

D.R. NO. 2004-4

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

In the Matter of

ATLANTIC CITY HOUSING AUTHORITY,

Public Employer,

-and-

Docket No. RO-2004-28

COMMUNICATIONS WORKERS OF AMERICA,  
PRIMARY LEVEL SUPERVISORS UNIT,

Petitioner.

**SYNOPSIS**

The Director of Representation directs an election in a unit of primary level supervisory employees of the Atlantic City Housing Authority. The employer alleged that two of the petitioned-for titles, the head project maintenance supervisor and the affirmative action officer, were inappropriate for inclusion in the proposed unit. The Director ordered that the two disputed titles vote subject to challenge.

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Appearances:

For the Public Employer,  
Klehr, Harrision, Harvey, Branzburg & Ellers, attorneys  
(Charles Ercole, of counsel)

For the Petitioner,  
Tim Dubnau, CWA Organizing Director

**DECISION AND DIRECTION OF ELECTION**

On September 23, 2003, Communications Workers of America (CWA) filed a timely Petition for Certification of Public Employee Representative, supported by an adequate showing of interest, with the Public Employment Relations Commission (Commission). CWA seeks to represent all primary level supervisors employed by the Atlantic City Housing Authority (Authority), excluding all managerial executives and confidential employees. The petitioned-for employees have never been

represented.<sup>1/</sup> There are approximately 16 employees eligible to vote in the primary level supervisory unit.<sup>2/</sup>

The Authority will not consent to an election in the primary level supervisory unit. It contends that two of the petitioned-for titles, the head project maintenance supervisor and the affirmative action officer, are inappropriate for inclusion in the proposed unit. The Authority alleges that the head project maintenance supervisor is a managerial executive and that the affirmative action officer is a managerial executive or a confidential employee. The Authority argues that the two employees should not be permitted to cast challenged ballots because the number of challenges exceeds ten percent of the number of eligible voters. The Authority further argues that no election should proceed until the Commission first determines whether these titles are appropriately included in the unit.

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<sup>1/</sup> On July 22, 2003, CWA filed timely petitions to represent the Authority's supervisory and white collar non-supervisory employees. On August 20, September 9, and 22, 2003, a Commission staff agent conducted investigatory conferences to determine the facts. At the conferences, the parties discussed the appropriate composition of the supervisory and non-supervisory units petitioned for by CWA, and agreed that three units -- primary level supervisors, secondary level supervisors, and non-supervisory white collar employees-- were appropriate. After the September 22 conference, CWA filed the instant petition and amended its supervisory petition to seek secondary level supervisors.

<sup>2/</sup> The Authority's non-supervisory blue-collar employees are currently represented by AFSCME.

The disposition of the petition is properly based upon our administrative investigation. N.J.A.C. 19:11-2.2 and 2.6. I find the following facts.

The parties agree that the proposed unit of 16 primary level supervisors sought by this petition is appropriate on its face. The Authority, however, will not consent to the inclusion in the unit of the head project maintenance supervisor or the affirmative action officer. The Township alleges that both employees are managerial executives, and that the affirmative action officer is also a confidential employee, and both should be excluded from the proposed unit. N.J.S.A. 34:13A-5.3.

The parties disagree only about the inclusion of two employees in a proposed unit of 16. Where the number of employees in disputed titles is small relative to the total number of eligible voters in the unit and the unit sought is otherwise appropriate, we will conduct an election and permit the disputed employees to participate in the election subject to challenge. Borough of Leonia, P.E.R.C. No. 86-143, 12 NJPER 523 (¶17195 1986); State of New Jersey, D.R. 81-20, 7 NJPER 41 (¶12019 1980), req. for rev. den., P.E.R.C. No. 81-94, 7 NJPER 105 (¶12044 1981); Newark Housing Auth., D.R. No. 93-3, 18 NJPER 482 (¶23219 1992); Township of E. Brunswick, D.R. No. 91-26, 17 NJPER 177 (¶22076 1991); Township of Middletown, D.R. No. 91-10, 16 NJPER 532 (¶21234 1990); Morris Cty. Park Comm., D.R. No.

80-17, 6 NJPER 37 (¶11019 1979); Township of North Brunswick, D.R. No. 78-4, 3 NJPER 260 (1977). I find that two disputed ballots of 18 possible voters is not an excessive number of challenged ballots. If the challenged ballots are determinative of the election results, post-election mechanisms are available to resolve the challenges, including an investigation to determine the status of the challenged voters. N.J.A.C. 19:11-10.3(k). If the challenged ballots are not determinative, and assuming that a certification of representative issues, the parties may voluntarily resolve the status of the challenged employees, or either party may file a petition for clarification of unit to determine the proper unit placement of challenged employees. E. Brunswick, Middletown, Leonia.

Accordingly, I find that the petitioned-for unit is appropriate and I direct that an election be conducted among the employees in the petitioned-for unit, and that the employees in the two disputed titles vote subject to challenge, as follows:

Included: All primary level supervisors employed by the Atlantic City Housing Authority, including Housing Manager, Senior Housing Manager, Supervisor of Senior Citizen Activities, Purchasing Agent, Director of Maintenance Services, Public Housing Modification Officer, Urban Renewal Supervisor, Supervisor of Data Processing, Coordinator of Monitoring and Evaluation, Project Director Housing Assistance, and Chief Security Guard.

Excluded: All managerial executives, confidential employees, secondary level supervisors, non-supervisory employees, craft employees, police employees, casual employees, and all other employees.

The head project maintenance supervisor and the affirmative action officer may vote subject to the Commission's challenge ballot procedure. N.J.A.C. 19:11-10.3(e).

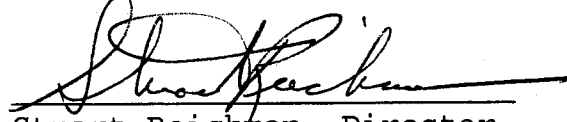
Employees shall vote on whether they wish to be represented for purposes of collective negotiations by CWA, Primary Level Supervisors Unit. The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, 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 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. 19:11-10.1, the public employer is directed to file with us an eligibility list consisting of an alphabetical listing of the names of all eligible primary-level supervisors, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by us no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously provided to the CWA with a statement of service

filed with us. We shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

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

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

A handwritten signature in black ink, appearing to read "Stuart Reichman", is written over a horizontal line.

Stuart Reichman, Director

DATED: October 2, 2003  
Trenton, New Jersey