

P.E.R.C. NO. 2012-50

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF RARITAN,

Public Employer,

-and-

Docket No. RO-2011-067

COMMUNICATIONS WORKERS OF  
AMERICA, AFL-CIO, LOCAL 1040,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Township of Raritan for review of D.R. 2012-3. In that decision, the Deputy Director of Representation ordered that the CWA be certified by card check as the majority representative for all regularly employed, professional and non-professional, white and blue collar supervisors employed by the Township. The Township specifically challenges the inclusion of the tax assessor and tax collector. The Commission holds that these titles are not statutorily excluded from inclusion in the unit.

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, DiFrancesco, Bateman, Coley,  
Yospin, Kunzman, Davis & Lehrer, attorneys (Richard P.  
Flaum, of counsel)

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

DECISION

On September 14, 2011, the Township of Raritan filed a request for review of D.R. No. 2012-003, 38 NJPER 177 (¶55 2011). In that decision, the Deputy Director of Representation ordered that, based upon its submission of a sufficient number of authorization cards, the Communications Workers of America, Local 1040, be certified as the exclusive representative of all regularly employed, professional and non-professional, white and blue collar supervisors employed by the Township. We deny the Township's request.

The Township seeks review on the ground that Tax Assessors and Tax Collectors were included in the collective negotiations

unit that CWA was certified to represent. The Township argues that because there are specific statutes concerning discipline, salary protections and job duties for these titles, they should not be part of the collective negotiations unit.<sup>1/</sup> As employees with statutory protections and/or statutorily-mandated duties are not ineligible for inclusion in a collective negotiations unit, we deny the request for review.

Under N.J.A.C. 19:11-8.2, a request for review of a Decision of the Director of Representation 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 Township argues that grounds, 1,2 and 3 are present in this case. The CWA responds that the Township has not

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<sup>1/</sup> The Township does not argue that the tax officials are not "employees" as defined in N.J.S.A. 34:13A-3(d) or excluded as managerial executives or confidential employees. N.J.S.A. 34:13A-3(f) and (g).

established a reason that warrants granting a request for review of the Deputy Director's decision.

We conclude that the Township has not met the standards for granting a request for review. We agree with the Deputy Director's analysis at pages 3-4 of his ruling, including his reliance on the precedent cited therein. We add the following.

We reject the Township's argument that, because tax officials have specific statutory protections, duties and avenues to appeal discipline, their inclusion in the collective negotiations unit creates an inherent conflict. It is not uncommon that employees in a single collective negotiations unit may have different avenues of appeal for discipline and different levels of job security. For example tenured teachers, with limited exceptions, can only be disciplined or reduced in compensation through statutorily-mandated proceedings conducted by the Department of Education, while non-tenured staff may contest discipline through contractual grievance procedures. Yet, in all public school districts, teachers, both tenured and non-tenured, are represented in a single collective negotiations unit, by the same majority representative and covered by the same collective negotiations agreement. Similarly, in Civil Service jurisdictions, classified employees may use the grievance procedure to contest minor discipline, while major disciplinary sanctions can only be reviewed through statutory procedures

established by Civil Service laws and regulations. All of these employees retain the right to negotiate collectively through representatives of their own choosing in appropriate units.

In addition, the titles tax assessor and tax collector have previously been included with other supervisory positions in collective negotiations units. See Town of Kearny, P.E.R.C. No. 89-55, 15 NJPER 10 (¶20002).

While it is possible that, in some municipalities, tax assessors and tax collectors are unrepresented, no case cited to us holds that these tax officials, because of their statutory protections and duties, can not be part of a collective negotiations unit or lack rights under the New Jersey Employer-Employee Relations Act.<sup>2/</sup> Accordingly, the Deputy Director applied existing Commission law concerning the representation rights of tax officials and the Township's application does not raise a substantial question of law or present an occasion

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<sup>2/</sup> Neither Hyland v. Township of Lebanon, 419 N.J. Super. 375 (App. Div. 2011) nor Carlson v. City of Hackensack, 410 N.J. Super. 491 (App. Div. 2010) holds that tax assessors and tax collectors are ineligible to be represented in a collective negotiations unit. In Hyland, the Court's opinion mentions as a background fact, that the tax official was not part of the collective negotiations unit that represented other municipal employees and concluded that the dispute was limited to whether the Township violated the tax official's rights under N.J.S.A. 40A:9-165 and not any claim arising under our jurisdiction. Carlson, also involving a claim that the municipality reduced a tax official's compensation in contravention of N.J.S.A. 40A:9-165, does not mention this Commission's jurisdiction or the New Jersey Employer-Employee Relations Act.

warranting the reconsideration of any Commission rule or policy. Finally, the Township has not identified any ruling on a substantial factual issue that is erroneous and prejudices the Township's rights.<sup>3/</sup>

ORDER

The Township of Raritan's request for review is denied.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Jones, Krengel, Voos and Wall voted in favor of this decision. None opposed.

ISSUED: March 29, 2012

Trenton, New Jersey

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3/ The Township asserts that the Deputy Director erred when he noted:

The Township also alleges that the tax assessor and tax collector must appeal disciplinary actions to the Tax Board rather than PERC, which demonstrates that these titles are outside PERC's jurisdiction and ineligible for representation. Since PERC does not have jurisdiction over any disciplinary appeals, I do not find this argument persuasive.

[38 NJPER at 178, n.3]

The Commission has no role in appeals of discipline by civilian public employees other than to provide a list of independent grievance arbitrators where a majority representative and a public employer have agreed to use the Commission's panel as a source for arbitrators. See N.J.A.C. 19:12-5.1.