

D.R. NO. 87-10

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

In the Matter of

GREATER EGG HARBOR
REGIONAL HIGH SCHOOL,

Public Employer,

-and-

TRANSPORT WORKERS UNION OF
AMERICA, LOCAL 225, BRANCH 4,

DOCKET NO. RO-87-80

Petitioner,

-and-

OAKCREST-ABSEGAMI SCHOOL
PERSONNEL ASSOCIATION, NJEA/NJEA,

Intervenor.

SYNOPSIS

Relying on City of Newark, D.R. No. 85-24, 11 NJPER 344 (¶16126 1985), the Director of Representation concludes that the incumbent's challenge to the raiding petitioner's showing of interest is both procedurally and substantively lacking in merit and directs an election in a support staff unit. The Director rejected the incumbent's assertion that the petitioner had misrepresented the purpose of signing authorization cards.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law.

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Appearances:

For the Public Employer
Daniel J. Brandon, Consultant

For the Petitioner
Michael O'Brien, Int'l Representative

For the Intervenor
Eugene J. Sharp, UniServ Rep.

DECISION AND DIRECTION OF ELECTION

On October 15, 1986, the Transport Workers Union of America, Local 225, Branch 4, AFL-CIO ("Local 225") filed a petition seeking certification as the exclusive representative of cafeteria, transportation, custodial, maintenance, groundskeeping and clerical employees of the Greater Egg Harbor Regional Board of Education

("Board"). The unit sought by Local 225 is currently represented by the Oakcrest-Absegami School Personnel Association, NJEA/NEA ("Association").

On October 23, 1986, the Association submitted a letter dated October 21, 1986 and a copy of an executed collective negotiations agreement between the Board and the Association. Consistent with N.J.A.C. 19:11-2.7, the Association was granted intervenor status. In its letter, the Association stated that it would consider consenting to a secret ballot election at an informal conference scheduled for October 30, 1986. The Association did not state its position concerning Local 225's petition until the conference of October 30, 1986.

An informal conference was convened on October 30, 1986 and attended by representatives of each of the parties. At the conference, the Association refused to consent to a secret ballot election, claiming that the showing of interest obtained by Local 225 was improper. An investigation into the allegations presented by the Association was conducted. The results of the investigation follow.

In support of its petition for certification, Local 225 filed a sufficient showing of interest by way of signed authorization cards. The printed portion of the cards state:

I hereby authorize the Transport Workers Union of America, through its Officers, Committees and other Legal Representatives for the purpose of bargaining collectively with my employer in respect to rates of pay, wages, hours of employment and other conditions of employment.

The Association alleges that two incidents involving the manner in which Local 225 obtained its authorization cards should render its showing of interest invalid. The first alleged incident occurred on or about October 9, 1986. The Association claims that a negotiations unit member, a custodian, was approached by a Local 225 representative about signing an authorization card. The custodian allegedly asked the Local 225 representative about the purpose of signing a card. The Local 225 representative allegedly told the custodian that he would not be eligible to vote in an election unless he signed a card. The Association has offered to submit an affidavit from the custodian about the alleged incident of October 9, 1986.

The second alleged incident occurred on or about October 13, 1986, at a meeting held by Local 225 with negotiations unit members. The Association claims that a unit member, a secretary, asked a Local 225 representative about the purpose of signing an authorization card. The response allegedly given to the secretary was that Local 225 simply wanted to speak to the membership about its program. This incident allegedly occurred at a sign-up table before Local 225 began its meeting. The issue was apparently brought up during the meeting. An international representative for Local 225, who was there speaking on Local 225's behalf, allegedly stated that anyone wishing to take back his card could do so. The Association asserts that this offer to retract authorization did not cure the problem due to the intimidating attendant circumstances.

The Association has offered to submit an affidavit from the secretary about the alleged October 17, 1986 incident.

The Association also challenged the appropriateness of the unit sought by Local 225 because the unit description in Local 225's petition for certification included part-time employees. The existing unit includes only full-time employees. The Board does not employ any part-time employees and it also contends that the appropriate unit consists of full-time employees only. Local 225 stated at the informal conference that it seeks an election among employees in the existing unit. On October 31, 1986, it amended its petition by altering the description of the unit it seeks to represent to include only full-time employees.^{1/}

On November 6, 1986, we informed the parties that, based on the results of the investigation, we were inclined to direct an election among the employees in the petitioned-for unit to determine whether they desire to be represented in collective negotiations by Local 225, the Association, or neither.

