

D.R. No. 2006-15

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

In the Matter of

PASSAIC COUNTY PROSECUTOR'S OFFICE,

Respondent,

-and-

Docket No. RO-2006-056

INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS, AFL-CIO,

Petitioner.

SYNOPSIS

The Director of Representation certified the International Association of Machinists and Aerospace Workers, AFL-CIO, District 15 as the majority representative of a unit of employees employed by the Passaic County Prosecutor. The Prosecutor had opposed the certification claiming the authorization cards submitted were ambiguous and should not be accepted to obtain a Certification through a card check, but that the petition should proceed to a secret ballot election. The Prosecutor also claimed one title was confidential and should be removed from the unit. The Director found that the authorization cards were not ambiguous and complied with the Commission's regulations and certified the unit based upon card check. The Director also reminded the parties the issue regarding confidential status could be resolved through a clarification of unit petition after the certification issued.

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Petitioner.

Appearances:

For the Respondent,
Genova, Burns & Vernioia, attorneys
(Brian W. Kronick, of counsel)

For the Petitioner,
Vincent Addeo, organizer

DECISION

On January 31, 2006, the International Association of Machinists and Aerospace Workers, AFL-CIO, District 15 (IAM) filed a timely representation petition for Card Check Certification seeking a unit of "[a]ll Prosecutor's Agents, Support Staff, Clerical Division, and Victim-Witness Employees" employed by the Passaic County Prosecutor's Office (Prosecutor). The petitioned-for unit was an existing unit, previously represented by Passaic County Prosecutor's Clerical Association (Clerical Association) which had a collective negotiations agreement with the Prosecutor covering the period January 1, 2003 through December 31, 2005. The petition was accompanied by

authorization cards from a majority of the unit employees, as well as a letter by the Clerical Association disclaiming interest in further representation of the petitioned-for employees. No other labor organization claimed interest in organizing these employees.

The Prosecutor objects to the grant of the card check certification to the IAM. It asserts "that many of the employees did not fully comprehend what they were signing when they signed the authorization cards." Furthermore, the Prosecutor states that it questions the validity of the statement on the authorization card and whether or not it may be ambiguous.

In addition, the Prosecutor contends that the title "Assistant Fiscal Officer," a title currently being held by employee Todd Stanley, should not be included in the described unit. The Prosecutor argues that Stanley is involved in the collective negotiations with employees in the Prosecutor's office, and, therefore, is a confidential employee.

We have conducted an administrative investigation into this matter to determine the facts. The disposition of the petition is properly based upon our administrative investigation. There are no substantial material facts in dispute which would require convening an evidentiary hearing. N.J.A.C. 19:11-2.2 and 2.6.^{1/}

^{1/} While the Prosecutor alleges that certain employees may not have fully understood the meaning of the authorization card they were signing, and/or that the stated language on the
(continued...)

Based upon the administrative investigation into the facts surrounding this matter, I find the following:

The Clerical Association represented all white-collar employees employed by the Passaic County Prosecutor's office. The Clerical Association was certified by the Commission on July 2, 1979.

By letter dated January 31, 2006, the Clerical Association disclaimed interest in further representation of the unit, stating that ". . . it will no longer have an interest in representing the present bargaining unit and also does not possess an interest in participating in any secret ballot election should it be ordered by the Commission Administrator."

On February 9, 2006 the Prosecutor submitted a list of active agents, clerical staff, support staff, and victim/witness employees, as sought by the IAM. We have checked the submitted authorization cards against the names provided on the employer's list and determined that a majority of unit employees have signed authorization cards for the IAM.

The Commission's assigned staff agent scheduled an investigatory conference for February 24, 2006, to determine whether the parties could agree on an appropriate unit. The

1/ (...continued)
card is ambiguous, these issues do not appear to raise "substantial and material factual issues" which require resolution through the conduct of hearing. N.J.A.C. 19:11-2.2 and 2.6.

parties were informed that although there was an investigatory conference scheduled for February 24, if all parties were amenable, the matter could be resolved by telephone.

The Commission staff agent called both the IAM and the Prosecutor to determine if the matter could be resolved without an in-person conference. On February 17, 2006, the staff agent received a signed and dated Certification of Posting, dated February 6, 2006, accompanied by a letter stating, "...per my secretary's telephone conversation with you today regarding the above-entitled matter, enclosed please find a copy of the Certification of Posting, which was mailed on February 6, 2006 to 153 Halsey Street, Newark, New Jersey." It appearing that the parties were in agreement, the February 24, 2006 conference was cancelled and a Stipulation of Appropriate unit was forwarded to the parties for signature. However, on February 24, 2006, the Prosecutor advised the staff agent by telephone that he opposed the card check procedure. On February 28, 2006 the staff agent received the Prosecutor's formal written position. Notices to Public Employees were posted on February 6, 2006, indicating that the IAM had filed a Petition for Certification by card check.

