

D.R. No. 2013-10

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

In the Matter of

TOWNSHIP OF LITTLE EGG HARBOR,  
Public Employer,

-and-

AFSCME, AFL-CIO COUNCIL 71,  
Petitioner,

Docket No. RO-2013-018

-and-

GOVERNMENT WORKERS UNION,  
Intervenor.

**SYNOPSIS**

The Director of Representation orders a mail ballot election among the petitioned-for, non-supervisory white collar employees of the Township of Little Egg Harbor (Township). The petitioner, AFSCME, AFL-CIO Council 71 (AFSCME) filed a timely petition accompanied by an adequate showing of interest. In response to the petition, the Government Workers Union (GWU), the incumbent representative of a unit of non-supervisory, white collar employees and a separate unit of public safety telecommunication operators, objected to the petition, contending AFSCME sought to represent in a single unit both non-supervisory white collar employees and public safety telecommunication operators. AFSCME filed an amended petition seeking to represent the existing unit of non-supervisory, white collar employees and excluding public safety telecommunication operators from the petitioned-for unit. The amended petition was supported by an adequate, timely filed showing of interest. GWU objected to the amended petition, contending the Commission lacked jurisdiction to process amended representation petitions and asserting it would not consent to an election. The Director dismissed GWU's objections and ordered a mail ballot election, finding that AFSCME's amended petition was supported by an adequate, timely filed showing of interest and raised a valid question concerning representation of the Township's non-supervisory, white collar employees.

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Appearances:

For the Public Employer,  
Citta, Holzapfel, & Zabarsky, P.C.  
(Robert A. Greitz, of counsel)

For the Petitioner,  
John Rice, Staff Representative

For the Intervenor,  
David L. Tucker, President

**DECISION**

On October 1, 2012, AFSCME, AFL-CIO Council 71 (AFSCME) filed a representation petition seeking to represent a collective negotiations unit of non-supervisory white collar employees of Little Egg Harbor Township (Township). The petition is accompanied by an adequate showing of interest. N.J.A.C. 19:11-

1.2(a)(9). The petition specifically sets forth these titles for representation:

assessing aide, assessing clerk, assessor  
trainer, assistant assessor, assessor  
municipal tax collector, assistant purchasing  
agent, clerk, deputy municipal court  
administrator, deputy registrar of vital  
statistics, payroll clerk, payroll  
clerk/personnel clerk, personnel aide,  
personnel assistant, personnel clerk, public  
safety telecommunications operator, recorder  
operator (courts), registrar vital  
statistics/sec. board/commission secretary,  
tax clerk, violations clerk. These titles  
include designations in the same titles  
series: 'trainee', 'senior', 'principal and  
'assistant' as well as public safety  
telecommunications operator, [and] typist  
designations in the same title series (e.g.  
'clerk typist') full-time and part-time.

The Government Workers Union (GWU) seeks to intervene, based upon two collective negotiations agreements and two memoranda of agreement it signed with the Township. On February 26, 2008, representatives of the GWU and the Township signed a collective negotiations agreement extending from January 1, 2008 to December 31, 2010 setting forth terms and conditions of employment for public safety telecommunication operators, and several other telecommunication operator titles. On or about October 2, 2008, representatives of the GWU and Township entered into a collective negotiations agreement covering the terms and conditions of employment for white collar, non-supervisory employees. The GWU also submitted signed copies of memoranda of agreement extending both collective negotiations agreements from January 1, 2011

through December 31, 2012. Both memoranda were signed on July 13, 2011. I find that the GWU has properly intervened in this matter. N.J.A.C. 19:11-2.7.

On October 17, 2012, the GWU filed a letter seeking dismissal of AFSCME's petition. GWU contends that the petition should be dismissed because AFSCME is not seeking to represent an existing unit; specifically, that it has petitioned to represent in a single unit titles which GWU currently represents in two negotiations units.

