D.R. NO. 2020-1

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

In the Matter of

ATLANTIC CITY MUNICIPAL
UTILITIES AUTHORITY,
Public Employer,

-and- Docket No. RO-2019-057

AFSCME NJ COUNCIL 63,
Petitioner,

-and-

GOVERNMENT WORKERS UNION
Intervenor.

SYNOPSIS

The Director of Representation orders that a secret mail ballot election be conducted among an existing unit of blue collar employees of the Atlantic City Municipal Utilities Authority (MUA) based a timely representation petition filed by AFSCME NJ Council 63 (AFSCME). The unit is currently represented by Government Workers Union (GWU), its intervention perfected by its Certification of Representative. GWU filed an unfair practice charge, alleging that the MUA was subject to oversight by the State of New Jersey pursuant to the Municipal Stabilization and Recovery Act, N.J.S.A. 52:27BBBB-1 et. seq., and that the alleged resulting failure to negotiate was the proximate cause of employee dissatisfaction with GWU. GWU requested that the processing of its charge block the election. GWU requested an extension of its certification and/or contract bar. GWU also challenged AFSCME's showing of interest and requested a hearing to resolve allegations of falsified authorization cards.

The Director found that GWU did not submit documentary evidence in support of any of its requests. The Director found that GWU did not meet its burden to show a nexus between an alleged unlawful failure to negotiate and the potential for a free and fair election to warrant exercise of the Director's discretion to block the election. The Director found that GWU did not submit competent evidence that it was precluded from one year of good faith negotiations to warrant extension of its certification bar, and that policy reasons did not exist for extending a contract bar for a failure to negotiate before an open period. The Director also held that the showing of interest was an administrative concern not subject to collateral attack, that a hearing would compromise confidentiality and be potentially disruptive of the free choice of employees, and that an election is the best method to ascertain the desires of the employees.

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Appearances:

For the Public Employer,
Law Offices of Andrew Weber, attorneys
(Andrew Weber, of counsel)

For the Petitioner,
Beckett and Paris, attorneys
(David B. Beckett, of counsel)

For the Interevnor,
(David L. Tucker, President)

DECISION

On June 7, 2019, American Federation of State, County, and Municipal Employees New Jersey Council 63 (AFSCME) filed a petition for certification of public employee representative, accompanied an adequate showing of interest, seeking to represent a collective negotiations unit of all non-supervisory blue collar

employees of the Atlantic City Municipal Utilities Authority (MUA). The petitioned-for unit is currently represented for purposes of collective negotiations by Government Workers Union (GWU).[1/]

On June 10, 2019, we sent a letter to the MUA, with a copy to AFSCME, scheduling a telephone investigatory conference for June 24, 2019. A letter was also sent to GWU, advising of the date of the conference and that its failure to perfect a request to intervene may result in its exclusion from participation in the conference. GWU acknowledged receipt of the letter the same day.

On June 17, 2019, the MUA filed the requisite Certification of Posting and provided a list of employees meeting the proposed unit description, confirming the adequacy of AFSCME's showing of interest. N.J.A.C. 19:11-2.6. The MUA also provided a Memorandum of Agreement (MOA) signed by GWU and the MUA on December 4, 2018, setting forth various terms and conditions of employment of the blue collar unit for a term extending from January 1, 2015, through December 31, 2019. (AFSCME's petition, "filed after end of the third year of the agreement," is timely. N.J.A.C. 19:11-2.8(d)). The MUA advised that it was not raising any objections

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1/ GWU was certified as the majority representative on October 5, 2016, after winning a Commission-conducted election against the then-incumbent AFSCME, operating under a different council number at that time (Dkt. No. RO-2017-002).

to an election. Also on June 17, 2019, I sent another letter to GWU, advising that if it did not file a request to intervene, I would assume that it had no further representation claim and that it would not appear on the ballot in any election conducted among unit employees. GWU acknowledged receipt of the letter the next day.

