

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

In the Matter of

COUNTY OF CAPE MAY ASSIGNMENT JUDGE,

Public Employer,

-and-

CAPE LOCAL 1983,

DOCKET NO. AC-85-1

Petitioner,

-and-

CIVIL & PUBLIC EMPLOYEES LOCAL 1983,
a/w IBPAT, AFL-CIO,

Intervenor.

BOROUGH OF STONE HARBOR,

Public Employer,

-and-

CAPE LOCAL 1983,

DOCKET NO. AC-85-2

Petitioner,

-and-

CIVIL & PUBLIC EMPLOYEES LOCAL 1983
a/w IBPAT, AFL-CIO,

Intervenor.

CITY OF WILDWOOD,

Public Employer,

-and-

CAPE LOCAL 1983,

DOCKET NO. AC-85-3

Petitioner,

-and-

CIVIL & PUBLIC EMPLOYEES LOCAL 1983
a/w IBPAT, AFL-CIO,

Intervenor.

CITY OF CAPE MAY,

Public Employer,

-and-

CAPE LOCAL 1983,

DOCKET NO. AC-85-4

Petitioner,

-and-

CIVIL & PUBLIC EMPLOYEES LOCAL 1983,
a/w IBPAT, AFL-CIO,

Intervenor.

COUNTY OF CAPE MAY,

Public Employer,

-and-

CAPE LOCAL 1983,

DOCKET NO. AC-85-5

Petitioner,

-and-

CIVIL & PUBLIC EMPLOYEES LOCAL 1983,
a/w IBPAT, AFL-CIO,

Intervenor.

BOROUGH OF AVALON,

Public Employer,

-and-

CAPE LOCAL 1983,

DOCKET NO. AC-85-6

Petitioner,

-and-

CIVIL & PUBLIC EMPLOYEES LOCAL 1983,
a/w IBPAT, AFL-CIO,

Intervenor.

SYNOPSIS

The Administrator of Representation Proceedings, on the basis of an administrative investigation, dismisses six Petitions for Amendment of Certification filed by an organization which claims to have disaffiliated from its parent International. Relying on private sector precedent, the Administrator notes that an "amendment of certification may not be granted when there is a question concerning representation and that such amendments are not permitted where the certified representative remains in existence and opposes the amendment." The Administrator rejected the Petitioner's contention that if a trusteeship imposed by the International is found to have been imposed improperly, the Commission would grant the Petitions for Amendment of Certification. The Administrator holds that the nature of the certifications issued by the Commission, which were issued in the name of the Local affiliated with the International, renders it inappropriate for the Local to seek an amendment of certification in the face of opposition by the International.

D.R. NO. 85-6

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CIVIL & PUBLIC EMPLOYEES LOCAL 1983,
a/w IBPAT, AFL-CIO,

Intervenor.

Appearances:

For the County of Cape May Assignment Judge
Joan Kane Josephson, Chief/Labor Relations

For the Borough of Stone Harbor
E. F. Pain, Administrative Assistant

For the City of Wildwood
Marc Pfeiffer, Business Administrator

For the City of Cape May
Fred Coldren, City Manager

For the County of Cape May
Tuso, Gruccio, Pepper, Giovinazzi & Butler, P.A.
(Lawrence Pepper, Jr. of counsel)

For the Borough of Avalon
Fineberg & Rodgers, P.C.
(Robert A. Fineberg of counsel)

For the Petitioner
Samuel & Ballard, attorneys
(Alice W. Ballard of counsel)

For the Intervenor
Meranze, Katz, Spear & Wilderman, attorneys
(Bernard N. Katz of counsel)

DECISION

On July 24, 1984, Petitions for Amendment of Certification were filed by CAPE Local 1983 ("Petitioner") with the Public Employment Relations Commission ("Commission") seeking to amend Certifications of Representative issued by the Commission on January 5, 1972 in the County of Cape May (RO-369); April 25, 1972 in the Borough of Avalon (RO-426); June 15, 1972 in the City of Cape May (RO-454); July 9, 1971 and December 11, 1972 in the City of Wildwood (RO-277 [Nonsupervisory Unit] and RO-511 [Lifeguard

