

D.R. NO. 2004-18

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

In the Matter of

LOWER ALLOWAYS CREEK TOWNSHIP,

Public Employer,

-and-

Docket No. RO-2004-78

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO

Petitioner.

SYNOPSIS

The Director of Representation orders an election among regularly employed nonsupervisory blue collar employees, including police dispatchers and a records coordinator, employed by Lower Alloways Creek Township. The Township did not consent to an election, contending that under Jefferson Tp. Bd. of Ed., P.E.R.C. No. 61, N.J. Supp. 248 (¶61 1971), the police dispatchers and records coordinator should not be severed from the Lower Alloways Creek Police Officers and Dispatchers Association (LACPODA), an organization which admits police employees to membership. The Director ordered severance, finding a unit which includes both police and non-police employees to be prima facie inappropriate under the Act. The Director further found that any prior agreement to include these employees in the existing unit did not establish an exception under N.J.S.A. 34:13A-5.3 since the relationship did not predate the enactment of the Act in 1968.

Concerning the parties' dispute whether the building and grounds foreman was a supervisor and thus inappropriate for the petitioned for unit, the Director found that the employee would be permitted to vote by challenge ballot.

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Appearances:

For the Public Employer,
Ruderman and Glickman, attorneys
(Mark Ruderman, of counsel)

For the Petitioner,
Alysia Welch, Organizer

DECISION AND DIRECTION OF ELECTION

On February 17, 2004, and by amendment on March 11, 2004, Communications Workers of America (CWA) filed a timely Petition for Certification of Public Employee Representative, supported by an adequate showing of interest, with the Public Employment Relations Commission (Commission). CWA seeks to represent approximately 34 regularly employed blue-collar employees, including police dispatchers, department of public works employees, records coordinators, lunch program aides and van drivers employed by Lower Alloways Creek Township (Township).^{1/}

^{1/} CWA's original petition sought approximately 30 employees,
(continued...)

The Township does not consent to an election. It contends that the police dispatchers and records coordinator are currently represented by the Lower Alloways Creek Police Officers and Dispatchers Association (LACPODA), affiliated with the Fraternal Order of Police (FOP). By letter of March 23, the FOP, on behalf of LACPODA, declined to intervene in the representation matter.^{2/} The public works employees have never been represented.

The Township objects to an election. It argues that the dispatchers and records coordinator should not be severed from the existing police unit because the severance would contravene the Commission's policy of more than three decades favoring broad-based units, except in exceptional circumstances, and that the instant Petition does not present such an exceptional circumstance favoring severance. The Township cites Cumberland Cty. Sheriff, 17 NJPER 73(¶22034 1991) and Jefferson Tp. Bd. of Ed., P.E.R.C. No. 61, N.J. Supp. 248 (¶61 1971). The Township

1/ (...continued)
including police dispatchers, department of public works employees and records coordinator(s). At the investigatory conference on March 13, 2004, the parties agreed that lunch program workers and van drivers would be included in an appropriate unit. At the conference, CWA filed an amended petition seeking these four additional employees.

2/ At the March 13 investigatory conference, the Township produced a copy of an undated letter from LACPODA President Franklin Pompper, indicating that on February 26, 2004, the membership voted to allow the full-time dispatchers and records coordinator "to leave the LACPODA" and to change the name of the Association to the Lower Alloways Creek Police Officers Association.

asserts that in those cases, the Commission found that permitting severance due to a small discrepancy in the employees' community of interest "would pave the way for continuous agitation and redefinition of units whenever someone could find a difference." The Township further asserts that the records coordinator was included in the unit over the Township's objection by an arbitrator's decision in February 1993, and the unit should not now be disturbed as a result of CWA's petition.

CWA asserts that the Association, from its formation in the 1970's, has been inappropriately constituted with police and civilian personnel, in violation of Commission rules. CWA further asserts that since the current majority representative has disclaimed interest in further representing the police dispatchers and records coordinator, those employees should be permitted to select another bargaining representative.

