

D.R. NO. 94-20

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

In the Matter of

PARSIPPANY-TROY HILLS TOWNSHIP,

Public Employer,

-and-

Docket No. AC-93-3

PARSIPPANY-TROY HILLS BLUE COLLAR ASSOCIATION,
UNITED PAPERWORKERS INTERNATIONAL UNION,

Petitioner.

SYNOPSIS

The Director of Representation issues a supplemental decision affirming amendment of the Parsippany-Troy Hills Blue Collar Association's certification of representative to reflect affiliation with the United Paperworkers International Union. (D.R. No. 94-5, 19 NJPER 511 (¶24235 1994))

The Director finds that the Township's additional arguments were insufficient to overturn his determination that the affiliation vote provided adequate due process. The Director also finds that the Association's failure to provide an absentee ballot for an unavailable voter was insufficient to invalidate the affiliation election. Finally, the Director finds that the Township did not raise factual disputes sufficient to warrant a hearing.

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Appearances:

For the Public Employer
Courter, Kobert, Laufer, Purcell & Cohen, attorneys
(Fredric M. Knapp, of counsel)

For the Petitioner
Kroll & Gaechter, attorneys
(Raymond G. Heineman, Jr., of counsel)

SUPPLEMENTAL DECISION

On April 7, 1993, the Parsippany-Troy Hills Blue Collar Association, United Paperworkers International Union ("Association") filed a Petition for Amendment of Certification with the Public Employment Relations Commission. The Association requested that the Commission amend its certification to reflect affiliation with the United Paperworkers International Union ("UPIU"). On August 10, 1993, I issued a decision amending the Association's certification

to reflect that the name of the certified representative is the Parsippany-Troy Hills Blue Collar Association, United Paperworkers International Union. D.R. No. 94-5, 19 NJPER 511 (¶24235 1993).

On August 23, 1993, the Township filed a Request for Review with the Commission. The Township requested that the Commission set my decision aside and direct that a hearing be held on the Association's petition. In its request for review, the Township alleged that I relied, in part, on information submitted by the Association that had not been provided to the Township, specifically the April 20, 1993 affidavit of Association President John Devlin. The Township also stated that I did not address its request for a factual hearing or the Association's failure to provide an absentee ballot for the affiliation election.

On October 8, 1993, Commission Chairman James Mastriani transferred the matter back to me for a supplemental decision before the Commission considers the matter as a whole. The Chairman directed me to address the Township's response to Association submissions that it did not receive at the time of my initial decision, as well as whether an absentee ballot should have been provided for an unavailable voter in the affiliation election. The Chairman also requested that I address the Township's request for a hearing in this matter.

On November 11, 1993, the Association provided the Township with a redacted copy of the April 20, 1993 affidavit of its President John Devlin. The Township submitted its response to the

portions of the affidavit it reviewed and renewed its request for a copy of the entire document on December 21, 1993. After reviewing the entire affidavit in January, 1994, Counsel for the Township informed me by letter of March 7, 1994 that he declined to make any additional submissions. The Township's response to Devlin's affidavit is as follows.

Devlin's affidavit details the circumstances leading up to the amendment of certification decision and the conduct of the affiliation vote. The Township takes issue with Devlin's statement that he believed that the only way he could obtain a contract for the remainder of his unit was to agree to the removal of parks and forestry employees. The Township contends that the Association wanted the parks and forestry employees removed from its unit and that the Township agreed to do so by removing them from the recognition clause of the parties' agreement. Regardless of which party initiated removal of parks and forestry employees from the unit, the Township's statement that "...Parks and Forestry (employees) were mutually negotiated out of the contract" supports the essential point: these employees were removed from the unit prior to the affiliation vote.

The Township objects to the characterization of an April 1, 1993 letter to employees from the Mayor as a letter opposing the affiliation. The first paragraph of the letter states "A letter that you may have received from the Union, dated March 25, 1993 contained many inaccuracies that would lead you to believe that

merging with the United Paperworkers Union would be a positive and necessary move." Similarly, the rest of the letter is critical of the affiliation effort. I will not modify my characterization.

The Township states that although employee Gene Vallejo observed the affiliation election, he had no control over who would be permitted to sign-in and vote. It contends that the mere fact that Vallejo signed the tally of votes is not proof that the conduct of the election itself was untainted. Vallejo states in his May 12, 1993 affidavit that:

Moreover, during the Friday, April 2, 1993 election, I witnessed older individuals that I did not recognize entering the firehouse in the voting vicinity. They asked me where the vote was being held and I showed them the place. They went into the voting area and came out a few minutes later. I got the impression that these unknown individuals were entering the firehouse to vote. Since there was no list of eligibles to vote and the election was unsupervised any individuals could have voted whether or not they were blue collar voters.

