

P.E.R.C. NO. 94-119

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PARSIPPANY-TROY HILLS TOWNSHIP,

Public Employer,

-and-

Docket No. AC-93-3

PARSIPPANY-TROY HILLS BLUE COLLAR ASSOCIATION,
UNITED PAPERWORKERS INTERNATIONAL UNION,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission denies Parsippany-Troy Hills Township's request for review of the Director of Representation's decision granting the Parsippany-Troy Hills Blue Collar Association, United Paperworkers International Union's request to have its certification amended to reflect its affiliation with the United Paperworkers International Union. D.R. No. 94-5, 19 NJPER 511 (¶24235 1993). The Commission finds that the employer's request raises no substantial questions of law; the Director did not err in deciding a substantial factual issue; and there are no other compelling reasons for review. Accordingly, the Commission denies the Township's request.

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Appearances:

For the Public Employer, Courter, Kobert, Laufer, Purcell & Cohen, attorneys (Fredric M. Knapp, of counsel)

For the Petitioner, Kroll & Gaechter, attorneys
(Raymond G. Heineman, Jr., of counsel)

DECISION AND ORDER

On April 7, 1993, the Parsippany-Troy Hills Blue Collar Association, United Paperworkers International Union petitioned to have its certification amended to reflect its affiliation with the United Paperworkers International Union ("UPIU"). On June 28, Superior Court Judge Reginald Stanton, A.J.S.C. dismissed without prejudice an action brought by the Township of Parsippany-Troy Hills seeking to block the affiliation. Judge Stanton ordered that relief be sought before us.

On August 10, 1993 the Director of Representation granted the Association's request and amended its certification. D.R. No. 94-5, 19 NJPER 511 (¶24235 1993). On August 23, the Township requested review of the Director's decision. On October 8, the

Chairman transferred the case back to the Director to permit the Township to respond to Association submissions that it had not received at the time of the Director's initial decision, and to address the Township's arguments that an absentee ballot should have been provided to a voter in the affiliation vote and that there should have been an evidentiary hearing.

The Township reviewed the Association's submissions and filed additional arguments. On March 22, 1994, the Director issued a supplemental decision reaffirming his decision to amend the Association's certification. D.R. No. 94-20, 20 NJPER 180 (¶25079 1994). He found that the Township's additional arguments and the Association's failure to provide an absentee ballot to one voter were insufficient to demonstrate that the affiliation vote violated due process standards. He further found that the Township had not identified factual disputes warranting a hearing.

On April 4, 1994, the Township requested review of the supplemental decision. It contends that it learned of discrepancies in the Association's affiliation vote and believed that the results of the vote were not a true representation of the wishes of the majority of Association members. It asserts that: the certification of employee Gene Vallejo suggests that there was voter fraud and that any ambiguities should be clarified during a hearing; the Director erred in finding that an alleged threat by a union official lacked an adequate nexus to the affiliation vote; and five votes would be in dispute had an absentee ballot been provided to

Michael Kelsey, and that could affect the outcome of the 56-51 vote in favor of affiliation.

Under N.J.A.C. 19:11-8.2, review will be granted only upon one or more of these grounds:

1. That a substantial question of law is raised concerning the interpretation or administration of the act or these rules;
2. That the director of representation's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of the party seeking review;
3. That the conduct of the hearing or any ruling made in connection with the proceeding may have resulted in prejudicial error; and/or
4. That there are compelling reasons for reconsideration of an important commission rule or policy.

N.J.S.A. 34:13A-5.3 provides that a representative selected by an appropriate unit of public employees shall be the exclusive representative for collective negotiations in such a unit. When an organization petitions to be certified as a majority representative, we conduct secret ballot elections to determine employee choice.

N.J.S.A. 34:13A-6(d). If a majority of employees voting in an election select an employee organization, the Director of Representation certifies the organization as their majority representative. N.J.A.C. 19:11-9.2(1).