On June 24, 2019, GWU filed a request to intervene with a copy of the Certification of Representative we issued to it for the blue collar unit. Intervention was granted on the basis that GWU submitted evidence that it is currently certified as the exclusive representative of the employees sought by the petition. N.J.A.C. 19:11-2.7(b)(1). GWU also advised that it would not agree to an election.

Also on June 24, GWU filed an unfair practice charge (Dkt. No. CO-2019-311) against the MUA seeking to block the processing of AFSCME's petition. The charge alleges that the MUA, like the City of Atlantic City, is subject to oversight by the State of New Jersey, pursuant to the Municipal Stabilization and Recovery Act (MSRA), N.J.S.A. 52:27BBBB-1 et. seq.;[2/] that civil service protections and processes have thus been restrained; that the oversight has caused delays in labor/management relations and

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2/ For municipalities in need of stabilization, as designated as such pursuant to the MSRA, the State acts through the Director of the Division of Local Government Services or his/her designee. N.J.S.A. 52:27BBBB-5,-7.

conflicts and delays regarding promotions and salaries of employees, including certain named individuals; that the MSRA has had a negative effect on employees and has caused them to view the MUA's alleged refusal to negotiate and settle grievances as ineffective representation by GWU; that the alleged refusal to negotiate is the proximate cause of employee dissatisfaction with GWU; and that GWU has not received the effective benefit intended by a "contract" bar, for which GWU requests an extension. On July 8, 2019, GWU filed an amended charge, alleging that the MUA has not responded to its email messages regarding employee issues since the filing of its original charge (June 24, 2019).

Also on June 24, 2019, representatives of GWU, AFSCME, and the MUA participated in the scheduled investigatory telephone conference with the assigned Commission staff agent. The staff agent explained the standards and process for determining whether an election should be blocked pending resolution of the related unfair practice charge. As no other disputed issues were raised, GWU agreed that if its blocking request were denied, it would then sign an Agreement for Consent Election.

After the conference, the parties were sent a letter explaining that the Commission does not automatically accord blocking effect to unfair practice charges, and that GWU must provide documentary evidence that the alleged unfair practices prevent a free and fair election. State of New Jersey, P.E.R.C.

No. 81-94, 7 NJPER 105 (¶12044 1981), Matawan-Aberdeen Reg. Sch. Dist., P.E.R.C. No. 89-69, 15 NJPER 68 (¶20025 1988).

On June 27, 2019, GWU filed and served its position statement, together with these exhibits: the text of the entire MSRA; various emails involving representatives of the MUA purporting to show that the MUA is subject to the MSRA and has been restrained in its ability to negotiate with GWU for a successor agreement and for civil service title disputes, disciplinary disputes, and other job disputes; a petition with various employee signatures stating that the employees did not sign authorization cards for AFSCME, that any representation by AFSCME to the contrary has been made falsely, and that the employees did not believe that 30% of the employees in the negotiations unit has an interest in having AFSCME become their representative. On June 28, 2019, GWU filed and served another petition with a similar statement and additional employee signatures.

GWU did not provide any certifications or affidavits with respect to any alleged facts or the authenticity of exhibits. The legal arguments and the averred purpose of the exhibits in GWU's position statement are limited to the issues of whether GWU should receive an extension of its "certification" bar due to the restraint on negotiations the MSRA has allegedly imposed on the

MUA,[3/] and whether AFSCME's showing of interest is adequate. In its submissions, GWU did not provide any document(s) supporting other allegations in its unfair practice charge, including that the MUA's purported failure to negotiate has caused employees to view GWU as providing ineffective representation and is the proximate cause of employee dissatisfaction leading to the filing of AFSCME's representation petition.

