

D.R. NO. 2020-8

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

In the Matter of

TOWNSHIP OF TOMS RIVER,

Public Employer,

-and-

Docket No. AC-2020-001

TOMS RIVER PROFESSIONAL  
ASSOCIATION,

Petitioner.

**SYNOPSIS**

The Director of Representation amends the Certification of Representative issued to Toms River Professional Association to reflect its affiliation with AFSCME New Jersey Council 63. The petitioner complied with the necessary requirements and neither the Township of Toms River nor any other employee organization opposed the amendment. Accordingly, the Certification of Representative is amended to reflect that Toms River Professional Association, AFSCME New Jersey Council 63, Local 3186 is now the name of the exclusive representative.

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Appearances:

For the Public Employer,  
Donald Guardian, Business Administrator

For the Petitioner,  
Zazzali Fagella Nowak Kleinbaun and Friedman, attorneys  
(Paul L. Kleinbaum, of counsel)

**DECISION**

On September 16, 2019, the Toms River Professional Association (TRPA) filed an Amendment of Certification Petition with the Public Employment Relations Commission (Commission) seeking to amend its Certification of Representative to reflect the TRPA's affiliation with American Federation of State County and Municipal Employees New Jersey, Council 63 (AFSCME).<sup>1/</sup>

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<sup>1/</sup> TRPA seeks to have the Certification of Representative amended to reflect the following name: Toms River Professional Association, AFSCME New Jersey Council 63, Local 3186.

TRPA submitted certifications in support of its petition from AFSCME Council 63 Executive Director Steven Tully and TRPA President Jennifer A. Clifton. N.J.A.C. 19:11-1.6(c). On September 17, 2019, we sent a letter to the Township requesting whether it objects to the proposed amendment. On September 18 and 25, 2019, the assigned Commission staff agent issued a letter to TRPA seeking clarification of certain statements set forth in the submitted certifications. On September 23 and 25, 2019, respectively, Counsel for TRPA provided clarifying responses.

On September 23, 2019, Township Administrator Donald Guardian confirmed by telephone with the assigned Commission staff agent that the Township did not object to the proposed amendment. No other employee organization has intervened. N.J.S.A. 19:11-2.7(f).

I have conducted an investigation into the matters raised by this petition. N.J.A.C. 19:11-2.2. No disputed substantial material facts require us to conduct a hearing. N.J.A.C. 19:11-2.6(d)(5). I find the following facts.

On December 17, 2013, (Docket No. RO-2014-014), the Commission certified Toms River Professional Association as the exclusive representative of the following unit:

**Included:** All regularly employed full-time and part-time non-professional, non-supervisory white collar employees employed by the Township of Toms River.

**Excluded**: Managerial executives, confidential employees, and supervisors within the meaning of the New Jersey Employer-Employee Relations Act, blue collar employees, craft employees, police, professionals, deputy tax collector, deputy tax assessor, casual and all other employees.

About one hundred employees are currently included in the negotiations unit.

Jennifer Clifton has been employed by the Township since April, 2014. She is currently employed as a secretary in the detective bureau. She was elected President of TRPA in 2018. Steven Tully is the Executive Director of AFSCME New Jersey Council 63. Bill Murawski is the AFSCME staff representative for Toms River.

On June 4, 2019, TRPA conducted four meetings in two different locations to discuss affiliation with AFSCME. The meetings were held at 10:00 a.m., 11:00 a.m., 1:00 p.m., and 2:00 p.m. A total of 41 different members attended the meetings. Each meeting was attended by Clifton, Tully, and Murawski. Tully and Murawski spoke, answered questions, and distributed materials at each meeting.

On June 10, 2019, Clifton emailed members, notifying them that a vote would be held on June 25, 2019, as to which direction TRPA should take: (1) keep the same labor attorney, (2) form a special committee to hire a new labor attorney, or (3) schedule a subsequent official vote to affiliate with AFSCME. The email

included an attached sample ballot and a notice with the date, time and place of the vote. Clifton also emailed a copy of the notice to the TRPA Executive Board with a request that it be posted.

