

D.R. NO. 97-8

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

In the Matter of

TOWNSHIP OF RANDOLPH,

Public Employer,

-and-

Docket No. RO-97-25

RANDOLPH TOWNSHIP EMPLOYEES
ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation rejects the employer's argument that a municipal white-collar unit should be restricted to only full-time employees. The Director finds that the part-time employees meet the Commission's test for employment regularity and continuity and share a community of interest with full-time employees. Further, although the petitioner did not originally seek part-time workers, it is willing to represent them in the unit. Accordingly, an election among full and part-time employees is ordered.

The Director also finds that an employee in an internship position whose status is disputed may vote subject to challenged ballot.

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Appearances:

For the Public Employer
Courter, Kobert, Laufer & Cohen, attorneys
(Fredric M. Knapp, of counsel)

Lorber, Schneider, Nuzzi, Vichness, Bilinkas & Mason,
attorneys
(Lisa Chadwick Thompson, of counsel) - on the position
papers

For the Petitioner
Gary Lindsay, Representative

DECISION AND DIRECTION OF ELECTION

On September 3 and September 11, 1996, the Randolph Township Employees Association filed a Petition for Certification of Public Employee Representative and amended petition with the Public Employment Relations Commission. The Association seeks to represent the Township's unrepresented white-collar employees. The Township refuses to consent to an election unless the defined unit is expressly limited to only full-time employees. Further, it objects to the inclusion of the assistant to the planning director in the unit.

We have conducted an administrative investigation into the petition and find the following facts. N.J.A.C. 19:11-2.6.

The Association's petition described the proposed unit as including: tax collector/treasurer, assistant township engineer, construction official, fire official, recreation program supervisor, senior sanitarian, sanitarian, public works inspector, engineering assistant, health supervisor/welfare director, water and sewer foreman, and assistant to the planning director. The petitioned-for unit included about 18 employees.

The parties have agreed that the following positions should be excluded from the proposed unit: township manager; assistant township manager; township clerk; township engineer; health officer; planning director; finance director; and director of parks, recreation, and community service.

The proposed unit, as described in the petition, referred only to titles held by full-time employees. The assigned staff agent conducted an investigatory conference with the parties. Subsequent to the conference, the Township advised us that it would not consent to an election unless part-time employees were specifically excluded from the described unit. We advised the parties that such an exclusion is contrary to the Commission's policy and asked for information about the Township's part-time employees. The Association has identified the following part-time positions as potentially appropriate for unit inclusion: poundkeeper, deputy animal control officer, public health nurse,

public health nursing supervisor, zoning officer/building inspector, assistant tax assessor, and fire inspector.

Poundkeeper Norma Jacobs works a varied schedule, but averages 20 to 30 hours a week. Deputy animal control officer Allen Alpaugh works a varied schedule averaging 15 hours a week. Public health nurse Colleen Hintz regularly works 10 1/2 hours a week. Public health nursing supervisor Virginia Maico works 27 1/2 hours a week. Zoning officer/building inspector Russ Heiney works between 19 to 25 hours a week, as the workload dictates. Assistant tax assessor Charles Whitehead regularly works 28 hours a week. Fire inspector Marty Reynolds works 10 hours a week.

On December 3, 1996, we advised the parties of our findings and intent to direct an election among employees in a unit of full-time and part-time white-collar employees. The Township responded that it does not seek to deprive part-time employees of their statutory rights, but asserts that its full-time and part-time employees lack a community of interest based upon the latter's limited entitlement to employee benefits. However, it states that certain "grandfathered" part-time employees receive health benefits, and all part-time employees enjoy paid holidays, vacation and sick time.

The Township also asserts that the assistant to the planning director should be excluded from the unit. This full-time employee works on a two-year internship program, but receives no benefits. It is anticipated that the employee will be replaced at

the end of the two-year period. Therefore, the Township argues that this position lacks a community of interest with regular Township employees.

The parties have also agreed that, should an election be conducted, the professional employees would be entitled to a professional option ballot to determine whether they wish inclusion in a collective negotiations unit with non-professional employees.^{1/} The parties further agree that the employees eligible for the professional option are: senior sanitarian, sanitarian, engineering assistant, assistant township engineer, public health nurse, public health nursing supervisor, and health educator. Although they disagree about the unit eligibility of the assistant to the planning director, the parties concur that the position is a professional one, entitled to a professional option vote.^{2/}

ANALYSIS

Part-time Employees

The Township argues that the unit should be specifically limited to full-time employees. The Association counters that, although it has not sought to represent the part-time employees, it

1/ See N.J.S.A. 34:13A-5.3 and 6.

2/ The Association also sought to give the assistant tax assessor a professional option ballot. After the Township objected, noting that the tax assessor is included in the non-professional supervisors unit, the Association withdrew this request and agreed that the assistant tax assessor can be classified as non-professional.

is willing to accept regularly employed part-time employees in its unit.

The Commission is charged with the responsibility of determining the appropriate unit for negotiations. N.J.S.A. 34:13A-6(d). The Commission's policy is not to restrict units to only full-time employees. Monmouth Cty. Voc. Reg. Bd. of Ed., D.R. No. 79-31, 5 NJPER 179 (¶10097 1979). The Act does not restrict its coverage to only employees with full-time employment status. Regular part-time employees are entitled to all the rights guaranteed to public employees by the Act.

