

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

In the Matter of

HOUSING AUTHORITY OF THE
CITY OF EAST ORANGE,

Public Employer,

-and-

EAST ORANGE HOUSING AUTHORITY
EMPLOYEES' ASSOCIATION,

DOCKET NO. RO-82-137

Petitioner,

-and-

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 617,

Intervenor.

SYNOPSIS

The Director of Representation, on the basis of an administrative investigation, directs that an election be conducted among nonsupervisory employees employed by the Housing Authority to ascertain their choice as to collective negotiations representation. The Director rejects the request of the incumbent organization that an election be blocked pending consideration of unfair practice charges it filed against the Authority. In the Unfair Practice Charges, Local 617 alleged that the Authority ceased to negotiate with it and coerced the employees into withdrawing their membership in it. The Director notes that Local 617 did not meet its responsibility to provide evidence that the employer coerced employees and that an erosion of employee support resulted from the employer's refusal to continue negotiations.

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Appearances:

For the Public Employer
Harold Smith, Executive Director

For the Petitioner
Ida V. Milbauer, Secretary

For the Intervenor
Rothbard, Harris & Oxfeld, attorneys
(Sanford R. Oxfeld of counsel)

DECISION AND DIRECTION OF ELECTION

On February 8, 1982, a timely Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission (the "Commission") by the East Orange Housing Authority Employees' Association (the "Association") seeking to represent a unit of nonsupervisory employees of the

Housing Authority of the City of East Orange (the "Authority"). Service Employees International Union, Local 617 ("Local 617") is the current exclusive representative of the above described negotiations unit and has been granted intervenor status in this proceeding based upon its recently expired collective negotiations agreement with the Authority.

The undersigned has caused an administrative investigation to be conducted into the matters and allegations involved in the Petition in order to determine the facts. The assigned Commission staff agent conducted an informal conference among the parties on February 23, 1982, at which time Local 617 objected to the conduct of an election. The sole issue raised in this proceeding is whether the consideration of an unfair practice charge filed by Local 617 should delay or "block" the conduct of a representation election.

Based upon the administrative investigation to date, the undersigned finds the following:

1. The disposition of this matter is properly based upon the administrative investigation herein, it appearing that no substantial and material factual issues exist which may more appropriately be resolved after an evidentiary hearing. Pursuant to N.J.A.C. 19:11-2.6(b), there is no necessity for a hearing where, as here, no substantial and material factual issues have been placed in dispute by the parties.

2. The Housing Authority of the City of East Orange is a public employer within the meaning of the New Jersey Employer-

Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), is the employer of the employees who are the subject of the Petition and is subject to the provisions of the Act.

3. The East Orange Housing Authority Employees' Association and the Service Employees International Union, Local 617 are employee representatives within the meaning of the Act and are subject to its provisions.

4. The Association seeks to represent the negotiations unit of nonsupervisory Housing Authority employees which Local 617 currently represents.

5. The Authority has consented to a secret ballot election to be conducted among the employees. Local 617 objects to the conduct of a secret ballot election.

6. Local 617 asserts that the Authority has engaged in certain unfair practices and has requested that the processing of the representation proceeding be blocked pending Commission review of the unfair practice charge against the Authority which it has filed (Docket No. CO-82-193). The Unfair Practice Charge, filed on February 4, 1982, several days before the filing of the Association's certification petition, initially asserted that the Authority "has refused to meet with the charging party at reasonable times and premises to negotiate a successor collective bargaining agreement for the agreement which expired on December 31, 1981. The charging party has been ready, willing and able to meet at any reasonable time on a mutual site to negotiate."

7. In considering the request that an unfair practice charge block a representation election, the Commission's policy is to require that the charging party provide documentary evidence supportive of the claim that the conduct underlying the alleged unfair practice prevents the conduct of a free and fair election. In In re State of New Jersey, D.R. No. 81-34, 7 NJPER 209 (¶ 12093 1981), aff'd P.E.R.C. No. 81-94, 7 NJPER 105 (¶ 12044 1981), motion for reconsideration den. P.E.R.C. 81-95, 7 NJPER 133 (¶ 12056 1981), the undersigned stated:

... the undersigned has required that parties asserting unfair practice charges specifically state whether they desire that the charges should block representation proceedings. In addition, the undersigned requires such parties to submit documentary evidence in the representation forum to establish the basis for the claim that the conduct underlying the alleged unfair practice prevents the conduct of a free and fair election. Where such material has not been furnished, the undersigned has declined to exercise his discretion to block an election. See In re Village of Ridgewood, D.R. No. 81-17, 6 NJPER 604 (¶ 11300 1980).

On March 9, 1982, the undersigned advised Local 617 of this responsibility and provided Local 617 the opportunity to submit such documentary evidence and a statement of position. Additionally, the undersigned advised Local 617 that its unfair practice charge appeared to be deficient in that it did not set forth with specificity the alleged time and place of the particular acts alleged to constitute the unfair practice, or the names of the respondent's agents by whom committed. Local 617 was

provided the opportunity to amend its unfair practice charge to provide such specificity.

8. On March 18, 1982, Local 617 filed an amended unfair practice charge asserting that the Authority refused to negotiate with it from December 29, 1981 until February 18, 1982. Moreover, Local 617 added an allegation in the amended unfair practice charge which was not asserted in its initial filing. This allegation states "In addition, on or about December 30, 1981, the Housing Authority coerced members of the Union into withdrawing from membership in the Union."

In a letter which accompanied the amended unfair practice charge, Local 617 reiterated its request that the charge block the processing of the certification petition. Local 617 asserts that "officials of the Housing Authority coerced members of Local 617-SEIU into withdrawing from membership within the Union." Local 617's statement further asserts:

Such conduct by the employer, in both refusing to negotiate and in coercing the employees, undoubtedly created an atmosphere in which employees could not express a free choice in this election of majority representative.

