

D.R. No. 2013-7

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

In the Matter of

MONMOUTH COUNTY MOSQUITO  
EXTERMINATION COMMISSION,

Public Employer,

-and-

Docket No. RO-2012-065

CWA LOCAL 1038,

Petitioner.

SYNOPSIS

The Director of Representation certifies by card check a unit of regularly employed blue collar employees and white collar employees of the Monmouth County Mosquito Extermination Commission. The Director finds sufficient facts to support the employer's assertion that the research scientist and the entomologists are "professional employees" as defined by the Act. As they did not express a desire to be included in a unit with non-professional employees, the Director excludes these titles from the unit.

D.R. No. 2013-7

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

In the Matter of

MONMOUTH COUNTY MOSQUITO  
EXTERMINATION COMMISSION,

Public Employer,

-and-

Docket No. RO-2012-065

CWA LOCAL 1038,

Petitioner.

Appearances:

For the Public Employer,  
Steven W. Kleinman, Special County Counsel

For the Petitioner,  
Barry Isanuk, attorney

DECISION

On June 29, 2012, Communications Workers of America, Local 1038 (Local 1038) filed a representation petition seeking to represent a collective negotiations unit of all non-managerial employees of the Monmouth County Mosquito Extermination Commission (Mosquito Commission or Commission). The petition was accompanied by authorization cards from a majority of the petitioned-for unit employees. No other labor organization claims interest in representing these employees.

The Mosquito Commission objects to the proposed unit and does not consent to a stipulation of unit agreement. It contends that employees in the titles research scientist and entomologist

are professional employees within the meaning of the New Jersey Employee-Employer Relations Act (Act), N.J.S.A. 34:13A-1 et seq., and should not be included in the petitioned-for unit unless ". . . a majority of such professional employees vote for inclusion in such unit." N.J.S.A. 34:13A-6(d). The Mosquito Commission also asserts that Local 1038 has provided copies of the submitted authorization cards in this case and that none of the asserted "professional" employees signed a card.

We have conducted an administrative investigation into this matter to determine the facts. N.J.A.C. 19:1-2.2. By letter dated November 19, 2012, I advised the parties of my tentative findings and conclusions and invited responses. Neither party filed additional submissions. The disposition of the petition is properly based upon our administrative investigation. There are no substantial material facts in dispute which would require convening an evidentiary hearing. N.J.A.C. 19:11-2.2 and 2.6. Based upon the administrative investigation, I make the following findings of fact.

The petitioned-for employees are currently unrepresented. The Mosquito Commission certifies that it posted our Notice for the required ten-day period. On July 20, 2012, at our request, the Mosquito Commission submitted a list of nineteen (19) employees in the proposed unit.<sup>1/</sup> The list consists of fifteen

---

<sup>1/</sup> Although Local 1038 had petitioned for sixteen (16)  
(continued...)

(15) titles. We have compared the names submitted on authorization cards with those provided on the list and determine that a majority of unit employees have signed authorization cards for Local 1038. On July 23, 2012, a stipulation of appropriate unit was provided to the parties. The Mosquito Commission declined the proposed stipulation of unit.

An investigatory conference was held on July 26, 2012. At the conclusion of the informal conference, two titles, entomologist and research scientist, remained in dispute and all other titles were agreed to be eligible for representation in the proposed unit.

The parties have agreed that the following titles shall be included in the petitioned-for unit:

supervising heavy equipment operator;  
truck driver;  
senior inspector, mosquito extermination;  
inspector, mosquito extermination;  
pilot & inspector, insect extermination;  
assistant supervising heavy equipment operator;  
senior garage attendant;  
heavy equipment operator/mechanic;  
laborer 1;  
equipment operator;  
principal account clerk;  
wetlands specialist, mosquito extermination;  
keyboarding clerk 2

---

1/ (...continued)  
employees, they are seeking to represent all nineteen (19) employees on the Commission's list.

The Commission also asserts that none of the four employees in the two assertedly professional titles were included among the copies of authorization cards it received from Local 1038.

The parties have agreed to exclude these titles from the petitioned-for unit:

superintendent;  
assistant superintendent

The parties dispute the eligibility of four employees in the titles of research scientist and entomologist. The Mosquito Commission maintains that they are "professional" within the meaning of the Act and should be excluded from the petitioned-for unit.