The MUA did not directly respond to GWU's submission in this representation matter regarding the blocking request. Instead, on July 3, 2019, it filed and served an uncertified "response" to GWU's unfair practice charge, admitting State oversight pursuant to the MSRA, but denying that the oversight caused conflicts and delays in responding to employee issues or grievances, or that the MSRA has been an obstacle to the labor/management relationship. The MUA avers that it successfully worked with the State to negotiate a long term "labor union contract" with GWU and that some unspecified contractual terms are "substantially more generous than those of similarly situated employees" of the City of Atlantic City. The MUA postulates that unit employees' representational desires are linked to the former presence (and

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3/ GWU cites Jersey City Bd. of Ed., P.E.R.C. No. 79-15, 4 NJPER 455 (¶4206 1978) for the proposition that where an employer has failed to bargain in good faith during the certification bar year, a remedy can include an extension of the certification bar year even where the union may have lost majority support during the interim.

current absence) of a named (non-employee) union representative.

On or about July 5, 2019, AFSCME filed and served its response to the blocking request, including a certification of Bill Sciblo, an AFSCME staff representative. Countering GWU's contention that the MUA is prohibited from collectively negotiating under the MSRA, Sciblo certifies that AFSCME and the MUA have successfully negotiated and signed memoranda of agreement in May, 2019 for two other negotiations units represented by AFSCME. Sciblo also certifies the authenticity of the memoranda of agreement submitted as exhibits. Responding to GWU's petition of employees writing that they did not sign authorization cards for AFSCME, Sciblo certifies his knowledge that certain employees on the petition have affirmed their interest to be represented by AFSCME.

AFSCME argues that GWU has not verified any of its exhibits or facts and has not met the standard for blocking an election. AFSCME argues that GWU's exhibits do not support its contention that civil service appeals and grievances have been delayed and that its allegations about "delays" provide no justification for blocking an election. AFSCME argues that GWU's allegation about a failure to negotiate a successor agreement does not provide a basis for blocking the election. AFSCME distinguishes Jersey City Bd. of Ed. and City of Atlantic City, D.R. No. 2019-10, 45 NJPER 227 (¶60 2018), arguing that clear proof of a failure to

negotiate was provided in those cases that warranted extension of a certification bar, and that, in this case, GWU has not provided clear proof. AFSCME argues that the emails submitted by GWU show, at most, that the MUA consulted and coordinated with the State, but do not show that the MUA was prevented from negotiating or that the State was the sole agent for negotiations. AFSCME argues that its own ability (and GWU's inability) to successfully negotiate agreements with the MUA were not due to the MSRA preventing negotiations, but rather, to AFSCME performing its "job" in representing employees and GWU failing in this role. AFSCME also argues that GWU's attacks on the showing of interest are not legally sufficient to block the election.[4/]

On July 8, 2019, GWU filed and served a letter requesting the Commission to investigate alleged "forgeries" included in AFSCME's showing of interest and conduct a hearing to determine the facts. On July 10, 2019, AFSCME filed and served a response to GWU's letter, arguing that GWU submitted neither competent evidence nor sworn statements supporting its allegation and

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4/ AFSCME cites In re City of Newark, 346 N.J. Super. 460 (App. Div. 2002) and Hudson Cty. Comm. College, P.E.R.C. No. 85-117, 11 NJPER 369 (¶16131 1985) for the proposition that the a showing of interest determination is not subject to collateral attack and that an election, rather than a hearing, is the preferred method to determine adequate employee support.

reiterating that N.J.A.C. 19:11-2.1 protects the confidentiality of the showing of interest. AFSCME contends that an election is the appropriate method to resolve the issue.

We have conducted an administrative investigation to determine the facts. N.J.A.C. 19:11-2.2. The disposition of the petition is properly based upon our administrative investigation. No substantial or disputed material facts require us to convene an evidentiary hearing. N.J.A.C. 19:11-2.2 and 2.6.

ANALYSIS

Blocking Charge Allegations

The Commission's policy is to expedite the processing of representation disputes so that the question of whether employees will be represented by either competing organizations or no organization can be resolved by the Commission's secret ballot election mechanism. Berkeley Tp., D.R. No. 2009-6, 34 NJPER 422, 423 (¶131 2008).

