

D.R. NO. 91-26

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

In the Matter of

TOWNSHIP OF EAST BRUNSWICK,

Public Employer,

-and-

Docket No. RO-91-112

EAST BRUNSWICK PROFESSIONAL MANAGERS
ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation orders an election among all primary level supervisors employed by the Township of East Brunswick. The Township alleges that the Director of Welfare is a managerial executive and that the Comptroller is a confidential employee and should be excluded from the proposed unit. Where the number of employees in the disputed titles is small relative to the total number of eligible voters and the proposed unit is appropriate, an election will be conducted with the understanding that the employees in the two disputed titles may vote subject to challenge.

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Appearances:

For the Public Employer
Apruzzese, McDermott, Mastro & Murphy, attorneys
(Robert T. Clarke, of counsel)

For the Petitioner
Stephen H. Williams, Manager

DECISION AND DIRECTION OF ELECTION

On December 10, 1990, the East Brunswick Professional Managers Association ("Association") filed a timely Petition for Certification of Public Employee Representative, supported by an adequate showing of interest, with the Public Employment Relations Commission ("Commission"). The Association seeks to represent all supervisors employed by the Township of East Brunswick ("Township"), excluding all managerial executives and confidential employees.^{1/}

^{1/} Subsequent to the filing of this petition, the parties stipulated that certain titles are excluded from the

The petitioned-for employees have never been represented. The Township's blue collar and white collar workers are currently represented by the East Brunswick Municipal Employees' Association.

The Township will not consent to an election. It contends that two of the petitioned-for titles, the Director of Welfare and the Comptroller are inappropriate for inclusion in the proposed unit. The Township alleges that the Director of Welfare is a managerial executive and that the Comptroller is a confidential employee. In addition the Township argues that the Township Planner, Township Surveyor, the Deputy Construction Official, the Fire Official and the Supervising Health Inspector are professional

1/ Footnote Continued From Previous Page

petitioned-for unit based on the following:

Those employees who are managerial executives within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1.1 et seq. ("Act"), including: Township Administrator, Township Attorney and Municipal Judge; Directors of Public Safety, Recreation and Parks, Planning and Community Development, Finance, Personnel, Public Works and Water Resources, and the Office on Aging.

Those employees who are higher level supervisors, including: Assistant Director of Public Works and Water Resources, Chief Construction Official, Tax Assessor, Assistant Township Engineer, and Assistant Director of Recreation, Parks and Community Service.

Those employees who are confidential employees within the meaning of the Act, including: Budget Manager/Special Projects and Township Clerk.

In addition, the parties agreed to exclude from the unit the Municipal Court Clerk and the Police Inspector.

employees and must be provided with a separate professional option on the ballot.^{2/}

On January 7, 1991, a Commission Staff Agent conducted an investigatory conference in order to determine the relevant facts. The disposition of the petition is properly based upon our administrative investigation. N.J.A.C. 19:11-2.2 and 2.6. These facts appear.

The parties agree that the proposed unit of 20 supervisors sought by this petition is appropriate on its face. The Township, however, will not consent to the inclusion in the unit of the Comptroller and the Director of Welfare. The Township alleges that the Comptroller is a confidential employee and that the Director of Welfare is a managerial employee, and both should be excluded from the proposed unit. N.J.S.A. 34:13A-5.3.

The parties disagree only about the inclusion of two employees in a proposed unit of 20. 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 Civil Service Association, D.R. No. 81-20, 7 NJPER 41, 45 (¶12019

^{2/} The Association initially objected to a professional ballot option for these titles. It subsequently withdrew this objection.

1980); County of Morris Park Commission, D.R. No. 80-17, 6 NJPER 37 (111019 1979); Tp. of North Brunswick, D.R. No. 78-4, 3 NJPER 260 (1977). If the challenged ballots are determinative of the election results, post-election mechanisms are available to resolve the challenges, including an investigation to determine the status of the challenged ballots. If the challenged ballots are not determinative and assuming that a certification of representative issues, the parties may voluntarily resolve the status of the challenged employees or either party may file a petition for clarification of unit to determine the proper unit placement of challenged employees. Leonia.

Accordingly, I find that the petitioned-for unit is appropriate and I direct that an election be conducted among the employees in the petitioned-for unit, that the employees in the two disputed titles vote subject to challenge, and that a professional option be afforded to the employees designated as professional, as follows:

Included: All primary level supervisors employed by the Township of East Brunswick.

Excluded: All managerial executives, higher level supervisors, confidential employees, police employees, craft employees, blue collar employees, white collar employees and all other employees employed by the Township of East Brunswick.

The Comptroller and the Director of Welfare may vote subject to the Commission's challenge ballot procedure.

The election shall be conducted in accordance with the Commission's rules as follows:

Two voting groups are established for purposes of this election.

Voting Unit 1 -- Included: All non-professional primary level supervisors employed by the Township of East Brunswick.

Excluded: All professional employees, managerial executives, confidential employees, police employees, craft employees, blue collar employees, white collar employees and all other employees employed by the Township of East Brunswick.

Voting Unit 2 -- Included: All professional primary level supervisors employed by the Township of East Brunswick, including the Township Planner, the Township Surveyor, the Deputy Construction Official, the Fire Official and the Supervising Health Official.

Excluded: All non-professional primary level supervisors, all higher level supervisors, managerial executives, confidential employees, police employees, craft employees, blue collar employees, white collar employees and all other employees employed by the Township of East Brunswick.

Professional primary level supervisors (Voting Unit 2) and non-professional primary level supervisors (Voting Unit 1) shall vote on whether they wish to be represented for purposes of collective negotiations by the East Brunswick Professional Managers Association. Professional primary level supervisors (Voting Unit 2) shall also vote on whether they wish to be included in a unit with non-professional employees.

If a majority of voting professional primary level supervisors (Voting Unit 2) votes for inclusion in a unit with non-professional employees, then the ballots of the professional employees shall be tallied together with the ballots of the non-professional employees and an appropriate certification shall issue covering both Voting Units 1 and 2 together.

If a majority of voting professional primary level supervisors (Voting Unit 2) does not vote for inclusion in a unit with non-professional employees (Voting Unit 1), then the ballots of the professional employees shall be counted separately from those of the non-professional employees and appropriate, separate certifications shall issue for each voting unit.

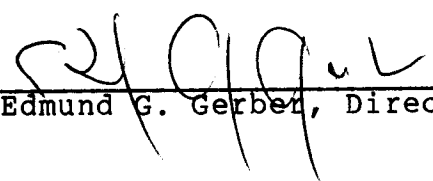
The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, including those in the military service. Employees must appear in person 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 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. I 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: March 8, 1991
Trenton, New Jersey