During the informal conference among the parties in this case, Local 1038 was advised that if the disputed titles are considered "professional" under the Act, they could not be included in the proposed unit unless a majority of the employees in the disputed titles provided cards or writings confirming that they wished to be included in a negotiations unit with non-professional employees. N.J.S.A. 34:13A-6(d). Local 1038 has not provided any cards or writings to that effect and has not asserted that any of the disputed employees express interest in representation in a negotiations unit. Local 1038 contends that the disputed employees perform many of the same duties as other petitioned-for employees, and that it would be arbitrary to classify titles as "professional" and "non-professional."

We have received the certification of Douglas L. Guthrie, Sr., Mosquito Commission Superintendent and executive secretary, together with job descriptions for the titles, research scientist

and entomologist. The documents reveal the following facts about the responsibilities, education and training of the research scientist and entomologists employed by the Mosquito Commission.

Research Scientist - Vivian Roegner

Research scientist Roegner is responsible for the development of new pathogen detection methods. She is primarily responsible for designing, executing and evaluating the testing of ticks for tick-borne diseases. She also develops protocols to detect the presence of emerging tick-borne diseases as part of new programs/grant initiatives; completes DNA extraction and *Borrelia burgdorferi* PCR assays for ticks submitted by the public; designs, executes and evaluates the use of Blocking ELISA to detect antibodies to West Nile virus antigens; performs agarose gel electrophoresis to visualize and isolate PCR products. Utilizing a Basic Local Alignment Search Tool of Genbanks nucleic acid database, she determines the percent homology of sequenced PCR amplicons. Research scientist Roegner designs experiments and adapts the Eppendorf thermal cycler program to determine the impact of increased annealing temperatures on amplicon production.

She independently maintains functional biosafety level 1 and 2 laboratories at the McLean research laboratory building. This includes purchasing requests, equipment maintenance, coordination of hazardous material removal, and record-keeping of potentially infectious material. In addition, she provides technical

laboratory methodology for grants being prepared for investigations into tick-borne diseases, and trains technical support personnel and graduate students in laboratory techniques. She also provides support and expertise in the areas of microbiology, immunology and molecular biology as part of a visiting scientist appointment in the Department of Entomology at Rutgers University, and is widely published in her field.

The minimum educational requirement for a research scientist employed at the Commission is a doctorate degree or a master's degree plus six years of appropriate experience. Additionally, the research scientist requires training in molecular and immunological laboratory techniques with specialized knowledge in the identification of pathogens present in ticks and mosquitos. Research scientist Roegner has a Master of Science in Biochemistry and received additional training in recombinant DNA techniques, as well as "over twenty years of laboratory experience before joining the Mosquito Commission."

Entomologist - Sean P. Healy

Entomologist Healy is responsible for independently initiating, developing and coordinating programs in the field of entomology. He manages the Commission's tick identification and testing program, and assumes program-related administrative and supervisory duties. He is third in command of all Mosquito Commission operations and is responsible for all managerial

functions when the superintendent and assistant superintendent are not available.

Entomologist Healy develops and manages the annual tick management program budget in conjunction with the Mosquito Commission's superintendent and assistant superintendent. He directs testing of ticks performed at a Mosquito Commission laboratory, coordinates and performs identification of all tick specimens at its facilities, and conveys medically-sensitive tick information regarding Lyme disease to the public.

He writes, procures and manages externally-funded grant programs related to mosquito and tick control and mosquito and tick borne diseases, including budget and personnel, and has been the co-principal investigator on successfully funded grants exceeding four-million dollars. Entomologist Healy generates reports on grant related tick/mosquito initiatives, tick program activities and education and outreach activities. He also disseminates information through scientific publications, presentations, seminars, and training workshops and programs, and provides support and expertise in the areas of tick control, tick biology, tick identification, and tick-borne diseases as part of his appointment as a visiting scientist at the Department of Entomology at Rutgers University. He has received numerous grants and awards, is widely published in his field and regularly makes presentations in his area of expertise.



