

D.R. NO. 98-11

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

In the Matter of

TRENTON HOUSING AUTHORITY,

Public Employer,

-and-

Docket No. RO-98-24

N.J. MUNICIPAL GOVERNMENT PUBLIC EMPLOYEES
ASSOCIATION, affiliated with PEA,

Petitioner,

-and-

TRENTON HOUSING AUTHORITY SUPERVISORS
ORGANIZATION OF CWA LOCAL 1040,

Intervenor.

TRENTON HOUSING AUTHORITY,

Public Employer,

-and-

PUBLIC EMPLOYEES ASSOCIATION,

Docket Nos. RO-98-25
RO-98-26

Petitioner,

-and-

COMMUNICATIONS WORKERS OF AMERICA,
LOCAL 1040,

Intervenor.

SYNOPSIS

The Director rejects a claim that the Petitioner's showing of interest language is defective and was collected through misrepresentations to the employees. The Director also dismisses an argument that the Petitioner is not an employee organization within the meaning of the Act because one of its organizers is an alleged confidential employee of another employer. An election is directed among three units of the Housing Authority's employees.

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Appearances:

For the Public Employer
Stuart Tucker, attorney

For the Petitioner
Steven Kook, Acting President

For the Intervenor
Weissman & Mintz, attorneys
(Judianne Chartier, of counsel)

DECISION AND DIRECTION OF ELECTION

On September 17 and 18, 1997, the Public Employees Association filed three Petitions for Certification of Public Employee Representative with the Public Employment Relations Commission seeking to represent certain employees of the Trenton Housing Authority. By its first petition (Docket No. RO-98-24), PEA seeks to represent a collective negotiations unit of the Authority's supervisors. By its second petition (Docket No. RO-98-25), it seeks to represent the Authority's white-collar employees. By its third petition (Docket No. RO-98-26), it seeks to represent the Authority's maintenance and craft employees. All of the petitioned-for employees are currently represented by Communications Workers of America, Local 1040, AFL-CIO.

PEA seeks elections among the employees in each of the three units. The Housing Authority takes no position with regard to the petitions. CWA objects to the petitions and does not consent to elections. First, CWA asserts that the PEA is not an employee organization within the meaning of the New Jersey Employer-Employee Relations Act because it has an illegal structure. Second, CWA contends that the authorization cards submitted by PEA as showings of interest in support its respective petitions do not qualify as valid showings of interest as defined by N.J.A.C. 19:10-1.1, and therefore, the PEA has not met the filing requirements under section 19:11-1.2. Third, CWA argues that employees were misled about the

purpose of signing designation cards for PEA, and have subsequently revoked those designations.^{1/}

We have conducted an administrative investigation to determine the facts and the positions of the parties concerning the petition. N.J.A.C. 19:11-2.2 and 2.7. For the reasons that follow, I direct an election in this matter:

PEA's Status as an Organization

N.J.S.A. 34:13A-3(e) states:

(e) The term "representative" is not limited to individuals but shall include labor organizations, and individual representatives need not themselves be employed by, and the labor organization serving as a representative need not be limited in membership to the employees of, the employer whose employees are represented. This term shall include any organization, agency or person authorized or designated by a public employer, public employee, group of public employees, or public employee association to act on its behalf and represent it or them.

In prior decisions considering a petitioner's organizational structure, the Commission has interpreted the Act's requirements to allow for a wide range of appropriate structures. This is consistent with those policies underlying the Act which

^{1/} At the investigatory conference concerning this matter, CWA raised two additional assertions: (1) that a pending CWA unfair practice charge should block further processing of the petition; and (2) that PEA was inappropriately using the Commission in its campaign materials. The charge alleged that the Housing Authority discriminatorily gave PEA access to the employees during work time, and that the Authority refused to sign and implement a fully negotiated agreement covering the Authority's maintenance employees. The CWA has subsequently withdrawn its charges and it has not pursued its campaigning claim in its written submissions.

permit organization of all public employees who desire collective negotiations. N.J.S.A. 34:13A-2. In Camden Police Department, P.E.R.C. No. 82-89, 8 NJPER 226 (¶13094 1982), the Commission explained,

We particularly emphasize that a petitioner is not required to have certain attributes in order to file a representation petition. N.J.S.A. 34:13A-3(e). It is only required not to have an illegal structure. Beyond enforcing the Act's specific prohibitions, we will not interfere in a petitioner's internal affairs. 8 NJPER at 227, n. 2.

