

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

In the Matter of

TOWNSHIP OF NORTH BRUNSWICK,

Public Employer,

-and-

NORTH BRUNSWICK EMPLOYEES
ORGANIZATION,

Petitioner,

DOCKET NO. RO-85-43

-and-

COMMUNICATIONS WORKERS OF
AMERICA, LOCAL 1082, AFL-CIO,

Intervenor.

SYNOPSIS

The Commission Designee determines the eligibility of three (3) challenged voters in an election conducted by the Commission to determine the exclusive negotiations representative, if any, of white-collar employees of the Twp. of North Brunswick.

The Commission Designee finds that (a) a part-time Welfare Interviewer has the requisite regularity of continuity of employment and shares a community of interest with other members of the unit, and is therefore eligible to vote; (b) a clerk typist on medical leave of absence is eligible to vote; and (c) an employee in a recently created title, Assistant Building Inspector, is a white-collar employee and shares a community of interest with the employees in the unit, and is therefore, eligible to vote in this election. Therefore, the Commission Designee orders that the three disputed ballots be opened and counted.

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

In the Matter of

TOWNSHIP OF NORTH BRUNSWICK,

Public Employer,

-and-

NORTH BRUNSWICK EMPLOYEES
ORGANIZATION,

Petitioner,

DOCKET NO. RO-85-43

-and-

COMMUNICATIONS WORKERS OF
AMERICA, LOCAL 1082, AFL-CIO,

Intervenor.

Appearances:

For the Public Employer
Thomas Savage, Esquire

For the Petitioner
Bosco-McDonnell Associates
Simon Bosco, Consultant

For the Intervenor
John Loos, Staff Rep.

DECISION

On December 7, 1984, a secret ballot election was conducted by the Public Employment Relations Commission ("Commission") among white-collar professional and clerical employees employed by the Township of North Brunswick ("Township"), pursuant to an Agreement for Consent Election entered into between the parties and approved on November 28, 1984. In that election, challenges were asserted to the eligibility of certain voters and those challenged ballots are sufficient in number to affect the results of the election. Pursuant to N.J.A.C.

19:11-9.2(k), the Commission Designee has caused an investigation to be conducted concerning the challenges.

On the basis of the administrative investigation herein, I find and determine as follows:

1. The administrative investigation has not revealed any substantial or material factual issues which would more appropriately be resolved at a hearing nor have substantial and/or material factual issues been placed in dispute by the parties. Therefore, in accordance with N.J.A.C. 19:11-9.2(k), there is no necessity for a factual hearing. The disposition of this matter may properly be based on the administrative investigation.

2. The Township of North Brunswick is a Public Employer within the meaning of the Act, is subject to its provisions and is the employer of the employees who are involved in the instant petition.

3. The North Brunswick Township Employee Organization ("N.B.E.O") and the Communications Workers of America, Local 1082, AFL-CIO ("C.W.A."), respectively, are employee organizations within the meaning of the Act and are subject to its provisions.

4. The C.W.A. is the certified majority representative of a unit described in the contract between the Township and C.W.A. as follows:

WHEREAS, the Township of North Brunswick has heretofore recognized the Union as the majority representative of the Township's employees, set forth in Schedule A, 1/ pursuant to Chapter 303, Public Laws of 1968 of the State of New Jersey,...

1/ The "Contract" Schedule A consists of the following titles: Sr. Clerk Typist, Bookkeeping Machine Operator, Purchasing Asst., Telephone Operator, Sr. Assessing Clerk, Assessing Clerk, Municipal Tax Collector, Sr. Bookkeeping Machine Operator, Clerk Typist, Sr. Clerk Transcriber, Construction Inspector, Prin. Engineering

5. The N.B.E.O. filed a timely petition, supported by an adequate showing of interest, seeking an election in a unit described as follows:

All clerical employees, white collar unit, deputy clerk, sub code officials, code enforcement officer, police dispatchers excluding all other employees

6. Pursuant to N.J.A.C. 19:11-2.7, the C.W.A. properly intervened in this proceeding.

7. An Agreement for Consent Election was entered into by the parties and was signed sequentially by the parties on November 3, 5 and 19, 1984. The Agreement provided for a secret ballot election to be conducted in accordance with the Commission's rules among all employees in the collective negotiations unit comprised as follows:

all white-collar professional and clerical employees employed by the Twp. of North Brunswick* including employees in titles listed on the attached, 2/ but excluding police, supervisors within the meaning of the Act, managerial executives, confidential employees, craft employees, and blue-collar employees.

