

D.R. NO. 88-23

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

In the Matter of

MORRISVIEW NURSING HOME,

Public Employer,

-and-

DISTRICT 1199J, NUHHCE, AFL-CIO,

DOCKET NO. RO-88-42

Petitioner,

-and-

MORRIS COUNCIL #6, NJCSA,

Intervenor.

SYNOPSIS

The Director of Representation directs an election to determine the majority representative of full-time and part-time service and maintenance and day care and clerical employees. The Director permitted an amendment to the petition although the amendment was filed outside the open period. He found the amendment to the petition presented a valid question concerning representation because it clarified the initial petition and did not change the essential unit structure.

D.R. NO. 88-23

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

In the Matter of

MORRISVIEW NURSING HOME,

Public Employer,

-and-

DISTRICT 1199J, NUHHCE, AFL-CIO,

DOCKET NO. RO-88-42

Petitioner,

-and-

MORRIS COUNCIL #6, NJCSA,

Intervenor.

Appearances:

For the Public Employer  
John McGill, Director of Labor Relations

For the Petitioner  
Oxford, Cohen, Blunda, Friedman, Levine & Brooks, Esqs.  
(Reba Carmel, of counsel)

For the Intervenor  
Morris and Hantman, Esqs.  
(Allen Hantman, of counsel)

DECISION AND DIRECTION OF ELECTION

On September 30, 1987, District 1199J, National Union of Hospital and Health Care Employees, AFL-CIO ("District 1199J") filed a petition seeking certification as the exclusive representative of all full-time and regular part-time service and maintenance employees, including day care and clerical employees, of the Morris County Board of Social Services employed at the Morris View Nursing

Home ("Board"). The unit sought by District 1199J is currently represented by Morris Council Number 6 of the New Jersey Civil Service Association ("Council 6").

On October 22, 1987 District 1199J amended its petition to exclude the physical therapist, the physical therapist assistant and the senior physical therapist alleging that these are professional positions, and the food service supervisor and the assistant director of food services alleging that these are supervisory positions. District 1199J noted that employees in these titles were included on the list of employees supplied by the Board; it argues that employees in these titles are not included in the petitioned-for service and maintenance unit because they are professional or supervisory employees. The showing of interest was determined to be adequate to support the amended petition. N.J.A.C. 19:11-2.1.

The County has declined to take any position on the petition. On October 29, 1987 Council 6 submitted correspondence dated October 27, 1987 and a copy of an executed collective negotiations agreement between it and the Board covering the petitioned-for unit. Consistent with N.J.A.C. 19:11-2.7, the Association was granted intervenor status.

We conducted an administrative investigation to determine the facts in this matter. N.J.A.C. 19:14-2.6. The results of that investigation follow.

An informal conference was held on November 10, 1987, which was attended by representatives of each party to this petition. Council 6 refuses to consent to a secret ballot election in the petitioned-for unit. Council 6 argues that the unit sought is inappropriate because it includes members of another unit (the supervisors' unit) and that the procedures employed to amend the petition were improper. Council 6 further contends that the Commission's rules do not provide for the amendment of representation petitions and that, if such amendments are valid, District 1199J's petition was not amended properly because it did not seek to exclude from the petitioned-for unit, all of the titles which are now included in the supervisory unit.<sup>1/</sup> Council 6 has not claimed that any title specifically excluded from the petitioned-for unit should appropriately be included in the blue collar unit.

The Morris County Board of Social Services is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, is subject to its provisions and is the employer of the employees in the unit at issue. District 1199J and Council 6 are public employee organizations within the meaning of the Act and are subject to its provisions. Council 6 is presently the majority

---

<sup>1/</sup> Council 6 asserts that all supervisory unit titles must be specifically excluded from the petitioned-for unit because some of the titles included in the supervisory unit may not be supervisors within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").

representative of a collective negotiations unit comprised of all blue collar employees of the Morris County Board of Social Services. On August 5, 1985, Council 6 was certified as the majority representative of the unit of blue collar employees -- all regular full-time and part-time nonprofessional employees -- employed by the Board at the Morris View Nursing Home. That certification resulted from a July 26, 1985 election conducted by the Commission to determine the majority representative of all full-time and part-time professional and non-professional employees employed by the Board at Morris View Nursing Home.<sup>2/</sup> The certification excluded supervisors within the meaning of the Act.<sup>3/</sup>

Council 6 also represents the supervisors' unit which includes the building service supervisor, supervisor of patient accounts, supervisor account clerk, payroll supervisor, food service

---

<sup>2/</sup> On August 5, 1985, we also certified the Communication Workers of America as the majority representative of all regular full and part-time professional employees employed by the Board at Morris View Nursing Home.

<sup>3/</sup> Since the 1985 election, the Board and Council 6 negotiated a collective negotiations agreement which did not include a specific recognition clause. Rather, it was attached to a 1978 agreement between Morris County and Council 6. The only clause of the 1985 agreement concerning the scope of the unit includes adult day care center employees in the unit. They voted by challenged ballot in the last election. Certain supervisory employees also voted by challenged ballot in the last election. While the adult day care center employees are clearly included in the unit in the recent agreement, the unit placement of the supervisors who previously voted by challenged ballot is not apparent from that agreement.

supervisor, supervisor of patient clothing, transportation supervisor and hospital recreation director.<sup>4/</sup> The supervisors' unit's recognition clause includes all of these titles and further lists as unresolved the titles of the assistant chief pharmacist, coordinator of volunteer services and hospital recreation director. The dispute concerning these titles was subsequently resolved to include the hospital recreation director in the supervisors' unit and to exclude the other positions. It appears that the supervisors' unit existed at the time of the last election and some of those employees voted in the last election by challenged ballot.