Entomologist Healy has a Master of Science in Entomology and more than ". . . seven years of experience in mosquito and tick identification, mosquito and tick control, and surveillance for mosquito and tick-borne diseases" prior to his employment at the Mosquito Commission.

Entomologist - Anthony J. Acquaviva

Entomologist Acquaviva is independently responsible for coordinating and directing the Commission's disease surveillance live trapping program to detect West Nile virus throughout Monmouth County. He is responsible for selecting the trapping sites and equipment, setting the surveillance schedule, determining the number of and composition of the samples submitted to the New Jersey Department of Health and Senior Services for disease testing, and assigning priority to surveillance tasks undertaken by Commission employees. He also oversees mosquito surveillance and mosquito control operations at the U.S. Navy's Naval weapons Station Earle pursuant to a contract between the Navy and the Commission. Acquaviva is also responsible for managing, coordinating and tracking the larvivorous fish component of the Mosquito Commission's Integrated Pest Management Program, which involves stocking approximately 10,000 fish annually.

He independently initiates and participates in research projects, such as conducting a field trial study resulting in the approval of Agnique MMF surface film to be used throughout New

Jersey to control mosquitos, and a multi-year collaborative project examining the viability of the use of *Macrocyclusd albidus copepods* as a bio-control agent.

Entomologist Acquiviva is heavily involved in the Commission's public outreach efforts, having represented the Mosquito Commission in numerous television and newspaper interviews. He authors Commission press releases, answers mosquito and/or insect related questions from the public by telephone or e-mail, and performs insect identification for residents. He has also designed informational brochures used by the Mosquito Commission and other agencies state-wide.

Entomologist Acquaviva has a Bachelor of Science degree in Biology and ". . . thirty-one years of experience serving as laboratory technician, seasonal biologist, and senior biologist at the Mosquito Commission."

Entomologist - Taryn Crepeau

Entomologist Crepeau is independently responsible for researching the control of the Asian Tiger mosquito. She performs research, analysis and surveillance of mosquito populations and implementation of control operations. A large portion of her duties requires ongoing evaluation and reaction to mosquito population dynamics, meteorological conditions and presence of mosquito-borne pathogens. Her research involves experimental design and data analysis requiring a flexible and

reactive cognitive process. She is widely published in her field.

Entomologist Crepeau creates partnerships and maintains relationships with scientists in related disciplines such as meteorologists, epidemiologists, education specialists, soil scientists, and environmental scientists, and has worked with laboratories at Rutgers University and the Center for Disease Control. She also provides advice to residents regarding mosquito control and the Asian Tiger mosquito.

Entomologist Crepeau has a Bachelor of Science degree in Marine Biology/Ecology and she had six years of experience in mosquito identification, ground and ariel mosquito control, surveillance and disease monitoring prior to her employment at the Mosquito Commission.

The minimum educational requirement for an entomologist employed by the Mosquito Commission is a scientific degree from an accredited college or university in biology, entomology or a related field. According to the Commission, their entomologists must be trained in the scientific method and have demonstrated ability to perform advanced problem solving, obtained through academic work (preferably at the graduate level) and on-the-job experience. Additionally, they must have the knowledge of all aspects of medical entomology relating to mosquito and tick control, mosquito and tick biology, and mosquito and tick-borne diseases.

ANALYSIS

On July 19, 2005, the Legislature amended the Act to authorize the Commission to certify a majority representative where: (a) a majority of employees in an appropriate unit who have signed authorization cards designating that organization as their negotiations representative; and (b) no other employee representative seeks to represent those employees. See N.J.A.C. 19:11-2.6(b).

The Legislature has determined that a check of an organization's authorization cards signed by a majority of employees in an appropriate unit is a lawful method to determine a majority representative. Our review of the authorization cards shows that Local 1038 has submitted cards from a majority of its petitioned-for employees. The employees' signatures on the cards meets the intent of the statute and the rules. Accordingly, Local 1038 is entitled to a certification based upon card check. See Passaic County Prosecutor's Office, D.R. No. 2006-15, 32 NJPER 107 (¶51 2006); Atlantic County Prosecutor's Office, D.R. No. 2007-2, 32 NJPER 264 (¶108 2006).