In deciding which part-time employees share a community of interest with "regular" employees, we focus on whether their employment demonstrates a fair degree of regularity and continuity, as opposed to casual employees who perform an occasional job for a temporary purpose or are hired for a special engagement. Mt. Olive Bd. of Ed., P.E.R.C. No. 82-66, 8 NJPER 102 (¶13041 1982). Part-time employees who regularly work more than one-sixth of the hours of full-time employees generally share a community of interest and will be included in the negotiations unit. Mt. Olive; County of Bergen, P.E.R.C. No. 84-2, 9 NJPER 451 (¶14196 1983).^{3/}

3/ See also, Tp. of Eastampton, D.R. No. 94-1, 19 NJPER 404 (¶224178 1993) (municipal sub-code officials working ten-hours a week are eligible for unit inclusion with other municipal employees); Tp. of No. Brunswick, D.R. No. 85-16, 11 NJPER 155 (¶16068 1985) (part-time employees regularly averaging ten-hours weekly are unit eligible); Lawrence Tp. Bd. of Ed., D.R. No. 82-49, 8 NJPER 278 (¶13125 1982) (instructional aides working between 5 and 15 hours weekly are included in a unit with full-time aides).

Further, excluding part-time employees from this unit suggests they may belong in a separate unit. The New Jersey Supreme Court has affirmed the Commission's policy of favoring broad-based, employer-wide negotiations units rather than narrowly defined units. Broad-based units streamline negotiations by reducing the potential for such problems as "competing demands, whipsawing and continuous negotiations..." that result from negotiating with numerous smaller units. N.J. Dept. of Education, 64 N.J. 231 (1974). Part-time status alone is insufficient to destroy a finding of community of interest and force a separate negotiations unit for part-time employees. Mt. Olive, Lawrence Tp. Bd. of Ed., Bergen Cty. The fact that certain employees are presently receiving health benefits while others are not does not mean they lack a community of interest; nor should it be inferred that unit inclusion automatically entitles any group to receive the benefits of the other unit members. Should the Association prevail in securing representation rights for these employees, the parties must negotiate over terms and conditions of employment for each unit position.

Based on the facts in this matter, I find no basis to exclude any of these part-time employees. They work regularly between 10 and 27 1/2 hours a week. This regularity of employment is sufficient to find that they share a community of interest with other white-collar municipal employees. Accordingly, I find that the appropriate unit should include part-time employees.

The Township also asserts that the unit should be limited to that which is the subject of the Association's petition. The Commission is charged with determining the most appropriate unit in the event of a dispute. N.J.S.A. 34:13A-6(d); N.J. Dept. of Education, 64 N.J. 231, 257 (1974). Sometimes the most appropriate unit is different from the one sought by the petitioner or even proposed by the employer. Here, the unit we are finding to be appropriate is slightly larger than that sought by the technical language of the petition. The sufficiency of the petitioner's showing of interest is unaffected by the additional seven unit positions, and there are no timeliness implications. The petitioner has expressed its willingness to accept the part-time employees in its unit. We will therefore order an election, in which the employees will have an opportunity to collectively decide whether they wish representation. See Monmouth Bd. of Ed.; Borough of New Milford, E.D. No. 76-42 (1976).^{4/}

Assistant to the Planning Director

The Township also asks us to exclude the assistant to the planning director as this is a two-year internship position with no benefits and no expectation of continued employment. The Association argues that even if the current employee is replaced

^{4/} Cf., City of East Orange, P.E.R.C. No. 84-101, 10 NJPER 175 (¶15086 1982) In East Orange, the petitioner sought a unit of engineering supervisors; the Commission found a more expansive unit of all Township supervisors to be appropriate, and dismissed the petition.

after a finite period, the intern position continues and should be eligible for representation.

We need not resolve the status of this position at this time. Where the number of employees in disputed titles is small relative to the total number of eligible voters in the unit and the unit sought is otherwise appropriate, we conduct the election with the understanding that the employees in the disputed positions may vote subject to challenge. Borough of Leonia, P.E.R.C. No. 86-143, 12 NJPER 523 (¶17195 1986); State of New Jersey, D.R. No. 81-20, 7 NJPER 41 (¶12019 1980); Morris Cty. Park Commission, D.R. No. 80-17, 6 NJPER 37 (¶11019 1979). If the challenged ballot is determinative of the election results, post-election mechanisms are available to resolve the challenge, including an investigation to determine the unit status of the challenged employee. If the challenged ballot is not determinative and, assuming that a certification of representative issues, the parties may voluntarily resolve the status of the challenged employee or either party may file a petition for clarification of unit to determine the employee's unit status. Leonia.

Based upon the foregoing, I direct an election in the following appropriate unit:

Included: All full-time and regularly employed part-time white-collar employees employed by the Township of Randolph, including employees in the following titles: public works inspector, tax collector/treasurer, water and sewer foreman, community service supervisor/welfare director, road foreman, construction official, animal control official, recreation program supervisor,

fire official, senior sanitarian, sanitarian, engineering assistant, assistant township engineer, health educator, poundkeeper, deputy animal control officer, public health nurse, public health nursing supervisor, zoning officer/building inspector, assistant tax assessor, and fire inspector.

Excluded: Managerial executives, confidential employees, police employees, craft employees, supervisors within the meaning of the Act, all employees in other collective negotiations units; township manager; township clerk; township engineer; health officer; planning director; finance director; director of parks, recreation and community services and assistant township manager.

The following employees will be given a professional option ballot pursuant to N.J.S.A. 34:13A-6: senior sanitarians, sanitarian, engineering assistant, assistant township engineer, health educator, public health nurse, and public health nursing supervisor. The assistant to the planning director may vote on the professional option question and the representation question subject to the Commission's challenge 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 at the polls 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. 19:11-10.1, 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 unit, 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: January 23, 1997
Trenton, New Jersey