

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

In the Matter of

CITY OF ATLANTIC CITY,  
Public Employer,

-and-

ALLIANCE OF ATLANTIC CITY  
SUPERVISORY EMPLOYEES,  
Petitioner,

Docket No. RO-2012-022

-and-

GOVERNMENT WORKERS UNION,  
Intervenor.

SYNOPSIS

After conducting an administrative investigation, the Director orders a secret mail ballot election for a collective negotiations unit of supervisors employed by the City of Atlantic City (City), over the objections of the incumbent, Government Workers Union (GWU). The Alliance of Atlantic City Supervisory Employees (Alliance) filed a representation petition seeing to represent the supervisors unit, the GWU intervened, and objected to an election based on the GWU's State and federal trademark registration of the Alliance's name, an assertion that jurisdiction in the representation dispute was preempted by the courts due to the trademark issue, the Alliance's failure to list any other employee organizations on its representation petition, and to describe the petitioned-for unit correctly. The GWU also alleged that the employer failed to post the requisite Notice to Employees, and further that the employer had encouraged and supported the Alliance. The Alliance asserted that it was a bona fide labor organization, and requested an in-person election. The City consented to a secret mail ballot election.

Although the Commission does not have jurisdiction to enforce state or federal trademark registration or laws, the parties can pursue those right in an appropriate forum; however, those potential causes of action do not invalidate an otherwise appropriately and timely filed representation petition, nor do they warrant its dismissal or a delay in its processing. There is no legal reason why the Alliance's proffered unit description or the alleged failure to disclose very employee organization that represents City employees justifies dismissing the representation petition. The City certifies that it posted the Notice to Employees, and the GWU provided no facts suggesting that the Notice was not posted. There were no facts asserted which would support the allegation that the Alliance was an employer-dominated organization. Weighing all the factors to determine the appropriate election methodology, the Director denies the Alliance's request for an in-person election and finds that a secret mail ballot election is the most appropriate.

D.R. No. 2012-7

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Intervenor.

Appearances:

For the Public Employer, Ruderman & Glickman, P.C.,  
attorneys (Steven S. Glickman, of counsel)

For the Petitioner, O'Brien, Belland & Bushinsky, LLC,  
attorneys (Robert F. O'Brien, of counsel)

For the Intervenor, David Tucker, National President

DECISION AND DIRECTION OF ELECTION

On September 30, 2011, the Alliance of Atlantic City Supervisory Employees (Alliance) filed a representation petition seeking to represent a collective negotiations unit of about 122 supervisors currently represented by Government Workers Union (GWU), and employed by the City of Atlantic City (City). The City consents to a secret ballot election among the unit employees.

On October 4, 2011, GWU was provided a copy of the petition and invited to intervene. N.J.A.C. 19:11-2.7. No response was filed. GWU was advised that if it did not intervene by October 17, 2011, we would assume that it had no further interest in continuing to represent the petitioned-for unit, and its name would not appear on the ballot in any election. On October 14, 2011, GWU sought to intervene as the majority representative of the petitioned-for unit, based upon a collective negotiations agreement signed by the City and "United Workers Union Supervisors Council 10," extending from January 1, 2008 through December 31, 2011. The incumbent has not filed a Petition for Amendment of Certification seeking to change the name and/or affiliation of the certified representative. N.J.A.C. 19:1-1.6. Neither the City nor the petitioner disputes that GWU is the majority representative of the petitioned-for unit, despite the differing organizational names. For purposes of this decision, we accept GWU's request to intervene.

GWU objects to an election for several reasons, each of which shall be identified and discussed.

We have conducted an administrative investigation to determine the facts. N.J.A.C. 19:1-2.2. Disposition of the petition is properly based upon our administrative investigation. No substantial material facts are disputed. N.J.A.C. 19:11-2.2

and 2.6. Based upon the administrative investigation, I find the following facts:

On October 4, 2011, we issued Notices to Employees, advising that the Alliance filed a petition seeking an election. The City has certified that it posted the notices for the required ten-day period. On October 13, 2011, at our request, the City filed a list of the employees in the negotiations unit. We have checked the showing of interest cards submitted by the Alliance against the names provided by the City, and determined that the showing is sufficient to process the petition.

