

D.R. No. 2013-13

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

In the Matter of

TOWNSHIP OF ROXBURY,

RESPONDENT,

-and-

Docket No. RO-2013-036

TEAMSTERS LOCAL 97 OF NEW JERSEY,
I.B.T.,

PETITIONER.

SYNOPSIS

The Director of Representation certifies Teamsters Local 97 of New Jersey, I.B.T. (Local 97) as the exclusive representative of all regularly employed, non-supervisory full-time and part-time white collar employees of the Township of Roxbury (Township). The Township objected to certification of this unit by card check authorization and requested an election based on the assertion that the employees who signed cards did not know they were voting for Local 97 as their majority representative. The Township also contended the certified unit was inappropriate because part-time employees, by virtue of their part-time status, did not share a community of interest with full-time employees and that the unit was overly broad in scope. The Director dismissed the Township's objections, denied the Township's request for an election and found the certified unit was appropriate. In reaching this decision, the Director explained that the Commission has rejected the position that part-time employees, by virtue of their part-time status, lack a community of interest with full-time employees. Moreover, the Director cited the long-standing Commission precedent in favor of broad-based, functional negotiations units and noted there were no facts suggesting that employees who signed authorization cards did not intend to designate Local 97 as their majority representative.

D.R. No. 2013-13

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

In the Matter of

TOWNSHIP OF ROXBURY,

RESPONDENT,

-and-

Docket No. RO-2013-036

TEAMSTERS LOCAL 97 OF NEW JERSEY,
I.B.T.,

PETITIONER.

Appearances:

For the Respondent,
Fox Rothschild, LLP
(Kenneth Rosenberg, of counsel)

For the Petitioner,
Jill Pitman, Business Agent

DECISION

On January 11, 2013, January 18 and March 8, 2013, Teamsters Local 97 of New Jersey, I.B.T. ("Local 97") filed a representation petition and amended petitions seeking to represent about 23 non-supervisory white collar employees of the Township of Roxbury ("Township"). The Township objects to the petition and amendments thereto and refuses to sign a Stipulation of Appropriate Unit form.

We have conducted an administrative investigation into this matter to determine the facts. N.J.A.C. 19:11-2.2(a). By letter dated May 10, 2013, I advised the parties of my tentative

findings and conclusions and invited responses. Neither party filed additional submissions. The disposition of the petition is properly based upon our administrative investigation. There are no substantial material facts in dispute which would require convening an evidentiary hearing. N.J.A.C. 19:11-2.2 and 2.6. Based upon the administrative investigation, I make the following:

FINDINGS OF FACT

The original petition sought certification by authorization cards of a collective negotiations unit of court administrators, account clerks, coordinators, records clerks, DAR drivers and secretaries. The petition was supported by authorization cards from a majority of employees in the petitioned-for unit.

On or about January 16, a Township representative wrote to Local 97 (with a copy to us), advising that recognition could not be granted because nothing indicated that the Roxbury Public Employees Workers' Association had disclaimed interest in representing white collar employees.

On January 18, Local 97 filed an amended petition seeking certification by a secret ballot election of a negotiations unit of all white collar employees of the Township, specifically including the titles set forth in the original petition. The amended petition identified the Roxbury Public Employee Workers

Association ("Association") as the current majority representative of the petitioned-for unit.^{1/}

On February 7, 2013, the Association filed a letter disclaiming interest in representing the petitioned-for unit.

On March 7, 2013, the Township filed a list of nineteen (19) employees in the petitioned-for unit, together with their job titles.

On March 8, 2013, Local 97 filed a second amended petition seeking certification by authorization cards for a unit described as "all regularly employed full-time and part-time non-supervisory white collar employees" of the Township. We have checked the authorization cards against the Township's list and have determined that a majority of the petitioned-for employees have signed authorization cards designating Local 97 as their collective negotiations representative. N.J.A.C. 19:11-2.6.

