P.E.R.C. NO. 76-28

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,
Respondent,

-and-

Docket No. CO-5

LOCAL NO. 6, INTERNATIONAL FEDERATION OF HEALTH PROFESSIONALS, ILA, AFL-CIO,
Charging Party,

-and-

LOCAL 945, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
Intervenor.

SYNOPSIS

In agreement with the Hearing Examiner's findings of fact and conclusions of law, the Commission determines that violations of the Act have not occurred and dismisses the complaint in an unfair practice proceeding. The charging party alleged that the public employer illegally entered into an agreement with an incumbent employee organization will full knowledge that the charging party in fact represented a majority of unit employees. Among other things, the charging party relied upon the fact that only 2½ months prior to the execution of the allegedly illegal agreement, it had filed a representation petition which, although dismissed as untimely, was found to have been supported by an adequate showing of interest; that it had notified the public employer in writing on many occasions that it represented a majority of unit employees; and that the disputed agreement had been executed only a few hours before a timely representation petition could be filed. The Hearing Examiner found that, under the facts presented, the public employer did not have actual or constructive knowledge of either the charging party's alleged majority status or the incumbent's alleged minority status. He further found that there was no basis for the public employer to have had a good faith doubt as to the continuing majority status of the incumbent.

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OF TEAMSTERS,

Intervenor.

Appearances:

For the Charging Party
Anderson Russell Kill and Olick, P.C.
(Mr. Steven M. Pesner, of Counsel)
(Mr. William Perry, President,
Local No. 6, on the Exceptions)

For the Respondent
Gerald L. Dorf, P.A., Labor Counsel
City of Newark
(Mr. Thomas J. Savage, of Counsel)

For the Intervenor
Rothbard, Harris & Oxfeld, Esqs.
(Mr. Sanford R. Oxfeld and Mr. Emil Oxfeld,
of Counsel)

DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission on January 23, 1975 and perfected on January 31, 1975 [1/] by

1/ P.L. 1974, c. 123, which, in part, amended the New Jersey Employer-Employee Relations Act to place unfair practice jurisdiction in the Commission, went into effect on January 20, 1975. The Charging Party's original charge was filed in letter form and was perfected by being submitted on the forms provided by the Commission. These forms, consistent with the Commission Rules, N.J.A.C. 19:14-1.1 et seq., contained more information than was contained in the original letter.

Local No. 6, International Federation of Health Professionals, ILA, AFL-CIO (hereinafter "Local No. 6") alleging that the City of Newark (hereinafter the "City") had engaged in certain unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (the "Act"). Local No. 6 alleged that the City entered into a "collusive collective bargaining agreement dated December 31, 1975 ('agreement') with Local 945, International Brotherhood of Teamsters ('Local 945') with full knowledge that Local No. 6 and not Local 945 represents an overwhelming majority of the employees in the unit involved herein".

The charge was processed pursuant to the Commission's Rules, and it appearing to the Commission's Executive Director that the allegations of the charge, if true, might constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on April 14, 1975.

Following the issuance of the Complaint, the City filed a motion for summary judgment contending that the Complaint should be dismissed as relating to events occurring prior to January 20, 1975, the effective date of P.L. 1974, c. 123. In an interlocutory decision issued on May 20, 1975 the Commission denied the motion for summary judgment, holding that its unfair practice jurisdiction did extend to the time of the events alleged in this charge, December 31, 1974. The Commission held that, at least for events within six months of the date of the charge, [2/] Chapter 123 mandated only a change in forum for the protection and enforcement of pre-existing statutory rights, rather than creating new ones. A second ground for dismissal urged

2/ P.L. 1974, c. 123 ss 1 (c) (N.J.S.A. 34:13A-5.4(c)) establishes a six-month statutory period of limitations on the filing of unfair practice charges.

by the City was also denied, as the Commission found that there were substantial disputed factual issues necessitating a plenary hearing.

On June 18, 1975 Local 945 filed a motion to intervene in the proceedings pursuant to N.J.A.C. 19:14-5.1, which motion was granted by the Executive Director by letter dated June 24, 1975.

Hearings were held before Stephen B. Hunter, Hearing Examiner of the Commission, on June 25, 1975, June 26, 1975, July 1, 1975, July 30, 1975 and July 31, 1975 in Newark at which time all parties were given an opportunity to examine witnesses, to present evidence and to argue orally. All parties submitted briefs by November 17, 1975 on the issues presented. On February 27, 1976, the Hearing Examiner issued his Recommended Report and Decision, which Report included a complete procedural history and an analysis of relevant private sector legal precedent, a complete review of the arguments and allegations of the Charging Party, and a summary of the evidence presented. Based upon this very comprehensive analysis, the Hearing Examiner made certain findings of fact and conclusions of law which led to his recommended Order dismissing the Complaint. The original of the Report was filed with the Commission and copies were served upon all parties. A copy is attached hereto and made a part hereof.

N.J.A.C. 19:14-7.3 sets forth the procedure to be followed in filing exceptions to the hearing examiner's recommended report and decision. Subsection (a) of this rule requires an original and nine copies of the exceptions together with a supporting brief in like number. Subsection "b" requires that each exception:

> shall set forth specifically the questions of procedure, fact, law, or policy to which exception is taken; shall identify that part of the recommended report and decision to which objection is made; shall designate by precise citation of page the portions of the record relied on; and shall state the grounds for the exception and shall include the citation of authorities unless set forth in a supporting brief. Any exception which is not specifically urged shall be deemed to have been waived. Any exception which fails to comply with the foregoing requirements may be disregarded.
>
> Subsection "h" states:
>
> (N)o matter not included in exceptions or cross-exceptions may thereafter be urged before the Commission, or in any further proceeding.

Local No. 6 had requested an extension of time in which to file exceptions. In a letter dated March 5, 1976, the Executive Director granted the requested extension, making any exception due in the Commission office by the close of business March 19, 1976, and specifically advised Local No. 6 that any exceptions filed must comply with Section 19:14-7.3(b) and (c) of the Commission's Rules.

By letters dated March 19, 1976 and March 22, 1976 the President of Local No. 6, William Perry, objects to the results reached by the Hearing Examiner and requests that the Commission review the complete record in this case and overturn the Recommended Report and Decision of the Hearing Examiner. These letters are reproduced in their entirety in the footnote below.3/

3/ Text of letter from Perry dated March 19, 1976:

> We are amazed by the hearing officer's decision and one has to wonder whether Mr. Hunter, was present at the hearing, with his mind open or closed. We would be misrepresenting the hundreds of people, who are employed by the City of Newark and have designated this Union as their exclusive bargaining agent, by allowing the report to stand as it is and be a party to destroy our whole system of democracy and allowing the employees to continue to be without representation of their choice. (continued)

An examination of the March 19, 1976 and March 22, 1976 letters indicates that these submissions do not comply in any respect with the requirements of the Rules. Neither letter sets forth with any specificity

3/ (continued)

The Union has proven to the Commission, initially, that there was sufficient evidence for the Commission to issue a complaint and in the hearing the record will reflect that Local 6, has proven beyond a shadow of a doubt, that the City of Newark, through its representatives has entered into a secret agreement with an unauthorized bargaining agent whereby, depriving hundreds of employees of their right to vote as guaranteed to every citizen of this republic by various State, City and Federal statutes. The employees whom local 6, represents were never advised or consulted and were not aware that such an agreement was signed on December 31st. The City has also violated the mandatory requirement whereby a municipality before its chief executive officer signs an agreement, public notice must be given. This too was not done in this case. And again, the City through its representative chose to ignore the law and take away the only thing that we are so proud of that our forefathers have build for this republic that we live in 'is the right to vote and guaranteed freedom'.

Therefore, we respectfully request the Commission to review the complete record including our legal memorandum that we filed and I am sure that the Commission will find that the hearing officer's decision should be overturned.

Text of letter from Perry dated March 22, 1976:

We respectfully request that the additional information which was overlooked in our letter dated March 19, 1976, we believe is essential for the commission to be aware of what transpired during the hearings.

The attorneys for Local 6, were approached, during one of the recesses at the hearing, by the attorneys of the City of Newark and Mr. Hunter. The proposition was posed, by the attorneys of the City of Newark, that if Local 6, was willing to consent to an election and if they were to be certified as the winner they would have to live with the present contract which was signed on December 31, 1974. Local 6, rejected the offer because this contract was negotiated and signed without the consent of the employees of the City of Newark. This of course, is a clear indication on the part of the City of Newark whereby, the City tried to rectify the out and out violation of law which they have committed.

the portions of the record which might support the contentions that it has "proven beyond a shadow of a doubt" that the City entered into a secret agreement with an unauthorized bargaining agent. Nor do they cite to any portion of the record that supports the contention that the employees represented by Local No. 6 were never advised of the agreement between the Teamsters and the City. It should also be noted that the standard for the issuance of a Complaint is based solely on the allegations contained in the unfair practice charge (N.J.A.C. 19:14-2.1), and is not based on any potential evidentiary matter which may have been submitted. Therefore the issuance of a Complaint can in no way be given probative value in establishing that an unfair practice has been committed.

The remaining allegations contained in the March 19, 1976 letter relate to the alleged failure to give public notice before the City executed the December 31, 1974 agreement. Although Local No. 6 has failed to cite any portion of the record in which this point had been raised, the record reveals, as found by the Hearing Examiner, that on December 27, 1975 a resolution authorizing the Mayor and Business Administrator to execute the labor agreement negotiated with the Teamsters on behalf of the City was adopted by the City Council.

Similarly, the allegations raised in its March 22, 1976 letter, aside from the fact that it was received after the approved period for the filing of exceptions, do not conform to the Rules of the Commission. With regard to the contention that the alleged offer of settlement was an admission that the City had violated the law, suffice it to say that even assuming that such

a conversation actually did take place,[4] the Commission does not consider it supportive of Local No. 6's position. On the contrary, the Commission feels that to allow the fact that one party or a Commission staff member made an off the record proposal for settlement to be introduced into the proceeding to the prejudice of any of the parties would be violative of the public policy of the Act which is to promote the prompt settlement of labor disputes. See N.J.S.A. 34:13A-2.[5]

Despite the failure of these exceptions to meet the procedural requirements of our Rules, or to specifically identify those areas of the Recommended Report with which they take exception, the Commission has reviewed the entire record, including careful consideration of the Hearing Examiner's Recommended Report and Decision. We hereby adopt those findings of fact and conclusions of law as stated by the Hearing Examiner substantially for the reasons set forth by him. Contrary to the statements contained in Local No. 6's letter of March 19, 1976, we found Mr. Hunter's report to be a thorough and accurate recitation of the arguments and evidence presented; and we are in agreement with his conclusion that Local No. 6 did not carry its burden of proving the allegations of the Complaint by a preponderance of the evidence. N.J.S.A. 34:13A-5.4(c) and N.J.A.C. 19:14-6.8.

