

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

In the Matter of

WESTERN MONMOUTH UTILITIES
AUTHORITY,

Public Employer,

-and-

KATHERINE BARRETT,

DOCKET NO. RD-83-14

Petitioner,

-and-

LOCAL UNION NO. 701, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS,

Intervenor.

SYNOPSIS

The Director of Representation, on the basis of an administrative investigation, directs an election among clerical employees to ascertain whether they desire continued representation by the current employee representative. The representative filed unfair practice charges against the employer alleging that the employer did not negotiate with it in good faith, coerced employees and made promises of future benefits, and requested that the unfair practice charge block the processing of the decertification petition. However, the evidence provided by the representative to support its claims that employees could not exercise free choice in an election did not support the claim that the proported actions of the employer eroded employee support for the representative, that employees were coerced or that promises of future benefits were made to employees if they elected to reject their representative.

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Appearances:

For the Public Employer
Morton P. Kramer, attorney

For the Petitioner
Katherine Barrett, pro se

For the Intervenor
Schneider, Cohen, Solomon & DiMarzio, attorneys
(Bruce D. Leder of counsel)

DECISION AND DIRECTION OF ELECTION

On March 9, 1983, a Petition for Decertification of Public Employee Representative, supported by an adequate showing of interest, was filed with the Public Employment Relations Commission ("Commission") by Katherine Barrett on behalf of certain employees of the Western Monmouth Utilities Authority ("Authority")

seeking an election among employees to ascertain whether they desire continued representation by the incumbent representative, Local Union No. 701, International Brotherhood of Teamsters ("Local 701") or to have no representation. Local 701 has intervened in the Petition on the basis of its certification as the majority representative in January 1982.

The undersigned has caused the conduct of an administrative investigation into the matters and allegations involved in the Petition in order to determine the facts. Based upon the administrative investigation, the undersigned finds and determines as follows:

1. The disposition of this matter is properly based upon the administrative investigation herein, it appearing that no substantial and material factual issues exist which may more appropriately be resolved after an evidentiary hearing. Pursuant to N.J.A.C. 19:11-2.6(b), there is no necessity for a hearing where, as here, no substantial and material factual issues have been placed in dispute by the parties.

2. Western Monmouth Utilities Authority is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), is the employer of the employees who are the subject of the Petition, and is subject to the provisions of the Act.

3. Local Union No. 701, International Brotherhood of Teamsters is an employee representative within the meaning of the Act and is subject to its provisions.

4. Local 701 was certified by the Commission on January 26, 1982 as the majority representative of the Authority's nonsupervisory clerical employees. ^{1/} Since its certification, Local 701 has not entered into a written collective negotiations agreement with the Authority.

5. On March 9, 1983, Petitioner, Katherine Barrett, filed a Petition for Decertification of Public Employee Representative on behalf of certain employees seeking an election to ascertain whether the employees in the extant unit seek continued representation by Local 701.

6. On March 10, 1983, the undersigned advised Local 701 and the Authority of the filing of the Petition and requested the submission of certain documentation and statements of position within five days. ^{2/} Local 701 was specifically advised that "[T]he failure of any employee organization to respond to or to participate in the processing of the petition may result in the exclusion of such party from any participation in these proceedings." An informal conference was simultaneously scheduled by the undersigned for March 24, 1983, and was subsequently rescheduled for April 7, 1983. After several attempts by the Commission staff agent to secure a written position from the incumbent, by letter dated March 24, Local 701, advised the Commission of its continued interest

^{1/} Local 701 holds its certification under the name: Highway and Local Motor Freight Drivers, Dockman and Helpers, Local Union No. 701.

^{2/} The undersigned, in part, requested copies of any collective agreements and a statement of whether the Authority and Local 701 agreed to an election.

in representing the employees, and by letter dated March 28, Local 701 moved to intervene in the representation matter. Local 701 did not state a position, either orally, or in writing, in agreement or disagreement with the requested representation election.

7. On the date of the scheduled conference, counsel for Local 701 advised the Commission staff agent that he could not attend the conference because of a conflicting court appearance. The conference proceeded with the attendance of the Authority, and although the Petitioner was not present, arrangements for an election were entered into telephonically between the Authority and Petitioner. The Commission staff agent was not successful in her attempts to secure Local 701's participation by telephone.

8. On April 14, 1983, copies of the proposed consent election agreement were mailed to all parties for signature.

9. The Authority and the Petitioner executed and returned the Agreement for Consent Election on May 18, 1983. Local 701 did not execute the Agreement. Rather, on April 21, 1983, approximately six weeks after the filing of the decertification Petition, Local 701 filed an unfair practice charge against the Authority alleging: (1) the Authority did not commence negotiations with Local 701 until May 1982, four months after Local 701's initial demand for negotiations; (2) on January 12, 1983, Local 701 and the Authority negotiators reached tentative agreement on a contract, but the Authority never communicated its approval of the tentative agreement; and (3) subsequent to January 12, "the Authority made

promises to the employees that if the employees supported the decertification that the Authority would agree to pay the employees the same money as was negotiated."

Contemporaneous with its filing of the unfair practice charge, Local 701 stated its position concerning the representation petition for the first time. It requested that the representation petition be "blocked" pending the review and litigation of its charge.

