

D.R. NO. 90-15

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

In the Matter of

SOUTH JERSEY PORT CORPORATION,

Respondent,

-and-

Docket Nos. RD-90-2
CE-H-89-21
CO-H-89-61

WATCHMENS AND GUARDS UNION, AFL-CIO

Charging Party.

SYNOPSIS

On remand, the Director of Representation blocks the processing of a decertification petition based on supporting documentary evidence submitted by the union. The Director finds that the charge's allegations as supported by the submitted evidence, if true, would tend to interfere with the conduct of a free and fair election.

D.R. NO. 90-15

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

In the Matter of

SOUTH JERSEY PORT CORPORATION,

Respondent,

-and-

Docket Nos. RD-90-2
CE-H-89-21
CO-H-89-61

WATCHMENS AND GUARDS UNION, AFL-CIO

Charging Party.

Appearances:

For the Respondent,
Appruzzese, McDermott, Mastro & Murphy, Esqs.
(Maurice Nelligan, Jr., of counsel)

For the Charging Party,
O'Donnell & Schwartz, Esqs.
(Catherine Minuse, of counsel)

DECISION ON REMAND

By letter decision dated September 28, 1989, I found that an unfair practice charge filed with the Public Employment Relations Commission ("Commission") by the Watchmen's and Guard's Union ("Union") (CO-89-61) blocked the processing of a decertification petition filed by employee Paul Honey (RD-90-2). On October 16, 1989, the South Jersey Port Corporation ("Corporation") requested review of my decision by the Commission. It argued that no required documentary evidence was filed to support the Union's request to block. On November 21, 1989, the Commission, citing


Matawan-Aberdeen Reg. Sch. Dist., P.E.R.C. No. 89-69, 15 NJPER 68 (¶20025 1988), remanded the case to me to solicit and review evidence in support of the Union's request to block the processing of the decertification petition.

On December 19, 1989, the Union submitted two affidavits and other documentary evidence in support of its request to block. I have reviewed the material submitted and find that it supports the allegations of the Union's charge. I further find the charge's allegations as supported by the submitted evidence, if true, would tend to interfere with the conduct of a free and fair election.

Accordingly, for the reasons set forth in my September 28, 1989, letter decision (Appendix A), I will continue to block the processing of decertification petition RD -90-2.

Ultimately, the veracity of these allegations will be decided by the Commission after a full hearing in the unfair practice charge. However, at this stage of the proceedings, no findings of fact can be made.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Edmund G. Gerber
Director of Representation

DATED: December 21, 1989
Trenton, New Jersey



STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

CN 429
495 WEST STATE STREET
TRENTON, NEW JERSEY 08625 0429

UNFAIR PRACTICE/REPRESENTATION
(609) 292-6780

ADMINISTRATION/LEGAL
(609) 292-9830

CONCILIATION/ARBITRATION
(609) 292-9898

September 28, 1989

Maurice J. Nelligan, Esq.
Apruzzese, McDermott, Mastro
& Murphy
P.O. Box 329
500 Morris Avenue
Springfield, NJ 07081

Manlio Di Preta, Esq.
O'Donnell and Schwartz
Lincoln Building, Suite 1022
60 East 42nd Street
New York, NY 10165

Paul Hohney
450 Trenton Avenue
Camden, NJ 08103

Re: South Jersey Port Corp
-and-
Watchmen's and Guards
Union, AFL-CIO
Docket Nos. CO-H-89-61;
CE-H-89-21;
RD-90-2

Gentlemen:

On September 5, 1989, Paul Hohney filed a petition seeking to decertify the Watchmens and Guards Union ("Union") as the majority representative of all guards employed by the South Jersey Port Corporation ("Corporation"). By letter dated September 14, 1989, the Union requested that the processing of this petition be blocked pending the resolution of its unfair practice charge docketed as CO-H-89-61. On September 20, 1989, Hohney responded arguing against a block. The Corporation takes no position on the blocking issue.

APPENDIX "A"

The Commission does not automatically accord blocking effect to unfair practice charges. Rather, the party requesting the block must establish that there is a nexus between the allegations in the charge and the conduct of a free and fair election. State of New Jersey, D.R. No. 81-20, 7 NJPER 41 (¶12019 1980), aff'd P.E.R.C. No. 81-94, 7 NJPER 105 (¶12044 1981), mot. for reconsid. den. P.E.R.C. No. 81-95, 7 NJPER 133 (¶12056 1989).

In State of New Jersey, P.E.R.C. No. 81-94, the Commission noted that the following factors are applicable in determining whether to block.

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 R case by the charging party; and the timing of the charge. (NLRB Case Handling Manual, Section 1173.5).

Here, the Union alleged in its charge that the Corporation refused to continue contract negotiations because it maintained that the Union no longer represented a majority of the bargaining unit. The charge further alleges that the Corporation failed to make and maintain proper dues and initiation fees deductions; posted a notice in the work place unilaterally increasing the hourly salary rate for guards and indicating the the Union was no longer recognized; recruited anti-union employees and engaged in a long-term program aimed at reducing the number of union members and coerced new employees into signing a statement declaring that they have not joined the union.

Hohney alleged that the union does not represent a majority of the employees in the bargaining unit and that he has seen no evidence of employer coercion regarding union membership. Hohney further argued that even if the union claims are true, the employees requesting decertification were not affected by these actions and accordingly an election should be held. I disagree. When viewed as a whole the alleged Corporation actions, if true, could tend to have a profound effect on the continued viability of the majority representative. While Hohney makes assertions to the contrary, such a determination cannot be made without a full hearing on the unfair practice charge.

Accordingly, I find that the allegations in the charge bear a nexus to the conduct of an election among the unit to warrant blocking effort.

Ultimately, the veracity of the these allegations will be decided by the Commission after the full hearing in the unfair practice charge. A hearing examiner will first make credibility judgments as to the sufficiency of the proofs and make findings of fact concerning the merits of the allegations. At this stage of the proceedings, no findings of fact can be made. Rather, I find the character of the charge's allegations, if ultimately proven, would tend to interfere with the conduct of a free and fair election.

Very truly yours,



Edmund G. Gerber
Director of Representation
and Unfair Practices

EGG:ahs