*See attached method of balloting. 3/

1/ (continued)

Aide, Zoning Officer (Typing), Sr. Police Record Clerk, Sr. Clerk Stenographer, Sr. Payroll Clerk, Police Records Clerk, Bldg. Maint. Worker, Prin. Clerk Typist, Sr. Account Clerk, Supervisor Collections and Billing, Welfare Interviewer, Motor Vehicle Operator Handicapped, Asst. Zoning Officer/Housing Inspector, Bldg. Sub-Code Official, Elec. Inspector, Police Radio Dispatcher, Asst. Plumbing Inspector, Elec. Sub-Code Official, Sr. Engineering Aide, Municipal Court Clerk, excluding confidential and all other employees of the Township of North Brunswick.

2/ The listing of included titles attached to the Agreement for Consent Election is appended hereto.

3/ The method of balloting attached to the Agreement for Consent Election provides for a professional option ballot for certain professional employees of the Township, in order to determine whether such professional employees desire to be included in a unit with nonprofessional employees. The results of the professional option are not affected by the challenged ballots in the election.

8. The election provided employees with an opportunity to select either the North Brunswick Employees Organization or the Communications Workers of America, Local 1082, AFL-CIO or no representative.

9. Of the 42 valid votes counted in the election, 22 votes were cast in favor of representation by "N.B.E.O.", 20 votes were cast in favor of representation by "C.W.A., Local 1082", and no votes were cast in favor of "no representation." In addition to the 42 valid votes counted, there were three unresolved challenged votes cast which were sufficient in number to affect the results of the election.

10. Two of these three unresolved challenged votes were cast by employees who were on the eligibility list supplied by the employer and were challenged by the N.B.E.O. They were, Josephine Parillo, Welfare Interviewer, who was challenged on the basis of her part-time status and Eileen Scardino, Clerk Typist, who was challenged because she was on a medical leave of absence from the Township. The third challenged vote was cast by Robert Nora, Assistant Housing Inspector, who was challenged by the Commission election agent because the employee's name did not appear on the Employer's eligibility list.

11. No objections have been filed concerning the conduct of the election or conduct affecting the results of the election.

12. By letter dated December 11, 1984, I advised all parties of their obligations pursuant to N.J.A.C. 19:11-9.6(k), to provide the Commission with documentary and other evidence together with statements of position concerning the challenged ballots. Statements of position were submitted by the C.W.A. The N.B.E.O. submitted several documents (Civil Service CS-21 forms and certain employee time records).

By letter dated January 30, all parties were advised of my intentions to determine the eligibility of challenged voters based on the administrative investigation conducted herein. All parties were afforded an additional opportunity to present documentary and other evidence as well as statements of position relating to the challenged ballots. No submissions have been received in response to the January 30, 1985 correspondence.

ANALYSIS OF CHALLENGED BALLOTS

Josephine Parillo, Welfare Interviewer

Josephine Parillo was challenged by the N.B.E.O. as a part-time employee.

Josephine Parillo is a part-time employee working a regular schedule of ten (10) hours per week. She is the only incumbent in the title Welfare Interviewer, and that title is listed as an eligible title in the attachment to the Agreement for Consent Election. The title is clearly covered by the 1982-1983 collective negotiations agreement between the Township and the C.W.A. Appendix A, referenced in the recognition clause of that agreement, specifically lists the title as included in the unit.^{4/} Additionally, Article V of that agreement provides that:

Part-time Welfare Interviewer who works ten
(10) hours per week shall receive the following raises in annual base salary:

1/1/83 [sic]:	\$250.	5/1/83:	\$125.
10/1/83 [sic]:	\$125.	10/1/83:	\$150.

The collective negotiations unit description in the Agreement for Consent Election is not restricted to full-time employees, and in

^{4/} See footnote number 1, supra.

fact, other part-time employees participated in the election without challenge.

