

D.R. NO. 2004-10

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

In the Matter of

WARREN COUNTY POLLUTION CONTROL
FINANCING AUTHORITY,

Public Employer,

-and-

Docket No. RD-2004-002

IUOE LOCAL 68,

Incumbent Representative,

-and-

JOAN PLUTO,

Petitioner.

SYNOPSIS

In a decertification election, the outcome of which is determined by the eligibility of one challenged ballot, the Director of Representation determines the challenged voter was not eligible to vote in the election. The voter did not meet eligibility criteria as he was not employed by the cut-off date. The ballot was voided and, not receiving a majority of valid votes cast, the majority representative was decertified on a 2-2 vote.

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Petitioner.

Appearances:

For the Public Employer,
John G. Carlton, Executive Director

For the Incumbent Representative,
Mary Moriarty, General Counsel

For the Petitioner,
Joan Pluto, pro se

DECISION

On September 30, 2003, employees of the Warren County Pollution Control Financing Authority filed a Decertification Petition with the Public Employment Relations Commission seeking to decertify IUOE Local 68 as the majority representative of the Authority's blue collar employees, including scale house operators, enforcement/quality control officers, recycling center

working foremen and laborers/recycling. Employee Joan Pluto signed the Petition on behalf of employees.

Local 68 intervened based on its then current collective negotiations agreement with the Authority covering employees' terms and conditions of employment. N.J.A.C. 19:11-2.7b(2). That agreement was set to expire December 31, 2003.

On October 28, 2003, Pluto, the Authority and Local 68 entered into a Consent Agreement for the conduct of a secret ballot election among unit employees to determine whether a majority of unit employees wished to continue to be represented for purposes of collective negotiations by Local 68. Pursuant to N.J.A.C.19:11-4.1(b), the Consent Agreement conferred to the Director's discretion the following matters:

1. The payroll period for eligibility cutoff date;
2. The date and hours of the election; and,
3. The due date for the eligibility list.

Following the receipt of submissions by all three parties, the former Director determined, by letter dated November 12, 2003, the following: (1) employees employed by the Authority as of the date the Consent was approved, November 6, 2003, would be eligible to vote in the election; (2) the election would be conducted on December 16, 2003 from 12:00 p.m. to 12:15 p.m; and (3) the eligibility list was due December 3, 2003. All other

details of the election were previously agreed upon by the parties.

On November 24, 2003, Local 68 requested the Commission review the Director's determination regarding the payroll period for eligibility. It also requested a stay of the election.

On November 24, 2003, Local 68 also filed an unfair practice charge (Docket No. CO-2004-154) against the Authority contending that on November 7 and/or 10, 2003, the Authority refused to hire Robert Williams III,^{1/} after processing his application for more than a month. Local 68 contends this was due to Williams III's long-time friendship with a unit member/shop steward and the belief that he supported Local 68 against the decertification effort initiated by unit employees. Local 68 further contends the Authority declined to hire Williams III after it learned that Local 68 sought to have Williams III declared eligible to vote in the decertification election. It contends the Authority was concerned that hiring Williams III would interfere with Petitioner Pluto's rights in seeking to decertify Local 68 as majority representative.

Local 68 alleges that the Authority's actions violate N.J.S.A. 34:13A-5.4a(1) and (3). It requested, among other relief, that we block processing of the election pending

^{1/} Ironically, there was another voter named Robert Williams, not related, whose name was on the voter eligibility list.

investigation and resolution of the unfair practice charge (CO-2004-154). By letter of December 2, 2003, the Director denied Local 68's request to accord its unfair practice charge blocking effect.

On December 3, 2003, the Commission denied Local 68's request for a stay of the election. On January 29, 2004 the Commission denied Local 68's request for review and declined to extend the payroll period for eligibility. On December 16, 2003, consistent with the terms of the parties' Consent Agreement and the Director's November 12, 2003 determination, a secret ballot election was conducted among the petitioned-for employees with the following result:

2 votes for continued representation by Local 68

2 votes against continued representation by Local 68

1 challenged ballot

Robert Williams III appeared at the polls and cast a challenged ballot as his name did not appear on the employer's eligibility list. To retain majority representative status, Local 68 had to obtain a majority of the valid votes cast.