The filing of an unfair practice charge or issuance of an unfair practice complaint will not automatically block the processing of a representation petition. A blocking charge procedure is not required by the Act nor by the Commission's rules. The decision whether an unfair practice charge will block the processing of a representation petition lies within the Commission's discretion. State of New Jersey, P.E.R.C. No. 81-94, 7 NJPER 105 (¶12044 1981).

The legal standard for determining whether an unfair practice charge should block the processing of a representation petition was set forth in State of New Jersey, and reaffirmed in Matawan-Aberdeen Reg. School Dist., P.E.R.C. No. 89-69, 15 NJPER 68 (¶20025 1988). The charging party must first request that the charge block the representation election. It must also submit documents showing that the conduct underlying the unfair practice prevents a free and fair election. The Director of Representation will exercise discretion to block if under all of the circumstances, the employees could not exercise their free choice in an election. See Atlantic City Convention & Visitors Authority, D.R. No. 2002-9, 28 NJPER 170 (¶33061 2002); Village of Ridgewood, D.R. No. 81-17, 6 NJPER 605 (¶11300 1980).

In State of New Jersey, the Commission adopted the following substantive factors in evaluating whether a fair election can be conducted during the pendency of an unfair practice charge:

> The character and the scope of the charge(s) and its tendency to impair the employee's free choice; the size of the working 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 [representation] case by the charging party; and the timing of the charge. [NLRB Case Handling Manual, Section 11730.5]
> [7 NJPER at 109]

In applying these factors to a blocking request, we carefully evaluate the certifications and documents presented in support of a blocking request to determine whether the evidence is competent (and in particular, based on an affiant's personal knowledge). River Vale Bd. of Ed., D.R. No. 2014-3, 40 NJPER 133 (¶50 2013); County of Monmouth, D.R. No. 92-11, 18 NJPER 79 (¶23034 1992); Leap Academy Charter School, D.R. No. 2006-17, 32 NJPER 142 (¶65 2006); Atlantic City Convention and Visitors Auth.

For purposes of deciding the blocking effect of the charge, we assume the veracity of the statements within the certifications submitted by both parties. Ridgefield Bd. of Ed., D.R. No. 2012-6, 38 NJPER 246 (¶82 2012). However, we will not block an election where no facts are certified by a person with personal knowledge that demonstrate a nexus between the alleged unfair practice and the conduct of a free and fair election. Academy Urban Leadership Charter H.S., D.R. No. 2018-13, 44 NJPER 208 (¶60 2017) ("[C]onclusory statements, which are not based upon . . . personal knowledge cannot provide that nexus."); Somerset Cty., D.R. No. 2016-1, 42 NJPER 87 (23 2015) (holding that speculation is not sufficient to support a blocking request and that the union's allegation of the employer's deliberate delay of negotiations was not supported by certifications or other documentary evidence); cf. Berlin Tp., D.R. No. 2011-3, 36

NJPER 379 (¶148 2010)(refusing to consider evidence from individuals who lacked personal knowledge of events).

The Commission does not block the processing of a representation petition based upon claims of bad faith negotiations without a showing of a nexus between the alleged violation and the potential for a free and fair representation election. Berlin Boro., D.R. No. 93-9, 19 NJPER 74 (24033 1992); Somerset Cty. (finding that no facts were submitted showing how voters' freedom to choose a representative would be influenced by the purported bad faith negotiations); compare Great S. Trucking Co. v. NLRB, 139 F.2d 984, 986-87 (4th Cir. 1944); NLRB v. P. Lorillard Co., 314 U.S. 512, 512-13, 62 S. Ct. 397, 397-98, 86 L.Ed. 380, 382-83 (1942), directing enforcement of In re P. Lorillard Co., 16 NLRB 684, 5 LRRM 259, 16 NLRB No. 69 (1939); NLRB v. George P. Pilling & Son Co., 119 F.2d 32, 39 (3d Cir. 1941).[5/]

A timely-filed representation petition effectively prevents the employer from lawfully continuing negotiations with the

