

D.R. NO. 90-26

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

In the Matter of

TOWNSHIP OF WEST ORANGE,

Public Employer,

-and-

Docket No. RO-90-103

AFSCME, AFL-CIO,

Petitioner.

SYNOPSIS

The Director of Representation orders an election to be conducted among blue collar supervisory employees employed by the Township of West Orange Public Works Department. The Township and petitioner, West Orange DPW Supervisors, AFSCME, AFL-CIO, disagree about whether the Superintendent and Assistant Superintendent should be included in the unit. Without deciding the merits of this dispute the Director orders an election to be conducted; the two disputed positions may vote subject to challenge. Should the challenged ballots determine the outcome of the election, the Commission will conduct an investigation to determine the status of the challenged ballots. N.J.A.C. 19:11-9.2.

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Appearances:

For the Public Employer
Marvin Corwick, Business Administrator

For the Petitioner
Arthur C. Delo, Jr., Staff Rerepresentative

DECISION AND DIRECTION OF ELECTION

On December 26, 1989, the West Orange Department of Public Works Supervisors, AFSCME, AFL-CIO ("AFSCME") filed a Petition for Certification of Public Employee Representative with the Public Employment Relations Commission ("Commission") seeking to represent all blue-collar supervisors employed at the Township of West Orange ("Township") Department of Public Works. The petition was supported by an adequate showing of interest. N.J.A.C 19:11-1.2(a)8. These employees are presently unrepresented.

On January 25, 1990, a Commission staff agent conducted an informal investigatory conference. The Township will not consent to an election because it alleges that the Superintendent and Assistant Superintendent of Public Works are inappropriate for inclusion in

the proposed unit. The Township contends these employees supervise the other proposed unit members. The Township argues that the inclusion of these two positions in the proposed unit creates an impermissible conflict of interest and thus the positions should be excluded from the unit.

The investigation reveals the following:

The Township is a public employer, and AFSCME is a public employee representative within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1.1 et seq. ("Act")

AFSCME presently represents a unit of non-supervisory employees employed by the Township.

The parties agree that the unit sought by this petition is prima facie appropriate. The proposed unit contains fifteen employees, including the Superintendent and Assistant Superintendent of Public Works. However, the Township will not consent to the inclusion in the unit of the Superintendent and Assistant Superintendent of Public Works. The Township alleges that the Superintendent and Assistant Superintendent of Public Works have disciplined some of the employees in the proposed unit and control their work assignments. AFSCME alleges that such supervisory decisions are made by the Director of Public Works. The employer has not supplied us with evidence in support of its position.

ANALYSIS

The petition here seeks an appropriate unit. The parties disagree only about the inclusion of the Superintendent and

Assistant Superintendent. The information submitted is insufficient for me to reach any conclusions concerning the supervisory status of the disputed positions. It is the Commission's policy that when the number of employees in disputed titles is small relative to the number of eligible voters, we will conduct an election in the proposed unit with the understanding that the employees in the disputed positions may vote subject to challenge. In most circumstances, the votes of the disputed titles, here, the Superintendent and Assistant Superintendent, are not determinative.^{1/} Accordingly, I order that an election be conducted in the following unit:

Included: All blue collar supervisory employees employed by the Township of West Orange Department of Public Works.

Excluded: All non-supervisory employees, professional employees, craft employees, confidential employees, managerial executives, police employees and firefighters within the meaning of the Act.

The Superintendent and Assistant Superintendent shall vote subject to challenge.

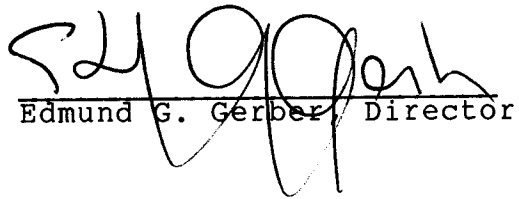
^{1/} Where the challenged ballots are not determinative of the election results, we can then (1) issue a certification of representative, if the union wins the election, and the parties can either voluntarily resolve the unit status of the disputed positions or file a unit clarification petition with the Commission; or (2) issue a certification of results if the union loses the election, in which case the status of the challenged ballots need not be resolved. Where the challenged ballots are determinative of the election results, we conduct an investigation to determine the status of the challenged ballots. N.J.A..C. 19:11-9.2.

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: April 11, 1990
Trenton, New Jersey