10. On May 2, 1983, the undersigned advised Local 701 of the Commission's "blocking" charge policy as expressed in In re 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). Local 701 was advised of the requirement that it submit, in the representation forum, evidence in support of its assertion that the conduct underlying the alleged unfair practices prevented the exercise of a free and fair election.

11. In support of its blocking request, Local 701 has submitted an affidavit by its recording secretary/business agent. The affiant states that the Authority's representatives told "us that the members of the Authority would have to authorize payments of the money provided for in the agreement." Local 701 does not state the date on which its own negotiations committee members ratified the tentative settlement. Likewise, Local 701 does not state whether the Authority approved or rejected the required authorization for the salaries, as provided for in the alleged agreement.

Local 701's assertion that "the Authority has coerced the employees and has made promises of future benefits" is supported by the claim that "this is based, in part, on the fact that the person who signed the Petition was on the negotiating team and she ratified the agreement reached on January 12, 1983."

The undersigned has reviewed the assertion of the blocking charge request and the allegations of Local 701 as they relate to the continued processing of the decertification Petition. This review entails, as noted in the State of New Jersey matter, supra, consideration of the following factors, where applicable:

... the character and scope of the charge and its tendency to impair the employees' 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 interest 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; the showing of interest, if any, presented in the R case by the charging party; and the timing of the charge.

In the present matter, there are allegations of refusal to negotiate, employer coercion and promises of future benefits to employees. As noted above, in examining the nature of unfair practice allegations, the Commission must be provided with evidence which would establish that the conduct underlying the alleged unfair practice prevents the conduct of a free and fair election.

In previous matters involving allegations of an employer's refusal to negotiate the undersigned has examined whether there is

any nexus between the circumstances related to the alleged refusal to negotiate and any erosion of support for the incumbent representative. Where there is no evidence tending to link the claimed refusal to negotiate with a resulting erosion of employee support for the incumbent representative, there cannot be a basis for the contention that a free and fair choice could not be exercised by employees. The evidence provided by the charging party herein is not supportive of any nexus between the Authority's alleged delay in commencing negotiations in Spring 1982, and the current erosion of employee support. cf: In re Matawan Reg. Bd. of Ed., D.R. No. 78-11, 4 NJPER 37 (¶ 4019 1977) and In re East Orange Housing Auth., 8 NJPER 280 (¶ 13126 1982). Further, there is no evidentiary proffer linking the employer's consideration of the tentative agreement with the decertification drive among certain employees. Absent the submission of evidence of improper activities which touch upon the exercise of employee free choice, the undersigned will not disturb the normal presumption that free choice can be exercised by employees in an election proceeding. ^{3/}

The undersigned has also reviewed the evidence, submitted by Local 701 to support its claim of coercion and promises of future benefits, supra, item 9. The claim of coercion and promises of future benefits is not supported by the fact that the Petitioner herein was on Local 701's negotiations team. This nonsequitor is

^{3/} Nor is the evidence supportive of any claim that the employer was obligated to reduce the tentative agreement to a written contract, thereby potentially implicating the Commission contract bar rule. See In re Mt. Olive Bd. of Ed., D.R. No. 83-29, 9 NJPER ____, (¶ ____ 1983).

indeed baffling and not at all probative. No other evidence has been proffered in support of this claim.

The undersigned has also considered the timing of the instant charge and blocking request particularly in light of Local 701's evident disregard of its responsibility to respond forthrightly and to participate in the investigation of the representation proceeding. As noted above, Local 701 was promptly notified on March 10, 1983, of the filing of the decertification Petition. The undersigned requested that Local 701 submit a positional statement, but it did not submit any position in opposition to the requested election until April 21, 1983, in conjunction with the filing of its charge. Local 701's position was elicited only after it was advised that its failure to respond to the circulation of a consent election agreement would be interpreted as a disclaimer of further interest in representing the employees. Indeed, Local 701's charge was filed after receipt of the consent election agreement executed by the Authority and the Petitioner.

In light of all the above, Local 701's charge may not be accorded blocking effect and an election should proceed in this matter. Therefore, the undersigned shall direct the conduct of a mail ballot election.

Accordingly, the undersigned finds that the appropriate unit is: all clerical employees employed by the Western Monmouth Utilities Authority, excluding elected officials, members of

Boards or Commissions, supervisors, maintenance employees, managerial executives and confidential employees.

Pursuant to N.J.A.C. 19:11-2.6(b)(3), the undersigned directs that the election shall be conducted by mail ballot. The election shall commence no later than thirty (30) days from the date set forth below.

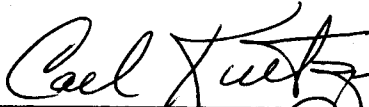
Those eligible to vote are the employees set forth above who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation, or temporarily laid off, including those in military service. Ineligible 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 Authority is directed to file with the undersigned and with the Petitioner and Local 701, 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. In order to be timely filed, the eligibility list must be received by the undersigned no later than ten (10) days prior to the date established for ballot issuance. A copy of the eligibility list shall be simultaneously filed with the Petitioner and Local 701 with statements of service to the undersigned. The undersigned shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

Those eligible to vote shall vote on whether or not they wish to continue to be represented for purposes of collective negotiations by Local Union No. 701, International Brotherhood of Teamsters.

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 in accordance with the provisions of the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Carl Kurtzman, Director

DATED: May 24, 1983
Trenton, New Jersey