N.J.A.C. 19:11-10.7; Evesham Tp. Bd. of Ed., D.R. 79-36, 5 NJPER 253, 254 n.1 (¶10143 1979). Therefore, the resolution of the challenged ballot in this case will determine the result of the election. N.J.A.C. 19:11-10.3(k).

Pursuant to N.J.A.C. 19:11-10.3(k), we have investigated the facts concerning the challenged ballot and requested the parties submit position statements and/or supporting evidence. The parties' responses were submitted by December 23, 2003.

The Authority and Pluto contend Williams III was not employed by the Authority as of the November 6, 2003 payroll period for eligibility cutoff date. The Authority advised that:

Mr. Williams applied for employment with the Pollution Control Financing Authority of Warren County on September 27, 2003. Mr. Williams was interviewed and a background check performed. The Authority also conducted a review of Mr. Williams' employment history. Based on the complete review of Mr. Williams, on November 10, 2003 he was informed that he was no longer being considered for employment.

Therefore, Mr. Williams was not an employee of the authority as of the November 6, 2003 payroll period for eligibility.

Local 68 acknowledges that Williams III was not employed by the Authority as of the November 6, 2003 payroll period for eligibility cutoff date. However, it raises two mitigating factors:

1. Local 68's Request for Review of the determination to utilize November 6, 2003 as the eligibility cutoff date is currently pending before the Commission; and,
2. Local 68's unfair practice charge, CO-2004-154, alleging the Authority's refusal to hire Williams III was discriminatory due to his perceived support for Local 68.

Local 68 contends, based on its Request for Review and its unfair practice charge, that it may yet establish that Williams III should have been hired by the Authority by the November 6th cutoff date or that the cutoff date itself was inappropriate. It contends resolution of those two matters should occur before, and independent of, the challenged ballot.

There are no disputed facts concerning Williams' eligibility 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). I make the following findings of fact.

The Warren County Pollution Control Financing Authority is a public employer within the meaning of the New Jersey Public Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act). Local 68 is an employee organization and a majority representative within the meaning of the Act. It represented a unit of blue collar employees employed by the Authority. Historically, the unit has consisted of five employees. During the late summer and fall of 2003, the laborer/recycling position was vacant.

Robert Williams III applied for the position on September 27, 2003. Following an interview, background check and review of his employment history, the Authority advised him on November 10, 2003 he was no longer being considered for employment.

In the interim, Pluto's Decertification Petition was filed on September 30, 2003. The timing of her filing coincides with the open period for filing representation petitions for municipal authorities pursuant to N.J.A.C. 19:11-2.8(c), as the collective negotiations agreement between Local 68 and the Authority was set to expire December 31, 2003.

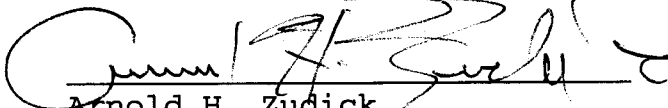
ANALYSIS

N.J.A.C. 19:11-10.3(c) provides, in relevant part, that in order to be eligible to vote in a representation election, one must be employed during the payroll period for eligibility and be included in the unit described in the agreement for consent election. The regulation establishes two criteria to be eligible to vote: (1) unit status as of the time of the election and (2) payroll status as of the payroll cutoff date. See generally, Cumberland Cty. Bd. of Soc. Svce., D.R. No. 2003-11, 29 NJPER 63 (¶17 2003) (challenged ballot voided, runoff election ordered where challenged voter no longer unit member on date of election).

The foregoing was taken into consideration in this matter when establishing the cutoff date. The Director set the payroll cutoff for voter eligibility as November 6 - the date he approved the Consent Agreement. The Commission has agreed with that determination.

The only issue before me is whether challenged voter Williams III meets the eligibility criteria as set forth in the Consent and the Director's November 12 determination. I find that he does not. Williams was never hired by the Authority and therefore never attained payroll or unit status as of the November 6, 2003 eligibility cutoff date. The Director previously determined that there was no basis to block processing of the representation matter pending the outcome of Local 68's unfair practice charge. Consequently, I see no basis to hold disposition of the challenged ballot in abeyance until the conclusion of that litigation. The charge will proceed independently.^{2/} Based upon the above analysis, Williams III is not eligible to vote and his ballot must be voided.

