

D.R. NO. 81-45

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

In the Matter of

BOROUGH OF ENGLISHTOWN,

Public Employer,

-and-

DOCKET NO. RO-81-145

ENGLISHTOWN POLICE ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation, on the basis of an administrative investigation, dismisses a petition seeking a unit consisting of one employee. The Director refers to In re Borough of Shrewsbury, PERC No. 79-42, 5 NJPER 45 (¶ 10030 1979), in which the Commission found that one person units are not "collective", as required by the Act, and thus not appropriate.

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Appearances:

For the Public Employer
Frank A. Campione, Consultant

For the Petitioner
Klatsky & Klatsky
(R. Mark Hochberg of counsel)

DECISION

On December 8, 1980, a Petition for Certification of Public Employee Representative was submitted to the Public Employment Relations Commission (the "Commission"), by the Englishtown Police Association (the "Association") seeking to represent all of the police (a total of three) employed by the Borough of Englishtown (the "Borough"). On January 16, 1981 the Association submitted an adequate showing of interest in support of its petition and the petition was accepted for filing on that date.

In accordance with N.J.A.C. 19:11-2.6 the undersigned has caused an administrative investigation to be conducted into the matters involved in the Petition in order to determine the facts and to obtain the positions of the parties.

At the time of its submission of the showing of interest, the Association, by letter dated January 14, 1981, informed the Commission that only one employee was still employed by the Borough.

Based upon the administrative investigation herein, the undersigned finds and determines as follows:

1. The disposition of this matter is properly based upon the administrative investigation herein, it appearing that no substantial and material factual issues exist which may more appropriately be resolved after an evidentiary hearing. Pursuant to N.J.A.C. 19:11-2.6(b), there is no necessity for a hearing where, as here, no substantial and material factual issues have been placed in dispute by the parties.

2. The Borough of Englishtown is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), is the employer of the employee who is the subject of the petition and is subject to the provisions of the Act.

3. The Englishtown Police Association is an employee representative within the meaning of the Act and is subject to its provisions.

4. The Association, having filed a Petition for Certification of Public Employee Representative, has raised a question concerning representation, and the matter is appropriately before the undersigned for determination.

5. The Borough does not agree to an election in a unit consisting of one employee and bases this position upon previous

Commission decisions finding such a unit to be inappropriate.

6. The Association, by letter dated February 3, 1981, stated that it would not withdraw the petition and insisted upon further processing of this matter. The Association contended that the matter should proceed because it is seeking to represent the unit for the 1980 calendar year, at which time more than one employee was employed in the unit. Finally, the Association seeks a retroactive certification to cover 1980.

The Commission has previously considered the appropriateness of one person negotiations units and has held that said units are not "collective" and are therefore inappropriate. In re Borough of Jamesburg, D.U.P. No. 79-5, 4 NJPER 398 (Para. 4180 1978); In re Borough of Shrewsbury, PERC No. 79-42, 5 NJPER 45 (Para. 10030 1979), aff'd 174 N.J. Super. 24 (App. Div. 1980), pet. for certif. den. 75 N.J. 29 (1980). In fact, in In re Borough of Shrewsbury, supra, the Commission held that even if the Borough had negotiated with one employee in the past it was not under any legal obligation to continue to negotiate - PERC No. 79-42 at slip op. pp. 3-4. 5 NJPER at p. 46.

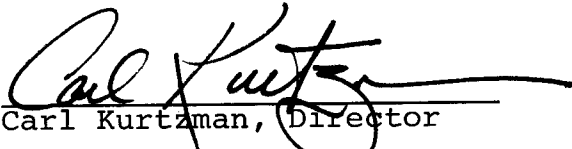
Although the Association seeks a retroactive certification, the Commission, in the processing of representation petitions, investigates current conditions and renders determinations which are prospective, not retrospective. Since there was no other labor organization that had a collective negotiations agreement covering the instant unit during 1980, the Association had an opportunity to file a petition during 1980, supported by an adequate showing of

interest, to represent an appropriate unit of employees. In addition, even if the petition had been filed while more than one employee was employed in the unit, and before its reduction in size to one employee, the Commission would not issue a Certification of Representative in a unit consisting of one employee. Sonoma-Martin Publishing Co., 172 NLRB 625, 68 LRRM 1313 (1968); Westinghouse Electric Corp. 179 NLRB No. 49, 72 LRRM 1316 (1969).

With respect to the Association's allegations that the other employees were illegally dismissed, the instant representation petition is not the proper forum to consider that issue.

For the above reasons, the instant petition is dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: June 3, 1981
Trenton, New Jersey