

D.R. NO. 92-35

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

In the Matter of

NEWARK HOUSING AUTHORITY,

Public Employer,

-and-

Docket No. RO-92-161

UNION OF INDEPENDENT SPECIAL POLICE,

Petitioner.

SYNOPSIS

The Director of Representation orders an election in a unit of special police employees of the Newark Housing Authority. The Authority had alleged that a contract existed with another employee organization which barred the processing of the petition. The Director determined that the "contract" was not a collective agreement and he ordered the election.

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Appearances:

For the Public Employer
Karimu F. Harvey, attorney

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

DECISION AND DIRECTION OF ELECTION

On March 24, 1992, the Union of Independent Special Police ("UISP") filed a Petition for Certification of Public Employee Representative seeking to represent all special police II employees of the Newark Housing Authority. The petition was accompanied by an adequate showing of interest. N.J.A.C. 19:11-1.2.

The Authority refused to sign a consent agreement for a secret ballot election and filed a statement of position asserting that the petitioned-for unit is currently represented by the Newark Special Police Association. It attached a letter purporting to be a current collective negotiations agreement between it and the Association. On May 20, 1992, we sent a letter to Ronald Arbuckle,

president of the Newark Special Police Association, advising that his organization may have an interest in this proceeding and requesting that he file a statement of position. The Association has not responded to our letter.

Our investigation reveals the following facts:

1. The Authority employs about 42 special police II employees. The employees carry weapons, make arrests, write police reports and drive police vehicles. They receive 18 weeks of training at a certified State Police training academy. (A full training course is 22 weeks). They are not trained in ticketing, some aspects of communications and some aspects of driving. No party disputes that the special police IIs are police employees.

2. The Authority negotiates with other units -- more than 400 maintenance employees are represented by SEIU, Local 617; about 90 supervisory employees are represented by OPEIU, Local 32; about 140 unarmed security guards are represented by UISW, Local 101.

3. The Authority has submitted a letter purported to be a current collective negotiations agreement with the Newark Special Police Association.

The letter is dated November 26, 1990, and is addressed to Ronald Arbuckle, president of the Association. The letter begins;

This is to confirm our agreement reached in regard to the rates of pay, training, and benefits that will be applicable to the individual special police officers who will be engaged by the Housing Authority of the City of Newark as independent contractors for the provision of professional security services. The Housing Authority of the City of Newark will

provide personal services contracts to the Association for execution by its members. This agreement is contingent upon the execution of personal service contracts by the individual licensed special police officers of the City of Newark and the review and approval of the contracts by board of commissioners of the Newark Housing Authority.

The "agreement" then enumerates a rate of pay, but specifies that the Authority "is not responsible for the provision of benefits to the special police officers." Subsequent paragraphs provide for training and a training rate of pay, a disclaimer of liability and a statement indicating that no agreement has been reached on dates when either the "security services" are to be provided or when the training is to begin. Finally, the letter states, "the terms as set forth above, shall not be binding on either of the parties until said contracts have been approved as indicated above." The letter is signed by the Authority's assistant executive director.

On May 20, 1992, we issued a tentative decision ordering an election in the petitioned-for unit. No party responded to that letter.

The issue is whether the petition is timely filed, pursuant to N.J.A.C. 19:11-2.8. This rule provides:

(c) During the period of an existing written agreement containing substantive terms and conditions of employment and having a term of three years or less, a petition for certification of public employee representative or a petition for decertification of public employee representative normally will not be considered timely filed unless:

2. In a case involving employees of a county or a municipality, any agency thereof, or any county or municipal authority, commission or board, the petition is filed not less than 90 days and not more than 120 days before the expiration or renewal date of such agreement;

Further, an agreement which does not state substantial terms and conditions of employment to the degree necessary to stabilize the parties' negotiations relationship cannot act as a bar to the filing of a petition. See City of Newark, D.R. No. 85-15, 11 NJPER 152 (¶16067 1985); Mt. Olive Bd. of Ed., D.R. No. 83-29, 9 NJPER 633 (¶14271 1983); Appalachian Shale Products Co., 121 NLRB No. 149, 42 LRRM 1506 (1958).

The proffered "agreement" is not a collective negotiations agreement which adequately stabilizes the relationship between the Association and the Authority. It has no beginning and ending dates; and it has no dispute resolution procedure, vacation or sick leave provisions, etc. Further, the agreement refers to the prospective employees as "independent contractors" and calls for the signing of individual personal services contracts; the agreement's viability is conditioned on the signing of such individual agreements. Individual employment agreements are the antithesis of collectively negotiated agreements as contemplated by the Act and administrative code.

Accordingly, there is no agreement which bars the processing of this petition and we direct that a secret ballot

election be conducted in the petitioned-for unit. The unit shall be:

Included: All special police II officers employed by the Newark Housing Authority.

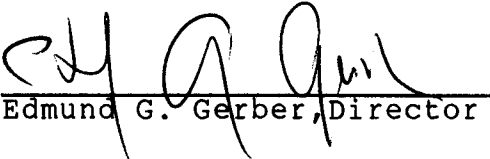
Excluded: All non-police employees, unarmed employees, employees in other negotiations units, professional employees, confidential employees, managerial executives, firefighters, craft employees and supervisors within the meaning of the Act.

The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, including those in the military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who resigned or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

Pursuant to N.J.A.C. 19:11-9.6, the public employer is directed to file with us an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the units, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by us no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously provided to the employee organization with a statement of service filed with us. We shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

The exclusive representative, if any, shall be determined by a majority of the valid votes cast in the election. The election shall be conducted in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Edmund G. Gerber, Director

DATED: June 11, 1992
Trenton, New Jersey