

D.R. No. 2009-15

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

In the Matter of

DOWNTOWN PATERSON SPECIAL
IMPROVEMENT DISTRICT, INC.,

Public Employer,

-and-

Docket No. RO-2009-002

UNITED FEDERATION OF SECURITY
GUARDS, LOCAL 1019,

Petitioner.

SYNOPSIS

The Director of Representation dismisses a representation petition filed by the United Federation of Security Guards, Local 1019 to represent a negotiations unit of "all employees performing security duties" employed by the Downtown Paterson Special Improvement District, Inc. The Director finds that the Downtown Paterson Special Improvement District, Inc. is neither a "special district" nor a "political subdivision" within the meaning of the Act, and is therefore not a public employer.

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Appearances:

For the Respondent,
Fox Rothschild, LLP, attorneys
(Brian A. Caufield, of counsel)

For the Petitioner,
Dan Kielty, Union Representative

DECISION

On July 11, 2008 and August 8, 2008, the United Federation of Security Guards, Local 1019 (Local 1019) filed a representation petition and amended petition for certification by card check authorization seeking to represent a negotiations unit of "all employees performing security duties" employed by the Downtown Paterson Special Improvement District, Inc. (District). About 8 unrepresented employees are included in the proposed unit. They "maintain a security presence" in and around the businesses in the District, remove loiterers from storefronts, and report unlawful vendors.

The District objects to the petition, asserting that it is not a public employer as defined by N.J.S.A. 34:13A-3(c). Local 1019 asserts that the District is a public employer.

We have conducted an administrative investigation into this matter to determine the facts. N.J.A.C. 19:1-2.2. On May 19, 2009, I wrote to the parties advising of my tentative findings and conclusions and inviting responses. Neither party responded. The disposition of the petition is properly based upon our administrative investigation. There are no substantial material facts in dispute which would require convening an evidentiary hearing. N.J.A.C. 19:11-2.2 and 2.6. Based upon the administrative investigation, I find the following facts:

N.J.S.A. 40:56-65, et seq. permits municipalities to establish by ordinance self-financing special improvement districts to promote economic growth and employment in downtown business districts. Municipalities can also establish or designate by ordinance district management corporations to execute self-help programs to enhance the local business climates of the special improvement districts.

Paterson City Ordinance No. 97-036 created the Downtown Paterson Special Improvement District. Its management and control were left to a district management corporation. The ordinance provides that the corporation has the power to: 1) adopt bylaws for the affairs and conduct of its business; 2) administer and manage its own funds and accounts and pay its own

obligations; and 3) hire employees and fix and pay their compensation from funds available to the corporation.

The District's corporation bylaws provide that "all owners of non-residential, for-profit commercial property . . . located in, on, or around the downtown area of Paterson . . . shall be members of the corporation." The business and affairs of the corporation are managed by a board of 13 trustees, 11 of whom are elected by and among the members, and the other 2 trustees are appointed by the City to act as municipal liaisons.

The board of trustees has an executive committee which conducts the routine business of the corporation. The current committee has hired an executive director and has vested that position with, among other things, the authority to control labor relations.

Sheri Ferreira is currently the executive director of the District. She has full authority to control the hiring, firing, work schedules, promotion, discipline, evaluations and vacations of District employees. Neither Ferreira nor any employees of the District are included in a State pension system, and they do not receive any benefits from the City of Paterson.

The District is a tax-exempt organization under §501 of the Internal Revenue Code. It receives all of its funding from tax assessments levied by the City of Paterson upon commercial and mixed-use land owners located in downtown Paterson. The amount of funding is determined in large part by the budget which the

District proposes annually to the City of Paterson. N.J.S.A. 40:56-65 et seq. requires the City to hold hearings regarding the District's budget for interested persons to present objections. The City may amend the budget during or after the public hearing. The City must also hold annual hearings to consider objections to the amount of money assessed against the benefitted properties in the District.

N.J.S.A. 40:56-65 et seq. gives the District the power of eminent domain and the power to accept, purchase, rehabilitate, sell, lease, or manage property in the District. It does not give the District the power to issue bonds. The District's board of trustees does not have subpoena power.

ANALYSIS

N.J.S.A. 34:13A-3(c) defines "employer." The section provides:

The term "employer" includes an employer and any person acting, directly or indirectly, on behalf of or in the interest of an employer with the employer's knowledge or ratification, but a labor organization, or any officer or agent thereof, shall be considered an employer only with respect to individuals employed by such organization. This term shall include 'public employers' and shall mean the State of New Jersey, or the several counties and municipalities thereof, or any other political subdivision of the State, or a school district, or any special district, or any authority, commission, or board, or any branch or agency of the public service (emphasis added).

Local 1019 argues that the Downtown Paterson Special Improvement District, Inc. is a "special district" within the meaning of the Act. It argues that N.J.S.A. 34:13A-3(c) demonstrates that our Legislature "clearly envisioned that a special improvement district would be encompassed within the meaning of an employer."