On October 19, 2012, the Township posted our Notice to Public Employees regarding AFSCME's petition. N.J.A.C. 19:11-2.4. On October 22, 2012, the Township filed a letter advising that it takes no position on whether or not AFSCME's petition should be dismissed. The Township wrote that if AFSCME's petition is processed, the representational desires of the employees should be resolved through a secret ballot election.

On October 23, 2012, a Commission staff agent advised the parties that generally, a representation petition seeking to modify the structure of an existing, appropriate unit will not be processed and that a petitioner may amend such a petition to represent an existing unit, provided that an adequate showing of interest was timely filed. On the same date, GWU filed a letter objecting to any amended petition that AFSCME might file. GWU contends that neither the New Jersey Employer-Employee Relations

Act, N.J.S.A. 34:13A-1 et seq., nor the Commission's rules permit amendments to representation petitions. The GWU wrote that it would not consent to an election.

On October 24, 2012, AFSCME filed an amended representation petition seeking to represent only those titles in the white collar unit currently represented by GWU (and identified in its initial petition), deleting all "public safety telecommunications operators." The amended petition is supported by an adequate showing of interest which accompanied AFSCME's initial petition. On November 15, 2012, the Township posted our Notice to Public Employees regarding AFSCME's amended petition.

On November 29, 2012, I wrote to the parties, advising of my tentative findings and conclusions and inviting responses. I advised that I was inclined to process AFSCME's amended representation petition and order a secret mail ballot election because the amended petition was supported by an adequate, timely filed showing of interest and raised a valid question concerning representation.

On December 10, 2012, GWU filed a letter objecting to the processing of AFSCME's amended petition and contending the Commission lacked jurisdiction to process it. GWU also objects to a mail ballot election and requests an on-site election. On December 13, 2012, GWU filed another letter objecting to the eligibility of four named employees because it was unaware of

them. On December 17, 2012, AFSCME filed a response to GWU'S objections, contending the Commission has jurisdiction to process its amended petition and consenting to a mail ballot election.

#### ANALYSIS

Commission policy provides that ". . . once a valid question concerning representation has been raised concerning employees, the petitioner may later seek to propose a different unit structure limited to some or all of the petitioned-for employees." Morrisview Nursing Home, D.R. No. 88-23, 14 NJPER 88, 89 (¶19031 1988), citing Atlantic Cty., D.R. No. 81-19, 7 NJPER 39 (¶12018 1980); Holmdel Bd. of Ed., D.R. No. 80-29, 6 NJPER 120 (¶11065 1980); see also City of Passaic, D.R. No. 91-12, 17 NJPER 7 (¶22005 1990). To raise a valid question concerning representation in this context, the representation petition must be filed during the open period under the current collective negotiations agreement covering the petitioned-for employees. Moreover, the petition must be accompanied by an adequate showing of interest at the time of filing. N.J.A.C. 19:11-1.2(a)(9); Holmdel Bd. of Ed. The original petition filed by AFSCME in this matter is timely filed. N.J.A.C. 19:11-2.8.

The Commission has approved the processing of amended representation petitions filed outside the open period where the amendment merely clarifies the initial timely-filed petition's unit structure, and is adequately supported by the showing of

interest accompanying the original petition. Morrisview, 14 NJPER at 89, citing Bergen Cty., P.E.R.C. No. 84-2, 9 NJPER 451 (¶14196 1983); Holmdel Bd. of Ed. In such instances, the amended petition is not treated as a "new petition," but rather as an amendment that relates back to the original petition.

Morrisview; Bergen Cty. If the initial petition is not supported by an adequate showing of interest, the Commission will not process an amendment filed outside the open period, since the original petition never raised a valid question concerning representation. Atlantic Cty.

