

D.R. NO. 2000-8

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

In the Matter of

BERGEN COMMUNITY COLLEGE,

Public Employer,

-and-

BERGEN COMMUNITY COLLEGE
SUPPORTIVE STAFF/NJEA,

Docket No. RO-2000-75

Petitioner,

-and-

IBEW LOCAL 1158,

Intervenor.

SYNOPSIS

The Director of Representation rejects the Intervenor's request to have its unfair practice charge block the processing of a representation petition. The Intervenor failed to submit any affidavits or other evidence establishing that conduct occurred which would prevent a free and fair election. Therefore, the Director orders that an election be conducted in the historic unit of the College's support staff.

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Appearances:

For the Public Employer
Schepisi & McLaughlin, attorneys
(John A. Schepisi, of counsel)

For the Petitioner
Oxfeld and Cohen, attorneys
(Nancy I. Oxfeld, of counsel)

For the Intervenor
Carella, Byrne, Bain, Gilfillan, Cecchi, Stewart &
Olstein, attorneys
(Justine A. Niccollai, of counsel)

DECISION AND DIRECTION OF ELECTION

On January 12, 2000, the Bergen Community College Supportive Staff/NJEA filed a timely petition for certification with the Public Employment Relations Commission. The petition is

supported by an adequate showing of interest. By its petition, NJEA seeks to represent an existing unit of approximately 200 full and part-time support staff employees employed by the Bergen Community College. IBEW Local 1158 currently represents these employees and has intervened in this matter pursuant to N.J.A.C. 19:11-2.7. Both the College and IBEW oppose the petition and refuse to consent to an election among the employees.

We have conducted an administrative investigation into the petition. On January 25, 2000 the assigned staff agents conducted an investigatory conference with the parties concerning the petition. At the conference, IBEW alleged that the NJEA committed violations of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4b(1)^{1/} when its agent urged IBEW unit members to reject a contract negotiations package offered by the College to IBEW and, instead, support NJEA's election campaign to replace IBEW as the majority representative. IBEW asked that we suspend processing of the NJEA's petition until its alleged unfair practices have been adjudicated.

By letter of February 7, 2000, we outlined the Commission's standards for considering blocking effect of unfair practice allegations; we also advised the parties specifically that (a) no unfair practice charge had been filed; and (b) any

^{1/} This section prohibits employee organizations, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act."

request to have a charge block further processing of a representation petition must be supported by affidavits, documents or proofs specifically demonstrating the nexus between the conduct alleged and the prevention of a free and fair election. IBEW was advised that absent the filing of both the charge and supporting affidavits, its blocking request would not be considered.

On February 9, 2000, the IBEW filed its charge (Docket No. CO-2000-227), together with proof of service on the NJEA and the College. The charge specifically alleges that the NJEA through its agent Professor Peter Helf, met with and urged support staff employees to join NJEA, told employees that NJEA could obtain a better deal; advised them to disassociate from IBEW by rejecting IBEW's contract proposal; and solicited their signatures on NJEA authorization cards. The IBEW alleges that Helf's conduct undermined its ongoing collective negotiations with the College. The IBEW submitted no affidavits or documents in support of its claims. On February 11, 2000 the NJEA responded to the charge, denying that it committed unfair practices and arguing that the charge is not supported by facts sufficient to block an election. The College has not submitted a written position.

The disposition of this matter is properly based on our administrative investigation. We have not found any substantial and material factual disputes which may be more appropriately resolved at a hearing. N.J.A.C. 19:11-2.6(b). Based upon our investigation, I make the following:

FINDINGS OF FACT

The College and IBEW had a collective negotiations agreement covering the support staff employees which was effective from July 1, 1996 through June 30, 1999. In about May 1999 these parties began negotiations for a successor agreement. Sometime in early September 1999, the unit members rejected a proposed contract by a margin of about 8 votes.

Sometime in the fall 1999, the NJEA began an organizing campaign to take over representation of the support staff unit. On or about December 29, 1999, the IBEW unit members rejected, by a wide margin, a second contract proposal offered by the College. On January 12, 2000, the NJEA filed a valid, timely representation petition with the Commission, supported by an adequate showing of interest.