4/ By letter dated March 24, 1976, the attorney representing the City denied having made any formal offer as alleged by Local No. 6 but did indicate that he had been willing to discuss settlement.

5/ A review of the record shows no attempt by Local No. 6 to present any evidence of this conversation or its alleged probative value into the record. Assuming Local No. 6 actually believed this conversation was an admission of guilt, it could have attempted to make this argument at the hearing.

Accordingly, the Commission concludes that no unfair practices have been committed by the Respondent and the Complaint in this matter should be and hereby is dismissed with prejudice.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

By Bernard M. Hartnett, Jr.
Acting Chairman

DATED: Trenton, New Jersey
April 27, 1976

H.E. NO. 76-4

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

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Intervenor.

ERRATUM

The Hearing Examiner's Recommended Report and Decision in the above-entitled matter that issued on February 27, 1976 is hereby corrected as follows:

page	line	delete	substitute
25	20	"Local No. 6's"	"the Teamsters'"

Stephen B. Hunter
Stephen B. Hunter
Hearing Examiner

Dated: March 8, 1976

H.E. NO. 76-4

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City of Newark
(Mr. Thomas J. Savage, of Counsel)

For the Intervenor
Rothbard, Harris and Oxfeld, Esqs.
(Mr. Sanford R. Oxfeld and Mr. Emil Oxfeld, of Counsel)

HEARING EXAMINER'S RECOMMENDED REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission on January 23, 1975 and perfected on January 31, 1975 by Local No. 6, International Federation of Health Professionals, ILA, AFL-CIO (hereinafter Local No. 6) alleging that the City of Newark (hereinafter the City) had engaged in unfair practices within the meaning of the New Jersey

Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1, et seq. (hereinafter the Act).[1/]

It appearing that the allegations of the charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on April 14, 1975.

An interlocutory decision denying a motion for summary judgment filed by the City was issued on May 20, 1975.[2/] The City had contended that the Complaint should be dismissed since the Commission did not have jurisdiction over events occurring prior to January 20, 1975, the effective date of P.L. 1974, Ch. 123. The Commission held that its unfair practice jurisdiction did extend to events occurring prior to January 20, 1975, since the Commission viewed Chapter 123 as mandating a change in forum concerning the protection and enforcement of pre-existing statutory rights, rather than creating new statutory rights and duties. A second ground for dismissal urged by the City was also denied, as the Commission found that there were substantial disputed factual issues necessitating a plenary hearing.

Pursuant to the Complaint and Notice of Hearing, hearings were held on June 25, 1975, June 26, 1975, July 1, 1975, July 30, 1975 and July 31, 1975 in Newark, New Jersey at which time all parties were given an opportunity to examine witnesses, to present evidence and to argue orally. Briefs subsequently were submitted by all the parties to this instant proceeding. Upon the entire record in this proceeding, the Hearing Examiner finds:

1. The City of Newark is a Public Employer within the meaning of the New Jersey Employer-Employee Relations Act, as amended, and is subject to its provisions.

1/ More specifically, Local No. 6 alleged that the actions of the City in "entering into a collusive collective bargaining agreement dated December 31, 1974 ('agreement') with Local 945, International Brotherhood of Teamsters ('Local 945') with the full knowledge that Local No. 6 and not Local 945 represents an overwhelming majority of the employees in the unit involved herein" violated N.J.S.A. 34:13A-5.4(a)(1)(2) and (5).

These subsections prohibit employees, their representatives or agents from "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act...(2) Dominating or interfering with the formation, existence or administration of any employee organization ...(and) (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative.

2/ See City of Newark (P.E.R.C. No. 87), 1 NJPER 21 (1975).

2. Local 945, International Brotherhood of Teamsters[3] (hereinafter the Teamsters) and Local No. 6, International Federation of Health Professionals, ILA, AFL-CIO are employee representatives within the meaning of the New Jersey Employer-Employee Relations Act, as amended, and are subject to its provisions.[4]

3. An Unfair Practice Charge having been filed with the Commission alleging that the City of Newark has engaged or is engaging in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, a question concerning alleged violations of the Act exists and this matter is appropriately before the Commission for determination.

BACKGROUND

On April 15, 1971 the Teamsters were certified as the exclusive majority representative for the purpose of collective negotiations for a unit of all blue collar employees employed by the City of Newark excluding all clerical, craft and professional employees, elevator operators, storekeepers, asphalt workers, policemen, managerial executives, department heads, deputy department heads and supervisors within the meaning of the Act.

A Petition for Certification of Public Employee Representative [Docket No. RO-906] was filed with the Commission on October 11, 1974 by Local No. 6

3/ The Teamsters's motion to intervene in the instant unfair practice proceeding pursuant to Section 19:14-5.1 of the Commission's Rules, was granted by the Commission's named designee, Jeffrey B. Tener, on June 24, 1975. [Exhibit CO-1]

4/ The Teamsters refused to stipulate that Local No. 6 was an employee representative within the meaning of the Act, in part, because it was alleged that the International Federation of Health Professionals was not an international union at all since it had chartered only one local chapter and had no other membership. It was contended that the Federation's officers were therefore holding office illegally in violation of the precise terms of the Landrum-Griffin Act.

This Hearing Examiner takes "administrative" notice of N.J.S.A. 34:13A-3 which states in part the following:

> "The term 'representative"...shall include labor organizations...This term shall include any organization, agency or person authorized or designated by a public employer, public employee, group of public employees, or public employee association to act on its behalf and represent it or them."

The above definition is quite expansive and contains few qualifications. The essential element in this definition is that a public employee or group of employees must have, at one time, designated a particular labor organization or entity to act on their behalf and represent them [in matters concerning collective negotiations].

This Hearing Examiner concludes that on this basis Local No. 6 is an employee representative within the meaning of the New Jersey Employer-Employee Relations Act.

with respect to the approximately 1,000 City blue collar sanitation, sewer and water department employees subsumed within the aforementioned negotiating unit represented by the Teamsters. The Petition was perfected by the filing of an adequate showing of interest on October 27, 1974. The Executive Director of the Commission thereafter caused an investigation to be conducted into the matters and allegations set forth in the Petition in order to determine the facts. On the basis of the administrative investigation conducted the Executive Director, on December 6, 1974, issued a decision that dismissed the Petition filed by Local No. 6 as untimely.5/

During the investigatory process concerning the Petition filed by Local No. 6 the City had contended that the Petition was untimely and should therefore be dismissed. In support of its assertions the City submitted a copy of an agreement executed between it and the Teamsters covering the employees petitioned for by Local No. 6, and having a term of January 1, 1972 to and including December 31, 1973. The City in addition proffered a copy of an executed "Amendment to Agreement", dated August 14, 1973, which, in part, deleted and replaced the duration clause of the original agreement with the following: "this Agreement shall be in full force and effect as of January 1, 1972 and shall be in effect to and including December 31, 1975...." The City relied upon the foregoing as "an existing written agreement" within the meaning of the Commission's contract bar rule set forth in Rule Section 19:11-1.15(c).

The Executive Director determined that there was an existing four year agreement between the City and the Teamsters, having a term of January 1, 1972 through December 31, 1975. For purpose of the Commission's contract bar rules only, he treated the contract as a three year agreement expiring on December 31, 1974, [citing Rule Section 19:11-1.15(d)] and concluded that Local No. 6's petition was neither filed nor perfected until after the applicable open period.6/

The Executive Director set forth that during the investigation , Local No. 6 had alleged that the "Amendment to Agreement" had not been ratified, unit employees were never informed of its existence and never received various wage increases called for under it, and therefore asserted that it could not operate as a bar to Local No. 6's petition. However the Executive Director found that although Local No. 6 had been informed of its obligation under Section 19:11-1.12(a)

5/ See City of Newark (Local No. 6), E. D. No. 56 (1974)

6/ Pursuant to N.J.A.C. 19:11-1.15(c)(2) the relevant open period for timely filing was "not less than 90 days and not more than 120 days" before December 31, 1974.

of the Commission's Rules to present documentary and other evidence, as well as statements of position, in support of these allegations, Local No. 6 had been unable or unwilling to do so.

On December 31, 1974 the City entered into a collective negotiating agreement with the Teamsters that covered the three year period from January 1, 1975 through December 31, 1977. Only the Wage Schedule [designated as Appendix B within the agreement] was to be opened for renegotiations by either party giving notice to the other, in writing, no sooner than one fifty (150) or later than ninety (90) days prior to December 31, 1975, or December 31, 1976, respectively.

Local No. 6 thereafter, on January 2, 1975 filed another Petition for Certification of Public Employee Representative [Docket No. RO-954] with the Commission with respect to all blue collar employees included within the negotiating unit represented by the Teamsters. The City responded by forwarding to the Commission a copy of the Agreement between the City and the Teamsters that was signed on December 31, 1974 and requested that the new petition filed by Local No. 6 be dismissed forthwith upon applieation of Section 19:11-1.15(c) 2 of the Commission's Rules concerning the timeliness of representation petitions.

The instant Unfair Practice Charge was then filed with the Commission on January 23, 1973 and perfected on January 31, 1975 by Local No. 6.

Subsequently, on June 20, 1975 all apposite parties were informed by the Executive Director of the Commission that the Petition for Certification filed by Local No. 6 on January 2, 1975 [Docket No. RO-954] would be held in abeyance during the pendency of the unfair practice proceeding initiated by Local No. 6.

MAIN ISSUES

1. Whether the City had either actual knowledge of the majority status of Local No. 6 or the lack of the majority status of the Teamsters or a good faith doubt as to the continuing majority status of the Teamsters?

