

D.R. NO. 2004-19

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

In the Matter of

TOWNSHIP OF TEANECK,

Public Employer,

-and-

Docket No. AC-2004-007

TEANECK PUBLIC WORKERS ASSOCIATION, INC.,

Petitioner.

**SYNOPSIS**

The Director of Representation grants an amendment of certification requested by the Teaneck Public Workers Association, Inc. (Association). This name change reflects the affiliation of the Association with the New Jersey Employees Labor Union, Local One, U.S.W., I.U.J.A.T., AFL-CIO (Local #1). The request was granted despite concerns raised by three unit members as to procedural due process afforded the membership. The Director found that there was adequate notice and opportunity to discuss before the secret ballot election on the proposed affiliation.

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Appearances:

For the Public Employer,  
DeCotiis, Fitzpatrick, Cole & Wisler, attorneys  
(Louis Rainone, of counsel)

For the Petitioner,  
Weissman & Mintz, attorneys  
(James M. Cooney, of counsel)

**DECISION AND AMENDMENT OF CERTIFICATION**

On February 6, 2004, the Teaneck Public Workers Association, Inc. (Association) filed an Amendment of Certification Petition with the Public Employment Relations Commission (Commission) pursuant to N.J.A.C. 19:11-1.6 seeking to amend its Certification of Representative to reflect its affiliation with the New Jersey Employees Labor Union Local One, U.S.W., I.U.J.A.T., AFL-CIO (Local #1).

The Township questions whether adequate due process was afforded the Association's membership. It bases its concern on correspondence received from three unit members.

The Association was given an opportunity to respond to the Township's concerns. After extensions of time, on April 8, 2004, it submitted a supplemental certification from Association Acting President Sal Tuminello, addressing the specific concerns raised in the letter. A copy of the certification was also forwarded to the Township. After review of the supplemental submission, the Township raises no objection to the petition.

I have conducted an investigation into the matters raised by this petition. N.J.A.C. 19:11-2.2. There are no substantial, material facts in dispute which would require a hearing. N.J.A.C. 19:11-2.6(c)(5). Based upon our investigation, I make the following:

#### **FINDINGS OF FACT**

On March 13, 2001, the Commission certified the Teaneck Public Workers Association, Inc. as the exclusive representative of all regularly employed blue-collar employees employed by the Township of Teaneck in its department of public works including various listed titles.

Association President Sal Tuminello submitted certifications stating that on November 19, 2003, he posted a notice next to the time clock where all employees punch in and out before and after their work shifts. The notice announced a meeting to be held on December 3, 2003 to discuss contract negotiations and to vote on whether the Association should affiliate with Local #1. The

notice also explained that Local #1 representatives would be in attendance at the meeting.

In November 2003, Tuminello compiled a list of dues paying members who would be eligible to vote by using the October dues list. The November dues list was not yet available.

Forty-seven (47) members -- the entire Association membership -- attended the December 3 meeting. At the meeting, Tuminello discussed issues relating to the affiliation and answered questions from the membership. A Local #1 representative also spoke and then answered questions.

After the discussion, those who wanted to vote lined up and were checked off an eligibility list. Eligible voters were handed a secret ballot with a yes/no question as to whether they wished to affiliate with Local #1. One member, Richard Merz, was not permitted to vote because his name did not appear on the eligibility list which captured all dues paying members as of October 2003. Merz authorized dues payments on November 13, 2003. Therefore, his name did not appear on the list.

Voters put their ballots in a ballot box. Thirty-eight (38) votes were cast: twenty-nine (29) voted to affiliate with Local #1 and eight (8) voted against affiliation.

The Association president certifies that the Association's officers and the composition of the negotiations unit remain unchanged.

On December 8, 2003, three Association members wrote to the Director of Representation regarding the December 3 meeting. The Township received a copy of the letter. The letter describes the December 3 meeting as follows:

1. the pre-vote affiliation discussion did not address all questions of the membership;
2. Merz should have been allowed to vote;
3. only thirty-seven (37) out of approximately fifty (50) members voted; and
4. the meeting was unprofessional because it was not called to order, no minutes were read or a current financial report discussed.