District 1199J states that it did not petition for any employees in the supervisors' unit, does not believe those employees are included in its petition and does not wish to represent those employees.

Initially, Council 6 asserts that Commission rules do not provide for amendment of representation petitions. While the rules do not include specific provisions for amendments, Commission policy provides that "once a valid question concerning representation has been raised concerning employees, the Petitioner may later seek to propose a different unit structure limited to some or all of the petitioned-for employees." County of Atlantic, D.R. No. 81-19, 7 NJPER 39 (¶12018 1980), Holmdel Tp. Bd. of Ed., D.R. No. 80-29, 6 NJPER 120 (¶11065 1979). Where a request to amend a representation

---

<sup>4/</sup> The Board has not taken a position regarding whether all of these titles are supervisors within the meaning of the Act.

petition covers a different unit structure than that already petitioned-for, that petition must be filed within the open period in order to be timely filed pursuant to N.J.A.C. 19:11-2.6.

Atlantic County. However, where an amendment merely clarifies the initial petition, it is not treated as a new petition, County of Bergen, P.E.R.C. No. 84-2, 9 NJPER 451 (¶14196 1983).

In Bergen, the petition concerned an existing blue collar unit. The description of the petitioned-for unit was similar to the existing unit's recognition clause. After the open period, petitioner amended its petition to slightly change the unit description. Petitioner also alleged several titles were inappropriate for inclusion in the unit. The employer and the incumbent argued that the unit covered by the amended petition was inappropriate and the amendment was untimely since it was filed outside the open period. The Commission allowed the amendment, finding the changes in the description of the petitioned-for unit clarified the petition but did not change the essential unit structure.

In Atlantic County, we dismissed a representation petition and a request to amend that petition. The original petition, filed on the last day of the open period, sought to include all county employees not already represented by petitioner. The amendment sought to include only those employees in units represented by the intervening incumbent. The amendment would have cut the size of the unit in half, significantly changing the unit sought. We dismissed

that petition as untimely because the original showing of interest was insufficient, and therefore, the petition did not raise a valid question concerning representation during the open period.

It appears that District 1199J's amendment, like the Bergen amendment, merely clarified the petition but did not change the essential structure of the petitioned-for unit. The original petition included all blue collar employees employed by the Board at the Morris View Nursing Home. It excluded professionals and supervisors. The amendment specifically excludes certain titles which are contended to be professional or supervisory. Since this amendment does not change the unit structure, filing it outside the open period does not render the amendment untimely.

The amended petition presents a valid question concerning representation. Since District 1199J's petition presents a valid question concerning representation, it appears that the clarifying amendment should be permitted.

Council 6 argues in the alternative, if District 1199J is allowed to amend its petition, that it was not amended properly because the amendment does not specifically exclude every member of the supervisory unit. District 1199J contends that it never intended to include those positions in its petitioned-for unit inasmuch as those positions were already in a separate unit -- so there is no need to specifically exclude them.

Accordingly, District 1199J's petition for a unit of blue collar employees, filed on September 30, 1987, is prima facie



appropriate. Its amendment to exclude the titles of physical therapist, physical therapist assistant, senior physical therapist, food service supervisor and assistant director of food service was filed to clarify its original petition which was for a non-supervisory, non-professional unit of blue collar employees. Thus, the amendment is also appropriate.

Based upon the record in this matter and the foregoing discussion, we direct that a secret ballot election be conducted in the petitioned-for unit, which is comprised as follows:

Included: All full-time and regular part-time service and maintenance employees including day care and clerical employees employed by the Morris County Board of Social Services at Morris View Nursing Home.

Excluded: All managerial executive employees, confidential employees, police, professional employees, guards and supervisors<sup>5/</sup> within the meaning of the Act and the physical therapist, physical therapist assistant, senior physical therapist, food service supervisor and the assistant director of food services.

The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote are the employees in the unit set forth above who were employed during the payroll period immediately preceding the date below, including

---

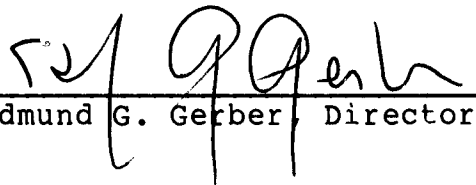
<sup>5/</sup> Since the Board has not challenged their supervisory status, those employees presently included in the supervisors' unit represented by Council 6 are not eligible to vote in this election.

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. Employees must appear in person at the polls in order to be eligible to vote. 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 election date.

Pursuant to N.J.A.C. 19:11-9.6, the public employer is directed to file with us an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the unit, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by us no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be filed simultaneously with the employee organization 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 of the full-time and regular part-time service and maintenance employees including day care and clerical employees, if any, shall be determined by a majority of the valid votes cast in the election by these employees. The election shall be conducted in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Edmund G. Gerber, Director

DATED: January 7, 1988  
Trenton, New Jersey