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5/ In State of New Jersey, footnote # 20, the Commission wrote that the NLRB, which investigates and prosecutes unfair labor practice charges, has a higher standard of proof (than the Commission) for complaint issuance, exercises discretion in deciding whether to block the processing of a representation petition. The Commission, in assuming the truthfulness of allegations in a "blocking charge," applies "even more discretion" to avoid abuse of the "blocking policy" by a party desirous of holding up an election by filing "a frivolous but serious-sounding charge."

incumbent organization until the representation dispute is resolved. Leap Academy Charter School, D.R. No. 2006-17, 32 NJPER 142 (¶65 2006); County of Bergen, P.E.R.C. No. 84-2, 9 NJPER 451 (¶14196 1983). Accordingly, we are cautious about permitting an unfair practice charge to block a representation petition. Ridgefield Bd. of Ed., D.R. No. 2012-6, 38 NJPER 246 (¶82 2012).

GWU alleges that the MUA's failure to negotiate and settle grievances is seen by employees as ineffective representation by GWU and is the proximate cause of employee dissatisfaction with it. But GWU has neither reiterated that allegation in the pending representation matter (in support of its blocking request), nor provided documents or certifications from persons with personal knowledge demonstrating MUA's alleged failure to negotiate and that that failure caused GWU to loose employee support, thereby jeopardizing a free and fair election. Compare City of Atlantic City, D.R. No. 2019-10, 45 NJPER 227 (¶60 2018) (president of incumbent majority organization certified that he heard on an almost daily basis from many unit members that they were frustrated with the inability of the organization to secure a contract with the City and were therefore dissatisfied with the organization).[6/]

6/ The petition in City of Atlantic City was ultimately dismissed because the incumbent was granted an extension of (continued...)

Even if GWU certified the authenticity of the emails it provided as exhibits supporting its blocking request, it merely offers them as proof of "restraint" in the negotiations relationship without further explanation, notwithstanding a July 30, 2018 email from the MUA to GWU. GWU asserts that the email shows that MUA Executive Director Bruce Ward indicated he hadn't received "permission" from the State to negotiate collectively with GWU. But the text of the email from Ward to GWU provides that the current State administration is "still figuring out its approach to the City" and that he is "working to get the ACMUA on board for negotiations." Ward's email does not reveal or imply a refusal to negotiate collectively. I agree with AFSCME that this email and the others show, at most, that the MUA consulted and coordinated with the State.

The amended unfair practice charge alleges that the MUA has not responded to GWU demands to negotiate made after the initial charge was filed (June 24, 2019). However, the MUA cannot lawfully continue negotiations with GWU until this representation dispute is resolved. See Leap Academy Charter School; County of Bergen. Accordingly, even if these additional allegations were

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6/ (...continued)
its certification bar (see discussion below). Therefore, no determination was made whether such documentary evidence submitted by the incumbent was sufficient to otherwise block the election had the certification bar not been extended. I note, however, that GWU in this matter has not provided any documentary evidence.

included in GWU's submissions in support of its blocking request, and even if they were supported by certifications and documents, they would not warrant blocking the election.

Timeliness and Extension of Filing Bars

N.J.A.C. 19:11-2.8, "Timeliness of petitions," provides in a pertinent part:

> (b) Where there is a certified or recognized representative, a petition for certification or decertification will not be considered timely filed if during the preceding 12 months an employee organization has been certified by the Commission as the exclusive representative of employees in an appropriate unit, or an employee organization has been granted recognition by a public employer pursuant to N.J.A.C. 19:11-3.1 (Recognition as exclusive representative).

The Commission has found that "in a situation where an employer has failed to bargain in good faith during the certification bar year[,] the appropriate remedy is an affirmative order to bargain and the extension of the certification bar year for a period equivalent to the period of the refusal to bargain" – "even where the union may have lost majority adherence during the interim." Jersey City Bd. of Ed., P.E.R.C. No. 79-15, 4 NJPER 455, 456 (¶4206 1978).