#### **ANALYSIS**

The Commission's rules establish procedures for amending certifications and our case law establishes the standards for granting such petitions. N.J.A.C. 19:11-1.6. Parsippany-Troy Hills Twp., P.E.R.C. No. 94-119, 20 NJPER 279 (¶25141 1994), denying req. for rev. of D.R. No. 94-20, 20 NJPER 280 (¶25079 1994); Cape May Assignment Judge, et al., P.E.R.C. 85-60, 11 NJPER 91 (¶16039 1985). N.J.A.C. 19:11-1.6(c) requires such a petition to be supported by an affidavit attesting that the membership of the certified employee representative voted in favor of the change in name and affiliation. Such affidavit must specify that:

1. The membership was given advance notice of the election;

2. The election was conducted by secret ballot;
3. A majority voted in favor of the change in name and affiliation; and
4. The organization's officers and the unit structure remain unchanged.

Additionally, to record an affiliation, an employee organization is required to show that its affiliation procedure afforded the membership a degree of due process. Adequate due process will be found where the affiliation procedures provide the members with advance notice of the affiliation vote, an opportunity to discuss the affiliation prior to the vote, and the chance to participate in the affiliation election. Township of Middletown, et al., P.E.R.C. No. 2000-47, 26 NJPER 59, 60 (§31020 1999); Parsippany Troy Hills Tp., 20 NJPER at 280; No. Hudson Reg. Fire and Rescue, D.R. No. 2000-13, 26 NJPER 257 (§31101 2000).

Here, the affiliation procedure afforded the membership notice of the December 3 meeting and an opportunity to discuss the proposed affiliation at that meeting. Although several Association members felt that certain meeting protocol was not followed and there was insufficient discussion before the vote, our due process standard does not require the reading of minutes or a financial report, nor a specified length of time for discussion. Presumably, if the membership's concerns were not addressed by the discussion, the vote would reflect any

dissatisfaction and the affiliation would not be approved. The vote in this instance was, unquestionably, in favor of affiliation.

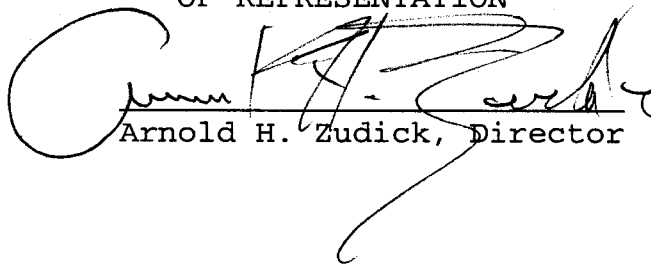
Our rules require a secret ballot election on the proposed affiliation, N.J.A.C. 19:11-1.6(c)2. All those present at the meeting were given an opportunity to vote by secret ballot. A majority, 38 out of 47 members, chose to vote. Nine (9) members present at the meeting exercised their prerogative not to cast a vote. The decision to refrain from voting does not suggest a lack of due process. The majority of those voting were in favor of affiliation. Additionally, whether Tuminello made the correct decision not to allow Merz to vote is immaterial in this instance. One vote against affiliation would not have changed the outcome of the secret ballot election.

Based on the foregoing, the amendment of certification is appropriate to record the Association's change in affiliation. The Association's officers and the structure of the negotiations unit have remained unchanged since the affiliation election. There was adequate advance notice of the election to permit members the opportunity to discuss the issue prior to the vote and, subsequently, members were allowed to participate in a secret ballot election on the proposed affiliation.

Accordingly, the Certification of Representative is amended to reflect that the exclusive negotiations representative is now

Teaneck Public Workers Association, Inc. affiliated with New Jersey Employees Labor Union, Local One, U.S.W., I.U.J.A.T., AFL-CIO.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION



Arnold H. Zudick, Director

DATED: April 26, 2004  
Trenton, NJ