

D.R. No. 2007-2

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

In the Matter of

ATLANTIC COUNTY PROSECUTOR'S
OFFICE,

Public Employer,

-and-

Docket No. RO-2006-075

CWA LOCAL 1034,

Petitioner.

SYNOPSIS

The Director of Representation orders Certification of Communication Workers of America (CWA) as the exclusive representative of assistant prosecutors employed by the Atlantic County Prosecutor's Office, based upon a card check. The Prosecutor's Office sought the exclusion of two titles from the negotiations unit based upon their alleged supervisory and managerial executive status. However, the Director found that resolution of the disputed titles was not a necessary prerequisite to certification as the CWA has submitted authorization cards from a majority of the unit, with or without the disputed employees. Either party may file a Unit Clarification Petition to request a determination about the disputed titles after the certification issues.

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Appearances:

For the Respondent,
James F. Ferguson, Atlantic County Counsel

For the Petitioner,
Weissman and Mintz, attorneys
(Annmarie Pinarski, of counsel)

DECISION

On April 20, 2006, the Communication Workers of America (CWA) filed a Petition for Card Check Certification seeking to represent all assistant prosecutors in the Atlantic County Prosecutor's Office (Employer).

The employer objects to the proposed negotiations unit and to certification by card check. It seeks to exclude six chief assistant prosecutors and one supervisory assistant prosecutor from the unit, contending that they are supervisors and managerial executives as defined by the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1.1 et seq.

Furthermore, the employer asks that we conduct an election among the eligible employees.

We have conducted an administrative investigation into this matter to determine the facts. The parties each submitted position statements together with documentation supporting their respective arguments. The disposition of the petition is properly based upon our administrative investigation. There are no substantial material facts in dispute which would require convening an evidentiary hearing. N.J.A.C. 19:11-2.2 and 2.6 Based upon the administrative investigation into the facts surrounding this matter, I find the following:

FINDING OF FACTS

The Association seeks to represent a negotiations unit of all assistant prosecutors. These employees have not previously been represented. We provided Notices to Employees, advising that CWA has submitted a request for Certification by Card Check. The employer has certified that it posted these notices to the affected employees for the required ten-day period. No other organization has expressed a representation interest in these employees. At our request, the Employer submitted a list of the 38 employees in the proposed unit, which included the seven disputed employees. We have conducted a check of the authorization cards submitted by CWA against the employee list submitted by the Employer. The CWA has produced authorization

cards from a majority of the unit employees, whether the seven disputed employees are included or excluded from the unit.

ANALYSIS

On July 19, 2005, the Legislature amended the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13a-5.3, to authorize the Commission to certify a majority representative where (a) a majority of employees in an appropriate unit who have signed authorization cards designating that organization as their negotiations representative; and (b) no other employee representative seeks to represent those employees. See N.J.A.C. 19:11-2.6(b).

In refusing to consent to the proposed unit, the Atlantic County Prosecutor's Office argues the titles of chief assistant prosecutor and supervisory assistant prosecutor be excluded from the unit. The employer apparently seeks an election because it is opposed to card check certifications. But an election is unnecessary in this case.

The Legislature has determined that a check of the organization's authorization cards signed by a majority of the employees in an appropriate unit is a lawful method to determine a majority representative without an election. The employee signatures on the cards submitted here meets the intent of the statute and the rules. The Prosecutor's request for an election is, therefore, denied.

While the parties disagree over whether the chief assistant prosecutors and supervisory assistant prosecutor are managerial executives and/or supervisors within the meaning of the Act, we need not resolve that question as a prerequisite to certification. Our review of CWA's authorization cards shows that it has submitted cards from a majority of the assistant prosecutors, even if the seven employees in question were to be excluded from the unit. Therefore, CWA is entitled to certification based upon a card check. N.J.S.A. 34:13A-5.3. Following certification, either party may file a Petition for Unit Clarification requesting us to determine the chief assistant prosecutors and supervisory assistant prosecutors' unit status. N.J.A.C. 19:11-1.4.^{1/}

I, therefore, certify the Communications Workers of America, AFL-CIO as the exclusive representative of the unit described below.

Included: All Assistant Prosecutors employed by the Atlantic County Prosecutor's Office.

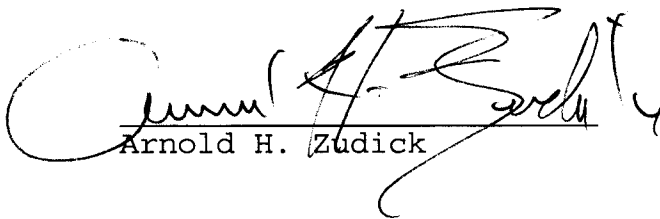
Excluded: Managerial executives, confidential employees and supervisors within the meaning of the Act; non-professional employees, craft employees, police, casual employees, and all other employees.

^{1/} The parties may resubmit the affidavits and other supporting documentation proffered here, to argue their respective positions concerning any Unit Clarification proceeding.

ORDER

I certify the Communications Workers of America, AFL-CIO as the exclusive representative of the unit described above, based upon its authorization cards.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Arnold H. Zudick

Dated: July 21, 2006
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 July 31, 2006.