

D.R. NO. 97-10

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

In the Matter of

CITY OF NEWARK,

Public Employer,

-AND-

SEIU LOCAL 617,

Docket No. RO-96-109

Petitioner,

-and-

DISTRICT 6, INTERNATIONAL UNION  
OF INDUSTRIAL, SERVICE, TRANSPORT  
& HEALTH EMPLOYEES,

Incumbent.

SYNOPSIS

The Director of Representation dismisses a representation petition filed by SEIU in order to remedy the unlawful assistance given to SEIU by the City. The City should not have delayed its contract ratification vote in order to give SEIU more time to collect signatures in support of its representation petition. The subsequent bilateral ratification of the contract by the incumbent majority representative, District 6, and the City shall act as a contract bar to SEIU's petition.

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Appearances:

For the Public Employer  
Gregory Franklin, Assistant Corporation Counsel

For the Petitioner  
Balk, Oxfeld, Mandell & Cohen, attorneys  
(Arnold S. Cohen, of counsel)

For the Incumbent  
Markowitz & Richman, attorneys  
(Jonathan Walters, of counsel)

DECISION

On April 9, 1996 SEIU Local 617 ("SEIU") filed a petition to represent blue collar employees of the City of Newark ("City") represented by District 6, International Union of Industrial, Service, Transport and Health Employees ("District 6"). On

April 16, 1996 the representation petition was amended to reflect that the unit consisted of approximately 300 employees. A sufficient showing of interest was provided with the amended petition.

The processing of the petition was blocked pending resolution by the Commission of three related unfair practice charges filed by District 6 against the City (Docket Nos. CO-H-96-306, CO-H-96-323 and CO-H-96-324). On November 20, 1996, the Commission issued a decision, City of Newark, P.E.R.C. No. 97-61, 23 NJPER 14 (¶28014 1996), on these unfair practice charges finding that the City of Newark violated subsection 5.4(a)(1)<sup>1/</sup> of the Act when it delayed a vote to ratify a tentative agreement with District 6 in order to give SEIU more time to collect signatures to support its representation petition.<sup>2/</sup>

By way of remedy, the Commission ordered in part that "If District 6 establishes within 30 days that its membership in this unit has voted to ratify the tentative contract, the City will within 30 days conduct a contract approval vote." City of Newark at 15. The Commission reserved for me to decide whether the contract bars the processing of SEIU's petition should the City approve the contract. City of Newark at 16, fn. 2.

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<sup>1/</sup> This subsection prohibits public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act."

<sup>2/</sup> The Commission dismissed the allegation that the City refused to reduce a negotiated agreement to writing and to sign such agreement.

On January 27, 1997 District 6 filed a motion to dismiss the pending representation petition filed by SEIU. In support of its motion, District 6 represents that it advised the City of union membership ratification by letter dated October 29, 1996. It asserts that in the event the City approves the agreement the representation petition should be dismissed based on a contract bar. N.J.A.C. 19:11-2.8(c). To do otherwise, District 6 argues, would result in the City accomplishing what it set out to do when it wrongfully delayed the ratification vote to assist a rival union.

SEIU opposes the dismissal of its petition. It asserts that the City still has not ratified the agreement so that there is no contract to act as a bar. Secondly, since SEIU was not a party to any action by the City that was violative of the Act, it should not be penalized for the City's conduct. And thirdly, its representation petition was timely filed before the final ratification of any successor agreement.

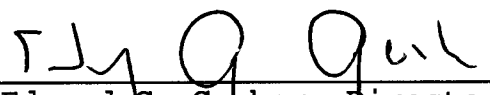
However, the City Council of Newark did ratify the tentative agreement at its January 8, 1997 meeting.

Further, the Commission found that when the City's ratification vote scheduled for March 27, 1996 was delayed, it was at the request of SEIU representatives in order to give SEIU more time to gather showing of interest to support its representation petition. City of Newark at 15. While SEIU's conduct may not have been violative of the Act, it set in motion events that resulted in a violation of the Act.

I grant the motion to dismiss. District 6 should not be harmed by the unlawful conduct of the City. To the degree possible, the parties should be made whole. That is, they should have the same rights under the Act today as they did on March 27, 1996. At that time, the City Council had an obligation to either bring the contract approval question to a vote or, if it had a sincere doubt about union ratification, notify District 6 of its concern.<sup>3/</sup> This would have afforded District 6 the opportunity to cure any deficiencies in the ratification process and the contract could have been bilaterally ratified before SEIU had filed a perfected petition. Instead, as the Commission found, the City purposely assisted SEIU's effort to unseat District 6 as majority representative. I dismiss the petition not to penalize SEIU but to assure that District 6 is not harmed by the City's unlawful conduct.

Now that both District 6 and the City have ratified the tentative agreement, it shall act as a contract bar to SEIU's representation petition. Therefore, I dismiss the petition.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Edmund G. Gerber, Director

DATED: February 27, 1996  
Trenton, New Jersey

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<sup>3/</sup> If the City had a good faith doubt concerning District 6's status as majority representative of unit employees, it should have filed a petition for certification in accordance with N.J.A.C. 19:11-1.4.