

D.R. No. 86-7

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

In the Matter of

BOROUGH OF RED BANK,

Public Employer,

-and-

DOCKET NO. RO-86-35

BOROUGH OF RED BANK INDEPENDENT
MUNICIPAL EMPLOYEES ASSOCIATION,

Petitioner.

BOROUGH OF RED BANK,

Public Employer, Petitioner,

-and-

BOROUGH OF RED BANK MUNICIPAL
EMPLOYEES ASSOCIATION,

DOCKET NO. RE-86-2

-and-

BOROUGH OF RED BANK INDEPENDENT
MUNICIPAL EMPLOYEES ASSOCIATION,

LOCAL 56, UNITED FOOD AND COMMERCIAL
WORKERS, AFL-CIO.

SYNOPSIS

The Director of Representation orders an election in a unit of all blue and white collar employees employed by the Borough of Red Bank. The Director determined that the employer's Petition for Certification of Public Employee Representative was accompanied by documentary submissions demonstrating objective considerations in support of the request that an election be conducted to determine the representation status of the employees. The Director also dismissed a related Petition for Certification of Public Employee Representative filed by the Borough of Red Bank Independent Municipal Employees Association because the Petitioner failed to submit the requisite showing of interest in a timely manner.

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LOCAL 56, UNITED FOOD AND COMMERCIAL
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Appearances:

For the Public Employer
Murray & Granello
(James P. Granello of counsel)

For the Petitioner
Gregory Nagy, Sanitary Inspector

For the Employee Rep.-Intervenor
Hott, Margolis & Hernandez
(Timothy R. Hott of counsel)

DECISION AND DIRECTION OF ELECTION

On September 30, 1985, a Petition for Certification of Public Employee Representative ("Public Employer Petitioner") was filed with the Public Employment Relations Commission ("Commission") by the Borough of Red Bank ("Borough") with respect to a unit of employees represented by the Borough of Red Bank Municipal Employees Association ("M.E.A."). The M.E.A. is the certified representative of a unit of all blue collar employees of the roads, parks, sanitation, maintenance and custodial departments and all white collar office and clerical employees. The unit includes approximately fifty-five employees.

On October 2, 1985, a Petition for Certification of Public Employee Representative was filed with the Commission by Members of the Red Bank Municipal Employees Association^{1/} ("M.E.A.-Independent") with respect to the same unit description as set forth in the Public Employer's Petition for Certification of Public Employee Representative. While the Petition was filed timely pursuant to N.J.A.C. 19:11-2.8(c)(2), I have determined that pursuant to N.J.A.C. 19:11-2.1, a valid showing of interest had not been timely filed. Consequently, pursuant to N.J.A.C. 19:11-2.6, the Petition for Certification of Public Employee Representative

^{1/} In a letter dated October 9, 1985, the Commission was advised that the name of the employee organization was the Borough of Red Bank Independent Municipal Employees Association.

filed by the M.E.A.-Independent (Docket No. RO-86-35) is hereby dismissed. See, In re Jersey City Housing Authority, E.D. No. 66, 1 NJPER 8 (1975). However, on October 11, 1985, the Commission received from the M.E.A.-Independent a showing of interest of more than 10% of the employees in the unit involved in this matter. Consequently, the Petition for Certification filed by the M.E.A.-Independent is amended to constitute a request to intervene and, pursuant to N.J.A.C. 19:11-2.7(a), the M.E.A.-Independent shall be accorded intervenor status in the employer's Petition for Certification of Public Employee Representative (Docket No. RE-86-2).

On July 23, 1985, Local 56, United Food and Commercial Workers Union, AFL-CIO, ("Local 56") filed an Unfair Practice Charge alleging that the Borough violated N.J.S.A. 34:13A-5.4(a)(2) and (5).^{2/} In its Charge, Local 56 stated: "On or about June 6, 1985, and June 13, 1985, counsel for Local 56 notified the Borough of Red Bank in writing that the M.E.A. had voted to affiliate with Local 56 and that Local 56 was now the successor labor organization to the M.E.A." The Charge goes on to indicate that in or about the latter

^{2/} These subsections prohibit public employers, their representatives or agents from: " (2) Dominating or interfering with the formation, existence or administration of any employee organization; (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

part of June, 1985, the Borough refused to acknowledge that Local 56 was the successor to all collective bargaining rights of the M.E.A. unless directed to do so by the Public Employment Relations Commission.^{3/}

In its Petition, the Borough requests that the Commission conduct an election among unit employees in order to ascertain the identity of the majority representative in the petitioned-for unit. The Borough has submitted certain materials which it claims constitute objective considerations in support of its Petition.

