

D.R. NO. 89-33

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

In the Matter of

TOWNSHIP OF ROXBURY,

Public Employer,

-and-

Docket No. RO-89-84

LOCAL 11, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS,

Petitioner.

SYNOPSIS

The Director of Representation determines that a challenged voter in a representation election is ineligible. The Township and the Petitioner had agreed during the initial representation conference that certain employees were eligible for inclusion in the white collar unit and certain other employees were excluded from the unit based upon their confidential status. The parties executed a Consent Election Agreement. Accordingly, the Director finds that Petitioner waived its right to now insist that the challenged employee is eligible for unit inclusion. The Director orders that the ballot cast by the ineligible employee be voided and the appropriate certification of election results issue.

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Appearances:

For the Public Employer
Eric M. Bernstein, Esq.

For the Petitioner
Schneider, Cohen, Solomon, Leder & Montalbano, Esqs.
(Bruce D. Leder, of counsel)

DECISION AND DIRECTION OF ELECTION

Local 11, International Brotherhood of Teamsters ("Local 11") entered into an Agreement for Consent Election with the Township of Roxbury ("Township") and an election was conducted by the Public Employment Relations Commission ("Commission") on April 12, 1989, among white collar employees of the Township to determine if these employees wished to be represented by Local 11, IBT. Of the 37 eligible voters, 33 voted. Twelve employees voted in favor of representation by Local 11; 16 voted against representation. Five additional ballots were challenged. The challenges are sufficient to affect the results of the election.

Local 11 asserts that the five challenged voters are eligible and their ballots should be counted. The Township objects to counting the challenged ballots. It contends that the five voters are confidential employees within the meaning of N.J.S.A. 34:13A-6. It also maintains that one of the challenged voters, Theresa DeFazio, Secretary to the Police Chief, should not have her vote counted because both parties agreed to exclude DeFazio from the unit as a confidential employee.

We have conducted an administrative investigation into the issues raised by the challenges, pursuant to N.J.A.C. 19:11-9.2(k). We do not find any substantial and material factual disputes which may more appropriately be resolved through the conduct of a formal hearing. N.J.A.C. 19:11-2.6(b). Accordingly, we have determined that the disposition of this matter is properly based on our administrative determination of the following facts.

Local 11 filed a Petition for Certification with the Commission on January 30, 1989. It sought to represent clerical employees and dispatchers employed by the Township. These employees are not currently represented.

On February 21, the assigned staff agent met with the parties. The parties agreed that a collective negotiations unit of the Township's white collar employees was appropriate, but disagreed about the inclusion of certain specific titles. By the end of the conference, four employees remained in dispute (see below).

On February 22, 1989, the assigned staff agent wrote to the parties summarizing the agreement of the parties at the conference as to unit composition. The letter summary provided in pertinent part:

The Township and Local 11 have agreed that Patricia Dillon, Eleanor Holdworth, Olive Donovan and Theresa DeFazio are confidential employees and should be excluded from the unit. The Township will agree that DeMazzi is not confidential. The parties continue to disagree about the appropriateness of including Riley, Stadelman, Fiorino and Vanderhoof in the unit. Accordingly, I have suggested the parties enter into the enclosed Agreement for Consent Election, which will permit the Township to challenge the remaining disputed ballots at the election.

The Township has agreed. Local 11 will advise me by Monday, February 27 if such an agreement is acceptable to them.

On March 6, Local 11's representative, Louis Grasso, called the assigned staff agent and indicated that Local 11 was prepared to enter into the Consent Agreement as proposed. At no time did Grasso indicate that the February 22 letter containing the parties agreement and transmitting the proposed consent did not accurately reflect the positions of the parties. An election date, time and place were agreed upon, and both Local 11 and the Township signed and returned the proposed consent.

In the April 12 election, five challenged ballots were cast in the election. Four of those ballots were cast by the agreed-upon challenged voters--Fiorino, Stadelman, Riley and Vanderhoof. The fifth challenged ballot was cast by Police Chief's Secretary Theresa DeFazio, one of the employees both parties agreed to exclude from the unit.

The Agreement for Consent Election provides in part that, "the undersigned parties hereby waive a hearing on all issues that could properly be raised at said hearing and agree as follows:...." We read the Agreement for Consent Election language together with the cover letter memorializing the agreement of the parties to include certain employees and to exclude certain others. Local 11 cannot now seek to include an employee it previously agreed to exclude from the unit. Except for those four employees that the parties specifically reserved their right to challenge, the parties waived their rights to a hearing on the unit status of employees. Local 11 waived its right to assert DeFazio should be eligible for inclusion in the unit.^{1/}

Where there is a mutual intent to exclude employees from the unit, the Commission will not look behind that agreement to examine the unit status of those employees. See Warren Tp., D.R. No. 82-10, 7 NJPER 529 (¶12233 1981); Wayne Bd. of Ed., D.R. No. 80-6, 5 NJPER 422 (¶10221 1979), aff'd P.E.R.C. No. 80-94, 6 NJPER 54 (¶11028 1980).


We determine that DeFazio is an ineligible voter in this election and void her ballot accordingly. The parties agreed that DeFazio is a confidential employee within the meaning of N.J.S.A. 34:13A-6, in that she performs confidential duties for the Police

^{1/} To permit either party to avoid a negotiated settlement concerning unit composition simply by reasserting the dispute via a challenged ballot, would quickly discourage parties from engaging in settlement process for representation disputes.

Chief, who is involved in negotiations and grievance handling with the police unit.

Accordingly, based upon the parties' mutual agreement, DeFazio is ineligible to vote in this election. Her challenged ballot is hereby voided. It is unnecessary to further resolve challenged ballots to obtain a definitive result in this election. We direct the issuance of the appropriate certification of results of the election.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: May 17, 1989
Trenton, New Jersey