

D.R. NO. 2019-7

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

In the Matter of

GALLOWAY TOWNSHIP,

Public Employer,

-and-

Docket No. RO-2019-023

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 68, AFL-CIO,

Petitioner,

-and-

GOVERNMENT WORKERS UNION,

Intervenor.

SYNOPSIS

The Director of Representation orders that a secret mail ballot election be conducted among an existing unit of all regularly employed full-time and part-time white collar non-supervisory employees of the Township of Galloway (Township), based on a timely representation petition filed by International Union of Operating Engineers Local 68 (Local 68) accompanied by an adequate showing of interest. The unit is currently represented by Government Workers Union, its intervention perfected by its current collective negotiations agreement with the Township. The Director determined that no material factual dispute was raised and orders an election to resolve the question concerning representation.

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Appearances:

For the Respondent,
Blaney and Karavan, PA, attorneys
(Kyle D. Weinberg, of counsel)

For the Petitioner,
O'Brien Belland and Bushinsky, LLC, attorney
(Mark Belland, of counsel)

For the Intevenor,
David L. Tucker

DECISION

On October 1, 2018, International Union of Operating Engineers Local 68 (Local 68) filed a petition for certification of public employee representative, accompanied by an adequate showing of interest, seeking to represent a collective negotiations unit of all regularly employed full-time and part-

time white collar non-supervisory employees of the Township of Galloway (Township). The petitioned-for unit is currently represented for purposes of collective negotiations by Government Workers Union (GWU).

On October 1, 2018, we sent a letter to the Township, with a copy to Local 68, scheduling an in-person investigatory conference for October 15, 2018. We also sent a letter to GWU advising it of the date of the conference and that a failure to perfect any request to intervene may result in GWU's exclusion from participation in the conference. On October 3, 2018, the Township filed the requisite Certification of Posting and provided a list of employees meeting the proposed unit description, confirming the adequacy of Local 68's showing of interest. N.J.A.C. 19:11-2.6.

On October 9, 2018, GWU intervened in this petition, based upon its most recent collective negotiations agreement (CNA) with the Township, which expires on December 31, 2018. N.J.A.C. 19:11-2.7(b)2. On the same day, the assigned Commission staff agent sent GWU, Local 68, and the Township a draft Agreement for Consent Election for a mail ballot election. The Township signed it the same day, and Local 68 signed it on October 11, 2018.

On October 12, 2018, the last business day before the an in-person conference originally scheduled for October 15, 2018, a representative from GWU advised that it would not attend the

conference. Although the conference was rescheduled to October 22, 2018, the staff agent informed the parties that if they all signed the Agreement for Consent Election, the conference would be cancelled. As GWU had not signed the agreement by the rescheduled conference date, representatives from the Township and Local 68 arrived at our Trenton office for the scheduled conference on October 22nd. GWU did not send a representative.

On the same date, GWU filed an unfair practice charge against the Township and Local 68 (Dkt. No. CO-2019-104) and requested that the charge block the processing of the representation petition. The charge alleges, among other things, that the Township did not agree to schedule collective negotiations with GWU on several specified dates in September, 2018; and that it permitted Local 68 to meet with unit employees and campaign against GWU on Township property in September, 2018. The Township's conduct allegedly violates section 5.4a(1), (2), (3), (5) and (7)^{1/} of the New Jersey Employer-Employee Relations Act

1/ These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act;(2) Dominating or interfering with the formation, existence or administration of any employee organization;(3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by the act;(5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees
(continued...)

(Act) and Local 68's conduct allegedly violates section 5.4b (1), (2) and (5)^{2/} of the Act.

Later on October 22, the staff agent sent a letter to the parties, requesting that GWU provide, by October 26, 2018, documentary evidence in support of its blocking request, pursuant to the standard articulated in State of New Jersey, P.E.R.C. No. 81-94, 7 NJPER 105 (¶12044 1981) and Matawan-Aberdeen Req. Sch. Dist., P.E.R.C. No. 89-69, 15 NJPER 68 (¶20025 1988). The letter also informed GWU that, in the absence of a submission by that date, GWU's consent to the continued processing of the petition prior to adjudication of the unfair practice charge would be presumed. GWU did not submit documentary evidence, as set forth in and required by State of New Jersey. The charge does not block the processing of Local 68's petition^{3/}.

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- 1/ (...continued)
in that unit, or refusing to process grievances presented by the majority representative; and (7) Violating any of the rules and regulations established by the commission."
- 2/ These subsections prohibit employee organizations, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (2) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances; and (5) Violating any of the rules and regulations established by the commission."
- 3/ The charge shall be processed in the normal course.

On October 30, 2018, the staff agent sent an updated Agreement for Consent Election to the parties. The staff agent advised that the failure to sign the agreement without a particular objection filed by 12:00 p.m. on November 1, 2018, might result in a decision directing an election. On October 30, 2018, the Township signed the agreement and, pursuant to our direction, provided a list of employees in the unit. Local 68 signed the agreement on November 1, 2018. By email at 3:00 p.m. on November 1, 2018, GWU filed an objection.

