

D.R. NO. 2017-12

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

In the Matter of

TOWNSHIP OF WAYNE,

Public Employer,

-and-

Docket No. RO-2017-043

COMMUNICATIONS WORKERS OF
AMERICA, LOCAL 1032,

SYNOPSIS

The Director of Representation certifies Communications Workers of America, Local 1032 as the exclusive representative of all regularly employed non-supervisory school traffic guards employed by the Township of Wayne. The Township objects to the petition and refused to sign a Stipulation of Appropriate Unit. Since the New Jersey Employer-Employee Relations Act provides for certification by card check, and Local 1032 complied with the card check rules, the Director certified Local 1032 as the majority representative for the unit in question.

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COMMUNICATIONS WORKERS OF
AMERICA, LOCAL 1032,

Petitioner.

Appearances:

For the Respondent,
Cleary Jacobbe Alfieri Jacobs, LLC, attorneys
(Matthew J. Jacobbe, of counsel)

For the Petitioner,
Weissman and Mintz, attorneys
(Annmarie Pinarski, of counsel)

DECISION

On April 28, 2017, Communications Workers of America, Local 1032, (Local 1032) filed a petition seeking to represent all school traffic guards (traffic guards) employed by the Township of Wayne (Township). The petition, seeking certification by card check, was accompanied by valid authorization cards signed by a majority of employees in the petitioned-for title. The Township opposes the petition and refuses to sign a Stipulation of Appropriate Unit.

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:

FINDINGS OF FACT

By letter dated May 2, 2017, we notified the Township of the petition, requested a list of employees identified in the petition, and the posting of a notice to public employees describing the petitioned-for unit. The Township has certified that it posted the notice for the required ten-day period on May 2, 2017. On May 11, 2017, the Township provided the requested list of employees. Based on the Township's list, we have determined that a majority of the petitioned-for employees timely signed valid authorization cards designating Local 1032 as their representative for purposes of collective negotiations. N.J.A.C. 19:11-2.6(b).

By letter dated May 12, 2017, we notified the parties that the showing of interest was adequate, and circulated a proposed Stipulation of Appropriate Unit, which described the unit as "all regularly employed non-supervisory school traffic guards employed by Wayne Township." On May 16, 2017, a telephone conference was conducted among the parties, during which we again advised the parties that the petition was adequate. During that call, counsel for the Township advised that the Township objected to

the petition and would not execute the Stipulation. By letter dated May 17, 2017, we requested that the Township and Local 1032 submit position statements by May 22, 2017, and responses to those statements by May 23, 2017. The Township provided a letter dated May 22, 2017, which states that Local 1032 "must demonstrate a showing of at least fifty (50%) percent of signed cards in order to have a majority representative recognized" pursuant to N.J.S.A. 34:13A-5.3, and although the Township had received our May 12, 2017 letter which stated that "we have received the employer's list of unit members and the showing of interest is good," the Township "need[s] written confirmation from [the Commission] that the showing of interest represents 'a majority of the employees' as mandated by law" so that the Township "can ascertain whether or not the showing of interest satisfies the statutory criteria." Thus, the Township requested that the Commission provide the Township with "written confirmation that the Union has fulfilled that statutory mandate."

Local 1032 provided a letter dated May 22, 2017, submitting that a check of a union's authorization cards signed by a majority of employees in an appropriate unit is a lawful method to determine a majority representative, and that the employees' signatures meet the intent of the Act and Commission rules.

Thus, Local 1032 submits that it is entitled to card check certification.

Local 1032 also submits that the petitioned-for unit is appropriate, as it consists of regularly employed crossing guards, which is consistent with other crossing guard units certified by the Commission, see City of Hoboken, D.R. No. 2010-10, 36 NJPER 9 (2010). Local 1032 also submits that the petitioned-for unit employees are regularly employed from September through June, work 16 to 20 hours per week, and some have been employed by the Township for 20 to 30 years.

No responses to the position statements were received.

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 May 22, 2017, the Township submitted a letter to the Commission in which it states that Local 1032 "must demonstrate a showing of

at least fifty (50%) percent of signed cards in order to have a majority representative recognized" pursuant to N.J.S.A. 34:13A-5.3. The Township asserts that it "need[s] written confirmation from [the Commission] that the showing of interest represents 'a majority of the employees' as mandated by law" so that the Township "can ascertain whether or not the showing of interest satisfies the statutory criteria."

However, it is the Commission, and not the Township, that makes the determination regarding whether a majority of employees in the unit have signed valid authorization cards. 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, and that "[t]he 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). The determination as to the adequacy of the showing of interest had been made, and the Township was advised of that decision in our letter of May 12, 2017, stating that "we have reviewed the employer's list of unit members and the showing of interest is good."

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 any 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). Our review of Local 1032's authorization cards shows that it has submitted cards from a majority of the petitioned-for employees. The cards set forth clear language designating Local 1032 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, Local 1032 is entitled to certification based upon a card check regardless of the Township's failure to submit a signed Stipulation of Appropriate Unit. See City of Perth Amboy, D.R. No. 2010-2, 35

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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).

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

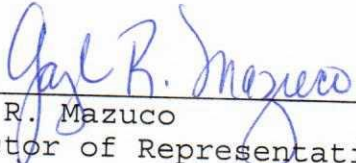
Included: All regularly employed non-supervisory school traffic guards employed by the Township of Wayne.

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

Local 1032 has met the requirements of the Act, and it is entitled to certification based upon the authorization cards from a majority of the employees in the petitioned-for titles.

ORDER

I certify Communications Workers of America, Local 1032, as the exclusive representative of the unit described above, based upon its authorization cards.^{1/}



Gayl R. Mazuco
Director of Representation

DATED: May 24, 2017
Trenton, New Jersey

^{1/} An appropriate Certification of Representative will issue with this decision.

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 8, 2017.

Attachment:

Certification of Representative dated: May 24, 2017

In the Matter of

TOWNSHIP OF WAYNE

-and-

COMMUNICATIONS WORKERS OF AMERICA, LOCAL 1032

Docket No. RO-2017-043

Service on the following:

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