

D.R. No. 2013-9

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

In the Matter of

NORTH BERGEN PARKING AUTHORITY,

Public Employer,

-and-

Docket No. RO-2013-004

RWDSU, UFCW LOCAL 108,

Petitioner.

SYNOPSIS

The Director of Representation orders that RWDSU, UFCW Local 108 (Local 108) be certified as the exclusive representative of all regularly employed parking authority officers, including parking enforcement officers, cashier/clerk parking enforcement officers, parking enforcement officers/maintenance workers, probationary parking enforcement officers, and parking enforcement officer supervisors. The North Bergen Parking Authority (Authority) objected to certification of this unit by card check authorization, contending one employee in the unit was coerced into signing an authorization card. The Authority also objected to the inclusion of the parking enforcement officer supervisor in the unit and contended that the unit should not include parking enforcement officers with parking enforcement officers who also perform clerical and maintenance work. Citing the Commission's policy in favor of broad based, employer wide negotiations units whose employees share a community of interest, the Director dismissed the Authority's objections, finding that the parking enforcement officers who also performed maintenance and clerical work shared a community of interest with parking enforcement officers. The Director also found that the parking enforcement officer supervisor should be included in the certified unit since the supervisor was not statutory supervisor as defined by the New Jersey Employer-Employee Relations Act. Finally, the Director concluded that certification by card check authorization was appropriate since a majority of employees clearly designated Local 108 as their exclusive representative by signing authorization cards and there was no evidence that these employees were coerced into signing authorization cards.

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Appearances:

For the Public Employer,  
Roth D'Aquanni, LLC  
(Alan C. Roth, of counsel)

For the Petitioner,  
Charles N. Hall, Jr., President

DECISION

On July 23, 2012, RWDSU, UFCW Local 108 ("Local 108") filed a representation petition for certification by authorization cards seeking to represent a collective negotiations unit of full-time and part-time parking authority officers employed by the North Bergen Parking Authority ("Authority").

The Authority objects to certification by authorization cards, contending that the Commission should conduct an election because Vito Spezzacatena, a petitioned-for unit employee, was coerced by a Local 108 organizer to sign an authorization card. The Authority also contends that James Burns, another petitioned-for unit employee, should be excluded from the unit because he

performs supervisory duties. The Authority also objects to the inclusion of parking authority officers who also perform maintenance duties, clerical/cashier duties or supervisory duties. The Authority alternatively requests that if a unit is certified by a count of authorization cards, only full-time and part-time parking enforcement officers should be included in the unit, and that all other employees performing maintenance, clerical or supervisory duties should be excluded.

We have conducted an administrative investigation into this matter to determine the facts. N.J.A.C. 19:11-2.2. On September 27, 2012, I wrote to the parties, advising of my tentative findings and conclusions and invited responses. On October 9, 2012, the Authority filed a letter objecting to the proposed inclusion of the title, cashier/clerk parking enforcement officer in the petitioned-for-unit. The Authority disputes that the title shares a community of interest with parking enforcement officers. Local 108 has not filed any responses. 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 the administrative investigation, I find the following facts.

The petitioned-for employees are currently unrepresented. Local 108 seeks to represent all full-time and part-time parking

authority officers employed by the Authority. Upon our request for a list of employees in the petitioned-for-unit, the Authority provided a list of twelve (12) employees. Included on the list are employees in these titles: parking enforcement officer/maintenance worker, parking enforcement officer and probationary parking enforcement officer. The Authority later filed a letter identifying two other titles; cashier/clerk parking enforcement officer and parking enforcement officer supervisor. We infer that these titles were inadvertently omitted from the list, despite the Authority's objection to their inclusion in the petitioned-for-unit. A sufficient number of valid authorization cards has been filed to certify Local 108 as the majority representative of the petitioned-for unit. N.J.A.C. 19:11-2.6.

On August 1, 2012, the Authority posted our Notice to Public Employees advising that Local 108 is seeking certification by a check of authorization cards. N.J.A.C. 19:11-2.4. No other labor organization has claimed an interest in representing the petitioned-for employees.

