

D.R. NO. 2016-1

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

In the Matter of

COUNTY OF SOMERSET,

Public Employer,

-and-

Docket No. RO-2015-042

TRANSPORT WORKERS UNION
LOCAL 225,

Petitioner,

-and-

SOMERSET COUNTY DRIVERS
AND AIDES ASSOCIATION,

Intervenor.

SYNOPSIS

The Director of Representation finds that a request to block a representation election among all mini-bus drivers, motor coach operators, in-home service workers, transportation aides, home delivered meal drivers, dispatchers, administrative assistants and transportation assistants employed by the County of Somerset is not supported by sufficient evidence to block the election while litigation of the unfair practice charge ensues. The Director found an absence of documentary evidence for the Association's contention that the County deliberately delayed negotiations for a successor agreement by offering a low salary proposal in retaliation for previous filings at PERC. Further, the Director found an absence of facts to support the contention that the voters' freedom to choose a majority representative would be influenced by the purported bad faith negotiations. As such, the Director orders that a secret mail ballot election be conducted.

D.R. NO. 2016-1

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

In the Matter of

COUNTY OF SOMERSET,

Public Employer,

-and-

Docket No. RO-2015-042

TRANSPORT WORKERS UNION
LOCAL 225,

Petitioner,

-and-

SOMERSET COUNTY DRIVERS
AND AIDES ASSOCIATION,

Intervenor.

Appearances:

For the Respondent,
Ruderman Horn and Esmerado, attorneys
(Mark S. Ruderman, of counsel)

For the Petitioner,
David Tykulsker and Associates, attorneys
(David Tykulsker, of counsel)

For the Intervenor,
Oxfeld Cohen, LLC, attorneys
(Sanford R. Oxfeld, of counsel)

DECISION

On April 24, 2015, the Transport Workers Union, Local 225 (TWU) filed a representation petition seeking to represent for purposes of collective negotiations, a unit of all "motor coach operators, mini-bus drivers, home delivered meal drivers, non

supervisory office staff and transportation aides" employed by the County of Somerset (County). The petition is timely filed and accompanied by an adequate showing of interest. N.J.A.C. 19:11-1.2. The employees are currently represented by the Somerset County Drivers and Aides Association (Association). On June 15, 2015, the Association intervened in this matter as the incumbent employee organization, based upon its collective negotiations agreement with the County, which expired on December 31, 2012. N.J.A.C. 19:11-2.7.

There is no dispute as to the unit description or the appropriateness of the petitioned-for unit. The County takes no position on the petition. The Association opposes the petition and will not consent to an election.

On March 20, 2015, prior to the filing of TWU's representation petition, the Association filed an unfair practice charge (Docket No. CO-2015-226). The charge alleges that the County violated 5.4a(1) and (3) of the New Jersey Employer-Employee Relations Act (Act)^{1/} by proposing an "absurdly low" economic offer during negotiations for a successor contract in

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. (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."

retaliation for the Association's union activity and "its ability to prevail in other matters before PERC." By letter dated June 12, 2015, the Association requested that its charge block further processing of the TWU's representation petition.

On June 16, 2015, we requested the Association to submit its position statement, accompanied by documentary evidence, to support its allegations and to establish a nexus between the alleged unfair practice and the preclusion of a free and fair election. On June 22, 2015, the Association submitted a position statement together with the certification of Robert Peterson, the former Association President, in support of its request to block an election. On July 2, 2015, the County filed its position statement including a certification of Jonathan Cochran, Compensation Specialist for the County, denying the allegations as set forth in the charge and opposing the request to block an election. On July 2, 2015, the TWU also filed a position statement opposing the Association's blocking request.

Peterson certifies that the Association and the County are engaged in negotiations for a successor contract to the 2010-2012 agreement. Peterson states that since the last contract expired on December 31, 2012, there have been numerous negotiation sessions; impasse was declared and two mediation sessions were conducted. At the end of the second mediation session on February 25, 2015, the County's economic offer was 0% in the

first and second years and 1.5% in the third year. Peterson certifies that based upon discussion with other union officers in Somerset County that the County average is a three year contract with proposed raises of about 2% in the first year; 2.5% in the second year; and 2% in the third year. Peterson states that the County has engaged in "bad faith bargaining" and made a "retaliatory obscene wage offer" as a result of the Association's prior filings and dispositions at PERC^{2/}. Peterson certifies that he was told by other union presidents that the County was offering other unions 6.5% over three years on average. Peterson states that but for the low salary proposal and the County's delay tactics, the Association would have had a new negotiations agreement and TWU's petition would not have been timely filed.

