

P.E.R.C. NO. 2014-88

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF SOMERSET,

Public Employer,

-and-

Docket No. RO-2013-043

SOMERSET COUNTY DRIVERS
AND AIDES ASSOCIATION,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission denies the County of Somerset's request for review of the Director of Representation's certification by card check of the addition of certain titles employed by the County of Somerset to the existing unit represented by the Somerset County Drivers and Aides Association. The Director determined that the petitioned-for titles shared a community of interest with the Association unit members and that a hearing was not necessary. Finding that there is no absolute right to a hearing and that the Commission has a consistent policy of resolving representation questions after administrative investigations unless substantial and material facts are in dispute, the Commission holds that even accepting all facts as asserted by the County, it would conclude that the petitioned-for employees share a community of interest with the existing 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, Ruderman & Glickman, attorneys
(Mark S. Ruderman, of counsel)

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

DECISION

On April 28, 2014, the County of Somerset requested review of D.R. 2014-14, 40 NJPER 527 (¶172 2014). In that decision, the Director of Representation certified by card check the addition of non-supervisory dispatchers, administrative assistants, and transportation aides employed by the County Department of Transportation into the existing unit of drivers and aides represented by the Somerset County Drivers and Aides Association.

The Director conducted an administrative investigation. On March 25, 2013, a Commission Staff Agent conducted an informal

investigatory conference at which the employer objected to the petitioned-for titles alleging they do not share a community of interest with the extant unit. On April 15, the Staff Agent issued a letter requesting the parties to provide evidence in support of their respective positions. On May 6, July 15 and October 11, the Staff Agent issued letters to the parties requesting inclusion of certified facts. The County provided a certification on October 17.

On March 24, 2014, the Director issued a letter setting forth tentative findings of fact, conclusions of law and a tentative determination that the petitioned-for titles share a community of interest with titles represented by the Association. The parties were invited to file responses by April 1. On April 1, the County filed a reply that included a supplemental certification. After considering all information received by the parties, the Director determined that the petitioned-for titles shared a community of interest with the Association unit members and a hearing was not necessary. The Director found the Association met the requirements of the Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. and certified the unit based upon the authorization cards received from a majority of the employees in the petitioned-for titles.

N.J.A.C. 19:11-8.2(a) states that 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 County asserts that it was wrongly denied a fact-finding hearing since material facts are in dispute; the Director incorrectly found that the petitioned-for employees share a community of interest with the Association members; and the Commission should reconsider its preference for broad based units.

Neither public employers nor public employee representatives have an absolute right to a hearing. We have a consistent policy of resolving representation questions after administrative investigations unless substantial and material facts are in dispute. Tp. of Teaneck, P.E.R.C. No. 2009-25, 34 NJPER 379 (¶122 2008). The County asserts the disputed facts requiring a

hearing relate to the community of interest the petitioned-for employees have with the other titles in the unit. Negotiations units must be defined with due regard for the community of interest among employees concerned. N.J.S.A. 34:13A-5.3. We have examined the alleged disputed facts asserted by the County and find none of them to be material that would require a hearing. The Director analyzed all arguments of the parties in her decision. Even if we accept all the facts as asserted by the County, we would also conclude the petitioned-for employees share a community of interest with the remainder of the negotiations unit.

As to the County's assertion that we should reconsider our preference for broad-based negotiations units, we decline to do so in this case. The public policy underlying the Act favors the ultimate organization of all employees desiring collective negotiations and the placement of broad-based negotiations units. State v. Prof. Ass'n of N.J. Dept. of Ed., 64 N.J. 231 (1974). Under the circumstances of this case, where the County has not provided an alternate appropriate unit for the employees, the broad-based unit policy is not an issue. The relief the County seeks would prevent the organization of the petitioned-for employees which is contrary to the Act.

ORDER

The request of the County of Somerset for review of D.R. 2014-14 is denied.

BY ORDER OF THE COMMISSION

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

ISSUED: June 26, 2014

Trenton, New Jersey