

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

In the Matter of

MATAWAN REGIONAL SCHOOL DISTRICT
BOARD OF EDUCATION,

Public Employer,

-and-

MATAWAN REGIONAL TEACHERS
ASSOCIATION,

Docket Nos. RO-78-21
and RO-78-22

Petitioner,

-and-

LOCAL 11, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS,

Intervenor.

SYNOPSIS

The Director of Representation directs an election among employees in units of bus drivers and custodial and maintenance personnel notwithstanding the filing of unfair practice charges by the intervenor. The intervenor, which is the employees' incumbent representative, has filed charges alleging that the employer has refused to negotiate with it, and has urged that the charges should "block" the conduct of an election. The Director, however, determines that it is unlikely that the alleged unfair practice conduct will affect the results of the election since the employee showing of interest in support of the petitioning organization was obtained prior to the alleged conduct described in the Charge. Additionally, the Director determines that an election should be conducted since the allegations of unfair practice violations raise issues that are in part directly related to, and dependent upon, resolution of the outstanding question concerning representation.

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Appearances:

For the Public Employer, Gerald L. Dorf, P.A.
(Mr. Richard M. Salsberg, of Counsel)

For the Petitioner, Emil Oxfeld, Esq.

For the Intervenor, Messrs. Schneider, Cohen &
Solomon, Esqs.
(Mr. Bruce Brafman, of Counsel)

DECISION AND DIRECTION OF ELECTION

On August 5, 1977, two Petitions for Certification of Public Employee Representative, supported by adequate showings of interest, were filed with the Public Employment Relations Commission (the "Commission") by the Matawan Regional Teachers Association (the "M.R.T.A."). The M.R.T.A. seeks certification as the exclusive representative of two units of employees: school bus drivers (Docket No. RO-78-21) and custodial and maintenance

workers (Docket No. RO-78-22) employed by the Matawan Regional School District Board of Education (the "Board"). Local 11, International Brotherhood of Teamsters ("Local 11"), the incumbent representative, is hereby granted intervention in this proceeding on the basis of two recent collective negotiations agreements covering all bus drivers, and all custodial and maintenance employees employed by the Board, which agreements were in effect from July 1, 1975 through June 30, 1977.

The instant petitions must be placed in historical perspective. On June 16, 1977, the Board received letters from the M.R.T.A. demanding that the Board recognize the "disaffiliation" of the employees in the bus driver and the custodial and maintenance units, and their "affiliation" with the M.R.T.A. The letters, accompanied by petitions and cards purportedly signed by eight of eight bus drivers and 40 of 54 custodial and maintenance workers, demanded that the Board stop negotiations with Local 11 and begin negotiations with the M.R.T.A. The Board thereafter ceased negotiations with Local 11 and, on June 21, 1977, filed two Petitions for Certification of Public Employee Representative ^{1/} with the Commission. On June 24, 1977, Local 11 filed unfair practice charges against the Board alleging violations of N.J.S.A. 34:13A-5.4(a)(1), (2) and (5).^{2/} These charges are presently pending before the Commission.

The undersigned has caused an administrative investigation of the Petition to be conducted in order to determine the facts. All parties

^{1/} Docket No. RE-77-8 (custodial and maintenance workers) and RE-77-9 (bus drivers). These petitions, filed approximately nine days prior to the expiration of the Board's contract with Local 11, were not timely under N.J.A.C. 19:11-2.8(c)(3) (formerly, N.J.A.C. 19:11-1.15 (c)(3)). As the Board has not acted to withdraw these RE petitions, the latter have been dismissed in an accompanying decision issued this day, D.R. No. 78-12, 3 NJPER ___ (1977).

^{2/} Docket Nos. CO-77-343 (bus drivers) and CO-77-344 (custodians and maintenance). See footnote 4.

have been advised of their obligations under N.J.A.C. 19:11-2.6 (formerly N.J.A.C. 19:11-1.12) and have been afforded an opportunity thereunder to present documentary and other evidence as well as statements of position relating to the Petitions. The Board has certified that the Commission's standard Notices to Employees have been posted.

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.S.A. 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 Matawan Regional Board of Education 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 herein, and is subject to the Act's provisions.

3. Both the Matawan Regional Teachers Association and Local 11, International Brotherhood of Teamsters are employee representatives within the meaning of the Act and are subject to its provisions.

