

D.R. No. 2010-3

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

In the Matter of

NORTH BERGEN TOWNSHIP,

Public Employer,

-and-

Docket No. RO-2009-071

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS LOCAL 701,

Petitioner.

SYNOPSIS

The Director of Representation orders an election in a petition that had been filed seeking representation by card check. A significant number of employees submitted written documentation which the Director determined raised issues regarding the validity of their authorization cards that the petitioner submitted in support of its petition. Noting that the validity of those cards could not be relied upon for card check purposes, the Director determined that the cards were nevertheless sufficient to justify the conduct of an election to allow the employees to vote on whether to be represented by the petitioner or have no representation.

D.R. No. 2010-3

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

In the Matter of

NORTH BERGEN TOWNSHIP,

Public Employer,

-and-

Docket No. RO-2009-071

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS LOCAL 701,

Petitioner.

Appearances:

For the Respondent,
Weiner Lesniak, attorneys
(Mark A. Tabakin, of counsel)

For the Petitioner,
Mets, Schiro and McGovern, LLP, attorneys
(James M. Mets, of counsel)

DECISION

On February 5, 2009, the International Brotherhood of Teamsters Local 701 (Local 701) filed a representation petition for certification by card check accompanied by what appeared to be an adequate number of authorization cards seeking to represent about 40 non-supervisory emergency medical technicians (EMTs) employed by the Township of North Bergen (Township).

On March 26, 2009, the Township filed a letter, objecting to a certification by card check and requesting a secret ballot election to determine the intent of the employees.

On February 23, 2009, the Township filed a list of sixty-two EMTs, together with a letter advising that Local 701 underestimated the number of employees in the proposed unit because of the transient nature of the part-time workforce. On March 2, 2009, Local 701 filed a reply, asserting that the Township was "packing" the list. It also wrote that it could not identify eleven employees on the Township's list and set forth the names of another eleven employees who have either quit or were terminated. On March 26, following a conference call to discuss discrepancies in the parties' respective lists of employees, the Township provided a second list of fifty-one EMTs. On April 10, 2009, Local 701 filed a letter, challenging the eligibility of fourteen names on the Township's March 26 list. The parties subsequently agreed to remove four of the challenged names from the list. Of the remaining ten (from the challenged fourteen names), four are on leaves of absence and six are assertedly supervisors.

The Township contends that the employees on leave are eligible for representation and it provided anticipated return dates for three of the four employees. On May 12, 2009, Local 701 filed a letter, conceding the eligibility of the employees with expected return dates, but contesting whether the employee on an open-ended leave is eligible for representation.

Accordingly, the eligibility of one employee on leave remains in dispute.

The Township asserts that none of the six purported supervisors hire, fire, discipline, or effectively recommend those actions, and should be included in the petitioned-for unit. The parties do not object to a unit comprised of non-supervisory EMTs.

We have conducted an administrative investigation into the petition. N.J.A.C. 19:11-2.2. On June 4, 2009, I wrote to the parties, advising that I was inclined to order an election rather than certify the petitioned-for unit by card check because of issues regarding the validity of a number of authorization cards. The parties were provided an opportunity to reply. On June 22, 2009, Local 701 filed a letter and certifications, alleging that the Township's conduct during the processing of the petition would prevent a fair election. It requests that the Director certify the unit based upon the authorization cards or order a hearing to determine the validity of the cards. Our review of all documents submitted reveals the following facts.

Local 701 has submitted authorization cards signed by a majority of employees in the petitioned-for unit, regardless of whether the remaining employees are determined to be included or excluded from the bargaining unit.

The Township received letters from ten employees who had signed cards expressing a desire to rescind their authorization cards. Copies of the letters were also sent to Local 701 and to me. The identically-worded letters of those ten employees provide in a pertinent part:

I was wrongly informed and promised a full-time position as well as benefits and a pension by the organizer. I was told that we will meet and discuss the pros and cons before any further action would be taken. I was pressured into [signing the authorization card] and told that we will be able to cast a vote. None of the these actions were taken by the organizer and therefore, I wish to revoke my authorization card.

The cover letter which accompanied the ten letters provides in a pertinent part:

We were falsely misled and harassed by the organizer into signing an authorization card. We were told that we were signing the cards to have a union rep come and speak to us. We were never told that these cards will count as our vote. The organizer also told us that if we signed the cards we were guaranteed a full-time position with benefits and a pension. We were also told that if we disagree with anything that the union rep [representative] had to offer we will be able to withdraw from it.

Local 701 asserts that the parties' difficulty in agreeing to an employee list indicates that the "evidence of revocation is highly suspect."

ANALYSIS

N.J.A.C. 19:10-1.1 defines a showing of interest as:

. . . a designated percentage of public employees in an allegedly appropriate negotiations unit, or a negotiations unit determined to be appropriate, who are members of an employee organization or have designated it as their exclusive negotiations representative. . . . When requesting certification, such designations shall consist of written authorization cards or petitions, signed and dated by employees, normally within six months of the filing of the petition, authorizing the employee organization to represent such employees for the purpose of collective negotiations. . . .

Although a "showing of interest" may include authorization cards, it is a term specifically identified as those materials accompanying a petition seeking certification by election.

N.J.A.C. 19:10-1.2(a)(9). A petition seeking certification by card check must be accompanied by authorization cards as defined by N.J.A.C. 19:11-2.6(d)(6), which permits the Director to "certify the petitioner as the majority representative based on its submission of **valid** authorization cards signed by a majority of the employees in the appropriate unit" (emphasis added).

