

D.R. NO. 2005-7

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

COUNTY OF UNION,

Public Employer,

-and-

UNION COUNCIL NO. 8,  
IFPTE, AFL-CIO,

Docket No. AC-2004-010

Petitioner.

-and-

NEW JERSEY CIVIL SERVICE ASSOCIATION,

Intervenor.

**SYNOPSIS**

The Director of Representation dismisses an amendment of certification (AC) petition finding that an over two-year delay between the membership disaffiliation vote and the filing of the AC petition, absent justifiable circumstances, was too long and caused employee confusion as to the status of their majority representative. The Director found that the AC petition filing should normally occur within six months of the affiliation/disaffiliation vote. The Director also found that the AC petition seeking to disaffiliate certain parties to a jointly certified majority representative raised a question concerning representation that is more appropriately resolved pursuant to representation/election procedures. The Director also found that the AC petition's supporting affidavit insufficiently identified the eligibility of voters in the disaffiliation election and raised questions regarding whether the election results adequately represented the intent of unit employees.

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Appearances:

For the Public Employer  
Schenck, Price, Smith & King, attorneys  
(Kathryn Hatfield, of counsel)

For the Petitioner  
Loccke & Correia, attorneys  
(Michael A. Bukosky, of counsel)

For the Intervenor  
Fox and Fox, LLP  
(Craig S. Gumpel, of counsel)

**DECISION**

On June 15, 2004, Union Council No. 8, IFPTE, AFL-CIO (Council 8) filed an amendment of certification (AC) 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 disaffiliate from the New Jersey Civil Service Association (NJCSA), and remove their name

from the certified representative. The current certification of record certifies Union Council No. 8, New Jersey Civil Service Association, IFPTE, AFL-CIO as the exclusive representative of Union County's non-supervisory employees.

On June 24, 2004, the County was requested to submit its statement of position regarding the AC petition. Council 8 was also requested to supplement its AC petition and supporting affidavit to provide more specificity regarding the details of the disaffiliation vote that it conducted to support this petition.<sup>1/</sup>

On June 29, 2004, the County advised that it did not oppose the AC petition but expressed concern about whether Council 8 complied with the requirements of N.J.A.C. 19:11-1.6(c). On July 2, 2004, we provided a copy of the petition to NJCSA. Due to the preliminary procedural concerns raised by the County, however, no formal response was sought from NJCSA at that time.

After several extensions of time, Council 8 submitted its supplemental information on August 31, 2004.<sup>2/</sup> On October 7,

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1/ Council 8 was requested to submit additional information regarding when, how, or in what manner the membership was given advance notice of the election and to provide a copy of the notice of the election. It was also requested to state when (date and time) and where the election was conducted. It was asked to state the total membership of the organization at the time of the election, the voter turnout and numerical result of the tally of ballots and to provide a sample ballot.

2/ On July 15, 2004, Council 8 advised that it was compiling  
(continued...)

2004, NJCSA was asked to advise us in writing whether it had an interest in the petition and, if so, to state its position. After an extension of time, NJCSA responded on October 28, 2004, opposing the AC petition and requesting that it be dismissed. NJCSA maintains that, as part of the certified majority representative, it has exclusive rights to represent certain Union County employees. It noted, however, that the certified representative also represents employees in a number of other jurisdictions in Union County, including Clark and Union Townships, the City of Elizabeth and the Plainfield Public Library. NJSCA describes itself as

. . . a statewide organization comprised of subordinate councils who represent non-uniformed public employees, generally in civil service jurisdictions. Although NJCSA has changed in size over the years, it is still a viable, active organization whose Board holds meetings on a quarterly basis. NJCSA also publishes a quarterly newspaper, *The Civil Service Leader*.

Union 8 is a subordinate council of NJCSA. It has been a subordinate council for over 40 years. All subordinate councils pay a per capita tax to NJCSA. Currently, Council 8 is in arrears on its per capita payments. Although in arrears, it is still a member of NJCSA.

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2/ (...continued)  
the information requested by the Commission's June 24 initial case processing letter. On July 21, 2004, Council 8 confirmed that it was considering withdrawing its petition and it was directed to submit either its withdrawal or the previously requested supplemental information by August 25, 2004. That time was extended, at Council 8's request, and the submission was filed on August 31.