2. If the City did have a good faith doubt as to the continuing majority status of the Teamsters, did it engage in unfair practices within the meaning of N.J.S.A. 34:13A-5.4(a), subsections 1, 2 and 5 by continuing to deal with the Teamsters and by entering into a collective negotiating agreement dated December 31, 1974, with the Teamsters?

POSITION OF LOCAL NO. 6

Local No. 6 contended that the City interfered with, restrained and coerced its blue collar employees in the exercise of the rights guaranteed to

them by the New Jersey Employer-Employee Relations Act by entering into a collective negotiating agreement with the Teamsters on December 31, 1974, only hours before a Petition for Certification filed by Local No. 6 could have been timely filed, with the full knowledge that Local No. 6 and not the Teamsters represented a compelling majority of the employees in the unit at issue. Local No. 6 argued that by entering into this aforementioned agreement, while having a good faith doubt as to the majority status of the Teamsters, the City deprived its employees of their right to select their own employee representative for purposes of collective negotiations and to change their exclusive representative in accordance with appropriate Commission procedures.

Local No. 6 substantiated its contentions that the City either did have full knowledge or should have had complete knowledge that Local No. 6 and not the Teamsters represented a clear majority of the employees in the blue collar unit at issue by referring to specific events and incidents.

For example, Local No. 6 introduced a series of letters that had been sent to representatives or agents of the City that, in essence, attempted to inform the City that Local No. 6 had been designated by an overwhelming majority of the employees in the unit as their sole and exclusive negotiating agent. Local No. 6 argued that although the City had an obligation to thoroughly investigate its claims before entering into any further agreements with the Teamsters they chose to do absolutely nothing.

Local No. 6 maintained that the finding as set forth in Executive Director's Decision No. 56 [issued on December 6, 1974], that Local No. 6's Petition for Certification, filed on October 11, 1974, was perfected by the filing of an adequate showing of interest in accordance with the Commission's Rules in and of itself should have created a good faith doubt in the minds of City officials that the Teamsters still represented a majority of the employees in the blue collar unit.

Local No. 6 also contended that the apparently hasty negotiations leading up to the execution of a new three year agreement between the City and the Teamsters, providing for little in the way of increased wages and benefits, when there was still one full year to run in the existing contract, indicated that the City did have knowledge of Local No. 6's majority status and intended to "freeze" this organization out by entering into a "sweetheart contract" with the incumbent union. In this regard, Local No. 6 emphasized that no representatives of the City or the Teamsters were able to refer to the dates of particular

negotiating sessions and that the contract was executed only a few hours before a new Petition for Certification filed by Local No. 6 would have been timely filed in accordance with the import of Executive Director's Decision No. 56.

Local No. 6 asserted that the testimony of Marvin Moschel, a representative of Council 52 of the American Federation of State, County and Municipal Employees, as to statements made by the City's Special Labor Counsel, Gerald Dorf, during the course of negotiations between the City and a local that Mr. Moschel serviced within the City, gave the clearest indication of the City's desire to keep Local No. 6 out as "a favor" to the Teamsters.

In addition, among other events, Local No. 6 referred to the holding of two large Local No. 6 membership meetings; massive revocations of Teamster dues check off authorizations; the alleged knowledge of certain supervisory personnel of Local No. 6's majority status; a telephone conversation in late December with the City's Corporation Counsel Office; and an August, 1974 meeting between William Perry, President of Local No. 6, and Joseph Campisano, President of the Teamsters Local in support of its contention that the City was clearly in violation of N.J.S.A. 34:13A-5.4(a), subsection 1.

In support of its contentions Local No. 6 referred to decisions of the National Labor Relations Board, including the often cited Midwest Piping case [17 LRRM 40 (1945)], that it concluded supported its contentions that the presumption of continued majority status of a certified incumbent union was rebuttable and that an employer acted at its peril if it executed a successor agreement with an incumbent where circumstances clearly casted doubt upon the continued majority status of the incumbent.

Local No. 6 also asserted that the City had engaged in an unfair practice within the meaning of N.J.S.A. 34:13A-5.4(a), subsection (2) in that it had interfered with the existence of Local No. 6 by entering into the December 31, 1974 agreement with the Teamsters with the full knowledge that Local No. 6 represented an overwhelming majority of the employees in the negotiating unit at issue. Local No. 6 added that the City had also interfered with the existence of Local No. 6 by improperly failing to recognize it as the exclusive collective negotiating agent and by deliberately failing to take any action (including responding to correspondence) to determine who truly represented its employees within the City wide blue collar unit.

Lastly, Local No. 6 alleged that the City had engaged in an unfair practice within the meaning of N.J.S.A. 34:13A-5.4(a), subsection (5) in that the City refused to negotiate at all, although demand was made, with Local No. 6, as the majority representative of the employees in the negotiating unit at issue, concerning the terms and conditions of employment of the employees in the unit.

POSITION OF THE CITY OF NEWARK

The City entered a general denial of all operative allegations which would or might lead to the conclusion that it had committed any unfair practices within the meaning of the New Jersey Employer-Employee Relations Act.

More specifically, the City maintained that Local No. 6 had failed to demonstrate its majority status to anyone and failed to prove that the City knew or should have known of "its majority status" and therefore should have had a good faith doubt as to the status of the Teamsters. In addition the City asserted that Local No. 6 had totally failed to demonstrate any conspiracy between the City and the Teamsters to collusively deprive Local No. 6 or any of the employees within the negotiating unit of the rights guaranteed to them under the New Jersey Employer-Employee Relations Act.

The City argued that it had no good faith doubt as to the continuing majority status of the Teamsters when it entered into a new three year negotiating agreement with them on December 31, 1974 during, what it considered to be, a judicially and administratively recognized "insulated period". The City emphasized that no credible evidence had been presented to it during any stage of the relevant proceedings to raise in the minds of the City's representatives a good faith doubt as to the status of the Teamsters.

The City referred to the following arguments, among others, in support of its position:

1. The Executive Director had found in his December 6, 1974 decision [referred to hereinbefore as E.D. No. 56] that Local No. 6 although informed of its obligations under Section 19:11-1.12(a) of the Commission's Rules had been unable or unwilling to substantiate the statements that it had made during the course of the Commission's investigation of its original certification petition that the "Amendment to Agreement" executed by the City and the Teamsters on August 14, 1973 had not been ratified and that employees were never informed

of its existence and never received various wage increases called for under it. The only good faith doubt that this situation may have created in the minds of City officials was the good faith doubt as to the accuracy and veracity of other statements made by Local No. 6 officials.

2. None of the letters that Local No. 6 sent to various City officials contained anything other than traditional, self serving "campaign rhetoric". In none of these letters was there enclosed a showing of interest or any authorization cards from the alleged "overwhelming majority of employees" who had designated Local No. 6 as their new exclusive bargaining agent. Local No. 6 did not even offer in these letters to submit a showing of interest or any authorization cards to City officials on demand.

3. Although Local No. 6 referred to the "mass revocation" of Teamsters' dues checkoff authorizations as an incident that should have placed the City on notice of the majority status of Local No. 6 the record shows that out of a unit of approximately 1,000 employees no more than 50 to 150 employees revoked their Teamsters' authorizations during the entire period of Local No. 6's organizational campaign. This number included individuals who revoked their authorizations for several reasons including those who retired or were laid off.

4. No decertification petition was filed by the employees themselves nor did the employees apparently undertake any type of letter writing campaign to City officials directly informing them of their representation preferences.

5. A showing of interest is not designed to support a naked claim of majority in a particular unit and consequent recognition by the employer, but rather to show that there is sufficient employee support for collective bargaining to warrant the initiation of a full scale hearing and the possible invocation of the Commission's election machinery.

In addition the City had no responsibility to investigate the question of a showing of interest since the Commission through its Executive Director was solely responsible for determining the validity and adequacy of that showing.

6. The testimony of Marvin Moschel was self serving in nature and was rebutted by the testimony of Albert Pannullo, the person in charge of labor relations within the City Government of Newark.

7. It was never proven that there were any City officials present at the two Local No. 6 general membership meetings that were called in the latter part of 1974 nor was it proven that any blue collar supervisory personnel witnessed the organizational activities of Local No. 6 and then reported back to City officials.

8. William Perry, President of Local No. 6, testified that no City officials were present at the August, 1974 meeting with Joseph Campisano. He also testified that he told no City officials about this meeting prior to the filing of the instant unfair practice charge.

POSITION OF THE TEAMSTERS[7/]

The Teamsters concurred with the City in asserting that the City should not have had a good faith doubt as to the continuing majority status of Teamsters in that Local No. 6 had failed to either demonstrate its majority status to the City or to disprove the majority status of the Teamsters.

The Teamsters referred to decisions of the National Labor Relations Board that maintained that the filing of a decertification petition or even the withdrawal of a majority of an incumbent union's dues checkoff authorizations would not overcome the presumption of an incumbent union's continuing majority status. The Teamsters contended that none of the evidence proffered by Local No. 6 had overcome this presumption in the instant matter.

The Teamsters asserted that since the December 31, 1974 agreement signed by the City and itself was executed during the Commission's delineated "insulated period" when no timely filed Petition for Certification was outstanding no organization could then interfere with the negotiations of a valid new agreement. In this regard the Teamsters added that the subjective intentions of the parties to this agreement - even if their intention included a desire to "freeze out" Local 6 from filing a timely certification petition the next day - were completely immaterial so long as the December 31, 1974 contract was a valid agreement. The Teamsters contended that even Local No. 6 appeared to agree that this contract was a valid enforceable agreement for contract bar and other purposes.

On the topic of the expressed intentions of the parties the Teamsters maintained that the state of the law, at least in the private sector, clearly permits an employer to announce its preference concerning which union it wishes to deal with as long as that statement of preference is not buttressed by threats or coercion, or any rendering of illegal assistance to the preferred union. The Teamsters argued that the record in this matter did not refer to

7/ The Teamsters' position on the employee representative status of Local No. 6 was discussed and analyzed in an earlier section of this recommended report and decision.

any incidents where employees in the blue collar unit were threatened or coerced in any way concerning their individual preference as to the choice of their negotiating representative. The Teamsters asserted that the City did not even make use of its right to declare its preference to the membership of the unit.

