

D.R. NO. 87-16

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

In the Matter of

COUNTY OF UNION,

Public Employer,

-and-

PARK MAINTENANCE, CRAFTSMEN AND
MECHANICS ASSOCIATION, CORP.,

DOCKET NO. RO-87-42

Petitioner,

-and-

UNION COUNTY PARK, FIELD AND
MAINTENANCE EMPLOYEES, IUE-AFL-CIO,

Intervenor.

SYNOPSIS

The Director of Representation orders an election among blue collar and craft employees of the Union County Park system. The Director rejects the Intervenor's argument that the Petition should be dismissed because the Petitioner is represented by the County's former labor negotiator. Since the Petitioner's attorney has only had limited involvement in this matter, and his relationship with the County ended nearly two years ago, the Director finds that his representation of the Petitioner will not interfere with the conduct of a free and fair election.

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Appearances:

For the Public Employer
Apruzzese, McDermott, Mastro & Murphy, Esqs.
(Robert T. Clark, of counsel)

For the Petitioner
Weinberg & Kaplow, Esqs.
(Irwin Weinberg, of counsel)

For the Intervenor
Lewis, Greenwald, Kennedy & Lewis, Esqs.
(Nicholas F. Lewis, of counsel)

DECISION AND DIRECTION OF ELECTION

On September 30, 1986, the Park Maintenance, Craftsmen & Mechanics Association Corp. ("Association") filed a timely Petition for Certification of Public Employee Representative, supported by an adequate showing of interest, with the Public Employment Relations

Commission ("Commission"). By its Petition, the Association seeks to represent all blue collar employees and craft employees employed by Union County ("County") in the golf courses, skating rinks and other recreation facilities of the County. These employees are currently represented by Union County Park Field & Maintenance Employees, Local 399, International Union of Operating Engineers, AFL-CIO-CLC ("IUE"). The IUE has filed a request to intervene in this proceeding based upon its current collective negotiations agreement covering the petitioned-for employees for the period January 1, 1985 through December 31, 1986. The request to intervene is granted. The IUE objects to the petition for an election.

We have conducted an administrative investigation in this matter to determine the facts. (N.J.A.C. 19:11-2.6). To date, the following facts appear:

The IUE is the current representative of a collective negotiations unit described in the 1985-1986 collective negotiations agreement as:

All blue-collar employees including craft employees employed in the Union County Park system, including but not limited to golf courses, skating rinks, and other recreation facilities but excluding therefrom supervisory employees and foremen.

The Association seeks to represent the existing unit of approximately 105 employees and there is no dispute as to the appropriateness of the collective negotiations unit. The County consents to an election among the employees in the unit to determine which employee organization, if any, the employees want to represent them. The Association agrees to an election.

The IUE does not consent to an election and urges the dismissal of the petition. It argues that the representation of the petitioner Association by Mr. Irwin Weinberg, Esq., has so tainted the election process that the petition should be dismissed. The IUE contends that because Mr. Weinberg previously was the labor negotiator for the County, he and his law firm should now be disqualified from representing the Association. The IUE argues that Mr. Weinberg's current representation of the Association raises an appearance of impropriety, contrary to the Rules of Professional Conduct (specifically, RPC 1.7). The IUE asserts that the Code of Professional Responsibility (DR 4-101, RD 9-101 and R 1:14) compels the disqualification of counsel when counsel represents a client against a party which that attorney had previously represented. The IUE further argues that because Mr. Weinberg previously represented the County, voters in a representation election may believe that Mr. Weinberg would have an inside track with the County during collective negotiations and thus the Association would enjoy an unfair advantage with the voters in a representation election.

The facts show that Mr. Weinberg served as labor counsel for the County of Union during a 10-year period ending about December, 1984. At the time that the authorization cards were signed by the employees, Mr. Weinberg was no longer the labor negotiator for the County. There are no allegations that any representative or agent of the County assisted in the formation of this employee organization (i.e., the Association) or in the filing

of the Petition. Further, the County has not raised any objection to Mr. Weinberg's representation of this Association.

