

P.E.R.C. NO. 2020-18

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOUTH ORANGE VILLAGE TOWNSHIP,

Public Employer,

-and-

Docket No. AC-2019-002

TEAMSTERS LOCAL 125,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission grants the Teamsters Local 125's request for review of the Director of Representation's decision, D.R. No. 2020-3, 46 NJPER 55 (¶13 2019). The Director dismissed a petition for Amendment of Certification seeking to amend a Certification of Representative for the South Orange Municipal Employees Union (SOMEU) to have its name Teamsters Local 125 as the majority representative. The Commission affirms the Director's decision for the reasons set forth in his written opinion. The Commission concurs with the Director's analysis that there would be no continuity of representation if the certification issued to SOMEU were to be amended to certify Local 125 as the exclusive representative.

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.

P.E.R.C. NO. 2020-18

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOUTH ORANGE VILLAGE TOWNSHIP,

Public Employer,

-and-

Docket No. AC-2019-002

TEAMSTERS LOCAL 125,

Petitioner.

Appearances:

For the Public Employer, Apruzzese McDermott Mastro & Murphy, attorneys (Arthur R. Thibault, of counsel)

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

DECISION

On August 2, 2019, Petitioner, Teamsters Local 125, filed, pursuant to N.J.A.C. 19:11-8.1 et seq., a request for review of D.R. No. 2020-3, 46 NJPER 55 (¶13 2019). In that decision, the Commission's Director of Representation dismissed a petition for Amendment of Certification (AC), seeking to amend a Certification of Representative issued by the Director on November 4, 2018 to the South Orange Municipal Employees Union (SOMEU) as the exclusive majority of all regularly employed, non-supervisory, clerical and blue collar employees employed by the Township of South Orange Village (Township), after SOMEU prevailed in a secret ballot election conducted by the Commission, in which

SOMEU prevailed over the prior representative, OPEIU Local 32 (Dkt. No. RO-2019-011).

The petition, filed March 13, 2019, sought to amend the November 4, 2018 certification to have its name Teamsters Local 125 as the majority representative because employees represented by SOMEU on February 26, 2019, had voted "to affiliate with Teamsters Local 125."<sup>1/</sup> <sup>2/</sup> We grant the request for review but affirm the Director's decision essentially for the reasons set forth in his comprehensive written opinion.

The Director's decision details at length the pertinent facts and procedural history regarding the affiliation vote by the employees represented by SOMEU and the events occurring after the filing of the petition. After reviewing those matters and applying pertinent Commission and National Labor Relations Act precedents,<sup>3/</sup> the Director dismissed the petition concluding:

---

<sup>1/</sup> Teamsters Local 125 asserts that neither SOMEU, nor the Township, objects to the amendment of certification petition.

<sup>2/</sup> Administrative notice was taken that the Director issued a Certification of Representative to SOMEU on November 4, 2018, after it prevailed in a secret ballot election against the prior representative, OPEIU Local 32. (Dkt. No. RO-2019-011). SOMEU's one-year certification bar ends on November 4, 2019.

<sup>3/</sup> The New Jersey Supreme Court has held that the representation provisions of the New Jersey Employer-Employee Relations Act were modeled on the National Labor Relations Act. See Lullo v. International Association of Fire Fighters, 55 N.J. 409, 423-426 (1970).

1. Local 125 is a separately existing organization from SOMEU, rather than the same organization with a different name or affiliation relationship;
2. Under the totality of the facts, there is no continuity of representation between the petitioner (Local 125) and the certified organization (SOMEU);
3. The lack of continuity of representation presents a question concerning representation regardless of the non-opposition of the certified organization and the employer;
4. Local 125 must instead seek either voluntary recognition by the Township or a new Certification of Representative pursuant to a timely-filed representation petition.

Local 125 asserts that the decision of the Director conflicts with Cumberland County Board of Social Services, D.R. No. 2006-10, 32 NJPER 33 (¶16 2006) where the AC petition was granted. Local 125 emphasizes that both here, and in Cumberland, the AC petition was unopposed and no struggle between competing labor organizations existed, while in County of Cape May Assignment Judge, D.R. No. 85-6, 10 NJPER 621 (¶15296 1984), dismissing AC petitions, the certified representative was viable and opposed the petitions.

#### **ANALYSIS**

Requests for Review of actions of the Director of Representation are governed by N.J.S.A. 19:11-8.1 et. seq. including N.J.S.A. 19:11-8.2 and N.J.S.A. 19:11-8.3.<sup>4/</sup>

---

<sup>4/</sup> These regulations provide:

(continued...)

---

4/ (...continued)

19:11-8.2 Grounds for granting a request for review

(a) The Chair may grant a request for review. 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.

19:11-8.3 Contents of request for review; timely presentment of facts

(a) A request for review must be a self-contained document enabling the Commission or Chair to rule on the basis of its contents.

