D.R. NO. 92-13

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

In the Matter of

CITY OF BURLINGTON,

Public Employer,

-and-

Docket Nos. RO-92-34
CO-92-88

INDEPENDENT ASSOCIATION OF
BURLINGTON CITY PUBLIC WORKERS,

Petitioner,

-and-

C.W.A., LOCAL 1044,

Intervenor.

SYNOPSIS

The Director of Representation orders an election among clerical and blue collar employees of the City of Burlington. The incumbent majority representative, CWA, Local 1044, filed an unfair practice charge seeking to block the processing of the petition. CWA alleged that the petitioner, Independent Association of Burlington City Public Workers and the City conspired to deny it equal access to City facilities to hold meetings. Another negotiations unit was permitted to use the facilities.

The Director determines that CWA, Local 1044 has not shown a sufficient nexus between the alleged unfair practice and the conduct of a free and fair election. The Director refuses to block the processing of the petition and orders an election in the petitioned-for unit. He also finds that a complaint shall issue on at least some of the allegations in the charge.

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Appearances:

For the Public Employer
Burton Conway, Administrator

For the Petitioner
Sharon Kennedy, Representative

For the Intervenor
Calvin Money, Staff Representative

DECISION

On September 6, 1991, the Independent Association of Burlington City Public Workers ("Association") filed a representation petition seeking to represent about 61 clerical and blue collar employees of the City of Burlington ("City"). The petition is accompanied by an adequate showing of interest. N.J.A.C. 19:11-1.2.

Communications Workers of America, Local 1044 ("CWA") is the incumbent majority representative of the petitioned-for unit. It filed an unfair practice charge on September 30, 1991, seeking to block the processing of the petition. On October 1, 1991, a conference was convened at which CWA properly intervened by submitting a copy of its 1989-91 collective agreement with the City. N.J.A.C. 19:11-2.7. The Association and the City also attended the conference.

CWA's charge alleges that from June through September 1991, the City and the Association have "conspired" to "decertify" CWA by denying it use of City facilities to hold union meetings. At the same time, CWA alleges, the City has permitted the "traffic guard" unit to use the facilities for its meetings. CWA also alleges that the City "encouraged and coerced" the Association to endorse a local political candidate, despite CWA policy of not endorsing such candidates. Finally, CWA alleges that the City unilaterally included a title in the unit for the purpose of undermining its leadership. All these acts allegedly violate subsections 5.4(a)(1)-(7) of the Act.[1/]

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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (3) Discriminating in regard to hire or tenure of employment or any term or condition of

Footnote Continued on Next Page

On October 2, 1991, we mailed copies of a letter to the parties, advising that the Commission does not automatically accord blocking effect to unfair practice charges. The party requesting the block must show a "nexus between the allegations in the charge and the conduct of a free and fair election." We asked that CWA file materials in support of its position by October 9, 1991.

On October 9, CWA filed a brief and supporting affidavits. CWA alleges that the City denied its request to hold union meetings for the petitioned-for unit on August 22 and September 18, 1991. The City purportedly allowed the traffic guard unit to hold its meetings in City facilities on June 19, July 10, September 19, 23 and 26, 1991. The CWA does not allege that the petitioner conducted meetings in City facilities. The CWA alleges (in both the charge and an affidavit) that on July 9, the City clerk told CWA treasurer Florence McNamara that he "deals with Herb Sanderson...and Sharon Kennedy," Association representatives.

1/ Footnote Continued From Previous Page

> employment to encourage or discourage 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. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative. (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement. (7) Violating any of the rules and regulations established by the commission."

CWA also alleges that the City clerk advised that use of any facility for meetings must be approved by a City Council representative (whom petitioner allegedly endorsed for a re-election bid). CWA contends that this approval process constitutes a unilateral change in terms and conditions of employment because before June 1991, no approval was necessary for use of City facilities.

CWA contends that the City unilaterally included the deputy municipal court clerk, a sister of one of the petitioners, in the blue collar and clerical unit in February 1991; this was confirmed in a letter dated September 13, 1991.

On October 28, 1991, the Association filed a response, denying any conspiracy, but agreeing that before June 1991, CWA meetings were scheduled by petitioning employees Sanderson or Kennedy. It also asserts that it has not used City facilities for organizational meetings.

