

D.R. NO. 93-1

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

In the Matter of

WESTERN MONMOUTH UTILITIES AUTHORITY,

Public Employer,

-and-

Docket No. RO-92-131

IBT LOCAL 701,

Petitioner.

SYNOPSIS

The Director of Representation orders an election among approximately eight clerical employees employed by the Western Monmouth Utilities Authority to determine if they wish to be represented by Local 701. The parties disagreed only about the inclusion of the secretary to the executive director. Where the number of employees in disputed titles is small relative to the total number of eligible voters in the unit and the unit sought is otherwise appropriate, the Director will order an election with the understanding that the disputed positions may vote subject to challenge.

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Appearances:

For the Public Employer
Arthur Goldzweig, attorney

For the Petitioner
Schneider, Cohen, Solomon, Leder & Montalbano, attorneys
(Bruce D. Leder, of counsel)

DECISION AND DIRECTION OF ELECTION

On January 13, 1992, IBT, Local 701 filed a Petition for Certification of Public Employee Representative, supported by an adequate showing of interest, with the Public Employment Relations Commission. Local 701 seeks to represent a unit of approximately 8 unrepresented clerical employees employed by the Western Monmouth Utilities Authority. Although the Authority consents to an election, it objects to the inclusion of the secretary to the executive director in the proposed unit. The Authority asserts that the secretary, Agnes Ralph, is confidential within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").

A Commission staff agent conducted an administrative investigation. N.J.A.C. 19:11-2.6. The parties submitted post-conference position statements and responses. In addition, Local 701 submitted a certification from Ralph. On June 16, 1992 I issued a tentative decision stating that I was inclined to include Ralph in the proposed unit.^{1/} On June 24, 1992, the Authority submitted additional information, including an affidavit from Executive Director Nurlick, contesting the inclusion of the secretary. The Authority contends that the secretary will be intimately involved in the collective negotiation process when the Authority and Local 701 begin negotiations for this unit. The Authority also contests Ralph's certification that she never attended closed sessions of the commissioner's monthly meetings during which labor relations issues may be discussed.

The parties disagree only about the inclusion of one employee in a proposed unit of eight. Where the number of employees in disputed titles is small relative to the total number of eligible voters in the unit and the unit sought is otherwise appropriate, I have conducted elections with the understanding that the employees in the disputed positions may vote subject to challenge. Borough of Leonia, P.E.R.C. No. 86-143,, 12 NJPER 523 (¶17195 1986); New Jersey

^{1/} In addition I indicated that I was also inclined to include a second title objected to by the Authority, that of clerk. The Authority did not submit additional information in opposition to my initial decision and apparently has dropped any further objection to including the clerk. Therefore, the clerk is included in the proposed unit.

Civil Service Association, D.R. No. 81-20, 7 NJPER 41 (¶12019 1980);
Cty of Morris Park Commission, D.R. No. 80-17, 6 NJPER 37 (¶11019
1979). Here, if the challenged ballot is determinative of the
election results, post-election mechanisms are available to resolve
the challenge, including an investigation to determine the status of
the challenged ballot. If the challenged ballot is not
determinative and, assuming that a certification of representation
issues, the parties may voluntarily resolve the status of the
challenged employee or either party may file a petition for
clarification of unit to determine the proper unit placement of the
challenged employee. Leonia.

Accordingly, I find that the petitioned-for unit is
appropriate. I direct that an election be conducted among the
employees in the petitioned-for unit, and that the employee in the
disputed title vote subject to challenge, as follows:

Included: All clerical employees employed by the Western
Monmouth Utilities Authority.

Excluded: All managerial executives, confidential
employees, police employees, supervisors within the meaning
of the Act, professional employees, craft employees,
firefighters, all employees in other negotiating units and
all other employees employed by the Western Monmouth
Utilities Authority.

The secretary to the executive director, Agnus Ralph, may
vote subject to the Commission's challenge ballot procedure.

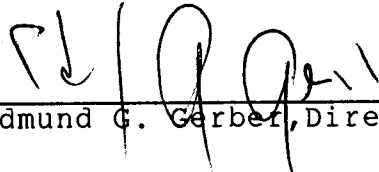
The election shall be conducted no later than thirty (30)
days from the date of this decision. Those eligible to vote must
have been employed during the payroll period immediately preceding

the date below, including 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 will vote by mail ballot. 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 units, 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 simultaneously provided to 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, if any, shall be determined by a majority of the valid votes cast in the election. The election shall be conducted in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Cerber, Director

DATED: July 8, 1992
Trenton, New Jersey