

D.R. No. 2016-7

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

In the Matter of

NEW HANOVER TOWNSHIP,

Public Employer,

-and-

Docket No. RO-2016-024

FRATERNAL ORDER OF POLICE LODGE 114/
FOP-NJ LABOR COUNCIL INC.,

Petitioner.

SYNOPSIS

The Director of Representation certifies the Fraternal Order of Police Lodge 114/FOP-NJ as the exclusive representative of all regularly employed non-supervisory rank and file police officers employed by New Hanover Township. The Township refused to sign a Stipulation of Appropriate Unit and requested copies of the authorization cards and confirmation that the employees who signed cards still had a desire to be represented. The Director found no competent evidence implicating the validity of any authorization cards, and therefore relied on the cards for purposes of determining the petitioning organization's majority representative status.

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Petitioner.

Appearances:

For the Public Employer,
Capehart & Scatchard, attorneys
(Kelly A. Grant, of counsel)

For the Petitioner,
Markowitz & Richman, attorneys
(Matthew D. Areman, of counsel)

DECISION

On December 22, 2015, the Fraternal Order of Police Lodge 114/FOP-NJ Labor Council (FOP) filed a representation petition for card check certification seeking to represent a unit of all full-time sworn law enforcement personnel employed by New Hanover Township (Township). The petition was accompanied by authorization cards from a majority of the petitioned-for unit employees. On January 12, 2016, Plumsted PBA Local 390, the petitioned-for employees' majority representative, filed a letter disclaiming interest in representing the unit for purposes of collective negotiations.

Three regularly employed full-time law enforcement officers are employed by the Township; one sergeant and two rank and file officers. The Township objected to the petitioned-for unit, arguing that the sergeant should be excluded because he is a supervisor within the meaning of N.J.S.A. 34:13A-1, et seq. (Act). FOP agreed to the proposed exclusion. Notwithstanding that resolution, the Township refuses to sign a Stipulation of Appropriate Unit form.

We have conducted an administrative investigation to determine the facts. N.J.A.C. 19:11-2.2. The disposition of the petition is properly based upon our administrative investigation. No substantial or disputed 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:

On December 29, 2015, we provided Notices to Employees, advising that the FOP had submitted a petition for certification by card check. The Township has certified that it posted the notices for the required ten-day period N.J.A.C. 19:11-2.4. On January 8, 2016, at our request, the Township submitted a list of the petitioned-for employees. We have compared the names submitted on authorization cards with those provided on the Township's list and determined that a majority of the petitioned-for employees have signed authorization cards for the FOP.

On January 14, 2016, a Commission staff agent forwarded to each party a proposed Stipulation of Appropriate Unit form setting forth a description of the petitioned-for unit, seeking the signatures of the parties' designated representatives. On January 22, 2014, the Township clerk informed the Commission staff agent that she had returned to us the Stipulation of Appropriate Unit signed by the Mayor the prior week. In response to our advice that the Stipulation was not received, the Township clerk advised that it would be sent again. The Stipulation was not received. On January 27 and 29, 2016, we again inquired of the Township clerk the whereabouts of a signed Stipulation of Appropriate Unit, who represented that she would email the signed document to us that same day. It was not received.

On February 3, 2016, the Township clerk informed the staff agent that the Mayor had not signed the Stipulation of Appropriate Unit, but would sign it on February 9, 2016, and that she would email it the following morning. Again, the signed document was not received. On February 10, 2016, the Township Mayor requested that the Commission staff agent discuss the petition with the Township attorney^{1/}.

On or about February 19, 2016, the staff agent spoke with Township counsel, who objected to the sergeant's inclusion in the

^{1/} The Township had not previously indicated they were represented by counsel and a notice of appearance was first received on February 29, 2016.

unit. The FOP agreed to the exclusion. The staff agent issued a new proposed Stipulation of Appropriate Unit form to the parties, memorializing the sergeant's exclusion from the unit. The Township refused to sign the new proposed Stipulation of Appropriate Unit form, advising that it is "not legally obligated" to do so.

