

D.R. NO. 94-5

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

In the Matter of

PARSIPPANY-TROY HILLS TOWNSHIP,

Public Employer,

-and-

Docket No. AC-93-3

PARSIPPANY-TROY HILLS BLUE COLLAR ASSOCIATION,
UNITED PAPERWORKERS INTERNATIONAL UNION,

Petitioner.

SYNOPSIS

The Director of Representation issues an amendment of certification reflecting the Parsippany-Troy Hills Blue Collar Association's affiliation with the United Paperworkers International Union.

The Director finds that the affiliation vote provided adequate due process, and that the Township's objections to the accuracy and procedure of the vote are insufficient to deny the amendment of certification.

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Appearances:

For the Public Employer
Courter, Kobert, Laufer, Purcell & Cohen, attorneys
(Fredric M. Knapp, of counsel)

For the Petitioner
Kroll & Gaechter, attorneys
(Raymond G. Heineman, Jr., of counsel)

DECISION

On April 7, 1993, the Parsippany-Troy Hills Blue Collar Association, United Paperworkers International Union ("Association") filed a Petition for Amendment of Certification with the Public Employment Relations Commission. The Association requests that the Commission amend its certification to reflect affiliation with the United Paperworkers International Union ("UPIU"). The Association's petition was accompanied by an affidavit stating that on March 23, 1993, it notified its members through a posting in each department that an affiliation vote would be conducted on April 2, 1993. Members of the Association voted 56 to 51 in favor of affiliation

with the United Paperworkers International Union. The Association asserts that its President and executive board remain in office following the affiliation vote and that the size and scope of its negotiations unit is unchanged.

Parsippany-Troy Hills Township objects to the issuance of an amended certification. It contends that ineligible voters participated in the affiliation vote and that the election was procedurally improper. A Commission staff agent conducted an administrative investigation. N.J.A.C. 19:11-2.6. These facts appear.

The Parsippany-Troy Hills Blue Collar Association was certified by the Commission on April 2, 1986 as the exclusive collective negotiations representative of the following unit:

Included: All blue collar employees employed by Parsippany-Troy Hills Twp. in the Shade Tree Division, Sewer Utility, Department of Public Works, Division of Parks and Recreation, Water Utility and Knoll Country Club Utility.^{1/}

Excluded: White Collar employees, seasonal employees, temporary employees, professional employees, craft employees, confidential employees, managerial executives, police employees, foremen and other supervisory employees and all other employees who are not blue collar employees.

^{1/} It appears that since the Association's initial certification, the Township merged the Shade Tree Division and the Division of Parks and Recreation into a new Parks and Forestry Department.

The Association admits into membership any employee who has completed the probationary period and is employed within the contractual negotiations unit. There is no dues checkoff for Association members. Membership is terminated by loss of employment or by an employee's withdrawal from the Association.

The current collective negotiations agreement covers a unit of "...all blue collar employees, employed in the Sewer Utility, Department of Public Works and Sanitation, Water Utility and Knoll Country Club Utility..." for the period January 1, 1992 through December 31, 1993. The recognition clause of this agreement does not include parks and forestry employees, although such employees were included in recognition clauses of previous collective negotiations agreements.

On May 7, 1992, Association President John Devlin received a petition stating:

"We the undersigned in the Parks and Forestry Department have decided that the additional collection of monies as requested is unnecessary at this time. Since it was conveyed to us, that if these monies were not collected, we would no longer be members of the The Blue Collar Association. If this is the situation, then please accept this as a letter of resignation."

This petition was signed by 21 of the 23 employees of the Parks and Forestry Department. Only David "Dutch" Van Moerkerken and Thomas Kennedy did not sign the petition. Copies were sent to the Mayor, Township Business Administrator and the Director of Parks and Forestry.

Apparently based on the mass withdrawal of parks and forestry employees, the Association and the Township agreed to remove those employees from the unit during negotiations for the 1992-93 agreement.^{2/} The Township granted retroactive wage increases to non-unit employees, including those parks and forestry employees who withdrew from Association membership, in late November, 1992. The Association's unit employees received their wage increases in late December, 1992. Van Moerkerken and Kennedy also received their wage increases in December, 1992, with the Association-represented group.

On March 24, 1993, the Association posted a notice in its members' work areas announcing the April 2, 1992 affiliation vote. Before the vote, Devlin made numerous requests to the Township for a list of Association members. On March 29, 1993, Township Business Administrator Greg Hill replied to Devlin's request, stating that it was impossible to provide such a list because there was no payroll dues deduction. On April 1, 1993, the Township distributed a letter from the Mayor opposing the proposed affiliation.