The Mosquito Commission seeks to exclude four professional employees from the proposed unit. Our Act does not prohibit the inclusion of professional employees in negotiations units with non-professional employees; it only requires us to afford professional employees an option to choose representation in the

same negotiations unit as non-professionals. N.J.S.A. 34:13A-5.3 and 6.<sup>2/</sup>

N.J.A.C. 19:10-1.1 defines professional employee as:

. . . any employee whose work is predominantly intellectual and varied in character, involves the consistent exercise of discretion and judgment, and requires knowledge of an advanced nature in the field of physical, biological, or social sciences, or in the field of learning. The commission will also consider whether the work is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time. The term shall also include any employee who has acquired knowledge of an advanced nature in one of the fields described above, and who is performing related work under the supervision of a professional person to qualify to become a professional employee as defined herein. The term shall include, but not be limited to, attorneys, physicians, nurses, engineers, architects, teachers and the various types of physical, chemical and biological scientists.

Applying these standards to the facts, I find that the research scientist and the entomologists are professional employees under the Act. The Mosquito Commission's certification shows that these positions must possess knowledge of an advanced nature in the field of biological science. The facts show that all four employees have acquired advanced knowledge in certain sciences, evidenced by their Masters and Ph.D. degrees. The employees in

---

<sup>2/</sup> N.J.S.A. 34:13A-6(d) provides that ". . . no unit shall be appropriate which includes . . . both professional and non-professional employees unless a majority of such professional employees vote for inclusion in such a unit . . ."

these titles are biological scientists with advanced knowledge and training in the field of infectious insect control. They also possess authority and responsibility consistent with the Act's "professional employee" standard.

The Mosquito Commission's research scientist is required to be trained in ". . . advanced microbiology techniques and have demonstrated ability to perform problem solving. This requires a graduate level Master of Science or Doctorate degree." The research scientist must be ". . . trained in molecular and immunological laboratory techniques with specialized knowledge in the identification of pathogens present in ticks and mosquitos." Research scientist Roegner has a Master of Science degree in biochemistry and received additional training in recombinant DNA techniques, as well as "over twenty years of laboratory experience before joining the Commission." Roegner's duties as research scientist are primarily intellectual in nature. She also independently maintains functional biosafety level 1 and 2 laboratories at the McLean research laboratory building. She is independently responsible for the development of new pathogen detection methods. She is also responsible for designing, executing and evaluating the testing of ticks for tick-borne diseases. She trains technical support personnel and graduate students in laboratory techniques. She is also widely published in her field.

The Mosquito Commission's entomologist ". . . must be trained in the scientific method and have demonstrated ability to perform advanced problem solving, obtained through advanced academic study (preferably at the graduate level) and on-the-job experience." The entomologist ". . . must be trained in the identification of insects with specialized knowledge in the identification of ticks and mosquitos." Entomologist Healy has a Master of Science degree in entomology, as well as over "seven years of experience in mosquito and tick identification, mosquito and tick control, and surveillance for mosquito and tick-borne diseases" prior to his employment at the Commission; entomologist Acquaviva has a Bachelor of Science degree in Biology and "thirty-one years of experience serving as laboratory technician, seasonal biologist, and senior biologist at the Commission;" and entomologist Crepeau has a Bachelor of Science degree in marine biology/ecology and six years of experience in mosquito identification, ground and aerial mosquito control, surveillance and disease monitoring prior to her employment at the Commission. The entomologists have independent authority and responsibility to design and implement the Mosquito Commission's infectious insect control programs. They have all either published or presented extensively in the field of entomology. They have also secured significant funding from the U.S. Department of Agriculture to perform research within their discipline. Their positions are predominantly intellectual and

varied in character, involving the consistent exercise of discretion and judgment.

Local 1038 asserts that, ". . . [g]iven that the majority of the proposed unit including the entomologists are working together and performing much of the same work, it would be arbitrary to attempt to exclude the entomologists." Local 1038 provides no rationale for this argument in light of our Act's requirements, and does not rebut the certification of Douglas L. Guthrie, Sr. and supporting documents demonstrating the advanced skills, scientific training and independent authority that the research scientist and entomologists possess.

