

D.R. No. 2010-15

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

In the Matter of

TOWNSHIP OF BERLIN,

Public Employer,

-and-

Docket No. RO-2010-055

COMMUNICATION WORKERS OF
AMERICA, AFL-CIO,

Petitioner.

SYNOPSIS

The Director of Representation orders that Communication Workers of America be certified as the exclusive representative for all regularly employed blue collar employees of the Township of Berlin. The Township objected to the card check petition and refused to sign a stipulation of appropriate unit, asserting that the petitioned-for employees wanted the Commission to conduct a secret ballot election rather than certify by authorization cards. Since the New Jersey Employer-Employee Relations Act provides for certification by authorization cards, and the Petitioner complied with the authorization card rules, the Director certified CWA as the majority representative of the petitioned-for unit.

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Appearances:

For the Public Employer,
Brown & Connery, attorneys
(Michael DiPiero, of counsel)

For the Petitioner,
Weissman & Mintz, attorneys
(Rosemarie Cipparulo, of counsel)

DECISION

On January 29, 2010, the Communication Workers of America, AFL-CIO (CWA) filed a representation petition for certification by authorization cards seeking to represent a unit of all blue collar employees of the Township of Berlin (Township).

The Township objects to certification by authorization cards, contending that employees have raised concerns to its Mayor and Council about the process. The Township requests that I investigate the employees' concerns and direct a secret ballot election in order to determine the representational desires of the petitioned-for employees.

We have conducted an administrative investigation into this matter to determine the facts. N.J.A.C. 19:1-2.2. On March 25, 2010, I wrote to the parties, advising them of my tentative findings and conclusions and inviting responses. Neither party filed a reply.^{1/} The disposition of the petition is properly based upon our administrative investigation. No substantial material facts are disputed. N.J.A.C. 19:11-2.2 and 2.6. I find these facts:

The petitioned-for employees are currently unrepresented. The Association seeks to represent all blue collar employees. At our request, the Township filed a list of 19 employees in the proposed unit. A sufficient number of authorization cards has been filed to certify the CWA as the majority representative of the petitioned-for unit.

The Township posted for ten days a Notice to Public Employees, supplied by the Commission. The Notice advises employees that the Association is seeking certification by a check of authorization cards. I know of no other labor organization seeking to represent these employees.

On or about February 18, 2010, the Township advised me of its objection to an authorization card certification. The

^{1/} A letter to us dated March 31, 2010 apparently written by the "Berlin Twp. Public Works Dept." reiterated a desire for a secret ballot election. The "Berlin Twp. Public Works Dept." is not a party to this matter and has not sought to intervene on behalf of any named persons.

Township was required to file a letter setting forth its reasons for objecting by February 26, 2010.

On or about February 24, 2010, two Township employees telephoned the Commission, requesting an election. They were invited to write their concerns about the authorization card process in a letter to the Director. No letters or other telephone calls from employees were received.

On February 26, the Township withdrew its objection to the authorization card certification. A conference call was scheduled for March 5, 2010, the purpose of which was to secure a stipulated negotiations unit description.

In the conference call, the Township advised that it had received a letter from its employees requesting an election rather than an authorization card certification. The Township renewed its objection to the authorization card process.

Also on March 5, 2010, the Township filed a letter setting forth its objections to the authorization card process. On March 10, CWA filed a reply and certifications from CWA staff representatives Constance English and Christopher Young. On March 12, the Township filed a reply letter and certification of Mayor Phyllis Magazzu. On March 16, CWA filed three certifications of proposed unit employees.

The Township's March 5 submission includes a copy of a March 5 letter addressed to the "Township Mayor and Councilmen" and

signed by the "Berlin Township Public Works Employees." The letter provides that on March 4, 2010, the employees met and conducted an "informal vote" on whether to proceed with joining the CWA. The letter advises that a "secret ballot informal vote" resulted in 14 votes against joining the union, 1 vote in favor of joining the union, and 3 abstentions. The letter provides that the union representative did not "make clear" to employees that their signing authorization cards would result in their joining the union, but would enable the signers to "listen to [its] proposal before making a final decision..." on union representation. The letter requests that an election be conducted to determine the representational intent of the employees. A second, undated page accompanied the letter, setting forth an enumerated, printed list of 19 employees alongside of which appeared 14 of their signatures. The signature page is undated and does not provide any other information.

The March 31 letter apparently filed by the "Berlin Twp. Public Works Dept." provides that ". . . the men made their decision to sign the card after they had had too much to drink." No named employee either signed or is identified in the letter. Nor did any certification accompany the 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).

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 of art 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." The CWA's cards comply with this rule; the card signers authorized the CWA to act as their collective negotiations representative for terms and conditions of employment.

In North Bergen Tp., P.E.R.C. No. 2010-37, 35 NJPER 435 (¶143 2009), the Commission sustained the Director's decision to order a secret ballot election in a representation case in which the petitioner sought certification by authorization cards. The Director could not conclude that the submitted authorization cards were valid. Ten employees wrote to the Director, expressing a desire to rescind their cards. Their letters provided:

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 these actions were taken by the organizer and therefore, I wish to revoke my authorization card.

A cover letter accompanying the letters provided:

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 had to offer we will be able to withdraw from it.

Based upon the employees' letters describing threats, promises of benefits and misleading statements causing them to sign the cards, the Director found that the authorization cards were not "valid" for card check purposes and ordered a secret ballot election to determine the representational intent of the employees. Cf. Mt. Ephraim Bd. of 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).