To date, Mr. Weinberg's involvement before the Commission has been limited to the preparation and filing of the Petition. There is no agreement nor any indication that Irwin Weinberg will represent the Association in any capacity beyond this proceeding for certification. Specifically, there is no indication that Mr. Weinberg will represent the Association in negotiations with the County, should it prevail in the election.

In a certification, Ted Kenny, International Representative of the IUE, states that he "...shared many comments and reflections on the difficulties of dealing with our respective constituencies" with Mr. Weinberg when the latter served as negotiator for the County. However, Mr. Weinberg was the County's attorney: thus, no attorney-client relationship ever existed between Kenny (or the IUE) and Weinberg.

The IUE cites Reardon v. Marlayne, Inc., 83 N.J. 460 (1980) and Gray v. Commercial Union Ins Co., 191 N.J. Super. 590 (App. Div. 1983) in support of its position that Weinberg's representation of the Association constitutes a conflict of interest. However, these cases dealt with attorneys involved in litigations where the attorneys were representing parties who were suing former clients of those same attorneys (or the clients of those attorneys' former law firms). It also cites Perillo v. Adv. Commission on Professional Ethics, 83 N.J. 366 (1980) in which the Supreme Court held it was

improper for a municipal attorney to prosecute a municipal employee, inasmuch as such circumstances give rise to the perception that the municipal attorney may not use sufficient zeal in such a prosecution because the attorney might know or be friendly with such employee.

However, the proceeding at issue is not an adversarial one; it is an administrative proceeding designed to allow the employees to choose, through the mechanism of a Commission representation election, a majority representative for collective negotiations or no representative. There have been no allegations made that the Association used the name of Mr. Weinberg or his former relationship with the County in any way in the election campaign. Nor are there allegations that the Association has been dominated or interfered with by the County through Mr. Weinberg. It is difficult to see how a client relationship which ended over two years ago can interfere with employees' exercise of their right to choose a majority representative for collective negotiations. ^{1/}Given the limited involvement of Mr. Weinberg in this matter, we are satisfied that his representation of the Association will not interfere with the conduct of a free and fair election.

1/ It is significant that the NLRB and the New Jersey Rules of Professional Conduct have regulations governing when a former employee (and Mr. Weinberg was not an employee of the County) may represent clients before the agencies for which those employees previously worked. See, RPC 1.11 (1984), 29 CFR §102.119 (1986) and Alumbaugh Coal Corp. v. NLRB, 106 LRRM 2001, (8th Cir. 1980).

Nor, does his limited participation as an attorney in a non-adversarial representation proceeding give rise to an appearance of a conflict of interest.

Accordingly, I direct that an election be conducted among the employees in the petitioned-for unit, which is comprised as follows: included - all blue-collar employees including craft employees employed in the Union County Park system, including but not limited to golf courses, skating rinks, and other recreation facilities but excluding therefrom supervisory employees and foremen. The election shall be conducted no later than thirty (30) days from the date of this election.

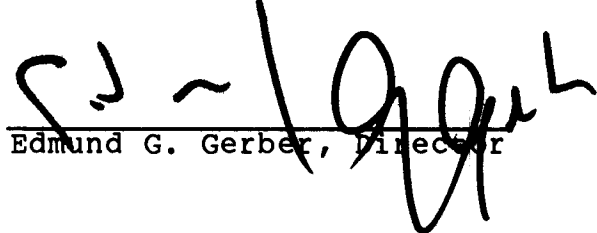
Those eligible to vote are the employees in the unit set forth above who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, including those in military service. 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 an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the 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 list shall be simultaneously filed with the employee organization 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 shall vote on whether they desire to be represented for the purpose of collective negotiations by Park Maintenance, Craftsmen and Mechanics Association, Corp.; Union County Park, Field and Maintenance Employees, IUE-AFL-CIO; or neither. The exclusive representative, if any, shall be determined by a majority of the valid votes cast in the election. The election shall be conducted in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: December 24, 1986
Trenton, New Jersey