

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HUDSON COUNTY BOARD OF CHOSEN FREEHOLDERS
Public Employer

-and-

LOCAL 1959, AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO
Petitioner

Docket No. RO-315

-and-

LOCAL 286, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS
Intervenor

DECISION AND CERTIFICATION OF REPRESENTATIVE 1/

Pursuant to a Consent Election Agreement a secret ballot election was conducted under the Commission's supervision on December 14, 1971. Eligible voters were given three choices on the question of representation: "Local 1959, A.F.S.C.M.E., AFL-CIO", "Teamsters Local 286", or "neither" organization. At the conclusion of the election, ballots were tallied as follows: 529 for Local 1959, A.F.S.C.M.E., 938 for Teamsters Local 286, 38 for neither organization; 216 ballots were challenged and 24 were declared void. Thereafter, objections to the election were timely filed by the American Federation of State, County and Municipal Employees, AFL-CIO. The Teamsters filed a reply denying the allegations so far as they related to Teamsters' conduct and asking that the objections be dismissed because they were not filed by a party to the proceeding; more specifically, the Teamsters contend that Local 1959 could properly object, but that A.F.S.C.M.E., the international organization and parent body of Local 1959, has no standing to file the objections.

1/ The Commission has caused the Notice of Hearing on Objections, previously issued, to be withdrawn and, pursuant to Section 19:15-11 of its Rules and Regulations, transfers this case to itself for decision. The Commission is aware that under the terms of the Consent Election Agreement, the Executive Director is authorized to make final determination of questions relating to the election. It is also aware that under Section 19:15-1(c) any decision of the Executive Director in representation matters is subject to a request for review filed with the Commission. Since the grounds for granting such request are limited and not easily satisfied (see Sec. 19:15-3), consideration of this case by the Commission in the first instance represents an expansion of due process rather than a denial.

The genesis of this case is as follows. Over an extended period of time seven petitions were filed, some by Local 1959, some by the Teamsters for various groupings of Hudson County employees. The petition for the largest unit of employees was that filed by Local 1959 for a unit of white collar clerical and blue collar employees employed by Hudson County in its hospitals and administration buildings. That petition bears the signature of Robert Murphy, Local 1959's President, and it was that petition which finally emerged as the operative one. Teamsters Local 286 intervened on that petition and became a party. When the parties agreed to a unit and an election in November 1971, Murphy signed the Consent Election Agreement on behalf of "Local 1959, Council 61, A.F.S.C.M.E." 2/ That party was designated on the Notices of Election and on the ballot as "Local 1959, A.F.S.C.M.E., AFL-CIO". Following the election, no one filed objections in the name of Local 1959. As indicated, the parent body filed in its own name and the document was signed by Louis Kaplan, A.F.S.C.M.E.'s Area Director for New York and New Jersey.

After preliminary administrative investigation of the objections, a Notice of Hearing issued setting certain objections down for hearing. Notice was also given that the question of standing was within the scope of the hearing. Service of the Notice of Hearing and of other preliminary papers was made upon Local 1959 and also upon the parent body. The hearing commenced on March 9, 1972, but no one entered an appearance on behalf of Local 1959. 3/ An adjournment was taken to a fixed date, but prior to resumption the hearing was adjourned indefinitely because of restraints imposed in connection with litigation between A.F.S.C.M.E. and Local 1959.

- 2/ Whether or not an entity known as Council 61 exists or did exist at the time the consent agreement was executed is in dispute. According to an affidavit filed by A.F.S.C.M.E. in a court proceeding described later, a reorganization of A.F.S.C.M.E.'s subordinate bodies operating in New Jersey was undertaken in October 1971. It was the apparent intent of some that the various local unions would be absorbed into or succeeded by a lesser number of councils. Council 61 was apparently intended as the successor to Local 1959. But according to the affidavit Council 61 did not come into being because Local 1959 failed or refused to submit a proposed constitution for approval by the International Union. The affiant is Louis Kaplan, A.F.S.C.M.E.'s Area Director for New York and New Jersey. According to pleadings filed in that same court proceeding Local 1959 contends that the transition was perfected and that Council 61 is its successor. For purposes of the instant case and to the extent it is material we accept A.F.S.C.M.E.'s contention.
- 3/ An attorney appeared "for the party filing the objections"; later in answer to the Hearing Officer's inquiry as to what organization he represented, the attorney replied: "I am appearing for A.F.S.C.M.E. Council 61 and A.F.S.C.M.E. the International Union."
cf. fn. 2 above.

The litigation referred to arose when, on January 12, 1972, A.F.S.C.M.E. moved to impose a trusteeship on Local 1959.

"...because secession of the Local is threatened, dissipation or loss of the funds or assets of the Local is threatened, and the Local is acting in violation of the International Constitution, lawful orders of the Convention, the International Executive Board and the International President." 4/

A.F.S.C.M.E.'s Area Director Louis Kaplan was named Trustee. Local 1959, its President Murphy and others countered with an action against A.F.S.C.M.E. in Superior Court Chancery Division, Hudson County, seeking restraint against alleged interference by the parent body and seeking other relief. The dispute was subsequently moved to United States District Court for the District of New Jersey, which court on February 1, 1972 entered orders of temporary restraint and show cause. The testimony phase of that suit has been completed, but no final determination on the merits has yet been reached. The restraint was vacated on appeal.