The Teamsters questioned the relevancy of the Commission's determination in E. D. No. 56 that the Petition filed by Local No. 6, later determined to be untimely filed, was perfected by an adequate showing of interest. The Teamsters stated that for purposes of establishing a "good faith doubt" concerning the continuing majority status of the Teamsters in the minds of City officials there had to be persuasive evidence introduced that a majority of the unit employees had withdrawn their Teamster dues checkoff authorizations contemporaneously with the signing of authorization cards for Local No. 6. The Teamsters pointed out that the record clearly established that only between 59 or 69 (the City's figures) and 150 employees (Local No. 6's figure), out of over 1,000 employees, withdrew their dues checkoff authorizations, for any reason, during the entire Local No. 6 organizational campaign despite Local No. 6's declarations, in a letter sent to Albert Pannullo, that "a vast and overwhelming majority of employees who work for the Public Works Department, Sanitation Department, Sewer Department, and Water Supply Department, of the City of Newark, have notified both the City and Local 945, IBT, that they revoked their authorization for the City to deduct Union dues from their wages." The Teamsters, in this regard, further contended that even Local No. 6 in an August 8, 1974 letter to the Commission appeared to concede at least at that date that they had not even obtained a showing of interest from a majority of the employees in the negotiating unit.

The Teamsters responded to Local No. 6's allegations that the hasty negotiating of a new three year contract after the issuance of E. D. No. 56 when the "Amendment to Agreement", dated August 14, 1973, still had one year to run helped to establish the illegality of this new agreement by first stating that the decision announced in E. D. No. 56 had been transmitted to all the parties weeks before its issuance on December 6, 1974. The Teamsters then emphasized that they were able to renegotiate, by mutual consent, the earlier agreement because of the ending of the wage stabilization period that had restricted their bargaining for the past few years and primarily because of the enormous leverage they could exert by threatening job actions if a new contract was not concluded by the end of the year.

In commenting on certain of the other allegations of Local No. 6 the Teamsters argued that evidence that two Local No. 6 organizational meetings were well attended during the latter part of 1974 should be of no persuasive force since they were open to anyone and the number of actual negotiating unit members attending was never proven. In addition, the Teamsters maintained the testimony of Marvin Moschel, previously referred to, was self serving, unreliable and irrelevant.

The Teamsters also contended that the record established that Local No. 6 did not even have enough support during December, 1974 to have any observers present at the Teamsters' ratification meeting attended by several hundred individuals and widely advertised.

Lastly the Teamsters emphasized that if the charges of Local No. 6 were sustained the effects of perhaps setting aside the executed three year agreement would be disasterous, adversely affecting the rights and livelihoods of individuals who could ill afford to lose wage increases, pension contributions and other benefits.

DISCUSSION AND ANALYSIS

A. THE APPLICABLE LAW

In the absence of any definitive Commission decisions concerning the relevant issues in this instant matter the undersigned has carefully examined apposite judicial and administrative decisions emanating out of the federal private sector dealing with similar issues. The Courts of our State have specifically recognized that the New Jersey Employer-Employee Relations Act was patterned after the National Labor Relations Act, as amended, and that the latter may be utilized as a guide in resolving disputes arising under our Act.[8/]

The undersigned believes that the National Labor Relations Board's decision in Midwest Piping and Supply Co. Inc., 17 LRRM 40 (1945) is the place to begin in analyzing whether the City's actions in this instant matter constituted illegal support of a minority labor organization and were in violation of the New Jersey Employer-Employer Relations Act. Under the Midwest Piping doctrine, which has been invoked by the Board in many subsequent cases, it is an unfair practice for an employer to recognize and bargain with one of two or more

8/ See Lullo v. Intern. Assoc. of Fire Fighters, 55 N.J. 409 (1970)

competing unions as the exclusive bargaining agent of its employees during the pendency of a rival union's Petition for Certification where a "real question concerning representation exists." The Board has rather consistently maintained that the mere filing of a representation petition supported by an administrative showing of interest is sufficient to raise this particular question.[9] The standards used by the Board to determine whether an election is appropriate [i.e. whether a petition is timely filed and supported by an adequate showing of interest] are the same tests utilized in determining the applicability of the Midwest Piping doctrine to a given case.

The Board has not often sought to justify its decision to make this doctrine coextensive with the existence of a question concerning representation. Commentators have correctly pointed out that this particular approach does make the Board's task in deciding whether or not to apply this doctrine an easy one.[10] Moreover, the policy is consistent with the Board's view that the purpose of the doctrine is to protect the purposes and policies of the N.L.R.A. that require the issue of representation to be decided by the employees in a manner attended by the safeguards of the Board's secret ballot election machinery. The Board thus views the Midwest Piping doctrine as one way of insuring the integrity of its election machinery and will go ahead with the holding of an election despite a prior expression of majority sentiment.

The various United States Courts of Appeals that have dealt with Midwest Piping issues, on appeal, have rejected the Board's determination of what constitutes "a real question concerning representation." These courts have consistently refused to find a violation of the N.L.R.A. when an employer has recognized or continued to recognize on the basis of a clear demonstration of majority support one of two unions competing for exclusive recognition. The exception to this above rule is where the clear majority employed by one of the competing unions is achieved by coercion, threats or some other unfair labor practice.[11]

9/ In at least one case [American Bread Co., 72 LRRM 1279 (1968)] the Board estimated that the production of one authorization card by a rival union might be sufficient to raise a question concerning representation within the meaning of the Midwest Piping doctrine.

10/ See Getman, "The Midwest Piping Doctrine: An Example of the Need for Reappraisal of Labor Board Dogma", 31 U. CHI. L. REV. 292 (1964).

11/ See for example, NLRB v. Intern. Island Resorts, Ltd. (Kona Surf Hotel), 87 LRRM 3075 (CA9) (1974) and Playskool, Inc. v. NLRB, 82 LRRM 2916 (CA7) (1973).

The Courts have virtually uniformly determined that the mere filing of a representation petition by a competing union even if supported by an adequate [at least 30%] showing of interest does not create a real question concerning representation. Their decisions have determined that in extending recognition or continuing to extend recognition on the basis of demonstrated majority status the employer has not coerced or interfered with the other "petitioner union", but has merely obeyed the duty imposed on him to deal with the agent which his employees have designated. These judicial decisions have held that, however the need to preserve the integrity of the Board's election machinery, courts must protect the right of employees to select and negotiate through their own representative without undue delay. The judiciary has also strived to implement the congressional purpose of promoting labor peace underlying the NLRA and has accepted a majority showing by a particular union as a means of terminating the instability inherent in a representation contest and preventing a minority union from frustrating the majority will in order to gain additional campaigning time.

In summary, the Board in applying the Midwest Piping doctrine generally looks first to the support held by a minority union and then finds a "question concerning representation" if the claim of the organization is not clearly unsupportable, while the judiciary looks first to the support held by the majority union and finds that no "question concerning representation" exists if that organization has the validly obtained support of the employee majority and the rival union is thus shown to be "no genuine contender."

In the instant matter before the undersigned, contrary to the factual situation in the Midwest Piping matter, the City continued to extend exclusive recognition to an incumbent union and executed a new three year agreement with this organization on December 31, 1974 within the insulated period of ninety (90) days immediately preceding the expiration date, for contract bar purposes only, of the "Amendment to Agreement" executed by the City and the Teamsters and dated August 14, 1973.[12/]

12/ See E. D. No. 56, supra, and N.J.A.C. 19:11-1.15(c)(2). The Commission has established an insulated period of ninety (90) days in cases involving employees of a county or a municipality or any county or municipal authority, commission or board. Petitions for Certification or Decertification filed within this ninety (90) day period will not normally be regarded as timely filed by the Commission.

It is important then to review applicable National Labor Relations Board and judicial decisions that have analyzed the applicability of the Midwest Piping doctrine to situations wherein an employer has chosen to negotiate an agreement with an incumbent union in the face of competing claims to majority representation status raised by rival employee organizations. Certain of these decisions specifically refer to the standards to be applied in those circumstances in which an agreement was negotiated with an incumbent during the NLRB established "insulated period."

In 1954 the Midwest Piping doctrine was narrowed by the Board in William D. Gibson Co. [35 LRRM 1092 (1954)] to meet the case where an employer contracted with an incumbent union. The Board held that the negotiation of a contract by the employer and the incumbent did not constitute an unfair labor practice as unlawful interference with the employees' free choice of their bargaining representative despite the demand for recognition by another union and the pendency of a petition for certification before the Board. The Board held that this exception to the Midwest Piping doctrine was justified on the grounds that "stability in industrial relations, the primary objective of the [NLRA], requires that continuity in collective bargaining agreements be encouraged, even though a rival union is seeking to displace an incumbent [35 LRRM 1092 at 1093]."

In 1958 in Shea Chemical Corporation [42 LRRM 1487] the Board overruled the Gibson "incumbent's exception" in holding that the employer in that case violated the Act by entering into a collective bargaining agreement while a representation case relating to that unit was still pending even though the contracting union had been recognized as the exclusive bargaining representative before the intervening union filed its petition. The Board stated its new version of the Midwest Piping doctrine as follows:

> [U]pon presentation of a rival or conflicting claim which raises a real question concerning representation an employer may not go so far as to bargain collectively with the incumbent (or any other) union unless and until the question concerning representation has been settled by the Board. [42 LRRM 1487 at 1487]

The Board in its Shea Chemical decision after announcing its new policy concerning the Midwest Piping doctrine added this exception:

> [T]he Midwest Piping doctrine does not apply in situations where, because of contract bar or certification year or inappropriate unit or any other established reason, the rival claim and petition do not raise a real representation question. [42 LRRM 1487 at 1487] (Emphasis mine)

This exception is relevant in this instant matter inasmuch as it is uncontroverted that there was no timely filed Petition for Certification pending before the Commission concerning the negotiating unit at issue at the time when the December 31, 1974 agreement between the City and the Teamsters was executed.

