

P.E.R.C. NO. 2004-43

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WARREN COUNTY POLLUTION CONTROL
FINANCING AUTHORITY,

Respondent,

-and-

Docket No. RD-2004-2

JOAN PLUTO,

Petitioner,

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 68, AFL-CIO,

Intervenor.

SYNOPSIS

The Public Employment Relations Commission denies a request for review by the International Union of Operating Engineers, Local 68, AFL-CIO. Local 68 seeks review of the Director of Representation's ruling that only unit employees employed by the Warren County Pollution Control Financing Authority as of November 6, 2003 were eligible to vote in a decertification election. The Commission finds that the Director's determination was well within his authority and there is no basis to grant this request for review.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Intervenor, Mary E. Moriarty, General Counsel

DECISION

On November 24, 2003, the International Union of Operating Engineers, Local 68, AFL-CIO requested review of a decision of the Director of Representation. Local 68 seeks review of the Director's ruling that only unit employees employed by the Warren County Pollution Control Financing Authority as of November 6, 2003 were eligible to vote in a decertification election.

Local 68's request for a stay pending review was denied and the election was conducted. Two employees voted for continued representation by Local 68; two voted against continued representation. The effect of a tie vote in a decertification

election is to decertify the union. Borough of Kenilworth, D.R. No. 2003-4, 28 NJPER 379 (¶33139 2003). It appears that there are normally at least five employees in the negotiations unit. A candidate for employment voted subject to challenge. That challenge is determinative and is the subject of another proceeding.

Local 68 asserts that this agency's customary rule for establishing voter eligibility dates should have been relaxed for such a small unit with a history of election filings, where the normal complement of employees would have been achieved shortly after the customary eligibility date. It further asserts that an exception must be made when application of that rule has enabled the employer to refuse to hire an applicant in order to manipulate the voter eligibility list. Local 68 alleges that shortly after position statements were submitted, it discovered that the candidate whose application had been being processed by the Authority was told that he was no longer under consideration. It has filed an unfair practice charge contesting that action.

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

1. A substantial question of law is raised concerning the interpretation or administration of the Act or these rules;
2. 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. The conduct of the hearing or any ruling made in connection with the proceeding may have resulted in prejudicial error; and/or

4. An important Commission rule or policy should be reconsidered.

The Director rejected Local 68's request that the voter eligibility date await the hiring of an employee to fill the fifth position. He reasoned that:

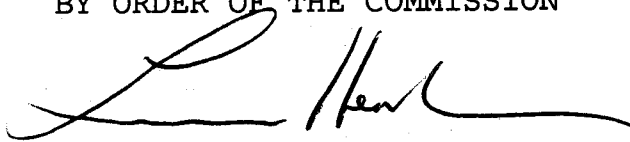
Delaying the election until a payroll period for eligibility can be fixed which is based on the prospective hiring of an employee to fill a vacant position in the petitioned-for negotiations unit is too speculative and would cause an unnecessary and undue delay. Such a delay would not ensure that the conduct of the representation election would be smooth or efficient because the parties would not be aware, until some uncertain future date, of who is eligible to vote in the election. Also, it would open the election process up to challenge that the employer's hiring determination, in the intervening period, may be tainted by an effort to manipulate the outcome of the election. While delaying the election may ensure that as many employees as possible, with a legitimate interest in the outcome of the election, would be able to cast ballots, the delay would not ensure that those eligible to vote would have at least reported for work to minimally establish a community of interest with the other employees.

The Director's determination was well within his authority and there is no basis to grant review. The allegation that the employer violated the Act by refusing to hire the applicant will be addressed through the unfair practice proceeding.

ORDER

The request for review is denied.

BY ORDER OF THE COMMISSION

A handwritten signature in black ink, appearing to read 'L Henderson', written over a horizontal line.

Lawrence Henderson
Chairman

Chairman Henderson, Commissioners Buchanan, DiNardo, Mastriani and Sandman voted in favor of this decision. None opposed. Commissioner Katz was not present.

DATED: January 29, 2004
Trenton, New Jersey
ISSUED: January 29, 2004