On March 14, 2013, the Director issued a letter to the Township requesting that it immediately post for ten days a Notice to Public Employees ("Notice") regarding the second amended petition. The Notice advised employees that Local 97 is requesting certification by card check. On April 3, 2013, the

^{1/} On January 4, 2012, the Director of Representation issued a Certification of Representative identifying the Association as the exclusive representative of a Township unit of "all regularly employed full-time and part-time white collar employees, including animal control officers and fire inspector." (Docket No. RO-2012-028)

Township filed a certification of posting, which advised that the Notice remained posted for ten days in places where notices are normally posted affecting the petitioned-for employees. No other labor organization has claimed interest in representing the petitioned-for employees. No employees have advised us of any objections to the validity of Local 97's authorization cards.

On March 18, a Commission staff agent sent the parties a proposed Stipulation of Appropriate Unit describing the unit as, "all regularly employed non-supervisory full-time and part-time white collar employees" employed by the Township. Excluded from the proposed unit are managerial executives and confidential employees Supervisors within the meaning of the Act; craft employees, police, professional employees, casual employees and all others employed by the Township. Local 97 signed the Stipulation, the Township refused.

On March 21, 2013, the Township submitted a letter objecting to Local 97's March 8, 2013 second amended petition and requesting an election. The Township asserts that employees who signed authorization cards believed they would have the choice of selecting Local 97 as their majority representative in an election and that employees did not know they were voting for Local 97 as a majority representative by signing the cards.

The Township also contends that part-time employees do not share a community of interest with full-time employees and

asserts that part-time employees should be excluded from the petitioned-for unit. The Township objects that the proposed unit description is overly broad and should be limited to the job titles set forth in its list of employees.

On April 5, 2013, Local 97 filed a reply. It responds that a majority of the petitioned-for employees signed authorization cards designating Local 97 as their exclusive collective negotiations representative. Local 97 argues that the Commission is authorized under N.J.S.A. 34:13A-5.3 to certify Local 97 as a majority representative based on the authorization cards submitted. Local 97 also disputes the Township's contention that employees did not know that the cards they signed may be used to designate it as a majority representative and asserts that the negotiations unit set forth in the proposed Stipulation is appropriate.

ANALYSIS

I find that the petitioned-for unit is appropriate. The Commission is charged with the responsibility of determining appropriate collective negotiations units and has long favored negotiations units structured along broad-based, functional lines. N.J.S.A. 34:13A-6(d); 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 (1974). Since 1971, we have consistently held

that full-time and regularly employed part-time employees who share a community of interest should be represented together. West Milford Tp. Bd. of Ed., P.E.R.C. No. 56, NJPER Supp. 218 (¶56 1971) (part-time building aides and office personnel may be included in a unit with full-time teachers, nurses and instructional aides subject to a professional option election); Clearview Reg. Dist. Bd. of Ed., E.D. No. 76-24, 2 NJPER 63 (1976) (part-time bus drivers working less than 18 hours per week were included in unit with full-time bus drivers).^{2/} No facts suggest that the proposed unit description encompasses job titles that are inappropriate for inclusion in the unit.

The critical factor in determining whether part-time employees should be included in a negotiations unit with full-time employees sharing the same titles and/or similar duties is whether part-time employees have a fair degree of regularity and continuity of employment (in contrast to casual employees whose contact with an employer is too infrequent to warrant their inclusion in the same unit as regular employees). Mt. Olive Bd. of Ed., P.E.R.C. No. 82-66, 8 NJPER 102 (¶13041 1982) (substitute bus drivers working 1/6 of the hours worked by regular bus drivers has a sufficient regularity of employment to be eligible

^{2/} See also: Bergen Cty., P.E.R.C. No. 84-2, 9 NJPER 451 (¶14196 1983); Randolph Tp., D.R. No. 97-8, 23 NJPER 145 (¶28070 1997); Kearny Bd. of Ed., D.R. No. 2001-4, 27 NJPER 68 (¶32030 2000); Somerset Cty., D.R. No. 2009-14, 35 NJPER 170 (¶64 2009).

for inclusion in a unit of full and part-time bus drivers). Part-time status alone does not indicate that employees lack a community of interest with full-time employees Mt. Olive Bd. of Ed.; Randolph Tp., D.R. No. 97-8, 23 NJPER 145 (¶28070 1997) (holding that the part-time status of municipal white collar employees was insufficient to destroy a finding of community of interest with full-time employees and force a separate negotiations unit of part-time employees). Absent a history of representation limited to full-time employees only, we will not approve a unit which excludes regularly employed part-time employees. Randolph Tp.; Kearny Bd. of Ed., D.R. No. 2001-4, 27 NJPER 68 (¶32030 2000) (Director dismisses a petition for certification that proposed a narrow unit of full-time aides only and finds that an appropriate unit should include full-time and part-time aides).

