

D.R. NO. 2004-15

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

In the Matter of

LIVINGSTON LIBRARY BOARD OF TRUSTEES,

Public Employer,

-and-

Docket No. RO-2004-84

CWA LOCAL 1031 - SUPERVISORS,

Petitioner.

**SYNOPSIS**

The Director of Representation directs an election in a unit of supervisory employees of the Livingston Library. The employer objects to the inclusion of the supervising librarian in the proposed unit. It contends she is a managerial executive and confidential employee and that her inclusion in a unit of department heads she directly supervises creates a potential conflict of interest. The Director ordered that the supervising librarian vote subject to challenge.

D.R. NO. 2004-15

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

In the Matter of

LIVINGSTON LIBRARY BOARD OF TRUSTEES,

Public Employer,

-and-

Docket No. RO-2004-84

CWA LOCAL 1031 - SUPERVISORS,

Petitioner.

Appearances:

For the Respondent,  
Schwartz, Simon, Edelstein, attorneys  
(Stephen J. Edelstein, of counsel)

For the Charging Party,  
Rene Garzon, Organizer

**DECISION**

On March 1 and 9, 2004, Communications Workers of America, Local 1031 - Supervisors (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 supervisors, including department heads and supervising librarian employed by the Livingston Library Board of Trustees (Library), excluding all managerial executives and confidential employees. The petitioned-for supervisors have never been represented.

The Library will not consent to an election in the proposed unit. It does not object to a supervisors unit but asserts that

the supervising librarian is inappropriate for inclusion in the unit. It claims the supervising librarian is a managerial executive and confidential employee, and, that her inclusion in the unit with one of the department heads she directly supervises would create a potential conflict of interest. West Orange Bd. of Ed. And Wilton, 57 N.J. 404 (1971).

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 a unit of the Library's supervisory employees is appropriate for collective negotiations. The parties disagree only about the inclusion of the supervising librarian in a proposed supervisors unit. Where the number of employees in dispute 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 East 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 No. Brunswick, D.R. No. 78-4, 3 NJPER 260 (1977). I find that the potential for one challenged ballot of five possible voters is not an excessive number of challenged ballots in this instance. If the challenged ballot is determinative of the election results, post-election mechanisms are available to resolve the challenge, including an investigation, or hearing if necessary, to determine the status of the challenged voter. N.J.A.C. 19:11-10.3(k). If the employees do not vote to be represented by CWA, then the disputed title issue is academic. If CWA succeeds in obtaining a majority of the valid votes cast, then we will certify CWA as the majority representative and parties may voluntarily resolve the status of the title, or either party may file a clarification of unit petition asking us to determine the proper unit status of the disputed title. East 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 unit as follows:

Included: All regularly employed supervisory employees employed by the Livingston Library including department heads.

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

The supervising librarian may vote subject to the Commission's challenge ballot procedure. N.J.A.C. 19:11-10.3(e).

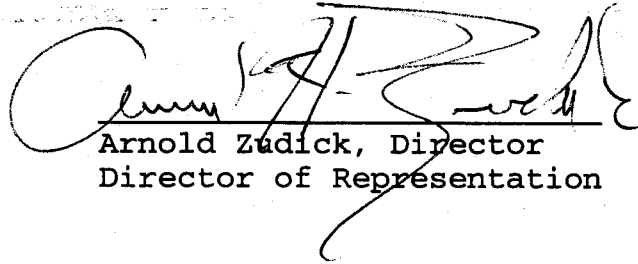
Employees shall vote on whether they wish to be represented for purposes of collective negotiations by CWA Local 1031 - Supervisors. The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period 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 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 not 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



Arnold Zadick, Director  
Director of Representation

DATED: March 25, 2004  
Trenton, New Jersey