

D.R. No. 2005-15

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF REPRESENTATION

In the Matter of

BOROUGH OF NORTH ARLINGTON,

Public Employer,

-and-

OPEIU LOCAL 32,

Docket Nos. RO-2005-58,
RO-2005-59, RO-2005-60 &
RO-2005-70

Petitioner.

SYNOPSIS

The Director of Representation directs an election for three existing units, white collar, blue collar and health department employees of the Borough of North Arlington. Without articulating any objection to the elections, the Borough simply refused to provide any of the requested information to PERC. Since no valid reason was offered as to why this election should not be held, the Director ordered an election in the petitioned-for unit.

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Appearances:

For the Respondent, Marinello & Marinello, P.C.
(Joseph Marinello, of counsel)

For the Petitioner,
Mark C. Rushfield, attorney

DECISION

On December 10, 2004, Office of Professional International Union, Local 32 (OPEIU) filed three representation petitions seeking to represent separate, existing units of board of health employees, blue-collar employees and white-collar employees employed by the Borough of North Arlington (Borough). These three units are currently represented by New Jersey Employees Local No. 1, USW, AFL-CIO (Local 1). By letter dated December 23, 2004, Local 1 disclaimed further representational interest in the employees in the three petitioned-for units and advised that it did not seek to intervene in these matters.

On January 6, 2005, OPEIU filed a fourth representation petition, seeking to represent the Borough's full and part-time dispatchers. These employees have not been previously represented for collective negotiations.

By letter dated December 22, 2004, we notified all parties that an investigatory conference was scheduled for January 7, 2005. We also asked the Borough to provide a written statement of position, the recently expired collective agreements, and an alphabetized list of the employees in each unit by December 29, 2004.

By letter facsimile dated December 31, 2004, the Borough, through its attorney Joseph Marinello, requested to adjourn the January 7 exploratory conference. By letter dated January 3, the exploratory conference was adjourned without date.

On January 12, 2005, the assigned staff agent conducted a conference call between Borough Attorney Marinello and OPEIU Representative Patrick Tully. The parties agreed that composition of the existing negotiations units would continue except that the dispatchers would be combined with the white-collar unit. Mariniello advised that the Borough was interested in granting voluntary recognition to OPEIU and he would be discussing it with the governing body at its next meeting scheduled the week of January 17, 2005.

Thereafter, the Commission staff agent attempted to contact Marinello on January 31 and on February 2, 4 and 8, 2005, to determine the status of recognition. No calls were returned. By letter dated February 9, another exploratory conference was scheduled for February 25, 2005. Additional repeated attempts to contact Marinello and Borough Administrator Martin Gobbo were not successful, and our telephone calls were not returned.

On February 24, 2005, the Borough notified us that the Borough would not be participating in the conference scheduled for February 25. The OPEIU representative did attend the conference and signed consent election agreements for each of the three negotiations units as agreed upon earlier. Borough Administrator Gobbo represented by telephone on February 25, 2005, that the Borough would sign consent agreements for the election in each of the three units. On March 1, the consent agreements were forwarded to Gobbo for signature, together with a renewed request for the employees' names, home addresses and titles for each unit and the certifications of posting for each unit. A follow up call to the March 1, 2005 letter again resulted in promises that the lists, certifications and signed consent agreements would be returned. By letter dated March 11, 2005, to Gobbo, the Commission agent again requested the consent agreements, the employee lists for each unit and the certifications of posting for each unit. The Borough has not

signed and returned the consent agreements nor has it supplied the employee lists and certification of posting. The Borough has not advised that it does not consent to the elections, has not offered any legal basis for its refusal to consent, but simply has failed to take any action. Thus, its inaction is the equivalent of a refusal to consent.

The petitioned-for units are existing units, with the exception of the dispatchers who have not been previously represented, and are to be included in the white collar unit.