Accordingly, Local 68 did not obtain a majority of the valid votes cast and therefore, Local 68 is decertified as the majority representative of the Authority's blue-collar employees. See Evesham, 5 NJPER at 254 n.1. A revised Tally of Ballots is attached together with an appropriate Certification of Results.


Arnold H. Zudick
Director of Representation

DATED: February 17, 2004
Trenton, New Jersey

^{2/} A Complaint and Notice of Hearing issued on Local 68's charge on January 22, 2004. That matter is scheduled for hearing.

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of
Warren County Pollution Control
Financing Authority,

Public Employer,

-and-
IUOE Local 68,

Employee Organization.

Docket No. RO-2004-002
Date Issued February 17, 2004
 Consent Agreement
 Commission Direction
 D.R. Direction

 On Site Mail Ballot

REVISED TALLY OF BALLOTS
(Counting of Challenged Ballots)

I, as agent of the Director of Representation, certify that the revised Tally of Ballots, resulting from the counting of certain resolved challenged ballots and concluded on the date above, is as follows:

	ORIGINAL TALLY	+	DETERMINED CHALLENGES	=	FINAL TALLY
1. Approximate number of eligible voters . . .	4				4
2. Void ballots	0		1		1
3. Votes cast for <u>IUOE Local 68</u>	2				2
4. Votes cast for _____					
5. Votes cast for _____					
6. Votes cast against employee representative	2				2
7. Valid votes counted (sum of)	4				4
8. Undetermined challenged ballots	1		n/a		0
9. Valid votes counted plus challenged ballots	5		n/a		4

The remaining undetermined challenged ballots, if any, in the Final Tally column are (not) sufficient to affect the results of the election.

A majority of the valid votes plus challenged ballots as shown in the Final Tally column has (not) been cast for:

IUOE Local 68

For the Director of Representation

Kevin M. St. Onge (s)
Kevin M. St. Onge Election Officer

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 _____

FOR _____

FOR _____

FOR _____

**STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION**

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**WARREN COUNTY POLLUTION CONTROL FINANCING
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Public Employer,

-and-

IUOE LOCAL 68,

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DOCKET NO. RD-2004-002

CERTIFICATION OF RESULTS

An election was conducted in this matter in accordance with the New Jersey Employer-Employee Relations Act, as amended, and the rules of the Public Employment Relations Commission. No exclusive representative for collective negotiations was selected, and no valid timely objections to the election were filed.

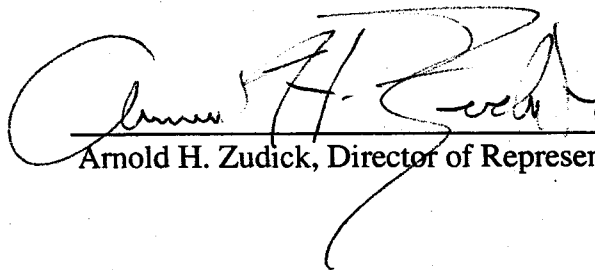
Accordingly,

IT IS HEREBY CERTIFIED that a majority of the valid ballots has not been cast by the employees in the unit described below for any employee organization appearing on the ballot. There is no exclusive representative of all the employees within the meaning of the New Jersey Employer-Employee Relations Act.

UNIT: Included: All regularly employed drivers, laborers, scalemasters, quality control inspectors and environmental enforcement officers employed by the Warren County Pollution Control Financing Authority

Excluded: Managerial executives, confidential employees, and supervisors within the meaning of the Act; craft, professional, police, casual and all other employees; employed by the Warren County Pollution Control Financing Authority

DATED: February 17, 2004
Trenton, New Jersey



Arnold H. Zudick, Director of Representation

Attachment:

Certification of Results dated: February 17, 2004

In the Matter of

WARREN COUNTY POLLUTION CONTROL FINANCING AUTHORITY

-and-

IUOE LOCAL 68

Docket No. RD-2004-002

Service on the following:

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