

D.R. NO. 95-11

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

In the Matter of

BOROUGH OF PARAMUS,

Public Employer,

-and-

PARAMUS EMPLOYEES ASSOCIATION,

Docket No. RO-95-40

Petitioner,

-and-

TEAMSTERS LOCAL 97,

Intervenor.

SYNOPSIS

The Director of Representation orders an election among the employees in an existing unit of blue-collar employees of Paramus Township. The Director rejects the incumbent representative's attack on the sufficiency of the petitioner's showing of interest when it failed to submit any documentation to support its claim that the showing was either forged or fraudulantly obtained.

The Director also rejects the Township's suggestion that the unit should be expanded to also include certain titles presently represented in the white-collar unit.

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Appearances:

For the Public Employer
Clifford Steele, Administrator

For the Petitioner
Maccarone & Fahri, attorneys
Michael Farhi, of counsel

For the Intervenor
John Gerow, Business Representative

DECISION AND DIRECTION OF ELECTION

On September 23, 1994, the Paramus Employees Association filed a petition seeking to represent all employees of the Borough of Paramus Department of Public Works. Teamsters Local 97 intervened in this matter pursuant to N.J.A.C. 19:11-2.7 with a copy of its current contract covering the unit of "...all permanent blue collar [employees], including Sanitation Division and Shade Tree & Parks Commission...."

We conducted an administrative investigation of the petition. N.J.A.C. 19:11-2.2. At the October 11, 1994, investigatory conference, the PEA clarified its petition to reflect that it seeks to represent the existing unit. The parties agree that, however described, the existing unit includes blue collar employees in the Department of Public Works (including the Division of Roads and the Division of Sanitation), the Department of Sewers, the Department of Parks and Shade Trees, and the Mechanical Department.

Teamsters Local 97 objects to the petition. It asserts that the employees' signatures submitted by PEA in support of its petition are either forgeries or were fraudulently obtained. Local 97 claims that the employees who actually did sign the petition were misled to believe that the purpose of their signatures on the showing was to arrange for a meeting with the PEA attorney to inquire about alternate representation.

The Borough does not object to a secret ballot election, but asserts that the unit should be expanded to also include the Township's six dispatchers, six traffic maintenance employees, and two or three custodial and groundskeeping staff. These (approximately) 15 employees are currently represented by the PEA in another negotiations unit which consists of white-collar employees who work primarily in the Borough's municipal building and report to the Borough Police Department. The PEA has a current contract which covers the white-collar unit, including these employees.

Local 97 objects to any expansion of the unit. The PEA takes no position on including these additional positions.

* * *

Showing of Interest

N.J.A.C. 19:11-1.2(a) (8) requires that "petitions for certification of public employee representative shall be accompanied by a showing of interest as defined in N.J.A.C. 19:10-1.1 of not less than 30 percent of the employees in the unit alleged to be appropriate...." N.J.A.C. 19:10-1.1 defines a showing of interest as:

...a designated percentage of public employees in an allegedly appropriate negotiations unit, or a negotiations unit determined to be appropriate, who are members of an employee organization or have designated it as their exclusive negotiations representative.... When requesting certification, such designations shall consist of written authorization cards or petitions, signed and dated by employees, normally within six months of the filing of the petition, authorizing the employee organization to represent such employees for the purpose of collective negotiations....

Further, N.J.A.C. 19:11-2.1 provides:

the showing of interest shall not be furnished to any of the parties. The director of representation shall determine the adequacy of the showing of interest and such decision shall not be subject to collateral attack.

In Jersey City Medical Center, D.R. No. 83-19, 8 NJPER 642 (¶13308 1982), the Director stated:

The submission of a showing of interest by a Petitioner is an administrative requirement for

the purpose of ensuring that sufficient interest exists among employees on behalf of the petitioner to warrant the expenditure of Commission resources in processing the petition. It is uniquely an administrative concern, and questions relating to its validity must be raised in a prompt manner.

Consistent with N.J.A.C. 19:11-2.1, we separately review claims regarding the validity of a showing of interest. Documentary evidence to support claims of forgery must be filed promptly. See Essex Cty., D.R. No. 85-25, 11 NJPER 433 (¶16149 1985); Woodbridge Tp. Bd. of Ed., D.R. No. 77-9, 3 NJPER 26 (1977); City of Jersey City, E.D. No. 76-19, 2 NJPER 30 (1976).^{1/}

Here, the PEA submitted a sufficient number of employees' signatures on a petition which contains a clear and unambiguous statement that the signers "wish for the Paramus Employees Association to hereinafter represent them in all aspects of collective negotiations with their employer, the Borough of Paramus. Each of these employees further certify that they no longer wish to be represented by Local No. 97, International Brotherhood of Teamsters."

