

D.R. NO. 94-25

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

In the Matter of

ATLANTIC COUNTY UTILITIES
AUTHORITY,

Public Employer,

-and-

Docket No. RO-93-110

IUOE LOCAL 68,

Petitioner.

SYNOPSIS

On remand from the Commission, the Director of Representation dismisses two election objections filed by IUOE Local 68 against Atlantic County Utilities Authority. The first objection alleged that the employer evaluated employees and implemented wage increases in order to induce employees not to select Local 68 as their collective negotiations representative. The second objection alleged that the Authority threatened to subcontract its operations, terminate its employees and reduce existing benefits in the event employees elected Local 68 as the majority representative. The Director finds that the allegations are unsupported and meritless.

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Appearances:

For the Public Employer,
Blank, Rome, Comisky & McCauley, Attorneys
(Jeffrey E. Meyers, of counsel)

For the Petitioner,
Kroll & Gaechter, Attorneys
(Raymond G. Heineman, of counsel)

DECISION AND ORDER

On March 19, 1993, I issued a decision, D.R. 93-18, 19 NJPER 185 (¶24091 1993) certifying the results of a representation election conducted among employees of a broad-based unit of employees of the Atlantic County Utilities Authority. That decision also dismissed objections to the election filed by the International Union of Operating Engineers, Local 68, the union that had filed the initial representation petition.

Local 68 then requested review of this decision with the Public Employment Relations Commission. The Commission granted Local 68's request for review and in P.E.R.C. No. 94-6, 19 NJPER 416

(¶24185 1993) remanded two objections, identified as objection 3 and 4, to me, ordering that they be considered on their merits.

Objection 3 provides:

Since on or about January 14, 1993 the employer evaluated employees and implemented wage increases in order to induce employees not to select Local 68 as their collective negotiations representative.

Specifically, it granted level 2 pay increases to certain employees in order to induce them to refrain from supporting Local 68 and granted the level 1 pay increases to avowed union supporters.

Objection 4 provides:

Since on or about December 21, 1992, the Employer, through Brian Lefke, Donald Smith, Salvatore Celano and other of its supervisors, threatened variously to subcontract its operations, terminate its employees and unilaterally reduce existing benefit levels in the event they selected Local 68 as their negotiations representative.

Objections 3 and 4 were also the subject of unfair practice charges, CO-H-93-185 and CO-H-93-257, respectively. CO-H-93-257 was scheduled to be heard by Hearing Examiner Stuart Reichman.

CO-H-93-185 was heard by Hearing Examiner Alan Howe on June 15, 16 and July 23, 1993^{1/} On August 30, 1993, I informed Local 68 and the Authority that I would wait for the Recommended Reports and Decisions by Hearing Examiners Reichman and Howe before making my decision on the objections.

^{1/} Hearing Examiner Howe also heard another charge filed by Local 68 against the Authority, CO-H-93-293, on this date.

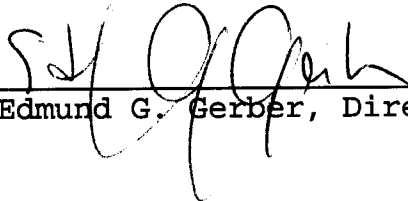
On November 24, 1993, Local 68 withdrew CO-H-93-257. It informed me that with respect to objection 3, it would rely solely on the affidavit of Robert Carter and the evidence of a denial of a step 2 raise to him addressed at the hearing conducted by Hearing Examiner Howe.

On February 10, 1994, Hearing Examiner Howe issued his Report and Recommended Decision, H.E. No. 94-15, 20 NJPER ____ (¶ 1994). He recommended dismissing CO-H-93-185. On March 29, 1994, the Commission adopted this decision, P.E.R.C. No. 94-97, ____ NJPER ____ (¶ 1994).

With respect to objection 3, I find that Local 68 failed to present sufficient evidence to support its objection. Local 68 had the opportunity to present evidence on this objection at the hearing on CO-H-93-257 that was scheduled before Hearing Examiner Reichman; however, it withdrew its charge prior to hearing. It now simply relies on Carter's affidavit and certain testimony at the hearing in CO-H-93-185. Upon review of the affidavit and the relevant testimony, I do not find any evidence that precisely and specifically shows that conduct has occurred which would warrant setting aside the election as a matter of law. The cited evidence merely shows that Robert Carter received a step 1 increase, rather than a step 2 increase. It does not show that the denial of a step 2 increase was in any way related to his support for Local 68. Moreover, further testimony at the hearing on CO-H-93-257 revealed that the majority of employees in the unit received step 1 and not step 2 increases. Accordingly, I dismiss objection 3.

As to objection 4, Local 68 presented evidence at the hearing in CO-H-93-185 in support of this objection. Hearing Examiner Howe found however that the speeches made by the Authority's agents were non-coercive and without promise of benefit and recommended dismissing the allegations against the Authority. On March 29, 1994, the Commission adopted his decision. Upon review of Hearing Examiner Howe's Recommended Report and Decision and the Commission's adoption of it, I can not conclude that the Authority's agents made the threats alleged by Local 68. Accordingly, I also dismiss objection 4.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Edmund G. Gerber, Director

DATED: May 3, 1994
Trenton, New Jersey