The Association denies that CWA has a policy of not endorsing political candidates. It also asserts that CWA was aware of petitioner's sister's membership in CWA in December 1989. The Association enclosed a copy of a December 12, 1989 letter from the CWA local president to the City clerk advising him of the membership and requesting appropriate payroll deductions. It maintains that deductions began in February 1991, after the employee served a probationary period. The Association further maintains that the deputy municipal court clerk has been included in the unit since

1985. It also enclosed a copy of a 1989 grievance filed by the then deputy court clerk.

In State of N.J., P.E.R.C. No. 81-94, 7 NJPER 105 (¶12044 1981), the Commission noted the following factors in determining whether to block:

> The character and the scope of the charge(s) and its tendency to impair the employees' free choice; the size of the work force and the number of employees involved in the events upon which the charge is based; the entitlement and interests of the employees in an expeditious expression of their preference for representation; the relationship of the charging parties to labor organizations involved in the representation case; a showing of interest, if any, presented in the R case by the charging party; and the timing of the charge. (NLRB Case Handling Manual, Section 1173.5).

CWA's principal claim concerns the City's denying it access to facilities. It is uncontested that the Association did not hold meetings at City facilities between June and September 1991. Claims of unequal access will be sustained only when one organization shows that it made a request for but was denied facilities access, while another organization was granted such access. See Ocean Cty. Judiciary, D.R. No. 86-25, 12 NJPER 511 (¶17191 1986). The charge and accompanying documents do not allege unequal access; that another negotiations unit was permitted access to City facilities in the same months is not, by itself, sufficient to show a tendency to impair the employees' free choice. I cannot find that the City was demonstrating any preference for either organization when neither of them held a meeting at a City facility. Accordingly, I find that this allegation should not block the processing of the petition.

The mere denial of access is not, as the CWA argues, "inherently destructive" of CWA rights. Nothing in the charge or supporting papers indicates that CWA could not have scheduled meetings at some other location or even that such scheduling would be a hardship. Nor do the facts suggest that the City acted improperly after the representation petition was filed.

CWA cites private sector cases in which the National Labor Relations Board dismissed decertification petitions because the employers' acts violated section 8(a)(3) of the National Labor Relations Act. For example, in Hearst Corp., 281 NLRB 1133, 123 LRRM 1241 (1986), the employer had interrogated employees, stated that continued representation by the union prevented receipt of improved benefits, promised to improve benefits if employees withdrew support for the union, and warned unit employees to keep away from the union leaders. In Wallkill Valley Hosp., 288 NLRB No. 18, 127 LRRM 1318 (1988), the Board dismissed a decertification petition when the employer unlawfully subcontracted unit work and fired an employee.

I do not believe that the allegations in this charge are comparable to the egregious circumstances in Hearst Corp. and Wallkill Valley Hosp. -- circumstances which resulted in the filing of a decertification petition. CWA has established no nexus between the employer's actions and the filing of a petition for certification by a competing organization. No facts suggest that the petitioner's showing of interest was tainted by any alleged

unfair practice. It also appears that employee interests connected with the filing of a representation petition may differ substantially from those which inspire the filing of a decertification petition. See Glassboro Housing Auth., P.E.R.C. No. 90-16, 15 NJPER 524 (¶20216 1989).

Insofar that the charge asserts violations of subsection 5.4(a)(1) and (5) of the Act based upon allegations that the City unilaterally discontinued a past practice and/or negotiated in bad faith, I believe that it meets our complaint issuance standard. N.J.A.C. 19:14-2.1(a). However, the record in this matter does not demonstrate a nexus between this alleged violation of the Act and the potential for a free and fair representation election.

The charge also alleges that the City unilaterally included the deputy court clerk in the petitioned-for unit in order to interfere with the rights of CWA. It asserts that it has "[no] record of this title being in the unit."

The response filed by the petitioner included a copy of a December 12, 1989 letter from the CWA treasurer to the City Clerk asking that union dues be deducted from Michelle Thurber's salary. It also enclosed a copy of a CWA application-for-membership card signed by Michelle Thurber, deputy court clerk and dated December 11, 1989.

It appears that these documents rebut CWA's allegations. In the absence of additional statements of position, we are inclined to dismiss the allegations raised in paragraph 7 of the charge.

Accordingly, I direct that an election be conducted in the petitioned-for unit as follows:

> Included: All clerical employees and blue collar employees of the City of Burlington.
>
> Excluded: All supervisors within the meaning of the Act, police employees, firefighters, craft employees, professional employees, confidential employees, managerial executives, employees in other negotiations units and all other employees of the City of Burlington.

Employees shall vote on whether they wish to be represented by the Independent Association of Burlington City Public Workers, C.W.A., Local 1044 or no representative.

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.

Further, I shall issue a complaint regarding the alleged unilateral change in the City's "policy" to allow CWA to use City facilities to hold meetings with the blue collar employees and clerical employees unit. The hearing shall proceed independently of this representation matter. In interests of economy, I will issue the complaint after seven days from this date in order to allow the parties to file additional information regarding the unilateral placement of the deputy court clerk in the negotiaions unit. In the absence of such information being filed by **January 21, 1992**, I will dismiss paragraph 7 of the charge.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION

Edmund G. Gerber, Director

DATED: January 13, 1992
Trenton, New Jersey