P.E.R.C. NO. 76-19

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF BAYONNE,
Public Employer,

- and -

BAYONNE MUNICIPAL SUPERVISORY ASSOCIATION,
Petitioner,

- and -

LOCAL 2261, AFSCME, AFL-CIO,
Intervenor.

Docket No. RO-962

CITY OF BAYONNE,
Public Employer-Petitioner,

- and -

LOCAL 2261, AFSCME, AFL-CIO,
Employee Representative.

Docket No. CU-76-23

SYNOPSIS

The Commission states that it will not authorize an intermediate appeal from a hearing officer's ruling in a representation case except in the most unusual of circumstances. Not only must a colorable claim on the merits be shown, but most importantly the requesting party must make a convincing showing that vindication of his position at the end of the case in "request for review" proceedings will be too late. In the instant case the Commission finds that such a showing has been made and authorizes an appeal. On the merits, the Commission affirms the hearing officer's ruling that intervenor status is proper on the basis of a contract covering non-supervisory employees, although the petition relates to a unit of supervisory employees, since the intervenor seeks to prevent the petitioner from "carving" alleged supervisors from its existing non-supervisory unit.

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DECISION ON MOTION

By letter dated January 26, 1976 the City of Bayonne (the "City") moved that the Public Employment Relations Commission (the "Commission") authorize a direct appeal to the Commission from an adverse ruling by the Hearing Officer on motions filed by the City in these consolidated representation and clarification proceedings. In the absence of authorization to appeal at this time, the Commission's Rules permit Commission review only at the conclusion of the proceedings and upon the grant of a request for

review of the Executive Director's decision. N.J.A.C. 19:14A-3.7.[1] By letter dated February 19, 1976 Local 2261, AFSCME, AFL-CIO ("AFSCME") opposed the City's motion for a direct appeal. Bayonne Municipal Supervisory Association (the "Association") has expressed no position with respect to the disposition of the City's motion.

In a letter ruling dated January 14, 1976 Hearing Officer Joel G. Scharff denied the City's motions to disqualify AFSCME as an intervenor in Docket No. RO-962 and to sever these previously consolidated proceedings. The City essentially argues that AFSCME cannot be permitted intervenor status on the basis of a recently expired contract covering non-supervisory employees, when the Association's petition seeks certification in a unit of supervisory employees. The City contends that if AFSCME's intervention is disallowed, the City and the Association will in all likelihood agree to a consent election, the delay necessitated by the hearing of evidence concerning the nearly eighty titles disputed by AFSCME will be avoided, and acceptable alternate procedures are available before the Commission to permit the resolution of those disputed titles without holding up the consent election. AFSCME argues that it is entitled to intervene to prevent the Association from "carving" alleged supervisors from AFSCME's existing non-supervisory unit.

The Commission will not authorize a direct appeal from an interim ruling of a hearing officer or the Executive Director except in the most

1/ N.J.A.C. 19:14A-3.7 provides: "Unless expressly authorized by the Commission, rulings by a hearing officer or by the Executive Director shall not be appealed directly to the Commission, but shall be considered by the Commission only upon the filing of a request for review in accordance with Section 2.1 of Chapter 15 (Request for review) of this Title."

unusual of circumstances where the requesting party can make a convincing showing that vindication of his position at the end of the case in "request for review" proceedings will be too late. Thus, although a colorable claim on the merits must also be shown, the timing of the matter is the most important element in order to warrant intermediate Commission review. We find that the City has made such a showing since, if permitting intervenor status to AFSCME were found by us to be improper in request for review proceedings at the end of the case, intervenor status will have been permitted throughout the case in any event andvindication of the City's position will have been rendered meaningless. The savings of time and effort which the City argues will be accomplished now by denying intervenor status would, at the end of the case, no longer be feasible. Authorization to appeal is accordingly granted and we will dispose of the appeal on the merits.