On June 18, 2019, Clifton emailed the TRPA general membership a reminder that the vote is scheduled for June 25, 2019. The reminder provided that voting would take place at 255 Oak Avenue from 9:00 a.m. to 2:00 p.m. and at 33 Washington Street from 2:30 p.m. to 5:30 p.m. It also stated that the key to the ballot box would be held by someone other than Clifton until voting ended at 5:30 p.m. and that the ballots would be counted in front of everyone who chose to attend.

On June 20, 2019, Clifton emailed the membership again, clarifying the purpose of the vote scheduled for June 25, 2019, and explaining the three choices on the ballot. Additional reminder emails were sent on June 24 and 25, 2019.

On June 25, 2019, after the vote, Clifton emailed the results to the membership, showing that 72 members voted to have a subsequent official vote to have TRPA affiliate with AFSCME, 2 members voted to keep the same labor attorney and not affiliate with AFSCME, and 0 members voted to form a committee to hire a new labor attorney.

On June 26, 2019, by email and regular mail, Clifton notified all members of the secret ballot affiliation vote

scheduled for August 20, 2019, and included a sample ballot and the absentee ballot procedures. The notice was also posted on all union bulletin boards but without the sample ballot.

The notice provided that voting would take place on August 20, 2019, at 255 Oak Avenue from 10:00 a.m. to 1:00 p.m. and at 33 Washington Street from 2:00 p.m. to 5:30 p.m.; that the key to the ballot box would be kept separate from the ballot box until voting ended at 5:30 p.m.; and that the ballots would be counted in front of all members who chose to be present at that time. The sample ballot asked the voter to mark yes or no to the question: "Do you wish the Toms River Professionals Association to affiliate with/become a local of AFSCME National Union (American Federation of State County Municipal Employees)?".

A detailed absentee ballot procedure was promulgated that contemplated an eligible employee's absence or sickness on the scheduled voting date; verification of an absentee voter's home address with the Township; a post office box for receipt of ballots and a voting process to assure secrecy. Only one member requested, received, and returned a marked absentee ballot.

The secret ballot election was conducted on August 20, 2019. That day, Clifton opened the one absentee ballot envelope in front of Murawski and the TRPA Correspondence Secretary and placed it in the ballot box without opening the ballot itself. After the ballots were tallied at the close of the election,

Clifton emailed the results of the election to the TRPA membership, which showed that 71 members voted for affiliation with AFSCME and 0 members voted against affiliation.

The composition and approximate size of the negotiations unit represented by TRPA has remained unchanged since affiliation. TRPA, as a local of AFSCME, will mostly retain the same autonomy and voting structure it had before affiliation, subject to AFSCME's constitution. The officers of TRPA have continued as officers of the TRPA local of AFSCME since affiliation. They will be entitled to run for reelection during the next officer election scheduled for August, 2020. Only members of the TRPA local of AFSCME who are employees in the current negotiations unit will be eligible to vote. No other negotiations units or employees of other jurisdictions are in the TRPA local of AFSCME.

#### **ANALYSIS**

A petition for an amendment of certification is “. . . for the purpose of recording a change in the name or in the affiliation of the exclusive representative” after the “membership of the certified employee representative voted in favor of the change in name and affiliation.” N.J.A.C. 19:11-1.6(a), (c). See also Missouri Beef Packers, Inc., 175 NLRB 1100, 71 LRRM 1177 (1969) (“Amendment of certification, by and large,

is intended to permit changes in the name of the representative, not a change in the representative itself.")<sup>2/</sup>

The Commission has required petitioners seeking to amend certifications to reflect changes in the name or affiliation of the certified representative to demonstrate (1) that minimum due process standards were satisfied and (2) that there is continuity of representation. Parsippany-Troy Hills Tp., D.R. No. 94-5, 19 NJPER 511 (¶24235 1993), req. for rev. den. P.E.R.C. No. 94-119, 20 NJPER 279 (¶25141 1994).

The Commission has analyzed various due process factors, including whether there was an election with regard to the change in name or affiliation; whether the membership of the certified exclusive employee representative was given advance and adequate notice of the election; whether the election was conducted by secret ballot within six months of the filing of the petition; whether a majority of those voting voted in favor of the change in name and affiliation; whether the procedures provided for an opportunity for debate among members prior to the vote; and whether the election was inaccessible to membership in timing and location.<sup>3/</sup> N.J.A.C. 19:11-1.6(c); Parsippany-Troy Hills Tp.;

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<sup>2/</sup> The Commission may utilize the experience of the National Labor Relations Board (NLRB) and adjudications under the Federal Labor Management Relations Act. Lullo v. International Assn. of Fire Fighters, 55 N.J. 409 (1970).