CWA also contends that Leroy Elwell, the building and grounds foreman, is a supervisor within the meaning of the Act and thus ineligible for inclusion in the petitioned-for unit. The Township disagrees, contending Elwell is not a supervisor.

We have conducted an administrative investigation into the matters alleged by the Petition. There being no substantial and material facts in dispute, the disposition of the Petition is properly based upon our administrative investigation. N.J.A.C. 19:11-2.2 and 2.6. I find the following:

FINDINGS OF FACT

Since approximately 1974, LACPODA has represented both police and civilian police dispatchers in the same unit. The records coordinator was initially included in the unit by the parties' agreement and subsequently as the result of a February 1993 arbitration decision. A review of Commission records failed to reveal a certification on file for the LACPODA bargaining unit.

N.J.S.A. 34:13A-5.3 provides in pertinent part:

. . . where established practice, prior agreement, or special circumstances dictate to the contrary, no policeman shall have the right to join an employee organization that admits employees other than policemen to membership.

A unit which includes both police employees and non-police employees, absent circumstances which implicate one of the aforementioned statutory exceptions, is prima facie inappropriate. Borough of Paulsboro, D.R. 90-13, 16 NJPER 51 (¶21015 1990); Moorestown Tp., D.R. 78-38, 4 NJPER 166 (¶4081 1978). In Moorestown, the then-Director of Representation determined that the inclusion of civilian personnel in a unit of police was inappropriate, noting that any "prior agreement" or "established practice" must have existed between the parties prior to the enactment of the Act in 1968. Moorestown, citing In re West Paterson Board of Ed. and West Paterson Education Assn., P.E.R.C. No. 77 at 10, NJPER Supp. 333 (¶77 1973); aff'd as modified, P.E.R.C. No. 79, NJPER Supp. 352 (¶79 1973).

In Paulsboro, the Paulsboro Police Association represented sergeants, police officers and dispatchers from 1975 until the Paulsboro Police Officers Association filed a representation petition seeking to sever police officers holding the rank of sergeant and below. The petitioner contended that the existing unit was illegal because it contained both police and non-police employees. The then-Director of Representation specifically determined that "the statutory prohibition precludes having civilian dispatchers in a unit of police officers." Paulsboro, 16 NJPER at 52. See also City of Vineland, D.R. 86-14, 12 NJPER 224 (¶17092 1986) (police dispatchers were not "police" within meaning of Act where they did not possess power to arrest, apprehend or detect offenders of law); City of Trenton, D.R. 83-14, 8 NJPER 589 (¶13274 1983) (personnel lacking statutory police powers of detection, apprehension or arrest, and likewise not engaged in rendering police services, were ineligible for representation in a police unit).

The Township argues that under Paulsboro's definition, the dispatchers and records coordinator should remain in the current bargaining unit due to an established practice "going back at least prior to 1974." CWA asserts that the Association was formed in the 1970's, after the enactment of the Act, which would preclude a finding of a pre-1968 practice. While stating that the unit has been in existence since prior to 1974, the Township

has alleged no facts indicating the existence of a pre-1968 collective negotiations relationship. The bare contention that LACPODA may have existed prior to 1974 is insufficient to establish an exception under the Act. Nor has the Township alleged facts establishing any of the other statutory exceptions. See also City of Newark, D.R. 98-9, 24 NJPER 36 (¶29022 1998) (employment of civilian clerks under federal program did not constitute "special circumstances" that would permit inclusion of police and non-police in one bargaining unit). Based upon the above analysis I find that the continued inclusion of police dispatchers and records coordinator in a unit of police and non-police to be repugnant to the Act, and hereby sever those employees from the LACPODA unit.

CWA asserts that the building and grounds foreman, Leroy Elwell, is a statutory supervisor, because "as part of (his) work responsibilities, he has assigned and reassigned job duties, scheduled vacation time, made decisions to send employees home on compensatory time and recommended discipline" for employees within the petitioned-for unit. The Township counters that while the building and grounds supervisor may recommend discipline, he must obtain approval from the superintendent of public works before implementing discipline; therefore, he is not a statutory supervisor and is eligible to be included in the petitioned-for unit.

