

D.R. NO. 87-9

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

In the Matter of

COUNTY OF ATLANTIC,

Public Employer,

-and-

JERSEY NURSES ECONOMIC
SECURITY ORGANIZATION,

DOCKET NO. AC-86-2

Petitioner,

-and-

NEW JERSEY STATE NURSES ASSOCIATION,

Intervenor.

Appearances:

For the Public Employer
Pachman & Glickman, Esqs.
(Martin R. Pachman of counsel)

For the Petitioner
Zazzali, Zazzali & Kroll
(Albert G. Kroll of counsel)

For the Intervenor
Sterns, Herbert & Weinroth
(Michael J. Herbert of counsel)

DECISION

On February 24, 1986, the Jersey Nurses' Economic Security Organization ("JNESO") filed a Petition for Amendment of Certification with the Public Employment Relations Commission ("Commission") seeking to amend the Certification of Representative issued in County of Atlantic, Docket No. RO-79-74.

In accordance with N.J.A.C. 19:11-2.2, an administrative investigation was conducted concerning this matter. On June 20, 1986, a Commission staff attorney convened an informal conference during which representatives of the Petitioner JNESO, and the Intervenor, New Jersey State Nurses' Association ("NJSNA"), met for the purpose of setting forth their respective positions. In a previously submitted statement, the County of Atlantic took the position that it considered the Petition to be a matter solely concerned with the internal affairs of the employee organization and, consequently, would maintain a position of neutrality. The County did not attend the informal conference.

In correspondence dated October 24, 1986, we advised the parties that on the basis of the factual information before us, we were inclined to grant the petition for Amendment of Certification filed by JNESO. We set forth our rationale for this determination and invited the parties to file a response within the time frame established. None of the parties has filed a response.

The NJSNA is opposed to the amendment of certification sought by JNESO. The NJSNA takes the position that JNESO is a component of the NJSNA, not an independent employee organization. Consequently, it argues that JNESO should not be accorded the exclusive representational rights which it seeks through the amendment of certification process.

JNESO takes the position that it is an independent employee organization which was affiliated with the NJSNA. JNESO contends

that it took the appropriate steps to disaffiliate with the NJSNA and now merely wishes to amend the certification in order to accurately reflect the current circumstance.

The administrative investigation shows that on February 27, 1979, a Certification of Representative was issued to "JNESO of New Jersey State Nurses Association" for a unit of all registered professional nurses employed by Atlantic County. Since the certification issued, JNESO has represented unit employees in collective negotiations and contract administration. The investigation also indicates that prior to filing the Amendment of Certification Petition, JNESO notified unit employees that it would conduct a secret ballot vote concerning whether JNESO should disaffiliate with NJSNA. A secret ballot vote was conducted and resulted in a majority of voters casting ballots in favor of disaffiliation. The composition of the unit, the officers and the membership of the organization continue unchanged. While NJSNA takes the position that JNESO should not have conducted a disaffiliation vote, NJSNA states that it has no evidence of any procedural irregularity regarding the conduct of the vote. Accordingly, there appears to be no dispute that JNESO has conducted a fair and free disaffiliation vote and fulfilled the Commission's requirements that the disaffiliation vote be conducted with adequate due process safeguards. Further, it appears that substantial continuity has been maintained in the collective negotiations unit and in the employee organization, before and after the

disaffiliation vote. See, Ocean County Utilities Authority, D.R. No. 83-15, 8 NJPER 598 (§ 13279 1982); Dover Bd. of Ed., D.R. No. 83-1, 8 NJPER 460 (§ 13214 1982); and New Jersey State Police, D.R. No. 82-23, 7 NJPER 667 (§ 12300 1981).^{1/} Thus, under all the circumstances of this case -- where a fair and regular secret ballot disaffiliation vote was conducted and the unit composition, organization officers and membership continue unchanged -- no question concerning representation has been raised. Accordingly, the requested amendment of certification is appropriate.

The NJSNA brought an action in United States District Court challenging JNESO's disaffiliation. In response, JNESO filed a motion with the court seeking a preliminary injunction restraining NJSNA from, among other things, interfering with JNESO in the conduct of its collective bargaining activities. In granting the preliminary injunction, the court specifically concluded that JNESO "...has established a good likelihood of success on the merits of

^{1/} In St. Michael's Medical Center (NLRB Case No. 22-AC-38, 5/21/80), a private sector case nearly identical to the instant matter, JNESO filed an Amendment of Certification Petition in which it sought to substitute its name on the Certification for that of the "Jersey Nurses Economic Security Organization of the New Jersey State Nurses Association." The certified unit was comprised of all eligible registered and graduate nurses employed by St. Michael's Medical Center. After an administrative investigation, the Regional Director of the National Labor Relations Board issued a decision granting JNESO's Amendment of Certification Petition. The NJSNA's request for review of the Regional Director's decision by the full Board was denied on the basis that it raised "...no substantial issues warranting review."

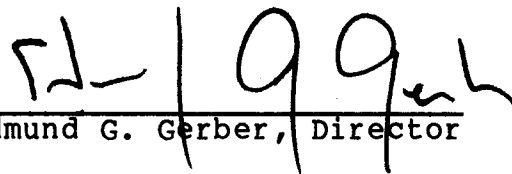
its claim that it had the right to disaffiliate from NJSNA." New Jersey State Nurses Ass'n v. Treacy, et al., Civil Action No. 85-4912, slip. op. pp. 3-4 (D.N.J., December 4, 1985). In reaching its conclusion, the court stated:

The courts of New Jersey, see, e.g., Harker v. McKessock, 7 N.J. 323, 329 (1951); International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America v. Becherer, 4 N.J. Super. 456, 459 (1949), as well as elsewhere, see, e.g., International Bh'd of Pulp, Sulphite and Paper Mill Workers, AFL-CIO v. Delaney, 442 P.2d 250, 258 (Wash. 1968) have held that in defining the relative rights of a parent labor organization and its subsidiary, the courts are to place primary reliance on the constitution and bylaws of those organizations, and are to afford those documents the same controlling force as they would the terms of a contract. In this instance, the NJSNA constitution is silent as to the right of a subsidiary such as JNESO to disaffiliate. Plaintiff [NJSNA] would have the court read such silence as a [sic] implicit prohibition against disaffiliation. The court, however, agrees with defendant's reading of such cases as Harker, which indicate that in the absence of constitutional provisions which affirmatively indicate 'a purpose to fuse once and for all' the subsidiary into the parent, 'and thereby preclude the local autonomy and separate existence characteristic of a voluntary affiliation dependent for its continuance upon the will of the parties,' id. at 329, the proper approach is to read the constitution to permit disaffiliation. New Jersey State Nurses Association, supra, slip op. at 4.

Our investigation has revealed nothing that would lead us to reach a result different from that of the District Court. We note that on appeal, the Third Circuit Court of Appeals has affirmed the District Court's grant of the preliminary injunction. New Jersey State Nurses Assn. v. Treacy, et al., Case No. 85-5840 (3rd Cir. August 7, 1986).

Accordingly, for the reasons set forth above, the Certification of Representative is hereby amended to reflect that the name of the exclusive representative of employees employed by the County of Atlantic and included in the unit previously described in this decision is the Jersey Nurses' Economic Security Organization.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: November 7, 1986
Trenton, New Jersey