

D.R. No. 2010-13

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

In the Matters of

MONMOUTH COUNTY PROSECUTOR'S
OFFICE,
Public Employer,

-and-

Docket No. RO-2009-088

OFFICE AND PROFESSIONAL EMPLOYEES
INTERNATIONAL UNION, LOCAL 32,
Petitioner.

MONMOUTH COUNTY PROSECUTOR'S
OFFICE,
Public Employer,

-and-

Docket No. RO-2009-094

COMMUNICATION WORKERS OF AMERICA,
LOCAL 1034,
Petitioner.

SYNOPSIS

Based upon a majority of authorization cards submitted by Office and Professional Employees International Union, Local 32, the Director of Representation certifies a unit of non-professional, non-supervisory clerical employees of the Monmouth County Prosecutor's Office. Based upon a majority of authorization cards submitted by Communication Workers of America, Local 1034, the Director of Representation also certifies a unit of professional, non-supervisory employees of the Monmouth County Prosecutor's Office. The Prosecutor did not object to the unit structure, but asserted that two titles Local 32 petitioned for were professional and should be placed in CWA's unit. After the Director notified the parties of his intention to find the titles to be non-professional, the Prosecutor did not dispute the finding, but asserted that none of its employees were professionals within the meaning of the Act. The Director found that the Prosecutor's assertions at this late stage of processing would thwart the employee's legitimate representation rights and, therefore, he ordered the units accordingly. The Director noted that the Prosecutor was not without a remedy because if employees were placed in the improper unit he can file a clarification of unit petition.

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Appearances:

For the Public Employer,
Parthenopy A. Bardis, Special County Counsel

For the OPEIU, Local 32,
Mets, Schiro & McGovern, LLP, attorneys
(Kevin P. McGovern, of counsel)

For the CWA, Local 1034,
Adam Liebttag, Lead Staff Representative

DECISION

On April 30, 2009, and August 13, 2009, the Office and Professional Employees International Union, Local 32 filed a representation petition for an authorization card certification and an amended petition (RO-2009-088) seeking to represent all

regularly employed non-professional clerical employees, including secretaries, clerks, senior clerks, clerk typists, principal clerk typists, senior clerk typists, technicians, senior technicians, data control, stenographers, transcribers, agents/messengers, and "all variations of said titles" employed by the Monmouth County Prosecutor's Office (Prosecutor).

On May 20, 2009, August 17, 2009, and February 19, 2010, the Communication Workers of America, Local 1036 filed a representation petition for an authorization card certification and two amendments (RO-2009-094) seeking to represent all regularly employed certified paralegals, coordinators, administrators, directors, prosecutor's agents, victim advocates, analysts, media technicians, and MDT mental health consultants employed by the Prosecutor.^{1/}

Local 32 petitioned for the title, technician; CWA petitioned for the title, media technician. The Prosecutor then identified two titles - senior technical management information systems (senior tech) and technical assistant management information systems (tech assistant)- as the technicians

1/ CWA's initial petition and first amendment were filed by Local 1034. During the processing of CWA's petition, the organization changed its structure, and Local 1034 became Local 1036. The second amendment was filed by Local 1036 and was accompanied by new authorization cards from employees that matched the new local number, in accordance with the Commission's requirements for card check certification.

described in the petitions. The Prosecutor employs one senior tech and three tech assistants.

During the processing of the petitions, the Prosecutor maintained that both titles were professional and appropriately included in the petitioned-for CWA unit. Local 32 contested the Prosecutor, writing that the titles were non-professional and appropriately included in its petitioned-for unit. CWA declined to file a letter setting forth an argument.

We conducted an administrative investigation to determine the facts. No disputed substantial material facts required us to convene an evidentiary hearing. N.J.A.C. 19:11-2.2. Our investigation reveals these facts:

On May 20, 2009, the Prosecutor filed a list of 124 employees, combining lists of employees in each of the petitioned-for units. On September 15, 2009, the Prosecutor filed two employee lists, revising its earlier combined list in order to distinguish the petitioned-for units. We have checked the submitted authorization cards against the names provided on the Prosecutor's lists and determined that majorities of unit employees have signed authorization cards for their respective petitioning employee organizations.