ANALYSIS

The IBEW asks us to find that the NJEA's alleged conduct would prevent a fair and free election and, therefore, should block further processing of the petition. The NJEA argues that its organizing efforts were within its rights during an open period, whether or not negotiations were taking place. The College has taken no formal position on the charge; its sole position is that it refuses to consent to an election.

The IBEW's charge was not accompanied by documents or affidavits. The Commission does not automatically accord blocking effect to unfair practice charges. Rather, as we pointed out to

the parties in our February 7, 2000 letter, the Charging Party must provide affidavits or other documentary evidence to support its claim that the respondent's alleged unfair practices would prevent a free and fair election. The charging party must file a position statement, together with affidavits or proofs, which articulate the nexus between the alleged unfair practice and the preclusion of a free and fair election. See South Jersey Port Corp., P.E.R.C. No. 90-45, 16 NJPER 3 (¶21001 1989) (Commission remanded case holding that Director may not order that an unfair practice charge block an election in absence of documentary evidence establishing nexus between charge and prevention of fair election); Matawan-Aberdeen Reg. Dist. Bd. of Ed., P.E.R.C. No. 89-69, 15 NJPER 68 (¶20025 1988); and Bor. of Berlin, D.R. No. 93-9, 19 NJPER 74 (¶24033 1992).

Applying South Jersey Port Corp., I will not consider whether the charge should be accorded blocking effect because IBEW has not complied with the requirement that blocking effect only be accorded to unfair practice charges supported by the submission of appropriate documentary evidence. Accordingly, I find that the IBEW's charge will not block the processing of the petition.

There are no other disputed issues in this matter. The NJEA's petition is timely filed and adequately supported by a showing of interest in accordance with the Commission's Rules. It seeks to represent the existing collective negotiations unit. Accordingly, I find that, in the absence of compelling reasons to

the contrary, the employees' statutory right to freely choose their collective negotiations representative will best be effectuated by conducting a prompt election.^{2/}

DIRECTION OF ELECTION

Based upon the above, I order that a secret ballot election be conducted among the employees in the following collective negotiations unit:^{3/}

Included: All regularly employed full-time (12 month) and part-time (20 hours per week minimum) support staff employees employed by Bergen Community College including the following titles: administrative secretary, department coordinator, executive secretary, production assistant, senior secretary, senior office assistant, senior library assistant, secretary, switchboard operator, office assistant, library assistant, child development center assistant, senior data entry control clerk, data entry control clerk, senior data entry operator, data entry operator, junior data entry operator II, junior data entry operator, mail services supervisor, senior buyer, buyer, payroll supervisor, mail room supervisor, accounting assistant, senior inventory clerk, senior offset pressperson, inventory clerk, head bookkeeper, senior mail/stock clerk, payroll assistant, offset pressperson, bookkeeper, senior office assistant-accounting, mail/stock clerk, office assistant-accounting, programmer, junior programmer, senior computer operator II, senior computer operator I, computer operator II, computer operator I, head (working) electrician, master plumber, head (working) maintenance repairperson, electrician, h.v.a.c. mechanic "A", plumber, head (working) groundskeeper, h.v.a.c. mechanic "B", maintenance mechanic, public safety

^{2/} N.J.A.C. 19:11-2.6 grants the Director of Representation the authority to direct an election when, among other things, it appears to him that "the policies of the Act...will be effectuated thereby, and that an election will reflect the free choice of the employees in the appropriate unit."

^{3/} The unit described is reflective of the historic unit defined in the recognition article contained in the most recently expired collective negotiations agreement.

lieutenant, plumbers helper, senior maintenance repairperson, head (working) custodian, public safety sergeant, h.v.a.c. mechanic "C", maintenance repairperson, senior custodian, senior groundskeeper, public safety officer, groundskeeper, custodian and child care assistant (10 month).


Excluded: Managerial executives, confidential employees and supervisors within the meaning of the Act; professional employees, police employees, casual employees and all other employees.

The election shall be conducted no later than thirty (30) days from the date of this decision. 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, including those in the 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. 19:11-10.1, the public employer is directed to file with us an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the units, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by us no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously provided to the employee organization 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.

The exclusive representative, if any, shall be determined by a majority of the valid votes cast in the election. The election shall be conducted in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Stuart Reichman, Director

DATED: February 25, 2000
Trenton, New Jersey