

D.R. No. 2011-3

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 Director initially ordered that CWA be certified as the exclusive representative in D.R. No. 2010-15. The Commission granted the Township's request for review, and remanded the case to the Director for further investigation into allegations of alcohol consumption during a meeting at which CWA collected authorization cards. The Director finds no reason to disturb the certification.

D.R. No. 2011-3

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.

Appearances:

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

For the Petitioner,  
Weissman & Mintz, attorneys  
(Jason Jones, of counsel)

DECISION

On June 24, 2010, the Public Employment Relations Commission remanded this matter to me for further investigation of a January 21, 2010, organizing meeting at which petitioned-for employees signed authorization cards. P.E.R.C. No. 2010-97, 36 NJPER 242 (¶89 2010). The Commission charged me with investigating where the organizational meeting was held, who chose that site, and what transpired during the meeting. The results of the investigation provide no reason to disturb the Certification of Representative issued to the Communication Workers of America, AFL-CIO (CWA).

On January 29, 2010, 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 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. On April 16, 2010, over the Township's objections, I found that CWA had met the certification by authorization card requirements under N.J.S.A. 34:13A-5.3 and N.J.A.C. 19:11-2.6(b) and ordered that CWA be certified as the exclusive representative for all regularly employed blue collar employees of the Township. D.R. No. 2010-15, 36 NJPER 105 (¶43 2010).

In compliance with the Commission's decision on remand, I wrote to the parties on July 26, 2010, requesting certifications or affidavits about an organizing meeting conducted on January 21, 2010. I wrote that the certifications and/or affidavits were to be filed by August 27, 2010. My letter also included a Notice to Employees concerning this matter, advising them of this investigation and inviting their written submissions on the organizing meeting by August 27. The Township posted the Notice in places where notices to employees are normally posted.

The CWA supplied certifications from two Township employees who attended the meeting, Thomas Wahl and Edward McKay, and two CWA staff representatives, Constance English and Christopher Young. Ten Township employees submitted letters, five of whom attended the meeting.<sup>1/</sup> I find these facts:

On or about January 18, 2010, a Public Works Department employee contacted English to inquire about CWA representation. An organizing meeting took place on January 21 at the Woodbriar Inn. McKay suggested that CWA hold the meeting at the Woodbriar Inn because of its proximity to the work site and his understanding that CWA had conducted prior organizing meetings at this establishment. English and Young conducted the meeting. It began around 3:00 p.m. and lasted approximately thirty minutes.

Employees began arriving at the Woodbriar Inn at about 2:30 p.m. Thirteen of the Public Works Department's nineteen employees attended the meeting. Some employees began drinking upon their arrival and before CWA representatives arrived. However, none of the employees in attendance appeared visibly intoxicated. Neither the employees nor the CWA representatives drank alcohol during the meeting. The CWA representatives did

---

<sup>1/</sup> The factual findings are based on the letters and certifications submitted by those with firsthand knowledge of what transpired during the meeting. I do not rely on the letters submitted by the five employees who did not attend the meeting.

not purchase or offer to purchase alcohol for the employees in attendance.

The organizing meeting occurred at a table approximately fifteen feet from the bar area. English and Young answered employees' questions during the meeting.

English and Young certified that they explained the card check process to the employees, including that if more than half of the employees signed cards, the CWA would seek certification by authorization cards rather than election. Wahl and McKay also certified that the employees were told that their signatures could result in certification without an election.

Two of the five employees noted that it was their understanding that signing a card indicated their interest in receiving additional information about the CWA. One employee thought that a signed card permitted the signator to vote at the next CWA meeting. Another employee thought that the card was simply an initial step in the process of investigating whether or not the employees wanted a union. This employee also certified that he was under the influence of alcohol and was unaware that his signature meant that he had joined the CWA. The last employee letter certified his understanding that if more than half of the employees signed cards, they would receive additional information about the union. None of the employees provided

details on what the CWA representatives said or did which led them to their various conclusions.