2/ In 2013 the Association filed a representation petition requesting that certain titles be added to their existing unit (RO-2013-043). The County opposed the petition. The Director of Representation certified by card check the addition of non-supervisory dispatchers, administrative assistants and transportation assistants to the existing unit of drivers and aides employed by the County. In 2014, the Association filed a grievance contesting the manner in which the County allocated overtime. The County denied the grievance at each step and when the Association demanded arbitration the County filed a scope of negotiations petition seeking to enjoin the arbitration (SN-2014-028). In a decision dated August 14, 2014, the Commission ruled on behalf of the Association. P.E.R.C. No. 2015-6, 41 NJPER 97 (¶33 2014). In 2014, a PERC hearing examiner found that the County violated 5.4a(3) and (1) of the Act by suspending the Association President for three days. H.E. No. 2015-3, 41 NJPER 185 (¶65 2014).

In support of the County's opposition to the Association's blocking request, Jonathan Cochran filed a certification denying the allegations in the Association's charge and asserting that the statements in Peterson's certification are inaccurate. According to Cochran, the parties did not begin negotiations for a successor agreement until October 16, 2013, due to the Association's delay in requesting a negotiations meeting with the County. Cochran certifies that the County made it clear to the Association from the beginning of negotiations that there would be no retroactive salary increases. In accordance with that position, the County's offer in January 2014 included 0% salary increases for 2013 and the 2015 proposal included 0% for both 2013 and 2014. Cochran certifies that the County relies upon certain grants each year to fund the transportation department, including Casino Revenue Fund grants from the State. According to Cochran, there has been a drastic decline in the revenue received from the Casino Revenue Fund grants due to the downturn in Atlantic City's casino industry. Cochran states "[c]asino grants received by the County for transportation, which were as high as \$853,185.00 in 2009, have decreased to \$581,108.00 in 2014, and are expected to decrease yet again in 2015." Cochran certifies that instead of responding to these funding concerns with layoffs, the County has instead taken the decreased funding into account when making their salary proposals to the

Association. Cochran also asserts that the County does not have a standard economic offer for negotiations with all of the other negotiations units in the County. According to Cochran, as of July 1, 2015, the County was in interest arbitration with PBA Local 177 which represents county Corrections Officers and the County's economic proposal for all three years is 0%. Cochran certifies that the County made other concessions to the Association in its latest proposals regarding worker's compensation and overtime calculations, and improved its uniform and shoe proposal.

TWU also opposes the Association's blocking request. It asserts that the documentary evidence submitted by the Association is comprised solely of speculation and is insufficient to support the request to block the pending petition. TWU argues that even if the Association's claim that the County made a discriminatorily low offer during negotiations was accurate, the Association has failed to demonstrate that the alleged conduct would prevent a free and fair election.

ANALYSIS

The Commission's policy is to expedite the processing of representation disputes so that the question of whether employees will be represented by either competing organizations, or no organization, can be resolved by the Commission's secret ballot

election mechanism. Berkeley Tp., D.R. No. 2009-6, 34 NJPER 422, 423 (¶131 2008).

The filing of an unfair practice charge or 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 nor by the Commission's rules. The decision whether an unfair practice charge will block the processing of a representation petition lies 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 whether an unfair practice charge should block the processing of a representation petition was set forth in State of New Jersey, Id., and reaffirmed in Matawan-Aberdeen Reg. School Dist., P.E.R.C. No. 89-69, 15 NJPER 68 (¶20025 1988). The charging party must first request that the charge block the representation proceeding. It must also submit documents showing that the conduct underlying the unfair practice prevents a free and fair election. The Director of Representation will exercise discretion to block if under all of the circumstances, the employees could not exercise their free choice in an election. See Atlantic City Convention & Visitors Authority, D.R. No. 2002-9, 28 NJPER 170 (¶33061 2002); Village of Ridgewood, D.R. No. 81-17, 6 NJPER 605 (¶11300 1980).

In State of New Jersey, the Commission adopted the following substantive factors in evaluating whether a fair election can be conducted during the pendency of an 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 [representation] case by the charging party; and the timing of the charge. [NLRB Case Handling Manual, Section 11730.5] [7 NJPER at 109]

In applying these factors to a blocking request, we carefully evaluate the certifications and documentary evidence presented in support of a blocking request to determine whether the evidence is competent and based on the affiant's personal knowledge.