The Commission has held that employees working less than full time are public employees entitled to protection and rights under the Act. Where part-time employees perform functions similar to full-time unit employees and thus share a community of interest with those employees, the part-time employees are properly included in collective negotiations units with full-time employees. Therefore, part-time employees are eligible to vote in a secret ballot election in a unit which they are thus properly included. See, In re County of Bergen, P.E.R.C. No. 84-2, 9 NJPER 451 (¶ 14196 1983), adopting H.E. No. 83-44, 9 NJPER 416 (¶ 14190 1983) (part-time employees working less than twenty hours per week were found to be appropriately included in a unit with "regular" full-time employees); In re City of Rahway, D.R. No. 83-9, 8 NJPER 538 (¶ 13247 1982), (the Director found a unit of part-time crossing guards appropriate). See also, In re Bridgewater Raritan Board of Education, D.R. No. 79-12, 4 NJPER 444 (¶ 4201 1978). Contrast with In re Mount Olive Board of Education, P.E.R.C. No. 82-66, 8 NJPER 102 (¶ 13041 (1982)).

In the instant matter, Ms. Parillo has the requisite regularity and continuity of employment of a regular part-time employee. She enjoys a community of interest with the other full-time employees and part-time employees who are included in this unit. Further, employee Parillo, in her employment title of Welfare Interviewer, has been included in the petitioned-for unit for a period of at least several years. Accordingly, I determine that Ms. Parillo is an eligible voter in this election and that her ballot should be counted.

Eileen Scardino, Clerk Typist

Eileen Scardino's name appeared on the eligibility list and was challenged by the N.B.E.O. on the basis that she was on a medical leave of absence at the time of the election.

Based upon the documentation submitted by the N.B.E.O., ^{5/} I determine the following: Pursuant to Civil Service Rules and Regulations, Ms. Scardino is a permanent employee and holds the title "Clerk Typist". She was granted a medical leave of absence from employment with the Township which began on June 20, 1984; that leave was then renewed by the Township through November 1, and then renewed again, to January 15, 1985. ^{6/}

The N.L.R.B. and the Commission have similar requirements concerning voter eligibility. ^{7/} The N.L.R.B.'s Consent Election Agreement provides that employees "...out ill, on vacation, or temporarily laid off..." are eligible to vote. The N.L.R.B. has determined that employees on medical leave who continue to be in the employer's employ are eligible to vote, provided that at the time of the election, it is believed that the employee will return to work. See, Keeshin Charter Service, 250 NLRB 780, 105 LRRM 1030 (1980); and NLRB v. Atkinson Dredging Co., 329 F2d 158, 55 LRRM 2598 (CA 4, 1964), cert den., 377 U.S. 965, 56 LRRM 2416 (1964).

^{5/} (a) Time Records for Robert Nora: July, 1984; (b) Civil Service CS-21 form dated August 22, 1984 for Robert Nora; (c) Civil Service form CS-21 dated July 2, 1984 for Eileen Scardino and (d) three memoranda from the Treasurers Office confirming the employment status of the three employees whose ballots were challenged in this election.

^{6/} Employee Scardino returned to her position with the Township on January 28, 1985.

^{7/} Lullo v. Int'l Association of Firefighters, Local 1066, 55 N.J. 409 (1970).

The Commission's Agreement for Consent Election and the Commission's rules ^{8/} provide that the "eligible voters" include: "...employees who did not work during the [payroll] period because they were out ill, on vacation, or temporarily laid off, including those in the military service." (emphasis added).

Based upon the foregoing, I determine that employee Scardino is an eligible voter in this election and that her ballot should be counted.

Robert Nora, Assistant Building Inspector

Robert Nora's name did not appear on the eligibility list submitted by the Township, and therefore, his ballot was challenged by the Commission staff agent who conducted the election, pursuant to N.J.A.C. 19:11-9.2(e).

Based upon the administrative investigation, I determine the following:

Nora holds the position of Assistant Building Inspector. The C.W.A. alleges that the titles Zoning Officer and Assistant Zoning Officer/Housing Inspector were previously included in the unit under the recognition clause of the 1982-1983 collective negotiations agreement with the Township. These titles were abolished by the Township in April, 1984, and were simultaneously replaced with a single title, Code Enforcement Officer. The C.W.A. further alleges that three months later (in July, 1984), the Township created a position entitled Assistant Housing Inspector (also known as Assistant Building Inspector) and hired Nora in that title on July 20, 1984. The C.W.A. argues against employee Nora's eligibility to vote in the election based upon: (1) the lack of inclusion of his formal title in

the unit to date and (2) the absence of his title in the attachment to the Consent Election Agreement (which lists the titles included in the unit).