NJCSA notes that Council 8 seeks to retain the "Council" designation which was assigned to it by NJSCA. Additionally, it advised that Council 8/NJCSA has an agreement with IFPTE not to interfere with the relationship between Council 8 and NJCSA. It also observes that possible severance of the representative may create certain unit issues and/or violate anti-raiding provisions of the AFL-CIO.

I have conducted an investigation into the matters raised by the AC petition. N.J.A.C. 19:11-2.2. Based on the foregoing submissions and certain administrative notice of the Commission's records, there are no substantial, material facts in dispute warranting a hearing. N.J.A.C. 19:11-2.6(e). Based upon our investigation, these facts appear:

1. Union County 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).

2. In 1970, the Commission certified Union Council No. 8, New Jersey Civil Service Association to represent separate units of the County's non-supervisory blue-collar and white-collar employees. At some point thereafter, Council 8, NJCSA apparently affiliated with International Federation of Professional and Technical Employees, AFL-CIO (IFPTE) and the two negotiations units were consolidated. Following a representation challenge from a rival organization, on April 27, 1995, we conducted an election and certified Union Council 8, NJCSA,

IFPTE, AFL-CIO as the exclusive representative for all regularly employed, non-supervisory blue and white-collar employees employed by the County. The unit now includes approximately 913 employees; approximately 660 are full dues-paying members while approximately 253 are agency fee payers.

I take administrative notice of Commission records revealing that the certified representative also represents employees in several other jurisdictions; Clark and Union Townships, the City of Elizabeth and the Plainfield Public Library. N.J.A.C. 19:11-6.6(e).

3. The County and certified representative are parties to a collective negotiations agreement covering the period January 1, 2001 through December 31, 2004 (the agreement). The agreement sets forth a recognition clause describing the unit in pertinent part as follows:

The Employer hereby recognizes the Association as the exclusive representative for . . . all regularly employed non-supervisory blue collar and white collar employees employed by the County of Union including those in the following departments: Operational Services, Runnells Specialized Hospital, Law, Administrative Services, Human Services, Finance, Public Safety, County Clerk, Sheriff, Register, Prosecutor, Surrogate, County Superintendent of Schools, Tax Board and Extension Services, but excluding employees represented in other negotiations units, police, confidential employees, managerial executives, craft employees, professional, supervisors within the meaning of the Act, and all non-contractual employees.

4. According to the affidavit submitted by Council 8's President Ed Lozinski, sometime before September 2001, Council 8's executive board decided to end its relationship with NJCSA. Council 8, allegedly, sent a notice to all its members advising that it would hold a vote on whether to sever its ties with NJCSA. The vote was scheduled to follow a membership meeting during which members would be afforded the opportunity to discuss the proposal.

Lozinski also states that Council 8 posted a flyer on County bulletin boards in September 2001 advising that a vote would be taken regarding NJCSA at its September monthly meeting. Council 8 did not, however, provide us with copies of either the notices sent to its membership or the September flyer that was allegedly posted. It is also unclear from the submissions whether the full membership of Council 8 was notified of - and was eligible to - participate in the disaffiliation vote, or whether the vote was limited to Council 8 members employed by Union County.

5. The minutes of the September 20, 2001, Council 8 meeting reflect that President Lozinski:

. . . explained to the members the reason for pulling out of NJCSA while Marge Gardiner handed out ballots for [sic] vote. We are paying approximately \$7000 for nothing when IFPTE has been working with us from day one. The vote passed 35 to 8 to withdraw from NJCSA.

Neither the minutes nor any other submission by Council 8, however, reflect whether there was any discussion among the membership regarding the proposed disaffiliation.