River Vale Bd. of Ed., D.R. No. 2014-3, 40 NJPER 133 (¶50 2013); County of Monmouth, D.R. No. 92-11, 18 NJPER 79 (¶23034 1992); Leap Academy Charter School, D.R. No. 2006-17, 32 NJPER 142 (¶65 2006); Atlantic City Convention and Visitors Auth., supra.

Applying these legal standards I cannot conclude that the conduct alleged in the Association's charge will interfere with a free and fair election. The Association's contention that the County deliberately delayed negotiations for a successor

agreement by offering a low salary proposal is not supported by documentary evidence. The Association submitted no certifications or other documentation which would tend to support the allegations in the charge that the employer negotiated in bad faith or discriminated against the Association. For example, no documents submitted reveal County collective negotiations proposals to other majority representatives of County employees, or the duration of those negotiations. Nor has Peterson submitted any facts indicating that the County has not previously relied significantly upon Casino revenue to fund unit employee salaries. Peterson's certification does not provide facts or proof that the County has been negotiating in bad faith or that its salary offer was given in bad faith. Instead, Peterson speculates that if the negotiations were not delayed and if the County made a higher salary proposal, a new negotiations agreement would have been in place prior to the filing of the representation petition. As explained in River Vale, speculation is not sufficient to support a blocking request. There is no evidence provided indicating that the County's actions would interfere with or would reasonably tend to interfere with the free choice of voters in an election. Moreover, no facts were submitted showing how the voters' freedom to choose a majority representative would be influenced by the purported bad faith negotiations.

Furthermore, the substance of the Association's charge does not warrant a block of the representation election. "The Commission does not automatically block the processing of a petition based upon claims of bad faith negotiations, particularly absent any showing of a nexus between the alleged violation and the potential for a free and fair representation election." City of Burlington, D.R. No. 92-13, 18 NJPER 83 (¶23036 1992). Although the Association contends that the County deliberately delayed negotiations with a low salary proposal, the facts indicate that both parties have been aggressively pursuing their respective salary proposals during negotiations. As the Director observed in Borough of Berlin, D.R. No. 93-9, 19 NJPER 74 (¶24033 1992) "[t]aking a hard-line position on a particular item in negotiations does not constitute a per se refusal to negotiate in good faith." Borough of Berlin.

For these reasons, I cannot conclude that the charge filed by the Association warrants a delay in conducting a secret ballot election. The right of unit employees to elect a majority representative of their choosing, or no representative at all, is paramount. Delaying the election for a significant period of time while the charge is litigated would not serve the representational interests of the employees. I have determined that the unfair practice charge filed by the Association should not block the conduct of an election in this case. The charge

will otherwise be processed in accordance with N.J.A.C. 19:14-1.6.

ORDER

An election is hereby directed among the employees in the following unit:

Included: All regularly employed nonsupervisory mini-bus drivers, motor coach operators, in-home service workers, transportation aides, home delivered meal drivers, dispatchers, administrative assistants and transportation assistants employed by the County of Somerset.

Excluded: Managerial executives, confidential employees, and supervisors within the meaning of the Act; professional employees, craft employees, police, casual employees, and all others employed by the County of Somerset.

Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, and including those in the military service. 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 are ineligible to vote. Employees in the unit described above shall vote to determine the collective negotiations representative, if any, for the unit in which they are employed and will have the option to vote for the Somerset County Drivers and Aides Association or Local 225, Transport Workers Union, AFL-CIO, or no representative.

Pursuant to N.J.A.C. 19:11-10.1, the public employer is directed to file with us an eligibility list consisting of an alphabetical listing of the name and address of each eligible voter and his or her job title. The eligibility list must be received by us **no later than August 3, 2015**. A copy of the eligibility list shall be simultaneously provided to both employee organizations with a statement of service filed with us. We shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

Ballots will be mailed by the Commission to eligible voters in the unit on **August 17, 2015**. Any employee who believes he or she is eligible to vote in this election and does not receive a ballot in the mail by **August 26, 2015** should contact the Commission at (609) 292-6780 immediately if they wish to participate in this election. Ballots must be returned to the Commission's Post Office Box by 9:00 a.m. on **September 15, 2015**. The ballots will be counted at 10:00 a.m. on **September 15, 2015** at the Commission's Trenton Office, 495 West State Street, Trenton, New Jersey. The election shall be conducted in accordance with the Commission's rules.

/s/ Gayl R. Mazuco
Gayl R. Mazuco
Director of Representation

DATED: July 28, 2015
Trenton, New Jersey

A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3.

Any request for review is due by August 11, 2015.