See also, Elizabeth Housing Authority, D.R. No. 89-37, 15 NJPER 385 (¶20162 1989); Passaic County, D.R. No. 89-32, 15 NJPER 265 (¶20113 1989).

Here, CWA asserts that the PEA has an illegal structure. CWA asserts that Nancy Webber, the "purported president, organizer, and spokesperson for the group," is not an employee within the meaning of the Act, in that Webber is employed by the State of New Jersey Department of Transportation in a confidential position.

First, I find that the Act does not require employee organizations to be composed of employees of that employer, nor even of public employees. The petition in this matter was signed by PEA Organizer Steven Kook. Kook attended the conference on behalf of the PEA and has been its spokesperson. Even assuming Webber is organizing or acting as a representative of the PEA, whether she is or is not a public employee, a confidential employee, or a non-employee, is of no moment to the PEA's status as a labor organization.

Second, there is no evidence presented to show that Webber is a confidential employee. N.J.S.A. 34:13A-3(g) defines a confidential employee:

"Confidential employees" of a public employer means employees whose functional responsibilities or knowledge in connection with the issues involved in the collective negotiations process would make their membership in any appropriate negotiating unit incompatible with their official duties.

To determine confidential status, we look beyond an employee's job title and written job description and instead focus on the employee's actual duties and knowledge about collective negotiations issues. State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507 (¶16179 1985). Although CWA submitted a certification from a CWA Staff Representative certifying that Webber occupies a title classified by the State as a confidential position, no evidence has been submitted that would demonstrate that Webber's duties and responsibilities actually involve confidential labor relations materials. Accordingly, I find that PEA is an employee organization within the meaning of the Act.

PEA's Showing of Interest Designations

The CWA further argues that the showing of interest submitted with the PEA petition is facially defective and does not meet the Commission's showing of interest requirements.

N.J.A.C. 19:11-1.2a(8) requires that "petitions for certification of public employee representative shall be accompanied by a showing of interest as defined in N.J.A.C. 19:10-1.1 of not

less than 30 percent of the employees in the unit alleged to be appropriate...." N.J.A.C. 19:10-1.1 defines a showing of interest as:

...a designated percentage of public employees in an allegedly appropriate negotiations unit, or a negotiations unit determined to be appropriate, who are members of an employee organization or have designated it as their exclusive negotiations representative.... When requesting certification, such designations shall consist of written authorization cards or petitions, signed and dated by employees, normally within six months of the filing of the petition, authorizing the employee organization to represent such employees for the purpose of collective negotiations....

Further, N.J.A.C. 19:11-2.1 provides:

the showing of interest shall not be furnished to any of the parties. The director of representation shall determine the adequacy of the showing of interest and such decision shall not be subject to collateral attack.

In Jersey City Medical Center, D.R. No. 83-19, 8 NJPER 642 (¶13308 1982), the Director stated:

The submission of a showing of interest by a Petitioner is an administrative requirement for the purpose of ensuring that sufficient interest exists among employees on behalf of the petitioner to warrant the expenditure of Commission resources in processing the petition. It is uniquely an administrative concern, and questions relating to its validity must be raised in a prompt manner.

Here, I am satisfied that the showing of interest submitted by the PEA meets the Commission's showing of interest standards and I will not dismiss the petition on the bases urged by the CWA.

Alleged Misrepresentations
to Card Signers

CWA further asserts that the PEA misrepresented its intentions to the employees when it secured their signatures on the showing of interest authorization cards. CWA has submitted signed statements from employees indicating that they wish to revoke any authorization made to the PEA.

We are not inclined to open up claims of card collection irregularities or misrepresentations to the scrutiny of an investigation or the hearing process. To do so would undermine employee confidence in the right to sign confidential union cards in any election campaign situation. Rather, it is the Commission's long-held position that the best method to test employee representation desires is the secrecy of the election booth.

