

P.E.R.C. NO. 2010-97

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF BERLIN,

Public Employer,

-and-

Docket No. RO-2010-055

COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO,

Petitioner.

SYNOPSIS

The Commission grants the Township of Berlin's request for review of a decision of the Director of Representation certifying the Communication Workers of America as the exclusive representative for all regularly employed blue collar employees of the Township. The Commission remands this case to the Director for further investigation regarding the location of the organizing meeting, how the site was chosen and what transpired during the meeting.

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 Public Employer, Brown & Connery, attorneys
(Michael DiPiero, of counsel)

For the Petitioner, Weissman & Mintz, attorneys
(Rosemarie Cipparulo, of counsel)

DECISION

On January 29, 2010, the Communication Workers of America, AFL-CIO, filed a representation petition with the Public Employment Relations Commission seeking certification by authorization cards to become the exclusive majority representative of the public works employees of the Township of Berlin, pursuant to N.J.S.A. 34:13A-5.3, part of the New Jersey Employer-Employee Relations Act, as amended.

The Township objected after some employees had raised concerns about the authorization card process and asked the Director of Representation to hold a secret ballot election

rather than issue a certification on the basis of authorization cards.

On April 16, 2010, after conducting an administrative investigation, the Director certified CWA as the exclusive majority representative for purposes of collective negotiations of all of the Township's regularly employed blue collar employees on the basis of submission of authorization cards signed by a majority of employees in the proposed unit. D.R. 2010-15, 36 NJPER 105 (¶43 2010).^{1/} We grant the Township's request for review of the Director's decision and remand this case to him for further investigation.

On or about February 18, 2010, the Township first objected to certification of CWA by authorization cards, but did not, at that time, respond to the Director's request that it file, on or before February 26, a letter supporting its position. On the due date, the Township withdrew its objection.

On or about February 24, 2010, two Township employees telephoned the Commission asking for a secret ballot election. They were invited to express their concerns about the

1/ The Director found that the Township had posted the appropriate Notice to Employees. The Notice described the unit claimed by CWA to be "All full and part-time laborers employed by the Public Works Department of the Township of Berlin." All other employees would be excluded. That unit description is identical to the one contained on the petition filed by CWA.

authorization card process in a letter to the Director, but did not immediately do so.

On March 2, 2010 a "Proposed Stipulation of Appropriate Unit," was sent to the Township and CWA. The parties were requested to participate in a March 5 conference call to stipulate that the appropriate unit for collective negotiations was "All regularly employed blue collar employees employed by the Township of Berlin." During the conference call, the Township advised that it had received a letter from its employees requesting a secret ballot election rather than certification by authorization cards. The Township renewed its objection to the authorization card process.

Also on March 5, 2010, the Township filed a letter setting forth its objections to the authorization card process. On March 10, CWA filed a reply and certifications from CWA staff representatives Constance English and Christopher Young. On March 12, the Township filed a reply letter and certification of Mayor Phyllis Magazzu. On March 16, CWA filed the certifications of three employees in the proposed unit.

The Township's March 5, 2010 submission includes a copy of a March 5 letter addressed to the "Township Mayor and Councilmen" signed by the "Berlin Township Public Works Employees." The letter recites that on March 4, the employees met and conducted an "informal vote" on whether to proceed with joining CWA. The

letter advises that a "secret ballot informal vote" resulted in 14 votes against joining the union, 1 vote in favor of joining the union, and 3 abstentions. The letter provides that the union representative did not "make clear" to employees that their signing authorization cards would result in their joining the union, but would enable the signers to "listen to [its] proposal before making a final decision..." on union representation. The letter requests that an election be conducted to determine the representational desires of the employees. A second, undated page accompanied the letter, containing a printed list of 19 employees. The signatures of 14 employees appear next to their names. The signature page does not provide any other information.

On March 25, 2010, the Director wrote to the parties, setting forth the facts found during his administrative investigation and his inclination to certify CWA as the majority representative of "All regularly employed blue collar employees employed by the Township of Berlin" based on its submission of authorization cards signed by a majority of the employees in the unit. He stated that he did not have a valid basis to deny CWA certification through authorization cards and was disposed to deny the Township's request to have the employees vote in a secret ballot election. He set forth his legal analysis including cases where there were claims that employees signing

authorization cards had been misled or coerced so that a majority representative could obtain certification. The letter gave the parties until April 5 to make additional submissions.

A typed letter, dated March 31, 2010, was received by the Director. It was unsigned, instead reciting that it was from the "Berlin Twp. Public Works Dept." The letter's second paragraph, referring to an organizing meeting held by CWA representatives, alleges:

Pertinent information was never shared with every employee as it should have been. Several questions also need to be addressed. Why wasn't the meeting, date, time and location well posted in advance and the men given ample time to attend? Why was alcohol being served and/or consumed during the meeting? Was it really necessary to hold the meeting in a loud, dimly lit bar? The fact is a majority of the men made their decision to sign the card after they had too much to drink and they are prepared to sign sworn statement to that effect.

The letter also asserts that many of the employees called in sick the next day and that the employees sought an opportunity to "make an informed decision to vote on this issue again."

On April 16, 2010, the Director issued his decision. Referring to the March 31 letter, he first notes that "[T]he 'Berlin Twp. Public Works Dept.' is not a party to this matter and has not sought to intervene on behalf of any named persons."