On October 21, 2011, a Commission staff agent conducted a conference among the parties for the purpose of reaching an agreement for a consent election. GWU refused to sign a consent agreement and for the first time raised objections to the election process.

On October 28, 2011, GWU provided a position statement and exhibits detailing its objection to the election. It contends that its representative, David Tucker, has ". . . legally registered and trademarked, Federally and under the laws of the State," the Alliance's name and, therefore, the Alliance cannot use it to process the petition without his permission, which he declines to provide. GWU further asserts that "[PERC] is legally preempted in jurisdiction of this dispute by the Superior Court." GWU also asserts that the Alliance "falsely" filled out the

petition when it did not list other employee organizations that represent City employees and inaccurately described the petitioned-for unit. It asserts that the City did not post the Notice to Employees as required under N.J.A.C. 19:11-2.4. Finally, GWU asserts that the City has "encouraged and supported" the Alliance to the degree that it is "an employer dominated and supported . . . labor representative."

The attached exhibits include: a "Certificate of Inc, (Non Profit)" from the New Jersey Department of the Treasury, Division of Revenue, registering the Alliance of Atlantic City Supervisory Employees on October 9, 2011, as a domestic non-profit corporation with Tucker as its registered agent; a notice from the Internal Revenue Service dated October 19, 2011, providing Alliance of Atlantic City Supervisory Employees/David Tucker an employer identification number for tax purposes; and a copy of a Special Civil Part Complaint filed in the Superior Court of New Jersey on October 20, 2011, asserting that Robert Preston, who signed the petition on behalf of the Alliance, had illegally ". . . filed legal papers with a government agency (Public Employment Relations Commission) under a business name [] owned by [Tucker]."

On November 4, 2011, the Alliance filed a reply, asserting that the Alliance is "a bonafide labor organization" with officers, bylaws, and other ongoing functions, including the

holding of meetings with members. On November 17, 2011, the Alliance requested that I order an in-person election in this matter, noting about 120 employees comprise the unit and that they work regular shifts.

#### ANALYSIS

N.J.S.A. 34:13A-5.3 gives public employees the right to organize and negotiate collectively. The Commission is charged with the responsibility of conducting secret ballot elections so that public employees may have an opportunity to select a majority representative. N.J.S.A. 34:13A-6(d); N.J.A.C. 19:11-10.3. Where there are no substantial material factual issues in dispute, I may find the appropriate negotiations unit and direct a secret ballot election among the employees. N.J.A.C. 19:11-2.6(c)(3).

GWU has raised several objections to an election. The Commission does not have jurisdiction to enforce Tucker's rights under state or federal registration or trademark laws. Accordingly, GWU and/or Tucker could pursue those rights in an appropriate forum. The described potential cause of action does not however, invalidate an otherwise appropriately and timely-filed representation petition, nor warrant either its dismissal or a delay in its processing.

I also disagree that the proffered unit description and Alliance's alleged failure to disclose every employee

organization that represents City employees justifies our dismissing the petition. GWU has asserted no legal reason explaining why either deficiency should halt the processing of the petition or the ordering of an election.

The City certifies that it posted the Notice to Employees. GWU provides no facts suggesting that the Notice was not posted, nor does it assert facts indicating that the Alliance is an "employer-dominated" organization. That claim could appropriately be raised in an unfair practice charge; no such charge has been filed. Accordingly, for the reasons set forth above, I dismiss all of GWU's objections.

I will next address the Alliance's request for an in-person election.

