

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

In the Matter of

TOWNSHIP OF LOWER,

Public Employer,

-and-

TEAMSTERS LOCAL UNION NO. 676, AFFILIATED  
WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Docket No. RO-76-147

Petitioner,

-and-

LOCAL NO. 1983, CIVIL AND PUBLIC EMPLOYEES  
OF CAPE MAY COUNTY, N.J., INTERNATIONAL  
BROTHERHOOD OF PAINTERS AND ALLIED TRADES,  
AFL-CIO,

Intervenor.

SYNOPSIS

The Director of Representation Proceedings directs an election in a unit of municipal blue collar employees after finding that the petition was timely filed. He rejects the contention that a Term and Renewal provision of the contract between the employer and the intervenor covering certain of the employees bars the filing of the petition. He also rejects the contentions that the petition is barred by an understanding to continue in effect the provisions of the expired contract until a successor and retroactive agreement is reached, and that a negotiations bar exists. Additionally, the Director holds that the failure of the petitioner to list on its petition the existence of the intervenor did not prejudice the consideration of the petition.

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DECISION AND DIRECTION OF ELECTION

On May 26, 1976, a Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission by Teamsters Local No. 676, affiliated with International Brotherhood of Teamsters Chauffeurs, Warehousemen and Helpers of America ("Petitioner") with respect to a unit of approximately 12 road foremen, assistant road foremen, equipment operators, sweeper operators and labor truck drivers employed by the Township of Lower. On June 19, 1976, Local 1983, Civil and Public Employees of Cape May County, N.J., International Brotherhood of Painters and Allied Trades, AFL-CIO (hereinafter "Local 1983"), the incumbent organization, was granted intervention in this proceeding on the basis of a collective negotiations agreement covering the above-described employees and effective January 1, 1974 through December 31, 1975.

The Executive Director has caused an administrative investigation to be conducted into the matters and allegations set forth in the petition in order to determine the facts. During the course of the investigation, on June 29, 1976, the Teamsters amended its petition to include all blue collar employees employed by the Township of Lower. The amendment has the effect of including certain additional titles within the scope of the Teamsters's proposed unit. At all times relevant hereto the Teamsters' petition has been supported by an adequate showing of interest. All parties have been advised of their obligation under N.J.A.C. 19:11-1.12 and have been afforded an opportunity thereunder to present to the undersigned documentary and other evidence as well as statements of position relating to the petition.<sup>1/</sup>

On the basis of the administrative investigation herein, the undersigned finds and determines as follows:

1. The disposition of this matter is properly based upon the administrative investigation herein, it appearing that no substantial and material factual issues exist which may more appropriately be resolved after a hearing. Pursuant to N.J.A.C. 19:11-1.12(c), there is no necessity for a hearing where, as here, no substantial and material factual issues have been placed in dispute by the parties.

2. The Township of Lower is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, and is subject to its provisions.

<sup>1/</sup> On June 22, 1976 the Executive Director, Jeffrey B. Tener, was sworn in as full-time Commission Chairman. See N.J.S.A. 34:13A-5.2, as amended by Section 3 of P.L. 1974, c. 123. Effective immediately thereafter, the Commission approved the elimination of the Executive Director position, and named the Director of Representation Proceedings as its designee to perform those functions in representation proceedings, including the direction of election function relevant to the instant case, which the Executive Director had theretofore performed. See N.J.S.A. 34:13A-6(f).

3. Both Teamsters Local Union No. 676, affiliated with International Brotherhood of Teamsters Chauffeurs, Warehousemen and Helpers of America, and Local 1983, Civil and Public Employees of Cape May County, N.J., International Brotherhood of Painters and Allied Trades, AFL-CIO, are employee representatives within the meaning of the New Jersey Employer-Employee Relations Act and are subject to its provisions.

4. The Township of Lower refuses to recognize the Petitioner as exclusive representative of the employees in question. Accordingly, a question concerning representation of public employees exists and this matter is properly before the undersigned for determination.

5. In a statement provided to the Investigating Agent of the Commission, the Township states that it will not submit to a secret ballot election because of current on-going negotiations with the incumbent organization, Local 1983. The Township points to "the understanding contained in Article XXII - Term and Renewal of the agreement" and indicates that there is an understanding with Local 1983 that upon the completion of the current negotiations any revised agreement would be retroactive to January 1, 1976. Similarly, Local 1983 does not agree to a consent election on the grounds that it and the Township have agreed to continue operating under the old agreement until a new accord is reached. In addition, Local 1983 asserts that the Teamsters' petition is deliberately falsified insofar as the Petitioner was aware of the fact that Local 1983 represented road department employees, but failed to indicate Local 1983's status on the Petition for Certification of Public Employee Representative form. Lastly, Local 1983 asserts that the Petitioner instructed various members of the negotiating unit not to participate in any further discussions with the Township without the Petitioner's approval.

Although not embodied in any formal written communication to the Commission, Local 1983, at an informal conference held among the parties and Commission staff representatives, raised an issue as to whether employees in the title Road Foreman may properly be included in any blue collar unit insofar as it is claimed that a road foreman is a supervisor within the meaning of the Act.

Accordingly, the undersigned will discuss these issues seriatim.

6. Under the Commission's procedures, a Petition for Certification of Public Employee Representative filed after the expiration of a written agreement containing substantive terms and conditions of employment and prior to an effective successor agreement is normally a timely filed petition. At issue before the undersigned is whether Article XXII of the incumbent organization's negotiated agreement with the Township, or an agreement to extend the provisions of the contract subsequent to its termination for an indefinite period until a successor agreement is reached, or the status of current negotiations between an incumbent organization and an employer suffices to render an otherwise appropriately filed petition untimely.

