

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LOCAL 245, JERSEY CITY PUBLIC
EMPLOYEES, INC.,
Charging Party,

-and-

Docket No. CO-76-121

LOCAL 246, JERSEY CITY PUBLIC
EMPLOYEES, INC.
Respondent.

SYNOPSIS

An Unfair Practice Charge has been filed which seeks to block an election based upon allegations of improper conduct in the procurement of the showing of interest. This decision is issued in conjunction with the Decision and Direction of Election in E.D. No. 76-19.

The Executive Director determines that in this matter, the on-going representation process provides an adequate forum and remedy for the allegations raised in the Unfair Practice Charge, as they have also been raised in that proceeding. The use of the representation process herein affords a more expeditious result and one more consistent with the policies of the Act. The holding of an Unfair Practice Hearing prior to an election in this case, might exert undue pressure on the employees, thus jeopardizing the fairness of the election. It would also undermine the confidentiality of the showing of interest and allow the charging party to achieve in the Unfair Practice proceeding that which is specifically prohibited in the representation case. For these reasons the Executive Director refuses to issue a complaint.

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REFUSAL TO ISSUE COMPLAINT

An unfair practice charge was filed by Jersey City Public Employees, Inc. Local 245, the incumbent in the companion representation matter, Docket No. RO-76-44 (E.D. No. 76-19), against Jersey City Public Employees, Inc. Local 246, the petitioner in that matter, alleging unfair practices within the meaning of N.J.S.A. 34:13A-5.4(b)(1) et seq. The factual allegations of that charge, set forth in full below,^{1/} essentially

1/ "Peter Schrieber, as President of Local 246, Jersey City Public Employees, Inc. interfered with and coerced employees in the exercise of the rights guaranteed to them under the New Jersey Labor Mediation Act.

Peter Schrieber, as President of Local 246, Jersey City Public Employees, Inc. together with one John Guerra did by fraud, deceit and misrepresentation obtain signatures on a petition filed with the Public Employment Relations Commission.

Peter Schrieber, as President of Local 246, Jersey City Public Employees, Inc. together with one John Guerra filed a petition with the Public Employment Relations Commission containing forged signatures of members of Local 245, Jersey City Public Employees, Inc.

Peter Schrieber, as President of Local 246, Jersey City Public Employees, Inc. is and has interfered with the existence of Local 245, Jersey City Public Employees, Inc.

(Continued)

repeat the objections raised by Local 245 in the representation proceeding. An exploratory conference was conducted into the allegations of the charge on December 5, 1976. Subsequently, on December 23, 1975, the charging party (Local 245) requested that a complaint issue, that an interlocutory order be issued against the Petitioner's president, and that no election be held until the final disposition of the charge. Additionally, the charging party demanded the names and addresses of all persons that Petitioner claims "filed with them...for collective negotiations."

When a charging party seeks to "block" an election by the filing of an unfair practice charge the undersigned must determine how best to effectuate the policies of the Act. In making such a determination, consideration must be given to the availability of a method for the disposition of the allegations made and a remedy for the harm done if such allegations are found to have merit. In this case, the allegations raised by

1/ (Continued)

Peter Schrieber, as President of Local 246, Jersey City Public Employees, Inc. by false and slanderous publication, forged signatures and fraud, deceit and misrepresentation in obtaining signatures is and did attempt to dominate the representation of Jersey City employees and the membership of Local 245.

Peter Schrieber, President of Local 246, Jersey City Public Employees, Inc. did file a false petition with the Public Employment Relations Commission calling for inclusion of employees included in the bargaining unit now represented by Local 245, Jersey City Public Employees, Inc.

Peter Schrieber, President of Local 246, Jersey City Public Employees, Inc. did and is interfering with Local 245, Jersey City Public Employees, Inc. as bargaining agent for a defined bargaining unit as formed by the Public Employment Relations Commission."

Local 245 can be fully disposed of in the representation proceedings.

The representation process provides a more expeditious method for the resolution of these questions than does an unfair practice proceeding. The undersigned has already determined in E.D. No. 76-19 that the showing of interest is adequate to justify the processing of the petition. The holding of a prompt election gives the employees an opportunity to select the organization they want to represent them. If the incumbent is successful in the election, the matter will be resolved regardless of the merits of their allegations. If the petitioner is successful, the Commission's rules provide for post election machinery wherein timely filed objections based upon the allegations of improper activity can be appropriately considered. If by such improper conduct the petitioning organization has defeated the incumbent, the Commission can set aside the election and order such other remedy as befits the circumstances.

If, on the other hand, the charge in this case is allowed to block the election, the employees would be denied the expeditious resolution of the underlying representation question. During the interim period while the charge is processed, heard and a decision rendered by the Commission, the employees could be subjected to undue pressure, the employer would experience a more extended period of unrest than normally associated with an election, and the employees could be denied effective representation as doubt could exist as to the real majority representative.

If the allegations of the charge were ultimately found to have been without merit, all of this delay would have been for naught. If the allegations were ultimately sustained, the remedy provided would result in no more benefit to the incumbent than would the remedy in a post election proceeding. It is true the incumbent would not have had to go through an election, but any harm which Local 245 would incur would not result from having to submit to an election, but rather from having been challenged initially, and such harm, if any, has already occurred.

The only interest which the charging party is attempting to further through the charge, which could not be achieved from the representation process, is discovery of more information concerning the showing of interest. The charging party cannot be permitted to accomplish by way of an unfair practice proceeding that which it is not permitted to achieve through the representation process. For the same reasons that a release of the showing of interest is prohibited in the representation case, such a demand in the guise of an unfair practice charge is similarly inappropriate. The policy that such information shall remain confidential must not be subverted so easily.

For these reasons, it is the determination of the undersigned that the policies of the Act would not be furthered by the issuance of a complaint and the holding of a hearing on the within unfair practice charge. There being no benefit to the unfair practice proceeding which cannot be more expeditiously

obtained in the representation case, the undersigned hereby declines to issue a complaint in this matter. See N.J.A.C. 19:14-2.3.

BY ORDER OF THE EXECUTIVE DIRECTOR



Jeffrey B. Tener
Executive Director

DATED: Trenton, New Jersey
February 11, 1976