

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

In the Matter of

COUNTY OF SOMERSET,

Public Employer,

-and-

DOCKET NO. RO-78-168

LOCAL 866, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA,

Petitioner.

SYNOPSIS

The Director of Representation resolves certain challenges concerning the eligibility of voters in a secret ballot election and determines that personnel employed by the County under the Comprehensive Employment and Training Act are public employees within the meaning of the New Jersey Employer-Employee Relations Act, are employees of the County of Somerset, share a community of interest with other County road and bridge department employees, and are eligible to vote in a secret ballot election. The Director concludes that the instant matter does not present circumstances which would warrant deviation from the established policy set forth in In re Passaic County Board of Chosen Freeholders, D.R. No. 78-29, 4 NJPER 8 (¶4006 1977). Accordingly, the Director orders that the challenged ballots be opened and that a revised Tally of Ballots be issued.

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Appearances:

For the Public Employer
Lanigan, O'Connell & Hirsh, Esqs.
(Daniel F. O'Connell, of Counsel)

For the Petitioner
John Broderick, Business Representative

DECISION

Pursuant to an Agreement for Consent Election approved by the undersigned on June 9, 1978, a secret ballot election was conducted by the Public Employment Relations Commission (the "Commission") on June 21, 1978, among the employees of the County of Somerset (the "County") in the unit described below. ^{1/} In the

1/ "Included: All blue collar employees employed by the County of Somerset in the Road and Bridge Department. Excluded: All Managerial executives, clerical employees, confidential employees craft employees, professional employees, police and supervisors as defined in the Act, and excluding titles above assistant foremen and excluding bridge foremen, road foremen, road and bridge supervisor and assistant supervisors, and administrative supervisor." The Agreement for Consent Election is attached hereto and made a part hereof (Attachment "A").

election, the employees were provided the opportunity to determine whether they desired or did not desire to be represented for the purposes of collective negotiations by the International Brotherhood of Teamsters, Chauffers, Warehousemen and Helpers of America, Local 866 ("Local 866"). Following the election, the parties were served with the Tally of Ballots which showed that of the approximately 83 eligible voters, 79 ballots were cast, of which 37 valid votes were cast for Local 866, 31 valid votes were cast against the participating employee representative, and 11 votes were challenged. ^{2/} All challenged votes represent ballots cast by voters who are employed under the federal Comprehensive Employment and Training Act ("CETA"). The challenged votes are determinative of the results of the election.

In accordance with the provisions of N.J.A.C. 19:11-9.2 (k), the undersigned directed an investigation of the challenges. All parties to the election were provided the opportunity to present documentary and other evidence, as well as statements of position, relating to the challenged votes. The parties have agreed to submit the instant matter directly to the undersigned for a determination without a hearing, said determination to be based upon Stipulations of Fact ^{3/} duly executed by the parties and any briefs/statements of position submitted by them. No briefs/statements of position were filed by the parties.

2/ Tally of Ballots (Attachment "B").

3/ Stipulations of Fact (Attachment "C").

Based upon the Stipulations of Fact and the administrative investigation of the challenged ballots, the undersigned finds and determines the following:

1. The County of Somerset is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., as amended (the "Act"), and is subject to its provisions.

2. International Brotherhood of Teamsters, Chauffers, Warehousemen and Helpers of America, Local 866 is an employee representative within the meaning of the Act and is subject to its provisions.

3. Local 866 filed a Petition for Certification of Public Employee Representative on April 10, 1978, supported by an adequate showing of interest, seeking to represent a unit of blue collar employees in the County's road and bridge department.

4. On May 30, 1978, the parties executed an Agreement for Consent Election which was approved by the Director of Representation on June 9, 1978.

5. A secret ballot election was conducted by the Commission on June 21, 1978. Ballots which were challenged at the election are sufficient in number to affect the results of the election. Accordingly, the disposition as to the validity vel non of the challenged ballots is properly before the undersigned for determination.

6. No objections to the conduct of the election nor conduct affecting the results of the election have been filed with

the Commission.

7. The 11 challenged ballots were cast by County personnel hired in accordance with the provisions of the federal Comprehensive Employment and Training Act, 29 U.S.C. § 841, et seq. These CETA personnel were employed during the payroll period ending May 15, 1978, the eligibility cut-off date described in the Agreement for Consent Election.

