

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

In the Matters of
OCEAN COUNTY LIBRARY,
Public Employer,
-and-

OCEAN COUNTY LIBRARY EMPLOYEES
ASSOCIATION (NON-SUPERVISORS),
Petitioner.

DOCKET NO. RO-2013-032

-and-

GOVERNMENT WORKERS UNION,
Intervenor.

OCEAN COUNTY LIBRARY,
Public Employer,

-and-

OCEAN COUNTY LIBRARY EMPLOYEES
ASSOCIATION (SUPERVISORS),
Petitioner.

DOCKET NO. RO-2013-037

-and-

GOVERNMENT WORKERS UNION
SUPERVISORS' COUNCIL 10,
Intervenor.

SYNOPSIS

The Director of Representation orders two separate mail ballot elections among the petitioned for non-supervisory and supervisory white collar employees of the Ocean County Library. The petitioner, Ocean County Library Employers Association (OCLEA) filed a timely petition accompanied by an adequate showing of interest for an existing unit of supervisory and non-supervisory white collar employees. The Government Workers Union (GWU) properly intervened as the majority representative of the petitioned for employees. Upon notification that the petitioner was seeking to represent an apparently inappropriate unit historically comprised of both supervisory and non-supervisory employees, OCLEA (Non-Supervisors) filed an amended representation petition seeking to represent non-supervisory white collar employees and OCLEA (Supervisors) filed an amended representation petition seeking to represent supervisory white collar employees. The GWU objected to the amended petitions, contending that they were untimely filed, not supported by an adequate showing of interest, that OCLEA (Supervisors) showed no evidence of having a separate unit structure and asserting it would not consent to an election. The Director determined that as both the petitioner and the incumbent submitted valid Camden affidavits or certifications the potential issue regarding separate unit structure was moot. The Director dismissed GWU's objections and ordered two separate mail ballot elections, finding that the petitioning employees have expressed their support for OCLEA as their majority representative, which raised a valid question concerning representation in its initial timely-filed petition which was accompanied by an adequate showing of interest.

D.R. No. 2013-12

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OCEAN COUNTY LIBRARY,
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ASSOCIATION (SUPERVISORS),
Petitioner.

DOCKET NO. RO-2013-037

-and-

GOVERNMENT WORKERS UNION
SUPERVISORS' COUNCIL 10,
Intervenor.

Appearances:

For the Public Employer,
Citta, Holzapfel & Zabarsky, attorneys
(John J. Mercun, of counsel)

For the Petitioner,
The Law Offices of Richard M. Greenspan, P.C.
(Gary P. Rothman, of counsel)

For the Intervenor,
(David L. Tucker, President)

DECISION AND DIRECTION OF ELECTION

On December 20, 2012, Ocean County Library Employees' Association ("OCLEA") filed a timely representation petition seeking to represent a collective negotiations unit of about 99 "full-time and part-time librarians, senior librarians and principal librarians" employed by the Ocean County Library ("Library"). The petition requests a secret ballot election and is accompanied by an adequate showing of interest. N.J.A.C. 19:11-1.2 (a)9. On January 9, 2013, the Library posted our Notice to Employees regarding OCLEA's representation petition. N.J.A.C. 19:11-2.4.

On January 10, 2013, Government Workers Union ("GWU") filed a letter seeking to intervene as the majority representative of the petitioned-for employees together with a collective negotiations agreement it signed with the Library extending from April 1, 2010 through March 31, 2013. The recognition provision of the agreement describes the negotiations unit as "full-time and part-time librarians, including principal librarians, senior librarians, but excluding the titles of library director, assistant library director, chief librarian, supervising librarian and library associate. All per diem and temporary employees are also excluded." On January 11, 2013, GWU's request to intervene was approved. N.J.A.C. 19:11-2.7.

On January 24, 2013, the parties participated in a telephone conference call with a Commission staff agent. The Library advised that the petitioned-for unit includes both supervisors and non-supervisors, contrary to N.J.S.A. 34:13A-5.3.^{1/} The staff agent advised the parties that generally, the Commission will not certify a unit comprised of supervisory and non-supervisory employees and that a petitioner seeking to represent an apparently inappropriate unit may amend its petition to seek to represent one or more appropriate units, provided that an adequate showing of interest for each unit is timely filed.

On February 6, 2013, the OCLEA (Non-Supervisors) filed an amended representation petition seeking to represent about 73 "non-supervisory full-time and part-time librarians and senior librarians." Also on February 6, the OCLEA (Supervisors) filed an amended representation petition (Docket No. RO-2013-037) seeking to represent about 27 "full-time supervisory principal librarians and supervising senior librarians." The petitions are each supported by an adequate showing of interest which accompanied OCLEA's initial petition. On February 12, 2013, the Library posted our Notices to Public Employees regarding the amended petitions.

