

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

In the Matters of

BOROUGH OF ATLANTIC HIGHLANDS

Public Employer,

-and-

ATLANTIC HIGHLANDS MUNICIPAL
EMPLOYEES ASSOCIATION

DOCKET NO. RO-85-121

Petitioner,

-and-

TEAMSTERS LOCAL NO. 11, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS,

Intervenor.

BOROUGH OF ATLANTIC HIGHLANDS

Public Employer,

-and-

ATLANTIC HIGHLANDS SUPERVISORY
EMPLOYEES ASSOCIATION,

DOCKET NO. RO-85-138

Petitioner,

-and-

LOCAL NO. 711, INTERNATIONAL
FEDERATION OF LABOR UNIONS,

Intervenor.

SYNOPSIS

The Director of Representation orders that an election be conducted in separate units of blue collar municipal employees and supervisory blue collar employees of the Borough of Atlantic Highlands. Unfair practice charges filed by the respective incumbent organizations were found not to have a "blocking effect" on the processing of the representation petitions to a free and fair election in each of the collective negotiations units.

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Appearances:

For the Public Employer
Morton P. Kramer, Esq.

For the Petitioner Municipal Employees Association
Robert Dougherty, Representative

For the Petitioner Supervisory Employees Association
Edward Sims, Representative

For the Intervenors
Schneider, Cohen & Solomon, Esqs.
(Bruce D. Leder of counsel)

DECISION AND DIRECTION OF ELECTIONS

On February 26, 1985, the Atlantic Highlands Municipal Employees Association ("MEA") filed a Petition for Certification of Public Employee Representative with the Public Employment Relations Commission ("Commission") seeking to represent nonsupervisory and supervisory employees in the Water, Sewer, Street, Harbor, Sanitation and Mechanical Departments including water treatment operator of the Borough of Atlantic Highlands ("Borough"). On April 8, 1985, the MEA filed an amendment to the Petition to exclude the supervisory employees, and those employees were simultaneously petitioned for by the Atlantic Highlands Supervisory Employees Association ("SEA") in Docket No. RO-85-138.

Local 11, International Brotherhood of Teamsters ("Local 11") requested to intervene in the matter of the Petition for

nonsupervisory employees (Docket No. RO-85-121). Local 11 is party to a collective negotiations agreement with the Borough covering the period from October 15, 1982 through December 31, 1984, for the following collective negotiations unit:

...all blue collar employees employed by the Borough of Atlantic Highlands in the Street, Water and Sewer, Harbor and Sanitation Departments excluding all office clerical and supervisory employees.

Local 711, International Federation of Labor Unions ("Local 711"), has requested to intervene in the matter of the petition for supervisory employees (Docket No. RO-85-138). Local 711 has a collective negotiations agreement with the Borough covering the period from October 15, 1982, through December 31, 1984, for the following collective negotiations unit:

...all supervisory employees employed by the Borough of Atlantic Highlands in the Street, Water and Sewer, Harbor and Sanitation Departments excluding all clerical, non-supervisory employees, confidential, and managerial executives.

Based upon these recently expired agreements covering the petitioned-for employees, we granted the requests of Local 11 and Local 711 to intervene in these matters pursuant to N.J.A.C. 19:11-2.8.

The Borough states that it is willing to consent to a secret ballot election to be conducted among the employees in each

of the petitioned-for units to determine their choice of majority representative. The MEA and the SEA have each urged that the elections sought by their respective Petitions be conducted among the employees in each of the petitioned-for units. Local 11 and Local 711 do not consent to such elections. Local 11 and Local 711 each filed unfair practice charges with the Commission alleging the Borough lent illegal assistance to the Petitioner. ^{1/} They both argue that the unfair practice charges should first be adjudicated before a free and fair election can be conducted among the employees.

I have caused an administrative investigation to be conducted into the matters and allegations raised by the filing of these petitions in order to determine the facts. The following facts appear:

1. The disposition of this matter is properly based upon the administrative investigation conducted herein, there being no substantial and material factual issues in dispute which would necessitate the convening of an evidentiary hearing.
2. The Borough of Atlantic Highlands is a public employer within the meaning of the New Jersey Employer-Employee Relations

^{1/} Local 11's unfair practice charge has been docketed as CO-85-252 and Local 711's unfair practice charge has been docketed as CO-85-253.

Act, N.J.S.A. 34:13A-1.1 et seq. ("Act"), is subject to its provisions and is the employer of the employees who are the subject of these Petitions.

3. The Atlantic Highlands Municipal Employees Association, the Atlantic Highlands Supervisory Employees Association, and Local 11, International Brotherhood of Teamsters and Local 711, International Federation of Labor Unions are employee organizations within the meaning of the Act and are subject to its provisions.