Devlin's certification details the procedure used for the amendment/affiliation vote as follows. On April 2, 1993, the Association conducted a secret ballot affiliation election from noon

2/ Devlin stated in his certification that he signed the successor agreement even though it omitted parks and forestry employees because he believed that it was the only way he could obtain a contract for the remainder of his negotiations unit.

to 6 p.m. at the Parsippany-Troy Hills District 3 firehouse. Gene Vallejo, Eric Jost and Rob Cogler observed the election on behalf of those opposed to affiliation and Alfred Dimmick represented those in favor of affiliation. Employees signed in by name and department in order to receive a ballot. Devlin, together with road department employee John Dowd and UPIU representative Virginia Woodward maintained the sign-in list. Both the ballot box and ballots were in full view of the observers. The ballots were counted by the four observers who signed the tally sheet reflecting 56 votes in favor of affiliation and 51 votes against affiliation. There were no void or challenged ballots.

The Association submitted the sign-in list from the affiliation vote. It reflects that, with the possible exception of David Van Moerkerken, Thomas Kennedy, Richard Kinney and Art Keyser, all voters were both current Township employees and Association members. Van Moerkerken and Kennedy were the only parks and forestry employees permitted to vote. The Association contends that they retained association membership which all other parks and forestry employees renounced by signing the May 7, 1992 withdrawal letter. The Association states that Kinney was allowed to vote because it contends that he was discharged from a unit position without cause, which is the subject of a pending civil service appeal. The Association states that Keyser was erroneously permitted to vote based on his incorrect assertion of Association membership. Two bus drivers were not permitted to vote because the

drivers did not think they were part of the Association. The unit has never included bus drivers. Moreover, the two drivers are not Association members.

The Township objects to the affiliation vote, which it contends was inaccurate and procedurally improper. The Township states that there was no list of eligible voters, which prevented the Association from verifying voters' identities and thus made it impossible to prevent employees from voting twice. The Township asserts that Association and UPIU officials arbitrarily denied or allowed blue collar employees the right to vote. The Township also contends that although non-unit employees such as police garage mechanics, animal control officers and human services bus drivers were denied the right to vote, part-time Human Services Department custodian Art Keyser was allowed to vote. It submitted several certifications in support of its position.

Identical certifications were submitted by 21 parks and forestry department employees stating that they had attempted to vote but were denied ballots while Van Moerkerken and Kennedy were permitted to vote. The employees also stated that if they had been permitted to vote, they would have voted against affiliation.

Employees Gene Vallejo, Robert Kogler and Deanna Peters submitted certifications objecting to former employee Richard Kinney voting. Vallejo and Peters also stated that parks and forestry employees were not allowed to vote. Peters also objected to Van Moerkerken and Kennedy voting.

Vallejo submitted an additional certification stating that he was threatened by a UPIU official and that Devlin attempted to coerce him into voting for the UPIU in March, 1993. Vallejo also states that he witnessed other individuals he didn't recognize entering the polling place and had the "impression" they were entering to vote. He contends that since there was no list of eligible voters and the election was unsupervised, any individual could have voted, regardless of unit status.

Parks and forestry employees James Walsh and Doug Jones stated that they attended an Association informational meeting in March, 1993. They allege that a UPIU representative stated that parks and forestry employees could not vote in the affiliation election but would probably have to join the union once the UPIU became the majority representative.

Sewer Department employee Michael Kelsey's certification states that he was on vacation the week the affiliation vote was held. Kelsey requested an absentee ballot, but the UPIU stated that it was not permitted. If he could have voted, he would have voted no.

The Township also submitted three identical petitions signed by 12 water department employees, 21 parks and forestry employees and 25 sewer department employees. The petitions state that the Township should not accept the results from the April 2, 1992 election because only 2 of the 23 parks and forestry employees were allowed to vote, an ex-employee terminated in 1992 was allowed

to vote and the voting process was not overseen by an unbiased party. We received identical letters from 19 parks and forestry department employees, 16 sewer department employees, 14 water department employees, 2 maintenance department employees, 3 recycling department employees and 3 department of public works employees. The letters stated that the April 2, 1993 election was illegal for the three reasons contained in the petitions discussed above.

An amendment of certification will be granted if the petitioning organization demonstrates that after proper notification, the union's unit membership votes by secret ballot to approve the name change; there is continuity in the unit's composition and there has been a complete transfer of officers from the prior organization to the newly-affiliated organization. Dover Bd. of Ed., D.R. No. 83-1, 8 NJPER 460 (¶13215 1982); Ocean Cty. Utilities Authority, D.R. No. 83-15, 8 NJPER 598 (¶13280 1982); Teaneck Tp., D.R. No. 79-23, 5 NJPER 103 (¶10057 1979); Morris Cty. College, E.D. No. 71, 1 NJPER 17 (1975).

The Association has complied with these requirements. Members received notice of the affiliation vote ten days before it took place. The Association conducted a secret ballot election which was observed by employees both opposed to and in favor of the affiliation. The Association President certified that both he and the Association executive board remained in office after the affiliation vote.