In City of Atlantic City, D.R. No. 2019-10, 45 NJPER 227 (¶60 2018), the incumbent union submitted certifications and

documents showing that the City and the State had not engaged in negotiations, despite requests by the union commencing the month it was certified as the majority representative. The absence of negotiations was undisputed by the City and the State. The City acknowledged that no negotiations had occurred pursuant to the MSRA. The State asserted that although the operating conditions under the MSRA altered the terms for negotiations, it did not preclude negotiations, and the State anticipated that recent discussions would lead to formal negotiations. Based on undisputed and certified facts presented by the union regarding the lack of negotiations, I determined that it had not received the full benefit of its certification year - a reasonable period to engage in meaningful collective negotiations with the public employer. Accordingly, I directed that the certification bar be tolled and that it would run for eleven months from the date that the City was declared to no longer be a municipality in need of stabilization under the MSRA or from the date that the State, in conjunction with the City while it remained a municipality in need of stabilization, commenced uninterrupted good faith negotiations. Implicit in this order is that the MSRA does not preclude negotiations with State consent, and that a certification bar can expire after negotiations have occurred for the requisite period, even if the municipality remains one in need of stabilization.

In this case, (as noted in the above section regarding the blocking charge allegations), GWU has not filed certifications or authenticated documents showing that the MUA or the State in conjunction with the MUA, refused to engage in good faith negotiations. Although the MUA did not directly respond to GWU's submissions in support of its blocking request, it replied to the unfair practice charge, disputing GWU's allegations. AFSCME also filed documents showing that it and the MUA have engaged in good faith negotiations in the recent past.

I do not need to specifically find that the MUA and GWU engaged in good faith negotiations. Unlike the circumstances in City of Atlantic City, the exclusive representative's allegation of an absence of or a "restraint" on negotiations in this case is disputed.[7/] GWU's certification of representative was issued on October 5, 2016, and the one-year certification bar expired about 20 months ago, absent a submission of competent evidence that GWU was precluded from one year of good faith negotiations. Since

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7/ GWU cites Jersey City Bd. of Ed., but that case is distinguishable. There, a stipulated factual record showed that the employer notified the union that it would cease negotiations pending the resolution of a question concerning representation that was raised during the certification year, which the Commission found violated the Act as a matter of law. The Commission thus extended the union's certification bar as a remedy to the actual factual finding of an unfair practice.

GWU has not provided such evidence, I will not order that the certification bar be extended.[8/]

At various times in the processing of these matters, GWU characterized its request as one to extend its "contract" bar. See N.J.A.C. 19:11-2.8(c). GWU does not explain why the intended benefit of the certification bar (to give the representative a presumption of majority status for an adequate period of time to negotiate a first contract), and the policy reasons for its extension articulated in City of Atlantic City, should apply to a contract bar that starts upon execution of a collective negotiations agreement. GWU hasn't identified or submitted any "contract" it seeks to "extend." The existence of such an agreement would be inconsistent with GWU's allegation that the MUA has been precluded from negotiations with GWU. Simply put, if there is no contract, no contract bar can be extended.

The MUA submitted a copy of a MOA it and GWU signed on December 4, 2018, setting forth various substantive terms and conditions of employment and extending from January 1, 2015, through December 31, 2019. This MOA, if authentic, would constitute a contract for the purposes of the contract bar regulation, N.J.A.C. 19:11-2.8(c), and would extinguish any

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8/ Considering this rationale, I need not determine whether the MUA is actually independent of the City of Atlantic City's designation as a municipality in need of stabilization and not subject to State oversight under the MSRA.

certification bar that could otherwise be extended.[9/] AFSCME's petition is filed during the open period between the third year of the agreement and its expiration. N.J.A.C. 19:11-2.8(d). Even if GWU, absent the alleged preclusion from negotiations, would otherwise have been able to secure a new agreement with terms extending beyond December 31, 2019, AFSCME would still have been able to file its representation petition when it did. See Monmouth Cty., D.R. No. 99-3, 24 NJPER 492 (¶29229 1998) (discussing the premature extension doctrine, which provides that a new contract signed during the term of a previously executed contract can only act as a bar for the remainder of the period when the prior contract itself would have been a bar). Thus, the period of a contract before its open period does not serve the same purpose as the certification year, and a failure to negotiate before the open period does not warrant an extension of the contract bar.[10/]