GWU objects to the processing of the petition because of "irregularities" in the employee list provided by the Township, specifically the omission of employee title information and the inclusion of five additional employees on the list that were not on the "dues sheet" previously provided to GWU by the Township of dues-paying members in its white collar negotiations unit. We asked the Township to update its list to include employee title information and to explain the differences between the list and dues sheet.

On November 2, 2018, the Township filed and served an updated list with employee title information. The Township explained that four employees whose names were on the list but not on the dues sheet were part-time employees with fewer than 25 hours of work per week and did not qualify for unit inclusion under the recognition provision of GWU's current CNA, but would

qualify under the unit definition described in the petition and the Agreement for Consent Election, (which did not base the inclusion of part-time employees on the number of hours worked). The Township also explained that the fifth employee on its list but not included on the dues sheet was a unit employee who specifically opted not to be a dues-paying member of GWU.

In light of the updated list provided by the Township, the assigned staff agent advised the parties that in the absence of any further or renewed objections filed by 12:00 p.m., Monday, November 5, 2018, the Director of Representation would direct an election, unless the Agreement for Consent Election was signed by all parties. No further or renewed objections were made, nor was the Agreement for Consent Election signed by all parties.

I 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.

ANALYSIS

We have frequently directed elections in the absence of signed Agreements for Consent Election where no objections or arguments have been raised as to why an election should not be conducted. Stone Harbor Boro., D.R. No. 89-5, 14 NJPER 625 (¶19261 1988) (directing election where employer refused to sign

agreement yet raised no objection); Paterson Bd. of Ed., D.R. No. 88-12, 13 NJPER 793 (¶18301 1987) (directing election where employer "neither agreed nor objected to the conduct of an election" and "set forth neither facts nor arguments" that the petitioned-for unit was inappropriate); Winslow Tp., D.R. No. 87-24, 13 NJPER 208 (¶18087 1987) (directing election where employer raised no substantial dispute and advised that its regular policy was not to enter into an Agreement for Consent Election but to adhere to Commission rulings); Union City Housing Authority, D.R. No. 85-17, 11 NJPER 163 (¶16071 1985) (directing election where employer refused to consent but did not proffer any reason for its position); Haddonfield Boro., D.R. No. 83-13, 8 NJPER 588 (¶13273 1982) (directing election in the absence of consent where employer did not dispute the appropriateness of the proposed unit and advised that it would not submit additional material to raise any factual issues); Runnemede Boro., D.R. No. 83-12, 8 NJPER 587 (¶13272 1982) (directing election in the absence of consent where employer did not dispute the appropriateness of the proposed unit and where its attorney filed a statement indicating that no additional information or objections to the election would be forthcoming); Monroe Tp. Public Library, D.R. No. 82-30, 8 NJPER 65 (¶13026 1981) (directing election where employer advised that it had no objection but declined to execute an Agreement for Consent

Election); see also North Bergen Tp., D.R. No. 2010-5, 35 NJPER 312 (¶107 2009) (directing election in the absence of consent where parties did not raise challenges to voter eligibility or new objections - the only objection raised was addressed in a prior decision involving the parties).

The parties were given until 12:00 p.m. on Monday, November 5, 2018, to raise any new objection or to renew any objections that had been addressed and dismissed. No party has done so.^{4/} No substantial and material factual dispute regarding the petitioned-for and prima facie appropriate unit warrants an evidentiary hearing. An election will be ordered to resolve the question concerning representation.

Accordingly, I issue the following:

ORDER

A secret mail ballot election is directed among the employees in the following unit:

4/ The Commission does not approve negotiations units that exclude regular part-time employees who share a community of interest with full-time employees. Kearny Bd. of Ed., P.E.R.C. No. 2005-42, 30 NJPER 504 (¶171 2004). see also N.J.S.A. 34:13A-5.15 (requiring inclusion of all regular part-time employees performing negotiations unit work without regard to number of hours worked or whether a previously required threshold of hours was met, except that casual employees may be excluded). GWU's objection was not a challenge to the eligibility of particular voters. I note that the parties may raise such challenges on the day of the election count prior to the opening of the outer envelope of the challenged ballot. See N.J.A.C. 19:11-10.3(e).

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

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

Eligible voters are those employed on the last day of the payroll period ending October 27, 2018,^{5/} including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, including those in military service. Employees who resigned or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date are ineligible to vote. Employees in the unit described above shall vote to determine the collective negotiations representative, if any, for the unit in which they are employed and will have the option to vote for Government Workers Union, no representative, or International Union of Operating Engineers, Local 68, AFL-CIO.

Ballots will be mailed by the Commission to eligible voters in the unit on **November 14, 2018**. Ballots must be returned to the Commission's Post Office Box by 2:00 p.m. on **December 13**,

^{5/} The Township has already submitted an eligibility list for this payroll period consisting of an alphabetical list of the names of eligible voters in the unit, together with their last known mailing addresses, simultaneously provided to the parties with a proof of service filed with us.
N.J.A.C. 19:11-10.1.

2018. The ballots will be counted the same day at 3:00 p.m. at the Commission's Trenton office.

The exclusive representative, if any, shall be determined by a majority of the valid votes cast in the election. The election shall be conducted in accordance with the Commission's rules.

By Order of the
Director of Representation

/s/ Jonathan Roth
Jonathan Roth
Director of Representation

DATED: November 8, 2018
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 November 19, 2018.