

D.R. NO. 2002-9

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

In the Matter of

ATLANTIC CITY CONVENTION AND
VISITORS AUTHORITY,

Public Employer,

-and-

KELLY DILLON,

Docket No. RD-2002-6

Petitioner,

-and-

SPORTS ARENA EMPLOYEES' LOCAL 137,
LIUNA, AFL-CIO,

Intervenor.

SYNOPSIS

The Director of Representation blocks the conduct of a decertification election for March 19, 2002 which was scheduled via a consent election agreement entered into by the parties on February 26, 2002. The incumbent union filed an unfair practice charge against the employer on March 13, 2002 in which it requested that the March 19, 2002 election be blocked. The charge alleges that certain conduct engaged in by the employer, including alleged threats of loss of benefits if the incumbent is retained and promise of increased benefits if decertified precludes a fair and free election.

Applying the standard set forth in State of New Jersey, P.E.R.C. No. 81-94, 7 NJPER 105 (¶12044 1981) for determining whether a charge should block the representation process, the Director concludes that the documentation before him supports the union's blocking request and declines to allow the election to go forward at this time.

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Appearances:

For the Public Employer
Grotta, Glassman and Hoffman, attorneys
(Beth Hinsdale, of counsel)

For the Petitioner
Kelly Dillon, pro se

For the Intervenor
Karl N. McConnell, attorney

DECISION

On January 15, and January 25, 2002, Kelly Dillon (Petitioner), an employee of the Atlantic City Convention and Visitors Authority (Authority) filed a Petition for Decertification and amended Petition with the Public Employment Relations Commission (Commission). The petition was supported by a sufficient showing of interest. The negotiations unit is

currently represented by Sports Arena Employees' Local 137, LIUNA, AFL-CIO (LIUNA) and is comprised of all full-time and regular part-time clerical and secretarial employees of the Authority. There are approximately 21 employees in the unit.

On February 26, 2002, a Commission staff agent conducted an investigatory conference concerning the petition. At the conference, all parties entered into a consent election agreement which was approved by the Director of Representation on February 26, 2002. A secret ballot election has been scheduled for March 19, 2002 at the Authority's Atlantic City facility. The election is to determine whether the unit employees wish to continue to be represented by LIUNA.

On March 12 and March 13, 2002, LIUNA filed an unfair practice charge and amended charge (CO-2002-247) with the Commission. The charge alleges that the Authority violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act); specifically section 5.4a(1), (2), (3), (4) and (5)^{1/} by its conduct during the period beginning February 1,

^{1/} These provisions prohibit public employers, 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. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (4)

2002 and continuing through March 6, 2002. Additionally, LIUNA requested in its charge that the charge "block" the March 19 election.

By letter dated March 13, 2002, the Commission agent informed LIUNA in writing that its request to block the election would not automatically be granted and that LIUNA was required to submit a position statement, affidavits and other documentation in support of its blocking request. On March 14, 2002, LIUNA submitted the required documentation.

Specifically, LIUNA alleges in its charge that the Authority, acting through its vice-president of personnel and her assistant, violated the Act by: (1) publicly humiliating and disciplining the LIUNA shop steward on February 13, 2002 for conduct which was also engaged in by the Petitioner and her supporters yet the Petitioner and her supporters were not similarly disciplined; (2) conducting a campaign, beginning February 1, 2002, which included disinformation and untruths concerning benefits the Authority has allegedly granted to unit members as opposed to what LIUNA has negotiated for them; (3)

1/ Footnote Continued From Previous Page

Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act. (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."

assisting and urging the Petitioner to file the decertification petition; (4) meeting with individual unit employees and with unit employees en masse during which meetings the vice-president and her assistant allegedly threatened employees with the loss of medical and other benefits if the employees voted to retain LIUNA while promising to protect those benefits if the employees voted to decertify LIUNA; (5) promising on February 26, 2002, to award unit employees larger raises and benefits if the employees vote against LIUNA and threatening smaller raises and no bonuses if LIUNA is retained; and (6) assisting in the preparation and distribution of a written summary of benefits, and consequences as to the receipt of those benefits, if LIUNA is decertified rather than retained by unit employees in their March 19 election.

By letter dated March 15, 2002, the Authority and the Petitioner were given the opportunity to formally respond to LIUNA's blocking request and to set forth their respective positions on whether the March 19, 2002 election should be suspended pending litigation of the unfair practice charge. The Authority and the Petitioner were instructed to submit their responses by 9 a.m., March 18, 2002. Both parties timely submitted position statements.

The Petitioner opposes the blocking request and disputes that employees have been threatened by the Authority to vote against LIUNA. The Petitioner further argues that a sufficient showing of interest was submitted in support of its petition for

decertification and that the greater portion of unit employees want to be heard expeditiously concerning their preference for representation. According to the Petitioner, the employees do not want the election to be blocked.

The Authority opposes LIUNA's blocking request. In its position statement, the Authority initially contends that neither LIUNA's allegations, nor the supporting documentation are sufficient to support a block to the conduct of the March 19, 2002 election. In this regard, the Authority asserts that many of the charge's allegations lack a "meaningful degree of specificity."