^{1/} N.J.S.A. 34:13A-5.3 prohibits an employee organization that admits non-supervisory employees to membership from representing supervisory employees in collective negotiations.

On February 21, 2013, GWU filed a letter seeking to intervene in the proceedings on the amended petitions as the incumbent majority representative under the current collective negotiations agreement and consenting to a secret ballot election of employees "for an appropriately constructed unit." GWU also wrote that the amended petitions are untimely filed and not supported by adequate showings of interest.

On February 22, GWU Supervisors' Council 10 filed a letter "correcting or clarifying" an earlier request to intervene. It seeks to intervene in the OCLEA (Supervisors) petition as the incumbent majority representative under the collective negotiations agreement and consents to a secret ballot election of employees "in an appropriately constructed unit." GWU Supervisors' Council 10 also writes that the amended petitions are untimely filed and not supported by adequate showings of interest.

On February 22, 2013, we conducted an investigatory conference among the parties during which GWU refused to consent to any election. GWU contests the timeliness of the amended petitions and questions the adequacy of the showings of interest. It argues that OCLEA "invalidated" the initial petition by filing amended petitions which require new showings of interest. It also asserts that the amended petitions are untimely because they

were filed outside the open period for filing representation petitions.

During the conference, OCLEA (Supervisors) denied GWU's assertions and argued that GWU Supervisors' Council 10 should not be permitted to intervene in the OCLEA (Supervisors) petition because it was not a signator to a collective negotiations agreement covering the petitioned-for supervisors, and further did not submit a showing of interest for that unit. The Library did not take a position on either representation petition. The parties were directed to file any other statements and/or documents supporting their respective positions.

On March 1, 2013, GWU filed another letter, reiterating its timeliness objections to the petitions and asserting that "the organizational structure(s) of the proposed units are inappropriate as they do not conform to the spirit or letter of the requisite 'Camden affidavit.'^{2/}

Also on March 1, OCLEA filed a letter contending that the Commission has jurisdiction to process its amended petitions and asserting that elections should be directed promptly in the units sought by those petitions. Relying upon Camden Cty. MUA, D.R. No. 2012-12, 38 NJPER ____ (¶____, 2012), OCLEA asserts that the

^{2/} This phrase references a filing requirement of certain petitioners for units of supervisory employees set forth in City of Camden, P.E.R.C. No. 82-89, 8 NJPER 226 (¶13094 1982).

same objections to the processing of the amended petitions in this case were previously considered and rejected by the Director of Representation. OCLEA withdrew its objection to GWU Supervisors' Council 10's intervention in the OCLEA (Supervisors) petition.

On March 21, 2013, we requested that representatives from both OCLEA (Supervisors) and GWU Supervisors' Council 10 execute a Camden certification in advance of any supervisory unit election. On March 26, 2013, OCLEA (Supervisors) filed a completed Camden certification.

On April 12, 2013, I wrote a letter to the parties, advising of my tentative findings and conclusions and inviting responses. One April 17, GWU filed a Camden certification. On April 22, 2013, the GWU filed a response to our letter objecting that the name of the original petitioner changed in both the amended petition and the Supervisors' petition. It reiterated that OCLEA (Supervisors) showed "no evidence of having a separate unit structure." Also, on April 22, a staff agent notified GWU that GWU Supervisors' Council 10, not GWU, must file submit a Camden certification to properly participate in the supervisory unit election. On April 23, 2013, GWU Supervisors' Council 10 filed an updated and completed Camden certification.

We have conducted an administrative investigation into this matter to determine the facts. N.J.A.C. 19:1-2.2. The

disposition of the petition is properly based upon our administrative investigation and review of all of the submissions. No disputed substantial material facts warrant the convening of an evidentiary hearing. N.J.A.C. 19:11-2.2 and 2.6. Our findings are included in the following:

ANALYSIS

Section 5.3 of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act") generally prohibits supervisors from being represented in collective negotiations by an employee organization that admits non-supervisory personnel to membership. Although the initial timely-filed petition in this case seeks to represent the current recognized collective negotiations unit, the Library asserts that the unit is comprised of supervisors and non-supervisors, an assertion which is undisputed by OCLEA and the GWU.

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). OCLEA's initial petition was filed during the open period and accompanied by an adequate showing of

interest. N.J.A.C. 19:11-1.2(a)9; 2.8. The petition raises a valid question concerning representation.

The Commission has approved the processing of an amended representation petition filed beyond 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. On February 6, 2013, following the Library's uncontested assertion that the current unit is comprised of supervisors and non-supervisors, OCLEA (Non-supervisors) filed an amended petition seeking to represent non-supervisory librarians and senior librarians, accounting for about 75% of the extant unit. An adequate showing of interest for this petition accompanied the initial petition. On the same date, OCLEA (Supervisors) filed a petition to represent the supervisory principal librarians and supervising senior librarians, accounting for the remaining 25% of the current unit. These employees are uncontestedly identified as supervisors within the Act's meaning by the Library. An adequate showing of interest for this petition accompanied the initial petition.

