

D.R. NO. 92-19

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

In the Matter of

STATE OF NEW JERSEY
(RACING COMMISSION),

Public Employer,

-and-

Docket No. RO-92-69

COMMUNICATIONS WORKERS OF AMERICA,

Petitioner.

SYNOPSIS

The Director of Representation orders that a mail ballot election be conducted among the Veterinarians employed by the State of New Jersey, NJ Racing Commission, Department of Law and Public Safety, to determine if they wish to be represented by the petitioner Communications Workers of America, Local 1034 for purposes of collective negotiations. The Director rejected the State's contention that because veterinarians' working conditions are unique, the parties could not negotiate meaningfully, and held that the Act's policies favor giving the choice of representation to the petitioned-for employees.

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Appearances:

For the Public Employer
Robert J. DelTufo, Attorney General
(Michael L. Diller, Deputy Attorney General)

For the Petitioner
Joy Schulman, Staff Representative

DECISION AND DIRECTION OF ELECTION

A timely Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission ("Commission") by Communications Workers of America, Local 1034 ("CWA" or "Petitioner") seeking to add veterinarians employed by the New Jersey Racing Commission, Department of Law and Public Safety ("State" or "Racing Commission") to its statewide, non-supervisory professional unit. The Petition, filed on October 7, 1991, is supported by an adequate showing of interest. The veterinarians sought by the Petition have never been represented.

An administrative investigation into the matters and allegations involved in the Petition was conducted pursuant to

N.J.A.C. 19:11-2.2 and N.J.A.C. 19:11-2.6. The investigation revealed the following facts:

Veterinarians are employed at various racetracks throughout the State. At an informal conference between the parties, the State refused to consent to a secret ballot election; it opposes the petition on several grounds. First, the State alleges that the veterinarians' terms and conditions of employment are so unique and distinct from any other employees in the professional unit that they should be denied representation. Second, the State argues that veterinarians cannot be included in any unit for collective negotiations because it cannot negotiate meaningfully concerning veterinarians. Finally, the State argues that even if the Commission should decide that these employees are entitled to be organized, their terms and conditions must be "entirely negotiated before they can be certified as part of an existing unit of employees."

The State relies upon an Attorney General's opinion letter, dated December 24, 1986, to support its contentions that it cannot negotiate meaningfully because veterinarians' terms and conditions are so unique, and that their terms and conditions must be "entirely negotiated before they can be certified." This letter states that veterinarians are State employees who are paid on a weekly basis by their assigned track an amount established by the Racing Commission. N.J.S.A. 5:5-37. It states further that veterinarians' civil service status would probably be "unclassified, special and

part-time employees", but notes that only the Merit Systems Board can make this determination. It finds that if given civil service status by the Merit Systems Board, veterinarians would be entitled to sick and vacation leave to be determined and prorated by their appointing authority (ie., the Racing Commission); the Merit System Board will determine veterinarians' eligibility for overtime and holiday pay. The opinion finds that veterinarians whose annual salaries are at least \$1500 are required to be enrolled in the State Public Employees Retirement System, and that they will be eligible for life insurance benefits if enrolled before age 60. Finally, the opinion states that veterinarians are not eligible for coverage under the State Health Benefits Program because they are on the payrolls of the various tracks.

This opinion letter does not restrict the State from negotiating meaningfully over veterinarians' terms and conditions of employment. Assuming these employees are "unclassified, special and part-time employees," they are, nevertheless, public employees entitled to the protection of the Act.

That the veterinarians are paid by track owners will not restrict the Racing Commission in negotiating pay. The Racing Commission, not the tracks, sets veterinarians' salary. N.J.S.A. 5:5-37. Although the nature of the work may demand a certain seasonal and weekly schedule, and some terms and conditions of employment may be preempted by statute and regulation, there are many terms and conditions of employment that are appropriate for negotiations.

The State relies upon a National Labor Relations Board decision, Res-Care, Inc., 122 LRRM 1265, 280 NLRB 78 (1986)^{1/} for the principle that a petition must be dismissed where the employer lacks the ability to engage in the necessary "give and take" of good faith negotiations. There, the Board declined jurisdiction and dismissed a representation petition because it found that the employer's labor relations policy was controlled to such a degree by the U.S. Department of Labor ("DOL") that effective collective bargaining was precluded. The facts here are distinguishable. Significantly, in Res-Care the employer had to have all salary schedules, fringe benefits, staffing levels and personnel policies approved by the DOL. Here, the Racing Commission sets the wage rate, hires, assigns and has the power to remove veterinarians.

The State also relies upon Weymouth Tp. Bd. of Ed., D.R. No. 87-17, 13 NJPER 140 (¶18061 1987) at footnote # 1, which states:

The inclusion of part-time employees in an existing unit of full-time employees means only that there is an obligation to negotiate the terms and conditions of employment of the part-time employees. It does not follow that part-time employees, newly added to an existing unit, are entitled to the benefits already negotiated for full-time employees under the existing contract.

The State argues against granting representation rights to veterinarians and placing them in the professional unit because it

^{1/} Our Supreme Court has directed that we may be guided by the federal National Labor Relations Act, and its interpretations, but we are not bound by the Board's decisions. Lullo v. IAFF, 55 N.J. 409 (1970).

fears that CWA will demand an immediate grant of all existing contractual rights and benefits to the veterinarians. However, as stated in the Weymouth footnote, the right to be represented does not include the right to any particular terms and conditions of employment, but rather mandates only the right to good faith negotiations. The CWA may demand whatever negotiable terms it wishes, subject to the requirement of good faith negotiations,^{2/} but the State would not be required by law to grant to those demands including the benefits in the existing contract.

N.J.S.A. 34:13A-5.3 provides in part:

Except as hereinafter provided, public employees shall have, and shall be protected in the exercise of their rights, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity...

The inclusion of veterinarians in a unit with other professional employees is prima facie appropriate. I have already determined that the Racing Commission controls the labor relations of the veterinarians. State of New Jersey (Racing Com'n.), D.R. No. 91-35, 17 NJPER 357 (¶22165 1991). I conclude from the strong policy found in the Act favoring representation rights for those who choose them that our legislature did not intend to withhold the Act's protections from these employees.

Accordingly, I direct that a secret mail ballot election be conducted among the employees in the petitioned-for unit, which is comprised as follows:

^{2/} As well as the requirements of applicable statutes and rules.

Included: All veterinarians employed by the New Jersey Racing Commission to be added to the existing unit of professional employees employed by the State of New Jersey.

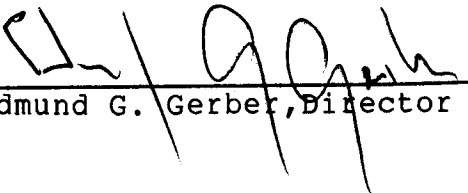
Excluded: All other employees, including non-professional employees, managerial executives, craft employees, confidential employees, police and supervisors within the meaning of the Act.

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. The election shall be conducted by mail ballot. 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. 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: February 20, 1992
Trenton, New Jersey