

D.R. No. 2008-9

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

In the Matter of

MORRIS-UNION JOINTURE COMMISSION,

Respondent,

-and-

Docket No. RO-2008-047

MORRIS-UNION JOINTURE COMMISSION
EDUCATION ASSOCIATION/NJEA,

Petitioner.

SYNOPSIS

The Director of Representation certifies the Morris-Union Jointure Commission Education Association/NJEA as the exclusive representative of certificated staff employed by the Morris-Union Jointure Commission, based upon a card check. The MUJC had opposed the certification by card check and requested an election claiming the Commission's Notice to Employees violated the Act and was ambiguous and that the Commission failed to investigate other potential interveners. The Director rejected the request for an election and found that the Notice to Employees was clear and that the Commission fulfilled all its responsibilities in processing the petition.

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Appearances:

For the Respondent,
Schwartz, Simon, Edelstein, Celso & Kessler, LLC,
attorneys (Martin R. Pachman, of counsel)

For the Petitioner,
Oxford Cohen, P.C., attorneys (Gail Oxford Kanef, of
counsel)

DECISION

On January 30, 2008, the Morris-Union Jointure Commission Education Association/NJEA (Petitioner or Association) filed a timely and sufficiently-supported Petition for Card Check Certification with the New Jersey Public Employment Relations Commission (Commission) seeking to represent a unit of all certificated staff employed by the Morris-Union Jointure Commission (Respondent or MUJC).

The MUJC objects to the card check certification. It contends that the Commission failed to investigate other potential representatives, and that the Commission's Notice to

Employees, which informs employees that a Petition for Card Check Certification has been filed and directs other employee organizations interested in representing the petitioned-for employees to advise the Director of Representation, violates the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act). The Respondent also contends that the Commission should have investigated the authorization cards submitted by the Petitioner.

We have conducted an administrative investigation into this matter to determine the facts. The disposition of the petition is properly based upon our administrative investigation. No disputed substantial material facts require us to convene an evidentiary hearing. N.J.A.C. 19:11-2.2 and 2.6. Based upon our investigation, the following facts appear:

The petitioned-for employees are currently unrepresented. The Association seeks to represent "all certificated staff," which includes teachers, behavioral specialists/teachers, physical therapists, occupational therapists, speech and language therapists, transition coordinator and nurses. At the Commission's request, the MUJC submitted a list of 139 employees in the proposed unit. A sufficient number of authorization cards has been filed to certify the Association as the majority representative of the petitioned-for unit, in accordance with N.J.S.A. 34:13A-5.3.

The MUJC certified that it posted for ten days a Notice to Public Employees, supplied by the Commission. The Notice advises employees that the Association is requesting certification by card check. No other labor organization claimed an interest in representing the employees. Eleven employees contacted the Commission to voice their desire for a secret ballot election. Assuming that each of the eleven employees signed an authorization card, and deducting those cards from the Association's submission, we can still conclude that the Association has provided a sufficient number of authorization cards for certification.

The MUJC has refused to sign a proposed Stipulation of Appropriate Unit and objects to a certification by card check. On March 3, 2008, the MUJC filed a letter setting forth its objections. On March 6, the Association filed a reply. On March 24, the MUJC filed a responsive letter.

ANALYSIS

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

representative seeks to represent those employees. N.J.A.C. 19:11-2.6(b).

The MUJC contends that the Commission's Notice to Employees does not provide that the certification will be without an election and inaccurately describes who may intervene in the process. MUJC suggests that the Commission investigate the authorization cards and conduct a secret ballot election to determine employee choice.

The Commission's Notice to Employees informs employees that a majority representative has filed a petition and ". . .seeks certification based upon a check of its authorization cards." The Notice explains which employees would be included and excluded from the negotiations unit claimed by the petitioner, and notes, ". . .any employee organization having an interest in representing any of these employees should advise the Director of Representation of the Public Employment Relations Commission in writing of its interest as soon as possible. Such notification must conform with N.J.A.C. 19:11-2.7."

The MUJC argues that the Notice does not comply with N.J.A.C. 19:11-2.4(b)3 and is ambiguous because it does not include the phrase ". . .without an election." The Act does not require that the phrase ". . .without an election" appear on the Notice. N.J.A.C. 19:11-2.4(b)3 provides that the Notice will set forth:

In appropriate cases, a statement that the petitioner is seeking certification as the majority representative without an election on the basis of its claim that a majority of employees in the unit have signed authorization cards and no other employee organization is seeking to be the majority representative.

The rule essentially requires only that the Notice distinguish between a petition seeking certification by election, and a petition seeking certification based upon a check of authorization cards.

Our Notice to Employees confirming that certification is sought by an election provides in a pertinent part:

A Petition has been filed with the Commission seeking an election to determine whether certain employees want to be represented for the purposes of collective negotiations by. . .