9. Two allegations of improper conduct are thus before the undersigned for consideration: (1) the Authority's alleged refusal to negotiate, and (2) the Authority's alleged coercion of employees to withdraw membership from Local 617. The undersigned shall consider these allegations as they relate to the representation proceeding in seriatim.

In a previous matter, In re Matawan Reg. Bd. of Ed., D.R. No. 78-11, 4 NJPER 37 (¶ 4019 1977), an incumbent representative asserted that a representation election could not be conducted under laboratory conditions because its majority status was eroded by the employer's refusal to negotiate. The undersigned examined the nature of the employee support for the petitioner which gave rise to the filing of the petition for certification. It appeared that substantial support for the Petitioner and disinterest in the incumbent representative was evidenced to the employer by the employees prior to the employer's determination to decline to negotiate. Thus, it was not demonstrated that the erosion of support for the incumbent representative, and a transfer of allegiance to the petitioner sufficient to raise a question concerning representation, could be attributed to the alleged refusal to negotiate by the employer. In concluding that the alleged unfair practice charge should not block the election, the undersigned further observed that the unfair practice allegations raised issues that were directly related to and dependent upon resolution of the majority status of the incumbent employee representative. The employer admitted that its refusal to negotiate with the incumbent representative was predicated upon its good faith and reasonably grounded doubts of the majority representative status.

In the instant matter, the investigation of the certification petition has revealed that on December 30, 1981, a substantial number of employees had advised Local 617 and the

Authority of their desire to withdraw as members of Local 617. The Authority has stated that it refused to meet with the incumbent because it had been informed that almost all the employees had withdrawn from the incumbent and were petitioning for an election.

Although the Unfair Practice Charge alleges that the employer refused to negotiate with the incumbent during a period of time which commenced December 29, 1981, there has not been an allegation of specific fact, nor has there been a submission of documentary evidence by the charging party which would specify December 29, or, in fact, any particular day as the date on which the employer notified the incumbent representative or employees of its determination to refuse to continue negotiations. The investigation reveals that the last negotiations session of the parties was conducted on December 28, 1981, and that the meeting was adjourned on that date.

As stated above, in examining the nature of unfair practice allegations the Commission must be provided with evidence which would establish that the conduct underlying the alleged unfair practice prevents the conduct of a free and fair election. There has not been a submission of any evidence by the charging party which would support the claim that erosion of support for the incumbent representative could be attributed to the employer's refusal to negotiate. Rather, it would appear from the investigation to date that the erosion of support for the incumbent representative, sufficient to raise bona fide doubts concerning continuing majority status occurred independently of any activity attributable to the

Authority's refusal to negotiate. Accordingly, the undersigned concludes that Local 617 has not met its responsibility to provide the Commission with documentary evidence to support the claim that the employer's refusal to negotiate contributed to an erosion of support for the incumbent representative and that such conduct prevents the conduct of a free and fair election at this time.

The second allegation of unfair practices by Local 617, that the Authority coerced employees into withdrawing membership from Local 617, is not supported by any evidence, or even factual allegation, of specific conduct by an official of the Authority. Therefore, Local 617 has not met its responsibility to provide documentary evidence which would support its claim that coercive conduct has occurred which would prevent the conduct of a free and fair election.

Accordingly, for the above reasons, the undersigned rejects Local 617's request that its Unfair Practice Charge block the conduct of a prompt election in the representation matter. ^{1/} The undersigned determines that a valid question concerning representation exists in an appropriate unit, that the policies of the Act will best be effectuated by an election, and that an election will reflect the free choice of employees in an appropriate unit.

^{1/} In directing an election herein, the undersigned is not considering whether the unfair practice charge has met the Commission's complaint issuance standards pursuant to N.J.A.C. 19:14-2.1, and no determination has been made with respect to the substantive merit of the unfair practice charge. In accordance with the Commission's procedure, the undersigned shall hold in abeyance further consideration of the unfair practice charge during the period of the representation election.

The undersigned finds that the appropriate unit is: All nonsupervisory employees of the Housing Authority of the City of East Orange, but excluding managerial executives, confidential employees, craft employees, professional employees, police and fire employees and supervisors within the meaning of the Act.

Pursuant to N.J.A.C. 19:11-2.6(b)(3), the undersigned directs that an election be conducted among the employees described above. The election shall be conducted no later than thirty (30) days from the date set forth below.

Those eligible to vote are the employees set forth above who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation, or temporarily laid off, including those in military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who resigned or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

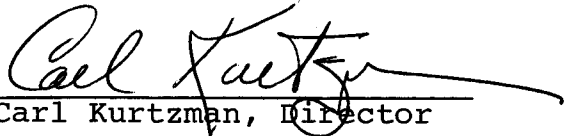
Pursuant to N.J.A.C. 19:11-9.6, the Public Employer is directed to file with the undersigned and with the East Orange Housing Authority Employees' Association and the Service Employees International Union, Local 617, an election eligibility list consisting of an alphabetical listing of the names of all eligible voters together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must

be received by the undersigned no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously filed with the Association and Local 617 with statements of service to the undersigned. The undersigned shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

Those eligible to vote shall vote on whether or not they desire to be represented for the purpose of collective negotiations by the East Orange Housing Authority Employee's Association, Service Employees International Union, Local 617, or neither.

The exclusive representative, if any, shall be determined by the majority of valid ballots cast by the employees voting in the election. The election directed herein shall be conducted in accordance with the provisions of the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: April 27, 1982
Trenton, New Jersey