

D.R. NO. 83-6

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

In the Matter of

BOROUGH OF KENILWORTH,

Public Employer,

-and-

DOCKET NO. RO-83-2

UNION COUNCIL NO. 8, NEW JERSEY  
CIVIL SERVICE ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation, on the basis of an administrative investigation, directs an election to be conducted among all blue collar employees in the Road and Sanitation Department of the Borough. The Director finds that a dispute concerning the inclusion of one employee in the unit is not substantial and should not delay an election. The disputed employee may vote subject to challenge. Post-election procedures are available, if necessary, to resolve the eligibility dispute.

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Appearances:

For the Public Employer  
Pollack & Zuckerman, attorneys  
(Terry R. Zuckerman of counsel)

For the Petitioner  
Fox & Fox, attorneys  
(David I. Fox of counsel)

DECISION AND DIRECTION OF ELECTION

On July 6, 1982, a Petition for Certification of Public Employee Representative, accompanied by an adequate showing of interest, was filed with the Public Employment Relations Commission ("Commission") by Union Council No. 8, New Jersey Civil Service Association ("Council 8"), seeking to represent all employees of the Borough of Kenilworth ("Borough") in the Road and Sanitation Department, excluding clerical, supervisory and administrative personnel. The petitioned-for employees are not presently represented for the purpose of collective negotiations.

In accordance with N.J.A.C. 19:11-2.6, the undersigned has caused an administrative investigation to be conducted into the matters and allegations set forth in the Petition to determine the facts.

Based upon the administrative investigation to date, the undersigned finds and determines as follows:

1. The disposition of this matter is properly based on the administrative investigation herein, it appearing that no substantial and material factual issues exist which may more appropriately be resolved after an evidentiary hearing. Pursuant to N.J.A.C. 19:11-2.6(b), there is no necessity for a hearing, where, as here, no substantial and material factual issues have been placed in dispute by the parties.

2. The Borough of Kenilworth is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), is the employer of the employees who are the subject of the Petition, and is subject to the provisions of the Act.

3. Union Council No. 8, New Jersey Civil Service Association is an employee representative within the meaning of the Act and is subject to its provisions.

4. Council 8 seeks to represent all employees in the Road and Sanitation Department, excluding clericals, supervisory and administrative personnel, and is willing to consent to a secret ballot election to ascertain their representational desires.

5. The Borough initially raised a question concerning the validity of the showing of interest supporting the Petition, and it was afforded an opportunity to submit evidentiary documentation to support its claim. No such documentation was provided to the undersigned, however, and the showing of interest was found to be sufficient.

6. The Borough does not question the appropriateness of the proposed unit, but it does object to the inclusion of a working foreman in the unit, asserting that he is a supervisory employee. This dispute concerns the appropriateness of including one petitioned-for employee in a unit consisting of approximately 14 employees. This issue is not substantial and should not delay the resolution of the question concerning representation in the petitioned-for unit since the overwhelming majority of employees are eligible to vote. See In re Tp. of North Brunswick, D.R. No. 78-4, 3 NJPER 220 (1977). The working foreman may vote subject to challenge. Adequate post-election procedures are available, if necessary, to resolve the instant eligibility dispute.

By letter dated July 22, 1982, the parties were advised by the undersigned that it appeared that a valid question concerning representation exists in a prima facie appropriate unit. The parties were reminded of their obligations pursuant to N.J.A.C. 19:11-2.6, to present documentary and other evidence with respect to the instant Petition and were afforded an additional opportunity to present any supplementary evidence as well as statements of

position relevant to the instant Petition. The parties were further advised that in the absence of the presentation of facts placing in dispute any substantial factual or material factual issues, the undersigned would thereafter issue a decision and direction of election.

On July 28, 1982, the Borough responded to the undersigned's letter by reaffirming its position that the working foreman has supervisory responsibilities and by acknowledging its right to challenge the eligibility of the employee at the election.

Accordingly, there being no substantial and material factual issues in dispute which may more appropriately be resolved after a hearing, the undersigned finds that the dispute in this matter is properly based upon the administrative investigation herein. Therefore, the undersigned finds the appropriate unit for collective negotiations is: all blue collar employees in the Road and Sanitation Department of the Borough of Kenilworth, but excluding clerical employees, managerial executives, confidential employees, craft employees, professional employees, police and supervisors within the meaning of the Act.

Pursuant to N.J.A.C. 19:11-2.6(b)(3), the undersigned directs that an election be conducted among the employees described above. The election shall be conducted no later than thirty (30) days from the date set forth below.

Those eligible to vote are the employees set forth above who were employed during the payroll period immediately preceding the date below, including employees who did not work


during that period because they were out ill, or on vacation or temporarily laid off, including those in 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 Borough is directed to file with the undersigned and Council 8, an election eligibility list consisting of an alphabetical listing of the names of all eligible voters together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by the undersigned no later than ten (10) days prior to the election. A copy of the eligibility list shall be simultaneously filed with Council 8 with statement of service to the undersigned. The undersigned shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

Those employees eligible to vote shall vote on whether or not they desire to be represented by Union Council No. 8, New Jersey Civil Service Association.

The exclusive representative, if any, shall be determined by the majority of valid ballots cast by the employees voting in the election. The election directed herein shall be conducted in accordance with the provisions of the Commission's rules.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
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Carl Kurtzman, Director  
of Representation

DATED: August 17, 1982  
Trenton, New Jersey