4. The Board consents to the conduct of secret ballot elections among the employees in the petitioned-for units. Local 11, however, declines to consent to such elections. Accordingly, Petitions for Certification of Public Employee Representative having been filed, questions concerning the representation of public employees are before the Commission, there exists a dispute, and the matter is properly before the undersigned for determination.

5. No party disputes the appropriateness of the petitioned-for units, and the undersigned finds the units prima facie appropriate for collective negotiations.

6. Local 11 argues that the unfair practice charges currently pending against the employer preclude the Commission from proceeding with representation elections. The undersigned has requested that all parties in the instant proceeding submit briefs on the question of whether the charges alleging violations of N.J.S.A. 34:13A-5.4(a)(1), (2) and (5) should "block" the holding of such elections.

On August 18, 1977, Local 11 filed a brief with the Commission, and on the same day the M.R.T.A. filed a statement of position. The Board's general position is set forth in the statement it filed with the Commission on July 14, 1977 in response to the aforementioned unfair practice charges.

Neither the Act nor the Rules of the Commission require the Commission to follow a blocking charge procedure. The undersigned has conducted an investigation of the procedures of the National Labor Relations Board (the "NLRB"), the agency that originated the "blocking charge" concept.^{3/} The NLRB will normally not conduct an election during the pendency of unwaived unfair labor practice charges involving employees in the bargaining units in which an election is sought. Edward J. Schlacter Meat Co., 100 NLRB 1171 (1972), 30 LRRM 1418. The general rationale is that if an election were held during the pendency of unfair labor practice charges and the charges were later found to be true, the restraint and coercion of the employees

^{3/} See Lullo v. International Association of Fire Fighters, 55 N.J. 409 (1970), and Board of Education of West Orange v. Wilton, 57 N.J. 404 (1971), regarding the similarities of the New Jersey Employer-Employee Relations Act and labor statutes of other jurisdictions.

flowing from the unfair labor practices would have precluded a free election and would require setting aside the election. Dumont Electric Corp., 97 NLRB 94 (1957).

The blocking charge procedure is required neither by the Labor Management Relations Act nor by the Rules of the NLRB. Rather, the practice is a matter within the NLRB's discretion. The NLRB will decline to follow the blocking charge procedure when it is of the opinion that the direction of an immediate election will effectuate the policies of the Act. See Columbia Pictures Corp., 81 NLRB 1313 (1949) 23 LRRM 1504.

It is of significance to the instant proceeding that among the categories of cases in which the NLRB will decline to follow the blocking charge procedure are, first, cases in which it seems unlikely that the alleged unfair labor practices would affect the election results, and second, those in which the alleged violations are related, at least in part, to the unresolved question of representation.

Illustrative of the first category is Carson Pirie Scott and Co., 69 NLRB 935 (1946). The Employer refused to bargain with the certified representative, the CIO, contending that its unit was inappropriate. The incumbent C.I.O. union responded by filing unfair labor practice charges against the employer. Shortly thereafter, because of a pre-existing dispute between the incumbent local and the international, unrelated to the employer's actions, the union membership overwhelmingly voted to transfer their affiliation from the CIO to the AFL. The AFL then filed a representation petition. The NLRB acknowledged that it would not normally have held an election while unwaived unfair labor practice charges were pending against the employer. However, it said, that the application of the blocking charge policy is predicated on the assumption that the employer's unfair labor practices will diminish support for the union and make an election

unfair. Since the transfer of membership was not attributable to the employer's alleged unfair labor practices, the NLRB directed an election.

Illustrative of the second category of cases is Panda Terminals, Inc., 161 NLRB 1215 (1966), 63 LRRM 1419. The Board denied motions from competing unions that the employer's representation petition be dismissed pending the disposition of 29 USCS §158(a)(2) and (5) charges against the employer. The representation question arose over the consolidation at one location of freight-handling operations formerly conducted at different locations by employees represented by different unions. The NLRB observed that while it normally would not proceed with an election when unfair labor practices were pending, its policy was ultimately a matter of discretion. It noted in that case that the unfair labor practice allegations raised issues that were directly related to and dependent upon resolution of the issues raised in the employer's representation petitions. In these circumstances it would not effectuate the purposes of the Act to refuse to process the cases notwithstanding the existence of the unfair labor practice charges. An election was directed. See Warston Corp., 120 NLRB 76 (1958).