N.J.S.A. 34:13A-5.3 provides in pertinent part:

. . . nor, except where established practice, prior agreement or special circumstances, dictate the contrary, shall any supervisor having the power to hire, discharge, discipline, or to effectively recommend the same, have the right to be represented in a collective negotiations unit by an employee organization that admits non-supervisory personnel to membership . . .

It is unclear from the information provided whether the building and grounds foreman meets the statutory definition. There is no dispute concerning the eligibility of the approximately 19 remaining public works employees.

After consideration of the dispatchers and records coordinator whom I have determined should be severed from the existing unit, and the additional employees the parties have identified as eligible, the parties disagree only about the inclusion of one employee in a proposed unit of 34. 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 will conduct an election and permit the disputed employees to participate in the election subject to challenge. Borough of Leonia, P.E.R.C. No. 86-143, 12 NJPER 523 (¶17195 1986); State of New Jersey, D.R. 81-20, 7 NJPER 41 (¶12019 1981), req. for rev. den., P.E.R.C. No. 81-94, 7 NJPER 105 (¶12044 1981); Newark Housing Auth., D.R. No. 93-3, 18 NJPER 482 (¶23219 1993); Township of E. Brunswick, D.R. No. 91-26, 17 NJPER 177 (¶22076 1991); Township of Middletown, D.R. No. 91-10,

16 NJPER 532 (¶21234 1991); Morris Cty. Park Comm., D.R. No. 80-17, 6 NJPER 37 (¶11019 1980); Township of No. Brunswick, D.R. No. 78-4, 3 NJPER 260 (1978). I find that one disputed ballot in 34 possible voters is not an excessive number of challenged ballots. If the challenged ballot is determinative of the election results, post-election mechanisms are available to resolve the challenge, including an investigation to determine the status of the challenged voter. N.J.A.C. 19:11-10.3(k). If the challenged ballot is not determinative, and assuming that a certification of representative issues, the parties may voluntarily resolve the status of the challenged employee, or either party may file a petition for clarification of unit to determine the proper unit placement of the challenged employee. E. Brunswick; Middletown; Leonia.

Accordingly, I find that the petitioned-for unit is appropriate and I direct that an election be conducted among the employees in the unit as follows:

Included: All regularly employed blue-collar employees including employees of the department of public works; lunch program coordinators, police dispatchers, records coordinators and van drivers employed by Lower Alloways Creek Township.

Excluded: All managerial executives, confidential employees, and supervisory employees within the meaning of the Act; professional employees, craft employees, police, casual employees, and all other employees.

The building and grounds foreman may vote subject to the Commission's challenge ballot procedure. N.J.A.C. 19:11-10.3(e).

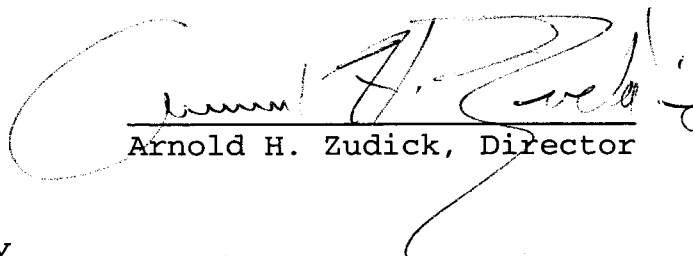
The election will be conducted by mail ballot.

Employees shall vote on whether they wish to be represented for purposes of collective negotiations by CWA. 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. 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 counting of the ballots.

Pursuant to N.J.A.C. 19:11-10.1, the Township is directed to file with us an eligibility list consisting of an alphabetical listing of the names of all eligible voters, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by us not later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously provided to the CWA 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



Arnold H. Zudick, Director

DATED: April 20, 2004
Trenton, New Jersey