ANALYSIS

On July 19, 2005, our 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 when: (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).

The Township has not asserted a colorable objection to the petition or to the proposed Stipulation of Appropriate Unit. On February 29, 2016, the Township filed a letter requesting copies of the submitted authorization cards so that it ". . . may ensure that they were properly executed and have been delivered to your office." Counsel also wrote, "[i]n light of the passage of time, given that the initial representation petition was filed December 22, 2015, the Township respectfully requests that your office contact the two Township employees that have submitted

authorization cards in support of a card check certification and confirm that they still desire to be considered part of the petition."

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. "The Director of Representation shall determine whether a majority of employees in the unit have signed valid authorization cards" [emphasis added]. N.J.A.C. 19:11-2.6(b).

In Paterson Charter School, P.E.R.C. No. 2016-4, 42 NJPER 99 (¶27 2015), the Commission rejected the employer's argument that the Director should have disclosed the exact number of unit members who signed authorization cards. The Commission clarified that the Director of Representation's investigatory duties and obligations flow from the Commission's regulations and declined to "unnecessarily impose a new requirement for the Director to provide more information than is legally obligated." Id., 42 NJPER at 101. In the absence of competent evidence implicating the validity of any authorization cards, I am compelled to rely on the cards for purposes of determining a petitioning organization's majority representative status. Id., N.J.S.A. 34:13A-5.3.

Commission policy is to expedite the processing of representation petitions so that employees' statutory rights to select a representative may be addressed properly. River Vale Bd. of Ed., D.R. No. 2014-3, 40 NJPER 133 (¶50 2013). Granting the Township's request that we now directly solicit the interest of employees who already signed timely-submitted cards is unnecessary; I decline to do so. Not only is the passage of time since the filing of the petition relatively brief, but the delay in processing this petition is largely attributable to the Township's actions.

Our review of the FOP's authorization cards shows that it has submitted cards from a majority of the petitioned-for employees. The cards set forth clear language designating the FOP as their exclusive majority representative for purposes of collective negotiations and were signed within six months of the filing of the petition. The employees' signatures on the cards meet the intent of the statute and our rules. Accordingly, the FOP is entitled to a certification based upon a card check, regardless of the Township's failure to submit a signed Stipulation of Appropriate Unit form. See City of Perth Amboy, D.R. No. 2010-2, 35 NJPER 243 (¶87 2009); 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).

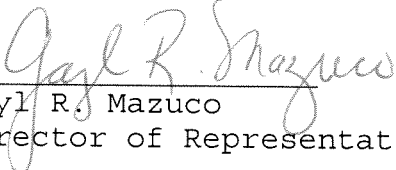
I find that the following unit is appropriate:

Included: All regularly employed non-supervisory rank and file police officers employed by New Hanover Township.

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

ORDER

I certify the Fraternal Order of Police Lodge 114/FOP-NJ Labor Council Inc., based upon its authorization cards, as the exclusive representative of the negotiations unit described above^{2/}.


Gayl R. Mazuco
Director of Representation

DATED: March 28, 2016
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 11, 2016.

^{2/} The formal certification is attached.

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

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Public Employer,	>	
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-and-	>	DOCKET NO. RO-2016-024
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FRATERNAL ORDER OF POLICE LODGE 114/	>	
FOP-NJ LABOR COUNCIL, INC.,	>	
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


FRATERNAL ORDER OF POLICE LODGE 114/FOP-NJ LABOR COUNCIL INC.

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 rank and file police officers employed by New Hanover Township.

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

DATED: March 28, 2016
Trenton, New Jersey



Gayl R. Mazuco, Esq., Director of
Representation

Attachment:

Certification of Representative dated: March 28, 2016

In the Matter of

NEW HANOVER TOWNSHIP

-and-

FRATERNAL ORDER OF POLICE LODGE 114/
FOP-NJ LABOR COUNCIL INC.,

Docket No. RO-2016-024

Service on the following:

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