

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

In the Matter of

CITY OF ATLANTIC CITY,

Public Employer,

-and-

TEAMSTERS LOCAL NO. 331, I.B.T.,

DOCKET NO. RO-78-72

Petitioner,

-and-

I.B.F.O.I.E., LOCAL NO. 59,

Intervenor.

SYNOPSIS

The Director of Representation, on the basis of an administrative investigation, directs an election among all school crossing guards employed by the City. The Director rejects the claim of the incumbent representative that the processing of the Petition be barred because of current negotiations with the City. The Director points to Commission precedent that the pendency of negotiations does not bar the processing of an otherwise timely filed petition.

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Appearances:

For the Public Employer  
Mr. John Miraglia

For the Petitioner  
Howard J. Casper, Esq.

For the Intervenor  
Ross D'Alessio, Business Manager

DECISION AND DIRECTION OF ELECTION

On October 3, 1977 a Petition for Certification of Public Employee Representative, supported by an adequate showing of interest, was filed with the Public Employment Relations Commission (the "Commission") by Teamsters Local No. 331 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America ("Local No. 331"). The Petitioner seeks a secret ballot election among employees in a proposed unit consisting of all school crossing guards employed by the City of Atlantic City (the "City"). Local No. 331 asserts that these employees are currently represented by the International Brotherhood of Firemen and Oilers and

Industrial Employees, Local 59 ("Local 59"), whose collective negotiations agreement with the City expires on December 31, 1977. Local 59 has been granted Intervenor status in this matter.

The undersigned has caused an investigation to be conducted into the matters and allegations set forth in the Petition in order to determine the facts. All parties were advised of their obligations under N.J.A.C. 19:11-2.6, and were afforded an opportunity thereunder to present documentary and other evidence, as well as statements of position, relating to the Petition. On the basis of the administrative investigation herein, the undersigned finds and determines as follows:

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 a hearing. Pursuant to N.J.A.C. 19:11-2.6, 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 City of Atlantic City is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., as amended (the "Act"), is the employer of the employees described herein, and is subject to the provisions of the Act.

3. Teamsters Local No. 331 affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and International Brotherhood of Firemen and Oilers and Industrial Employees, Local 59 are employee representatives within the meaning of the Act and are subject to its provisions.

4. Local No. 331 having filed a Petition for Certification of Public Employee Representative, and there being no agreement for a secret

ballot election, a dispute exists and the matter is appropriately before the undersigned.

5. Local 59 objects to a secret ballot election because it claims that it is currently in negotiations for a successor agreement with the City. The City has not advised the Commission of its position with respect to this matter. However, no party disputes the appropriateness of the petitioned-for unit.

6. By letter dated December 7, 1977, the undersigned advised the parties that the Commission has consistently rejected contentions that a negotiations bar exists to bar the processing of an otherwise timely-filed Petition. See In re Township of Franklin, P.E.R.C. No. 64 (1971); and most recently, County of Passaic, D.R. No. 77-7, 3 NJPER 22 (1976). The parties were further advised that it appeared that the instant Petition had been timely filed pursuant to N.J.A.C. 19:11-2.8(c)(2). The undersigned stated that in the absence of the presentation of documentary or other evidence which would raise substantial and material factual issues warranting the convening of an evidentiary hearing he would issue a determination based upon the investigation. The undersigned afforded the parties a further opportunity to proffer any additional evidence as well as statements of position which would raise substantial and material factual issues in this matter. There has been no such further evidentiary proffer.

7. Based upon the above, it appears to the undersigned that a valid question concerning representation exists in a prima facie appropriate unit. Further, the evidence submitted does not appear to place in dispute any substantial and material factual issues. Accordingly, an election shall be directed in the following appropriate unit: "All school crossing guards employed by the City of Atlantic City, excluding managerial executives,

confidential employees, police employees, professional employees, and supervisors within the meaning of the Act."

The undersigned directs that a secret ballot election shall 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 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, were 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 quit 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 employee organizations an eligibility list, consisting of an alphabetical listing of names of all eligible voters together with their last known 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 Local No. 331 and Local 59 with a 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 desire to be represented for the purposes of collective negotiations by Teamsters Local No. 331 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America or by the International Brotherhood

of Firemen and Oilers and Industrial Employees, Local 59, or neither.

The majority representative shall be determined by a majority of valid ballots cast. The election directed herein shall be conducted in accordance with the provisions of the Commission's Rules and Regulations and Statement of Procedure.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
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Carl Kurtzman, Director

DATED: December 29, 1977  
Trenton, New Jersey