(b) A request must contain a summary of all evidence and rulings bearing on the issues, together with page citations from the official transcript and a summary of argument.

(c) A request may not raise any issue or allege any facts not timely presented to the Director of Representation or the hearing officer, unless the facts alleged are newly discovered and could not with reasonable diligence have been discovered in time to be so presented.

(d) A request for review must specify both the grounds supporting review and address the merits of the issues for which relief is sought.

The Director comprehensively reviewed and applied Cumberland and Cape May as well as other pertinent Commission and private sector cases in his decision and noted prior Commission cases that had applied private sector decisions.<sup>5/</sup> In a comprehensive discussion he applied the cases to the facts. D.R. No. 2020-3 at 27 to 35. He concluded that the facts failed to demonstrate there was a continuity of representation between SOMEU and Local 125:

SOMEU has 44 members who are all employed by the Township and who comprise all of the employees in the negotiations unit. SOMEU bylaws require its officers to be unit employees of the Township. By contrast,

---

5/ Public Sector:

Cumberland Cty., supra.; Cape May Cty., supra.; Jersey City Bd. of Ed., P.E.R.C. No. 79-15, 4 NJPER 455 (¶4206 1978); Middletown Tp. et al. and IEU Loc. 417 and OPEIU Loc. 32, P.E.R.C. No. 2000-47, 26 NJPER 59 (¶31020 2000), aff'd, 27 NJPER 194 (¶32065 App. Div. 2001); Hillside Tp., I.R. No. 2019-14, 45 NJPER 260 (¶70 2019); County of Siskiyou (2010) Cal. PERB Decision No. 2113M.

Private sector:

NLRB v. Financial Institution Employees of America Local 1182 (Seattle-First), 475 U.S. 192 (1986); Brooks v. NLRB, 348 U.S. 96, 98 (1954); Sullivan Bros. Printers v. NLRB, 99 F.3rd 1217 (1<sup>st</sup> Cir. 1996); In re Pub. Serv. Elec. and Gas Co., 59 NLRB 325, 15 LRRM 152, 59 NLRB No. 69 (November 16, 1944); Bruckner Nursing Home, 262 NLRB 955, 110 LRRM 1374, 262 NLRB No. 115 (July 16, 1982); Gas Serv. Co., 213 NLRB 932, 87 LRRM 1226, 213 NLRB No. 123 (October 8, 1974); Western Commercial Transport, Inc., 288 NLRB No. 27, 127 LRRM 1313 (1988), Raymond F. Kravis Ctr. For the Performing Arts, 351 NLRB 143, 182 LRRM 1491, 351 NLRB No. 19 (2007), Missouri Beef Packers, Inc., 175 NLRB 1100, 71 LRRM 1177 (1969).

Local 125 is significantly larger, with 3,500 members who are employees of various employers in both the public and private sectors. Former SOMEU members will constitute only about 1.2% of the overall Local 125 membership.

[D.R. No. 2010-3 at 25].

Elaborating, the Director thoroughly reviewed the principles governing amendment of certification cases and the policy reasons behind them. We excerpt portions of his analysis.

There are important policy reasons for requiring continuity of representation regardless of opposition to an amendment of certification petition. Once an employer voluntarily recognizes an organization or once one is certified, the employer has a continuing negotiations obligation to negotiate absent a good faith doubt as to its majority status. See N.J.A.C. 19:11-1.1(a)(2), -1.4(a); Hillside Tp., I.R. No. 2019-14, 45 NJPER 260 (¶70 2019). If the certified representative changes its name or affiliation but remains essentially the same organization, the employer's and representative's negotiations and contractual obligations would continue, and the petitioner would be entitled to assert any remaining time left under a contract bar or certification bar (an amendment is not a new certification with a new one-year certification bar). If an entirely different organization claims to represent the employees, the employer may have a good faith doubt as to that organization's majority status that in turn may effect the employer's negotiations and contractual obligations.

[D.R. No. 2010-3 at 32-33].

\* \* \*

If the petitioner is not the same organization that was certified, it would be

improper for the Commission to give the petitioner status as the certified organization, requiring the employer to negotiate with it and preventing other organizations from filing representation petitions during the remaining certification bar period. Not only would it be unfair to the employer and other organizations, but it would be unfair to non-member unit employees who have in actuality had their representative switched without a vote, as opposed to having the representative previously chosen by the majority of unit employees simply changing its name or affiliations through internal organizational procedures whose control may be rightly limited to organizational members.

[D.R. No. 2010-3 at 34].

We fully concur with the Director's analysis and affirm his decision to dismiss Local 125's petition on the ground that there would be no continuity of representation if the certification issued to SOMEU were to be amended to certify Local 125 as the exclusive representative.

ORDER

D.R. No. 2020-3 is affirmed.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Jones, Papero and Voos voted in favor of this decision. None opposed.

ISSUED: October 31, 2019

Trenton, New Jersey