

D.R. NO. 95-23

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

In the Matter of

TOWNSHIP OF MT. HOLLY,

Public Employer,

-and-

Docket No. RO-95-145

C.W.A., LOCAL 1044 (SUPERVISORY UNIT),

Petitioner.

SYNOPSIS

The Director of Representation orders an election among supervisory employees of the Township of Mt. Holly. The Director also ordered that the public works foremen may vote a subject to challenged ballot. Finally, the Director dismisses the employer's objection to the inclusion of the construction code official, pursuant to J.P. Properties, Inc. v. Macy, 183 N.J. Super. 572, 444 A.2d 1131 (1982).

D.R. NO. 95-23

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

In the Matter of

TOWNSHIP OF MT. HOLLY,

Public Employer,

-and-

Docket No. RO-95-145

C.W.A., LOCAL 1044 (SUPERVISORY UNIT),

Petitioner.

Appearances:

For the Public Employer
Robert J. Incollingo, attorney

For the Petitioner
Calvin Money, Nat'l Representative

DECISION AND DIRECTION OF ELECTION

On November 22, 1994, CWA, Local 1044, AFL-CIO filed a representation petition seeking to represent a unit of blue collar and white collar supervisory employees of the Township of Mt. Holly. The petition was accompanied by an adequate showing of interest.

The Township filed a letter agreeing that some employees were eligible for inclusion in the proposed unit, others were ineligible, and that the "Department Heads Committee" is the bargaining representative for the petitioning employees.^{1/}

^{1/} The president of the "Committee" filed a letter disclaiming any interest in representing the petitioned-for unit. No collective agreement bars the processing of the petition.
N.J.A.C. 19:11-2.8.

The parties agreed that the Municipal Director of Welfare, construction official and two assistant foremen are eligible for inclusion. CWA did not contest that the Township Treasurer is a confidential employee and that elevator sub-code official is not regularly employed. The CWA also did not dispute that the electrical inspector and plumbing inspector are not supervisory employees.

Only one title appeared to be in dispute--public works foreman. CWA contended that he "hands out assignments to employees given to him by the Township manager" and "describes himself as a working foreman." CWA has also filed a "duties questionnaire" completed by the foreman. He described his duties as distributing work assignments, maintaining streets and parks, removing snow and performing "garage maintenance." He denied hiring, firing, or evaluating employees; he reports to the Township manager.

CWA also denied that any conflict exists in the relationship between the foreman and assistant foreman. CWA denies that the foreman "supervises" the assistant foreman; it asserts that the Township manager is responsible for employment actions.

The Township contended that the foreman makes hiring and merit pay recommendations, and under "limited supervision" of the Township manager, implements disciplinary actions.

On February 3, 1995, the Township filed a letter asserting that the construction code official is not appropriately included in the petitioned-for unit. It contended that the construction

official does not fall under the Township manager's "jurisdiction over matters of Act enforcement and construction official discipline." It referred to J.P. Properties, Inc. v. Macy, 183 N.J. Super. 572, 444 A.2nd 1131 (1982).

J.P. Properties, Inc. holds that township managers have no jurisdiction "over matters of [Uniform Construction] Code enforcement and construction official discipline based upon his official activities." Id. at 444 A.2nd 1333. This finding is not relevant to the pending representation case--it has little bearing on appropriate unit questions and on whether the disputed title is eligible for inclusion for statutory reasons. This disputed title, like any other in the petitioned-for unit, answers to the Township manager over "...salary, office space, location and equipment, reports of activities, investigat[ions of] performance and the fix[ing of] terms and conditions of employment." Id. The Township has proffered no other arguments justifying the construction official's exclusion from the unit. Accordingly, I find that this title is eligible for inclusion in the petitioned-for supervisory unit.

The parties dispute the duties of the public works foreman. No facts suggest that the foreman is a managerial executive or a confidential employee. The dispute is focused on whether the foreman supervises employees in the petitioned-for unit. Accordingly, I order an election in the petitioned-for unit and determine that the public works foreman may vote, subject to a challenged ballot.

The unit shall include the Municipal Director of Welfare, assistant foreman and construction official. Excluded are the treasurer, elevator sub-code official, electrical inspector and plumbing inspector, non-supervisory employees, employees in other negotiations units, craft employees, professional employees, police officers, firefighters, confidential employees and managerial executives within the meaning of the Act.

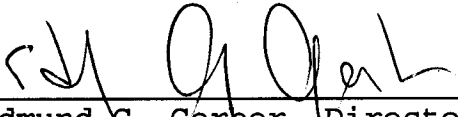
A secret mail ballot election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, including those in the military service. 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 in the units, together with their last known mailing addresses and job titles. Included in the list for purposes of permitting the disputed employee to vote subject to challenge, shall be the name and home address of the public works foreman. 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: March 14, 1995
Trenton, New Jersey