The Director noted the allegation about alcohol consumption. However, he observed that no employees signed or were identified in the letter and no supporting certification had been supplied.

After the Director issued his decision, the March 31, 2010 letter was resubmitted with a revised date of April 21. This time the letter contained the signatures of 13 Township employees. On April 22, the Township's attorney wrote to the Director asserting that employees had been making daily inquiries about the status of the case and that the Township sought a meeting with the Director and CWA representatives to resolve the situation. On April 27, the Director replied that as he had already issued a decision the issues raised would have to be presented to the Commission. On April 29, we advised the parties that we would view the April 21 letter as a request for review.

N.J.A.C. 19:11-8.2(a) provides that a request for review will be granted 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.

We are authorized "to resolve questions concerning representation of public employees by conducting a secret ballot election or utilizing any other appropriate and suitable method designed to ascertain the free choice of the employees."

N.J.S.A. 34:13A-6d.^{2/} This dispute raises a substantial issue concerning the administration of the Act - - specifically, whether in the context of the efforts of an employee organization to obtain certification by authorization cards, its organizing meeting was conducted in a setting that impaired employees' understanding of what they were being asked to sign and whether the employees' alleged lack of understanding was attributable to the actions of representatives of the petitioning organization.

The allegation concerning the location of the meeting and the possible intoxication of employees was submitted to the Director in an unsigned letter without any supporting certification. We know from CWA's brief and certifications of two of its representatives and three Department of Public Works employees that a meeting was held on January 21, 2010 to explain the organizing process and to distribute and collect any authorization cards that were signed by employees. Findings should be made by the Director concerning where the meeting was

^{2/} In 2005, N.J.S.A. 34:13A-5.3 was amended to permit an employee organization to become a certified majority representative through the "card check" process. P.L. 2005, c. 161.

held, who choose that site, and what transpired during the meeting.

When an employee organization seeks certification on the basis of having obtained signed authorization cards from a majority of employees, the site where the authorization cards are signed should be a location where the employees can exercise their free choice about representation for the purposes of collective negotiations. Accordingly, the circumstances concerning the solicitation of authorization cards are not free from review where substantial issues are raised that are similar to those considered by labor relations agencies in connection with the conduct of secret ballot elections.^{3/}

The issue of alcohol consumption near a representation election has arisen both under our Act and in the private sector. Whether the presence of alcohol at or near polling places affects the free choice of voters is a fact sensitive issue that depends on many variables. See Jersey City, P.E.R.C. No. 43, NJPER Supp.

^{3/} As noted by the Director, neither the March 5, 2010 letter, nor the March 31 letter concerning the consumption of alcohol at the organizing meeting, alleged that CWA representatives "made promises of benefits, coerced, or harassed employees . . ." 36 NJPER at 106. The brief CWA submitted to the Director asserts that the Mayor's conduct has undermined its organizing campaign and has tainted the representation process making a fair secret ballot election impossible. The certifications it submitted from three DPW employees all state, without elaboration, "[M]anagement has asserted that there may be consequences if we continue to support the union."

153 (¶43 1970), aff'd 114 N.J. Super. 463 (App. Div. 1971), (objections to second representation dismissed, as evidence adduced at hearing did not show that persons consuming alcohol, dispensed by officials of one of competing unions, were eligible voters); Labor Services, Inc., 274 N.L.R.B. 479, 1985 NLRB LEXIS 691, 118 L.R.R.M. 1407 (after appeals court denied enforcement of bargaining order,^{4/} NLRB voided election and certification where union agent, before and during election held in motel room, at motel's bar, encouraged voters to drink and picked up the tab).

We make no determination at this time and remand this case to the Director for further investigation.^{5/6/}

4/ NLRB v Labor Services Inc., 721 F. 2d. 13 (1st Cir. 1983).

5/ We note that the authorization cards submitted by CWA state: "I hereby designate the Communications Workers of America as my collective bargaining representative." Often, the phrases "collective bargaining" and "collective negotiations" have the same meaning. Our Supreme Court has always distinguished between "collective bargaining" and "collective negotiations," stressing that the latter phrase applies to public employees under Art I, ¶19 of the State constitution and the Act. See Lullo v. Int'l Ass'n of Fire Fighters, Local 1066, 55 N.J. 409, 436-441 (1970); Mount Holly Tp. Bd. of Educ. v. Mount Holly Tp. Educ. Ass'n, 199 N.J. 319, 327 (2009). N.J.S.A. 34:13A-5.3 and N.J.A.C. 19:10-1.1 use "collective negotiations" in connection with "Authorization cards." The Director should consider, if "Authorization cards" must use the proper statutory phrase.

6/ On June 23, 2010, the Commission received an additional submission from the Township, to which the CWA provided a response. After the statement in opposition to the request for review is filed, no further submissions may be considered by the Commission without leave of the

(continued...)

ORDER

A. This case is remanded to the Director of Representation for further investigation in accordance with this opinion.

B. The certification issued on April 16, 2010 is stayed.

BY ORDER OF THE COMMISSION

Commissioners Colligan, Fuller, Krengel, Voos and Watkins voted in favor of this decision. None opposed. Commissioner Eaton recused herself.

ISSUED: June 24, 2010

Trenton, New Jersey

6/ (...continued)
Commission. N.J.A.C. 19:11-8.4. Since neither party sought leave from the Commission, these documents have not been considered.