Following the discussion at the Inn, English distributed authorization cards. English and Young advised the employees that they could take the authorization card with them and sign and submit the card to CWA at a later date. Eight employees elected to sign cards at the table where the meeting was held. No employees signed cards at the bar. Two employees submitted authorization cards to English the following day.

Neither Young nor English entered the bar area of the establishment at any time. Both left the Woodbriar Inn at the close of the meeting.

#### ANALYSIS

In Berlin Tp., P.E.R.C. No. 2010-97, 36 NJPER 242 (¶89 2010), the Commission explained that "the site where the authorization cards are signed should be a location where the employees can exercise their free choice about representation for the purposes of collective negotiations." Id. at 244.

Although the Commission has not specifically addressed the issue of alcohol consumption during the signing of authorization cards, it has addressed this issue for on-site elections. In the context of an on-site election, the dispensing of alcoholic beverages near a polling place is not a basis upon which to set aside that election, absent proof that the beverages interfered

with the voters' ability to cast their ballots freely without inducement or reward. Jersey City, P.E.R.C. No. 43, NJPER Supp. 153 (¶43 1970), aff'd 114 N.J. Super. 463 (App. Div. 1971).

Applying that standard to these facts, I find that neither the location of the meeting nor the employees' consumption of alcohol before the meeting interfered with their ability to freely choose to sign authorization cards. No facts are alleged that CWA purchased or offered to purchase alcohol for the employees as an inducement or reward. Although one employee said he was "under the influence," no facts are alleged that the employees consumed alcohol during the meeting or that any of them did not voluntarily sign cards.

The employees do not directly dispute that the CWA representatives informed them of the potential for certification without an election. Additionally, no evidence is proffered to suggest that the CWA representatives threatened, promised benefits or made misleading statements to the employees, which would cause me to doubt the validity of the submitted authorization cards. Cf. N. Bergen Tp., P.E.R.C. No. 2010-37, 35 NJPER 435 (¶143 2009). Authorization cards submitted for certification must be printed in a language understood by the signers. N. Bergen Tp. at 35 NJPER 436. CWA's submitted authorization cards meet this standard.

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) just above or below the employee's signature advising that the card may be used by the union to obtain certification without an election, would obviate virtually all concerns about what was "understood." I recommend such an authorization card requirement be adopted by the Commission.

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. Consequently, the following unit is appropriate for collective negotiations:

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

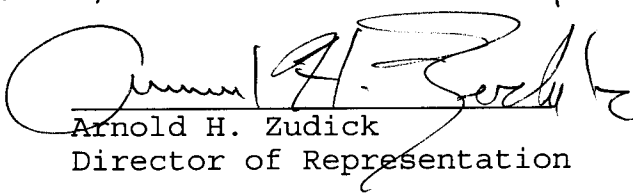
Excluded: Managerial executives, confidential employees, supervisors within the meaning of the Act; craft employees, police employees, professional employees, casual employees and all other employees employed by the Township of Berlin.

#### ORDER

As directed by the Commission, upon further investigation, having found no inappropriate action by the Petitioner in collecting authorization cards, I renew the certification



originally issued on April 16, 2010. The one year certification bar shall run from September 29, 2010.<sup>2/</sup>

  
Arnold H. Zudick  
Director of Representation

DATED: September 29, 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 October 12, 2010.

---

<sup>2/</sup> On April 26, 2010, the Township filed a letter with the Commission seeking to appeal my April 16 decision. On April 29<sup>th</sup>, the Commission agreed to grant a review of the decision. On June 16, 2010, CWA filed an unfair practice charge (Dkt. Nno. CO-2010-489) alleging that the Township refused to negotiate collectively after the Certification of Representative issued on April 16, 2010. In the absence of any facts indicating that the parties negotiated after April 16, the CWA is entitled to a one year certification bar in an attempt to reach an agreement. Therefore, I will not consider a representation petition for the above-described unit timely filed until September 30, 2011. See N.J.A.C. 19:11-2.8(b).