

D.R. NO. 83-19

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

In the Matter of

JERSEY CITY MEDICAL CENTER,

Public Employer,

-and-

INTERNATIONAL SERVICE WORKERS
OF AMERICA,

DOCKET NO. RO-83-30

Petitioner,

-and-

DISTRICT 1199-J, NATIONAL UNION
OF HOSPITAL AND HEALTH CARE EMPLOYEES,
RWDSU, AFL-CIO,

Intervenor.

SYNOPSIS

The Director of Representation, on the basis of an administrative investigation, directs an election among the Center's nonsupervisory food service employees to ascertain whether they desire representation by ISWA, District 1199-J, or by neither organization. District 1199-J's claim that the ISWA's showing of interest was obtained in a manner which confused employees is unsupported by any evidence. Although an ISWA local represents supervisory employees at the Center, more than sufficient showing of interest designated support for a different ISWA local.

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Appearances:

For the Public Employer
Joseph Doyle, Personnel Director

For the Petitioner
Schneider, Cohen, Solomon & DiMarzio, attorneys
(J. Sheldon Cohen of counsel)

For the Intervenor
Greenberg, Margolis, Ziegler & Schwartz, attorneys
(Mark S. Tabenkin of counsel)

DECISION AND DIRECTION OF ELECTION

On September 8, 1982, a Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission ("Commission") by the International Service Workers of America ("ISWA") seeking to represent a unit

of nonsupervisory food service employees employed by the Jersey City Medical Center ("Center"). These employees are currently represented by District 1199-J, National Union of Hospital and Health Care Employees, RWDSU, AFL-CIO (District 1199-J), which has intervened in the instant proceeding pursuant to N.J.A.C. 19:11-2.7, on the basis of a current contractual agreement.

In accordance with N.J.A.C. 19:11-2.6, the undersigned has caused an administrative 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, the undersigned finds and determines as follows:

1. The disposition of this matter is properly based on 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 Jersey City Medical Center is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), is the employer of the employees who are the subject of this Petition and is subject to the provisions of the Act.

3. International Service Workers of America and District 1199-J, National Union of Hospital and Health Care Employees, RWDSU, AFL-CIO, are employee representatives within the meaning of the Act and are subject to its provisions.

4. ISWA has filed a Petition for Certification of Public Employee Representative seeking to represent a unit of food service employees currently represented by District 1199-J. ISWA seeks the conduct of a secret ballot election.

5. District 1199-J does not consent to an election. It asserts that the showing of interest submitted by ISWA was inappropriate. Specifically, it argues that the authorization and designation cards submitted by ISWA were misleading and improperly obtained, because many of the cards did not designate a choice for any particular local of ISWA, but merely listed the name of the parent organization. District 1199-J concedes the general rule that a showing which designates a parent organization is valid, but it urges that in this particular setting the Commission should not accept a showing of interest that does not designate a particular local because an ISWA affiliate already represents a unit of supervisory employees employed by the Center and who supervise the petitioned-for employees. District 1199-J states:

As a general rule, of course, an authorization card designating a parent labor organization serves as a valid designation of its affiliate.
(citations omitted)

Significantly in each of the cited cases, there was no likelihood of confusion as to the identity of the potential representative in the minds of the signers. In the present case, by contract, the likelihood of confusion as to the identity of the potential representative is manifest.

6. The submission of a showing of interest by a Petitioner is an administrative requirement for the purpose of ensuring that sufficient interest exists among employees on behalf of the petitioner to warrant the expenditure of Commission resources in processing the Petition. In re Woodbridge Tp. Bd. of Ed., D.R. No. 77-9, 3 NJPER 26 (1977). It is uniquely an administrative concern, and questions relating to its validity must be raised in a prompt manner. Unless good cause exists to the contrary, challenges questioning the validity of a showing of interest are to be raised prior the informal conference and should be embodied in the challenging party's response to the Commission's initial request for positional statements.

N.J.A.C. 19:11-2.1 provides:

The showing of interest shall not be furnished to any of the parties. The director of representation shall determine the adequacy of the showing of interest and such decision shall not be subject to collateral attack.

Consistent with the above rule, the undersigned engages in a separate review of claims regarding the propriety of the showing of interest. See In re City of Jersey City, E.D. No. 76-19, 2 NJPER 30 (1976). Documentary and other evidence in support

of such claims shall be filed within 72 hours of the raising of the challenge.

7. This issue was timely raised with the assigned Commission staff agent and the undersigned provided District 1199-J an opportunity within the prescribed 72 hour period to submit evidence supporting its claim.

Further, the undersigned advised the parties that, based upon the investigation, it appeared that there were no issues in dispute concerning the appropriateness of the unit and no disputes involving other representation issues. The parties were reminded of their obligations under N.J.A.C. 19:11-2.6, to present documentary or other evidence, as well as statements of position relating to the instant Petition and were afforded an additional opportunity to proffer any supplementary evidence or statements of position relevant to the instant Petition.

8. Although District 1199-J has presented a positional statement concerning the ISWA showing of interest, it has not submitted probative evidence supportive of its claim that employees were confused when they signed the ISWA's authorization cards. Thus, there is no evidentiary proffer underlying District 1199-J's assertion of a "likelihood of confusion." Moreover, District 1199-J has not cited to any decisional authority which would be supportive of any claim that, absent some evidence of fraud or misconduct, a showing of interest investigation should be pursued to probe the allegation of "a likelihood of confusion in the minds of the signers."

9. Notwithstanding District 1199-J's assertion that many of ISWA's authorization cards designate only the parent organization, among ISWA's showing of interest are authorization cards which in fact designate a particular local along with the name of the parent organization. The designated local is not the ISWA local which represents the supervisory unit. The cards which designate a different ISWA local exceed the 30% showing of interest requirement of N.J.A.C. 19:11-1.2(a)(8).

In light of the submission of an adequate showing of authorization cards which neither designate the parent organization solely, nor designate the supervisory local, but rather designate a separate nonsupervisory local, the undersigned can confirm the adequacy of the showing of interest without reference to or consideration of the remaining disputed cards. ^{1/}

Accordingly, there existing no substantial and material factual issues in dispute which may more appropriately be resolved after a hearing, the undersigned finds that the disposition of this matter is properly based on the administrative investigation herein. Therefore, the undersigned finds that the appropriate unit for collective negotiations is: all food service workers in the Food Service Department, but excluding all other employees including managerial executives, supervisory employees, confidential employees, craft employees, professional employees and police within the meaning of the Act.

^{1/} Even in those circumstances involving a fraudulent showing of interest, the National Labor Relations Board will continue to process those matters where the non-fraudulently obtained showing exceeds the 30% showing of interest requirement. NLRB Casehandling Manual, ¶ 11028.2. See also, Woodbridge, supra.

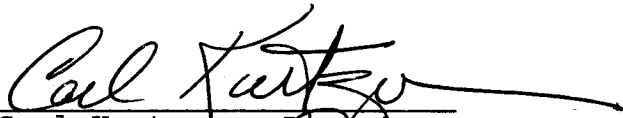
Accordingly, the undersigned directs that an election be conducted among the employees in the unit described above. The election shall be conducted no later than thirty (30) days from the date set forth below. Those eligible to vote are employees set forth above who were employed during the payroll period 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 ISWA and District 1199-J, an 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 ISWA and District 1199-J with statement 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 they wish to be represented by International Service Workers of America, District 1199-J, National Union of Hospital and Health Care Employees, AFL-CIO, 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 shall be conducted in accordance with the provisions of the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: October 29, 1982
Trenton, New Jersey