Having carefully considered the City's arguments and the opposing contentions of AFSCME, we affirm the Hearing Officer's denial of the City's motions substantially for the reasons stated by him in his letter ruling, attached hereto and made a part hereof. The grounds for intervention relate to the employees sought in the petition, not the manner in which the petitioner chooses to describe them. Furthermore, our rules do not limit intervention to those seeking a place on the ballot.

In view of the large number of disputed titles still to be resolved, and in the interests of providing a reasonably rapid disposition with respect to those employees ultimately found to be appropriately petitioned for by the Association, the Commission orders all parties to these consolidated matters to proceed as expeditiously as possible. The Hearing Officer is hereby authorized to take whatever steps he deems necessary to bring these matters

to an early disposition as aforesaid.

BY ORDER OF THE COMMISSION

Charles H. Parcells

Charles H. Parcells
Acting Chairman

Decided February 26, 1976

Issued March 1, 1976

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
LABOR AND INDUSTRY BUILDING
POST OFFICE BOX 2209
TRENTON, NEW JERSEY 08625
Telephone: (609) 292-6780

January 14, 1976

CERTIFIED MAIL

Maurice J. Nolligan, Jr., Esq.
Apruzzese & McDermott
Independence Plaza
500 Morris Avenue
Springfield, New Jersey 07081

Re: City of Bayonne
and
Local 2261, AFSCME, AFL-CIO
Docket Nos. CU-76-23 and RO-962

Dear Mr. Nelligan:

Your letter of December 31, 1975, addressed to Mr. Tener has been referred to me for ruling pursuant to Commission Rule 19:14A-2.1(9). You have moved to disqualify Local 2261, AFSCME, AFL-CIO as an intervenor in case number RO-962 and to sever the consolidation of the petitions docketed as CU-76-23 and RO-962.

With respect to your motion for disqualification of Local 2261 as an intervenor, the record reveals that Local 2261 sought intervention in RO-962 based upon an Agreement between it and the City of Bayonne. Pursuant to the Agreement, Local 2261 is recognized as "the sole and exclusive bargaining agent" in a unit described as follows:

> "The unit shall consist of all permanent full time employees as described in the certification of representative, Docket Number RO-112, with the exception of Traffic Crossing Guards, seasonal employees, policemen, firemen, managerial executives, supervisors within the meaning of the Public Employees Relation Act."

This Agreement was executed on October 18, 1973, and was effective through December 31, 1974. The Petition in RO-962 was filed on January 13, 1975.

The Petition in RO-962 seeks the formation of a unit of supervisors in the City of Bayonne. Local 2261's request to intervene was based on its position that the titles claimed by the Petitioner to be supervisory were not supervisory, and that the titles were included as part of Local 2261's non-supervisory negotiating unit with the City.

Commission Rule 19:11-1.13(a) provides that a motion to intervene may be based upon a "recently expired agreement with the public employer governing any of the employees involved." The primary issue before this Hearing Officer is whether the employees involved are, in fact, supervisors within the meaning of the Act. To the extent that they eventually may be found not to be supervisory employees, they would presumably be represented by Local 2261, in the absence of certain other statutory considerations. In this event, Local 2261's Agreement with the public employer would be an Agreement "covering any of the employees involved." While Local 2261, may not participate in an election for a unit of supervisors, if such a unit is found, they may, nevertheless, intervene in the proceedings. Consequently, your motion to disqualify Local 2261 as an intervenor is denied.

With respect to your motion to sever the proceedings in CU-76-23 and RO-962, most of the disputed titles involved in CU-76-23 are the same titles raised in RO-962. Much of the testimony that would be raised in each matter overlaps. The undersigned sees no sufficient diversity of interest to warrant the severance of the proceedings. Your motion to sever, therefore, is denied.

Very truly yours,

Joel G. Scharff
Assistant to Executive Director

JGS:ca

cc: Philip Feintuch, Esq.
921 Bergen Avenue
Jersey City, New Jersey

William E. Anderson, Esq.
880 Bergen Avenue
Jersey City, New Jersey