing of the petition was held in abeyance while the parties attempted to pursue a voluntary resolution of the question concerning representation with the assistance of the staff agent. The Association now requests that an election be directed.

#### ANALYSIS

N.J.A.C. 19:11-1.2(a)(9) requires that:

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<sup>1/</sup> N.J.A.C. 19:11-2.1 is recited below.

A petition 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 of not less than 30 percent of the employees in the unit alleged to be appropriate. . . .

N.J.A.C. 19:10-1.1 defines a 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 written authorization cards or petitions, signed and dated by employees, normally within six months of the filing of the petition, authorizing the employee organization to represent such employees for the purpose of collective negotiations. . . .

Further, 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. Neither the nature nor the size of the showing of interest shall be divulged.

In Jersey City Medical Center, D.R. No. 83-19, 8 NJPER 642

(¶13308 1982), the Director stated:

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. It is uniquely an administrative concern, and questions relating to its validity must be raised in a prompt manner.

Challenges to the validity of a showing of interest must ordinarily be raised prior to the informal conference and should be embodied in

the challenging party's response to the Commission's initial request for positional statements. Borough of Red Bank, D.R. No. 99-6, 25 NJPER 6 (¶30001 1998). Further, while we may investigate properly supported, timely presented claims of signature fraud, we do not permit litigation in a representation forum over whether authorization cards have been procured by misrepresentation or coercion, or whether cards are stale, or whether employees have since revoked their authorizations. Rather, the Commission has determined that the best method to discover employees' true choice as to which organization, if any, they wish to designate as their negotiations representative is by providing employees a secret ballot election. City of Newark, D.R. 2000-11, 26 NJPER 234 (¶31094 2000), rev. den. P.E.R.C. No. 2000-100, 26 NJPER 289 (¶31116 2000), aff'd 346 N.J. Super. 460 (App. Div. 2002) [28 NJPER 128 (¶33039 App. Div. 2002)]; Bor. of Harvey Cedars, D.R. No. 99-10, 25 NJPER 151 (¶30068 1999); Bor. of Red Bank, D.R. No. 99-6, 25 NJPER 6 (¶30001 1998); Essex Cty., D.R. No. 85-25, 11 NJPER 433 (¶16149 1985); City of Orange Tp., D.R. No. 85-10, 11 NJPER 33 (¶16018 1984); Woodbridge Tp. Bd. of Ed., D.R. No. 77-9, 3 NJPER 26 (1977).

Here, the Borough has not articulated any specific issue concerning the petition or its accompanying showing of interest. I am satisfied that the showing of interest supporting Local 108's petition conforms in every respect to the requirements of the Commission's Rules and that an election is appropriate to resolve the representation question.

The petitioned-for unit of all regularly employed crossing guards is prima facie appropriate. The Borough's opposition to the petition is not supported by any valid reasons and, therefore, does not constitute a sufficient basis to deny employees the representational rights guaranteed to them by the Act. See Tp. of Winslow, D.R. No. 87-8, 12 NJPER 784 (¶17298 1986); Bor. of Point Pleasant Beach, D.R. No. 87-4, 12 NJPER 657 (¶17247 1986); Tp. of Washington, D.R. No. 86-15, 12 NJPER 226 (¶17093 1986); Bor. of Interlaken, D.R. No. 86-9, 12 NJPER 57 (¶17022 1985). Accordingly, I direct a secret ballot election in the following appropriate unit:

Included: all regularly employed crossing guards employed by the Borough of Bogota

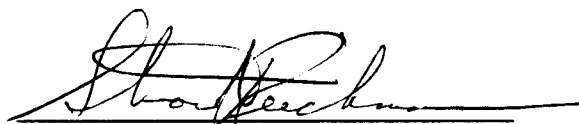
Excluded: Managerial executives, confidential employees and supervisors within the meaning of the Act; professionals, police and craft employees, casually employed crossing guards, and all other Borough employees.

The election shall commence no later than thirty (30) days from the date of this decision and shall be conducted by mail ballot. 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. 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. 19:11-10.1, 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



Stuart Reichman  
Director of Representation

DATED: August 23, 2002  
Trenton, New Jersey