

D.R. NO. 95-3

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

In the Matter of

EDISON HOUSING AUTHORITY,

Public Employer,

-and-

Docket No. RO-94-133

AFSCME COUNCIL 73,

Petitioner.

SYNOPSIS

The Director of Representation orders an election among non-supervisory employees of the Edison Housing Authority to determine if they wish to be represented by Local 701. The parties disagreed only about the inclusion of the administrative assistant and the maintenance supervisor. Where the number of disputed employees is small relative to the total number of eligible voters in the unit and the unit sought is otherwise appropriate, the Director will order an election with the understanding that the disputed positions may vote subject to challenge.

D.R. NO. 95-3

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

In the Matter of

EDISON HOUSING AUTHORITY,

Public Employer,

-and-

Docket No. RO-94-133

AFSCME COUNCIL 73,

Petitioner.

Appearances:

For the Public Employer  
Ansell, Zaro, Bennett, Kenney and Grimm, attorneys  
(Joseph Orlando, of counsel)

For the Petitioner  
Don Dileo, Staff Representative

DECISION AND DIRECTION OF ELECTION

On May 2, 1994, AFSCME Council 73 filed a Petition for Certification of Public Employee Representative with the Public Employment Relations Commission seeking to represent a unit of all non-supervisory employees employed by the Edison Housing Authority.

The Authority opposes the petition and refuses to consent to a secret ballot election; it contends that the unit is inappropriate because the Authority is partially dependent upon

federal funding. It also argues that one of the unit positions is confidential and another is supervisory within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., and are both ineligible for unit membership.

An administrative investigation was conducted in this matter. I make the following findings. N.J.A.C. 19:11-2.2.

The Association seeks to represent an appropriate unit of non-supervisory employees including clerks, maintenance employees and coordinators. The employees' salaries are either fully or partially funded by federal housing grants. However, the Authority retains control over employee selection, job performance, salary and benefits, discipline and other employee terms and conditions of employment. The Commission has previously held that the source of an employer's funding is not the determinative factor in deciding whether public employees are eligible for representation. In Passaic Cty., D.R. No. 78-29, 4 NJPER 8 (¶4006 1977), the Commission found that funding employee salaries with federal CETA grants did not undermine the public employer's ability to negotiate over employees' terms and conditions of employment. See also, Hudson Association of Retarded Citizens, P.E.R.C. No. 94-57, 19 NJPER 593 (¶24287 1993); Cranford Tp., D.R. No. 86-26, 12 NJPER 566 (¶17214 1986); Tp. of Mine Hill, D.R. No. 79-4, 4 NJPER 294 (¶4148 1978).

Funding of employee salaries by federal grants would not hinder the Authority's ability to meaningfully negotiate terms and conditions of employment if AFSCME is certified as the employees'

representative.

The parties dispute the unit eligibility of the administrative assistant position. The Authority contends that although the position does not currently involve any confidential duties, this employee will be directly involved in labor relations in the event that AFSCME is certified to represent its employees.

The parties also disagree about whether the position is currently occupied. The Authority contends that Mary Lou Rapkine formerly held the title, resigned a few months ago and is presently seeking reinstatement to the position. The union contends that Rapkine is still employed and is currently on a paid leave of absence. It is not necessary to decide this dispute in order to determine whether an election may now properly be conducted in this unit. The issue of whether this employee, or the administrative assistant position, is eligible for inclusion in this unit can be decided at a later date. N.J.A.C. 19:11-2.6 provides that if there is a substantial material dispute between the parties, I may conduct an administrative hearing to resolve the facts and make conclusions. However, it is not necessary to do so since the number of employees in dispute is small compared with the size of the unit. I will permit Rapkine to participate in the election by challenged ballot. Borough of Leonia, P.E.R.C. No. 86-143, 12 NJPER 523 (¶17195 1986); Newark Housing Auth., D.R. No. 93-3, 18 NJPER 482 (¶23219 1992).

The Authority also alleges that the maintenance supervisor

is a supervisor within the meaning of the Act and must be excluded from the proposed unit. N.J.S.A. 34:13A-5.3 provides:

...nor, except where established practice, prior agreement or special circumstances dictate to the contrary shall any supervisor having the power to hire, discharge, discipline or effectively recommend the same, have the right to be represented in collective negotiations by an employee organization that admits non-supervisory personnel to membership.

Determination of supervisory status requires more than a job description which merely states that a position is supervisory or a bare assertion that an employee has the authority to hire, discharge, discipline or effectively recommend such action. The Commission requires evidence that this level of authority is regularly exercised. "The mere possession of the authority is a sterile attribute unable to sustain a claim of supervisory status." Somerset Cty. Guidance Center, D.R. No. 77-4, 2 NJPER 358, 360 (1976).

The Authority contends that Maintenance Supervisor Richard Willey supervises four employees: two full time repairers and two seasonal employees hired to maintain the Authority's lawns. Willey directs their work. They report to him for assignments and he may keep track of their time. There is no claim that Willey has direct authority to hire replacement employees, nor can he independently discipline these employees. I therefore find that Maintenance Supervisor Richard Willey is not a supervisor within the meaning of the Act, and is included in this unit.

Based upon the foregoing, I order that a representation

election be conducted in the unit described below:

Included: all non-supervisory white collar employees and blue collar employees employed by the Edison Housing Authority

Excluded: managerial executives, confidential employees, craft employees, police, professional employees, and supervisors within the meaning of the Act.

May Lou Rapkine may participate in the election subject to the Commission's challenged ballot procedure. The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, including those in the military service. Employees must appear in person in order to be eligible to vote. Ineligible to vote are 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.

Pursuant to N.J.A.C. 19:11-9.6, the public employer is directed to file with us an eligibility list consisting of an alphabetical listing of the names of all eligible voters, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by us no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously provided to the employee organization with a statement of service filed with us. We shall not grant an extension of time within which to file the eligibility list

except in extraordinary circumstances.

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

  
Edmund G. Gerber, Director

DATED: August 24, 1994  
Trenton, New Jersey