On August 14, 2012, a Commission staff agent solicited the parties' signatures on an otherwise completed Stipulation of Appropriate Unit form. Local 108 returned a signed copy of the form to our office on August 15th. On August 16, the Authority filed a letter objecting to Local 108's petition. On August 23,

the staff agent informed the Authority that it must submit documents and a statement of position not later than August 31st. On August 27, during an informal conference among the parties regarding the petition, the Authority refused to sign a Stipulation of Appropriate Unit form.

On August 31, 2012, the Authority filed a statement of position with several attachments, including an affidavit signed by Vito Spezzacatena, a proposed unit employee. Spezzacatena certifies that in May or June, 2012, an unnamed woman claiming to be a Local 108 representative approached him while he was on-duty reading parking meters and operating an Authority motor vehicle. The woman, of medium build, approached the Authority vehicle on Bergenline Avenue between 80<sup>th</sup> and 81<sup>st</sup> streets, leaned against the car door and prevented Spezzacatena from leaving his vehicle or driving away. The woman said that she wanted him to sign an authorization card. Spezzacatena told her several times that he did not wish to join Local 108 and did not want to sign the authorization card. Although Spezzacatena advised the representative that he needed to return to his duties, she insisted that he sign the card and ". . . she kept leaning on [his] car and prevented [him] from returning to work for approximately fifteen (15) to twenty (20) minutes." Spezzacatena certifies that he ". . . felt that if he did not sign the union authorization card that the representative would continue to

prevent him from performing his duties" and that her presence at the job site ". . . was an annoyance."

Local 108 denies that any coercive or intimidating tactics were used to obtain signatures of its authorization cards, and also asserts that the cards were signed voluntarily. No other facts indicate that other Authority employees were or may have been intimidated or coerced by Local 108.

The Authority provided four job specifications for the following job titles: parking enforcement officer (PEO), parking enforcement officer/maintenance worker, cashier/clerk/parking enforcement officer and parking enforcement officer supervisor. According to the Authority, eight (8) of the employees in the petitioned-for unit are PEO/maintenance workers, one (1) employee is a PEO supervisor, two (2) employees are "probationary PEOs", two(2) employees are PEOs, and one (1) employee is a cashier/clerk PEO. I also observe that the Authority has not objected to the unit eligibility of the title, probationary parking enforcement officer.

The job specifications set forth varying "examples of work." For instance, the PEO/maintenance worker may prepare parking meter boxes for collection; conduct periodic inspections of parking meters; paint and cement parking meter poles on streets; maintain the cleanliness of the Authority parking lots and offices; and perform other related maintenance duties. The PEO

supervisor is responsible for the daily coordination of activities related to parking enforcement; the daily review and tracking of tickets and paperwork generated by PEOs; and other responsibilities in coordination with and at the request of the Authority's director and the director's administrative assistant. In addition to parking enforcement, the cashier/clerk PEO also performs clerical duties.

All of the petitioned-for-titles share common goals and duties. For example, the PEO, the PEO/maintenance worker, and the cashier/clerk PEO ". . . patrol designated areas and issue summonses for motor vehicles to enforce state, county, or municipal statutes, resolutions, ordinances or regulations related to the parking of motor vehicles within the municipality." The PEO supervisor, ". . . under direction, supervises employees" engaged in those activities. They also share certain job duties, such as issuing summonses, checking the condition of parking meters, giving testimony in court pertaining to summonses issued, and electronically chalking vehicles that are parked in unmetered time-restricted areas. Moreover, PEOs and probationary PEOs work the same hours and share the same duties. The principle differences between PEOs and probationary PEOs is that probationary PEOs have worked for the Authority for a period of three (3) months or less and earn less compensation

than permanent employees. After three (3) months, probationary PEOs become "permanent" PEO employees of the Authority.