Applying our definition of "professional employee" in the Act to the disputed titles in this case, I find that the research scientist and the entomologists are professional employees. Inasmuch as we have received no indication that a majority of these employees wish to be represented by Local 1038 and that none have expressed a desire to be included in a unit with non-professional employees, I will not include the titles, research scientist and entomologist in the petitioned-for unit.

I certify the following appropriate unit:

Included: All regularly employed blue collar employees and white collar employees of the Monmouth County Mosquito Extermination Commission.

Excluded: Managerial executives, confidential employees, supervisors within the meaning of the Act, craft employees, professional employees including entomologists and research



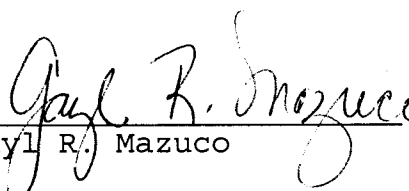
scientists, police, casual employees, and all other employees of the Monmouth County Mosquito Extermination Commission.

If the professional employees wish to be represented in a collective negotiations unit in the future, they may file a timely representation petition.

ORDER

I certify Communication Workers of America, Local 1038 as the exclusive representative of the unit described above, based upon its authorization cards.<sup>3/</sup>

BY ORDER OF THE DIRECTOR OF REPRESENTATION

  
\_\_\_\_\_  
Gayl R. Mazuco

DATED: December 6, 2012  
Trenton, New Jersey

A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3.

Any request for review is due by December 17, 2012.

---

<sup>3/</sup> An appropriate Certification of Representative will issue with this decision.

**STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION**

<b>In the Matter of</b>	>	
	>	
MONMOUTH COUNTY MOSQUITO	>	
EXTERMINATION COMMISSION,	>	
Public Employer,	>	
	>	
-and-	>	DOCKET NO. RO-2012-065
	>	
COMMUNICATIONS WORKERS OF AMERICA	>	
LOCAL 1038,	>	
Petitioner.	>	
	>	

**CERTIFICATION OF REPRESENTATIVE  
BASED UPON AUTHORIZATION CARDS**

In accordance with the New Jersey Employer-Employee Relations Act, as amended, and the Rules of the Public Employment Relations Commission, we have conducted an investigation into the Petition for Certification filed by the above-named Petitioner. The Petitioner has demonstrated by card check that a majority of the unit employees described below have designated the Petitioner as their exclusive representative for purposes of collective negotiations, and, no other employee organization has expressed a valid interest in representing these employees.

Accordingly, **IT IS HEREBY CERTIFIED** that

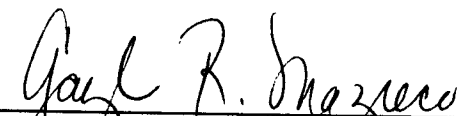
**COMMUNICATIONS WORKERS OF AMERICA LOCAL 1038**

is now the exclusive representative of all the employees included below for the purposes of collective negotiations with respect to terms and conditions of employment. The representative is responsible for representing the interests of all unit employees without discrimination and without regard to employee organization membership. The representative and the above-named Employer shall meet at reasonable times and negotiate in good faith with respect to grievances and terms and conditions of employment as required by the Act.

**UNIT: Included:** All regularly employed blue collar employees and white collar employees of the Monmouth County Mosquito Extermination Commission.

**Excluded:** Managerial executives, confidential employees, supervisors within the meaning of the Act, craft employees, professional employees including entomologists and research scientists, police, casual employees, and all other employees of the Monmouth County Mosquito Extermination Commission.

**DATED:** December 6, 2012  
Trenton, New Jersey

  
\_\_\_\_\_  
Gayl R. Mazucco, Director of Representation

**Attachment:**

**Certification of Representative dated:** December 6, 2012

**In the Matter of**

MONMOUTH COUNTY MOSQUITO EXTERMINATION COMMISSION

-and-

CWA LOCAL 1038

Docket No. RO-2012-065

**Service on the following:**

Steven Kleinman, Esq.  
Monmouth County  
Hall of Records  
1 East Main Street, Room 236  
Freehold, New Jersey 07728

Barry Isanuk, Esq.  
Law Offices Barry D. Isanuk  
740 Lloyd Road  
Matawan, New Jersey 07747