

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION  
BEFORE THE ADMINISTRATOR OF REPRESENTATION PROCEEDINGS

In the Matter of

COUNTY OF BERGEN (BERGEN PINES  
COUNTY HOSPITAL),

Public Employer,

-and-

LOCAL 389, SERVICE EMPLOYEES  
INTERNATIONAL UNION, AFL-CIO,

DOCKET NO. RO-84-2

Petitioner,

-and-

COUNCIL 52, AMERICAN FEDERATION OF  
STATE, COUNTY AND MUNICIPAL EMPLOYEES,  
AFL-CIO,

Intervenor.

SYNOPSIS

The Administrator of Representation Proceedings, on the basis of an administrative investigation, directs an election among security guards and security officers at Bergen Pines Hospital to ascertain whether they wish to be represented by certain locals of either SEIU, or AFSCME, or by neither organization. The Administrator finds that the showings of interest presented by the representatives are valid, and that the representatives are not statutorily prevented from representing security guards. The Hospital has not provided support for its claims that the security employees are managerial executives and that AFSCME should be precluded from representing guards because it represents other Hospital employees.

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Appearances:

For the Public Employer  
Ralph Kornfeld, Personnel Director

For the Petitioner  
Edward Kahn, Organizer

For the Intervenor  
Richard Gollin, Associate Director

DECISION AND DIRECTION OF ELECTION

On July 6, 1983, a Petition for Certification of Public Employee Representative, accompanied by an adequate showing of interest, was filed with the Public Employment Relations Commission ("Commission") by Local 389, Service Employees International

Union, AFL-CIO ("SEIU"), seeking to represent all full time security guards employed by the County of Bergen at the Bergen Pines County Hospital ("Hospital"). Subsequently, on July 22, the SEIU filed an amendment to the Petition describing the unit as all "full-time security guards and security officers."

On August 1, 1983, Council 52, American Federation of State, County and Municipal Employees, AFL-CIO ("AFSCME") advised the Commission of an interest to represent the same employees and requested to intervene in the instant matter. AFSCME's request was adequately supported by a showing of interest in conformity with N.J.A.C. 19:11-2.7, and therefore its request for intervention was granted.

SEIU and AFSCME have each indicated their willingness to consent to an election to be conducted by the Commission among the Hospital's security guards and security officers in order to ascertain their representational desires.

However, the Hospital has objected to an election among the petitioned-for employees, claiming that: (a) the Hospital has a right to examine the showings of interest presented herein; (b) the security guards and security officers are "managerial" employees; (c) the organizations seeking to represent the employees "do not conform to the Commission's standards;" and (d) the potential for AFSCME's representation of security guards presents a conflict of interest because of that organization's representation of other hospital employees.

An administrative investigation has been conducted into the matters and allegations raised by the filing of this Petition. On the basis of the administrative investigation 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 an evidentiary hearing. Pursuant to N.J.A.C. 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 County of Bergen, operating the Bergen Pines County Hospital, is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), is the employer of the employees who are the subject of this Petition, and is subject to the provisions of the Act.

3. Local 389, Service Employees International Union AFL-CIO and Council 52, American Federation of State, County, Municipal Employees, AFL-CIO are employee representatives within the meaning of the Act and are subject to its provisions.

4. SEIU and AFSCME are each seeking to represent a collective negotiations unit of security guards and security officers employed at Bergen Pines County Hospital and agree to the conduct of a secret ballot election by the Commission among these Hospital security employees. The Hospital has declined to consent

to an election for the reasons enumerated above.

5. For the following reasons the undersigned must reject the Hospital's reasons in opposition to an election.

The Hospital's request to review the showings of interest submitted to the Commission by the respective employee representatives must be denied because such review is precluded by Commission rules. An examination of the showing of interest by any party is specifically prohibited by N.J.A.C. 19:11-2.1 which provides complete confidentiality to signatories. N.J.A.C. 19:11-2.1 provides:

The showing of interest shall not be furnished to any of the parties. The Director of Representation shall determine the adequacy of the showing of interest and such decision shall not be subject to collateral attack.

