

P.E.R.C. NO. 85-117

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HUDSON COUNTY COMMUNITY COLLEGE,

Public Employer,

-and-

Docket No. RO-85-109

COMMUNICATIONS WORKERS OF AMERICA,  
AFL-CIO,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission denies the Hudson County Community College's request for review of the Director of Representation's decision directing an election. The College alleged the Director erred in not granting a hearing to determine whether the employees who signed written authorization cards to establish the requisite "showing of interest" truly desired to be represented by the Communications Workers of America. The Commission, however, holds that the best method for correcting any alleged errors in showing of interest determinations is a secret ballot election.

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Appearances:

For the Public Employer,  
Joseph V. Kealy, Jr., Acting County Counsel  
(John A. Smith, III, Assistant County Counsel)

For the Petitioner, Steven P. Weissman, Esq.

DECISION ON REQUEST FOR REVIEW

On February 4, 1985, the Communications Workers of America, AFL-CIO ("CWA") filed an amended Petition for Certification of Public Employee Representative with the Public Employment Relations Commission. CWA seeks to represent a collective negotiations unit of approximately 90 white collar and blue collar employees of Hudson County Community College ("College").

In order to meet the showing of interest requirements of N.J.A.C. 19:11-1.2(a)8, CWA submitted written authorization cards signed by employees within the unit CWA seeks to represent. These cards, dated within six months prior to the petition's filing, enlisted the signators as members of CWA and authorized CWA to represent the employees for purposes of collective negotiations. See N.J.A.C. 19:10-1.1.

Pursuant to N.J.A.C. 19:11-2.1, the Director of Representation investigated CWA's showing of interest. The College submitted a list of 92 employees it believed were in the petitioned-for unit and the Director checked the showing of interest against that list. The College also submitted identical affidavits from 15 employees that they had not authorized CWA to include their names in a showing of interest, although they may have signed applications for information.<sup>1/</sup>

On March 29, 1985, the Director informed the parties that CWA had submitted a valid showing of interest.<sup>2/</sup>

On April 11, 1985, the College requested review of the Director's determination that CWA had submitted a valid showing of interest. It asserts that the Director erred in not granting a hearing on whether the employees who signed affidavits truly desired CWA's representation. The CWA has filed a statement opposing review.

<sup>1/</sup> The College has also claimed that the petitioned-for unit is inappropriate because it includes security guards and certain employees who are allegedly confidential employees, professional employees, or managerial executives.

<sup>2/</sup> In the same letter, the Director consolidated this representation case with a Complaint based on an unfair practice charge CWA filed against the College on February 4, 1985. That charge alleged that the College coerced employees into signing the affidavits opposing CWA's showing of interest and therefore violated subsections 5.4(a)(1), (2), (3) and (4) of the New Jersey Employer-Employee Relations Act. The Director ordered a hearing on the consolidated case on May 7, 8 and 9, 1985. That hearing will encompass the County's other positions in the representation case.

N.J.A.C. 19:11-8.2 sets forth the standard in determining whether to grant a request for review:

(a) The commission will grant a request for review only where compelling reasons exist therefor. Accordingly, a request for review may be granted only upon one or more of the following grounds.

1. That a substantial question of law is raised concerning the interpretation or administration of the act or these rules;
2. That 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. That the conduct of the hearing or any ruling made in connection with the proceeding may have resulted in prejudicial error; and/or
4. That there are compelling reasons for reconsideration of an important commission rule or policy.

Based on our review of the parties' submissions and the record, we find no compelling reasons or grounds for granting review here.

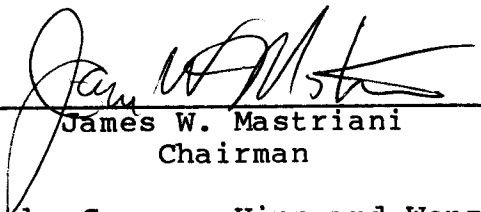
N.J.A.C. 19:11-2.1 provides that the Director shall determine the showing of interest and prohibits a collateral attack on that determination. See State of New Jersey, P.E.R.C. No. 81-94, 7 NJPER 105 (Para. 12044 1981). This regulation embodies the practice of the National Labor Relations Board which also prohibits hearings or appeals concerning such a determination. Morris, The Developing Labor Law (2nd Ed. 1983) at 343-344; R. Gorman, Basic Text on Labor Law (1970) at 42; Guide for Hearing Officers in NLRB Representation Proceedings (1975) at 10. It reflects the Commission's and the NLRB's shared belief that the best method for correcting any alleged errors in showing of interest determinations is a secret ballot election, State of New Jersey, supra.

In this case, the cards on their face authorize CWA to represent the signators for collective negotiations and squarely meet the Commission's rules for a valid showing of interest. The County's affidavits merely allege that some of the signators did not realize that their authorization cards would be used to support a petition for a representation election. In effect, the College is asserting that an employee who authorizes an employee organization to represent him immediately should not be presumed to want that organization to have an opportunity to gain representation through an election. That is an insufficient basis for challenging a showing of interest and, in any event, employees who no longer support CWA may vote against that organization if a secret ballot election is held.<sup>3/</sup> Accordingly, pursuant to N.J.A.C. 19:11-2.1, we deny the College's request for review.

ORDER

The request for review is denied.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Butch, Graves, Hipp and Wenzler voted in favor of this decision. Commissioner Suskin was opposed.

DATED: Trenton, New Jersey  
May 15, 1985  
ISSUED: May 16, 1985

3/ The allegations in this case do not rise to the level of fraud, physical intimidation or other egregious misconduct. A showing of interest could be attacked by such allegations and the Director of Representation would then determine their accuracy. Practice and Procedure Before the National Labor Relations Board (1984) at 6. If they were true, he would reject a showing tainted by such misconduct.