<sup>3/</sup> Where adequate notice and opportunity is provided, name  
(continued...)

North Hudson Reg. Fire and Rescue, D.R. No. 2000-13, 26 NJPER 257 (¶31101 2000); South Orange Village Tp., D.R. 2020-3, \_ NJPER \_ (¶\_ 2019), req. for rev. pending.

Factors for analyzing continuity of representation have included whether the organization's officers and unit structure have changed; whether changes in officers were a condition of affiliation or the result of normal turnover, similar officer election procedures, or the former officers declining offers; whether the petitioner is a different organization or essentially the same representative; and whether changes are sufficiently dramatic to alter the organization's identity. N.J.A.C. 19:11-1.6(c); Middletown Tp. et als. and IEU Loc. 417 and OPEIU Loc. 32, P.E.R.C. No. 2000-47, 26 NJPER 59 (¶31020 2000), aff'd 27 NJPER 194 (¶32065 App. Div. 2001); South Orange Village Tp. (citing factors utilized in federal and NLRB cases).

I am satisfied that minimum due process was afforded during the process of affiliation and that there is continuity of

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3/ (...continued)  
change and affiliation elections can be decided by the majority of those voting despite low voter turnout. See North Hudson Reg. Fire and Rescue; Hamilton Tool Co., 190 NLRB 571, 77 LRRM 1257 (1971). Cf. Atlantic City Housing Auth., D.R. No. 78-6, 3 NJPER 270 (1977) ("An axiom of democratic elections is that those persons who choose not to vote acquiesce in the will of the majority"). An employee organization may limit participation in such elections to members only. See Parsippany-Troy Hills Tp.; NLRB v. Financial Institution Employees of America Local 1182 (Seattle-First), 475 U.S. 192 (1986).

representation between the unaffiliated TRPA that was certified as the exclusive representative and the petitioning TRPA that has affiliated with AFSCME.

TRPA discussed the option of affiliation at four meetings in two different locations for the convenience of its members. Members were allowed to discuss the option and ask questions at these meetings. Multiple emails and postings provided members with adequate notice of an election to decide the direction TRPA should take. That election was conducted by secret ballot at two locations over several hours. The results showed that 72 out of 74 voters chose to move forward with an official subsequent affiliation election.

Members were then given adequate notice by email, regular mail, and posting as to the timing and location of the affiliation election. The sample ballot clearly expressed that the vote concerned whether TRPA should affiliate with and become a local of AFSCME. Like the prior election, the affiliation election was conducted by secret ballot at two locations over several hours. Moreover, absentee ballot procedures were implemented and the secrecy of the one absentee ballot cast was maintained.

The results of the election showed that 71 members voted for affiliation with AFSCME and 0 members voted against affiliation. While the specific procedures for mail ballots did not have all

the safeguards the Commission uses for representation elections, I find that minimum due process standards were satisfied. See Parsippany-Troy Hills Tp. (minimum due process standards satisfied for affiliation election despite failure to have process for absentee ballots).

I also find a continuity of representation. The unit structure has remained unchanged. TRPA, as a local of AFSCME, will mostly retain the same autonomy and voting structure it had before affiliation. The officers have remained unchanged and will be entitled to run for reelection in the next officer election. Only members of the TRPA local of AFSCME who are employees in the current negotiations unit will be eligible to vote for the local officers. No other negotiations units or employees of other jurisdictions are included in the TRPA local of AFSCME.

Accordingly, the Certification of Representative is amended to reflect that Toms River Professional Association, AFSCME New Jersey Council 63, Local 3186 is now the name of the exclusive representative.<sup>4/</sup>

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<sup>4/</sup> Because I find that the Commission's previous standards for minimum due process have been satisfied, I need not determine whether continuity of representation alone is sufficient for an amendment of certification. See Raymond F. Kravis Ctr. for the Performing Arts, 351 NLRB 143, 182 LRRM 1491 (2007); Seattle-First.

By Order of the  
Director of Representation

/s/ Jonathan Roth  
Jonathan Roth  
Director of Representation

DATED: October 1, 2019  
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 October 11, 2019.**