

P.E.R.C. NO. 2010-80

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF HOBOKEN,

Respondent,

-and-

Docket No. RO-2010-039

RWDSU LOCAL 108, UFCW,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission denies the City of Hoboken's request for review of D.R. No. 2010-10 filed by the City of Hoboken. In that decision, the Director ordered that RWDSU Local 108, UFCW be certified as the exclusive representative of all regularly employed non-supervisory crossing guards employed by the City. The City argues that it never stipulated to the unit and that the unit is too narrow. Local 108 opposes review. The Commission holds that because the City did not raise any objection or file any letter contesting the unit before the Director despite being requested to do so, the request for review is denied.

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, Scarinci & Hollenbeck (Ramon Rivera, of counsel)

For the Petitioner, Oxfeld Cohen, P.C., attorneys (Sanford R. Oxfeld, of counsel)

DECISION

On February 5, 2010, the City of Hoboken filed a request for review of D.R. No. 2010-10, 36 NJPER 16 (¶8 2010). In that decision, the Director of Representation ordered that RWDSU Local 108, UFCW be certified as the exclusive representative of all regularly employed non-supervisory crossing guards employed by the City of Hoboken, based upon a representation card check. The Director stated that the City did not raise any objection or file any letter contesting the petition or the proposed Stipulation of Appropriate Unit. Local 108 opposes the City's request for review and we deny it.

The City asserts that it never approved or signed the Stipulation of Appropriate Unit form to facilitate continued

processing of the petition. It argues that given our longstanding reluctance to approve units of employees in a single title or occupational group, we should grant review and deny certification.

The City has not disputed these facts as found by the Director in his Decision:

On December 22, 2009, a Commission staff agent issued to the parties a proposed Stipulation of Appropriate Unit form setting forth the petitioned-for unit description with spaces allotted for the signatures of the designated representatives. On December 23, 2009, Local 108 returned the form, signed by its business agent. Also that day, following a telephone conversation between the staff agent and the City's counsel, the City was issued a confirming letter setting January 8, 2010 as a filing deadline for a letter advising us of its position regarding the petition. We received no response.

On January 13, 2010, the staff agent again wrote to the City, seeking either the return of a signed Stipulation of Appropriate Unit form or its letter advising of its position on the petition not later than January 19, 2010. The letter also advised that if neither document was received, the petition would be processed. No response was filed.

On January 25, 2010, the Director issued his Decision and Order. He found:

The City has not raised any objection nor filed any letter contesting the petition or the proposed Stipulation of Appropriate Unit.

The Legislature has determined that a check of an organization's authorization

cards signed by a majority of employees in an appropriate unit is a lawful method to determine a majority representative. Our review of Local 108's authorization cards shows that it has submitted cards from a majority of the petitioned-for employees. The employees' signatures on the cards meets the intent of the statute and the rules. Accordingly, Local 108 is entitled to a certification based upon a card check, regardless of the City's failure to submit a signed Stipulation of Appropriate Unit.

Under N.J.A.C. 19:11-8.2, a request for 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 City argues that review should be granted because a substantial question of law is raised concerning the interpretation of the Act. However, a request for review may not raise any issue or allege any facts not timely presented to the Director of Representation, unless the facts are newly discovered and could not with reasonable diligence have been discovered in time to be so presented. N.J.A.C. 19:11-8.3(c). There is no

reason that the City could not have raised its argument before the Director issued his decision certifying Local 108. We note that the unit structure is not barred by statute or regulation. It may not be the most appropriate unit, but it is an appropriate unit and the City did not raise a timely objection to its formation.

ORDER

The request for review is denied.

BY ORDER OF THE COMMISSION

Commissioners Eaton, Krengel, Voos and Watkins voted in favor of this decision. None opposed. Commissioners Colligan and Fuller were not present.

ISSUED: May 27, 2010

Trenton, New Jersey