Another exception to the Midwest Piping doctrine was enunciated by the Board in City Cab, Inc. [46 LRRM 1332 (1960)]. In this decision the Board found that where there existed a bargaining agreement which under the Board's contract bar rules had an insulated period, during which an employer and an incumbent union could negotiate and execute a new or amended agreement without the intrusion of a rival petition, the Midwest Piping doctrine was inapplicable to conduct occuring within that period, unless there was on file at the beginning of that period a timely filed petition which therefore raised a real question concerning representation.

The Board's decision in City Cab, Inc., was modified in two subsequent Board decisions, Hart Motor Express, Inc. [65 LRRM 1218 (1967)] and Anderson Pharmacy [76 LRRM 1163 (1970)]. The Board determined that even in the absence of a pending representation petition if there was evidence that employees in a particular unit had withdrawn authority from an incumbent to negotiate a new agreement on their behalf and if the employer was made aware of a serious question concerning the incumbent's status as bargaining agent, the employer violated the NLRA by negotiating a new contract with the incumbent even if executed during the insulated period. In a recent U.S. Court of Appeals decision, NLRB v. Pepsi Cola Bottling Co., [79 LRRM 2324 (CA 6) (1972)] the court, citing the Hart Motor decision, held that if an employer knew that an incumbent union did not represent a majority of the employer's employees in a bargaining unit its entering into a contract with said union thereafter despite rival claims to majority status would violate the NLRA. This would be so notwithstanding that the "suspect contract" was executed during the insulated period and at a time when no timely filed representation petition was before the Board.

It is thus evident that although the Board and the courts have often disagreed as to the applicable law in determining the quantum of neutrality required of an employer when confronted with rival unions' recognitional demands under the Midwest Piping doctrine both the Board and the

judiciary have applied very similar standards in contested matters that parallel the case before the undersigned where an employer has executed a new agreement with an incumbent union during a insulated period at a time when a competing union's recognitional demands were outstanding and no timely filed petition was pending. The uniform approach taken in this line of cases is in part predicated on the well established law that an incumbent union's contractual relations with an employer gives rise to a presumption of majority status. In the face of this presumption an employer's withdrawal of recognition has been found to be unlawful unless (1) competent evidence established that the incumbent no longer commanded a majority as of the date of the employer's refusal to bargain or (2) the employer had a reasonable doubt based on objective considerations as to the incumbent's continuing majority status, that is, some substantial and reasonable grounds for believing that the incumbent had lost its majority status.[13/]

In summary, it is the undersigned's responsibility to determine whether the City had actual knowledge of the majority status of Local No. 6 or the lack of the majority status of the Teamsters or a good faith doubt as to the continuing majority status of the Teamsters. It is clear that the City's actions in executing the December 31, 1974 agreement are not automatically exempted from scrutiny because the City finalized the contract with an incumbent union during an insulated period. Nor are the City's actions immune from examination because there was no timely representation petition filed by Local No. 6 pending before the Commission at the time the agreement was signed.

B. DISCUSSION AND ANALYSIS OF THIS INSTANT MATTER IN LIGHT OF THE APPOSITE ADMINISTRATIVE AND JUDICIAL DECISIONS

After careful consideration of the foregoing and the record as a whole, the undersigned does not find that the City's conduct in continuing to deal with the Teamsters exclusively and entering into the collective negotiating agreement dated December 31, 1974 with the Teamsters ~~violated~~ N.J.S.A. 34:13A-5.4(a), subsections (1), (2) and (5).

An examination of the specific arguments of Local No. 6 and the evidence proffered by Local No. 6 in support of its contentions is in order and will be discussed seriatim.

13/ See Automated Business Systems v. NLRB, 86 LRRM 2659 (CA 6) (1974) and United Supermarkets, Inc., 87 LRRM 1434 (1974).

1. SERIES OF LETTERS SENT TO CITY OFFICIALS AND THE OBLIGATION TO INVESTIGATE CLAIMS

Local No. 6 introduced a series of letters[14/] that had been sent to representatives or agents of the City during the period between August 20, 1974 and December 26, 1974. Local No. 6 argued that these documents should have placed the City administration on notice that Local No. 6 and not the Teamsters represented an overwhelming majority of the employees in the blue collar unit at issue. Local No. 6 maintained that the City had the legal and moral obligation to thoroughly investigate Local No. 6's claims before entering into any negotiations with the Teamsters.

The undersigned after careful consideration of the series of letters does not find that these documents constituted a reasonable basis - predicated on objective considerations - for doubting the continuing majority status of the Teamsters at the time that the new three year agreement was negotiated, ratified, and executed.

The only specific evidence that was referred to in these letters in support of Local No. 6's claims to represent an overwhelming majority of the employees in the unit was the finding in E.D. No. 56 that Local No. 6's untimely petition for certification had been supported by an adequate showing of interest.[15/] However, there were no executed authorization cards attached to any of these letters in support of Local No. 6's contentions nor was there even a suggestion contained within these letters that cards would be submitted upon demand if voluntary recognition would be forthcoming on that basis.[16/] In addition, the first letter sent to any City official that even referred to the Commission's finding of an "adequate showing of interest" was dated December 9, 1974, apparently several weeks after negotiations had commenced between the City and the Teamsters with regard to a successor agreement and only three days before a letter was sent from the Attorney for the Teamsters to the Special Labor Counsel for the City confirming an agreement reached on a new three year contract between the parties.

14/ Exhibits C-3, C-8, C-9, C-10, C-11 and C-12

15/ This particular issue will be examined in more detail in a later section of this recommended report and decision.

16/ At an exploratory conference, conducted on March 10, 1975 pursuant to Section 19:14-1.6 of the Commission's Rules, William Perry, the President of Local No. 6 offered to show the City the executed authorization cards if recognition would be forthcoming. Mr. Perry testified, however, that he had never made this offer to the City before. [Transcript 6-25-74, pages 73-77, Transcript 7-1-75, pages 156-159]

In general the timing of the submission of these letters helps substantiate the City's contentions that they should not have had a good faith doubt as to the majority status of the Teamsters at the time that a successor agreement was negotiated. Of the six letters introduced into evidence by Local No. 6 in support of this particular argument only one letter claiming majority status [devoid of any reference to specific evidence in support of this contention] was sent to a City representative before December 9, 1974 and that was dated August 29, 1974, 111 days before.

In order to appropriately assess the "impact" these letters should have had on City officials at the time they were sent it is necessary to examine whether there were any outward manifestations of employee dissatisfaction with the Teamsters expressed to City agents and representatives during this time period. It is uncontroverted that no separate petitions for decertification[17] of the Teamsters indicating that employees no longer wished to be represented for purposes of collective negotiations by the Teamsters were either circulated or filed with the Commission. There was also no evidence proffered that any of the employees themselves engaged in any letter writing campaigns or other activities designed to put the City on notice that the majority status of the Teamsters was in doubt. In addition, there is evidence in the record that the City did examine the dues deduction register in response to Local No. 6's claims and determined that only between 59 and 69 of the 900 individuals authorizing dues deductions for the Teamsters [out of a 1000 man unit] had requested that these deductions be withdrawn for any reason during the organizing campaign of Local No. 6. William Perry, the President of Local No. 6, testified that not more than 100 or 150 people had demonstrated a desire to withdraw their "checkoffs".[18]

The record also does little to prove that Local No. 6 made any effort to meet with City officials during the period between August and

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17/ See N.J.A.C. 19:11-1.1(a)(3) and N.J.A.C. 19:11-1.3. The next subsection of this decision will deal more specifically with the differences between petitions for certification and petitions for decertification.

18/ Transcript 6-24-75, pages 77 and 173, Transcript 6-25-75, page 59, Transcript 7-1-75, page 66.

late December of 1974 to substantiate any of its contentions concerning its majority status.

Local No. 6 introduced no evidence that it had made or even tried to make specific appointments with City officials that were not kept to discuss the outstanding representation question despite William Perry's own admission that he himself had been in the City of Newark forty or fifty times on general business between July and December 31, 1974. Mr. Perry testified that although he had met with the Mayor of the City on several occasions during this period he had discussed "different business."[19/] Mr. Perry also testified that his primary response to persistent rumors that negotiations were taking place between the City and the Teamsters and that a new agreement would soon be executed thus"freezing out" Local No. 6 was to write more letters.[20/]

The undersigned concludes that is not enough to merely assert that one is the majority representative of a group of employees in order to create a good faith doubt as to the continuing majority status of an incumbent. The assertions must be supported by objective considerations that provide substantial and reasonable grounds for the belief that an incumbent's majority status is in doubt. The series of letters introduced by Local No. 6 in light of other relevant factors discussed hereinbefore cannot be considered to constitute these "substantial and reasonable grounds."

2. THE COMMISSION'S DETERMINATION REGARDING LOCAL NO. 6'S SHOWING OF INTEREST

Local No. 6 contended that the Executive Director's finding as set forth in E. D. No. 56 that Local No. 6's petition was perfected by the filing of an adequate showing of interest in accordance with the Commission's Rules should, certainly in combination with other factors, have created a good faith doubt in the minds of City officials that the Teamsters still represented a majority of the employees in the blue collar unit.

The undersigned finds that Local No. 6 has overemphasized the importance of the finding, in a representation proceeding, that it had submitted

19/ Transcript 6-25-75, pages 30 and 52.

20/ See Exhibits C-10 and C-11, Transcript 7-1-75, pages 114-115.

an adequate showing of interest along with its Petition for Certification.[21] The showing of at least thirty percent interest was a standard established for a limited purpose. It was developed by the National Labor Relations Board to prevent the Board's processes and the time and efforts of employees and employers from being dissipated and wasted by representation proceedings instituted by labor organizations that had little or no chance of being designated as the majority representative by the employees. The showing of interest requirement permits an agency such as the NLRB or our Commission to screen out those representation cases which do not warrant the incurring of expense for the further processing of a petition.

As pointed out by the City there is indeed a great deal of difference between using the thirty percent showing to support a decision to hold an election and using it as an evidentiary basis for an unfair practice finding. Its purpose is not designed to support a claim of majority status in a suggested petitioned for unit and consequent recognition by an employer.[22] This is so even if the submitted showing far exceeds the thirty per cent minimum requirement. Of course in this instant matter there was no reference in E. D. No. 56 to the preciseper cent showing of interest submitted along with Local No. 6's petition.