ANALYSIS

On July 19, 2005, the Legislature amended the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.3, to authorize the Commission to certify a majority representative where (a) a majority of employees in an appropriate unit who have

signed authorization cards designating that organization as their negotiations representative; and (b) no other employee representative seeks to represent those employees. N.J.A.C. 19:11-2.6(b).

In refusing to consent to the appropriate unit, the Prosecutor merely argues that employees did not fully comprehend what they were signing when they signed authorization cards, and that the Assistant Fiscal Officer was a confidential employee. The Prosecutor's suggested remedy regarding the cards is for me to direct an election. But an election is unnecessary in this case.

N.J.A.C. 19:10-1.1 defines "showing of interest" in pertinent part providing:

. . . such designations shall consist of written authorization cards or petitions, signed and dated by employees normally within six months prior to the filing of the petition, authorizing an employee organization to represent such employees for the purpose of collective negotiations . . .

While I cannot reveal the language on the IAM cards, City of Newark, D.R. No. 2000-11, 26 NJPER 234 (¶31094 2000); N.J.A.C. 19:11-2.1; those cards comply with the above rule because the language shows that the card signers authorized the IAM to act as their collective bargaining agreement for terms and conditions of employment. The language on the card is not ambiguous. I can only conclude that based upon the card language and the employee

signatures, that the employees were demonstrating their desire to be represented by the IAM.

The Legislature has determined that a card check certification system is an appropriate method to determine a majority representative without an election, and the employee signatures on the cards submitted meets the intent of the statute and the rules. The Prosecutor's request for an election is, therefore, denied.

With respect to whether the Assistant Fiscal Officer position should be included in the unit, where the parties cannot agree on an appropriate unit, we determine which unit is most appropriate for collective negotiations. N.J.S.A. 34:13A-6; N.J.A.C. 19:11-2.6d(3); see also State of N.J. and Prof. Assn. of N.J. Dept. of Educ., 64 N.J. 231 (1974). The Commission must define the appropriate unit ". . . with due regard for the community of interest among the employees concerned. . . ." West Milford Bd. of Ed., P.E.R.C. No. 56, NJPER Supp. 218 (¶56 1971). The Commission ultimately weighs the facts, as well as the concerns of the employer, employee representatives and the public in deciding what unit structure promotes the statutory goals of labor stability and peace. State of N.J., 64 N.J. at 240. However, the Commission also considers other factors in determining the appropriate unit: whether the composition of the petitioned-for unit is consistent with the requirements of the Act; whether the proposed unit structure is broad-based and

employer-wide in scope; the history of the negotiations unit; and the number, size and composition of the employer's existing negotiations units. State of New Jersey (State College Locals), D.R. No. 97-5, 24 NJPER 295 (¶29141 1996). The totality of circumstances, including the desire of the employees and the extent of organization of the employer's other employees, must be considered. New Jersey State (Human Services), D.R. No. 95-1, 20 NJPER 308 (¶25154 1994).

Here, I find that the IAM seeks to represent an existing negotiations unit of support employees. The petitioner has not asserted, nor is there a basis to conclude, that the existing unit would not continue to be appropriate. See Englewood Bd. of Ed., P.E.R.C. No. 81-100, 7 NJPER 141 (¶12061 1981). While the Prosecutor asserts that the Assistant Fiscal Officer, Todd Stanley, is a confidential employee, we need not resolve that question as a prerequisite to certification. The IAM's demonstration of its majority status is not dependent upon a resolution of that issue. Following certification, either party may file a Petition for Unit Clarification requesting us to determine the Assistant Fiscal Officer's unit status. N.J.A.C. 19:11-1.4. Our review of IAM's showing of interest shows that it has submitted authorization cards from a majority of the Passaic County Prosecutor's office employees and is therefore entitled to certification based upon a card check. N.J.S.A. 34:13A-5.3.

I, therefore, certify the International Association of Machinists and Aerospace Workers, AFL-CIO, District 15 as the exclusive representative of the unit described below:

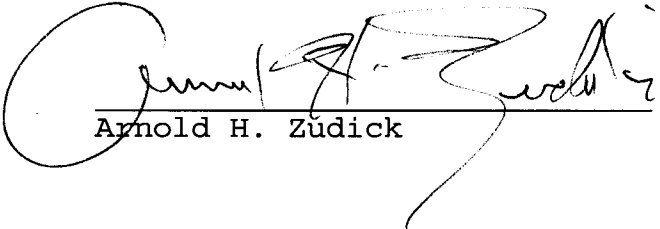
Included: All Prosecutor's Agents, Support Staff, Clerical Division, and Victim-Witness employees, employed by the Passaic County Prosecutor's office.

Excluded: All managerial executives, confidential employees and supervisory employees within the meaning of the Act; professional employees, craft employees, police, casual employees, (Chief Clerks, administrative secretaries,) and all others employed by the Passaic County Prosecutor's office.

ORDER

I certify the International Association of Machinists and Aerospace Workers, AFL-CIO, District 15 as the exclusive representative of the unit described above, based upon its authorization cards.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Arnold H. Zudick

Dated: April 7, 2006
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 April 20, 2006.