In this case, the Township's objection to authorization card certification is rooted in the March 5, 2010 letter signed by the "Berlin Township Public Works Employees." Neither that letter nor the March 31st letter allege that CWA made promises of benefits, coerced, or harassed employees to sign authorization cards. Cf. N. Bergen Tp. Nor is it clear that the employee signature page was bound to the March 5th letter at the time the signatures were affixed. The signature page is undated and does not specifically refer to the text or subject of the "Berlin Township Public Works Employees" letter. The apparent consistency is that the letter provides that 14 employees opposed joining the union and the signature pages sets forth 14 signatures. The March 31 letter is essentially anonymous. I reiterate that when (ostensible) unit employees were given the opportunity to communicate to us directly about the circumstances

under which they might be seeking to rescind authorization cards, no response was filed. Under all these circumstances, I find that the March 5th and March 31st letters do not raise sufficient doubt about the validity of the authorization cards to require a conversion to a secret ballot election. No further investigation is necessary.

In N. Bergen Tp., the Commission wrote that certification by authorization cards requires that, ". . . the cards [be] printed in a language understood by the signers." Id. at 35 NJPER 436. Although the authorization cards submitted by CWA meet the current standard, a printed notice on each card (and on all authorization cards, for that matter) advising that it may be used by the union to obtain certification without an election would obviate virtually all concerns about what was "understood." I recommend such language be adopted by the Commission.

I find here that a majority of petitioning employees have expressed their desire to be represented by CWA by signing authorization cards indicating that preference. N.J.S.A. 34:13A-5.3. I deny the Township's request for a secret ballot election. I find that the following unit is appropriate for collective negotiations:

Included: All regularly employed blue collar employees employed by the Township of Berlin.

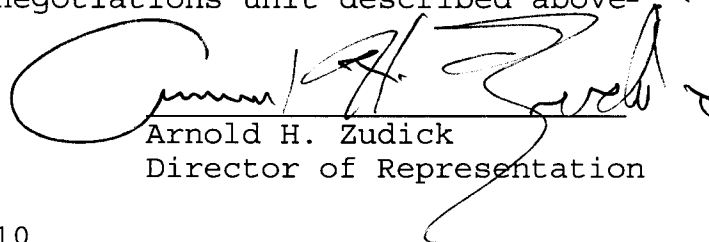
Excluded: Managerial executives, confidential employees, supervisors within the meaning of the Act; craft employees,

police employees, professional employees,
casual employees and all other employees
employed by the Township of Berlin.

I find that the CWA 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 Communication Workers of America, AFL-CIO,
based upon its authorization cards, as the exclusive
representative of the negotiations unit described above^{2/}.



Arnold H. Zudick
Director of Representation

DATED: April 16, 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 April 25, 2010.

^{2/} The formal certification is attached.

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TOWNSHIP OF BERLIN,
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-and-

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DOCKET NO. RO-2010-055

**CERTIFICATION OF REPRESENTATIVE
BASED UPON AUTHORIZATION CARDS**

In accordance with the New Jersey Employer-Employee Relations Act, as amended, and the Rules of the Public Employment Relations Commission, we have conducted an investigation into the Petition for Certification filed by the above-named Petitioner. The Petitioner has demonstrated by card check that a majority of the unit employees described below have designated the Petitioner as their exclusive representative for purposes of collective negotiations, and, no other employee organization has expressed a valid interest in representing these employees.

Accordingly, **IT IS HEREBY CERTIFIED** that

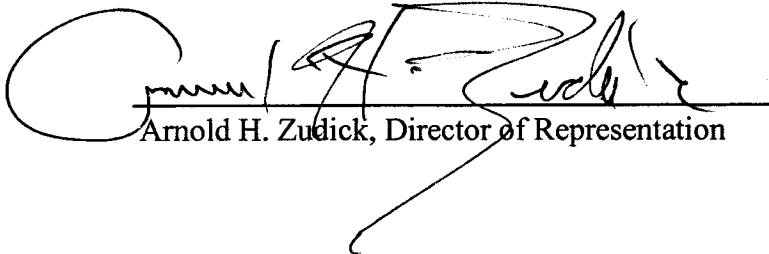
COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO

is now the exclusive representative of all the employees included below for the purposes of collective negotiations with respect to terms and conditions of employment. The representative is responsible for representing the interests of all unit employees without discrimination and without regard to employee organization membership. The representative and the above-named Employer shall meet at reasonable times and negotiate in good faith with respect to grievances and terms and conditions of employment as required by the Act.

UNIT: Included: All regularly employed blue collar employees employed by the Township of Berlin.

Excluded: Managerial executives, confidential employees and supervisors within the meaning of the Act; craft employees, professional employees, police employees, causal employees, and all other employees employed by the Township of Berlin.

DATED: April 16, 2010
Trenton, New Jersey



Arnold H. Zudick, Director of Representation

Attachment:

Certification of Representative dated: April 16, 2010

In the Matter of

TOWNSHIP OF BERLIN

-and-

CWA

Docket No. RO-2010-055

Service on the following:

Michael DiPiero, Esq.
Brown & Connery
360 Haddon Ave
Box 539
Westmont, NJ 08108

Rosemarie Cipparulo, Esq.
Weissman & Mintz
1 Executive Dr Ste 200
Somerset, NJ 08873