An examination of the general definition of "showing of interest" in the Commission's Rules does much to substantiate that it is not designed to be used in the manner suggested by Local No. 6. N.J.A.C. 19:10-1.1 states, in part, the following:

> "Showing [of] interest" means a designated percentage of public employees in an allegedly appropriate negotiating unit, or a negotiating unit determined to be appropriate, who are members of an employee organization or have designated it as their exclusive negotiating representative or have signed a petition requesting an election for certification or decertification of public employee representatives. Such designations shall consist of written authorization cards or petitions, signed and dated by employees, authorizing an employee organization to represent such employees for the

21/ N.J.A.C. 19:11-1.2(a)(9) sets forth the following:

> A petition for certification of public employee representative shall be accompanied by a showing of interest as defined in Sec. 1.1 (Definitions) of Ch. 10 of this Subtitle of not less than 30 percent of the employees in the unit alleged to be appropriate. A typewritten alphabetical list of such designations also shall be submitted to the Executive Director.

22/ See N.L.R.B. v. J. I. Case Co. 31 LRRM 2330 (CA 9) (1953) and N.L.R.B. v. Swift and Co. 48 LRRM 2699 (CA 3) (1961)

> purpose of collective negotiations or requesting an election for certification or decertification of public employee representatives; current dues records; an existing or recently expired agreement; or other evidence approved by the Executive Director or the Commission. (Emphasis mine)

It is apparent that evidence submitted and approved as an adequate showing of interest may simply request the holding of an election without establishing that a majority of the employees in a unit have already designated a particular union or Association to represent them for purposes of collective negotiations. It is quite common in contested cases for employees to sign more than one organization's showing of interest. The testimony of William Perry establishes that he recognized the limited utility of a showing of interest.[23/]

The general definition of showing of interest should be contrasted with the specific qualification added by the Commission in situations where a petition for decertification is filed by an employee or group of employees or an individual acting on their behalf alleging that an incumbent organization was no longer the majority representative of employees in a particular unit.[24/] N.J.A.C. 19:11-1.3(a)(3) sets forth the following:

> The Petition for Decertification shall be accompanied by a showing of interest of not less than 30 percent of the employees in the unit in which an employee representative has been recognized or certified. A showing of interest shall indicate that the employees no longer desire to be represented for purposes of collective negotiations by the recognized or certified employee representative. (Emphasis mine)

It is thus at least arguable that a Commission determination that a Petition for Decertification was supported by an adequate showing of interest may be used as an evidentiary basis for an unfair practice finding under certain circumstances. As stated before, however, there is no evidence that any Petition for Decertification was even circulated among the employees in the blue collar unit much less filed with the Commission.

It is also arguable that had the evidence established that at least a majority of the employees in the unit who had previously authorized dues deductions for the Teamsters had withdrawn their authorizations contemporaneously

23/ Transcript 6-25-75, pages 44-45 and 64

24/ N.J.A.C. 19:11-1.1(a)(3)

with the execution of authorization cards for Local No. 6 said evidence may have been used to support Local No. 6's contentions in this instant charge. However, as referred to hereinbefore the evidence serves to support the City's argument that the dues deduction register helped only to reaffirm the Teamsters' majority status.

In summary, Local No. 6's contentions with reference to the finding of an adequate showing of interest do not support a determination that the City had a reasonable basis for believing that Local No. 6 and not the Teamsters represented a majority of its employees in the blue collar unit.[25/]

3. ALLEGED HASTY NEGOTIATIONS PRECEDING THE EXECUTION OF THE NEW THREE YEAR AGREEMENT

Local No. 6 maintained that hasty non-substantive negotiations between the City and the Teamsters preceding the execution of a new agreement on December 31, 1974, when there was one full year to run in the predecessor contract, indicated that the City had knowledge of Local No. 6's majority status and desired to prevent Local No. 6 from filing a timely petition for certification as of January 1, 1975 by entering into a "sweetheart agreement" with the minority incumbent organization. Local No. 6 emphasized the timing of these negotiations and the execution of the successor agreement and also stressed that City agents and representatives were never able to refer to dates of particular negotiating sessions.

Local No. 6 contends that an analysis of both objective considerations [i.e. the amount of time actually spent negotiating the new three year agreement; the date of the execution of the agreement; the alleged lack of substantive changes in the agreement] and largely subjective issues [i.e. the reasons why the employer negotiated a new agreement under the circumstances] relating to this specific argument helps to prove its contentions.

With reference to the largely subjective considerations the undersigned is in agreement with judicial decisions that have determined that by itself it was not an unfair practice for an employer to negotiate a hasty contract with a particular union where that organization represented an uncoerced majority of the employees, even if the employer was motivated by the desire to

25/ In view of the undersigned's findings in this recommended report and decision, no substantial comment is necessary on the Teamsters' additional allegations that Local No. 6's showing of interest was fraudulently obtained in part by material misrepresentations. Suffice it to say that the record does not establish that Local No. 6's showing of interest was obtained fraudulently.

"freeze out" a rival union. These decisions have determined that the relevant issue was not an employer's state of mind but the effect of its actions on the rights of the employees. It has been concluded that where an organization possessed the support of a majority of the employees achieved without coercion or illegal assistance on the part of the employer, its initial or continuing recognition by the employer and the subsequent execution of a collective bargaining agreement was the type of cooperation that it was the policy of the NLRA to foster.[26/]

In this instant matter Local No. 6 does not contend that any employees in the blue collar unit were threatened or coerced concerning their individual preferences as to their choice of representative. Local No. 6 alleges that the Teamsters did not represent a majority of the employees within the unit at the time that the December 31, 1974 agreement was executed and that the logical attendant effect of the City's actions was to interfere with, restrain or coerce these employees in the exercise of their rights to freely choose their majority representative. Thus with regard to this specific argument of Local No. 6 it is necessary to determine whether the City's actions, based on the aforementioned objective considerations, indicated that it did have a good faith doubt as to the majority status of the Teamsters. An analysis of the subjective state of mind of the City in executing the December 31, 1974 agreement is only relevant so far as it may serve to place objective factors in their proper perspective.

It is the undersigned's finding that a careful analysis of these objective factors does not establish a basis for the finding that the City was involved in the commission of unfair practices.

It is evident that Local No. 6 made no attempt during the course of the hearing to demonstrate that either the new three year contract between the City and the Teamsters was not ratified by their respective constituencies or that said agreement was not actually signed on December 31, 1974 by representatives of the parties.[27/] Local No. 6 did try to first establish that there were little or no substantive negotiations between the parties preceding the signing of this agreement.

26/ Suburban Transit Corp. v. N.L.R.B. 86 LRRM 2626 (CA 3) (1974) and Garment Workers Union v. N.L.R.B., 48 LRRM 2251 (Sup. Ct.) (1961)

27/ In one of its exhibits (C-12) Local No. 6 asserted that only approximately 45 members of the unit were present at a (ratification) meeting called by the Teamsters. However, no testimony was introduced by Local No. 6 that casted any doubt on the Teamsters' statements that after appropriate notices were posted (Exh. I-7) between 200 and 300 employees voted to ratify the contract on December 22, 1974.

The record does confirm Local No. 6's contention that certain City representatives active in the negotiating of the new agreement were unable to testify as to specific dates of negotiating sessions that took place concerning the new agreement. However the record does establish the following essentially unrefuted facts concerning the negotiations between the City and the Teamsters during the months of November and December, 1974:

1. Negotiations were commenced apparently by mutual agreement[28] of the parties on a largely informal basis during the latter part of November, 1974 before the Thanksgiving holidays. There were between three and five preliminary negotiating sessions held that were attended primarily by Albert Pannullo, Manager of Labor Relations for the City of Newark, representing the City, and Moses Neal, Business Representative for the Teamsters, representing the incumbent. Mr. Pannullo was apparently assisted on several occasions by Gerald Dorf, Labor Counsel for the City, and Mr. Neal appeared with a Reverend Langston and one other shop steward on one occasion. These meetings each lasted between 1 and 1½ hours.[29]

2. It was concluded by Mr. Neal after these preliminary meetings that little progress had been made in negotiating with Mr. Pannullo and later with his assistant William Monahan. This matter was then turned over to Joseph Campisano, President of the Teamsters Local. Mr. Campisano and Local No. 6's Attorney, Emil Oxfeld, thereafter met on three or four different dates in late November and early December with Mr. Dorf who had become primarily responsible for representing the City in these negotiations after Mr. Pannullo had been hospitalized with pneumonia. A concluding negotiations session lasted several hours while the other meetings lasted between 1 and 1½ hours.[30]

A letter dated December 12, 1974 from Emil Oxfeld to Gerald Dorf [Exhibit I-9] confirmed that an agreement had been reached in settlement of the negotiations the essence of which was that the employees would receive an additional three percent increase as of January 1, 1975 over and above the previously negotiated salary schedules established in the predecessor agreement that had in part covered the period between January 1, 1975 and December 31, 1975.[31]

28/ There is some evidence that Albert Pannullo, representing the City, may have initiated this series of more informal meetings. [Transcript 7-30-74, pages 69-70]

29/ Transcript 6-24-75, pages 148-150, Transcript 7-30-75, pages 34-37, 69, 74.

30/ Transcript 7-30-75, pages 34-37, 81.

31/ Transcript 7-30-75, page 54-55. This settlement doubled the 3% salary increase that had previously been negotiated by the Teamsters for the 1975 calendar year. It is therefore evident that the negotiations that took place between the City and the Teamsters during November and December of 1974 resulted in a meaningful substantive change from the predecessor agreement.

3. During the course of negotiations the parties dealt with the salary schedule issue primarily but also apparently discussed issues concerning the restructuring of particular job classifications.[32]

4. Notices apprising unit employees of a general membership meeting to be held on Sunday, December 22, 1974, concerning the ratification of the new agreement were hand delivered to appropriate City facilities by Teamsters officials. Transportation was provided to this meeting.

