

D.R. NO. 81-43

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

In the Matter of

COUNTY OF UNION,

Public Employer,

-and-

INTERNATIONAL UNION OF ELECTRICAL,
RADIO & MACHINE WORKERS, AFL-CIO-CLC,

DOCKET NO. RO-81-50

Petitioner,

-and-

UNION COUNCIL #8, NEW JERSEY CIVIL
SERVICE ASSOCIATION,

Intervenor.

SYNOPSIS

In the absence of substantial and material disputed factual issues warranting a hearing the Director dismisses a petition for certification of public employee representative. The Director determined that the petitioner did not support a claim that certain employees within the Department of Public Works should be removed from the unit in which they are currently represented since it did not submit an evidentiary proffer which would establish instability or improper representation by the current representative.

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Appearances:

For the Public Employer
Weinberg & Manoff, Esqs.
(Irwin Weinberg, Esq.)

For the Petitioner
Lewis, Greenwald & Overman, Esqs.
(Nicholas Lewis, Esq.)

For the Intervenor
Fox & Fox, Esqs.
(David I. Fox, Esq.)

DECISION

On September 17, 1980 a Petition for Certification of Public Employee Representative was timely filed with the Public Employment Relations Commission (the "Commission") by the International Union of Electrical, Radio & Machine Workers (the "IUE") seeking a unit comprised of all hourly employees of the Union County

Road and Bridge Department, Union County Mosquito Commission and Union County Shade Tree Commission.

In accordance with N.J.A.C. 19:11-2.2(a), the undersigned has caused an administrative investigation to be conducted into the matters and allegations set forth in the petition in order to determine the facts. Union Council #8, New Jersey Civil Service Association ("Council #8"), having submitted a copy of its current contract to the undersigned in support of its request for intervention in this matter, has been granted intervenor status pursuant to N.J.A.C. 19:11-2.7.

On the basis of the administrative investigation herein, the undersigned finds and determines as follows:

1. The disposition of this matter is properly based upon the administrative investigation herein, it appearing that no substantial and material factual issues exist which may more appropriately be resolved at a 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. Union County is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., (the "Act"), and is the employer of the employees who are the subject of this petition, and is subject to the provision of the Act.

3. The International Union of Electrical, Radio & Machine Workers, AFL-CIO-CLC and Union Council #8, New Jersey Civil Service Association are employee representatives within the meaning of the Act and are subject to its provisions.

4. Petitioner seeks to represent hourly employees of Union County Road and Bridge Department, Union County Mosquito Commission, and Union County Shade Tree Commission. During the course of the investigation the County advised the undersigned that the petitioned-for group of employees are employed in the Mosquito Control, Road and Bridges and Shade Tree Divisions of the Department of Public Works. The petitioned-for employees are currently represented by Union Council #8, New Jersey Civil Service Association in a collective negotiations unit of all non-supervisory county employees.

5. The Petitioner is prepared to enter into an agreement for consent election for the petitioned-for unit. The County and Council #8 object to the severance of certain employees of the Department of Public Works from the current unit. Therefore, the County and Council #8 having declined to consent to an election, the dispute exists, and the matter is properly before the undersigned for determination.

6. The Commission has established standards for the severance of employees from an appropriate collective negotiations unit. In In re Jefferson Twp. Board of Education, P.E.R.C. No. 61 (1971), the Commission stated:

The underlying question is a policy one: assuming without deciding that a community of interest exists for the unit sought, should that consideration prevail and be permitted to disturb the existing relationship in the absence of a showing that such relationship is unstable or that the incumbent organization has not provided responsible representation. We think not. To hold

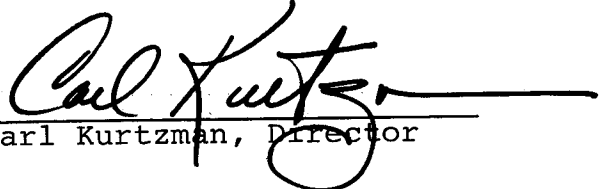
otherwise would leave every unit open to re-definition simply on a showing that one sub-category of employees enjoyed a community of interest among themselves. Such a course would predictably lead to continuous agitation and uncertainty, would run counter to the statutory objective and would, for that matter, ignore that the existing relationship may also demonstrate its own community of interest.

On January 30, 1981, the parties were advised by the undersigned that the Petitioner had not proffered evidence which would indicate that the existing collective negotiations relationship is unstable or that the incumbent organization has not provided responsible representation. Accordingly, the undersigned stated that the standards established by the Commission for the severance of employees from any appropriate collective negotiations unit are not met herein. Petitioner was provided additional opportunity to submit documentary and other evidence as well as a statement of position to establish any claims under the Jefferson Township standard. The undersigned advised that in the absence of substantial and material disputed factual issues the petition would be dismissed. By letter dated February 3, 1981, the IUE submitted an additional statement concerning its claim that employees in the Department of Public Works have had their interest sacrificed in the past collective bargaining and that Council #8 "has shown little concern for the workers in the Department of Public Works". Additionally, IUE's February 3 statement suggests that the affidavit previously supplied to the Commission by an employee of the Department of Public Works, in support of their request for severance, should warrant the convening of an evidentiary hearing in this matter. However, after studying the various submissions, the undersigned has determined that the IUE has failed to

meet the Commission's severance standards by proffering sufficient evidence which would indicate that the existing collective negotiations relationship is unstable or that the incumbent organization has not provided responsible representation. At best, assuming its factual validity, the evidentiary proffer supports a conclusion that certain employees of the Department of Public Works are not content with their inclusion in the unit of employees currently represented by Council #8 and believe they can achieve better representation in a unit limited to this subgroup. This does not establish a basis to support a claim that employees should be severed from a facially appropriate existing collective negotiations unit.

Accordingly, the undersigned determines that the Petitioner has not met its obligation pursuant to N.J.A.C. 19:11-2.6 to present documentary and other evidence in support of its position that the existing relationship is unstable or that the incumbent organization has not provided responsible representation. For the above reasons the undersigned dismisses the instant Petition.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: June 3, 1981
Trenton, New Jersey