Borough of Paramus, D.R. No. 95-11, 21 NJPER 25 (¶26015 1994); Essex Cty., D.R. No. 85-25, 11 NJPER 433 (¶16149 1985); City of Orange Tp., D.R. No. 85-10, 11 NJPER 33 (¶16018 1984); Jersey City Medical Center; Woodbridge Tp. Bd. of Ed., D.R. No. 77-9, 3 NJPER 26

(1977). Therefore, I am satisfied that the showing of interest is proper and valid on its face, and that an election is appropriate to resolve the representation question. Accordingly, I hereby direct an election among the employees in units described below:

Maintenance/Craft Unit - All maintenance and craft employees employed by Trenton Housing Authority including: building maintenance worker; sr. maintenance repairer, LPL; stock clerk; electrician; maintenance repairer, LPL; painter; groundskeeper; exterminator; maintenance repairer; excluding police employees, managerial executives, confidential employees and supervisors within the meaning of the Act; professional employees, white collar employees, seasonal employees and all other employees.

White Collar Unit - Administrative and clerical employees employed by Trenton Housing Authority including: principal cashier; community service aide; cashier; sr. clerk typist; purchasing assistant; tenant interviewer; sr. cashier; excluding police employees, managerial executives, confidential employees and supervisors within the meaning of the Act, professional employees, blue collar employees, seasonal employees, and all other employees.

Supervisors Unit - Supervisory employees employed by the Trenton Housing Authority including: supervising account clerk; sr. housing manager; supervising groundskeeper; assistant maintenance superintendent; supervising painter; assistant supervising maintenance repairer, LPL; housing manager; supervisor of accounts; chief accountant; supervising maintenance repairer, LPL; supervising inventory control clerk; tenant selection supervisor; excluding police employees, managerial executives, confidential employees, non-supervisory employees within the meaning of the Act, seasonal employees, and all other employees.

Eligible employees in blue collar and white collar units described above shall vote on whether they wish to be represented for purposes of collective negotiations by Public Employees Association or Communications Workers of America, Local 1040, or no representative.

Eligible supervisors shall vote on whether they wish to be represented for purposes of collective negotiations by N.J. Municipal Government Public Employees Association, affiliated with PEA; or Trenton Housing Authority Supervisors Organization of CWA Local 1040; or no representative.

PEA and CWA have each created a separate supervisors' organization to represent the supervisors' unit, as required by Commission policy. See N.J.S.A. 34:13A-5.3; City of Camden, P.E.R.C. No. 82-89, 8 NJPER 226 (¶13094 1982); State of New Jersey,

D.R. No. 81-20, 7 NJPER 41 (¶12019 1980), aff'd P.E.R.C. No. 81-94, 7 NJPER 105, (¶12044 1981), mot. for recon. den. P.E.R.C. No. 81-95, 7 NJPER 133 (¶12056 1981); Hudson County, D.R. No. 78-46, 4 NJPER 232 (¶4115 1978). The PEA and CWA have each submitted certifications which satisfy the Camden requirements that the supervisory organization has no non-supervisory employees as members, and it agrees to maintain a separate organizational structure for supervisors which will control the negotiation and administration of any supervisors' contract.

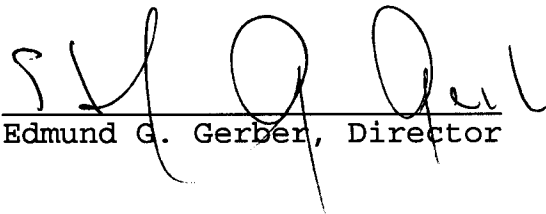
The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation 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 eligibility lists consisting of an alphabetical listing of the names of all eligible voters in each unit, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility lists must be received by us no later than ten (10) days prior to the date of the

election. A copy of the eligibility lists 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 lists except in extraordinary circumstances.

The exclusive representative of each unit, if any, shall be determined by a majority of the valid votes cast in each election. The elections shall be conducted in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Edmund G. Gerber, Director

DATED: December 3, 1997
Trenton, New Jersey