Council 8 President Lozinski's September 1, 2004, affidavit also asserted the following:

23. No Council 8 member challenged either the notification, the ballots, votes, election results, or the minutes of the September meeting which is reflected in the minutes of the October 8, 2001 meeting. (Exhibit "C")
24. The Officers and the unit structure remained unchanged by the vote and the decision to un-affiliate with the Civil Service Association has not affected Council 8's operations or status in any way.
25. In fact nothing whatsoever has changed within Council 8 as a result of the vote.
26. There has not been any involvement or contact with the Civil Service Association for years. The relationship was and is non-existent.
27. The Civil Service Association has had no involvement with Council 8 for years.
28. Council 8 believes the Civil Service Association to be a defunct Association which no longer engages in any collective activities or having relationships with any other employee groups.
29. As to the structure of the Civil Service Association, Council 8 believes that the organization is a [sic] simply a front or a sham organization with no legitimate purpose other than to collect money. Council 8 believes that for all practical purposes the organization has dissolved.



32. Council 8 petitioned PERC by letter soon after the election took place.

33. PERC responded that a letter application should be accompanied by a form petition.

34. Council 8 filled out the proper forms soon after the letter petition was filed and was fully diligent in seeking a formal name change with PERC. Council 8 did not sleep on its rights and made a request to the petition [sic] in a timely manner.

. . .

36. Council 8 now petitions the Public Employment Relations Commission to amend its name which should now be reflected as the following: "Union Council 8, IFPTE, AFL-CIO".

6. On October 22, 2001, Council 8 President Lozinski sent a letter to Morris Council #6/NJCSA President Betty Lisovsky stating the following: "Please be advised that at the September 20, 2001 general membership meeting of Union Council #8, the membership, by majority, voted to withdraw from N.J.S.C.A."

That October 2001 letter was attached to Lozinski's January 14, 2004, correspondence sent to the Commission which stated that Council 8:

. . . voted to withdraw from N.J.C.S.A. on September 20, 2001. A letter was sent to you, however, we just learned that you never you [sic] received it.

My office responded to Council 8's correspondence on March 17, 2004, noting that AC petitions need to be filed to record disaffiliation votes, and enclosed petition forms and the Commission's rules.

7. I take additional administrative notice that the Commission received correspondence dated April 20, 2004, from four purported NJCSA supporters stating, in pertinent part, the following:

We would like to request your assistance to determine proof-positive representation of the membership of Council #8, NJCSA, IFPTE, AFL-CIO. We would also like this meeting to be held at your facility.

It has come to the attention of the membership that during the month of September 2001, the President of UC#8 and the Board of Trustees presented, discussed and voted on the removal of NJCSA and Betty Lisovsky, President, as a governing body over the membership of Union Council #8. This was done with the approval of IFPTE, a fellow AFL-CIO, which may constitute "raiding".

This comes as a direct violation of the current Constitution & By-Laws that govern Council #8, Article VI, Section 1 (see attached). Further, Article I of the Constitution & By-Laws clearly states, "This Council No.8, New Jersey Civil Service Association, International Federation of Professional and Technical Engineers, AFL-CIO, which may also explain why the President and Board of Trustees has feverishly attempted to amend the current By-Laws to reflect this of I.F.P.T.E. and submit a decertification application to remove NJCSA as a representative despite the presence of contractual agreements with the State of New Jersey, the County of Union and various municipalities under the heading listed in Article I (see attached).

It is the position of the membership that NJCSA remain as a governing body and not be removed without full notification and understanding of the entire membership as stated in the By-Laws, Article VI, Sections 1 & 2, (section 2 amended 02/01).

On April 27, 2004, I responded to the letter advising that the issues raised therein reflected dissatisfaction with an internal union issue over which the Commission had no jurisdiction absent an appropriate petition. A copy of the Commission's rules setting forth the various petitions and when they may be filed was provided and I advised that a member of the representation staff was available by telephone to answer specific questions.

Council 8's AC petition was filed thereafter on June 15, 2004.

#### 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. D.R. No. 94-20, 20 NJPER 180 (¶25079 1994); Cape May Assignment Judge, et al., P.E.R.C. No. 85-60, 11 NJPER 91 (¶16039 1985).

The Commission's amendment of certification can be used to record a name change, or affiliation or disaffiliation of the exclusive majority representative. N.J.A.C. 19:11-1.6 requires such a petition to be supported by an affidavit attesting 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 with 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, I am not satisfied that Council 8 has met all of the requirements for amendment of certification or that it has afforded its members adequate due process.