9/ A contract will extinguish a certification or recognition bar even where the contract's expiration or open period will be sooner than what would have been the certification or recognition bar's expiration, resulting in no active bar at all. See Upper Tp., D.R. No. 80-27, 6 NJPER 118 (¶11063 1980), Greater Egg Harbor Reg. H.S. Dist., D.R. No. 88-27, 14 NJPER 100 (¶19036 1988).

10/ A failure to negotiate a successor contract may warrant blocking an election (as opposed to dismissing the petition as untimely due to an extended bar) if documentary evidence shows a nexus between the failure to negotiate and a fair election, but as explained in the section above regarding GWU's blocking charge allegations, such a nexus was not

(continued...)

Showing of Interest

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 . . . . or other evidence approved by the director of representation. . . .

Although a "showing of interest" may include authorization cards, it is a term specifically identified as those materials accompanying a petition seeking certification by election. N.J.A.C. 19:10-1.2(a)(9). North Bergen Tp., D.R. No. 2010-3, 35 NJPER 244 (¶88 2009), aff'd P.E.R.C. No. 2010-37, 35 NJPER 435 (¶143 2009). A showing of interest differs from authorization cards submitted to support a petition for certification by card check. North Bergen Tp. A showing is required merely to justify a secret ballot election. North Bergen Tp. It "ensur[es] that sufficient interest exists among employees on behalf of the

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10/ (...continued) demonstrated.

petitioner to warrant the expenditure of Commission resources in processing the petition . . . [I]t is uniquely an administrative concern." Jersey City Medical Center, D.R. No. 83-19, 8 NJPER 642, 643 (¶13308 1982).

A showing of interest is not subject to collateral attack. N.J.A.C. 19:11-2.1. The primary reason why it cannot be attacked is that an election will cure any doubt that may have arisen about the showing's validity. We have held:

> . . . [I]t is inappropriate in a representation forum to permit parties to litigate allegations that authorization cards have been procured by fraud, misrepresentation, or coercion or that they have been revoked or that they are stale. Rather, we have determined that the best method to discover employees true choice as to which organization, if any, they wish to designate as their negotiations representative is by providing employees a secret ballot election. [Borough of Paramus, D.R. No. 95-11, 21 NJPER 25, 26 (¶26015 1994)]

See also, State of New Jersey; Essex County, D.R. No. 85-25, 11 NJPER 433, 436 (¶16149 1985) (". . . the question concerning the representational desires of the employees raised herein can best be answered by the conduct of a secret ballot election by this Commission.").

As explained by the Director in North Bergen Tp.:

> When a legitimate and substantial doubt has been raised about the validity of authorization cards

> submitted for a card check certification, an election – not a hearing on the validity of the cards - is the appropriate administrative response. A hearing will unduly delay the employees' opportunity to resolve the question concerning representation. Unlike a secret ballot election, a hearing will likely require employees to openly disclose their support for - or against - [an employee organization], a circumstance that would be inconsistent with the intent of the Act and the secret ballot process. N.J.A.C. 19:11-2.1; N.J.A.C. 19:11-10.3(b); N.J.A.C. 19:11-10.3(f). An election by contrast, will promptly and curatively gauge the intent of the card signers and will better preserve the "laboratory conditions" under which their intent should be gauged. East Windsor Tp., D.R. No. 79-13, 4 NJPER 445, 447 (& 4202 1979); see also, General Shoe Corp., 77 NLRB 124, 21 LRRM 1337 (1948). [North Bergen Tp.]

