

D.R. NO. 91-10

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

In the Matter of

TOWNSHIP OF MIDDLETOWN,

Public Employer,

-and-

Docket No. RO-90-162

INTERNATIONAL UNION OF ELECTRONIC,
ELECTIRCAL, SALARIED, MACHINE AND
FURNITURE WORKERS, AFL-CIO,

Petitioner.

SYNOPSIS

The Director of Representation directs an election in a unit composed of all full and part-time hourly employees employed by the Township of Middletown Sewerage Authority. The Authority alleges that the Plant Foreman, Maintenance Foreman, Collection Foreman and Backhoe Operator are supervisory employees and should be excluded from the proposed unit. Where the number of employees in disputed titles is small relative to the total number of eligible voters and the proposed unit is appropriate, an election will be conducted with the understanding that the employees in the four disputed titles may vote subject to challenge.

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Appearances:

For the Public employer,
Francis J. Vernoia, attorney

For the Petitioner
Thomas J. Fagan, Int'l Rep.

DECISION AND DIRECTION OF ELECTION

On May 23, 1990, the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL-CIO ("IUE") filed a timely Petition for Certification of Public Employee Representative, supported by an adequate showing of interest, with the Public Employment Relations Commission ("Commission"). The IUE seeks to represent all full-time and part-time hourly employees employed by the Middletown Township Sewerage Authority ("Authority"). The petitioned-for employees are currently unrepresented. The Authority will not consent to an election. It

contends that four of the petitioned-for titles are supervisory and are inappropriate for inclusion in the proposed unit.^{1/}

On June 27, 1990, a Commission Staff Agent conducted an informal investigatory conference in order to determine the relevant facts. The disposition of the petition is properly based upon our administrative investigation. N.J.A.C. 19:11-2.2 and 2.6. These facts appear.

The parties agree that the proposed unit of 35 full-time and part-time employees sought by this petition is appropriate on its face. The Authority, however, will not consent to the inclusion in the unit of the Plant Foreman, Maintenance Foreman, Collection Foreman and Backhoe Operator. The Authority alleges that these employees are supervisory and should therefore be excluded from the proposed unit. N.J.S.A. 34:13A-5.3 and 6.

The parties disagree only about the inclusion of four employees in a proposed unit of 35. Where the number of employees in disputed titles is small relative to the total number of eligible voters in the unit and the unit sought is otherwise appropriate, we have conducted elections with the understanding that the employees in the disputed positions may vote subject to challenge. Bor. of Leonia, P.E.R.C. No. 86-143, 12 NJPER 523 (¶17195 1986); New Jersey Civil Service Association, D.R. No. 81-20, 7 NJPER 41, 45 (¶12019

^{1/} The IUE objected to the inclusion in the proposed unit of two employees, asserting that they work less than part-time. The IUE subsequently withdrew this objection.

1980); County of Morris Park Commisison, D.R. No. 80-17, 6 NJPER 37 (111019 1979); Twp. of North Brunswick, D.R. No. 78-4, 3 NJPER 260 (1977). If the challenged ballots are determinitive of the election results, post election mechanisms are available to resolve the challenges, including an investigation to determine the status of the challenged ballots. If the challenged ballots are not determinitive and assuming that a certification of representative issues, the parties may voluntarily resolve the status of the challenged employees or either party may file a petition for clarification of unit to determine the proper unit placement of challenged employees. Leonia.

Accordingly, as the petitioned-for unit is appropriate, we direct that an election be conducted to determine the representational desires of the petitioned-for employees in the unit described as follows:

Included: All full-time hourly employees and part-time hourly employees employed by the Township of Middletown Sewage Authority.

Excluded: All professional employees, craft employees, police employees, firefighters, confidential employees, managerial executives, supervisors within the meaning of the Act and all other employees of the Township of Middletown.

The Plant Foreman, Maintenance Foreman, Collection Foreman and Backhoe Operator may vote subject to the Commission's challenge ballot procedure.


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: September 13, 1990
Trenton, New Jersey