The determination of the sufficiency of the showing of interest is a ministerial act reserved to the Commission. The requirement exists for the sole purpose of assuring that the Commission's resources are not wasted by the filing of frivolous petitions that are not sufficiently supported by employee interest. In the instant matter, the undersigned is satisfied that the showing of interest requirements have been met and the Hospital has not proffered any evidence, or for that matter any reason, to support any claim questioning the bona fides of the showing of interest. See In re Woodbridge Tp. Bd. of Ed., D.R. No. 77-9, 3 NJPER 26 (1977).

Second, the Hospital submits that security guards are "managerial" employees and not eligible for representation in a collective negotiations unit. N.J.S.A. 34:13A-5.3 provides:

Except as hereinafter provided, public employees shall have and shall be protected in the exercise of the right ... to form, join and assist any organization or to refrain from any such activity; provided, however, that this right shall not extend to elected officials, members of boards and commissions, managerial executives, or confidential employees....  
(emphasis added)

The term "managerial executives" is defined by N.J.S.A. 34:13A-3(f) as "persons who formulate management policies and practices, and persons who are charged with the responsibility of directing the effectuation of such management policies and practices ...". To date, the Hospital has submitted no documentary evidence or factual proffer to support a conclusion that the Hospital's security guards and security officers formulate or direct the effectuation of management policies.

Third, the Hospital's claim that the employee organizations are not appropriate employee representative organizations for the purpose of representing security personnel appears to be unsupported in law. The Act grants employees the right to be represented by representatives of their own choosing and places no statutory prohibition on security guards joining or being represented by an organization that also represents other types of employees or has nonguard personnel as members. Where the legislature has chosen to restrict the organizational association of employees

it has specifically addressed the issue. <sup>1/</sup> It does not, therefore, appear that there is a basis to the Hospital's claim that neither of the competing organizations may represent security personnel.

Finally, although it has been provided a full opportunity, the Hospital has not explained the basis for its bare claim that "there would be a conflict of interest for AFSCME to represent security officers since ... 1400 employees of Bergen Pines are also represented by AFSCME." In the absence of a statement of position which presents the Hospital's position in cogent terms, the undersigned will not speculate as to the bona fides of the claim. There is, therefore, no basis for the undersigned to deny the instant employees the opportunity to chose representation in an undisputedly appropriate collective negotiations unit.

Therefore, the undersigned finds that the appropriate unit for collective negotiations is: all security guards and security officers, but excluding managerial executives, confidential and craft employees, professional employees, police and supervisors within the meaning of the Act and all other employees.

<sup>1/</sup> N.J.S.A. 34:13A-5.3 prohibits police membership in an organization which admits nonpolice to membership. This section of the Act has also been construed by the Commission to ban representation of police by an organization which admits nonpolice to membership. See In re City of Camden and Camden Police Superior Officers Assoc., P.E.R.C. No. 81-139, 7 NJPER 345 (¶ 12155 1981). However, in the instant proceeding, there is no allegation that the security guards are law enforcement personnel with statutory police powers. Cty. of Goucester v. PERC, 107 N.J. Super. 150 (App. Div. 1969) aff'd 55 N.J. 333 (1970).

Pursuant to N.J.A.C. 19:11-2.6(b)(3), the undersigned directs that an election 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 the 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 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. 19:11-9.6, the Public Employer is directed to file with the undersigned and with SEIU and AFSCME, an election eligibility list 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 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 SEIU and AFSCME with 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.

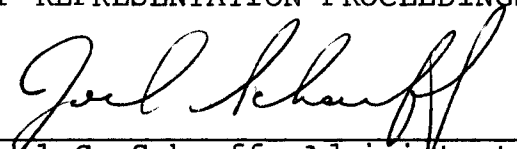
Those eligible to vote shall vote on whether or not they desire to be represented for the purpose of collective negotiations



by Local 389, Service Employees International Union, AFL-CIO, Council 52, American Federation of State, County and Municipal Employees, AFL-CIO or neither.

The exclusive representative, if any, shall be determined by the majority of valid ballots cast by the employees voting in the election. The election directed herein shall be conducted in accordance with the provisions of the Commission's rules.

BY ORDER OF THE ADMINISTRATOR  
OF REPRESENTATION PROCEEDINGS



Joel G. Scharff, Administrator

DATED: November 10, 1983  
Trenton, New Jersey