

I.R. NO. 88-7

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF MERCER AND
TEAMSTERS LOCAL 35,

Respondents,

-and-

Docket No. CO-88-157

NEW JERSEY STATE NURSES ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission Designee declines to restrain the County of Mercer from adopting a tentative contract between itself and Teamsters Local 35. The New Jersey State Nurses Association previously filed a Petition for Representation seeking to sever out the registered nurses from an existing unit of licensed practical nurses and registered nurses. The Commission, in Passaic County, has previously held that a severance petition should not prevent the majority representative from discharging its statutory obligation to negotiate with the incumbent as to the majority of employees who are not the subject of a severance petition and the principles of Middlesex County and Bergen County do not apply.

Moreover, the Commission declined to decide whether there was an obligation on the part of an employer to suspend negotiations for the employees that are the subject of the severance petition. Since the Commission has not made a determination on this issue and lacking guidance in these circumstances, the request for interim relief is denied.

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Appearances:

For the County of Mercer
Steven D. Wallach, Esq.

For Teamsters Local 35
Markowitz and Richman, Esqs.
(Joel G. Scharff, of counsel)

For the New Jersey State Nurses Association
Sterns, Herbert, Weinroth & Petrino
(Mark D. Schorr, of counsel)

INTERLOCUTORY DECISION

On December 15, 1987, the New Jersey State Nurses Association ("Association") filed an Unfair Practice Charge accompanied by an Order to Show Cause with the New Jersey Public Employment Relations Commission ("Commission") alleging that Teamsters Local 35 ("Local 35") and the County of Mercer committed unfair practices when they entered into a collective negotiations agreement while a representation petition brought by the Association was pending before the Commission. The Association seeks an Order restraining the County of Mercer from further negotiating a

successor agreement and from ratifying, executing or implementing any agreement already negotiated. It was specifically alleged that these actions violated N.J.S.A. 34:13A-5.4(a)(1) and (2).^{1/}

A hearing was held on the 21st of October^{2/} and all parties were given an opportunity to present evidence, argue orally and submit briefs.

On October 2, 1987, the New Jersey State Nurses Association brought a Petition in which it sought certification of a unit of registered and licensed practical nurses employed by the County of Mercer and currently represented by Teamsters Local 35. Subsequently, on October 26, 1987, the petition was amended to seek representation of only registered nurses.^{3/}

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- ^{1/} These subsections 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."
- ^{2/} A telephone conference was conducted among the parties in this action. There was a mutual understanding that there was no need for a temporary restraining order for the County was not going to take any action to adopt or approve the contract between it and Local 35 before December 22, 1987. A return date was set for December 21, 1987.
- ^{3/} It is Commission policy that "once a valid question concerning representation has been raised concerning employees, the Petitioner may later seek to propose a different unit structure limited to some or all of the petitioned-for employees." County of Atlantic, D.R. No. 81-19, 7 NJPER 39 (¶12018 1980); Holmdel Tp. Bd. of Ed., D.R. 80-29, 6 NJPER 120 (¶11065 1979).

On December 15, 1987, a Notice of Hearing was issued on the representation petition. The hearing was scheduled to determine if the registered nurses should be severed from the unit of licensed and registered nurses. There is no dispute here that the Teamsters and the County have engaged in negotiations during the pendency of the representation petition, a tentative negotiations contract had been entered into between them, and the Mercer County Freeholders are scheduled to vote upon ratification and adoption on this agreement at their meeting on December 22, 1987 at 2 p.m.

The Commission, in the matter of County of Bergen, P.E.R.C. No. 84-2, 9 NJPER 451 (¶14196 1983) and in Middlesex County (Roosevelt Hospital), P.E.R.C. No. 81-129, 7 NJPER 266 (¶12118 1981) held that an employer with knowledge of a pending representation petition may not negotiate and/or reach an agreement with an incumbent union.

However, in Passaic County Technical and Vocational High School, 85-39, 10 NJPER 577 (¶15269 1984), the Commission held that a severance petition should not prevent the majority representative from discharging its statutory obligation to negotiate with the incumbent and the principles of Middlesex County and Bergen County do not apply to the majority of employees who are not the subject of a severance petition.

Accordingly, here, there are no grounds to restrain the implementation of the contract as it applies to the licensed practical nurses's which consists of 2/3 of the existing unit or 25 of the 75 employees.

Moreover, in Passaic County the Commission declined to decide whether Middlesex County and Bergen County applied to the employees who were the subject of the severance petition. Accordingly, since the Commission did not make a determination on this issue and lacking guidance in these circumstances, the ultimate determination here cannot be foreseen.

Accordingly, the Application for restraint is denied. This is an interim decision only and the unfair practice charge here will go forward for a full hearing and an ultimate determination by the full Commission.



Edmund G. Gerber
Commission Designee

DATED: December 22, 1987
Trenton, New Jersey