Article XXII of the instant Agreement, entitled "Term and Renewal", provides:

This Agreement shall be in full force and effect as of January 1, 1974 and shall remain in effect to and including December 31, 1975, without any reopening date. This Agreement shall continue in full force and effect from year to year thereafter, unless one party or the other gives notice, in writing, at least ninety (90) days prior to the expiration date of this agreement of a desire to change, modify or terminate this agreement.

The undersigned assumes that the appropriate ninety day notice was either given or waived by one of the parties insofar as the Township and Local 1983 have indicated that they are in the midst of negotiations for a successor

agreement. Accordingly, the undersigned is without the need to determine the effect, if any, of Article XXII upon the timeliness of the Teamsters' Petition.

Secondly, the fact that the Township and Local 1983 are engaged in negotiations for a successor agreement and have agreed to abide by the terms of the expired agreement until a successor agreement is reached does not bar the consideration of the Teamsters' Petition. In a matter previously considered by the Commission, In re Township of Franklin, P.E.R.C. No. 64, the Commission found that a provision in a collective negotiations agreement which provided that the terms of the agreement were to remain in full force and effect until a new contract was agreed upon did not bar the filing of a petition. The Commission stated therein that such a provision "presents a situation in which any potential petitioner would be effectively and permanently barred from filing a timely petition". See also In re City of Jersey City, E.D. No. 78. Similarly, the Commission in Township of Franklin found no merit to a mediation bar argument. A bar to the filing of a petition while the parties are negotiating for a successor agreement and until such time that a successor agreement is executed would also effectively and permanently bar the legitimate aspiration of employees who have petitioned for representation of their choice. See also In re Englewood Board of Education, E.D. No. 72.

There is no evidence that the Petitioner "falsified" certain items on its Petition for Certification of Public Employee Representative by failing to indicate on Item 9 and Item 11 the existence of the incumbent organization, Local 1983. The Petitioner listed "none" in each of these items. The purpose of these items is to provide the Commission with one method of contacting other employee organizations who may be interested in the representation proceedings. Under the circumstances herein, Local 1983

has not been prejudiced by the Petitioner's failure to include Local 1983's name on the face of the Petition. Local 1983, as the incumbent organization, became aware of the pendency of the Petition, filed a statement of position with the Commission, and was granted intervention in these proceedings. Local 1983 has been granted full opportunity and, in fact, has fully participated herein.

Similarly, there is no evidence to support the allegation that the Petitioner instructed various members of the bargaining unit not to participate in any further discussions with the Township without the Petitioner's approval. Nor would such allegations appear to be relevant at this stage of the proceedings.

7. The Petition for a unit of all blue collar employees is prima facie appropriate. As indicated above, the question respecting the appropriate unit placement of the personnel in the category of Road Foreman has not formally, in writing, been placed before the undersigned. Nevertheless, the undersigned shall consider this issue. The recognition clause in the agreement between the Township and Local 1983 includes the title Road Foreman within the unit of non-supervisory road employees. It appears that the title Road Foreman has been included in the unit since its inception in October, 1971, by Commission certification pursuant to a consent election agreement (Commission Docket No. RO-342). Although Local 1983, as well as the Township, have been granted the opportunity to present to the undersigned documentary evidence in support of the claim that road foremen are supervisors within the meaning of the Act, no written evidence or statement has been submitted in respect thereto. In view of the foregoing, for the purposes of the direction of election, the title Road Foreman shall be included within the proposed unit of all blue collar employees. Such determination shall not preclude any party from asserting a challenge to the eligibility of the road foremen to cast ballots at the election.

8. Based upon the above, including the conclusion that the Petition was timely filed, it appears to the undersigned that there is reasonable cause to believe a valid question concerning representation exists in an appropriate unit and that the policies of the Act will be effectuated by the direction of an election. The election shall be directed in the following appropriate unit: "All blue collar employees employed by the Township of Lower excluding managerial executives, confidential employees, craft employees, professional employees, policemen, and supervisors within the meaning of the New Jersey Employer-Employee Relations Act."

9. The undersigned directs that a secret ballot election be conducted in the unit found appropriate. The election shall be conducted no later than thirty (30) days from the date set forth below.

Those eligible to vote are employees set forth above who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, were on vacation, or temporarily laid-off, including those in military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who quit 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.19:11-2.7 the Public Employer is directed to file with the undersigned an election eligibility list, consisting of an alphabetical listing of names of all eligible voters together with their last known mailing addresses and job titles. Such list must be received by the undersigned no later than ten (10) days prior to the date of the election. The undersigned shall make the eligibility list immediately available to all parties to the election. Failure to comply with the foregoing shall be




grounds for setting aside the election upon the filing of proper post-election objections pursuant to the Commission's Rules.

Those eligible to vote shall vote on whether they desire to be represented for the purposes of collective negotiations by Teamsters Local Union No. 676, affiliated with International Brotherhood of Teamsters Chauffeurs, Warehousemen and Helpers of America, or by Local 1983, Civil and Public Employees of Cape May County, N.J., International Brotherhood of Painters and Allied Trades, AFL-CIO, or by neither.

The majority representative shall be determined by a majority of valid ballots cast. The election directed herein shall be conducted in accordance with the provisions of the Commission's Rules and Regulations and Statement of Procedure.

BY ORDER OF THE ACTING DIRECTOR OF REPRESENTATION PROCEEDINGS

  
Joel G. Scharff, Acting Director  
Representation Proceedings

DATED: Trenton, New Jersey  
September 1, 1976