This ratification meeting was attended by between 200 and 300 people who voted to ratify the contract after its terms had been discussed by Mr. Campisano and Mr. Oxfeld.[33]

5. A resolution authorizing the Mayor and Business Administrator to execute the labor agreement negotiated with the Teamsters local on behalf of the City of Newark was adopted by the Newark City Council on December 27, 1975.[34]

Although the aforementioned negotiations concerned almost exclusively the topic of compensation and took place within an admittedly condensed period of time there was no evidence introduced by Local No. 6 that substantiated its allegations that the City's conduct established that it doubted the Teamsters' majority status. The undersigned finds that on the contrary the actions of the City were reflective of the City's knowledge of the majority status of the Teamsters during the period of negotiations with reference to the new agreement and of its attendant obligations and duties to deal exclusively with that organization.

In this regard at the time of the finalization of contract talks on or about December 12, 1974, the City had in its possession no more than two letters from Local No. 6 [Exhibits C-3 and C-8] claiming majority status and a copy of E. D. No. 56 evidence that - as analyzed in the preceding two subsections - did little to substantiate an essentially naked claim to majority status. Secondly an examination of the City's dues deduction register had revealed nothing to rebut the presumption of the continuing majority status of the Teamsters and had helped in fact to reaffirm the Teamsters' position as the exclusive majority representative.

32/ Transcript 6-24-75, page 159, Transcript 7-30-75, pages 37, 71.
33/ Transcript 7-30-74, pages 55-59
34/ Exhibit R-5

Thirdly the record established that the City representatives' mistaken belief that "P.E.R.C." in E.D. No. 56 had completely invalidated and rendered unenforceable, for all purposes, the fourth year [January 1, 1975 to December 31, 1975] of the amended agreement between the City and the Teamsters[35] was apparently fully shared by the designated representatives of Local No. 6 and subsequently verbalized in communications sent to the City.

For example, in a letter dated December 9, 1974 [Exhibit C-8] three days after the issuance of E.D. No. 56, William Perry informed Albert Pannullo that "as you are aware, your existing 'contract' with Local 945, I.B.T. is valid, if at all, only until the close of the year. Since Local 945 no longer represents your employees you may not recognize them beyond December 31st and you may not negotiate any new agreements with them." In a letter dated December 12, 1974 sent to Mayor Kenneth Gibson [Exhibit C-9] Mr. Perry wrote, in part, that "The PERC Commission ruled, on December 6, 1974 that, effective January 1, 1975, the contract extension covering these workers, that was negotiated by the City with Local 945, I.B.T., for bargaining purposes, is null and void." Another letter dated December 20, 1974 [Exhibit C-10] from Mr. Perry to Milton Buck, Corporation Counsel of the City, stated, in part, that, "On petition of this organization the Public Employment Relations Commission on December 6, 1974, determined that the collective bargaining agreement between the City of Newark and Local 945, I.B.T. respecting Sanitation, Water and Sewer employees is invalid after December 31, 1974." Lastly, in a hand-delivered letter from James P. Heffernan, Attorney for Local No. 6, to Mayor Gibson, dated December 26, 1974 it was stated that, "the Public Employment Relations Commission (PERC) has determined that it will not recognize the attempt to bind these City employees in a four year contract. PERC has refused to recognize the last year of the alleged "extension" agreement. Therefore, the contract between Local 945 and the City of Newark will terminate on Decmeber 31, 1974."

It is evident therefore that at least certain key agents and representatives of both Local No. 6 and the City believed inaccurately that the fourth year of the amended agreement between the City and the Teamsters had been rendered totally unenforceable for all purposes by P.E.R.C. In the

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35/ The record established that Gerald L. Dorf, Labor Counsel for the City, had apparently advised Albert Pannullo that E.D. No. 56 had rendered unenforceable the last year of the "Amendment to Agreement" that had covered the period between January 1, 1975 and December 31, 1975. [Transcript 6-24-75, pages 161-162, 173-174]

E.D. No. 56 viewed that the existing amended agreement had an enforceable term of four years including the period between January 1, 1975 and December 31, 1975. For purposes of the contract bar rule only [N.J.A.C. 19:11-1.15(d)] the Commission stated that it would treat this agreement as a three year agreement having a term of January 1, 1972 to and including December 31, 1974.

absence of substantial and reasonable grounds, based on objective considerations, for believing that the Teamsters had lost its majority status the record thus advances a very plausible reason why the City felt compelled to negotiate a new agreement with the Teamsters.

With regard to the precise timing of the actual execution of the new three year agreement between the City and the Teamsters hours before a Petition for Certification could have been timely filed the record reflects that in the past the City had executed contracts with other City unions during the last few days of December before the expiration of an existing contract largely because of fiscal considerations and, most obviously, union pressures.[36/]

The timing of the execution of the new agreement is even more understandable in light of particular matters discussed in the record.

There had been considerable dissatisfaction expressed by the Teamsters leadership and the rank and file employees with the economic terms of the amended agreement between the City and the Teamsters that had been executed when government wage-price controls had been in effect. The eventual relaxation and removal of these controls coupled with worsening general economic conditions had increased pressures to renegotiate the terms of the existing agreement regardless of whether the terms of the existing contract for the 1975 calendar year were strictly enforceable. It had also been brought to the attention of the Teamsters that the City would shortly establish its own economy measures and would seek to impose a freeze of indefinite duration on all salaries.[37/]

In addition, it is apparent that the Teamsters desired to exert considerable pressure against the City, by threatening job actions for example, to conclude a new agreement before January 1, 1975 to avoid getting involved in a potentially expensive and time consuming representation election campaign with Local No. 6 if a new petition was filed after the first of the year; especially on the eve of the possible establishment of a City wide wage freeze. The City under the circumstances would in turn have been able to exert considerable leverage of its own in order to win contractual concessions from the Teamsters.

36/ Transcript 6-24-75, pages 167-168.

37/ Transcript 7-30-75, pages 10-11, 27-28.

It may thus be seen that considerable external and internal pressures exerted on the City and the Teamsters combined to help affect the timing of negotiations that took place in November and December 1974.

Earlier the undersigned referred to judicial precedent that had determined that the state of mind of an employer in negotiating a new contractual agreement was irrelevant if certain conditions - fulfilled in this case - were met. It was however stated that the subjective state of mind of the City in this matter was relevant so far as it would serve to place objective factors in their proper perspective. The undersigned finds that in light of the various considerations referred to herein, the City's motivations in executing a new agreement with the City did not in any way serve to taint its actual conduct.

4. THE TESTIMONY OF MARVIN MOSCHEL

Local No. 6 argued that the testimony of Marvin Moschel, a representative of Council 52, American Federation of State, County and Municipal Employees, concerning statements made by the City's chief negotiator and Special Labor Counsel, Gerald Dorf, on January 20, 1975 helped prove that the City desired to "freeze out" Local No. 6 as a favor to the Teamsters.

Moschel testified that he was present at a January 20, 1975 negotiating session involving the City and Local 2299, A.F.S.C.M.E. [composed of City Inspectors]. The City at this session was represented by Albert Pannullo and Gerald L. Dorf.

It is uncontroverted that at this meeting there was some discussion concerning the December 31, 1974 agreement reached between the City and the Teamsters Local. Moschel stated that this conversation came up when he asked the City's representatives why the City was not offering Local 2299 any increase in wages or other economic benefits for 1975 when the Teamsters, representing other City employees, were to receive a 6 percent increase in 1975. Moschel testified that Dorf, in part, stated that Local No. 6 could have submitted another Petition for Certification [to P.E.R.C.] as of January 1, 1975 and that at the request of the Teamsters, in order to accommodate that Local, the City agreed to a new agreement dating from 1975 through 1977 that had tacked on another 3 percent increase giving the employees in that unit a 6 percent increase as of January 1, 1975 with salary reopeners for 1976 and 1977. Moschel emphasized that Dorf had said "in effect" that this had been done to favor and/or to accomodate the Teamsters Local.[38/]

38/ Transcript 6-24-75, pages 96-97, 99-100, 111.

Local No. 6 introduced into evidence the notes taken by Moschel at the January 20, 1975 negotiations session [Exhibit C-13]. In apposite part these notes read as follows:

> Local 945 - Teamsters - 3 year agreement. Existing 2 year agreement which ran from 1969-72 and 3 years were tacked on it. 5½% 1st year, 3% the second and 3% the third. Petition filed by Local 6 in N.Y. around Oct. PERC found there was contract bar until end of 1974 preventing petition by another union. Petition dismissed as untimely but Local 6 would file another petition by Jan. 1, 1975. City agreed to new agreement - 1975, 76 and 77 agreeing to additional 3% with salary reopeners in 1966 and 1967 (sic).

During cross-examination by the City Moschel confirmed that his notes did not contain any specific reference to statements that the City had executed the December 31, 1974 agreement as a favor to or in order to accommodate the Teamsters upon their request. Moreover Moschel testified that he could relate the substance of Dorf's comments but not the exact words that he had used on January 20, 1975.[39] In addition, Moschel did not assert that any City representative had stated at the January 20, 1975 negotiating session that the City had a good faith doubt as to the continuing majority status of the Teamsters when the December 31, 1974 agreement was negotiated and signed.

Albert Pannullo, called as a witness by Local No. 6, later testified during cross-examination, that neither Dorf nor any one else at the January 20, 1975 meeting made any kind of statement that the City had done the Teamsters a favor and at their request executed a contract in order that a contract bar argument could be raised concerning a Petition for Certification filed after January 1, 1975 by Local No. 6.

The undersigned concludes that even assuming arguendo that Gerald Dorf made the statements that were attributed to him by Marvin Moschel this does not provide a basis for a finding that there were substantial and reasonable grounds, predicated on objective considerations, for the belief that the Teamsters' majority status was in doubt. More specifically, this particular argument deals with a largely subjective issue [i.e. the reason why the City negotiated a new agreement under the circumstances], the evidentiary effect of which has been discussed in a preceding section of this decision.[40]

39/ Transcript 6-24-75, page 109

40/ See pages 23 and 24 of this recommended report and decision.

It is interesting to note parenthetically that the intended meaning of the statement attributed to the City referring to "a favor or accommodation being extended to the Teamsters" is unclear especially since it was allegedly asserted during an apparently unproductive negotiations session between the City and the A.F.S.C.M.E. Affiliate serviced by Moschel. This declaration may have been carefully designed to encourage dissension or divisiveness among A.F.S.C.M.E.'s negotiating team by alluding to their lack of bargaining strength or leverage compared to the Teamsters. On the other hand it may have been a spontaneous remark advanced in an attempt to partially support the City's decision at that time not to formally offer similar increases in wages, during the 1975 calendar year, to other City unions.

