

D.R. NO. 81-9

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

In the Matter of

BOROUGH OF WHARTON,

Public Employer,

-and-

DOCKET NO. RO-81-15

WHARTON BOROUGH POLICE
COMMUNICATIONS DIVISION AND
POLICE RECORDS CLERK,

Petitioner.

SYNOPSIS

The Director of Representation, on the basis of an investigation, directs that an election be conducted to determine whether or not civilian employees of the police department desire to be represented for the purpose of collective negotiations by Petitioner. The Director determines that a dispute concerning the voting eligibility of the police records clerk may be addressed after the election.

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Appearances:

For the Public Employer
Anthony P. Guadagnino, Administrator-Clerk

For the Petitioner
May Fancher, Chairman

DECISION AND DIRECTION OF ELECTION

On July 18, 1980, a Petition for Certification of Public Employee Representative, accompanied by an adequate showing of interest, was filed by the Wharton Borough Police Communications Division and Police Records Clerk (the "Petitioner") with respect to a proposed unit consisting of all police dispatchers and the police records clerk employed by the Borough of Wharton (the "Borough"). The undersigned has caused an investigation to be conducted into the matters and allegations set forth in 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(b), 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 Borough of Wharton 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 the Petition, and is subject to the provisions of the Act.

3. The employee group which calls itself the Wharton Borough Police Communications Division and Police Records Clerk is an employee representative within the meaning of the Act and is subject to its provisions.

4. The Petitioner seeks to represent a unit of all police dispatchers and the police records clerk and agrees to a secret ballot election to be conducted among the employees.

5. The Borough has certified that the Commission's standard Notice to Public Employees has been posted but has declined to provide a list of employees as requested by the undersigned.

6. The Petitioner has provided a valid showing of interest.

7. On July 31, 1980, the Borough submitted a letter to the undersigned objecting to the combination of the employees of the Records Bureau and the Communications Division into a single unit. The Borough also asserted that the police records clerk serves as the secretary to the Chief of Police and, therefore, should not be included in a unit of dispatchers based on the confidential nature of her position. Finally, the Borough alleged that there is no community of interest between the police records clerk (secretary) and the employees in the police communications division. Based upon this contention, the Borough took the position "that the petition is inappropriate" and would not enter into an Agreement for Consent Election.

8. The employees involved herein constitute all of the civilian employees of the police department.

9. On August 5, 1980, the assigned staff member conducted an informal conference with representatives of the Borough and the Petitioner. At the conference the Borough argued that the appropriate placement of the police records clerk, if any, would be in a unit with other clerical employees of the Borough. The Borough's clerical employees are not currently represented for the purpose of collective negotiations. Although the assigned staff member pointed out that adequate Commission procedures were available, if necessary, to resolve any outstanding eligibility dispute involving the one police records clerk, which may arise in the context of a Commission conducted election, the Borough declined to agree to an election.

10. On August 15, 1980, the undersigned advised the parties that it appeared that a valid question concerning representation exists in a prima facie appropriate unit. In previous matters the undersigned has found that a dispute as to the unit eligibility or unit placement of an insignificant number of potential voters does not raise a substantial factual issue requiring a pre-election hearing and a delay of an election for the great majority of voters whose eligibility is not in dispute. In re Tp. of North Brunswick, D.R. No. 78-4, 3 NJPER 260 (1977). Adequate post-election procedures are available, if necessary, to resolve the eligibility dispute. The undersigned stated that in the absence of any substantial and material factual disputed issues, he would thereafter issue a decision and direction of election.

By letter dated August 22, 1980, the undersigned received a reply from the Borough reiterating its position that the police records clerk (secretary) is a confidential employee. By letter dated August 28, 1980, a representative of the Petitioner reiterated its position that the police records clerk (secretary) is not a confidential employee.

As noted above, the undersigned concludes that the unit eligibility of the records clerk (secretary) is best resolved in a post-election proceeding. Accordingly, there existing no substantial and material factual issues in dispute which may more appropriately be resolved after a pre-election hearing, the undersigned finds that the appropriate unit is: all civilian employees

employed by the Police Department of the Borough of Wharton, but excluding professional employees, managerial executives, craft and confidential employees, police and supervisors within the meaning of the Act. The police records clerk (secretary) may vote subject to challenge by the Borough. If challenge votes are determinative of the results of the election, the challenges will be resolved in accordance with the Commission's challenge procedures. See N.J.A.C. 19:11-9.3(k). If the 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 that a certification of representative issues.

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 the 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. 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 the undersigned and with the petitioning employee organization known as the Wharton Borough Police Communications Division and Police Records Clerk, 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 election. A copy of the eligibility list shall be simultaneously filed with the Wharton Borough Police Communications Division and Police Records Clerk 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 on whether or not they desire to be represented for the purpose of collective negotiations by the petitioning employee organization known as the Wharton Borough Police Communications Division and Police Records Clerk.

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

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Carl Kurtzman, Director

DATED: September 5, 1980
Trenton, New Jersey