Although our rules do not specifically address the revocation of an authorization card for a card check petition, the Director must determine if the cards are valid. N.J.A.C. 19:11-2.6(d)(6).

A showing of interest differs from authorization cards submitted to support a petition for certification by card check. A showing is required merely to justify a secret ballot election. It "ensur[es] that sufficient interest exists among employees on

behalf of the petitioner to warrant the expenditure of Commission resources in processing the petition . . . [I]t is uniquely an administrative concern." Jersey City Medical Center, D.R. No. 83-19, 8 NJPER 642, 643 (¶13308 1982). Authorization cards submitted for a card check certification however, presumably measure voters' representational wishes, as would their ballots in a Commission-conducted election.

A showing of interest is not subject to collateral attack. N.J.A.C. 19:11-2.1. The primary reason why it cannot be attacked is that an election will cure any doubt that may have arisen about the showing's validity. We have held:

. . . [I]t is inappropriate in a representation forum to permit parties to litigate allegations that authorization cards have been procured by fraud, misrepresentation, or coercion or that they have been revoked or that they are stale. Rather, we have determined that the best method to discover employees true choice as to which organization, if any, they wish to designate as their negotiations representative is by providing employees a secret ballot election. [Borough of Paramus, D.R. No. 95-11, 21 NJPER 25, 26 (¶26015 1994)]

See also, City of Newark, 346 N.J. Super. 460, 466; 28 NJPER 128, 129 (App. Div. 2002); State of New Jersey (Dept. of Corrections), D.R. No. 2006-6, 31 NJPER 389, 390 (¶151 2005); Essex County, D.R. No. 85-25, 11 NJPER 433, 436 (¶16149 1985).

In this case, the validity of the authorization cards is in doubt. A significant number of employees provided letters

describing threats, promises of benefits and misleading statements causing them to sign the cards. They wish to revoke their cards. Their concerns raise the issue of whether the cards are "valid" for card check purposes. Cf. Mt. Ephraim Bd. Ed., D.R. No. 2007-003, 32 NJPER 293 (¶121 2006) (Director found no basis to question the validity of authorization cards because no employee objected). Our goal is not to determine whether the cards were obtained by fraud or inappropriate conduct; it is to ascertain the intent of the employees who signed authorization cards.

When a legitimate and substantial doubt has been raised about the validity of authorization cards submitted for a card check certification, an election - not a hearing on the validity of the cards - is the appropriate administrative response. A hearing will unduly delay the employees' opportunity to resolve the question concerning representation. Unlike a secret ballot election, a hearing will likely require employees to openly disclose their support for - or against - Local 701, a circumstance that would be inconsistent with the intent of the Act and the secret ballot process. N.J.A.C. 19:11-2.1; N.J.A.C. 19:11-10.3(b); N.J.A.C. 19:11-10.3(f). An election by contrast, will promptly and curatively gauge the intent of the card signers and will better preserve the "laboratory conditions" under which their intent should be gauged. East Windsor Tp ., D.R. No. 79-

13, 4 NJPER 445, 447 (¶ 4202 1979); see also, General Shoe Corp., 77 NLRB 124, 21 LRRM 1337 (1948). Local 701's supposition that the Township prompted the employee's letters, leading to its statement that the "evidence of revocation is highly suspect," is best answered or cured by a secret ballot election.

Local 701 argues that the Supreme Court's holding in NLRB v. Gissel Packing Co., 395 U.S. 575, 71 LRRM 2481 (1969), prescribes when employees should be bound by their signed authorization cards. Gissel arose from consolidated unfair practice charge cases, principally alleging that the employers had refused to bargain, despite the fact that no secret ballot election had been conducted. The Court wrote that the duty to bargain could arise in the absence of an election when the employer's pre-election conduct was so egregious that a fair election probably could not have been held. 71 LRRM 2491. Local 701 alleges that the Township's conduct during the processing of the pending petition similarly prevents a fair election.

Local 701 has not filed an unfair practice charge against the Township, and the facts before me do not demonstrate that the employer engaged in unlawful conduct, let alone egregiously unlawful conduct. In Gissel, the Court noted that the National Labor Relations Board had found that in three of the four consolidated cases, the union had a valid card majority when it initially demanded recognition. Id. at 71 LRRM 2493. By

contrast, I am unable to determine that Local 701 has a valid card majority.

Although the letters I received cast doubt upon the validity of the authorization cards for purposes of a certification by card check, the cards suffice as a "showing of interest" and meet the thirty percent threshold required for an election. N.J.A.C. 19:11-1.2(d). As we wrote in Essex County: ". . . the question concerning the representational desires of the employees raised herein can best be answered by the conduct of a secret ballot election by this Commission." 11 NJPER at 436.

Accordingly, I direct that a secret ballot election be conducted among all full-time and regular part-time EMTs employed by the Township of North Bergen. They shall vote on whether they wish to be represented for purposes of collective negotiations by Local 701 or no representative. The election shall be conducted not 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. 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

to resolve the question concerning representation raised by this petition. Disputes over the eligibility of certain titles or positions can be handled through our challenged ballot procedure.

The public employer is directed to file with us an eligible list consisting of an alphabetical listing of the names of all eligible voters in the unit, together with their last known mailing addresses and job titles, pursuant to N.J.A.C. 19:11-10.1. In order to be timely filed, the eligibility list shall be simultaneously provided to the employee organization 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 H. Zudick, Director

DATED: July 14, 2009
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 24, 2009.