**Delay Between The Disaffiliation  
Vote And AC Petition Filing**

The disaffiliation vote occurred in September 2001. Council 8 did not file its AC petition until June 15, 2004; two years, nine months after unit members were afforded the opportunity to vote on the question of disaffiliation. Even if Council 8's January 14, 2004 correspondence from Lozinski were construed as a

perfected filing, it was filed two years, four months after the vote.

Neither the Act, Commission regulations nor case law prescribe any particular time period within which AC petitions must be filed in relation to the disaffiliation vote. The facts of this case demonstrate why they should. A delay of two years and four months between the disaffiliation vote and the filing of an AC petition is excessive - particularly in the absence of any significant reasons for the delay. Employee votes must be acted upon quickly in order to capture the voters intent before other events or changes in the employee complement shed doubt on the reliability of the intent of current employees.

In Parsippany-Troy Hills Twp., 20 NJPER at 182, the then Director, writing in March 1994 about an April 1993 affiliation vote, affirmed his prior decision to grant an amendment of a certification. It was determined that a hearing on the AC petition was unnecessary, and he explained why even an eleven month delay between the vote and finality of the process was too long:

[g]iven the substantial amount of time that has elapsed since the April, 1993 affiliation vote, a hearing would only serve to further delay the employees' right to know, with certainty, the identity of their majority representative. The employees' interests are therefore best served by bringing finality to the affiliation process. Further, the Association's amended certification does not prevent its members from availing themselves of the Commission's representation procedures

in a timely manner.<sup>3/</sup>

Similarly, in Yates Indus. Inc., 264 NLRB at 1249, an administrative law judge found, and the NLRB affirmed, that a change in organizational structure must be effected

in such a way as to afford employees an opportunity to participate in the decision and so as to meet certain minimal standards of due process, thereby ensuring that the decision was an accurate reflection of the participating employees' contemporaneous desires that the union seeking bargaining rights succeed to the bargaining rights of the alleged predecessor. [Emphasis added]

While the Commission, and apparently the NLRB and other state labor agencies have not defined a standard filing period for AC petitions or what constitutes the employees' "contemporaneous desires", this matter should be guided by other prescribed time periods applicable to other filings before the Commission. For example, N.J.S.A. 34:13A-5.4(c) requires the filing of an unfair practice charge within six months of the date the unfair practice was committed. N.J.A.C. 19:11-1.3 and 19:10-1.1(25) require that a representation petition be filed normally within six months of the employees' signatures on showing of interest designations. CU Petitions seeking to clarify units must be promptly filed after the change in circumstances that gives rise to the clarification. Clearview Reg. Bd. Of Ed., D.R. No. 78-2, 4 NJPER (1977). N.J.A.C. 19:11-

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<sup>3/</sup> The Directors decision was affirmed by the Commission, in Parsippany-Troy Hills Twp., at 20 NJPER 279 (¶25141 1994)

2.8(c) prescribes specific periods measured in days and months within which representation petitions may be filed where there is a current contract in effect.

Guided by the foregoing time periods, it seems that while there may be circumstances, not present in this case, in which some delay between an affiliation/disaffiliation vote and the filing of an AC petition may be justified, normally, the filing should occur within six months of the vote. Such a filing simply asks that we record the name change based upon steps the organization has already taken. No additional steps are required on the part of the certified representative after the vote except to file the petition. Therefore, no impediment exists to prompt filing.

In this case, no explanation was offered for the over two-year delay in filing the AC petition. Moreover, as evidenced by at least four members' correspondence to the Commission, the delay caused confusion to some employees as to the status of their majority representative.

Since this AC petition is not based on a reasonably contemporaneous expression of the employees' desires to oust NJCSA, it is dismissed.

#### **AC Petition Raises A Question Concerning Representation**

The petitioner in this case, Council 8, IFPTE, AFL-CIO, is not the sole and exclusive majority representative of the Union

County employees in question. Council 8, IFPTE, AFL-CIO shares its status as exclusive majority representative with NJCSA.

Council 8's AC petition seeks to disaffiliate from NJCSA and remove that organization as part of the certified majority representative. NJCSA opposes its removal as part of the certified majority representative, asserts that it is a continuing, viable entity to which Council 8 is still affiliated.

