

E.D. NO. 76-5

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF LOWER MUNICIPAL UTILITIES AUTHORITY,
Public Employer,

- and -

CIVIL & PUBLIC EMPLOYEES UNION LOCAL 1983,
IBPAT, AFL-CIO,
Petitioner,

Docket No. RO-1014

- and -

CAPE MAY COUNCIL NO. 19, NJCSA,
Intervenor.

SYNOPSIS

The Executive Director sustains a challenge to a ballot where, among other things, the employee in question, in contrast to unit members, is paid a salary and works only three to four hours a day, three days a week. Thus, no employee organization is certified as the majority representative of the blue-collar employees of the employer.

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DECISION AND CERTIFICATION OF RESULTS OF ELECTION

On March 31, 1975, a Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission ("Commission") by the Civil & Public Employees Union Local 1983, IBPAT, AFL-CIO ("Petitioner") with respect to certain employees of the Township of Lower Municipal Utilities Authority ("Authority"). The petition was supported by a valid showing of interest. On or about April 10, 1975, Cape May Council No. 19, NJCSA, ("Intervenor") moved to intervene in this matter in accordance with N.J.A.C. 19:11-1.13(a). This motion was granted on April 22, 1975.

The parties executed an Agreement for Consent Election which was approved by the undersigned on April 30, 1975. That agreement described the appropriate unit as: "All blue-collar employees employed by the Township of Lower Municipal Utilities Authority, but excluding managerial executives, professional employees, craft employees, policemen, and supervisors within the meaning of the Act."

A consent election was held on May 21, 1975. At that election, of a total of approximately 15 eligible voters, seven ballots were cast for the Petitioner and seven for the Intervenor. There was one ballot challenged by Petitioner. Since this challenged ballot was determinative and could not be resolved at the election, the Commission has not certified any employee representative.

The undersigned has caused an administrative investigation to be conducted into the matter of the challenge in order to determine the facts in accordance with the provisions of the Agreement for Consent Election ^{1/} and N.J.A.C. 19:11-2.4(h)^{2/}. All parties have been advised of their obligation and have been afforded an opportunity to present to the undersigned documentary and other evidence, as well as statements of position, relating to the challenged ballot.

On the basis of the 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

^{1/} The Agreement for Consent Election provides that, "If the challenges are determinative of the results of the election, the Executive Director shall investigate the challenges and shall, where appropriate, issue a notice of hearing. The method of investigation...shall be determined by the Executive Director..."

^{2/} N.J.A.C. 19:11-2.4(h) provides that "...the Executive Director shall investigate such...challenges... All parties shall present documentary and other evidence, as well as statements of position, relating to the ...challenged ballots."

and material factual issues exist which may more appropriately be resolved after a hearing. Pursuant to N.J.A.C. 19:11-2.4(i), the issuance of a notice of hearing would not be appropriate where, as here, no substantial and material factual issues have been placed in dispute by the parties.

- (2) The Township of Lower Municipal Utilities Authority is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, as amended, and subject to its provisions.
- (3) Both Civil and Public Employees Union Local 1983, IBPAT, AFL-CIO and Cape May Council No. 19, NJCSA are employee representatives within the meaning of the New Jersey Employer-Employee Relations Act, as amended, and are subject to its provisions.
- (4) The Township of Lower Municipal Utilities Authority refuses to recognize the Petitioner as the exclusive representative of the employees in question. Accordingly, a question concerning the representation of public employees exists and this matter is properly before the undersigned for determination.
- (5) There is no dispute regarding the following factual matters:
 - (a) Mr. J. Goodfellow, the employee whose ballot is at issue herein, is a part-time employee. The total hours worked by Mr. Goodfellow at the Authority are approximately three to four hours a day, three days a week. Mr. Goodfellow also works for the the Cape May-Lewes Ferry Commission.