4. The MEA is seeking to represent a collective negotiations unit of blue collar employees coincident with the unit currently represented by Local 11. The SEA is seeking to represent a unit of all supervisory employees coincident with the unit currently represented by Local 711. The petitions are supported by adequate showings of interest and appear to be timely filed under the Commission's Rules.

Local 11 and Local 711 have each filed unfair practice charges against the Borough and have asserted that those charges should block the processing of the representation petitions ^{2/} In their unfair practice charges, as amended, the Charging Parties allege that on or about January 9, 1985, the Borough, through its

^{2/} Both charges were amended on April 26, 1985, to cure the deficiencies referred to in the letter of April 17, 1985.

agent, Borough Clerk Ruth Carusoe, lent illegal assistance to the petitioning organization(s), by aiding in the preparation of the representation petition and thereby violated N.J.S.A.

34:13-5.4(a)(2).^{3/} In correspondence dated April 17, 1985, we advised the Charging Parties that the Commission does not automatically accord blocking effect to pending unfair practice charges where there is a properly filed representation petition pending before the agency. The Commission's policy is to require that a Charging Party provide (a) affidavits and other documentary evidence supportive of the claim that the events underlying the alleged unfair practice conduct prevents the conduct of a free and fair election; and (b) a statement of position which clearly articulates the nexus between the alleged unfair practice and the conduct of a free and fair election. See, In re Cty. of Essex, D.R. No. 85-25, 11 NJPER ____ (¶ ____ 1985); In re City of Newark, D.R. No. 85-24, 11 NJPER 344 (¶16126 1985); In re State of New Jersey, P.E.R.C. No. 81-14, 7 NJPER 105 (¶12046 1981), mot. for recon. den. P.E.R.C. No. 81-95, 7 NJPER 133 (¶12056 1981).

In support of their claim, Local 11 and Local 711 have submitted affidavits signed by the Locals' business agents, Grasso

^{3/} N.J.S.A. 34:13A-5.4(a)(2) prohibits public employers, their representatives or agents from: "Dominating or interfering with the formation, existence or administration of any employee organization."

and Sciari, which reiterate the general claim that the Borough Clerk lent assistance to the MEA. Enclosed with the affidavit, apparently as a documentary proffer in support of that claim, was a copy of a letter dated January 9, 1985, from the MEA to the Mayor and Borough Council. That letter was notarized by Borough Clerk Ruth Carusoe.

Based upon the above, it appears that the only fact proffered by the Charging Parties in connection with their charges is that the Borough Clerk notarized the letter statement submitted by certain unit employees to the Mayor and Council. Standing alone, such a proffer is an insufficient basis upon which to block the processing of a properly filed representation petition; it is difficult to see how the Borough Clerk's action in notarizing one letter has unduly influenced the employees in the units. It would seem that under the alleged circumstances, free and fair elections can be conducted in these two units. Accordingly, I hereby deny the Charging Parties' requests that the instant charges block the processing of the representation petitions filed by the MEA and SEA.

I find that the following units are appropriate for purposes of collective negotiations:

Docket No. RO-85-121

All blue collar employees employed by the Borough of Atlantic Highlands, but excluding supervisors within the

meaning of the Act, clerical employees, confidential employees, craft employees, managerial executives, and police.

Docket No. RO-85-138

All blue collar supervisors employed by the Borough of Atlantic Highlands, but excluding nonsupervisory employees, managerial executives, confidential employees, craft employees, clerical employees, and police.

Pursuant to N.J.A.C. 19:11-2.6(b)(3), I direct that an election be conducted among the employees in the collective negotiations units described above in order to ascertain their representational desires. The election shall be conducted no later than thirty (30) days from the date of this decision.

Those eligible to vote are the employees in the units set forth above who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation, or temporarily laid off, including those in 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 me and an eligibility list consisting of an alphabetical listing of the names of all eligible voters in each unit, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by me no later than ten (10) days prior to the date of the election. A copy of the eligibility lists shall be simultaneously filed with the employee organizations with a statement of service to me. I shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

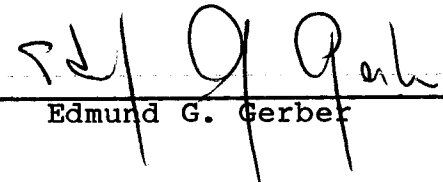
Those eligible to vote in the nonsupervisory unit shall vote on whether or not they desire to be represented for the purpose of collective negotiations by the Atlantic Highlands Municipal Employees Association or by Teamsters Local No. 11, International Brotherhood of Teamsters, or neither.

Those eligible to vote in the supervisory unit shall vote on whether or not they desire to be represented for the purpose of collective negotiations by the Atlantic Highlands Supervisors Association or by Local No. 711, International Federation of Labor Unions, or neither.

The exclusive representatives, if any, shall be determined by the majority of valid ballots cast by the employees voting in

each election. The election shall be conducted in accordance with the provisions of the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Edmund G. Gerber

DATED: August 9, 1985
Trenton, New Jersey