The Township objects to the eligiblilty criteria used by the Association to determine participation in the affiliation vote. It contends that the current blue collar unit includes all employees of the Parsippany-Troy Hills Township Parks and Forestry Department. Alternatively, it contends that if parks and forestry department employees are not included in the blue collar unit, then none of those employees should have been permitted to vote. It also states that if one part-time employee of the Human Services Department was eligible to vote, then other non-unit, blue collar, part-time employees such as police garage mechanics, animal control officers and human services bus drivers should have been eligible to vote.

It appears that, although parks and forestry employees were included in the blue collar unit at its inception, they were removed from that unit prior to the most recent collective negotiations agreement. Therefore, the Association maintained the continuity of unit composition by treating these employees as ineligible voters. Similiarly, the unit never contained police garage mechanics, animal control officers or human services bus drivers, although they are blue collar positions.

It is permissible for an employee organization to limit participation in an affiliation vote to members only. Employee organizations are not required to allow non-members to participate in affiliation votes, provided there is a continuity of representation. NLRB v. Financial Institution Employees, Local

1182, 471 U.S. 1098, 121 LRRM 2741 (1986).^{3/} It is clear that 21 parks and forestry department employees resigned as Association members by their May 7, 1992 letter to Devlin. As non-members of the Association, those parks and forestry department employees were not eligible to vote in the Association's affiliation election. Similiarly, other employees who were not Association members such as police garage mechanics, animal control officers and human services bus drivers (two of whom sought to vote) were ineligible to participate in the affiliation vote.

The Township also objects to employees Keyser, Van Moerkerken and Kennedy and discharged employee Kinney voting in the affiliation election. The Association agrees that Keyser, a non-unit employee who incorrectly asserted he was an Association member, was erroneously permitted to vote. I agree that his non-unit status renders Keyser an ineligible voter. The parties dispute the eligibililty of the remaining three employees. However, it is not necessary to reach this issue since the four employees' votes could not affect the outcome of the election.

The Township submitted a certification from an employee who was unable to vote on April 2, 1993 and was denied an absentee ballot. The Township also objects to the lack of an election eligibility list. Specifically, employee Gene Vallejo contended

^{3/} In NLRB v. Financial Institution Employees, the Supreme Court invalidated an NLRB rule requiring that nonunion employees be allowed to vote in an affiliation election.

that he witnessed other individuals he didn't recognize entering the polling place, and had the "impression" they were entering to vote. He contends that the absence of an eligiblilty list and the lack of supervision of the election meant that any individual could have voted regardless of unit status.

The procedure used by an employee organization to achieve an amendment of certification must comply with minimum due process standards or provide adequate safeguards such as an opportunity for debate among the membership before an affiliation vote and an election that promotes participation and is not irregular in timing and placement. Hamilton Tool Co., 190 NLRB 571, 77 LRRM 1257 (1971). However, the procedural safeguards provided for in the affiliation election do not have to meet the same standards as an election conducted by the NLRB. Williamson Co., 244 NLRB 953, 102 LRRM 1167 (1979). The NLRB will recognize affiliation votes as long as due process standards are satisfied and there is continuity of representation. Santa Barbara Humane Society, 302 NLRB 833, 138 LRRM 1104 (1991); May Department Stores, 289 NLRB 661, 128 LRRM 1299 (1988); Universal Tool and Stamping Co., 182 NLRB 254, 74 LRRM 1096 (1970).

I find that this affiliation vote provided adequate due process. Vallejo's allegations that unfamiliar individuals entered the polling place are unsubstantiated by specific facts. His general allegations that any individual could have voted are contradicted by his status as an election observer and his signature

on the election tally, which appeared on the final page of the voter sign-in list.^{4/} The assertion that there was no eligiblilty list is also undermined by the Township's refusal to provide the Association with a list of unit employees, despite its multiple requests.

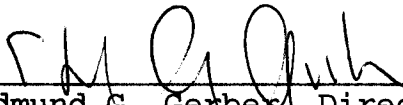
Finally, Vallejo's certification alleges that he was threatened by a UPIU official and coerced by Devlin in March, 1993. Two parks and forestry employees also submitted certifications that a UPIU representative stated that although parks and forestry employees were ineligible to vote in the affiliation election, they would probably have to join the the Association upon affiliation. While these events occurred prior to the April 1993 election, they lack an adequate nexus to the affiliation vote which is sufficient to overturn its result. The Association has not sought to represent parks and forestry employees. It wishes to continue to represent the existing unit, which I have found excludes such employees.

In conclusion, I find that the Township's objections to the affiliation are insufficient to deny the amendment of certification. The Association has satisfactorily demonstrated its compliance with amendment of certification requirements. Therefore, in accordance with the Commission's rules, the Certification of Representative issued by the Commission on April 2, 1986 is amended to reflect that the name of the exclusive negotiations

^{4/} The affiliation vote sign-in list contains 107 names, which is consistent with the tally of votes.

representative is the Parsippany-Troy Hills Blue Collar Association,
United Paperworkers International Union.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: August 10, 1993
Trenton, New Jersey