The Authority contends that if Local 108 is certified as a majority representative, the negotiations unit should include only PEOs and not PEO/maintenance workers, cashier/clerk PEOs, or the PEO supervisor. According to the Authority, PEO/maintenance workers and cashier/clerk PEOs should be excluded from the negotiations unit because they perform primarily maintenance and clerical work. The Authority also contends that James Burns, a PEO supervisor, should be excluded from the negotiations unit because he is a supervisor within the meaning of our Act.

Local 108 contends that Burns is a "stand-in supervisor", whose duties do not conform to the definition of a supervisor under our Act and maintains that the petitioned-for negotiations unit is appropriate.

#### 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 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).



I find that the appropriate negotiations unit for certification includes PEOs, PEO/maintenance workers, probationary PEOs, the cashier/clerk PEO and the PEO supervisor. In determining the appropriateness of a negotiations unit, the Commission weighs several factors, including the community of interest among the petitioned-for employees, whether or not the petitioned-for unit is consistent with the requirements of the Act, and whether the unit is broad-based and employer-wide in scope. N.J.S.A. 34:13A-5.3; State of New Jersey, D.R. No. 97-5, 24 NJPER 295 (¶29141 1996). Our Supreme Court has endorsed the Commission's policy in favor of broad-based, employer-wide, functional negotiations units and has upheld the Commission's policy against unit fragmentation and its attendant proliferation. State of N.J. and Professional Ass'n of N.J. Dept. of Education, P.E.R.C. No. 68, NJPER Supp. 273 (¶68 1972), rev'd NJPER Supp. 2d 14 (¶7 App. Div. 1973), rev'd 64 N.J. 231, 241 (1974). The Commission has also emphasized that affording employees with similar titles and goals the opportunity for unified employee representation promotes labor stability and harmony. Professional Ass'n of N.J. Dept. of Education; Piscataway Tp. Bd. of Ed., P.E.R.C. No. 84-124, 10 NJPER 272 (¶15134 1984); West Milford Tp. Bd. of Ed., P.E.R.C. No. 56, NJPER Supp. 218 (¶56 1971).

I find that certification of a negotiations unit that includes PEOs, PEO/maintenance workers, probationary PEOs, the cashier/clerk PEO and the PEO supervisor is consistent with the Commission's policy favoring broad-based, employer wide negotiations units and conforms with the requirements of our Act. All of these titles share the common duty and goal ". . . to patrol designated areas and issue summonses for motor vehicles to enforce state, county, or municipal statutes, resolutions, ordinances or regulations related to the parking of motor vehicles within the municipality." Although PEO/maintenance workers and the cashier/clerk PEO perform maintenance or clerical work in addition to parking enforcement, they share duties with the other petitioned-for-titles, including but not limited to, issuing summonses, checking the condition of parking meters, giving testimony in court pertaining to issued summonses, and electronically chalking vehicles that are parked in unmetered and time-restricted areas. Moreover, probationary PEOs and PEOs share the same duties and work the same hours. Thus, I find that a sufficient community of interest exists among PEOs, PEO maintenance workers, probationary PEOs, the cashier/clerk PEO and the PEO supervisor to warrant their inclusion in a single negotiations unit.

I find that James Burns is not a supervisor within the meaning of our Act and should be included in the petitioned-for

negotiations unit. Our Act provides that a negotiations unit which includes both supervisors and non-supervisors is generally inappropriate. N.J.S.A. 34:13A-6(d). The Commission has defined a statutory supervisor as one who has the authority to hire, discharge, or discipline an employee or effectively recommend those actions. Hackensack Bd. of Ed., P.E.R.C. No. 85-59, 11 NJPER 21 (¶16010 1984), adopting H.O. No. 85-3, 10 NJPER 527 (¶15241 1984); See also, Borough of Avalon, P.E.R.C. No. 84-108, 10 NJPER 207 (¶15102 1984), adopting H.O. No. 84-11, 10 NJPER 149 (¶15075 1984).

