

D.R. NO. 2003-11

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

In the Matter of

CUMBERLAND COUNTY BOARD OF SOCIAL  
SERVICES,  
Public Employer,

-and-

N.J.C.S.A. CUMBERLAND COUNCIL #18,  
Petitioner.

-and-

Docket No. RO-2003-27

CUMBERLAND SUPERVISORS' ASSOCIATION,  
Intervenor,

-and-

TEAMSTERS LOCAL 331,  
Intervenor.

SYNOPSIS

The Director of Representation orders that a runoff election be conducted among a unit of County social services supervisors, where none of the choices received a majority of the valid votes cast and where the sole challenged ballot could affect the outcome of the election. The Director finds that the challenged voter was ineligible to vote because she had been promoted into a non-unit title as of the cutoff date of the first election. Accordingly, her ballot can not determine the outcome of the election and a runoff election is necessary to determine the majority representative, if any.

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Appearances:

For the Public Employer  
Harold B. Shapiro, attorney

For the Petitioner  
Tomar O'Brien Kaplan Jacoby & Graziano, attorneys  
(Mark E. Belland, of counsel)

For the Intervenor - Cumberland Supervisors' Association  
Sandra White

For the Intervenor - Teamsters Local 331  
Szaferman, Lakind, Blumstein, Watter, Blader,  
Lehmann & Goldshore, attorneys  
(Sidney H. Lehmann, of counsel)

DECISION

On September 30, 2002, N.J.C.S.A. Cumberland Council 18  
filed a Representation Petition with the Public Employment Relations  
Commission seeking to represent:

all full-time and part-time social work supervisors, clerk supervisors, child support supervisors and human services specialists IV employed by the Cumberland County Board of Social Services.

Excluded were all other employees. These employees were represented by Teamsters Local 331. The Teamsters and the Cumberland Supervisors Association intervened. On October 21, 2002, the three unions and the Board consented to a mail ballot election, providing for an election among unit employees who were employed during the payroll period ending October 11, 2002, and further providing that Supervising Clerk Deborah Peacock would vote subject to challenged ballot. The parties did not agree about her eligibility to vote and be included in the unit.

The election began when the ballots were mailed on November 4, 2002. Ballots were received by and counted on November 25, 2002 with the following results:

For NJSCA Cumberland Council 18	10 votes
For Cumberland Supervisors Association	7 votes
For No Representative	2 votes
For Teamsters 331	1 vote

N.J.A.C. 19:11-10.4(a) requires one of the choices on the ballot to receive a majority of the valid ballots cast to be declared the winner. Thus, the resolution of the challenged voter could determine the outcome of the election. N.J.A.C. 19:11-10.4(a) requires one of the choices on the ballot to receive a majority of the valid ballots cast to be declared the winner. Thus, the resolution of the challenged voter could determine the outcome of

the election. Pursuant to N.J.A.C. 19:11-10.3(k), we have investigated the facts concerning the challenged ballot and asked the parties to submit position statements and supporting evidence. The Board and Council 18 responded; neither the Teamsters nor the Association has responded.

The Board takes no position on the issues raised. Council 18 argues that the resolution of the eligibility of the challenged voter should precede the conduct of a runoff election, and that the challenged voter should be eligible to vote in this election. Council 18 states: "Although the subject employee has been provisionally appointed to the management title of Assistant Chief Clerk, the individual would revert to her permanent title of Supervising Clerk [an included title] in the event she is not made permanent as the [Assistant Chief Clerk]." Council 18 further argues that if we find Peacock ineligible, then, in any runoff election we should include the employee who replaced Peacock as supervising clerk. That employee did not appear on the employer's eligibility list.

There are no disputed facts which would require convening an evidentiary hearing, and therefore, the disposition of this matter is properly based on our administrative investigation. N.J.A.C. 19:11-10.3(k). By letter of December 27, 2002, we advised the parties of our tentative findings and decision and invited responses. There were no additional submissions. I make the following findings of fact.

The Cumberland County Board of Social Services is a civil service employer under the jurisdiction of the New Jersey State Department of Personnel. The Board employs approximately 18 employees in its fiscal unit. The unit is managed by the chief clerk who is in charge of 4 subordinate units: personnel, payroll, assistance, and administration. Each sub-unit is supervised directly by a supervising clerk. About three or four months ago, the Board adopted the title assistant chief clerk as part of a reorganization of the fiscal unit.

Deborah Peacock was a supervising clerk in charge of the assistance unit until October 28, 2002, when the Board promoted her to assistant chief clerk. Assistant chief clerk is a higher title for which no civil service list of eligibles exists. Peacock is the first Board employee to hold that title. Her appointment is provisional, pending a civil service examination by the State DOP. Her appointment will trigger the exam and certification process by which Peacock may attain permanent status. However, the process may take a long time and there are no guarantees that Peacock will become permanent. If she is not successfully certified by the State DOP to the new title, she may return to her permanent title of supervising clerk; however, at this point that outcome is speculative. Peacock's civil service status has no bearing or effect on the duties and responsibilities she is actually performing. She is receiving the higher pay while serving as a provisional and she possesses all the necessary authority to perform her current job.

Since October 28, 2002, as assistant chief clerk, Peacock supervises other supervising clerks, in particular, the two supervising clerks in charge of the assistance and administrative units within the fiscal unit. There are 11 employees who are also subordinate to Peacock in these units. Thus, Peacock now has authority to recommend the hiring, discipline and termination of these employees and also may perform evaluations and assign and correct the work of subordinates, including unit employees.

Employees may be excluded from a negotiations unit when their inclusion in the unit would create a conflict of interest. The Supreme Court in Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404, 427 (1971) held:

If performance of the obligations or powers delegated by the employer to a supervisory employee whose membership in the unit is sought creates an actual or potential substantial conflict between the interests of a particular supervisor and the other included employees, the community of interest required for inclusion of such supervisor is not present. [Id. at 425].