On September 29, 2009, and October 8, 2009, a Commission staff agent sought to resolve issues among the parties, including the professional or non-professional status of the senior tech

and tech assistant titles. The parties were unable to resolve their dispute and were asked to file letters setting forth details of the "professional" or "non-professional" status of the disputed titles, including job duties, training, educational requirements, supervision, the exercise of independent judgment or discretion, compensation, and professional memberships.

On January 15, 2010, I wrote to the parties, advising of my intention to find that the disputed titles are non-professional. The letter set forth my recitation of the facts and invited the parties to reply.

On February 1, 2010, the Prosecutor filed a reply. The Prosecutor does not dispute my tentative finding that the senior tech and tech assistant titles are non-professional, but now asserts that none of the titles which CWA seeks to represent are professional and all of them should appropriately be included in the unit sought by Local 32.

On February 3, 2010, Local 32 filed a letter, contending that throughout the processing of the petitions the Prosecutor did not object to a separate unit of professional employees, maintaining that the titles CWA had petitioned for were professional, except for tech assistant and senior tech.

CWA declined to file a response.

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).

The Legislature has determined that a check of an organization's authorization cards signed by a majority of employees in an appropriate unit is a lawful method to determine a majority representative. Our review of the petitioners' authorization cards shows that each organization has submitted cards from a majority of its petitioned-for employees. The employees' signatures on the cards meets the intent of the statute and the rules. Accordingly, Local 32 and CWA are entitled to their respective certifications based upon card check. See Passaic County Prosecutor's Office, D.R. No. 2006-15, 32 NJPER 107 (¶51 2006); Atlantic County Prosecutor's Office, D.R. No. 2007-2, 32 NJPER 264 (¶108 2006).

The Commission's policy is to expedite the processing of representation petitions so that employees' statutory rights to select a representative may be addressed promptly. For months

the Prosecutor did not object to separate negotiations units for professional and non-professional employees. In fact, it maintained that the two disputed titles were professional. Suddenly, it now asserts that all of the titles which CWA seeks to represent are non-professional, questioning for the first time the appropriateness of a separate professional unit. I find that consideration of the Prosecutor's objection at this late date will thwart the legitimate representation rights of employees who have petitioned the Commission for card check certification.

The Prosecutor no longer disputes the tech assistant and senior tech's non-professional status which originally was its only dispute, and has not disputed the the petitioned-for employees' rights to organize. From the time the respective petitions were filed in April and May 2009 until January 15, 2010, the Prosecutor had no objection to separate units. The Prosecutor offered no support for his latest position. It is no longer appropriate to delay resolution of these representation cases.

The Prosecutor is not without a remedy. If the Prosecutor believes that a title is improperly included within a negotiations unit, he can file a clarification of unit petition. See Clearview Reg H.S. Bd. of Ed., DR No. 78-2, 3 NJPER 248 (1977).

Accordingly, I find that the following units are appropriate:

Office and Professional Employees International Union,
Local 32 (RO-2009-088):

Included: All regularly employed non-professional clerical employees, including secretaries, clerks, senior clerks, clerk typists, principal clerk typists, senior clerk typists, technicians, senior technicians, data control, stenographers, transcribers, agents/messengers, and all variations of said titles employed by the Monmouth County Prosecutor's Office.

Excluded: Managerial executives, confidential employees and supervisors within the meaning of the Act; craft employees, professional employees, police employees, casual employees, and all other employees employed by the Monmouth County Prosecutor's Office.

Communication Workers of America, Local 1036
(RO-2009-094):

Included: All regularly employed certified paralegals, coordinators, administrators, directors, prosecutor's agents, victim advocates, analysts, media techs, and MDT mental health consultants employed by the Monmouth County Prosecutor's Office.

Excluded: Managerial executives, confidential employees and supervisors within the meaning of the Act; craft employees, non-professional employees, police employees, casual employees, and all other employees employed by the Monmouth County Prosecutor's Office.

ORDER

I certify Office and Professional Employees International Union, Local 32 (RO-2009-088), and Communication Workers of America, Local 1036 (RO-2009-094) as the exclusive representative

of the respective units described above, based upon its authorization cards^{2/}.

Arnold H. Zudick
Director of Representation

DATED: March 15, 2010
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 March 25, 2010.

^{2/} The formal certifications are attached.