1/ A description of the unit follows:

Included: Secretaries, data key punch operators, clerks, custodians, groundskeepers, maintenance workers, cafeteria personnel and bus drivers employed by the Greater Egg Harbor Regional Board of Education.

Excluded: Administrators, teachers and related professionally certificated personnel, secretaries employed in the District Offices of Superintendent and Secretary-Business Administrator, secretary to the assistant superintendent, bus garage mechanics, transportation coordinator, assistant transportation coordinator, head custodian, custodial supervisors, cafeteria director, headcook managers, mechanics, supervisors, managerial executives, confidential employees, professionals, police, fire and craft employees.

The Commission's approach in dealing with allegations of misrepresentation in obtaining authorization cards is set forth in City of Newark, D.R. 85-24, 11 NJPER 344 (¶16126 1985):

Pursuant to N.J.A.C. 19:11-1.2(a)(8), "petitions for certification of public employee representative shall be accompanied by a showing of interest as defined in N.J.A.C. 19:10-1.1 of not less than 30 per cent [sic] of the employees in the unit alleged to be appropriate..."

N.J.A.C. 19:10-1.1 defines a showing of interest as:

... a designated percentage of public employees in an allegedly appropriate negotiations unit, or a negotiations unit determined to be appropriate, who are members of an employee organization or have designated it as their exclusive negotiations representative....When requesting certification, such designations shall consist of written authorization cards or petitions, signed and dated by employees, normally within six months of the filing of the petition, authorizing the employee organization to represent such employees for the purpose of collective negotiations....

In Jersey City Medical Center, D.R. No. 83-19, 8 NJPER 642 (¶13308 1982) the Director of Representation stated:

The submission of a showing of interest by a Petitioner is an administrative requirement for the purpose of ensuring that sufficient interest exists among employees ... to warrant the expenditure of Commission resources in processing the petition. It is uniquely an administrative concern, and questions relating to the validity must be raised in a prompt manner. Unless good cause exists to the contrary, challenges questioning the validity of a showing of interest are to be raised

prior [to] the informal conference and should be embodied in the challenging party's response to the Commission's initial request for position statements.

* * *

Consistent with N.J.A.C. 19:11-2.1 the undersigned engages in a separate review of claims regarding the propriety of the showing of interest. Documentary and other evidence in support of such claims shall be filed within 72 hours of the raising of the challenge. [citations omitted]

* * *

Generally, in arriving at its decisions, the Commission may look to the decisions of the National Labor Relations Board for guidance, where appropriate (Lullo v. International Assn. of Firefighters, 55 N.J. 409 (1970)). On the issue of alleged misrepresentation, the Board's long standing policy is clear:

In general, the Board determines the validity of a union's showing of representative interest only by means of an administrative investigation. Thus, the Board refuses to permit in the representation proceeding, the litigation of allegations that authorization cards have been procured by fraud, misrepresentation, or coercion or that they have been revoked or that they are stale. (Footnotes omitted) Georgia Kraft Co., 120 NLRB 806, 42 LRRM 1066 (1958)

Additionally, the Board finds that "it is well settled that an employee's subjective state of mind in signing a union card cannot negate the clear statement on the card that the signer is designating the union as his bargaining agent," Gary Steel Products Corp., 144 NLRB 1160, 54 LRRM 1211 (1963), citing, Dan River Mills, Inc., 121 NLRB 645, 42 LRRM 1411).

Clearly, any doubts as to the desires of employees on representational matters can best be answered by the conduct of a secret ballot election by the Commission. 11 NJPER at pp. 347, 348.

On November 6, 1986, we informed the parties that, it appeared that the Association's challenge to the validity of Local 225's showing of interest was both procedurally inadequate (i.e., raised at, rather than prior to the informal conference and not supported by affidavits within seventy-two hours) and substantively lacking in merit. We invited the parties to file affidavits and documentation in support of their positions by November 17, 1986. We have received no additional evidentiary materials from the parties. Therefore, based upon the principles set forth in City of Newark, supra, we direct that an election be conducted no later than thirty days from the date of this decision to determine whether employees in the petitioned-for unit desire to be represented in collective negotiations by Local 225, the Association, or neither.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: November 21, 1986
Trenton, New Jersey