GWU, the incumbent representative of the current broad-based unit argues that the amended petitions are not timely filed and not accompanied by valid showings of interest. I disagree.

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 both amended petitions. Similar to the petitioner in Holmdel Bd of Ed., OCLEA (Non-supervisors') petition is supported by at least thirty percent (30%) of the petitioned-for non-supervisory librarians and senior librarians, who comprise the great majority of the unit currently represented by GWU. These petitioning employees have expressed their support for OCLEA as their majority representative, which raised a valid question concerning representation in its initial timely-filed petition which was accompanied by an adequate showing of interest.

It is true that the name of the initial petitioner is now amended to include a suffixed parenthetical (i.e., Non-supervisors). Such a change was not required, nor does it render the petition untimely. The name change is merely descriptive of the unit, as it delineates non-supervisory employees, most of whom were the subject of the original, timely petition. The change was nothing more than a response to the Library's uncontested objection that the petitioned-for and extant unit was

comprised of supervisors and non-supervisors, rendering it inappropriate for certification.

I also disagree with GWU that the OCLEA (Supervisors) petition must be accompanied by a new showing of interest. I note that the Director determines the adequacy of the showing and that this decision is not subject to collateral attack. N.J.A.C. 19:11-2.1. The showing is an administrative requirement to ensure that sufficient interest exists among employees on behalf of the petitioner to warrant the expenditure of Commission resources in processing the petition. Woodbury Tp. Bd. of Ed., D.R. No. 77-9, 3 NJPER 26 (1977).

Pursuant to section 5.3 of the Act and City of Camden an employee organization is prohibited from representing both supervisory and non-supervisory employees of a public employer. City of Camden declares that a majority representative of non-supervisory employees of a public employer is "not qualified" to represent supervisory employees of that employer. City of Camden, 8 NJPER at 227. City of Camden also instructs that "employees are entitled to know that the organization they are voting for is the organization they will have if selected by a majority." Id. To that end, the Commission in City of Camden required that an organization wishing to appear on a ballot in this context must certify these facts: 1) as the organization now exists, it has no non-supervisory employee members and 2) if

selected by the employees it, and not the majority representative of the non-supervisory employees will control negotiations and contract administration concerning supervisory employees.

In this case, both OCLEA (Supervisors) and GWU (Supervisors' Council 10) have submitted valid Camden affidavits or certifications.

I also find that the current showing of interest demonstrates employee interest in OCLEA (Supervisors) sufficient to warrant the continued processing of the supervisors' petition. A Notice to Employees notifying the entire membership of the historical unit that OCLEA (Supervisors) is seeking to represent certain Library supervisors has been posted for the requisite period. Those petitioned-for employees have an opportunity to demonstrate their interest in another employee organization by filing a representation petition, together with a showing of interest. Finally, the supervisors shall have the opportunity to vote for OCLEA (Supervisors) or GWU Council 10 as their majority representative or for no representation. The Commission has long held that the best method to measure employees representational preferences is by conducting a secret ballot election. See Camden MUA.

For all of these reasons, I approve the continued processing of OCLEA's amended petitions. Accordingly, I order two secret mail ballot elections in the following appropriate units so that

the petitioned-for employees can freely choose their majority representative, if any.

Non-Supervisory:

Included: All regularly employed part-time and full-time non-supervisory white collar professional employees employed by the Ocean County Library.

Excluded: Managerial executives, confidential employees and supervisors within the meaning of the Act; craft employees, blue collar employees, non-professional employees, police, casual employees, and all other employees employed by the Ocean County Library.

Supervisory:

Included: All regularly employed part-time and full-time supervisory white collar professional employees employed by the Ocean County Library.

Excluded: Managerial executives and confidential employees within the meaning of the Act; non-supervisors, craft employees, blue collar employees, non-professional employees, police, casual employees, and all other employees employed by the Ocean County Library.


The exclusive representative for each unit, 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. The election shall be conducted no later than forty-five (45) 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 ill, on vacation or temporarily laid off, including those in the 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.

Pursuant to N.J.A.C. 19:11-10.1, the public employer is directed to promptly 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 the Director no later than 10 days before the date of the election. In a mail ballot election, the date of the election shall be the date on which the ballots are scheduled to be mailed. 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 parties may be provided an opportunity to agree upon dates of the mail ballot election and designations on the ballot, within the time periods set by this decision, subject to my approval. The assigned staff agent will convene a conference call among the parties for this purpose. In the absence of an agreement among the parties, I shall determine the dates of the

mail ballot election, the time and place of the counting of the ballots, and the designations on the ballot. N.J.A.C. 19:11-5.1.



Gayl R. Mazuco
Director of Representation

DATED: May 13, 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 May 28, 2012.