

D.R. NO. 89-16

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

In the Matter of

TOWNSHIP OF HADDON,

Public Employer,

-and-

TEAMSTERS UNION LOCAL NO. 676

Docket No. RO-89-38

Petitioner,

-and-

AFSCME, COUNCIL 71, LOCAL 577B,

Intervenor.

Synopsis

Teamsters Local 676 filed a timely petition seeking to represent certain Haddon Township employees currently represented by AFSCME, Council 71, Local 577B. AFSCME filed a claim against the Teamsters with the AFL-CIO alleging a violation of Article XX of the AFL-CIO Constitution. The Director found that sufficient time had been afforded to the parties in order to allow them an opportunity to resolve their Article XX dispute. Consequently, the Director held that any further delay in the conduct of an election was unwarranted and directed an election among all blue collar employees currently included in the extant collective negotiations unit.

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Appearances:

For the Public Employer  
Joseph Sandone, Solicitor

For the Petitioner  
Walter Bednarczyk, Business Agent

For the Intervenor  
Robert C. Little, Staff Rep.

DECISION AND DIRECTION OF ELECTION

On September 29, 1988, Teamsters Local Union No. 676, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America ("Teamsters") filed a Petition for Certification of Public Employee Representative, supported by an adequate showing of interest, with the Public Employment Relations Commission ("Commission"). The Teamsters seek to represent all blue collar employees employed by Haddon Township

("Township") who are currently included in the extant collective negotiations unit represented by the American Federation of State, County and Municipal Employees, Council No. 71, Local 577B, AFL-CIO ("AFSCME").<sup>1/</sup>

On the basis of the 1986-88 collective agreement between AFSCME and Haddon Township, AFSCME requested and was granted intervenor status in this matter. N.J.A.C. 19:11-2.7(a).

We find no substantial and material factual disputes which may more appropriately be resolved through the conduct of a formal hearing. See N.J.A.C. 19:11-2.6(b). Accordingly, the disposition of this matter is properly based upon our administrative investigation. The following facts appear.

An informal investigatory conference in the above-captioned matter was scheduled for October 27, 1988. On October 21, 1988, we were advised by Lane Kirkland, President, AFL-CIO, that AFSCME and the Teamsters were engaged in a dispute involving the petitioned-for employees and requested that further processing of the petition be held in abeyance in order to provide the parties with an opportunity to participate in the AFL-CIO's internal dispute resolution process. On October 26, 1988, the staff attorney assigned to this case advised the parties that the informal investigatory conference

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<sup>1/</sup> The titles contained in the extant collective negotiations unit are the following: mechanic, equipment operator, water plant operator, water plant attendant, tree climber, sewer plant operator, trash truck driver, water meter reader, driver/laborer, laborer and building maintenance worker.

would be adjourned in order to provide the parties and the AFL-CIO with an opportunity to resolve their internal dispute. The informal investigatory conference was rescheduled to December 7, 1988.

On November 18, 1988, the AFL-CIO impartial umpire rendered a decision in the dispute between AFSCME and the Teamsters. A copy of the decision was received by the AFSCME representative on December 6, 1988. The Teamster's representative was apprised of the umpire's ruling during the informal investigatory conference on December 7, 1988.

During the December 7, 1988 meeting, the Teamsters argued that an election among the petitioned-for employees should be conducted as soon as possible. The Teamsters stated that it filed a timely petition for an appropriate unit, supported by an adequate showing of interest, and that no legitimate grounds exist for delaying the conduct of an election. Without having had the opportunity to study the umpire's ruling, the Teamsters did not express any position regarding the further processing of the instant petition during the December 7, 1988 conference.

AFSCME contends that since the AFL-CIO's impartial umpire found the Teamsters in violation of Article XX of the AFL-CIO Constitution, further processing of the petition should be halted in order to provide AFSCME with an opportunity to seek enforcement of the ruling. Further, an adjournment would provide the Teamsters with an opportunity to consider the manner in which it would proceed on the petition in light of the Article XX ruling. AFSCME indicated that it would not enter into an Agreement for Consent Election.

The Township is neutral regarding the petition. However, it noted that the collective agreement expired on December 31, 1988, and until the question concerning representation is resolved, the Township is unable to negotiate for a successor agreement with the majority representative.

Since only AFSCME had a copy of the umpire's ruling, at the December 7, 1988 conference, we adjourned the conference and gave the parties until December 28, 1988, so they might review the umpire's determination and formulate their respective positions.

On December 28, 1988, a second investigatory conference was convened. The parties' positions remained unchanged from those taken at the December 7, 1988 meeting: the Teamsters maintained that an election should proceed without delay. AFSCME stated that it would not enter into an Agreement for Consent Election based on the Teamsters' violation of Article XX of the AFL-CIO Constitution. AFSCME contended that the Commission should refrain from conducting an election in light of its intention to seek enforcement of the umpire's ruling through the AFL-CIO's internal dispute resolution mechanism. The Township remained neutral. However, the Township argued that the Commission should delay any election for at least 30 days to provide the unions an opportunity to work out their Article XX dispute. The Township contends that conducting an election before the Article XX dispute is resolved may create greater labor relations problems for the Township in the future.

