

D.R. NO. 88-25

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

In the Matter of

COUNTY OF PASSAIC
PREAKNESS HOSPITAL,

Public Employer,

-and-

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
PREAKNESS HOSPITAL SUPERVISORS'
LOCAL, AFL-CIO,

Petitioner,

Docket No. RO-88-29

-and-

LOCAL 711, INTERNATIONAL FEDERATION
OF LABOR UNIONS,,

Intervenor.

SYNOPSIS

The Director of Representation finds that newly hired probationary employees are eligible to vote and orders an election among non-professional supervisors. The Director determines that the Petitioner's unfair practice charges, alleging that the County hired these new employees to undermine AFSCME's majority status, should not block the election. The Director rejected the requested blocking effect of the charge based upon its belated timing and its lack of evidentiary support.

D.R. NO. 88-25

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

In the Matter of

COUNTY OF PASSAIC
PREAKNESS HOSPITAL,

Public Employer,

-and-

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
PREAKNESS HOSPITAL SUPERVISORS'
LOCAL, AFL-CIO,

Petitioner,

Docket No. RO-88-29

-and-

LOCAL 711, INTERNATIONAL FEDERATION
OF LABOR UNIONS,,

Intervenor.

Appearances:

For the Public Employer
Thomas Lauricella, Hospital Director

For the Petitioner
Kirschner, Walters & Willig, Esqs.
Sidney H. Lehmann, Of Counsel

For the Intervenor
Schneider, Cohen, Solomon,
Leder & Montalbano, Esqs.
Bruce Leder, Of Counsel

DECISION

On September 22, 1987, American Federation of State, County
and Municipal Employees, Preakness Hospital Supervisors' Local

("AFSCME") filed a timely Petition for Certification of Public Employee Representative, accompanied by an adequate showing of interest, with the Public Employment Relations Commission ("Commission"). AFSCME seeks to represent an existing unit of non-professional supervisory employees employed by the County of Passaic at Preakness Hospital ("Hospital"). These supervisors are currently represented by Local 711, International Federation of Labor Unions ("Local 711").

We have conducted an administrative investigation to determine the facts. At an informal conference on October 21, 1987,^{1/} the parties agreed to permit the Commission to conduct an election among employees in the unit to determine their bargaining representative. However, the parties were unable to agree upon voter eligibility for the election. The facts in this matter are as follows:

1. The County of Passaic is a public employer within the meaning of the Act and operates the Preakness Hospital.
2. AFSCME, Preakness Hospital Supervisors' Local is an employee representative within the meaning of the Act. It is a qualified organization to represent supervisors.
3. From 1971 until 1985, the supervisors were represented by AFSCME, Preakness Hospital Supervisors' Local.^{2/}

^{1/} The conference originally scheduled for October 7 was postponed at the request of Local 711 with the consent of all parties.

^{2/} Then known as Local 2313.

4. Local 711, IFLU is an employee representative within the meaning of the Act. It has also qualified to represent supervisors. ^{3/} Local 711 was certified as the majority representative of the Hospital's non-professional supervisors on May 14, 1985. Local 711 intervened^{4/} in this matter based upon its collective negotiations agreement covering the employees, which expired on December 31, 1986.

5. At the time of the Commission election in 1985, there were 7 employees in this unit. Subsequent to the certification of Local 711, the scope of the unit was expanded twice by agreement of all parties.^{5/}

At the time of this Petition's filing on September 22, 1987, there were 15 employees in the supervisors unit. At a conference conducted on October 22, the Hospital submitted a list of

^{3/} The Commission requires that an organization seeking certification for a unit of supervisors must certify that it is a separate organizational entity from any non-supervisory affiliates and has no non-supervisory employees as members. N.J.S.A. 34:13A-5.3 and City of Camden, P.E.R.C. No. 82-89, 8 NJPER 226 (¶13094 1982). Both organizations met these requirements by December 14, 1987.

^{4/} See N.J.A.C. 19:11-2.7.

^{5/} In June 1986, the supervisors' unit was clarified by agreement of the parties to include 6 previously unrepresented titles: Director of Volunteers, Director of Patient Activities, Assistant Director of Patient Activities, Director of Food Services, Assistant Director of Food Services, Director of Social Services (Commission Docket No. CU-86-37). In January 1987, the parties recognized the addition of the following 4 titles to the supervisors unit: Food Production Foreman, Food Services Foreman, Food Manager, and Building Maintenance Foreman (Commission Docket No. RO-87-44).

19 employees, 5 of whom were hired after the filing of this Petition. AFSCME objects to the participation of these employees in an election. Local 711 consents to their voting eligibility. The Hospital takes no position with regard to voter eligibility and consents to an election.

AFSCME also objects to the inclusion of the personnel supervisor in the unit and asserts that she is a confidential employee within the meaning of the N.J.S.A. 34:13A-3(g).

*

*

*

AFSCME argues that voter eligibility should be limited to those employees who were on the County payroll at the time the Petition was filed. It argues that the five employees placed on the payroll after the filing of the Petition are probationary employees and should not be permitted to vote. Local 711 asserts that all current unit employees should be permitted to vote.