The Consent Election Agreement herein provides that the appropriate collective negotiations unit is, "all professional and clerical white collar employees employed by the Township of North Brunswick, including those employees listed on the attached." ^{9/} Language in consent election agreements describing the appropriate unit for collective negotiations such as that utilized herein should be interpreted to include all of the specifically listed titles but not necessarily to exclude non-listed titles. ^{10/}

The title held by Nora, Assistant Building Inspector, is a white collar title and enjoys a community of interest with the employees

^{9/} The Consent Election Agreement contained an attachment which listed the titles of employees included in the appropriate collective negotiations unit. That list is appended in this decision.

^{10/} The Commission has favored the formation of negotiations units along broad-based, functional lines rather than by means of only a listing of employment titles. The unit herein is structured and described in a manner consistent with the aforementioned policy, i.e., the unit description set forth in the Consent Election Agreement and agreed upon by the parties contains a generic part ("all white collar professional and clerical employees employed by the Twp. of North Brunswick...") and a clarifying part (a list of included employment titles). The purpose underlying this policy is, in part, to accommodate such circumstances as those which herein gave rise to the dispute concerning the unit status of Nora's title. See, State of New Jersey v. Professional Association of New Jersey Dept. of Education, 64 N.J. 231 (1974); aff'g In re State of New Jersey (Professional Association of New Jersey Dept. of Education), P.E.R.C. No. 68 (1972). See also, In re State of New Jersey (Neuro-Psychiatric Institute, et al.), P.E.R.C. No. 50 (1971), In re Bd. of Chosen Freeholders of the County of Burlington, P.E.R.C. No. 58 (1971), In re Bergen County Bd. of Chosen Freeholders, P.E.R.C. No. 69 (1972).

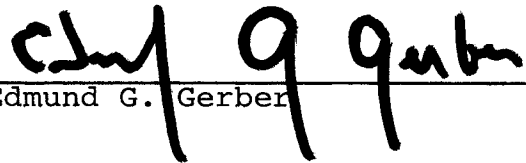
in the titles contained in the instant unit. None of the parties herein has disputed such contention.

Employee Nora's title is clearly included within the general unit description language agreed upon by the parties in the Consent Election Agreement. Further, employee Nora does not fall within any of the employment categories which are excluded under the terms of the Consent Election Agreement. Thus, there is no basis upon which to exclude employee Nora from participation in this election.

Accordingly, I conclude that employee Nora occupies a title which is properly included in the instant collective negotiations unit, that said employee is an eligible voter in this election and that his ballot should therefore be counted.

Based upon the foregoing, I find that the challenged voters, Parillo, Scardino and Nora, are eligible to vote in the election conducted on December 7. It is hereby ordered that their ballots be opened and counted, and that the appropriate certification issue forthwith.

BY ORDER OF THE COMMISSION DESIGNEE


Edmund G. Gerber

DATED: February 14, 1985
Trenton, New Jersey

(appended to Consent Election Agreement)

SCHEDULE A

C.W.A. BARGAINING UNIT

INCLUDED IN BARGAINING UNIT

Senior Clerk Typist
Bookkeeping Machine Operator
Purchasing Assistant
Telephone Operator
Senior Assessing Clerk
Assessing Clerk
Asst. Municipal Tax Collector
Senior Bookkeeping Machine Operator
Clerk Typist
Senior Clerk Transcriber
Construction Inspector (professional)
Principal Engineering Aide (professional)
Senior Police Record Clerk
Senior Clerk Stenographer
Senior Payroll Clerk
Police Records Clerk
Building Maintenance Worker
Principal Clerk Typist
Senior Account Clerk
Supervisor, Collections and Billing
Welfare Interviewer
Motor Vehicle Operator, Handicapped
Building Sub-code Official (professional)
Electrical Inspector (professional)
Police Radio Dispatcher
Assistant Plumbing Inspector (professional)
Electrical Sub-code Official (professional)
Senior Engineering Aide
Municipal Court Clerk
Code Enforcement Officer (professional)

EXCLUDED FROM BARGAINING UNIT

Confidential and all other employees of the Township of North Brunswick.