5. THE HOLDING OF TWO LOCAL NO. 6 MEMBERSHIP MEETINGS

Local No. 6 referred to the holding of two well attended Local No. 6 membership meetings to help substantiate its contention that the City should have had a good faith doubt as to the majority status of the Teamsters.

William Perry, President of Local No. 6, testified that during the period between August and December of 1974 when his local was actively involved in its organizational campaign within the City he and his organizers had conducted a number of individual meetings with rank and file employees within the unit along with committee meetings and two general membership meetings.[41/] Perry stated that there were approximately 650 people present at the first membership meeting attended by members of the police department and "various other employees of the City of Newark". Perry then added that there were 830 or so individuals present at the second membership meeting who unanimously stood up to express their overwhelming support and"pledged to vote for Local 6 for an election in the presence of the police department and other City officials."[42/]

The record however clearly reveals that these two "general membership meetings" were open to anyone and were not restricted to "members only". One notice introduced into evidence [Exhibit I-8] specifically invited the families of individuals who worked within the Water, Sewer, Sanitation or Public Works Departments to attend the second meeting held on November 14, 1974 at 7:30 P.M. in the Ballroom of the Robert Treat Hotel. No formal attendance records were

41/ Transcript 6-25-75, pages 14-15 and 74, Transcript 7-1-75, page 74.

42/ Transcript 6-25-75, page71, Transcript 7-1-75, page 77.

taken at these meetings and there was no attempt to check identifications at the door. In addition there was no evidence proffered by Local No. 6 that established the actual number of negotiating unit members that attended either one of these meetings.[43]

The record also established that William Perry considered the first "general membership meeting", the date of which he could not remember, to be a "regular informational meeting" at which he and certain of his committee members spoke and aired grievances. The notice introduced into evidence concerning the second meeting served to define the purpose of that meeting as being essentially informational also. This notice also announced that entertainment would be provided so that those in attendance including families would enjoy the evening. The tenor of the testimony concerning these two meetings does little to establish that the City's knowledge of these meetings would have put it on notice that the Teamsters' majority status was in doubt.[44]

In this regard it is important to consider that Perry did not identify any City agents or representatives that were present at either one of these meetings. In fact, Perry referred to the name of only one City official whom he asserted even had knowledge of any of these meetings. This individual was identified as Jesse Allen, a Councilman. There was no mention of the holding of these meetings in any of the correspondence directed to City officials between August of 1974 and January of 1975 nor was there any testimony that any Local No. 6 representative or member otherwise informed any City agent of these meetings and what they were intended to represent.

In summary the undersigned does not find that the holding of these two meetings could in any way have served as establishing in the minds of the City Administration a good faith doubt as to the continuing majority status of the Teamsters.

6. WILLIAM PERRY'S CONVERSATION WITH JOSEPH CAMPISANO, PRESIDENT OF THE TEAMSTERS LOCAL, IN AUGUST OF 1974.

Local No. 6 also alleged that a conversation that took place at a meeting between William Perry and Joseph Campisano in August of 1974 at a restaurant in New York City provided support for its contention that the City had full knowledge of the majority status of Local No. 6.

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[43] Transcript 7-1-75, pages 91-94, 97, Transcript 6-25-75, page 72.

[44] See Exhibit I-8, Transcript 7-1-75, pages 76-77.

The record establishes that Frankie Brown, who is apparently the Vice President in Charge of Organizing for District 65 set up this meeting between Campisano and Perry, the purpose of which was to discuss Local No. 6's organizing drive concerning sanitation department employees of the City of Newark. Brown had become acquainted with Perry because of their experience in working within the private sector union movement. Brown, Campisano and Perry were present at this luncheon meeting.45/

Perry testified that the substance of this conversation dealt with the efforts of Brown and Campisano to persuade him from pursuing his organizing drive within the City. Perry recollected that Brown had, in part, suggested that he simply "drop the whole thing." Perry stated that Campisano had asserted that he had recently taken over the leadership of the Teamsters local and admitted that he had been having problems in the City and needed time to straighten these problems out. Campisano stated that he realized that Local No. 6 had "a flock of [authorization] cards" and had an overwhelming majority of the people in the unit then. It is then alleged that Campisano asked Perry to (1) instruct his organizers not to encourage Teamsters members to withdraw their dues deduction authorizations; (2) not to engage in any personal attacks against Teamster officials; and (3) to otherwise stop Local No. 6's organizing efforts until after a Teamsters convention had taken place during the latter part of August of 1974. Campisano was then said to have offerred to assist Perry in the organizing of several hundred employees at another location - where Local No. 6 organizers had supposedly visited - in return for Perry's cooperation in limiting his involvement within the City. Perry asserted that he did not remember the name of this other location and at that time had not been cognizant of any Local No. 6 organizing efforts there.46/

Perry stated that he had rejected Campisano's offer and informed Brown and Campisano that he would not drop this case. Nevertheless he admitted that after Campisano had called him back later that day to tell him that he had started to look into the possibility of assisting Perry in organizing elsewhere he had informed his people to temporarily refrain from eliciting Teamsters dues deduction withdrawals and from engaging in any name-calling. Perry testified that when Campisano did not call him back after the Teamsters convention he instructed his people to resume the organizing drive within the City.47/

45/ Transcript 6-25-75, pages 30-31, Transcript 7-1-75, pages 139-141.
46/ Transcript 6-25-75, pages 33, 75, Transcript 7-1-75, pages 142-145, 147-148.
47/ Transcript 6-25-75, pages 33-34, Transcript 7-1-75, pages 135-136, 143-144.

In determining the relevance of the "Campisano meeting" it is important to emphasize that the Teamsters local has not been charged by Local No. 6 with the commission of any unfair practice. It has not been alleged that the Teamsters entered into the December 31, 1974 agreement with the City illegally because it had knowledge that it was a minority union at that time. Nor has it been alleged that the Teamsters in any way committed an unfair practice by coercing the City into granting a contract in violation of the Act.

The particular above-mentioned factor is particularly important in assessing the weight to be given evidentially to the "Campisano meeting." Perry testified that there was no one present at this meeting who was an authorized agent acting on behalf of the City, the only party to be charged with the commission of unfair practices in this instant matter. Perry further asserted that he had not informed any representative of the City of the meeting with Campisano nor had he ever mentioned Campisano's statement about Local No. 6's majority status to anyone associated with the City prior to the execution of the December 31, 1974 agreement. Perry also testified that he had no personal knowledge at the time that he had filed unfair practice charges against the City that the City had knowledge through its agents of Campisano's alleged admissions.[48/]

In summary, the undersigned does not find that the Campisano meeting provides an evidentiary basis for the finding that the City had committed unfair practices by continuing to deal with the Teamsters and by executing a new agreement with them.

7. ALLEGED KNOWLEDGE OF CERTAIN SUPERVISORY PERSONNEL OF LOCAL NO. 6'S MAJORITY STATUS

William Perry asserted that certain people in managerial positions within the Sanitation Department who reported directly to City Hall were aware of the majority status of Local No. 6. However, under cross examination Perry testified that he did not know the names of these individuals and had had no personal contact with them at all.[49/]

Local No. 6 never attempted to pursue this particular argument during subsequent proceedings. The undersigned therefore concludes that this particular argument should not be given any evidentiary weight.

48/ Transcript 6-25-75, pages 77-80, 82

49/ Transcript 6-25-75, pages 73, 121-122

8. TELEPHONE CONVERSATION WITH CITY CORPORATION COUNSEL'S OFFICE IN DECEMBER OF 1975

Local No. 6 alleged that a December 23, 1974 telephone conversation between William Perry and Jonathan Kohen, the City's Assistant Corporation Counsel, helped to substantiate its contention that the City had full knowledge of the overwhelming majority status of Local No. 6. Specifically Perry testified that Kohen had made material misrepresentations when he stated that so far as the Corporation Counsel's office was concerned there were no negotiations going on between the City and the Teamsters and that to their knowledge [within the Corporation Counsel's office] there had been no new contract signed between the City and the Teamsters. Local No. 6 introduced a document [Exh. C-11] that was purported to be an accurate and complete recital of the essential points discussed in Perry's conversation with Kohen.

Local No. 6 however failed to establish how this telephone conversation proved that the City had a good faith doubt as to the continuing majority status of the Teamsters. During cross examination Perry stated that he wasn't implying that Kohen had lied in his December 23, 1974 conversation with him and admitted that the statements that he had attributed to Kohen were factually correct. There were no more negotiations going on between the City and the Teamsters as of December 23, 1974 nor had any contract between those parties been signed as of that date.[50/] Kohen had also qualified his statements by referring only to the knowledge of those people assigned to the Corporation Counsel's office who apparently played little, if any, role in the negotiating of the new agreement with the Teamsters.[51/]

The undersigned therefore does not find that this particular argument of Local No. 6 helps to substantiate its unfair practice charges.

In conclusion, after careful consideration of the foregoing and the record as a whole, the undersigned does not find that the City's actions in continuing to deal with the Teamsters and executing the December 31, 1974 agreement with them violates N.J.S.A. 34:13A-5.4(a)(1)(2) or (5). More specifically, the undersigned does not find that Local No. 6 met its burden in proving the

50/ Perry testified during cross-examination that he was unsure of whether Kohen had mentioned that there were no negotiations being conducted. His letter dated December 23, 1974 (Exh. C-11) does not refer to this statement although Perry had testified that this letter referred to the essential points raised during his conversation with Kohen.

51/ Transcript 6-25-75, pges 23-25, 116-120

allegations of its charge by the preponderance of the evidence.[52/] The undersigned further concludes that the City did not have either actual or constructive knowledge of the majority status of Local No. 6 or the lack of the majority status of the Teamsters nor, on the basis of the entire record, should the City have had a good faith doubt as to the continuing majority status of the Teamsters.

ORDER

Accordingly, for the reasons set forth above, IT IS HEREBY ORDERED that the charge in this matter be dismissed in its entirety.

Stephen B. Hunter
Hearing Examiner

DATED: Trenton, New Jersey
February 27, 1976

52/ N.J.A.C. 19:14A-3.3