Where part of the certified employee organization objects to the proposed amendment severing its representation interests in the employees, we will find that a question concerning representation exists and the amendment of certification cannot be granted. Cape May Assignment Judge, et al., citing Missouri Beef Packers, Inc., 175 NLRB 1100, 71 LRRM 1177 (1969).<sup>4/</sup> Both cases explain the policy reasons for dismissing AC petitions in favor of representation petitions.<sup>5/</sup> In Missouri Beef Packers, Inc., the Board stated:

As we have frequently held in the past, amendment of certification is not appropriate in those cases where a question concerning representation is presented. Amendment of certification, by and large, is intended to permit changes in the name of the representative itself. Where, as here, there is no guaranty of continuity of representation and the certified labor organization is a functioning, viable entity, and opposes amendment, it cannot be granted

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4/ Missouri Beef Packers, Inc., was incorrectly cited in the Commission decision. The correct cite is above.

5/ See Lullo, v. IAFF, 55 N.J. 409, 429 (1970).



without doing violence to the purposes of the Act, which include the promotion of stability in labor-management relations. Additionally, amendment of certification under these circumstances would circumvent and unnecessarily abridge the Act's requirement that employees select their own collective-bargaining representative. The result we arrive at here does not preclude the Petitioner from renewing the combat by filing representation petitions when permitted under our contract-bar rules, if it musters the required 30 percent support. If we, in fact, err in this result, only time is lost without the possibility of interfering with a reasonably tranquil continuity of representation and without submerging the right of the employees to choose their own collective-bargaining representative. Accordingly, we shall dismiss the petitions. Id. at 1101-1102, 1179.

Based on the foregoing standard and the facts in this case, I find approving the petition would not guarantee a continuity of representation. Here, NJCSA asserts it continues to be a viable labor organization and objects to any amendment of certification which would eliminate its name as part of the certified representative. Accordingly, I find that there is a question concerning the representation of the unit employees and the AC petition must, therefore, be denied.

Should Council 8 seek to change the employee representative for the negotiations unit, it must file a timely and properly supported representation petition and win a representation election. N.J.A.C. 19:11-1.1 et seq., Cape May Assignment Judge, et al., 11 NJPER at 93; Yates Indus. Inc., 264 NLRB 1237, 1250, 112 LRRM 1231 (1982); Missouri Beef Packers, Inc.

Insufficient Specificity Of Petitioner's Supporting Affidavit

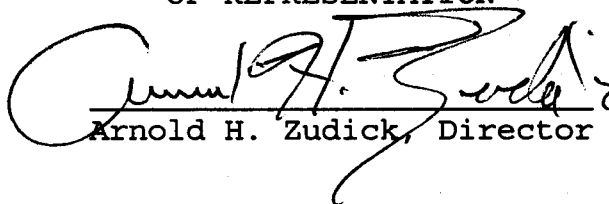
Even if the AC petition had been timely filed, I find that there are other defects in the evidence presented to support the petition. Council 8's submissions do not make it clear whether the 43 votes cast in September 2001 were cast by County employees in this unit. Since Council 8 represents employees employed by other public employers, it is unclear from its submissions whether the vote at the general membership meeting was among Union County employees only, or whether non-unit members were allowed to vote.

Moreover, given the relative size of the Union County unit, approximately 913 unit members, 660 of whom were union members, I am concerned that the 43 union members who actually voted in the disaffiliation election may not have adequately represented the intent of the Union County employees. While affiliation and disaffiliation votes are not required to include the same panoply of procedural safeguards as Commission representation elections, Parsippany-Troy Hills Twp., 20 NJPER at 181, considering all the other factors and concerns about this AC petition discussed previously, 43 out of 660 union members is too small a sampling of union members upon which to approve an amendment seeking to record the proposed disaffiliation from NJCSA.

**CONCLUSION**

Based upon the above discussion, and in accordance with N.J.A.C. 19:11-2.3 and 2.6(c)(1), I decline to amend the Certification of Representative issued by the Commission on April 27, 1995 (Commission Docket No. RO-95-168). This petition is dismissed.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Arnold H. Zudick, Director

DATED: December 8, 2004  
Trenton, New Jersey

A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3. Any request for review is due by December 21, 2004.