

P.E.R.C. NO. 2010-34

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SUSSEX COUNTY,

Respondent,

-and-

Docket No. CU-2008-005

COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO, LOCAL 1032,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission denies a request for review of D.R. No. 2010-6 filed by the Communications Workers of America, AFL-CIO, Local 1032. In that decision, the Director of Representation denied the CWA's motion to dismiss a clarification of unit petition filed by Sussex County seeking to remove alleged supervisors from a negotiations unit. The CWA argues that the petition should be dismissed because its unit predates the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. The County opposes review. The Commission holds that the CWA's appeal is interlocutory and should have been filed as a request for special permission to appeal. Nevertheless, the CWA may assert its arguments regarding the disputed titles during the administrative investigation of the clarification of unit petition.

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 Respondent, Knapp, Trimboli & Prusinowski, LLC
(James T. Prusinowski, of counsel)

For the Petitioner, Weissman & Mintz, attorneys
(Annmarie Pinarski, of counsel)

DECISION

On October 16, 2009 the Communications Workers of America, AFL-CIO, Local 1032, filed a request for review of D.R. No. 2010-6, ___ NJPER ___ (¶ ___ 2009). In that decision, the Director of Representation denied CWA's motion to dismiss a clarification of unit petition filed by Sussex County.

The petition seeks to clarify a broad-based unit of about 550 employees to exclude about 58 workers that the County asserts are supervisors within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. CWA's motion asserts that the negotiations unit it represents was formed before the Act was passed, thus qualifying for a statutory

"established practice" exception to the prohibition against the inclusion of supervisors in the same negotiations unit with non-supervisory employees. See N.J.S.A. 34:13A-5.3.

The Director reasoned, citing West Paterson Bd. of Ed., P.E.R.C. No. 77, NJPER Supp. 333 (¶77 1973), aff'd on reconsideration. P.E.R.C. No. 79, NJPER Supp. 352 (¶79 1973), that even if the unit had been formed prior to the passage of P.L. 1968, c. 303, there are exceptions warranting the exclusion of supervisors from such a unit.^{1/} After denying CWA's motion, he directed that an administrative investigation be conducted to determine if the job duties performed by holders of the disputed titles make them supervisors as defined by the Act.

On October 22, 2009, the County filed a response to CWA's application urging that it be denied.

Initially, we note that the Director's ruling on the motion to dismiss the petition was interlocutory and accordingly CWA's application should have been a request for special permission to appeal. See N.J.A.C. 19:11-6.9; N.J.A.C. 19:11-6.10, N.J.A.C. 19:14-4.6(b). However as the Director's decision states that it could be challenged by means of a request for review, we consider CWA's application to be timely.

^{1/} In West Paterson, we concluded that the existence of a pre-1968 established practice warranted the continued inclusion of principals and vice-principals in a collective negotiations unit that included teachers and other employees of the K-8 school district. However, we did recognize that there might be situations that warrant restructuring of a unit that was formed prior to 1968. NJPER Supp. at 337.

Special permission to appeal interlocutory rulings is granted only when extraordinary circumstances are present. State of New Jersey, P.E.R.C. No. 2005-62, 31 NJPER 61 (¶30 2005); City of Somers Point, P.E.R.C. No. 2002-45, 28 NJPER 148 (¶33049 2002).

We deny CWA's request. As the Director noted in his decision, CWA may participate in the investigation and assert that the disputed titles should not be excluded. In addition, as our ruling is neither an endorsement nor rejection of the Director's analysis that the CWA unit is not necessarily covered by the "established practice" exception, CWA would be free to reassert that position, if necessary, by seeking Commission review when proceedings before the Director of Representation are complete.

ORDER

Special permission to appeal is denied.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Branigan, Buchanan, Colligan Fuller, Joanis and Watkins voted in favor of this decision. None opposed.

ISSUED: November 24, 2009

Trenton, New Jersey