8. The County controls the hiring, firing, promotion, supervising, disciplining and directing of CETA personnel while they are employed by the County, subject to and within the restrictions imposed by the CETA legislation and the U. S. Department of Labor's rules and regulations enacted pursuant thereto.

9. The instant CETA personnel have the same general benefits and working conditions as the blue collar employees employed by the County in its road and bridge department.

10. The indefinite term of a CETA participant's employment is attributable to the continued availability of federal funding and the allocation of that federal funding within a total County program since all or part of such CETA monies may be utilized at different times for different programs, depending upon the needs of the County. The continued employment for such personnel, in the absence of or in lieu of CETA funding, is dependent upon the ability of the County to substitute its own funding and its desire to offer continued employment.

11. The issues placed before the undersigned by the parties are whether these CETA employees are public employees within the meaning of the Act, and whether they share a community of interest with other County personnel in the proposed unit of employees. ^{4/}

The undersigned has addressed the question of the status of CETA personnel previously. The facts herein do not demonstrate any circumstances which would warrant deviation from the prior established policy. ^{5/} In Passaic County, supra, n. 5, the undersigned concluded that CETA personnel

"have a sufficient regularity in their employment relationship to be entitled to the protections of the Act and the right to negotiate with their employer as to their terms and conditions of employment, subject to any restrictions that the federal legislation imposes upon the employment relationship."

In Hudson County, supra, n. 5, the undersigned expanded this discussion in response to the specific claim that CETA personnel were

^{4/} The parties have stipulated that, if CETA employees share a community of interest with other County road and bridge personnel, the proposed unit would be appropriate for the representation of CETA personnel.

^{5/} See In re Passaic Cty. Board of Chosen Freeholders, D.R. No. 78-29, 4 NJPER 8 (¶4006 1977), for a detailed discussion of the issues here involved. Also see, In re County of Hudson, D.R. No. 79-3, 4 NJPER 294 (¶4147 1978), and In re Township of Mine Hill, D.R. No. 79-4, 4 NJPER 297 (¶4148 1978) for subsequent analysis.

employed under a grant which was limited to a fixed period of time. The undersigned stated:

"It is the judgment of the undersigned that the fact that these CETA employees are currently employed under a CETA grant for only ten months as contrasted to the CETA employees in the Passaic County matter whose CETA employment was indefinite does not present a distinction which would warrant a change in the Commission's enunciated policy. The ten month period of guaranteed employment continues to qualify these CETA personnel as public employees..."

Therefore, in accordance with the facts of the instant matter, and consistent with holdings in prior decisions, the undersigned finds these CETA employees to be public employees within the meaning of the New Jersey Employer-Employee Relations Act, and finds, as in Passaic County, that the County substantially controls labor relations affecting CETA personnel and is the employer of the personnel hired under this federally funded program. The record evidence herein establishes that the CETA personnel share a community of interest with other County road and bridge department employees. Therefore, for the reasons stated in Passaic County, they are eligible voters in this representation election.

Accordingly, for the reasons stated above, the undersigned determines that these CETA employees are public employees within the meaning of the Act, are employees of the County of Somerset for the purposes of collective negotiations, share a community of interest with other blue collar employees in the unit agreed as appropriate, and are entitled to participate in the selection of the collective

negotiations representative, if any. The undersigned, therefore, directs that within ten (10) days of the date of this decision, the ballots of CETA personnel which have been challenged be opened and counted. The undersigned shall permit the parties to observe the counting of these ballots. After such count, a revised Tally of Ballots shall issue and the undersigned shall issue the appropriate certification as required by the Commission rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: September 19, 1978
Trenton, New Jersey



STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

AGREEMENT FOR CONSENT ELECTION

Pursuant to a Petition duly filed under Chapter 11 of the Public Employment Relations Commission's Rules and the New Jersey Public Employer-Employee Relations Act of 1968, and subject to the approval of the Executive Director of the Commission, the undersigned parties hereby waive a hearing and all issues that could properly be raised at said hearing and AGREE AS FOLLOWS:

1. **SECRET BALLOT.** – An election by secret ballot shall be conducted by the Commission under the supervision of the Executive Director, among the employees of the undersigned Public Employer in the unit defined below, at the indicated time and place, to determine whether or not such employees desire to be represented for purposes of collective negotiations by (one of) the undersigned employee organization(s). Said election shall be held in accordance with the Act, the Commission's Rules, and the applicable procedures and policies of the Commission, provided that the determination of the Executive Director shall be a final administrative determination upon any question raised by any party hereto relating in any manner to the election, and provided further that rulings or determinations by the Executive Director in respect of any amendment of any certification resulting therefrom also shall be final unless the Commission shall, in accordance with Chapter 15 of its Rules, grant a request for review.
2. **ELIGIBLE VOTERS.** – The eligible voters shall be those employees included within the Unit described below, who were employed during the payroll period indicated 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 the military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. At a date fixed by the Executive Director, the public employer, as requested, will furnish to the Executive Director, an accurate list of all the eligible voters, together with a list of the employees, if any, specifically excluded from eligibility.
3. **NOTICES OF ELECTION.** – The Executive Director shall prepare a Notice of Election and furnish copies to the parties setting forth the details and procedures for the election to be held, the appropriate unit, the eligibility period, the date(s), hours and place(s) of the election and containing a sample ballot. The public employer, upon the request of and at a time designated by the Executive Director, will post such Notice of Election at conspicuous and usual posting places easily accessible to the eligible voters.
4. **OBSERVERS.** – Each party hereto will be allowed to station an equal number of authorized observers, selected from among the nonsupervisory employees of the Public Employer, at the polling places during the election to assist in its conduct, to challenge, for good cause, the eligibility of voters, and to verify the tally.
5. **TALLY OF BALLOTS.** – After the votes have been counted and tabulated by the Executive Director, or his agent or agents, there shall be furnished a Tally of Ballots to each of the parties. When appropriate, the Executive Director shall issue to the parties a certification of representative or of results of election, as may be indicated.
6. **OBJECTIONS, CHALLENGES, REPORTS THEREON.** – Objections to the conduct of the election or conduct affecting the results of the election, may be filed by any of the undersigned parties with the Executive Director within five (5) days after the Tally of Ballots has been furnished. Copies of such objections shall be served simultaneously on the other parties by the party filing them, and a statement of service shall be made. The Executive Director shall conduct an investigation of the matters contained in the objections and shall, where appropriate, issue a notice of hearing designating a hearing officer to hear the matters alleged. The objecting party shall bear the burden of proof regarding all matters alleged in the objections. If objections are sustained, the Executive Director may void the results of the election and, in that event, shall be empowered to conduct a new election under the terms and provisions of this agreement at a date, time and place and period of eligibility to be determined by him. 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 of objections and challenges, including the question whether a hearing should be held in connection therewith, shall be determined by the Executive Director whose decision shall be a final administrative determination unless the Commission shall have granted a request for review.
7. **RUNOFF PROCEDURE.** – In the event more than one employee organization is signatory to this agreement, and in the event that no choice on the ballot in the election receives a majority of the valid ballots cast, the Executive

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

County of Somerset,

Public Employer,

-and-

IBTCWHA, Local 866,

Petitioner.

Docket No. RO-78-168
Date Issued 6/21/78
Type of Election: (Check one)
 Consent Agreement
 Commission Direction
 DR Decision

TALLY OF BALLOTS

The undersigned agent of the Executive Director certifies that the results of the tabulation of ballots cast in the election held in the above case, and concluded on the date indicated above, were as follows:

- 1. Approximate number of eligible voters..... 67
- 2. Void ballots..... - 0 -
- 3. Votes cast for IBTCWHA, Local 866 37
- 4. Votes cast for _____
- 5. Votes cast for _____
- 6. Votes cast against participating employee representative(s).. 31
- 7. Valid votes counted (sum of 3, 4, 5, and 6)..... 68
- 8. Challenged ballots..... 11
- 9. Valid votes counted plus challenged ballots (sum of 7 and 8). 79
- 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:~~

~~International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 866~~

FOR THE DIRECTOR OF REPRESENTATION

Michael B. Berman

Michael B. Berman

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

FOR
County of Somerset
Daniel F. Donnell
Attorney for Somerset County

FOR
IBTCWHA, Local 866
[Signature]
B. J.

