

D.R. NO. 93-3

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

In the Matter of

NEWARK HOUSING AUTHORITY,

Public Employer,

-and-

Docket No. RO-93-7

SKILLED TRADES ASSOCIATION, INC.,

Petitioner,

-and-

ESSEX COUNTY BUILDING AND
CONSTRUCTION TRADES COUNCIL,

Intervenor.

SYNOPSIS

The Director of Representation directs a representation election among all skilled trades and maintenance personnel in the Maintenance Department employed by the Newark Housing Authority. The employer refused to consent to an election in an appropriate unit, but put forth no valid reasons for that refusal. Additionally, five employees who are alleged to be supervisors will vote by challenged ballot.

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Appearances:

For the Public Employer
Karimu Harvey, attorney

For the Petitioner
S.M. Bosco Associates
(Dr. Simon M. Bosco, consultant)

For the Intervenor
Raymond G. Heineman, attorney

DECISION AND DIRECTION OF ELECTION

On July 7, 1992, the Skilled Trades Association, Inc., filed a Petition for Certification of Public Employee Representative with the Public Employment Relations Commission seeking to represent all skilled trades maintenance personnel in the Maintenance Department employed by the Newark Housing Authority. The petitioned-for employees are represented by the Essex County Building and Construction Trades Council. The Council and the

Authority are parties to a collective negotiations agreement covering the period from November 1, 1989 through October 31, 1992. The Council intervened in this representation proceeding pursuant to N.J.A.C. 19:11-2.7.

The Association and the Council are willing to consent to a secret ballot election. The Authority objects to an election, although it has raised no formal reasons for its objection. Additionally, the Authority contends that five employees in the titles of supervising carpenter, supervising electrician, supervising mason, supervising plumber and supervising welder should be excluded from the existing unit because they are supervisory employees.

On August 20, 1992, a Commission staff agent conducted an investigatory conference in order to determine the relevant facts. Representatives of all parties attended. There are no substantial and material factual disputes warranting a hearing. N.J.A.C. 19:11.2.6. These facts appear. N.J.A.C. 19:11-2.1 et seq.

The Association filed a valid petition, supported by an adequate showing of interest, seeking to represent a collective negotiations unit comprised of the Authority's skilled trades maintenance personnel. This unit of employees is represented by the Council. The petition is timely filed pursuant to N.J.A.C. 19:11-2.8 and the Council intervened in the proceeding on July 21, 1992.

The parties concur that the 62-person collective negotiations unit petitioned-for is generally appropriate. At the conference, the parties specifically agreed that certain temporary trades employees, recognized in a "Craft-Outside" agreement between the Authority and the Council, would not be eligible for participation in the representation election.

However, the Authority would not consent to including in the unit five employees in the titles of supervising carpenter, supervising electrician, supervising mason, supervising plumber and supervising welder; it contends that they are supervisors within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. However, the parties agreed that the five disputed employees could vote by challenged ballot.^{1/}

Although no other issues are in dispute, the Authority still refuses to consent to an election. They have provided neither a factual nor a legal basis to support their refusal to agree to an election. Thus, there is no basis to deny the employees in the petitioned-for unit the representation rights guaranteed to them under the Act. N.J.S.A. 34:13A-5.3. See Bor. of Fair Lawn, D.R. No. 91-15, 17 NJPER 50 (¶22018 1990); Essex Cty. Div. of Welfare,

^{1/} Since the parties only disagree about the inclusion of five employees in an otherwise appropriate unit of 62, it is appropriate to conduct the election with the employees in the disputed positions voting subject to challenge. See Tp. of East Brunswick, D.R. No. 91-26, 17 NJPER 177 (¶22076 1991); Bor. of Leonia, P.E.R.C. No. 86-143, 12 NJPER 523 (¶17195 1986).

D.R. No. 88-13, 13 NJPER 801 (¶18305 1987); Tp. of Washington, D.R. No. 86-15, 12 NJPER 226 (¶17093 1986).

Accordingly, I find that the petitioned-for unit is appropriate for collective negotiations and I direct that an election be conducted among the employees in the petitioned-for unit, as follows:

Included: All skilled trades maintenance personnel in the Maintenance Department employed by the Newark Housing Authority.

Excluded: All managerial executives, confidential employees, police employees, supervisors within the meaning of the Act, professional employees, non-craft employees, employees covered under the Rehabilitation Department and Craft-Outside agreement, employees in other negotiations units and all other employees employed by the Newark Housing Authority.

The employees in the titles supervising carpenter, supervising electrician, supervising mason, supervising plumber and supervising welder shall vote by challenged ballot. The employees in the petitioned-for unit shall vote on whether they wish to be represented for purposes of collective negotiations by the Skilled Trades Association, Inc., No Representative, or the Essex County Building and Construction Trades Council.

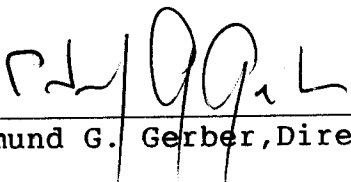
The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation 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 organizations 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: September 17, 1992
Trenton, New Jersey