Here, Peacock's performance of her new duties in supervising other unit employees creates at least a potential conflict of interest if she were included in this negotiations unit. Moreover, in deciding unit placement, the Commission focuses on the employee's actual duties and authority, not merely the employee's current job title. See Tp. of Pennsville, D.R. No. 2002-14, 28 NJPER 291 (¶33109 2002) (EMTs found to be actually performing the duties of firefighters); Somerset Cty. Guidance Center, D.R. No. 77-4, 2 NJPER 358 (1976). No matter what her current title is, at the time of the

election she had assumed the duties of supervising the fiscal unit, which places her in conflict with the employees below her. See Burlington City, H.O. No. 2002-1, 28 NJPER 1 (¶33000 2001).

N.J.A.C. 19:11-10.3(c) provides,

The eligible voters shall be those employees included within the unit described in the agreement for consent election, who were employed during the payroll period for eligibility . . . .

This Rule section sets up two criteria for voting: (a) unit status as of the time of the election, and (b) payroll status as of the payroll cutoff date. Here, Peacock was employed as of the payroll cutoff date, but no longer held unit status as of October 28, 2002 -- the date she assumed job duties and authority which placed her in a conflict of interest with the supervising clerks who are included in the unit. I find that the election began as of the date the ballots were mailed, November 4, 2002. Thus, as of that date, Peacock was not an eligible voter. In the future, because of a civil service process, Peacock may be returned to the title supervising clerk. However, such event is too speculative to determine her unit eligibility as of November 4, 2002. Provisional status alone is not a factor in determining unit eligibility. See Essex Cty., D.R. No. 95-29, 21 NJPER 193 (¶26127 1995) (Director found no reason to exclude provisional corrections employees from the election process simply because of their provisional status where they shared duties and working conditions identical to those of permanent officers. Also, provisionals' potential replacement with certified candidates was not imminent or certain, and there was

no evidence to establish with certainty that any of the provisionals would be replaced by permanent candidates from the civil service list). See also Passaic County (Preakness Hospital), D.R. No. 88-25, NJPER Supp. 379 (1988); Tp. of Cranford, D.R. No. 86-26, 12 NJPER 566 (¶17214 1986); Gloucester City, D.R. No. 82-12, 7 NJPER 564 (¶12251 1981); City of Bordentown, D.R. No. 81-27, 7 NJPER 120 (¶12049 1981); Tp. of Cherry Hill, P.E.R.C. No. 30, NJPER Supp. 30 (1970).

Based on the above, and N.J.A.C. 19:11-10.4(a)3, I find that challenged voter Deborah Peacock was ineligible to vote in any election in this negotiations unit. Her challenged ballot is voided. A revised Tally of Ballots is attached. According to the rules for a runoff election, N.J.A.C. 19:11-10.4(a) provides:

An election with three or more choices on the ballot (for example, at least two representatives and "no representative") that results in no choice receiving a majority of the valid ballots cast will be considered an inconclusive election. In such cases, the Director of Representation shall order a runoff election.

\* \* \*

2. The ballot for a runoff election shall provide for a choice between the two choices receiving the largest number of votes in the prior election.

3. **Employees who were eligible to vote in the prior election and who continue to be included in the voting unit on the date of the runoff election shall be eligible to vote in the runoff election. (Emphasis Added)**

Here, no choice on the ballot received a majority of the 20 valid votes cast. Therefore, a runoff election will be required pursuant

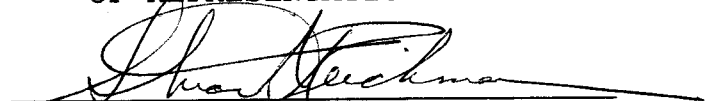


to the above to determine which organization will represent the unit employees. Voters will vote on whether they wish to be represented by NJCSA Cumberland Council #18 or Cumberland Supervisors Association. Those eligible to vote will be those who were eligible to vote in the first election. Peacock is not eligible to vote in this election.

ORDER

Based on all of the above, I order that a runoff election shall be conducted within thirty days from the date of this decision.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Stuart Reichman  
Director of Representation

DATED: January 15, 2003  
Trenton, New Jersey



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Intervenor.

Docket No. RO-2003-27
Date issued: January 15, 2003
[x] Consent Agreement
Commission Direction
D.R. Direction
On Site [X] Mail Ballot

REVISED
TALLY OF BALLOTS FOR MULTI-ORGANIZATION ELECTION

The undersigned agent of the Commission certifies that the results of the secret ballot election, concluded on this date are as follows:

- 1. Approximate number of eligible voters 23
2. Void ballots 1
3. Votes cast for Teamsters Local 331 1
4. Votes cast for NJCSA Cumberland Council 18 10
5. Votes cast for Cumberland Supervisors Association 7
6. Votes cast against participating employee representatives 2
7. Valid votes counted (sum of 3, 4, 5 and 6) 20
8. Challenged ballots 0
9. Valid votes counted plus challenged ballots (sum of 7 and 8) 20
10. Challenges are (not) sufficient in number to affect the results of the election.
11. A majority of the valid votes counted plus challenged ballots (item 9) has (not) been cast for.

Any selection on the ballot

For the Director of Representation

Signature of Stuart Reichman

Stuart Reichman, Director of Representation

The undersigned acted as authorized observers in the counting of ballots indicated above. We hereby certify that the counting was fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated. We also acknowledge service of this tally.

FOR THE PUBLIC EMPLOYER

Cumberland County Bd. of Soc. Services

FOR

NJCSA Cumberland Council 18

FOR

Teamsters Local 331

FOR

Cumberland Supervisors Associatoin