These allegations are not sufficient to demonstrate that the affiliation vote violated due process standards. The Association attempted to obtain a list of members but the Township stated that it was impossible to provide. However, the Association did require voters to register by printing and signing their names and listing their departments. The number of names on the list is consistent with the final tally of votes and with the possible exception of contested voters VanMoerkerken, Kennedy, Kinney and

Keyser, the list reflects that all other voters were both current township employees and Association members. Even if, as the Township contends, Vallejo's signing of the list is not proof that the election was untainted, Vallejo's speculative and unsubstantiated allegations of voter fraud are not sufficient proof that the election was improperly conducted, especially since the allegations are contradicted by the voter sign-in list.

An employee who was on vacation was denied the right to vote by absentee ballot, which the Township contends should have been provided. Commission rules provide that: "In a manual ballot election, employees must appear in person at the polls in order to be eligible to vote." N.J.A.C. 19:11-9.2 (c). While the Commission does not govern procedures for an affiliation vote, the procedure used to achieve an amendment of certification must comply with minimum due process standards or provide adequate safeguards such as an opportunity for debate among the membership before an affiliation vote and an election that promotes participation and is not irregular in timing and placement. Hamilton Tool Co., 190 NLRB 571, 77 LRRM 1257 (1971). However, the procedural safeguards provided for in the affiliation election do not have to meet the same standards as an election conducted by the NLRB. Williamson Co., 244 NLRB 953, 102 LRRM 1167 (1979). The NLRB will recognize affiliation votes as long as due process standards are satisfied and there is continuity of representation. Santa Barbara Humane Society, 302 NLRB 833, 138 LRRM 1104 (1991); May Department Stores, 289 NLRB 661,

128 LRRM 1299 (1988); Universal Tool and Stamping Co., 182 NLRB 254, 74 LRRM 1096 (1970). Due process does not require that unavailable voters must receive absentee ballots. Requiring an organization to provide absentee ballots for an affiliation vote would subject it to a greater standard than required by the Commission's election rules. The Association's failure to provide an absentee ballot to an unavailable voter is insufficient to overturn a finding that the affiliation vote provided adequate due process.

Finally, the Commission requested that I consider the Township's request for a hearing in this matter. N.J.A.C. 19:11-2.6 (c) provides that:

...A hearing shall be conducted:

1. If it appears to the Director of Representation that substantial and material factual issues exist which, in the exercise of reasonable discretion, he or she determines may more appropriately be resolved after a hearing; or
2. If it appears to the Director of Representation that the particular circumstances of the case are such that, in the exercise of reasonable discretion he or she determines that a hearing will best serve the interests of administrative convenience and efficiency.

Neither circumstance is present here. The Township contests the eligibility of four employees who voted in the affiliation election: two non-unit Association members, one discharged employee, and one Association non-member. Both parties agree that the non-member was ineligible to vote. It is not necessary to resolve the eligibility of the remaining three voters because their votes taken together with that of the ineligible voter

could not affect the election outcome, which was 56 to 51 in favor of the affiliation.

N.J.A.C. 19:11-2.6 (c)1. provides that a hearing is appropriate if substantial and material factual issues exist. The Township has not raised factual disputes sufficient to mandate a hearing. The Township relies on Vallejo's affidavit to support its contention that the election was improperly conducted. However, Vallejo's allegations are vague, unsubstantiated by specific facts and contradicted by the the voter sign-in sheet used by the Association.

N.J.A.C. 19:11-2.6 (c)2. provides that a hearing may be appropriate if it will best serve the interests of administrative convenience and efficiency. Given the substantial amount of time that has elapsed since the April, 1993 affiliation vote, a hearing would only serve to further delay the employees' right to know, with certainty, the identity of their majority representative. The employees' interests are therefore best served by bringing finality to the affiliation process. Further, the Association's amended certification does not prevent its members from availing themselves of the Commission's representation procedures in a timely manner.

For the reasons stated above, I affirm my August 10, 1993 decision to amend the Certification of Representative issued by the Commission on April 2, 1986 to reflect that the name of the exclusive negotiations representative is the Parsippany-Troy Hills Blue Collar Association, United Paperworkers International Union.

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In accordance with the Chariman's directive, this matter is returned to the Commission.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: March 22, 1994
Trenton, New Jersey