We have conducted an administrative investigation of these matters in accordance with N.J.A.C. 19:11-2.2 and 2.6. There being no known substantial or material factual issues in dispute, the disposition of these matters is based on the following:

Findings of Fact

Each of the petitioned-for units are prima facie appropriate. They include (1) all regularly employed, non-supervisory blue-collar employees; (2) all regularly employed, non-supervisory white-collar employees, including dispatchers; and (3) all regularly employed, non-supervisory board of health employees. There are approximately twelve (12) blue-collar employees, fourteen (14) white-collar employees including the dispatchers and three (3) employees of the board of health.

The most recent collective agreements between Local 1 and the Borough for all units expired on December 31, 2003.

Analysis

N.J.S.A. 34:13A-5.3 gives public employees the right to organize and negotiate collectively. The Commission is charged with the responsibility of conducting secret ballot elections so that public employees may have an opportunity to select a majority representative. Where there are no substantial material factual issues in dispute, I may find the appropriate negotiations unit and direct a secret ballot election among the employees. N.J.A.C. 19:11-2.6(c)(3).

Here, the proposed unit of blue collar employees, white collar employees and board of health employees are prima facie appropriate. Accordingly, I find in this case, that the following units are appropriate for collective negotiations.

Included: All regularly employed blue-collar employees employed by the Borough of North Arlington.

Excluded: Managerial executives, confidential employees, supervisors within the meaning of the Act, professional employees, craft employees, police, casual employees, and all other employees employed by the Borough of North Arlington.

* * *

Included: All regularly employed white-collar employees, including dispatchers, employed by the Borough of North Arlington.

Excluded: Managerial executives, confidential employees, supervisors within the meaning of the Act; professional employees, craft employees, police, casual employees, and all other employees employed by the Borough of North Arlington.

* * *

Included: All regularly employed employees employed by the North Arlington Borough Board of Health.

Excluded: Managerial executives, confidential employees, supervisors within the meaning of the Act; professional employees, craft employees, police, casual employees, and all other employees employed by the Borough of North Arlington.

An election among the employees in these proposed units will effectuate the policies of the Act and allow the employees in question to determine by free choice whether they wish to have OPEIU as their majority representative. The Borough of North Arlington has offered no reason why these elections should not be held. Therefore, I will order elections in the petitioned-for units.

ORDER

I order elections among the employees in the units described above to determine whether they wish to be represented by OPEIU, Local 32. The elections will be conducted by mail ballot.

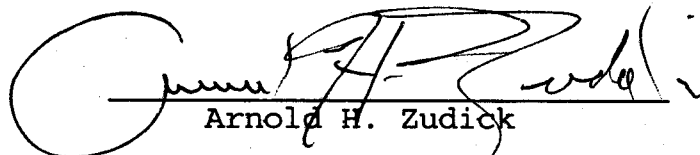
Ballots will be mailed to eligible voters in each unit on **April 18, 2005**. Ballots will be returned to the Commission post office box by 10:00 a.m. on **May 11, 2005**. The ballots will be counted on **May 11, 2005** at 11:00 a.m. in the Commission's Trenton Offices.

Pursuant to N.J.A.C. 19:11-10.1, the Borough of North Arlington is directed to file with us eligibility lists consisting of an alphabetical listing of the names of all

eligible voters in each unit described above, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility lists must be received by no later than April 5, 2005. A copy of each eligibility list shall also be simultaneously provided to OPEIU Local 32 with a statement of service filed with us. We shall not grant an extension of time within which to file the eligibility lists except in extraordinary circumstances.

Eligible employees in each unit will vote on whether they wish to be represented for purposes of collective negotiations by OPEIU Local 32. The exclusive representative, if any, shall be determined by a majority of the valid votes cast in each election. The elections shall be conducted in accordance with the Commission's rules.

By Order of the Director
of Representation



Arnold H. Zudick

Dated: March 23, 2005
Trenton, New Jersey

A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3.

Any request for review is due by April 5, 2005.