

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

In the matter of

TOWNSHIP OF MANALAPAN,

Public Employer,

-and-

DOCKET NO. RO-79-199

NEW JERSEY ORGANIZING COMMITTEE,
SERVICE EMPLOYEES INTERNATIONAL
UNION, AFL-CIO,

Petitioner.

SYNOPSIS

The Director of Representation, on the basis of an administrative investigation, directs an election among the Township's blue collar road department employees to ascertain their representational desires. The Director determines that a dispute over the includability of two individuals in the proposed collective negotiations unit may be resolved through post-election procedures and that the dispute does not raise substantial factual issues which must be resolved prior to an election.

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Appearances:

For the Public Employer
Sonnenblick, Parker & Selvers
(Gerald N. Sonnenblick, of Counsel)

For the Petitioner
Max Wolf, Coordinator

DECISION AND DIRECTION OF ELECTION

On April 5, 1979, a Petition for Certification of Public Employee Representative, supported by an adequate showing of interest, was timely filed with the Public Employment Relations Commission (the "Commission") by the New Jersey Organizing Committee, Service Employees International Union, AFL-CIO, (the "SEIU") with respect to a proposed unit of blue collar employees employed in the Department of Public Works of the Township of Manalapan (the "Township"). The undersigned has caused an

administrative investigation to be conducted into the matters concerning the Petition in order to determine the facts.

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(c), 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. The Township of Manalapan 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"), is the employer of the employees who are the subject of this Petition, and is subject to the provisions of the Act.

3. The New Jersey Organizing Committee, Service Employees International Union, AFL-CIO is an employee representative within the meaning of the Act and is subject to its provisions.

4. The SEIU has filed a Petition seeking a prima facie appropriate unit comprised of all blue collar employees of the Road Department of the Township, excluding office clericals, supervisors, guards, and other classifications excluded by the Act. The SEIU seeks a secret ballot election.

5. The Township does not consent to a secret ballot election. The Township contends that a "working supervisor" and a "clerical" employee must be included in the collective negotiations unit consisting of the employees of the Road Department. ^{1/} Furthermore, the Township contends that the unit placement of these two employees should be resolved by means of an evidentiary hearing to be conducted prior to the scheduling of an election.

6. A Petition for Certification of Public Employee Representative having been filed, and the parties not having agreed to a secret ballot election, a dispute exists, and the matter is properly before the undersigned for determination.

7. On July 20, 1979, the undersigned notified the parties that on the basis of the investigation to date, it appeared that no substantial and material factual issues had been placed in dispute and that a valid question concerning representation existed in a prima facie appropriate unit. The undersigned provided an additional opportunity to all parties to present evidence as well as statements of position relating to the Petition. The undersigned stated that in the absence of any substantial and material disputed factual issues, he would thereafter issue a decision and direction of election herein. No further evidentiary proffer or statement has been provided by the parties.

^{1/} The Township asserts that the "working supervisor" is not a supervisor within the meaning of the Act and that the "clerical" employee "performs many duties which are not clerical."

With respect to the Township's desire to resolve, prior to an election, the eligibility issues respecting the two employees described above, the Township has been advised that, in accordance with In re Township of North Brunswick, D.R. No. 78-24, 3 NJPER 260 (1977), a substantial disputed factual issue has not arisen which would warrant the delay of an election by the conduct of a pre-election evidentiary hearing. Adequate post-election procedures are available, if necessary, to resolve the instant eligibility dispute. If a challenge is asserted to voting eligibility at an election, these individuals may cast challenge ballots. If challenge ballots are determinative of the results of the election, the status of these employees' eligibility will be resolved in accordance with the Commission's usual post-election challenge procedure. If challenges are not determinative, the status of these employees may be resolved by a Clarification of Unit Petition filed by either party in accordance with the Commission's rules, assuming a Certification of Representative issues.

The Township asserts that the votes of the two individuals who might cast challenge ballots may be influenced due to the "likelihood" that their ballots, if tallied separately after a post-election proceeding, may lose their secrecy. The Commission's ten years of experience in conducting elections convinces the undersigned that such a result, although a possibility in every Commission election, is not necessarily a likelihood, particularly in the instant circumstances. In any event, the risk of such an unfortunate result

must be undertaken because, in the undersigned's judgment, the public interest is best served by the prompt conduct of an election herein and the employees should be afforded the opportunity to vote as to the question of representation without undue delay.

Therefore, for the above reasons, the undersigned is convinced that the challenge ballot procedure is appropriate in this matter.

Accordingly, there existing no substantial and material factual issues in dispute which may more appropriately be resolved after a hearing, the undersigned finds that the disposition of this matter is properly based upon the administrative investigation herein. Therefore, the undersigned finds that the appropriate unit for collective negotiations is: all blue collar employees of the Road Department employed by the Township of Manalapan, but excluding managerial executives, confidential employees, professional employees, craft employees, police and supervisors within the meaning of the Act.

Pursuant to N.J.A.C. 19:11-2.6(b)(3), the undersigned directs that an election be conducted among the employees described above. The election shall be conducted no later than thirty (30) days from the date set forth below.

Those eligible to vote are employees set forth above who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation, or temporarily

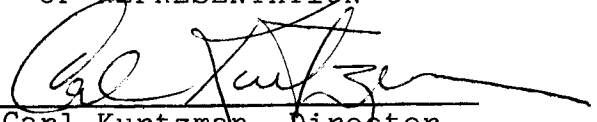
laid off, including those in military service. Employees must appear in person at the polls in order to be eligible to vote. The "working supervisor" and the "clerical" employee may cast challenge ballots. Ineligible to vote are employees who resigned or were discharged for cause since the designated 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 Township is directed to file with the undersigned and with SEIU an election 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 the undersigned no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously filed with SEIU with statement of service to the undersigned. The undersigned shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

Those eligible to vote shall vote whether or not they desire to be represented for the purpose of collective negotiations by the New Jersey Organizing Committee, Service Employees International Union, AFL-CIO.

The exclusive representative, if any, shall be determined by a majority of the valid ballots cast by the employees voting in the election. The election directed herein shall be conducted in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: August 9, 1979
Trenton, New Jersey