

D.R. NO. 93-9

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

In the Matter of
BOROUGH OF BERLIN,

Public Employer,

-and-

EMPLOYEES OF BERLIN BOROUGH,

Docket No. RD-93-6

Petitioner,

-and-

INTERNATIONAL BROTHERHOOD OF TEAMSTERS
LOCAL 115,

Incumbent Representative.

SYNOPSIS

The Director of Representation orders an election on a decertification petition filed by the Borough's blue-collar employees. The Director refuses to permit the election to be blocked by the incumbent union's unfair practice charge, which alleged that the Borough failed to negotiate in good faith by "insisting" in negotiations that the number of union shop stewards eligible for "super-seniority" be reduced. The allegations were neither supported by evidence nor substantively sufficient to prevent a free and fair election.

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Appearances:

For the Public Employer
Laskin & Botcheos, Attorneys
(George Botcheos, of Counsel)

For the Petitioners
Mark Mauger, pro se

For the Incumbent
Norton Brainard III, Attorney

DECISION AND DIRECTION OF ELECTION

On October 9, 1992, certain employees of the Borough of Berlin filed a petition seeking to decertify Teamsters Local 115 as the negotiations representative of Berlin's blue collar employees in the Department of Public Works. The petition is accompanied by an adequate showing of interest. N.J.A.C. 19:11-1.3.

Teamsters Local 115, the incumbent majority representative, intervened in this matter based upon its expired 1988-91 agreement with the Borough covering these employees. N.J.A.C. 19:11-2.7.

On September 14, 1992, Local 115 filed an unfair practice charge alleging that the Borough violated the Act^{1/} by insisting through negotiations that the number of union shop stewards with super-seniority be limited to one. Local 115 has asked that the Commission not process the decertification petition to an election until there is first a determination on the merits of its unfair practice charge.

The Commission does not automatically accord blocking effect to unfair practice charges. Rather, the charging party must provide affidavits and other documentary evidence to support its claim that the conduct underlying the alleged unfair practice prevents a free and fair election. See So. Jersey Port Corporation, P.E.R.C. No. 90-45, 16 NJPER 3 (¶21001 1989); Matawan-Aberdeen Regional Dist. Bd. of Ed., P.E.R.C. No. 89-69, 15 NJPER 68 (¶20025 1988).

On November 2, 1992, we advised Local 115 that it must submit affidavits and other documentation to support its allegations

^{1/} The charge asserted violations of N.J.S.A. 34:13A-5.4(b)(3) and (5), which refer to prohibited conduct of employee representatives; we assume charging party meant 5.4(a) (3) and (5). These subsections prohibit public employers, their representatives or agents from: "(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; (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

and to establish a nexus between the alleged unfair practice and the preclusion of a free and fair election. Local 115 submitted a statement of position outlining the history of certain grievance arbitrations concerning the super-seniority clause in its contract, together with the arbitrators' awards. These awards involve the interpretation of the language of the super-seniority clause in the 1988-91 contract, but do not substantiate the union's present claim that the alleged unfair practice prevents the conduct of a free and fair election.

Local 115 asserts in its charge and in its position statement that it and the Borough are engaged in negotiations for a successor contract to the 1988-91 agreement. Local 115 asserts that the Borough has "insisted" during those negotiations that the number of shop stewards enjoying super-seniority be reduced from two to one. The union has just as vigorously sought to keep the super-seniority clause intact. All other issues in negotiations have been resolved. The union argues that, but for the employer's insistence on changing the seniority clause, it would have a contract in place for the Borough's employees and the petition would not have been timely filed.

I find that this unfair practice charge should not block the decertification petition. First, Local 115 submitted no affidavits or other documentation which would tend to support the allegation in the charge that the employer negotiated in bad faith or discriminated against employees. Where such material has not

been furnished, we have declined to exercise our discretion to block elections. See Village of Ridgewood, D.R. No. 81-17, 6 NJPER 605 (¶11300 1980).

Second, the substance of the charge does not warrant blocking effect. In Matawan, the Commission reaffirmed the standards for evaluating a blocking charge request. These factors were originally adopted by the Commission in State of New Jersey, P.E.R.C. No. 81-94, 7 NJPER 105 (¶12044 1981):

The character and the scope of the charge(s) and its tendency to impair the employee's free choice; the size of the working force and the number of employees involved in the events upon which the charge is based; the entitlement and interests of the employees in an expeditious expression of their preference for representation; the relationship of the charging parties to labor organizations involved in the representation case; a showing of interest, if any, presented in the R case by the charging party; and the timing of the charge. [NLRB Case Handling Manual, Section 11730.5]

The Commission does not necessarily block the processing of a petition based upon claims of bad faith negotiations, particularly absent any showing of a nexus between the alleged violation and the potential for a free and fair representation election. See City of Burlington, D.R. No. 92-13, 18 NJPER 83 (¶23036 1992). Although the parties appear to have only one remaining issue in dispute, neither party filed a notice of impasse with the Commission or requested a mediator. There is no allegation that the Borough unilaterally implemented its reduced super-seniority proposal or that it refused to negotiate about the subject. Rather, it appears that both

parties have been vigorously pursuing their respective positions on this issue at negotiations. Taking a hard-line position on a particular item in negotiations does not constitute a per se refusal to negotiate in good faith. In re Coun. of N.J. State Coll. Locs., E.D. 79, 1 NJPER 39 (1975), aff'd sub nom. State v. Coun. of N.J. State Coll. Locs., 141 N.J. Super. 470 (App. Div. 1976).

Accordingly, I find that the unfair practice charge should not block the processing of the decertification petition to an election.

There are no other issues in dispute concerning the representation petition. The petition is timely filed and seeks an election in the certified unit. The Borough consents to an election. No other issues concerning the representation matter have been placed before us. Accordingly, I direct that a secret ballot election be conducted among the employees in the following certified unit:

Included: All blue collar employees employed by the Borough of Berlin in the Department of Public Works

Excluded: Supervisors within the meaning of the Act, Superintendent of Public Works, police, managerial executives, confidential employees, professional and craft employees, and all other employees.

Employees will vote on whether they wish to continue to be represented for purposes of collective negotiations by Teamsters Union Local 115.


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. 19:11-9.6, 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 certified unit described above, 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 petitioner and to Local 115, 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

DATED: December 15, 1992
Trenton, New Jersey