Our Notice to Employees advising that certification is sought by a check of authorization cards provides in a pertinent part:

The organization named below has filed a Petition with the Commission requesting certification as the exclusive negotiations representative of the unit of employees described below. The Petitioner claims that it has submitted authorization cards from a majority of the unit employees and that no other organization seeks to represent these employees. It seeks certification based upon a check of its authorization cards.

These advisements comport with the intent of the rule. N.J.S.A.

34:13A-5.3 prescribes a certification process ". . .by a majority

of the employees in the unit signing authorization cards. . .", which is virtually repeated on the Notice- "[the petitioner] seeks certification based upon a check of its authorization cards."

The MUJC also argues that the Commission's Notice to Employees improperly limits potential intervenors to "employee organizations." That section of the Notice provides:

NOTICE IS HEREBY GIVEN that any employee organization having an interest in representing any of these employees should advise the Director of Representation of the Public Employment Relations Commission in writing of its interest as soon as possible. Such notification must conform with N.J.A.C. 19:11-2.7.

The MUJC contends that the Notice violates N.J.S.A. 34:13A-3(e), which defines the term "representative." Citing N.J.A.C. 19:11-1.1a(1), MUJC argues that the term may include informal entities, unincorporated associations, committees of employees or individuals.

Item No. 4 on the Commission's representation petition form requests the petitioner to provide the name and contact information of "employee organization(s) other than the current majority organization which may have an interest in this petition." In this case, the Association wrote, "none." The MUJC argues the Commission should solicit any representative(s) interested in representing the petitioned-for employees. Our posted notice sufficiently solicited any such interest.

N.J.S.A. 34:13A-5.3 mandates: "public employees shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any *employee organization*" (emphasis added). The second paragraph of N.J.S.A. 34:13A-5.3 refers to "representatives." N.J.S.A.

34:13A-3(e) defines "representative":

The term 'representative' is not limited to individuals but *shall include* labor organizations . . . This term *shall include* any organization, agency or person authorized or designated by a public employer, public employee, group of public employees, or public employee association to act on its behalf and represent it or them (emphasis added).

Individuals do not appear to have a right to be a majority representative. Rather, individuals have the right to "form, join and assist any employee organization."

Our Notice instructs "employee organizations" interested in representing the petitioned-for employees to contact the Director of Representation. MUJC contends that individuals interested in representing the petitioned-for employees did not express their interest because the Notice inferentially barred them. It also argues that the Commission failed to investigate individual employees as potential intervenors. Assuming that the individual MUJC employees would qualify as legitimate intervenors, we did not receive any inquiry about intervention, or any filing indicating an intervention, pursuant to N.J.A.C. 19:11-2.7. The

Notice adequately provided any potential or alternate representative interested in representing the petitioned-for employees an opportunity to so advise the Director of Representation. None did.

N.J.A.C. 19:10-1.1 defines "showing of interest" in pertinent part:

. . . such designations shall consist of written authorization cards or petitions, signed and dated by employees normally within six months prior to the filing of the petition, authorizing an employee organization to represent such employees for the purpose of collective negotiations . . .

The Association's cards comply with the above rule; the card signers authorized the Association to act as their collective negotiations representative for terms and conditions of employment. In accordance with the card check language in N.J.S.A. 34:13A-5.3, I infer that the card signers have expressed their desire to be represented by the Association. No further investigation is necessary. Accordingly, the MUJC's request for a secret ballot election is denied.

The Commission determines in each instance the appropriate collective negotiations unit. N.J.S.A. 34:13A-6. In re State of New Jersey and the Professional Assn. of N.J. Dept. Of Education, 64 N.J. 231 (1974). The proposed negotiations unit of all certificated staff is prima facie appropriate. The MUJC has not objected to the scope of the proposed unit. Accordingly, I find

that the following unit is appropriate for collective negotiations:

Included: All regularly employed certificated staff employed by the Morris-Union Jointure Commission, including teachers, behavioral specialists/teachers, physical therapists, occupational therapists, speech and language therapists, transition coordinator and nurses.

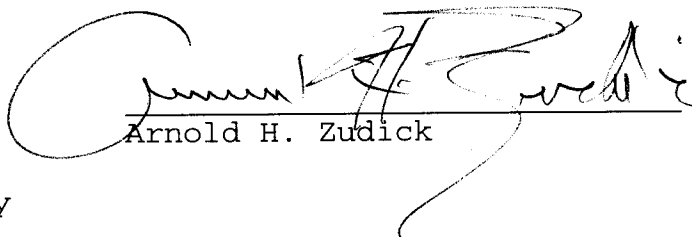
Excluded: Managerial executives, confidential employees, supervisors within the meaning of the Act; craft employees, police employees, casual employees and all other employees employed by the Morris-Union Jointure Commission.

The Association has met the requirements of the Act and is entitled to certification based upon its authorization cards from a majority of the unit employees. N.J.S.A. 34:13A-5.3.

ORDER

I certify the Morris-Union Jointure Commission Education Association/NJEA 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: April 16, 2008
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 April 28, 2008.