Unit] respectively); and November 30, 1983 in the Borough of Stone Harbor (RO-84-32). ^{1/} Petitioner also filed a Petition for Amendment of Certification with regard to a negotiations unit of employees serving in the Judicial branch of government, wherein the Petitioner named the public employer as the Assignment Judge of the Superior Court for the County of Cape May. ^{2/}

In accordance with N.J.A.C. 19:11-2.2, the undersigned has caused an administrative investigation to be conducted concerning this matter. Pursuant thereto, an informal conference was convened by a Commission Staff Agent on August 21, 1984 between representatives of the Petitioner and of the Intervenor, Civil and Public Employees Local 1983 affiliated with the International Brotherhood of Painters and Allied Trades, AFL-CIO ("International"). The International has opposed the processing of the Petitions and

^{1/} In County of Cape May and City of Wildwood (RO-277), the Certifications of Representative were issued to Civil and Public Employees, International Brotherhood of Painters and Allied Trades. Local 1983 is not referenced on the Certifications of Representative. In City of Cape May and City of Wildwood (RO-511) the Certifications of Representative were issued to the International Brotherhood of Painters and Allied Trades, AFL-CIO, Local 1983. Civil and Public Employees is not referenced. In Borough of Stone Harbor the Certification of Representative was issued to Civil and Public Employees, Local 1983, International Brotherhood of Painters and Allied Trades, AFL-CIO. In Borough of Avalon the Certification of Representative was issued to the International Brotherhood of Painters and Allied Trades, AFL-CIO. Consequently, Civil and Public Employees Local 1983 does not have standing to seek an amendment to the Certification issued by the Commission to the International, alone, in Borough of Avalon.

^{2/} The Commission's records do not reveal that a Certification of Representative has ever issued covering a negotiations unit comprised of Judiciary employees in Cape May County. Consequently, an Amendment of Certification could not issue.

asserts that the Petitioner is improperly utilizing its name. At the conclusion of the informal conference, the Petitioner and the International were directed to submit statements of position by September 5, 1984. ^{3/}

In the instant Petitions, the Petitioner seeks to have the various Certifications of Representative amended on the ground that it has disaffiliated from the International. The Petitioner argues that it has met the Commission's requirements for the issuance of an Amendment of Certification, i.e., notification to employees of a secret ballot vote, a membership vote, continuity of unit composition and a complete transfer of officers, stewards and members of the unit. Ocean Cty. Utilities Auth., D.R. No. 83-15, 8 NJPER 598 (¶ 13279 1982); Dover Bd. of Ed., D.R. No. 83-1, 8 NJPER 460 (¶ 13214 1982); New Jersey State Police, D.R. No. 82-23, 7 NJPER 667 (¶ 12300 1981).

The International argues that it is the proper and only employee organization entitled to represent employees in the various negotiations units involved herein. Moreover, the International contends that the requirements for the issuance of an Amendment of Certification have not been met by the Petitioner in that "[t]he vast majority of the members of the bargaining unit were not advised of the vote..." nor were the notices of election properly disseminated.

^{3/} The Petitioner's position statement was received timely on September 5, 1984 and the International's statement was received on September 11, 1984.

It is a well settled principle that the Commission may utilize the experience and adjudications under the Federal Labor Management Relations Act. Lullo v. International Assn. of Fire Fighters, 55 N.J. 409 (1970). The general rule applied by the National Labor Relations Board ("NLRB") to petitions seeking amendment of certification is that an "amendment of certification may not be granted when there is a question concerning representation and that such amendments are not permitted where the certified representative remains in existence and opposes the amendment." Missouri Beef Packers, Inc., 175 NLRB 179, 71 LRRM 1177, 1178 (1976). See also, North Electric Co., 164 NLRB 942, 65 LRRM 1379 (1967); Gas Service Co., 231 NLRB 123, 87 LRRM 1226 (1974). Thus, adopting the general rule applied by the NLRB, the threshold question before the undersigned is whether or not "the certified representative remains in existence and opposes the amendment." Missouri Beef Packers, Inc., supra.

