

D.R. NO. 91-16

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

In the Matter of

BERGEN PINES COUNTY HOSPITAL,

Public Employer,

-and-

SIE Local 908,

Docket No. RO-91-48

Petitioner,

-and-

SEIU LOCAL 455,

Incumbent.

SYNOPSIS

The Director of Representation orders an election among all full and part-time security employees of Bergen Pines County Hospital. Article XX charges (internal AFL-CIO no-raid dispute resolution proceedings) were filed by Local 455 against Local 908 and the matter was delayed for 30 days. Local 455 urged that the matter continue to be held in abeyance pending a final AFL-CIO decision. Balancing all the factors in the case, and absent other, substantive objections, the Director determined that an election should be held.

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Appearances:

For the Public Employer
Smith, Don, Alampi, Scalo & D'Argenio, attorneys
(Christos J. Diktas, of counsel)

For the Petitioner
Schneider, Cohen, Solomon, Leder & Montalbano, attorneys
(Jacqueline Poquette, of counsel)

For the Incumbent
Max Wolf, Secretary-Treasurer

DECISION AND DIRECTION OF ELECTION

On September 27, 1990, Local 908 Service and Industrial Employees of North America ("Local 908") filed a petition for certification of public employee representative seeking to represent all full and part-time security employees of Bergen Pines County Hospital ("Hospital"). The petitioned-for employees are currently represented by Service Employees International Union AFL-CIO, Local 455 ("Local 455"). The negotiations agreement covering the security

employees expires December 31, 1990. The petition submitted by Local 908 was supported by a sufficient showing of interest.

By letter dated October 23, 1990, Local 455 intervened in the proceeding as the incumbent representative of the petitioned-for employees.

On October 24, 1990, Local 455 requested that the processing of the petition be held in abeyance pending the resolution of Article XX charges filed against Local 908 under the AFL-CIO Constitution. Local 455 alleges that Local 11 of the International Brotherhood of Teamsters controls, assists, has interchangeable officer's and directs all policies and actions of Local 908, and as such is an alias for an AFL-CIO affiliate. Pursuant to Article XX of the AFL-CIO constitution, AFL-CIO affiliates may seek protection from attempts by other AFL-CIO members to disturb their established bargaining relationships. If Local 455 is successful in an Article XX proceeding, Local 908 may be required, as a condition for continued AFL-CIO membership, to withdraw from participating in any elections.

On November 5, 1990, Chairman Mastriani received a letter by fax transmittal from Lane Kirkland, President, AFL-CIO, requesting that the processing of the representation petition be held in abeyance pending an attempt at settlement of the dispute between Locals 908 and 455 under the provisions of the AFL-CIO

Internal Dispute Plan. On the same date, I issued a letter stating that the matter would be held in abeyance until November 29, 1990.

On November 13, 1990, pursuant to the AFL-CIO Internal Dispute Plan, a mediation was held between Locals 455 and 908, to no avail. The matter was submitted to an arbitrator on December 18, 1990. Local 455 asserts that "it is historically the practice of the Article XX arbitrator to issue a decision within one week." After an arbitrator's decision is issued, it may be appealed to the Executive Council of the AFL-CIO.

Local 455 requests that the matter be further postponed until there is a final decision from the AFL-CIO. Accordingly, it refuses to sign a consent agreement for an election, although it raises no other objections to the petition itself. Local 908 opposes any further delays and urges that I issue a decision directing an election. The Hospital takes no position on the inter-union dispute, but believes that a secret ballot election should be conducted among the employees to determine which, if any, organization they want as their majority representative.

In State of New Jersey, D.R. No. 81-20, 7 NJPER 41 (¶12019 1980), aff'd P.E.R.C. No. 81-94, 7 NJPER 105 (¶12044 1981), mot. for recon. den. P.E.R.C. No. 81-95, 7 NJPER 133 (¶12056 1981), aff'd App. Div. Dkt. Nos. A-3274-80T1 and A-4164-80T1 (11/10/82), the Director of Representation considered a similar request to postpone

Commission proceedings due to pending Article XX charges. In directing that the election be held, he stated:

The Commission's policy requires that representation matters shall be processed as expeditiously as possible in order to afford employees their choice as to representation, and to provide meaningful opportunities to negotiate, if collective representation is chosen. Although there is a possibility that [the union] may be required to withdraw from an election which they seek or to disclaim representation due to internal agreements within the AFL-CIO, this must be balanced by the Commission's concern that employees make a meaningful choice at an election conducted expeditiously. Furthermore, the Commission is not without the ability to provide for these contingencies. In any event, to permit the private dispute resolution procedures of the AFL-CIO to dictate the procedures of the Commission would certainly be an impermissible abdication of Commission Authority.
(7 NJPER at p. 48)

I have already permitted the proceedings to be postponed for 30 days. Balancing all of the factors in this case, I will not delay this matter any further. Accordingly, I direct that a representation election be conducted among all full and part-time security employees of the Bergen Pines County Hospital, excluding all temporary employees, blue collar employees, technical employees, registered nurses, licensed practical nurses, craft employees, white collar employees, professional employees, confidential employees, managerial employees and supervisors within the meaning of the Act.

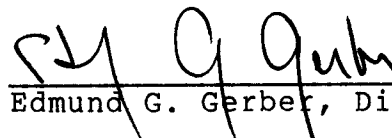
The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid

off, including those in the military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who resigned or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

Pursuant to N.J.A.C. 19:11-9.6, the public employer is directed to file with us an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the units, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by us no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously provided to the employee organization with a statement of service filed with us. We shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

The exclusive representative, if any, shall be determined by a majority of the valid votes cast in the election. The election shall be conducted in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: December 20, 1990
Trenton, New Jersey