In Holmdel Bd. of Ed., the Director approved the processing of an amended representation petition filed outside of the open period where the amendment sought to represent some of the employees identified in the initial petition and was supported by an adequate showing of interest. The initial petition in Holmdel Bd. of Ed. filed during an open period sought to add custodians and maintenance employees to an existing unit of teachers, secretaries, librarians, clerks and others. The amended petition filed months later, after the open period lapsed, sought to represent a unit of custodians and maintenance employees already represented in a separate unit by an incumbent employee organization. The incumbent employee organization objected to the amendment because it was filed outside the open period. In

dismissing the objection and allowing the amended petition to be processed, the Director wrote:

The significant consideration herein is that at least 30% of the custodial and maintenance employees involved in the petition have shown support for the Association by designating it as their exclusive negotiations representative and have raised a question concerning their representation during the appropriate "window" period of the contract bar rule. While the Association's amendment proposes a different unit for the representation of these employees, the amendment relates to the same employees for whom the question concerning representation has been opened. The Commission utilizes the showing of interest requirement in order to ascertain whether there is sufficient interest in designating the Petitioner as a negotiations representative to warrant the processing of a Petition. The Commission's requirement is not concerned with evidences of support for a particular unit definition. If there is no support among employees to have the Association represent them in the unit now in existence, this consideration will be reflected in a secret ballot election.

[Holmdel Bd. of Ed., 6 NJPER at 121]

Applying these principles to this case, I approve the continued processing of AFSCME's October 24 amended petition. Similar to the petitioner in Holmdel Bd. of Ed., AFSCME's amended petition is supported by at least thirty percent (30%) of the petitioned-for white collar, non-supervisory employees currently represented by the GWU. These employees have expressed their support for AFSCME as their exclusive negotiations representative, and AFSCME has raised a valid question concerning



their representation by filing an adequate showing of interest during the open period for filing representation petitions.

I also deny GWU's request for an on-site election. We have previously stated the Commission's policy in favor of mail ballot elections when laboratory conditions can be adequately met through the conduct of elections by mail, particularly when the financial and human resource costs to the Commission in conducting in-person elections are unjustified. Essex County, D.R. No. 2010-14, 36 NJPER 99 (¶40 2010). We have also identified the numerous factors that inform the Commission's policy and election methodology. If no facts or reasons are proffered to explain why a mail ballot election would be unreliable, we have denied requests for on-site elections. Essex County, 36 NJPER at 100-101 (Director denies request by labor organization to conduct an on-site election where no document or facts explained why a mail ballot election would be unreliable).

Although GWU contends that an on-site election would place no hardship on the parties, it does not explain why a mail ballot election would be unreliable in this instance. Nor are we aware of facts indicating that a mail ballot election would be unreliable. Therefore, I deny GWU's request for an on-site election.

ORDER

A secret mail ballot election is hereby directed among the employees in the following unit:

Included: All regularly employed, non-supervisory white collar employees of the Township of Little Egg Harbor.

Excluded: Managerial executives, confidential employees and supervisors within the meaning of the Act; craft employees, professional employees, police, casual employees; and all other employees of the Township of Little Egg Harbor.

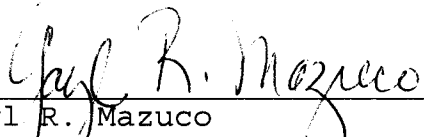
Eligible voters are those employed during the payroll period immediately preceding the date of this decision, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, including those in military service. Ineligible to vote are employees who resigned or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Employees in the unit described above shall vote to determine their exclusive, majority representative for collective negotiations, if any, for the unit and will have the option to vote for AFSCME, AFL-CIO Council 71, no representative, or the Government Workers Union.

Assuming the eligibility list is received on time and barring any other complications, ballots will be mailed by the Commission to eligible voters in the unit on **January 24, 2013**. Ballots will be returned to the Commission's Post Office Box by 9:00 a.m. on **February 20, 2013**. The ballots will be counted at

9:00 a.m. on **February 20, 2013**. The ballots will be counted at 10:00 a.m. on **February 20, 2013** at the Commission's Trenton Office.

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 list of the names of 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 the Director no later than **January 10, 2013**. A copy of the eligibility list shall be simultaneously provided to AFSCME and GWU with a statement of service filed with us. GWU will have the opportunity to timely contest the eligibility of named unit employees set forth on this list. 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.

  
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Gayl R. Mazuco  
Director of Representation

DATED: January 7, 2013  
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 January 17, 2013.