In City of Jersey City, E.D. No. 76-19, 2 NJPER 30 (1976), aff'd P.E.R.C. No. 76-21, 2 NJPER 58 (1976) (affirming substantially for the reasons stated by the Executive Director), the Executive Director, though noting that some doubt had been raised as to the validity of the petitioner's showing of interest in the face of affidavits from employees alleging forgery and misrepresentation, nevertheless directed an election after being satisfied that the showing was adequate to justify the continued processing of the petition, because an election was the preferred

method for ascertaining the free choice of the employees. The Executive Director explained:

> The Commission believes that the strict confidentiality of the showing of interest is an essential element of the protection afforded public employees. Employees must feel secure that the Commission's processes cannot be used to gain access to the names of those who may have expressed some dissatisfaction with the status quo. The holding of a full evidentiary hearing into the adequacy of the showing of interest, at any time, but especially prior to a self-determination election, would permit an objecting party to make a fishing expedition in the hope of discovering the very information which the Act is designed to protect. Even if their attempt would prove unsuccessful the very existence of the hearing could create an atmosphere potentially disruptive of the free exercise by the employees of their right to choose their majority representative.
>
> The reason for requiring that a showing of interest accompany a representation petition is to satisfy the Commission that sufficient interest exists to merit the processing of the petition. The showing of interest is therefore an administrative device designed for the convenience of the Commission.
>
> Certainly, the Commission has an obligation, when the showing of interest is questioned, to satisfy itself that its processes are not being abused. But such satisfaction is a ministerial act reserved to the Commission. The object of such an investigation is not to ascertain

> whether the petitioning party still has the same support it did when it filed, or even to resolve each challenge to the showing of interest raised by the objecting party. The true desires of the employees involved, which is the essential question to be resolved, will best be ascertained by the holding of an election, not by drawn out evidentiary hearings. [E.D. No. 76-19]

GWU alleges that some of the authorization cards submitted by AFSCME as a portion of its showing of interest were forged and it believes that AFSCME has not obtained the interest of 30% of the unit employees. GWU requests a hearing to determine the facts. I presume that GWU also requests that the election be blocked until the resolution of such hearing, and that AFSCME's petition be dismissed if it were determined that AFSCME did not have the interest of 30% of the unit employees at the time it filed the petition.

GWU submitted petitions purportedly signed by various unit employees stating that they did not sign authorization cards for AFSCME; that if any contrary representation has been made, it has been made falsely; and that they do not believe 30% of the unit employees have an interest in representation by AFSCME.

These statements are not presented as certifications or affidavits. By contrast, in City of Jersey City, individual employees submitted signed and notarized affidavits alleging

forgery and misrepresentation. Regardless, for the reasons explained in City of Jersey City, I decline to order a hearing. Instead, I direct an election because it is the best method to ascertain the desires of the employees.

Accordingly, I issue the following:

ORDER

A secret mail ballot election is directed among the employees in the following unit:

> **Included**: All regularly employed blue collar employees employed by the Atlantic City Municipal Utilities Authority.[11/]
>
> **Excluded**: Managerial executives, confidential employees, and supervisors within the meaning of the Act; craft employees, professional employees, police, and casual employees; and all other employees employed by the Atlantic City Municipal Utilities Authority.

The parties will have an opportunity to agree upon the designations on the ballot, the eligibility period for participation in the election, and the dates for the election,

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11/ We certified this unit description following the previous election among these employees (Dkt. No. RO-2017-002). It is not inconsistent with AFSCME's current petition, although it seeks to include certain example titles. The parties may agree to a unit description that includes these examples. However, in the absence of agreement (and because no party has otherwise raised an objection to the existing unit description), I will likely direct an election for employees in this prima facie appropriate unit.

including when the ballots will be mailed by the Commission, when they must be returned to our post office box and when the count will take place. In the absence of the parties' agreement, I shall determine those arrangements. The eligibility list from the public employer must be received no later than 10 days before the date the ballots will be mailed by the Commission. N.J.A.C. 19:11-4.1, -5.1. -10.1. Eligible voters are those meeting the requirements of N.J.A.C. 19:11-10.3(c).

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

/s/ Jonathan Roth
Jonathan Roth
Director of Representation

DATED: July 16, 2019
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 July 26, 2019.