The term, "special district" is not defined by the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act) and the Act's legislative history neither provides nor indicates that our Legislature intended that a special improvement district falls within the meaning of "public employer." It is not likely that our Legislature intended that a special district include an entity whose members are predominately private business owners. Accordingly, I find that the District is not a special district within the meaning of the Act.

Local 1019 also argues that the District is a "political subdivision" within the meaning of the Act, citing NLRB v. Natural Gas Utility District of Hawkins County, Tennessee, 402 U.S. 600, 91 S.Ct. 1746 (1971). There, the U.S. Supreme Court held that federal law and not state law governs the determination of whether an entity is a "political subdivision" of a state within the meaning of § 2(2) of the National Labor Relations Act, 29 U.S.C.S. § 152(2).

The legislative history of our Act provides no definition or description of a "political subdivision." In Jordan v. Zidel, 40 N.J. 244 (1963) our Supreme Court determined that a municipal utilities authority and a parking authority were political subdivisions of the State. The Court noted that each had "broad independent powers to acquire property, issue bonds, and fix rates for its services." Id. at 247-248. The Downtown Paterson Special Improvement District has the power to acquire property, but cannot issue bonds. Also, the fees or taxes which the property owners in the District are assessed are set by the City of Paterson, not the District.

In Natural Gas Utility District of Hawkins County, Tennessee, the U.S. Supreme Court found that the disputed utility district was a political subdivision within the meaning of § 2(2) of the National Labor Relations Act and therefore not an employer subject to the Act. The utility district was one of nearly 270 utility districts established under the Tennessee Utility District Law of 1937. Under that statute, Tennessee residents could create districts to provide a wide range of public services, such as the furnishing of natural gas, water, sewers, police protection, garbage collection, street lighting, parks, etc. Tenn. Code Ann. § 6-2608 (Supp. 1970).

The Court noted that the National Labor Relations Board limited the exemption for political subdivisions to entities that are either created directly by the state, so as to constitute

departments or administrative arms of the government, or administered by individuals who are responsible to public officials or to the general electorate.

The Court found that the utility district was a political subdivision for these reasons: 1) the District's commissioners are beholden to an elected public official for their appointment and are subject to removal procedures applicable to all public officials, thereby qualifying as "individuals who are responsible to public officials or to the general electorate" within the Board's test; 2) the District has the power of eminent domain, which it may exercise even against other governmental entities; 3) the District is given broad grant of "all the powers necessary and requisite for the accomplishment of the purpose for which such district is created, capable of being delegated by the legislature." Tenn. Code Ann. § 6-2612 (1955); 4) the District's "public records" requirement and the automatic right to a public hearing and written "decision" by the commissioners accorded to all users betoken a state, rather than a private, instrumentality; and 5) the commissioners' power of subpoena and their nominal compensation further suggest the public character of the District. Id. at 402 U.S. 608-609.

Applying these criteria to the Downtown Paterson Special Improvement District, I find that the District is not a political subdivision within the meaning of the New Jersey Employer-Employee Relations Act.

Eleven of the District's 13 trustees are elected by and among the members; only two of them are appointed by the City of Paterson to act as municipal liaisons between the District and the City. The vast majority of trustees are not responsible to public officials or to the general electorate. N.J.S.A. 40:56-65, et seq. gives the District the power of eminent domain, but does not provide that that power may be exercised against other governmental entities. The District's board of trustees does not have subpoena power.

The utility district in Natural Gas Utility District of Hawkins County, Tennessee is required by state statute to hear any protest to the rates it sets filed within 30 days of publication of its annual statement at a public hearing, and to make and publish written findings as to the reasonableness of the rates. 402 U.S. 607.

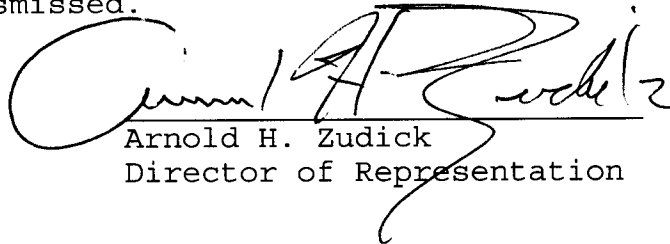
N.J.S.A. 40:56-65 et seq. requires that the City of Paterson, not the Downtown Paterson Special Improvement District, hold annual hearings regarding the District's budget for interested persons to present objections. Only the City may amend the budget during or after the public hearing based on the objections presented. The City, and not the District, is required to hold annual hearings to consider objections to the amount of money to be specially assessed against the benefitted and assessable properties in the district. The District itself is not required to hold public hearings to consider objections to

any of its policies or decisions. Finally, the District cannot issue bonds and does not determine the amount that the property owners in the District will be assessed.

For all of the cited reasons, I find that the Downtown Paterson Special Improvement District is not a public employer.

ORDER

The petition is dismissed.



Arnold H. Zudick
Director of Representation

DATED: June 9, 2009
Trenton, New Jersey

A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3.

Any request for review is due by June 19, 2009.