The Township contends that part-time status alone warrants a conclusion that part-time employees lack a community of interest with full-time employees. I disagree. Longstanding Commission precedent extends the Act's coverage and protections to full-time and part-time employees and declines to exclude employees from a unit of full-time employees based solely on their part-time status. In the absence of facts demonstrating that the Township's part-time employees are casual employees who lack a fairly regular and continuous employment relationship with the

Township, I will certify a negotiations unit that includes regularly employed full-time and part-time employees.

I also dismiss the Township's objection that the proposed Stipulation sets forth an "overly broad" unit description and should be limited to the titles included in the Township's list of employees. The Township cites no facts or legal authority undermining the Commission's preference for negotiations units structured along broad based, functional lines. We have found appropriate negotiations units that include both full-time and regularly employed part-time municipal white collar employees. 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 (1974); Randolph Tp.

On July 19, 2005, our Legislature amended the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. 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 deny the Township'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. However, in adopting the Director's decision to order an election, the Commission noted that 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 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). In Mt. Ephraim Bd. of Ed., the Director denied a employer's request for an election since there was no evidence to support a challenge to the validity of the authorization cards. The employer in Mt. Ephraim Bd. of Ed. requested an election in lieu of card check certification based on the contention that employees were not clearly advised that signing the cards could result in certification without an election. The Director denied the employer's request for an election, noting that no employees contacted the Commission objecting to certification by card check, the language on the cards designating the petitioner as a negotiations representative was unambiguous, and there was an absence of evidence to support a challenge to the cards' validity.

Like the employer in Mt. Ephraim Bd. of Ed., the Township requests an election based on the bare assertion that employees who signed authorization cards did not understand they were designating Local 97 as their majority representative. However, a majority of employees in the petitioned-for unit have signed valid authorization cards clearly setting forth their designation of Local 97 as their collective negotiations representative. Also, we have not been contacted by any employees objecting to the validity of the cards and no facts suggest that employees who signed the cards did not intend to designate Local 97 as their

negotiations representative. Based upon my review of the cards and employee signatures, I conclude that the authorization cards submitted by Local 97 demonstrate the employees' desire to be represented by Local 97.

Based on the foregoing, I certify the following unit as appropriate based on the authorization cards submitted by Local 97:


Included: All regularly employed, non-supervisory full-time and part-time white collar employees of the Township of Roxbury.

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 Township of Roxbury.

ORDER

I certify Teamsters Local 97 of New Jersey, I.B.T. as the exclusive representative of the unit described above, based upon its authorization cards.^{3/}

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Gay R. Mazuco

DATED: June 4, 2013
Trenton, New Jersey

^{3/} A Certification of Representative is attached.

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 June 18, 2013.

**STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION**

In the Matter of	>	
TOWNSHIP OF ROXBURY,	>	
Public Employer,	>	
	>	
-and-	>	DOCKET NO. RO-2013-036
	>	
TEAMSTERS LOCAL 97 OF NEW JERSEY, I.B.T.,	>	
Petitioner.	>	

**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

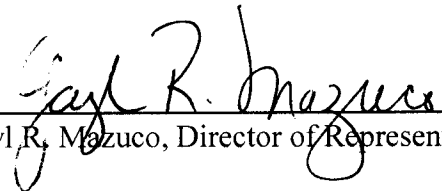
TEAMSTERS LOCAL 97 OF NEW JERSEY, I.B.T.

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, non-supervisory full-time and part-time white collar employees of the Township of Roxbury.

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 Township of Roxbury.

DATED: June 3, 2013
Trenton, New Jersey



Gayl R. Mazuco, Director of Representation