

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matters of
HUDSON COUNTY BOARD OF CHOSEN
FREEHOLDERS,

Public Employer,

-and-

INTERNATIONAL SERVICE WORKERS OF
AMERICA LOCAL 104,

Docket No. RO-82-156

Petitioner,

-and-

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS LOCAL 286,

Intervenor.

COUNTY OF HUDSON,

Respondent,

-and-

Docket No. CO-82-282

AFSCME, COUNCIL 52,

Charging Party.

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL UNION NO. 286,

Respondent,

-and-

Docket No. CE-82-23

AFSCME COUNCIL 52,

Charging Party

SYNOPSIS

The Commission's designee has denied a request for interim relief from AFSCME Council 52.

There is currently an election campaign pending among the employees of Hudson County. One of the unions campaigning to represent these employees is AFSCME Council 52. AFSCME filed two unfair practice charges and an Order to Show Cause against Hudson County and Teamsters Local 286. It was alleged that AFSCME's representatives were denied equal access to the facilities of the County during the current election campaign. The Order to Show Cause was denied on the basis that there are other remedies available to right the

harm alleged and similarly there are more appropriate forums than an unfair practice interim relief proceeding to right these harms. Specifically, the charging party may apply to the Director of Representation to have these same charges block the election until there is a final determination of the charges and, further, even after the election is held under the Commission's rules the Director of Representation may set aside the result of an election if the facts so warrant.

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Appearances:

For the County of Hudson
Murray, Granello & Kenney, Esqs.
(David F. Corrigan, Esq.)

For I.B.T. Local 286
Goldberger, Siegel & Finn, Esqs.
(Howard A. Goldberger, Esq.)

For AFSCME Council 52
Rothbard, Harris & Oxfeld, Esqs.
(Nancy Iris Oxfeld, Esq.)

INTERLOCUTORY DECISION

A representation petition was filed by the I.S.W.A. with the Public Employment Relations Commission (PERC). The union is seeking the representation of employees of the County of Hudson who are currently represented by Teamsters Local 286. AFSCME Council 52 ^{1/} is an intervenor in that matter, along with Local 1199J, R.S.W.D.A. An election is scheduled for June 16, 1982.

On May 5, 1982, AFSCME, Council #52 filed two Unfair Practice Charges with P.E.R.C. The two charges allege that the County of Hudson and the International Brotherhood of Teamsters, Local Union No. 286 respectively denied AFSCME's representative equal access to the facilities of the County during the election campaign in violation of N.J.S.A. 34:13A-5.4(a)(1), (2) and (3) and (b)(1). ^{2/}

The contract between Teamsters Local 286 and Hudson County provides that the union shall have the exclusive use of a bulletin board although the bulletin board may not contain election campaign material.

1/ The American Federation of State, County & Municipal Employees, AFL-CIO.

2/ These subsections provide in pertinent part that public employers, their representatives or agents are prohibited from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (2) Dominating or interfering with the formation, existence or administration of any employee organization; (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act"; and employee organizations, their representatives or agents are prohibited from "(1) Interfering with, restraining or coercing employees in the exercise of rights guaranteed to them by this act."

The affidavits submitted by AFSCME allege that when AFSCME representatives attempted to meet with union representatives in non-working areas on non-working time, they were ordered off the premises and were not allowed to distribute campaign literature on County property. It was also alleged that the Teamsters had access to the County P.A. system.

The Teamsters and the County acknowledge that Teamster representatives are allowed on County premises but only to administer the contract, and they are not allowed to campaign.

Along with the unfair practice charge AFSCME submitted a Show Cause Order seeking to have the Commission grant interim relief by ordering the County and Local 286 to grant AFSCME Council 52 access to County facilities equal to that granted to Teamsters Local 286 until the completion of the June 16 election.

With the consent of the parties the Show Cause Order was made returnable on May 7, 1982, at which time the parties were given a chance to argue orally, submit briefs and supporting affidavits.

The standards that have been developed by the Commission for evaluating the appropriateness of interim relief are quite similar to those applied by the courts when confronted with similar applications. The test is twofold: it must be shown that there is both a substantial likelihood of success on the legal and factual allegations in the final Commission decision, and that the nature of the harm that will occur if the requested relief is not granted is irreparable. Both standards must be satisfied before the requested

relief will be granted. ^{3/}

In the instant matter the undersigned is not satisfied that the Charging Party has shown that the harm suffered here is irreparable. There are other remedies available to right the harm alleged, and more appropriate forums than an unfair practice interim relief proceeding.

In New Jersey Civil Service Association, P.E.R.C. No. 81-94, 7 NJPER 105 (¶12044 1981) the Commission acknowledged that the Director of Representation has the authority after an administrative investigation to block an election, that is, cancel the election until there is a final determination of a pending unfair practice charge.

In Englewood Board of Education, RO-81-92 an Unfair Practice Charge was filed by Local 29 R.W.D.S.U. alleging that the Englewood Board of Education allowed custodial staff members to attend meetings of the Englewood Teachers Association during working hours without allowing Local 29 a similar privilege. See, Englewood Bd/Ed, P.E.R.C. No. 82-82, 7 NJPER 139 (¶13060 1982). The Director there, after an administrative investigation, ordered that the petition would be held in abeyance since "the character and scope of the charges if true would have a tendency to impair the employees' free choice at this time." Such an application is available here.

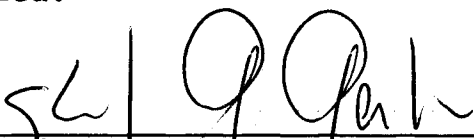
Further even after an election is held the remedy of holding a new election is available. The parties have the right to file objections to conduct affecting the result of an election. Pursuant

^{3/} See City of Vineland, I.R. No. 81-1, 7 NJPER 324 (¶12142 1981); State of New Jersey, I.R. No. 82-2, 7 NJPER 532 (¶12235 1981).

to Commission rule 19:11-9.2 the Director of Representation may, after an administrative investigation or hearing, set aside the results of an election if the facts so warrant.

The availability of these two alternative remedies lead me to conclude that the charging party will not be irreparably harmed if their motion for interim relief is denied.

Accordingly the motion is denied.



Edmund G. Gerber
Commission Designee

Dated: May 20, 1982
Trenton, New Jersey