On January 24, 1989, we received a letter from AFSCME setting forth its position concerning the conduct of an election and advising us of the current status of the Article XX proceeding before the AFL-CIO. AFSCME stated that since the Teamsters have not appeared to take steps to abide by the impartial umpire's determination, it has filed non-compliance charges against the Teamsters with the AFL-CIO. AFSCME advises us that a non-compliance hearing is now scheduled for early February. While AFSCME concedes that it is not possible to predict the outcome of such proceeding, it asserts that the AFL-CIO frequently orders the non-compliant employee organization to withdraw its representation petition and to disclaim any interest in representing the employees at issue. Consequently, AFSCME urges the Commission to refrain from conducting an election among the petitioned-for employees in this case.

The Commission has previously considered the manner in which to proceed with the processing of a representation petition in light of a pending Article XX dispute. In New Jersey Civil Service Association, D.R. No. 81-20, 7 NJPER 412 (¶12019 1980), adopted P.E.R.C. No. 81-94, 7 NJPER 105 (¶12044 1981), mot. for recon. den. P.E.R.C. No. 81-95, 7 NJPER 133 (¶12056 1981), the Director of Representation stated the following:

The Commission's policy requires that representation matters shall be processed as expeditiously as possible in order to afford employees their choice as to representation, and to provide meaningful opportunities to negotiate, if collective representation is chosen. Although there is a possibility that [one union] ... might be required to withdraw from an election which

they seek or to disclaim representation due to internal agreements within the AFL-CIO, this must be balanced by the Commission's concern that employees make a meaningful choice at an election conducted expeditiously. Furthermore, the Commission is not without the ability to provide for these contingencies.<sup>2/</sup> In any event, to permit the private dispute resolution procedures of the AFL-CIO to dictate the procedures of the Commission would certainly be an impermissible abdication of Commission authority.  
[7 NJPER at 48.]

In this case, upon being apprised of an Article XX dispute between AFSCME and the Teamsters, the Commission adjourned the informal investigatory conference scheduled for October 7, 1988, and provided the parties with approximately 30 days to participate in the AFL-CIO's internal dispute resolution mechanism. When the parties met on December 7, 1988, and discovered that the impartial umpire had recently issued a ruling pertaining to the Article XX dispute, the Commission adjourned the conference for an additional two weeks in order to provide the parties with an opportunity to review the ruling and adopt a position. When the parties met on December 28, 1988, their positions had remained basically unchanged from those taken on December 7, 1988. While AFSCME and the Township urged the Commission to delay conducting an election, no information has been proffered regarding a timetable for the final disposition

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<sup>2/</sup> For example, in a case such as this, if the AFL-CIO were to order an employee organization found to be in violation of Article XX to disclaim further representational interest in the collective negotiations unit, the Commission may not give effect to any bar raised to prevent the conduct of a new election upon receipt of a viable representation petition.

of the umpire's Article XX ruling.<sup>3/</sup> Consequently, having considered on the one hand, the employees' statutory rights to promptly choose whether and by which organization they wish to be represented in collective negotiations, and on the other hand, allowing the internal AFL-CIO dispute settlement mechanism to proceed to conclusion, the balance has shifted in favor of the employees' right to vote.

Other than the Article XX dispute between AFSCME and the Teamsters, the parties have given no other reason to delay the conduct of an election. Consequently, we are inclined to direct that an election be conducted among the petitioned-for blue collar employees employed by Haddon Township. See County of Bergen, D.R. No. 88-20, 14 NJPER 69 (¶19025 1987); Tp. of Winslow, D.R. No. 87-8, 12 NJPER 784 (¶17298 1986); Borough of Pt. Pleasant Beach, D.R. No. 87-4, 12 NJPER 657 (¶17247 1986); Tp. of Washington, D.R. No. 86-15, 12 NJPER 226 (¶17093 1986); Borough of Interlaken, D.R. No. 86-9, 12 NJPER 57 (¶17022 1985); Borough of Haddonfield, D.R. No. 83-13, 8 NJPER 588 (¶13273 1982).

Accordingly, we direct that an election be conducted among the employees in the petitioned-for unit. The election shall be

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<sup>3/</sup> While a non-compliance hearing has been scheduled by the AFL-CIO for early February, there appears to be no information regarding the time frame for issuance of a decision in that proceeding or the appeal mechanism following. Further, we note that the election will occur after the February hearing, still allowing the parties time to resolve the dispute prior to an election.

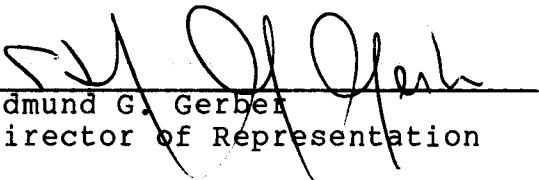


conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, and 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. 19:11-9.6, the Township is directed to file with us an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the unit, 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 organizations 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



Edmund G. Gerber  
Director of Representation

DATED: January 30, 1989  
Trenton, New Jersey