

P.E.R.C. NO. 86-143

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF LEONIA,

Public Employer,

-and-

Docket No. RO-86-110

LOCAL 29, RETAIL AND WHOLESALE  
DISTRIBUTIVE WORKERS UNION,  
AFL-CIO,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission declines the Borough of Leonia's request to stay an election ordered by the Director of Representation. The Commission further holds, however, that the eligibility of an alleged "supervisor" should be determined only after a hearing.

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Appearances:

For the Public Employer, McGuire and Regan, Esqs.  
(Robert Regan, Of Counsel)

For the Petitioner, Reitman, Parsonnet, Maisel & Duggan,  
Esqs. (Jesse Strauss, Of Counsel)

DECISION ON REQUEST FOR REVIEW

AND STAY OF ELECTION

On February 18, 1986, Local 29, R.W.D.S.U., ("Local 29") filed a Petition for Certification of Public Employee Representative with the Public Employment Relations Commission. Local 29 seeks to represent white collar employees employed by the Borough of Leonia ("Borough"). This proposed unit consists of 13 employees.

The Borough declined to consent to a representation election. Its sole objection to an election is that one of the employees in the petitioned-for unit -- Gwen Thomas, Community Development Director and Zoning Officer -- is allegedly not eligible for representation because she is a "managerial executive" and "supervisor" within the meaning of the Act. N.J.S.A. 34:13A-3(f)

and 34:13A-5.3. It contends that she is a managerial executive because she interprets and implements regulations established by local ordinances and she is a supervisor because "she may and in fact has ruled that certain individuals be hired, discharged or disciplined and as head of the...Department she has the responsibility for evaluating employees under her jurisdiction.

On May 27, 1986, the Director of Representation issued his decision directing an election. He determined, based on his administrative investigation, that Thomas was neither a "managerial executive" nor a "supervisor" within the meaning of the Act. Therefore, he concluded that the petitioned-for unit is appropriate for collective negotiations. He ordered a mail ballot election. Ballots were mailed June 13, 1986 and will be counted on June 30, 1986.

On June 10, 1986, the Borough filed a request for review of the Director's decision and a stay pursuant to N.J.A.C. 19:11-8.1 and 8.6. The Borough repeats that Thomas is a "managerial executive" and "supervisor" and therefore should not be included in the negotiations unit. In the alternative, it requests "that a plenary hearing be scheduled before the Commission prior to the rendering of a decision." On June 13, 1986, Local 29 filed its opposition papers to the request for review "for the reasons set forth in the Decision...of the Director of Representation." On June 16, 1986, Chairman Mastriani granted the Borough's request for review.

We have carefully reviewed the record and believe the issue of whether Thomas is a supervisor should only be determined

after a hearing. N.J.S.A. 34:13A-5.3 defines supervisors as "having the power to hire, discharge, discipline, or to effectively recommend the same" and except under limited circumstances, precludes their inclusion in a unit with non-supervisory personnel. The Borough has squarely raised allegations before both the Director of Representation and us, which, if proved, would establish that she is a supervisor. She is, according to the Borough, the Director of her Department and directly supervises and evaluates the clerk in that department. It has specifically alleged that she has the power to recommend hiring, firing, and disciplining employees and in fact has. Local 29 has not disputed that, at the very least, this raises a factual question as to the appropriateness of her placement in the proposed unit. In its only written submission to the Director, it stated that "Thomas' varied duties are so diverse and intertwined that there can be no logical determination at this time as to her appropriate placement in the unit. Accordingly, it is submitted that the best solution is to vote this individual subject to challenge." Under these circumstances, we believe a hearing would be required prior to determining whether Thomas is a supervisor.<sup>1/</sup>

We deny, however, the Borough's request to stay the election. There is no need to resolve this dispute prior to the

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<sup>1/</sup> We agree with the Director, however, that Thomas is not a managerial executive within the meaning of the Act. The Borough has not presented any claims regarding this issue that require a hearing. Township of Clark, P.E.R.C. No. 85-105, 11 NJPER 283 (¶16104 1985).

election. The Borough has objected to the inclusion of one of the 13 employees in the unit. This allegation is insufficient to warrant a stay of an election in a unit that is otherwise appropriate. New Jersey Civil Service Association, D.R. No. 81-20, 7 NJPER 41, 45 (¶12019 1980); County of Morris Park Commission, D.R. No. 80-17, 6 NJPER 37 (¶11019 1979); Township of North Brunswick, D.R. No. 78-4, 3 NJPER 260 (1977). What was said in North Brunswick is applicable here in determining the appropriate procedure to follow in resolving this representation dispute:

[T]he Commission's policy is that when a disputed factual issue as to the voting eligibility of certain employees is not substantial and material under the circumstances presented, an election should proceed with the disputed employees being afforded the opportunity to vote subject to challenge.

...While the undersigned is aware that allowing employees...to vote a challenge ballot leaves the question as to their eligibility in doubt, he is also concerned with the need for determining, without undue delay, the choice of the exclusive representative by the vast majority of potential voters whose eligibility to vote is not in dispute. Accordingly, the challenge ballot mechanism provides...voters with the opportunity to cast ballots in the election and at the same time allows non-disputed voters the opportunity, as is likely here, to resolve the question concerning representation in as expeditious a manner as possible. Such a procedure is preferable to the delay inherent in conducting formal proceedings as to the employee eligibility prior to an election.

[Id. at 261-262]

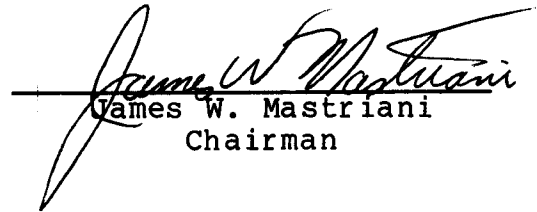
Accordingly, the following steps are to be taken to resolve this case:

- (1) the election will proceed and Thomas will have the opportunity to vote subject to challenge;
- (2) if her vote is determinative of the election, post election mechanisms are available to resolve the matter.
- (3) if her vote is not determinative and assuming that a certification of representation issues, the Borough may file a clarification of unit petition to determine whether Thomas should be in the unit.

ORDER

The request to stay the election is denied. The matter is remanded to the Director of Representation for proceedings consistent with this opinion.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Hipp, Johnson, Reid, Smith and Wenzler voted in favor of this decision. None opposed. Commissioner Horan was not present.

DATED: Trenton, New Jersey  
June 25, 1986  
ISSUED: June 26, 1986