- (b) Although Mr. Goodfellow receives the same fringe benefits as the other employees in the unit, he is paid on a salary basis, while the other employees are paid on an hourly basis.
 - (c) The hours and conditions of employment in regard to the hours required to be present in the plant are different for Mr. Goodfellow as compared to the other employees of the unit.
 - (d) Mr. Goodfellow's responsibilities for the operation of the plant and equipment are different from those of the other employees in the unit.
 - (e) Mr. Goodfellow has, in the past, negotiated separately with the Authority concerning his hours, wages, and conditions of employment.
- (6) The positions of the parties may be summarized as follows:
- (a) Although the Authority has been most co-operative in supplying information regarding this matter, it has taken no position in regard to the choice of employee representative.
 - (b) The Petitioner asserts that the ballot of Mr. Goodfellow should not be counted because of Mr. Goodfellow's unusual position with the Authority. It is Petitioner's contention that Mr. Goodfellow does not share the requisite community of interest with the other members of the unit.

(c) The Intervenor asserts that Mr. Goodfellow does, in fact, share a community of interest with the other members of the unit and that his ballot should be counted.

(7) The paramount consideration before the undersigned in this case is whether Mr. Goodfellow shares a community of interest with the other employees in the unit. If he does, it is clear that the challenge should be overruled and his ballot counted. If this community is lacking, the challenge should be upheld.

A number of factors need to be examined in determining whether a community of interest exists. The Commission has held that the mere fact that an employee is part-time is not enough to negate his community of interest with the overall group.^{3/} In the instant case, however, there are factors which override the part-time consideration. Here, Mr. Goodfellow is employed by two employers, the Township of Lower Municipal Utilities Authority and the Cape May-Lewes Ferry Commission. Apparently, both employers use his services for the same purpose, i.e., his engineer's ~~license~~ His responsibilities are, based on the license, much different from the other employees of the unit. Mr. Goodfellow has the overall responsibility for insuring that the equipment in the plant functions properly, not merely that it is working.

As to pay, Mr. Goodfellow is paid a salary, not by the hour, as are the other members of the unit. More importantly, Mr. Goodfellow has, over the years, negotiated separately with the employer for his salary.

^{3/} See In re West Milford Board of Education, P.E.R.C. No. 56 (1971).

Finally Mr. Goodfellow's hours and conditions of employment are obviously unlike those of the other employees. Mr. Goodfellow works three to four hours a day, three days a week. He apparently comes and goes as he pleases, not being expected to be present at his work station during a set time period as are the other members of the unit.

All of the above facts are uncontroverted by the parties, although the parties were afforded an opportunity to refute such facts. Accordingly, based on the facts above deduced by the administrative investigation herein, the undersigned finds that Mr. Goodfellow does not share a community of interest with the other members of the unit. Hence, the challenge of the Petitioner is sustained, and the vote will not be counted. Thus, the final tally indicates that each employee organization received seven votes. Therefore, the undersigned will certify the results of the election.

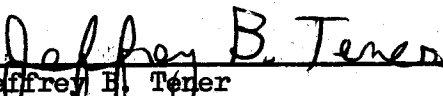
CERTIFICATION OF RESULTS OF ELECTION

An election having been conducted in the above matter under the supervision of the undersigned in accordance with the Act and Chapter 11 of the Commission's Rules and it appearing that no exclusive representative for collective negotiations has been selected; and no valid objections having been filed to the Tally of Ballots furnished to the parties, or to the conduct of the election, within the time provided therefor;

Pursuant to authority vested in the undersigned, IT IS HEREBY CERTIFIED that a majority of the valid ballots has not been cast by the employees in the unit described above for any employee organization appearing on the ballot. There is no exclusive representative of all the employees within the meaning

of the New Jersey ~~Employer-Employee~~ Relations Act, as amended.

BY ORDER OF THE EXECUTIVE DIRECTOR



Jeffrey B. Tener
Executive Director

DATED: September 17, 1975
Trenton, New Jersey

E.D. No. 76-5 DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Township of Lower Municipal Utilities Authority

and

Civil & Public Employees Union Local 1983, IBPAT, AFL-CIO

Docket No. RO-1040

To Parties: 9/17/75

To Press: 9/18/75

To Commissioners: 9/18/75

To Mailing List: 9/18/75