The Authority maintains that the conduct of its agents in connection with the decertification petition has been "absolutely neutral" and that it has been engaged in neither a coercive nor intimidating campaign. The Authority further maintains that its agents' discussions with unit employees were prompted by questions raised by unit employees and were not initiated by the Authority. Thus, the Authority asserts that the information it provided to employees in response to their questions was merely a factual response within acceptable parameters. Finally, the Authority argues that LIUNA has failed to explain the required nexus between the alleged unfair practice allegations and the continued processing of a fair and free election, and therefore the standard

for blocking the March 19, 2002 election has not been satisfied.^{2/}

ANALYSIS

The filing of an unfair practice charge or even the issuance of an unfair practice complaint will not automatically block the processing of a representation petition. A blocking charge procedure is not required by the Act or the Commission's Rules. The decision on whether an unfair practice charge should block a representation petition is a matter within the Commission's discretion. State of New Jersey, P.E.R.C. No. 81-94, 7 NJPER 105 (¶12044 1981).

The legal standard for determining when we permit an unfair practice charge to block the processing of a representation petition was set forth in State of New Jersey. Procedurally, the charging party must first request that the charge block the representation proceedings. It must then submit documentary evidence in the representation forum establishing the basis for the claim that the conduct underlying the unfair practice prevents a free and fair election. Where the charging party proffers such evidence, the Director of Representation will exercise his

^{2/} The Authority asserts that because we have determined not to provide it with all of the affidavits supplied to the Commission by LIUNA, it cannot adequately respond to the allegations. We have provided the Authority with one redacted affidavit, however because of the identifiability of the remaining affidavits, we have determined not to provide those additional affidavits at this point in the process.

discretion to block if, under all of the circumstances presented, the employees could not exercise their free choice in an election. See Village of Ridgewood, D.R. No. 81-17, 6 NJPER 605 (¶11300 1980).

In State of New Jersey, the Commission adopted the following factors in evaluating whether a fair election can be conducted during the pendency of the unfair practice charge:

The character and the scope of the charge(s) and its tendency to impair the employee's free choice; the size of the working force and the number of employees involved in the events upon which the charge is based; the entitlement and interests of the employees in an expeditious expression of their preference for representation; the relationship of the charging parties to labor organizations involved in the representation case; a showing of interest, if any, presented in the R case by the charging party; and the timing of the charge. [NLRB Case Handling Manual, Section 11730.5]

For the reasons stated below, I determine that the unfair practice charge filed by LIUNA should block the conduct of the election scheduled for March 19, 2002.

The decertification petition was filed in the instant case on January 25, 2002. LIUNA alleges that since February 1, 2002, the Authority has met with employees individually and in groups on work time and that during those meetings its vice-president for personnel and her assistant have repeatedly told unit employees that if they vote to retain LIUNA as their collective negotiations representative they would lose medical benefits and other fringe benefits they now enjoy. The charge also alleges that if, however, the employees

voted to decertify LIUNA, they would maintain their existing benefits. Affidavits provided by LIUNA specifically set forth meeting times and locations for Authority meetings with a group of at least 19 employees and meeting times and places with individual employees, including meetings in the vice-president's office.

LIUNA also alleges that the vice-president for personnel made statements to a group of unit employees concerning the Authority being prepared to grant bonuses and increased raises to unit employees if they voted to decertify LIUNA. Those same bonuses and raises allegedly would not be forthcoming if the employees retained LIUNA as their collective negotiations representative. LIUNA has also supplied supporting affidavits which speak specifically to these allegations.

Given the character of the allegations described above and the documents provided by LIUNA in support of the allegations, viewed in the context of this small unit (21 employees), and the number of employees to whom the alleged remarks were repeatedly made, including approximately 19 employees at one meeting and several employees individually, I conclude that LIUNA has established a nexus between the Authority's alleged conduct and the ability of the affected employees to make a free choice in the election scheduled for March 19, 2002. State of New Jersey.

Moreover, the Authority's alleged conduct came swiftly on the heels of the parties' consent election agreement. On February 26, 2002, the same day as the consent agreement was signed by the

Authority, it apparently held a meeting among unit employees during which promises and threats were allegedly made. This immediate and allegedly pervasive response to LIUNA's continued representation of these employees has placed the unit employees in a position of having to make a decision on continued representation in an atmosphere which may make it difficult to protect the integrity of the election process and preserve the employees' right of free expression.

While I note that the Authority, at this point in the procedure has not viewed all of the documentation in support of LIUNA's blocking request, it is within my discretion to block an election if I determine that under all the circumstances presented, the employees could not exercise their free choice in an election. See Village of Ridgewood. Based upon what is before me, I find that the election should not go forward at this time.

ORDER

The election scheduled for March 19, 2002 is postponed pending further processing of the unfair practice charge (CO-2002-247).

BY ORDER OF THE DIRECTOR
OF REPRESENTATION

Stuart Reichman, Director

DATED: March 18, 2002
Trenton, New Jersey