I have conducted an administrative investigation into the matters and the allegations involved in the Petition in order to determine the facts. See, N.J.A.C. 19:11-1.6(c). Based upon the administrative investigation, I find and determine the following:

1. The disposition of this matter is properly based upon the administrative investigation, inasmuch as the parties have not placed in dispute any substantial and material factual issues which may be more appropriately resolved after an evidentiary hearing, pursuant to N.J.A.C. 19:11-2.6(b).

2. The Borough of Red Bank is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A.

^{3/} I decline to entertain any request for the Unfair Practice Charge to be accorded blocking status in this matter. See, In re Matawan Regional School District Board of Education, D.R. No. 78-11, 4 NJPER 37 (¶ 4029 2977), In re City of Newark, D.R. No. 78-43, 4 NJPER 202 (¶ 4102 1978), and In re New Jersey Civil Service Association, D.R. No. 81-10, 7 NJPER (¶ 12019 1980) aff'd P.E.R.C. No. 81-94, 7 NJPER 105 (¶ 12044 1981).

34:13A-1 et seq. ("Act"), is subject to its provisions and is the employer of the employees who are the subject of these petitions.

3. The Red Bank Municipal Employees Association, the Red Bank Independent Municipal Employees Association, and Local 56, United Food and Commercial Workers Union, AFL-CIO, are employee representatives within the meaning of the Act and are subject to its provisions.

4. The Borough of Red Bank has filed a timely and viable Petition for Certification of Public Employee Representative raising a question as to the representative of employees in the above-enumerated negotiations unit. The Borough's petition is supported by a documentary submission which demonstrates objective considerations that it has reasonable grounds for seeking to clarify the identity of the employee representative of unit employees.^{4/}

5. The Borough agrees to the conduct of a secret ballot election among employees in the above-enumerated petitioned-for unit.

6. The Borough of Red Bank Independent Municipal Employees Association has properly intervened in the Borough's petition by demonstrating a sufficient showing of interest to support its intervenor status.

^{4/} In weighing the sufficiency of the "objective considerations," it is important to keep in mind that it is not the fact of the union's majority status that is in question but whether the employer has reasonable cause to believe that the union has lost its majority status. See, In re New Jersey Civil Service Association, D.R. No. 81-20, 7 NJPER 41 (¶ 12019 1980) aff'd P.E.R.C. No. 81-94, 7 NJPER 105 (¶ 12044 1981).

7. Evidence has been produced which indicates that the M.E.A. may have affiliated with Local 56. However, the affiliation process has been challenged and evidence has been received in support thereof. Under the circumstances present in this particular matter, a representation election will be the most expeditious manner in which to resolve the issues presented in this case.

Consequently, on the basis of my finding that the Borough's Petition for Certification of Public Employee Representative has been properly filed and for the other reasons indicated above, I conclude that since there is a substantial question concerning the representation of employees in the instant unit, the purposes of the Act will best be accomplished by the direction of an election. Accordingly, pursuant to N.J.A.C. 19:11-2.6(b)(3), I direct that an election be conducted among the employees in the collective negotiations unit described above in order to ascertain their representational desires. The election shall be conducted no later than thirty (30) days from the date of this decision.

Those eligible to vote are those employees serving in the unit as set forth above,^{5/} who were employed during the payroll period immediately preceeding the date of this decision, indicated below, including employees who did not work during that period because they were out ill, or on vacation, or temporarily laid off, including

^{5/} Eligible employees are those currently included in the negotiations unit represented by the Borough of Red Bank M.E.A.

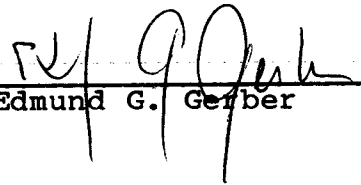
those in military service. Employees must appear in person at the polling place(s) in order to be eligible to vote. Ineligible to vote are employees who resigned or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Pursuant to N.J.A.C. 19:11-5.1, I further order the parties to meet with Stuart Reichman, a Commission staff attorney, on November 7, 1985 at 10:30 a.m. in the Commission offices at 1180 Raymond Boulevard, Newark, New Jersey for the purpose of determining the manner in which the employee representatives will appear on the ballot, the exact date of the election in accordance with this decision and other election details. In the event the parties are unable to agree upon the election details, I shall issue a supplemental decision for the purpose of resolving such issues.

Pursuant to N.J.A.C. 19:11-9.6, the public employer is directed to file with me an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the unit, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by me 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 employee organizations with a statement of service to me. I shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

The exclusive representative, if any, shall be determined by the majority of valid ballots cast by the employees voting in such

election. The election shall be conducted in accordance with the provisions of the Commission's rules.

BY ORDER OF THE DIRECTOR


Edmund G. Gerber

DATED: November 6, 1985
Trenton, New Jersey