In the affidavit referred to in footnote 2 above Kaplan asserts that Murphy refused to file objections to the election of December 14 and that Kaplan was "...obliged to file objection myself, in the name of A.F.S.C.M.E. and Local 1959." 5/ Kaplan also attached to that affidavit a copy of a letter which Kaplan states Murphy left with him. It is a letter dated December 20, 1971 from Murphy, as President of Local 1959, to the Hudson County Board of Chosen Freeholders, wherein he cites Local 1959's defeat in the representation election and gives notice that dues checkoff cease: "Local 1959 feels, inasmuch as we are not in a position to represent these employees, it would be most unfair to continue to accept their dues." 6/

Returning to the question of A.F.S.C.M.E.'s standing to file the objections, we take note of the following provisions. The beginning point is Sec. 19:11-19(f) of the Commission's Rules and Regulations which provides that "...any party may file [objections]..." Sec. 19:11-16, referring to Agreements for Consent Election, defines who are parties: "The parties to such proceeding shall be the public employer, the petitioner, and any intervenors who shall have complied

- 4/ Excerpted from a letter dated January 12, 1972 from A.F.S.C.M.E. International President Wurf to Murphy and other officers of Local 1959. A copy of that letter was attached to the affidavit of Louis Kaplan filed in Superior Court Chancery Division, Hudson County, Docket No. C-1301-71.
- 5/ The amended verified (by Murphy) complaint filed by Local 1959 in the Superior Court proceeding states that Kaplan's filing of the objections was contrary to the wishes of Local 1959's officers, Executive Board and general membership.
- 6/ Kaplan states he is without knowledge whether such action was authorized by the Local.

with the requirements [for intervention]." The standard terms of the Consent Agreement reinforce the point by providing in paragraph 6 that objections may be filed "...by any of the undersigned parties..." Elsewhere in the Rules Sec. 19:10-5 provides:

"The term "Party", as used herein, shall mean any person, employee, group of employees, organization or public employer filing a charge, petition, request or application under these Rules and Regulations..., or any other person, organization or public employer whose intervention in a proceeding has been permitted or directed by the Commission...., but nothing herein shall be construed to prevent the Commission, or any designated officer, from limiting any party's participation in the proceedings to the extent of his interest."

While the beginning elements of the last cited definition appear to be virtually all-encompassing, it is not particularly enlightening in view of the limitation placed at the end since the essential question here is what "interest", if any, does A.F.S.C.M.E. demonstrate - which is another way of posing the question of standing. The other provisions cited above narrow the inquiry to whether or not A.F.S.C.M.E., the International Union, is a "petitioner" or an "undersigned party" by virtue of the fact that its subordinate body Local 1959, petitioned and later executed the consent agreement.

Normally, it appears the issue would not arise because there is generally assumed to be a harmony of interest between an international and its local unions. But here it is abundantly clear that no such relationship existed. During the critical period, the five day period following the election when objections must be filed, Local 1959 was so much at odds with its parent body that within a month the latter moved to impose a trusteeship. It is not necessary to determine the effect of that action on the question of standing had it occurred prior to that critical period since the facts are otherwise. Local 1959, a viable entity as demonstrated by its later suit, and the moving party in initiating this case, refused to contest the election in which it participated. We do not believe that the International, in obvious disagreement with the Local which theretofore had clearly been a party, and in reliance on the parent-subordinate relationship, should be permitted to act in derogation of the Local's right to refrain, to oust the Local as a party and to substitute itself in the place of the dissenting Local. Given the peculiar circumstances in this case, we conclude that between A.F.S.C.M.E. and Local 1959, the latter alone was a party entitled to file objections and that its failure to do so constituted a disclaimer which could not be circumvented. The issue here is wholly separate from the question of whether there existed sufficient basis for the trusteeship proceeding. That is an internal matter which the Commission is not competent to judge and which, furthermore, is irrelevant to the matter decided here.

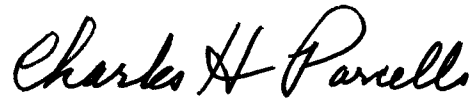
The objections filed by A.F.S.C.M.E. are hereby dismissed. Having received a majority of the valid ballots, plus challenged ballots cast, Teamsters Local 286 will be certified.