The power to "effectively recommend discipline" may be found where an employee has primary responsibility for evaluating other employees and his or her evaluations are instrumental in implementing personnel actions against the evaluated employees. Avalon; Hackensack Bd. of Ed. An employee may also be a statutory supervisor where his or her evaluations form the basis of decisions to withhold increments, renew employment contracts, or terminate employment or where that employee plays a formal, regular and effective role in the hiring process. Id. However, an employee will not be found to be a statutory supervisor based solely on a job description or an unsupported assertion that the employee has the power to hire, discharge, discipline or effectively recommend the same. Hackensack Bd. of Ed.

In this case, I find that the facts are insufficient to warrant a finding that Burns is a statutory supervisor. The Authority asserts that Burns is a part-time PEO supervisor with the authority to make assignments and "can" recommend discipline of staff. It concedes however, that only the Authority's executive director and commissioners have the authority to hire, fire, or discipline employees. Nothing in the proffered job description indicates that Burns has the power to evaluate, discipline, hire or discharge employees or effectively recommend those actions. The Authority has not presented facts indicating that Burns regularly, if ever, evaluates or plays any role in the hiring, firing or discipline of employees. Accordingly, I find that Burns is not a statutory supervisor and therefore should be included in a negotiations unit with other non-supervisory PEOs.

I also disagree with the Authority that the unit should include only PEOs. Exclusion of other petitioned-for employees could result in the eventual certification of multiple negotiations units among the PEO/maintenance workers and cashier/clerk PEOs. Such a result conflicts with the Commission's policy favoring broad-based negotiations units that are employer-wide in scope.

I deny the Authority's request for an election. The Commission and Director have ordered secret ballot elections in representation cases in which the majority representative did not

submit enough valid authorization cards to establish majority support. North Bergen Tp., P.E.R.C. No. 2010-37, 35 NJPER 435 (¶143 2009), adopting D.R. No. 2010-3, 35 NJPER 244 (¶88 2009). In North Bergen Tp., the Commission upheld a decision by the Director to order an election since the validity of a significant number of authorization cards were called into question by numerous letters from employees to the Director describing threats, promises of benefits, and misleading statements causing them to sign the cards. Specifically, ten employees wrote to the Director expressing their desire to revoke their authorization cards after signing them. The Director could not conclude that the authorization cards submitted were valid. North Bergen Tp. By contrast, we have declined to order elections in representation cases where the evidence presented does not raise sufficient doubt about the validity of the authorization cards to warrant an election in lieu of certification by check of authorization cards. Berlin Tp., D.R. No. 2010-15, 36 NJPER 105 (¶43 2010); See also, Mt. Ephraim Bd. of Ed., D.R. No. 2007-3, 32 NJPER 293 (¶121 2006) (certifying union as majority representative based upon authorization cards absent any writings and/or certifications by objecting employees). In deciding whether to certify a majority representative by a check of authorization cards, ". . . 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." North Bergen Tp., 35 NJPER at 246.

In this case, a majority of employees in the petitioned-for unit have signed valid authorization cards setting forth clear language designating Local 108 as their collective negotiations representative. This determination is true even if Burns and Spezzacatena were to be excluded from the authorization card count and the petitioned-for unit. Although serious concerns are raised by the possibility that Spezzacatena was coerced to sign an authorization card, no facts suggest that other employees were pressured. Accordingly, I find that a sufficient number of valid authorization cards has been submitted to warrant certification of Local 108 as a majority representative, even without Spezzacatena's authorization card.

I find that the following unit is appropriate for collective negotiations:


Included: All regularly employed parking authority officers, including parking enforcement officers, cashier/clerk parking enforcement officers, parking enforcement officers/maintenance workers; probationary parking enforcement officers; and parking enforcement officer supervisors employed by the North Bergen Parking Authority.

Excluded: Managerial Executives, confidential employees and supervisors within the meaning of the Act; craft employees, professional employees, police, casual employees; and all other employees of the North Bergen Parking Authority.

ORDER

I certify RWDSU, UFCW LOCAL 108 as the exclusive representative of the unit described above, based upon its authorization cards.<sup>1/</sup>

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Gayl R. Mazuco

DATED: December 18, 2012  
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 December 28, 2012.

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<sup>1/</sup> A Certification of Representative is attached.