

I.R. NO. 98-7

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

OPEIU, LOCAL 32,

Respondent,

-and-

Docket No. CI-98-12

JOANNE N. YUHASZ,

Charging Party.

NEW JERSEY STATE JUDICIARY,

Respondent,

-and-

Docket No. CI-98-13

JOANNE N. YUHASZ,

Charging Party.

SYNOPSIS

Joanne Yuhasz, an individual, sought by way of interim relief, a representation election among all court reporters of the State of New Jersey. Yuhasz argues that an election conducted by the Commission in September 1994 was a nullity since the original petition was not filed in compliance with the Commission's rules. The application was denied. The alleged unfair practice occurred more than six months before the filing of the unfair practice charge.

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Appearances:

For the Respondent, OPEIU, Local 32
Spear, Wilderman, Borish Endy, Spear & Runckel, attorneys
(Samuel L. Spear, of counsel)

For the Respondent, New Jersey State Judiciary
Peter Verneiro, Attorney General
(Matthew R. Gabrielson, Deputy Attorney General)

For the Charging Party
Ambrosio, Kyreakakis, DiLorenzo, Moraff & McKenna
(Keith A. McKenna, of counsel)

INTERLOCUTORY DECISION

On August 22, 1997, Joanne N. Yuhasz filed an unfair practice charge and order to show cause with the Public Employment Relations Commission alleging that the Judiciary of the State of New Jersey, Administrative Office of the Courts, OPEIU, Local 32,

AFL-CIO and Certified Shorthand Reporter Association engaged in unfair practices within the meaning of New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1) and (4).^{1/} It was specifically alleged that CSRA and the OPEIU signed an affiliation agreement that was to last for one year and after the agreement expired unit members would vote on whether to continue the affiliation. However, no vote was taken. Nevertheless, at some unspecified time, the AOC recognized OPEIU as the exclusive majority representative. It was alleged that such voluntary recognition denied individual shorthand reporters certain rights of expression and "coerced shorthand reporters" into ratifying the one-year mandatory affiliation with OPEIU Local 32.

It was also alleged that the respondents colluded in fraudulently altering the parties collective negotiations agreement to permit the AOC to transfer Yuhasz from her position in Morris County and failed to notify unit members of such alterations. Further, contract provisions were deliberately misrepresented for the ratification vote for the 1995-99 agreement and the respondent failed to process grievances at some unspecified time.

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act." The charge fails to list subsections of the Act, but does include the text of the subsection.

The show cause order was executed and made returnable for September 11, 1997.

I take administrative notice that on July 22, 1994, OPEIU Local 32 filed a representation petition for all official court reporters with the Commission. Pursuant to a consent election agreement, on September 29, 1994, a Commission staff agent conducted an election wherein 91 employees voted in favor of representation by OPEIU Local 32 and 3 voted against representation. On December 6, 1994, the AOC voluntarily recognized OPEIU as the exclusive majority representative.

At the hearing, Yuhasz argued that the OPEIU petition for representation, was not filed in compliance with N.J.A.C.

19:11-2.8 (c)(1).

1. In a case involving employees of the State of New Jersey, any agency of the State or any State authority, Commission or board, the petition is filed not less than 240 days and not more than 270 days before the expiration or renewal date of such agreement;

Since the petition was untimely, Yuhasz argues that the election conducted by the Commission was a nullity.

By way of remedy, Yuhasz sought a Commission election among members of the court reporter's unit to determine the desires of unit members.

To obtain interim relief, the moving party must demonstrate both that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations and that irreparable harm will occur if the requested relief is not granted. Further, the public interest must not be

injured by an interim relief order and the relative hardship to the parties in granting or denying relief must be considered. Crowe v. De Gioia, 90 N.J. 126, 132-134 (1982); Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 35 (1971); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 37 (1975).

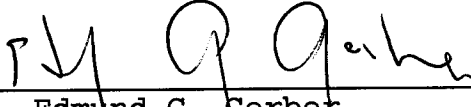
I denied Yuhasz' application since the requested remedy is not appropriate. Moreover, her argument concerning the petition's failure to comply with N.J.A.C. 19:11-2.8(c)(1) is untimely. N.J.S.A. 34:13A-5.4(c) of the Act provides in pertinent part:

...no complaint shall issue based upon any unfair practice occurring more than 6 months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge in which event the 6-month period shall be computed from the day he was no longer so prevented.

The election took place in September 1994, more than six months prior to August 22, 1997, the date the charge was filed.

Nothing in Yuhasz' argument suggests OPEIU Local 32 does not continue to enjoy majority status.^{2/}

Accordingly, the application for interim relief is denied.


Edmund G. Gerber
Commission Designee

DATED: September 26, 1997
Trenton, New Jersey

^{2/} If Yuhasz wishes to challenge that status, she could have filed a representation petition to seek to change or remove OPEIU as exclusive majority representative.