

D.R. NO. 2009-1

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

In the Matter of

SOMERSET COUNTY,

Public Employer,

-and-

Docket No. RO-2008-79

COMMUNICATIONS WORKERS OF AMERICA
1037A SUPERVISORS UNION, AFL-CIO,

Petitioner.

SYNOPSIS

The Director of Representation certifies a unit of professional supervisors employed at two Somerset County mental health facilities. Certification is based upon a card-check petition pursuant to N.J.S.A. 34:13A-5.3. The Director found that a majority of unit supervisors had signed authorization cards for representation by CWA Local 1037A Supervisors Unit and, that even accepting as true the facts offered by the County and two employees, the evidence does not support the County's or the employees' assertions that employees were coerced or intimidated into signing cards by CWA Local 1037 or peer employees.

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Appearances:

For the Respondent,
Drinker Biddle & Reath, LLC
(Marion Johnson, of counsel)

For the Petitioner,
Weissman and Mintz, attorneys
(Rose Cipparulo, of counsel)

DECISION

On June 3, 2008, the Communications Workers of America 1037A Supervisors Union, AFL-CIO (Local 1037A or the Union) filed a representation petition for card check certification seeking a unit of "all regularly employed professional supervisory employees employed by Somerset County (County) at the Richard Hall Community Mental Health Center located at 500 North Bridge St., Bridgewater, New Jersey, and the supervisory employees employed by Somerset County at the Psychiatric Emergency Screening Service Facility located at Somerset Medical Center at 110 Rehill Avenue, Somerville, New Jersey." The petition was

accompanied by authorization cards from a majority of the unit employees. No other labor organization claimed interest in organizing these employees.^{1/}

The County objects to a grant of the card check certification. It asserts that a number of the employees in the petitioned-for unit had conveyed their concerns to its representative(s) about the "methods used to convince employees to be represented by CWA." The County asserts that the employees ". . . felt they were being intimidated by the union and by other employees who were promoting the union." The County requests that a secret ballot election be conducted.

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. No disputed substantial material facts require us to convene an evidentiary hearing. N.J.A.C. 19:11-2.2 and 2.6. Based upon the administrative investigation this matter, I find the following

^{1/} The petitioned-for supervisors were initially included in a petition for card check certification filed by Local 1037 on April 25, 2008 seeking to represent all "professional employees" employed at several of the County's mental health centers (Docket No. RO-2008-71). In that case, the parties agreed to exclude the supervisors petitioned-for in the instant petition. By letter dated January 17, 2007, the previous collective negotiations representative for the mixed unit in RO-20080-71 had disclaimed interest in representing any of the petitioned-for employees. On June 17, 2008, based on a card check, Local 1037 was certified as the negotiations representative for the unit of non-supervisory professionals in RO-2008-71.

facts:

The petitioned-for employees are currently unrepresented. On June 13, 2008, the parties received a proposed stipulation of appropriate unit. Also on that date, at the Commission's request, the County submitted a list of twelve (12) employees in the proposed unit. The County's list consists of eight (8) titles, one of which, psychiatric nurse supervisor, is currently vacant. We have checked Local 1037A's authorization cards against the County's list and determined that a majority of unit supervisors have signed authorization cards for Local 1037A.

The County has certified that it posted for ten days a Notice to Public Employees, supplied by the Commission. The Notice informed employees that a petition for card check certification had been filed and it described the petitioned-for unit. In its June 13 submission, the County also requested that an election be conducted because of its concern that a majority of employees may not have freely signed cards.

The County has refused to sign the proposed stipulation of appropriate unit. On June 18, 2008, the County was given the opportunity to submit documents supporting its position. The County was also informed that individual employees could submit documents to support any request for a secret ballot election rather than a certification by card check. (By June 18, no employees had reported any concerns to the Director of

Representation or to any other PERC staff members). On June 23, 2008, the assigned PERC staff agent confirmed to the County representative the procedure that should be followed if it sought to maintain its objections to the petition.

On June 24, 2008, the County's Director of Human Resources filed a letter. On June 26 and 27, 2008, two employees submitted documents asserting that they opposed representation by Local 1037 and that they had been subjected to ". . .a great deal of pressure from fellow staff members who supported the union." Both employees reported that they were adverse to paying dues to a union and they requested a secret ballot election. On June 30, 2008, counsel for the County also filed a letter setting forth the County's objections and requesting a secret ballot election.

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 stipulation of appropriate unit, the County argues that several employees (perhaps three)

approached a County representative and advised that they were concerned about, and questioned the legality of the methods used to convince employees to be represented by CWA. These employees assertedly felt intimidated by the union and fellow unit employees who supported the union.

The County contends that there may be additional employees who feel similarly coerced, and that if even one employee presents legitimate concerns about the union's organizing methods, a secret ballot election should be ordered.

N.J.A.C. 19:11-2.6(d)(3) provides that the Director of Representation shall:

[i]ssue a decision directing an election in an appropriate unit, if it appears to [him] that there is reasonable cause to believe that a valid question concerning representation exists in an appropriate unit and that an election reflecting the free choice of the employees in the appropriate unit will effectuate the policies of the Act. (N.J.S.A. 34:13A-1.1 et seq.)

In this case, certain unit employees likely voiced their concerns to the County about methods used to organize. No evidence provided by these employees asserts anything more than "pressure" from other staff who wish to be represented by Local 1037A. No evidence suggests that Local 1037A intimidated or coerced employees. Nor does the evidence suggest that intimidation or coercion occurred among peer employees, one or more of whom acted on behalf of Local 1037A. Without facts

demonstrating such conduct, I must conclude that the employees who signed authorization cards demonstrated their desire to be represented by Local 1037A. Accepting as true the facts offered by the County, I also conclude that no valid question concerning representation exists which would require directing an election in this case.

Local 1037A has provided a sufficient number of authorization cards for certification by card check. Accordingly, I find that the following unit is appropriate for collective negotiations:

Included: All regularly employed professional supervisory employees employed by Somerset County at the Richard Hall Community Mental Health Center located at 500 North Bridge St., Bridgewater, NJ, and the supervisory employees employed by Somerset County at the Psychiatric Emergency Screen Service Facility located at Somerset Medical Center at 110 Rehill Avenue, Somerville, NJ.

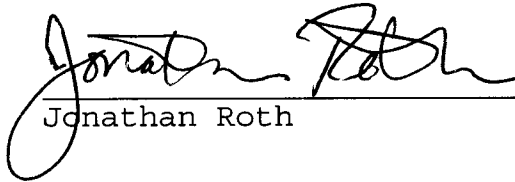
Excluded: Managerial executives, confidential employees, craft employees, non-professional employees, police employees, casual employees, non-supervisory professional employees and all other employees of Somerset County.

Local 1037A has met the requirements of the Act and is entitled to certification based upon its authorization cards from a majority of the unit employees. N.J.S.A. 34:13A-5.3.

ORDER

I certify the Communications Workers of America, 1037A Supervisors Union, AFL-CIO, as the exclusive representative of the unit described above, based upon its authorization cards.

BY ORDER OF THE ACTING
DIRECTOR OF REPRESENTATION


Jonathan Roth

DATED: July 18, 2008
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 July 28, 2008.