Sometimes an already certified representative decides to affiliate with a national or international union. In many such cases, the union seeks to change its name to reflect the new

affiliation and petitions us to amend its certification to reflect this name change. Our rules establish procedures for amending certifications and our caselaw establishes the standards for granting such petitions. N.J.A.C. 19:11-1.6; Cape May Cty. Assignment Judge, P.E.R.C. No. 85-80, 11 NJPER 91 (¶16039 1985); Morris Cty. College, E.D. No. 71, 1 NJPER 17 (1975). As the Director noted, an amendment of certification will be granted if the petitioning organization demonstrates that after proper notification, the union's unit membership voted by secret ballot to approve the name change and there is continuity in the unit's composition and leadership. 19 NJPER at 513.

The Parsippany-Troy Hills Blue Collar Association was certified on April 2, 1986 as the exclusive representative of the Township's blue collar employees. On April 2, 1993, the Association conducted a secret ballot election so that unit members could determine whether they wanted the Association to affiliate with the United Paperworkers International Union. Unit members both for and against affiliation acted as election observers. The ballots were counted by the observers who then signed a tally sheet reflecting 56 votes in favor of affiliation and 51 votes against. There were no void or challenged ballots.

The Township argues that the Director erred in dismissing the allegation of Gene Vallejo, one of the observers opposing affiliation, that unfamiliar individuals entered the polling place.

The Director found this allegation insufficient to demonstrate that the affiliation vote violated due process standards. Contrary to the suggestion of voter fraud, the Director found that voters registered by printing and signing their names; the number of names on the sign-in list matched the tally of votes; and with the possible exception of four employees, the list reflects that all other voters were current employees and Association members.

In his initial decision, the Director found that Vallejo's allegations that he was threatened by a UPIU official and coerced by the Association's president lacked an adequate nexus to the affiliation vote sufficient to overturn its result. While we do not condone threats or coercion during an affiliation election, the Township has not shown how these allegations, even if true, could have affected the outcome of the election. Vallejo opposed affiliation and has not alleged that he voted in favor of affiliation because of the alleged threats.

Finally, the Township argues that the Director erred by not finding that the Association had to provide an absentee ballot to a vacationing employee who opposed affiliation. It reasons that this employee's vote plus the votes of the four ineligible employees who voted could have affected the outcome of the election. But the Township has not cited any authority for the proposition that a union must provide absentee ballots in an affiliation election. By analogy, our rules governing the conduct of representation elections do not require the use of absentee ballots. See N.J.A.C. 19:11-9.1

et seq. And the provisions of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. 481 et seq., governing the election of union officers, require absentee ballots only where the union knows in advance that a substantial number or a particular segment of the members will not be able to exercise their right to vote in person, a situation not alleged in this case. 29 C.F.R. §452.95. Here, only one employee allegedly did not vote because he was on vacation. We cannot find that due process standards were violated by not providing him with an absentee ballot.

Finding an insufficient number of improper votes to affect the outcome of the election and no material facts in dispute, the Director denied the Township's request for a hearing.^{1/} We find that the employer's request raises no substantial questions of law; the Director did not err in deciding a substantial factual issue; and there are no other compelling reasons for review. Accordingly, we deny the Township's request.

In conclusion, we emphasize that this amendment of certification is essentially a name change. There has been no change in the negotiations unit or the leadership or structure of the majority representative. Such a change would have raised a question concerning representation and an amendment of certification would not have been appropriate. Should the Township or the

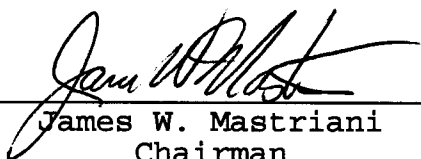
^{1/} We disagree with the Township's suggestion that Judge Stanton determined that a hearing should be conducted. He thought that a hearing might be needed, but he also recognized that the matter might be resolved without one (T24-22 to T25-3).

employees have a good faith doubt concerning the majority status of the current representative, our rules provide timely procedures for resolving such doubts.

ORDER

The request for review is denied.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Klagholz, Regan, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: June 30, 1994
Trenton, New Jersey
ISSUED: June 30, 1994