It is the Commission's policy to set a cutoff for eligibility immediately prior to the issuance of a direction of election or consent agreement. An election should be a meaningful expression of the choice of the employees who will (or will not) be represented.

Probationary status is not an overriding factor which negates community of interest with permanent employees, since probationary employees have a reasonable expectation of permanent

employment and thus, are not excluded from the election process simply on the basis of their probationary status. Gloucester City, D.R. No. 82-12, 7 NJPER 564 (¶12251 1981), City of Bordentown, D.R. No. 81-27, 7 NJPER 120 (¶12949 1981), Tp. of Cherry Hill, P.E.R.C. No. 30 (1970). These new employees possess identical titles to "regular" employees, do the same work and are paid pursuant to the existing collective negotiations agreement. We find that their community of interest with other "regular" employees outweighs the "temporariness" of their tenure in their respective unit titles and they are eligible to vote. See Township of Cranford, D.R. No. 86-26, 12 NJPER 566 (¶17214 1986). Moreover, probationary employees have been specifically included in this existing unit since at least 1983. ^{6/}

AFSCME claims that the timing of the hiring decision is suspect and constitutes evidence that the Hospital is seeking to undermine the majority status of AFSCME. These new employees dilute the support AFSCME enjoyed at the filing of its petition. However, AFSCME has not submitted any evidence, including affidavits, which would support its position that the employees were hired because of their position for a given union (or for no union). Standing alone, timing of the hiring of these individuals into the unit, is not sufficient to support AFSCME's claim and warrant a hearing.

^{6/} AFSCME's prior contract covering this unit for 1983-84 terms and conditions of employment for probationary employees.

All submissions with regard to this matter were scheduled to be received by January 5, 1988. At the request of AFSCME, the time for filing submissions was extended to January 8, 1988. On January 8, 1988, AFSCME filed an unverified unfair practice charge alleging three counts: 1) the new employees were hired with the intention of undermining AFSCME's majority status, 2) a non AFSCME supporter was discriminated against when initial representation fee of \$63.75 were deducted from his salary on October 7, 1987 and 3) Local 711 was allowed illegal access to Preakness Hospital while AFSCME was denied similar access. However, no date was alleged as to when this unlawful access took place.

AFSCME requests that this charge be given a blocking effect. In determining whether an unfair practice charge should block the processing of this representation petition, the totality of facts must be looked at, including the timing of the filing of the charge. See State of New Jersey, P.E.R.C. No. 81-94, 7 NJPER 105 (¶12044 1981) and Western Monmouth Utilities Authority, D.R. No. 83-32, 9 NJPER 632 (¶14272 1983). There is nothing in the charge, as submitted, which shows why AFSCME was prevented from filing its charge prior to the day before the scheduled day of the issuance of this decision. If an extension of time to respond to our seven day letter had not been granted to AFSCME, this decision would have issued prior to the filing of AFSCME's unfair practice charge. No good cause has been stated for the delay in the filing of the charge. Accordingly, the request to block the processing of the representation petition is denied.

Accordingly, we direct that an election be conducted among the employees in the following unit:

All non-professional supervisors employed by the County of Passaic at Preakness Hospital but excluding non-supervisory employees, professional employees, confidential employees, managerial executives, craft employees, and police.

As to the personnel supervisor, that employee may participate in the election subject to challenge by any party believing she is not an eligible voter. Given that this is one employee, the Commission's policy is to not delay an election where the dispute is minimal. See Borough of Leonia, P.E.R.C. No. 86-143, 12 NJPER 523 (¶17195 1986).

Those eligible to vote are the employees set forth above who were employed during the payroll period immediately preceding the date of this decision, including employees who did not work during that period because they were out ill, on vacation, temporarily laid off, or in military service. 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 are ineligible to vote.

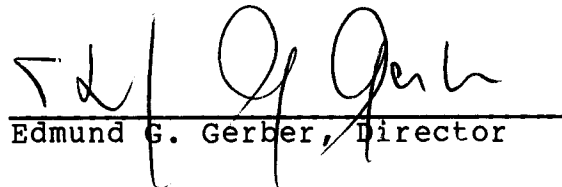
We direct the County to simultaneously file with us and each of the employees organizations, an eligibility list consisting of an alphabetical listing of the names of all eligible voters together with their last known mailing addresses and job titles, pursuant to N.J.A.C. 19:11-9.6. The County shall also file with us

an accompanying proof of service. The eligibility lists must be delivered to the recipients stated above no later than ten (10) days prior to the date of the date of the election. We shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

Employees must appear in person in order to be eligible to vote. Those eligible to vote shall vote on whether they wish to be represented for the purpose of collective negotiations by Preakness Hospital Supervisors' Local, AFSCME, AFL-CIO, or by Local 711, IFLU, or by no employee organization.

The exclusive representative, if any, shall be determined by the majority of valid ballots cast by the employees voting in the election. The election shall be conducted on site in accordance with the Commission's rules within 30 days of the date of this decision.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: January 12, 1988
Trenton, New Jersey