Local 97 contends that it was not given an opportunity to present evidence of the petitioner's alleged misrepresentations in collecting the employees' signatures. I find that Local 97 had

^{1/} See also, Pacific Gas & Electric Co., 97 NLRB 1397 n. 3, 29 LRRM 1256 (1956), in which the National Labor Relations Board makes clear that the manner, method and procedure for determining the validity of a showing of interest is not for disclosure.

ample opportunity to submit evidence supporting its claim. On October 3, we advised Local 97 of the filing of this petition and asked for its response. At the October 11 conference, Local 97 was advised that for the Director to even consider its claims about the signatures, it would have to support these claims by documentary evidence. By letter of November 7, I advised the parties that no evidence had been submitted to cast doubt as to the validity of the showing, and I invited the parties to submit statements of position together with supporting materials. Although Local 97 continues to object to the showing, it has never submitted evidence to support its claim that the showing of interest was forged or was collected by misrepresentation of the authorization signatures' purpose.

In Essex Cty., we reaffirmed the Commission's determination that it is inappropriate in a representation forum to permit parties to litigate allegations that authorization cards have been procured by fraud, misrepresentation, or coercion or that they have been revoked or that they are stale. Rather, we have determined that the best method to discover employees' true choice as to which organization, if any, they wish to designate as their negotiations representative is by providing employees a secret ballot election. Essex Cty.; City of Orange Tp., D.R. No. 85-10, 11 NJPER 33 (¶16018 1984); Jersey City Medical Center; Woodbridge Tp. Bd. of Ed. Therefore, I am satisfied that the showing of interest is proper and valid on its face, and that an election is appropriate to resolve the representation question.

Appropriate Unit

In State of New Jersey and Professional Assn. of N.J. Dept. of Educ., 64 N.J. 231 (1974), the New Jersey Supreme Court decided that where more than one possible unit of employees is appropriate, the Commission's responsibility is to decide in each instance which unit of employees is most appropriate. In deciding the most appropriate unit, we consider not only community of interest, but the extent of employee organization and the history of existing units. Here, Local 97 has represented the existing blue-collar unit since it was initially certified in 1978. The composition of the unit has since remained stable. The approximately 15 City Hall employees that the Borough seeks to add to the unit have been outside this blue-collar unit since its inception and have been represented in the white collar unit since its formation in 1981.

The Borough has not asserted a reorganization or other change in circumstances. Absent a change in circumstances, the employer may not seek to change the structure of either existing unit, based solely on an asserted greater community of interest with the blue collar unit over the white collar unit. In Township of Warren, D.R. No. 82-10, 7 NJPER 529 (¶12233 1981), we found that absent a change in circumstances or a substantial change in job duties, the simple allegation of community of interest is not enough to place a title which had been excluded by the mutual consent of the parties, into a recently certified unit. In Belleville Bd. of Ed., D.R. No. 86-23, 12 NJPER 482 (¶17184 1985), we extended that

rationale to also find it is insufficient to allege a lack of community of interest as the basis for removing titles which the parties had mutually consented to include in the unit.

Generally, the filing of a representation petition for the existing unit does not create an opportunity for either the employer or the incumbent organization, who have agreed to and lived with the existing unit structure, to modify the existing unit. Fairfield Tp., D.R. No. 93-10, 19 NJPER 76 (¶24035 1992); Mount Holly Bd. of Ed., D.R. No. 89-30, 15 NJPER 296 (¶20133 1989); Barneгат Bd. of Ed., D.R. No. 88-15, 14 NJPER 16 (¶19005 1987); City of Newark, D.R. No. 85-24, 11 NJPER 344 (¶16126 1985); Essex Cty.

Further, in Sussex Cty., D.R. No. 91-11, 16 NJPER 572 (¶21251 1990), I rejected the employer's attempt to expand the existing unit to consolidate it with another bargaining unit already represented by the petitioner. There, I observed that, even assuming the employees in both separate units shared some community of interest, on balance, the history of separate units weighed more heavily in favor of maintaining the existing unit structure. I also noted that enlarging the unit to include the additional employees, who were already represented by the petitioner in another unit, might unfairly give it an advantage in the voting.

Accordingly, on balance, I find that the appropriate unit is the historical unit of:

Included: All blue collar workers employed by the Township of Paramus, including employees in the Department of Public Works (including the division of Roads and the division of

Sanitation), the Department of Sewers, the Department of Parks and Shade Trees, and the Mechanical Department.

Excluded: White collar employees, craft and professional employees, police, managerial executives, confidential employees, supervisors within the meaning of the Act, and all employees represented in other collective negotiations units.

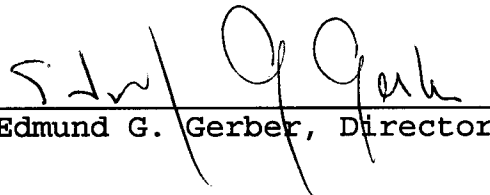
I order that a representation election be conducted among the employees in this unit. Employees will vote on whether they wish to be represented for purposes of collective negotiations by Paramus Employees Association, or by Teamsters Local 97, or by no representative. The election shall be conducted 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 must appear in person 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 public employer is directed to file with us an 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 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. Gerber, Director

DATED: December 6, 1994
Trenton, New Jersey