FOR

FOR

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF SOMERSET,

Public Employer,

-and-

DOCKET NO. RO-78-168

I.B.T.C.W.H.A., LOCAL 866,

Petitioner.

STIPULATIONS OF FACT

The parties to the above-titled matter do hereby stipulate that:

(1) The County of Somerset (the "County") is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., as amended (the "Act"), and is subject to its provisions.

(2) I.B.T.C.W.H.A., Local 866 ("Local 866") is an employee representative within the meaning of the Act and is subject to its provisions.

(3) Local 866 filed a Petition for Certification of Public Employee Representative on April 10, 1978, seeking to represent a unit of blue collar employees in the County's road and bridge department.

(4) On May 30, 1978, the parties entered into an Agreement for Consent Election which was approved by the Director of Representation on June 9, 1978. A copy of that Agreement is attached hereto and made a part hereof (Attachment "A"). The appropriate collective negotiating unit is described in Attachment "A", paragraph 12.

(5) A secret ballot election was conducted by the New Jersey Public Employment Relations Commission (the "Commission") on June 21, 1978 to determine whether the employees in the unit described above wished to be represented for the purposes of collective negotiations by Local 866 or by no employee representative. The Tally of Ballots reveals that 37 employees voted in favor of representation by Local 866, 31 employees voted against the participating representative and that 11 ballots were challenged. Therefore, challenges are sufficient in number to affect the results of the election. A copy of the Tally of Ballots is attached hereto and made a part hereof (Attachment "B").

(6) No objections to the conduct of the election nor to the conduct affecting the results of the election have been filed with the Commission.

(7) The 11 challenged ballots were casted by County personnel hired in accordance with the provisions of the federal Comprehensive Employment and Training Act of 1973, as amended, 29 U.S.C. § 841 et seq., ("CETA"). These CETA personnel were on the payroll for the period ending May 15, 1978, the eligibility cut-off date described in paragraph 10 of Attachment "A".

(8) The questions to be resolved herein are whether these CETA personnel are public employees and, whether there is a community of interest between these CETA employees and other employees within the proposed unit.

(9) The County controls the hiring, firing, promoting, supervising, disciplining and directing of the CETA personnel while

they are employed by the County and subject to and within the restrictions imposed by the United States Department of Labor, the Federal Statutes and rules and regulations enacted pursuant thereto.

(10) These CETA personnel have the same general benefits and working conditions as the blue collar employees employed by the County in its road and bridge department.

(11) The indefinite term of a CETA participant's employment is attributable to the continued availability of federal funding and the allocation of that federal funding within a total County program since all or part of such CETA monies may be utilized at different times, for different programs, depending on the needs of the County, availability and needs of the proposed CETA employee. The continued employment for such personnel in the absence of or in lieu of CETA funding is dependent upon the ability of the County to substitute its own funding and its desire to offer continued employment.

(12) Should it be found that these CETA personnel are public employees and that the requisite community of interest exists, then the petitioned-for unit would be the appropriate unit for the representation of the CETA personnel, subject, however, to the federal restrictions which are imposed on the County under the Federal Statutes and the United States Department of Labor and the rules and regulations indicated pursuant to such statutes.

(13) The parties agree to submit the instant matter directly before the Director of Representation for determination without hearing. Said determination shall be based upon the above

stipulations and such briefs/statements of position which may be submitted. Briefs/statements of position shall be due on or before the fourteenth day after the posting of these stipulations with answering briefs/statements of position due on or before the seventh day thereafter. All such briefs/statements of position shall be served upon the Commission's investigating agent and the opposing party. Proof of service upon the opposing party shall be furnished to the Commission's investigating agent.

/S/ John Broderick, Business Rep.
For the I.B.T.C.W.H.A., Local 866

/S/ Daniel F. O'Connell, Esq.
For the County of Somerset

Dated: 8/22/78

Dated: 8/22/78



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7. **RUNOFF PROCEDURE.** – In the event more than one employee organization is signatory to this agreement, and in the event that no choice on the ballot in the election receives a majority of the valid ballots cast, the Executive