In consideration of all the facts and arguments submitted in the instant case, and upon examination of the NLRB's well-reasoned utilizing of discretion in its blocking charge policy, the undersigned concludes that the pending unfair practice charges against the employer should not block representation elections herein. First, as stated in the charges ^{4/} against the

^{4/} The charge in Docket No. CO-77-344 provides in full:

"On or about June 16, 1977, Employer has refused to negotiate with Teamsters Union Local No. 11 concerning a collective bargaining agreement expiring on June 30, 1977, covering the custodial maintenance staff. Further, said refusal to bargain constitutes unlawful assistance to the Matawan Regional Teachers (sic) Association who had demanded that the Board recognize it as the collective bargaining representative for the aforementioned custodial maintenance staff. Teamsters Local 11 has continually offered to negotiate with the Board of Education, however, said Board has, at all times, refused."

The substance of the charge in Docket No. CO-77-345 is essentially the same as in CO-77-344.

Board, the alleged unfair practice violations took place "On or about June 16" and relate to the employer's alleged determination not to negotiate further with Local 11. The undersigned's investigation of the instant representation petitions and the signed authorization cards indicates that the authorization cards were signed prior to June 16, 1977 and that a demand for recognition was made upon the Board on June 16, 1977. Accordingly, it appears that a transfer of allegiance from Local 11 to the M.R.T.A. had already taken place prior to the alleged refusal to negotiate on the part of the Board which Local 11 claims constitutes unlawful assistance to the M.R.T.A.

Second, the alleged unfair practice violations are themselves related to the resolution of the questions concerning representation raised by the M.R.T.A.'s representation petitions. An underlying issue in the unfair practice charges filed by Local 11 is whether the Board possessed a good faith and reasonably grounded doubt of the incumbent's continued majority status. The unfair practice allegations appear to have raised issues that are directly related to and dependent upon resolution of the majority status of the incumbent employee representative.

Local 11 argues that the Board's alleged post-June 15 unfair practices have so tainted the atmosphere that Local 11 would unjustly suffer in the election. However, the undersigned cannot ignore the strong pre-June 16 employee desire for an election expressed in the authorization cards and petitions, and concludes that it would best effectuate the purposes of the Act to direct elections at this time among the bus drivers and maintenance workers. On the other hand, Local 11's rights are preserved in that this direction of election is without prejudice to, and any resulting certification would be specifically conditioned upon, any determination which might be made

concerning Local 11's status in the pending unfair practice cases against the employer.

Accordingly the undersigned shall direct an election to be conducted among bus drivers employed by the Matawan Regional School District Board of Education and an election to be conducted among custodial and maintenance personnel employed by the Matawan Regional School District Board of Education.

The undersigned directs that secret ballot elections be conducted among the employees described above. The elections 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 quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

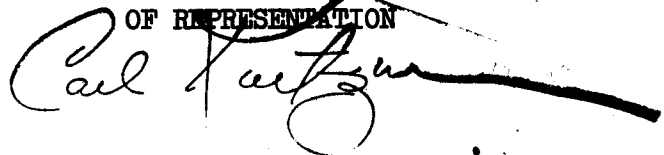
Pursuant to N.J.A.C. 19:11-9.6, the public employer is directed to file with the undersigned and with the employee organizations election eligibility lists - the first consisting of bus drivers; the second consisting of custodial and maintenance personnel - consisting of an alphabetical listing of the names of all eligible voters together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility lists must be received by the undersigned no later than ten (10) days prior to the date of the elections. Copies of the eligibility lists

shall be simultaneously filed with the M.R.T.A. and Local 11 with statement of service to the undersigned. The undersigned shall not grant an extension of time within which to file the eligibility lists except in extraordinary circumstances.

Those eligible to vote shall vote as to whether they desire to be represented for the purposes of collective negotiations by the Matawan Regional Teachers Association, or Local 11, International Brotherhood of Teamsters, or neither.

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

BY ORDER OF THE DIRECTOR
OF REPRESENTATION

A handwritten signature in cursive script, reading "Carl Kurtzman", written over a horizontal line. The signature is written in black ink and is positioned above the printed name of the Director.

Carl Kurtzman, Director
of Representation

DATED: September 8, 1977
Trenton, New Jersey