The International asserts that Local 1983, IBPAT, AFL-CIO continues as a viable functioning entity. The International has: (1) indicated that it has continued through its Local to assert a representational interest in employees; (2) appeared before this Commission during an informal conference for the specific purpose of asserting its existence and protecting its status as the exclusive representative of employees in the various units; and (3) acted on July 18, 1984, prior to the filing of the instant Petitions, to place its Local 1983 into trusteeship. The placement of Local 1983 under trusteeship would ordinarily indicate

that the International has removed all authority and rights from the previously designated local officials and has vested all Local authority in the trustee. This action places the Petitioner's post-trusteeship activities regarding membership vote matters into question and it would also appear to place into question Petitioner's claims that an independent CAPE Local 1983 is the "functioning viable entity" representing employees under Hamilton Tool Co., 190 NLRB 144, 77 LRRM 1257, 1261 (1971).

Thus, pursuant to the general principles set forth in the analogous private sector precedent, supra, the undersigned need not reach the issue of "whether the [dis]affiliation decision was made with sufficient 'due process' to insure that ... the decision reflected the wishes of the union's members." ^{4/} Financial Institution Employees v. NLRB, 738 F.2d 1483, 116 LRRM 3409, 3412, (9th Cir. 1984). The instant matter may be decided on the basis of whether the certified representative "remains in existence and opposes the amendment." Missouri Beef Packers, Inc., supra.

On September 19, 1984, the undersigned advised Local 1983 and the International that on the basis of the investigation to that date, it appeared that it would be inappropriate to grant any of the Amendments of Certification filed in this matter. The parties were reminded of their obligations under N.J.A.C. 19:11-

^{4/} In not reaching the issue of whether the disaffiliation decision was made with sufficient due process, it should be noted that the undersigned reserves decision on whether the instant petitions raise a question concerning representation.

2.6, to present any documentary or other evidence as well as statements of position relating to the instant Petitions and were afforded an additional period of time to proffer any such supplementary evidence or statements of position relevant to the instant Petitions. ^{5/} At the request of the Petitioner, an additional period of time for the submission of evidentiary proffers and statements of position was granted.

The Petitioner timely submitted a statement of position and other evidentiary proffers relating to an action initiated in Federal District Court. ^{6/} The Petitioner asserts that the cornerstone of the International's argument is the establishment and enforcement of the trusteeship imposed upon Local 1983 and in the event that such trusteeship is found to be invalid, the Commission "will be obliged to grant the [Amendment of Certification] petitions...."

In the judgement of the undersigned, the propriety vel non of the trusteeship imposed by the International begs the question of whether an amendment of the certification should be granted to this "disaffiliated" entity. The federal court proceeding will resolve the question of who controls the administration

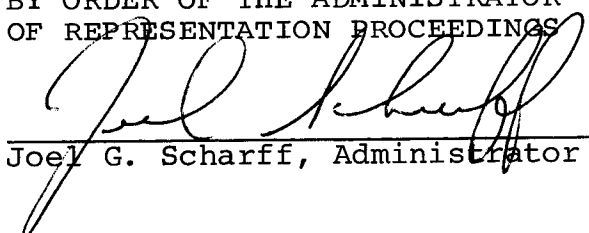
^{5/} The public employers were invited to proffer evidence and/or statements of position with respect to this matter on September 26, 1984.

^{6/} Included with the Petitioner's positional statement was a copy of Petitioner's Complaint, Motion for Preliminary Injunction, Proposed Findings of Fact, and Reply Brief in Support of its Motion for a Preliminary Injunction and in Opposition to Defendant's Motion for a Preliminary Injunction filed with the United State District Court for the District of New Jersey in its suit seeking an order enjoining the International from continuing a trusteeship imposed on the Local 1983.

of the Local established by the International. Irrespective of the answer to this question, and also quite apart from issues concerning independent, local control of the administration of the Local and the negotiations unit, for purposes of the holding of the PERC certification, the Commission views Local 1983 and the International as combined what might metaphorically be described as a symbiotic relationship. Therefore, it is not enough that local officials desire the amendment of certification. The opposition of International officials requires that the requested amendment be denied.

Accordingly, for the above reasons, as well as for the reasons stated in n.1 and 2, the instant Petitions are dismissed. The respective employers whose units are certified are required to negotiate with Local 1983 representatives who subscribe to the affiliation of the Local with the International Brotherhood of Painters and Allied Trades, AFL-CIO.

BY ORDER OF THE ADMINISTRATOR
OF REPRESENTATION PROCEEDINGS


Joel G. Scharff, Administrator

DATED: October 18, 1984
Trenton, New Jersey