The Commission's mission is to conduct free and fair elections within a reasonable time and cost. City of Newark, D.R. No. 2007-1, 32 NJPER 262 (¶107 2006). When laboratory conditions for elections can be adequately met through the conduct of elections by mail, we will use that method, particularly when the financial and human resource costs to the Commission in conducting in-person elections are unjustified. Id. at 263. The Director weighs numerous factors to determine election methodology, including:

- (1) Scattering of voters due to job duties over wide geographic area;

- (2) Scattering of voters due to significantly varying work schedules preventing presence at common location at common time;
- (3) Whether a strike, lockout, or picketing is in progress;
- (4) Desires of all the parties;
- (5) Likely ability of voters to read and understand mail ballots;
- (6) Availability and accuracy of addresses for employees;
- (7) Efficient and economic use of Commission agents and resources;
- (8) Size of the unit;
- (9) Potential disruption to employers and employees by conducting in-person elections;
- (10) Security issues for in-person elections;
- (11) Employee access to telephone and/or internet connections. [Bergen Cty., D.R. No. 2003-9, 28 NJPER 463 (¶33170 2002)]

The Alliance seeks an in-person election, noting that the estimated 120 eligible voters work regular hours during regular workweeks. The number of employees and their work schedules comprise only two factors which are considered in ordering an election methodology. The parties have not provided any evidence that the City is unable to provide accurate addresses for employees or that employees will be unable to read and understand the ballot. See Essex Cty., D.R. 2010-14, 36 NJPER 99 (¶40 2010) (Director of Representation orders mail ballot election over petitioner's request for in-person election where incumbent



provided no documents or specific facts supporting assertion that employee addresses were inaccurate); NJ Transit, D.R. 2007-11, 33 NJPER 48 (¶19 2007) (Director exercises discretion under N.J.A.C. 19:11-10.3 to order mail ballot where parties preferred an on-site election; incumbent argued but did not support contention that reliable addresses were unavailable). No information has been provided about eligible voters' work locations. Although they may work regular hours, the eligible employees may not all regularly report to one work site. I believe that a mail ballot election will be efficient, cost effective, and create the least burden for the Commission and public employer resources. Hudson Cty., P.E.R.C. No. 2012-15, \_\_\_ NJPER \_\_\_ (¶\_\_\_\_). In light of the Commission's preference for mail ballot elections and the limited facts upon which Alliance bases its request, I deny the request for an in-person secret ballot election.

All parties agree upon the historical unit and the City has communicated its consent to a secret ballot election.

Accordingly, I issue the following:

ORDER

A mail ballot election is hereby directed among the employees in the following unit:

Included: All regularly employed supervisory employees in classified titles, including craft employees and professional employees employed by the City of Atlantic City.

Excluded: All managerial executives, confidential employees, and non-supervisors within the meaning of the Act; non-craft employees, police employees, casual employees, and all other employees employed by the City of Atlantic City.

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 who resigned or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date are ineligible to vote. Employees in the unit described above shall vote to determine the collective negotiating representative, if any, for the unit in which they are employed and will have the option to vote for Government Workers Union, no representative, or Alliance of Atlantic City Supervisory Employees. The election shall be conducted no later than thirty (30) days from the date of this decision.

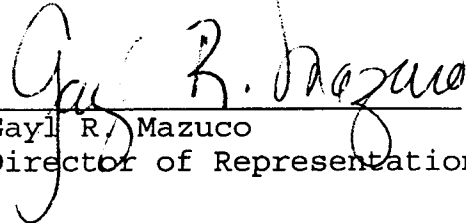
Pursuant to N.J.A.C. 19:11-10.1, the public employer is directed to file with us an eligibility list consisting of an alphabetical listing of the names of all eligible supervisors, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by us no later than December 8, 2011. A copy of the eligibility list shall be simultaneously provided to the Alliance

and GWU 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.

Ballots will be mailed by the Commission to eligible voters in the unit on December 22, 2011. Ballots will be returned to the Commission's Post Office Box by 9:00 a.m. on January 27, 2011. The ballots will be counted at 10:00 a.m. at the Commission's Trenton Office.

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

  
Gayl R. Mazuco  
Director of Representation

DATED: December 1, 2011  
Trenton, New Jersey

A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3.

Any request for review is due by December 12, 2011.