CERTIFICATION OF REPRESENTATIVE

IT IS HEREBY CERTIFIED that Local 286, International Brotherhood of Teamsters has been designated and selected by a majority of the employees of the above-named Public Employer, in the unit of the following titles: Account Clerk, Administrative Clerk Rev. & Fin., Admitting Clerk, Admitting Clerk MT. & Rep., Canteen Clerk, Cashier, Cashier-Typist, Clerk, Clerk-Stenographer, Clerk-Typist, Clinic Attendant-Typist, Clinic Attendant-M.H., Elevator Operator, File Clerk, Head Account Clerk, Hospital Bond Interviewer, Hospital Credit Interviewer, Junior Lib. Assistant, Mail Clerk, Medical Records Clerk, Messenger, Medical Stenographer, Microfilm Operator, Mult.Operator, Music Therapy Aide, Necropsy Stenographer, Principal Clerk, Principal Account Clerk Steno, Principal Medical Records Clerk, Principal Account Clerk-Typist, Principal Account Clerk, Receptionist, Secretary-Whse. Division, Senior Account Clerk, Senior Account Clerk Typist, Senior Clerk, Senior Clerk Stenographer, Senior Clerk Transcriber, Senior Clerk Typist, Senior Hospital Credit Interviewer, Senior Mail Clerk, Senior Medical Records Clerk, Senior Multi-Operator, Senior Music Therapy Aide, Senior Receptionist, Senior Telephone Operator, Senior X-Ray Technician-Clerk Typist, Statistical Clerk Steno, Stock Clerk, Storekeeper, Telephone Operator, Telephone Operator PT, Timekeeper, Transcriber, Vital Statistics Clerk, Ward Clerk. Assistant Laundry Foreman, Bacteriology Technician, Barber, Beautician, Blood Bank Technician, Bridge Attendant, Bridge Operator-Steam, Building Admint. Worker, Building Maintenance Worker, Building Maintenance Worker GER, Building Maintenance Worker-Laundry, Building Maintenance Worker-Maintenance & Repair, Building Repairman-Helper, Building Service Worker, Building Service Worker-Floors, Building Service Worker-Part-Time, Butcher, Central Supply Aide, Chair Caner, Chauffeur, Clerk Room Attendant, Clinic Attendant-PLLK, Cook, Custodian, Dental Aide, Dental Technician, Electrical Maintenance Repairman, Elevator Operator, Elevator Operator-PLT STR, Elevator Starter, ENV Therapy Aide, Equipment Operator-Roads, Equipment Operator-Sweeper, Food Service Worker, Food Service Worker-Part-Time, Furniture Finisher, Garage Attendant, Gardener, Groundskeeper, Head Cook, Histology Technician, Hospital Attendant, Housekeeper, Institutional ADJ, Laboratory Assistant, Laboratory Technician, Laborer, Laborer Driver, Laundry Worker, Linen Room Attendant, Linen Room Attendant-Laundry, Maintenance Repairman, Maintenance Repairman Carpenter, Maintenance Repairman Electrician, Maintenance Repairman Glazier, Maintenance Repairman Helper, Maintenance Repairman Locksmith, Maintenance Repairman-Maintenance & Repair, Maintenance Repairman-Painter, Maintenance Repairman-Plumber, Mechanic, Mechanic Helper, Mechanic Repairman Helper-MEQ, Music Therapy Aide, Nurses Aide, Occupational Therapy Aide, Occupational Therapist, Organist, Pharmacist Helper, Physical Therapy Aide, REC Therapy Aide, Repairman, Road Repairman, Seamstress, Seamstress Laundry and Linen,

Senior Bkr. Machine Operator, Senior Building Maintenance Worker, Senior Building Service Worker, Senior Central Supply Aide, Senior Cook, Senior Electrical Card Technician, Senior Food Worker, Senior Hospital Attendant, Senior Laundry Worker, Senior Linen Room Attendant, Senior Maintenance Repairman, Senior Maintenance Repairman-Iron Work, Senior Maintenance Repairman-MSPLS, Senior Maintenance Repairman-Plumber, Senior Maintenance Repairman-Plumber Steamfitter, Senior Maintenance Repairman-Roofer, Senior Maintenance Repairman-Windows, Senior Mechanic Repairman, Senior Medical Technologist, Senior Pharmacists Helper, Senior Physical Therapy Aide, Senior Repairman Electrician, Senior Seamstress-Laundry & Linen, Senior Sewerage Plant Operator, Senior Stock Clerk, Sewerage Plant Operator, Shoe Maker, Stock Clerk, Stock Handler, Telephone Operator, Telephone Operator-P.T., Tile Setter, Traffic Maintenance Repairman, Truck Driver, Upholsterer, X-Ray Technician, Institutional Fireman, Naturalizational Clerks, Docket Clerks, Assistant Cashier; excluding Medical Records Librarian, Building Service Supervisor, Carpenter, Dietician, Electrician, Food Service Supervisor, Food Service Worker-Foreman, Laundry Worker Foreman, Maintenance Foreman, Maintenance Repairman Foreman, Mason Plasterer, Morgue Custodian, Painter, Plumber, Pump Room Attendant, Supervisor Central Supply, Supervising Hospital Attendants and all other craft and professional employees, and managerial executives, police and supervisors within the meaning of the Act, as their representative for the purposes of collective negotiations; and that pursuant to the New Jersey Employer-Employee Relations Act of 1968, the said organization is the exclusive representative of all employees in such unit for the purposes of collective negotiations with respect to terms and conditions of employment.

BY ORDER OF THE COMMISSION



Charles H. Parcels
Acting Chairman

DATED: April 25, 1972
Trenton, New Jersey