

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

In the Matter of

TOWNSHIP OF DOVER,

Public Employer,

-and-

TEAMSTERS LOCAL NO. 97 OF N.J.,

DOCKET NO. RO-81-228

Petitioner,

-and-

AFSCME, COUNCIL 71, LOCAL 2279,

Intervenor.

SYNOPSIS

The Director of Representation directs that a secret ballot election among white collar employees be held in order to determine their choice of representative. The Director finds that charges filed by the incumbent representative (AFSCME) against the Township due to the Township's refusal to negotiate with it, should not delay an election. The employee showing of interest which supports the Teamsters' petition predated the employer's refusal to continue negotiations and, thus, the question concerning representation is independent of the employer's actions. The Director concludes that the character and scope of the alleged conduct would not have the tendency to impair employee free choice.

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Appearances:

For the Public Employer

Murray, Granello & Kenney

(Robert E. Murray and Lawrence C. Chapin, Esqs.
of Counsel)

For the Petitioner

Andrew D. Trause, Vice President

For the Intervenor

Russell Weiss, Staff Representative

DECISION AND DIRECTION OF ELECTION

On April 22, 1981, a Petition for Certification of Public Employee Representative, supported by an adequate showing of interest, was filed with the Public Employment Relations Commission (the "Commission") by Teamsters Local No. 97 of New Jersey (the "Teamsters"). The Teamsters seek certification as the exclusive representative of a unit of white collar employees employed by the Township of Dover (the "Township"). AFSCME, Council 71, Local 2279 ("AFSCME"), the

incumbent representative, is hereby granted intervention in this proceeding on the basis of a recent collective negotiations agreement covering the employees in, and coextensive with, the petitioned-for unit, for the period January 1, 1978 - December 31, 1980.

On April 1, 1981, the Township received a letter from the Teamsters demanding that it recognize the Teamsters as the sole and exclusive negotiations agent for the white collar employees and that it commence negotiations immediately. On April 9, 1981 the Township wrote to the Teamsters suggesting that the matter be brought before the Commission for a determination inasmuch as AFSCME had not disclaimed its representational interest in the petitioned-for unit. Simultaneously, the Township wrote AFSCME informing it of the Teamsters demand for recognition and suspending negotiations during the pendency of the question concerning representation. On April 21, 1981, AFSCME filed an unfair practice charge against the Township alleging violations of N.J.S.A. 34:13A-5.4(a)(1), (2) and (5). ^{1/} The charge is presently pending before the Commission.

The undersigned has caused an administrative investigation to be conducted in order to determine the facts. All parties have been afforded the opportunity to present documentary and other evidence as well as statements of position relating to the petition for consideration by the undersigned. The Township has certified that the Commission's standard Notice to Public Employees has been posted.

^{1/} Docket No. CO-80-21

On the basis of the administrative investigation, 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.S.A. 19:11-2.6(b), 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 Dover is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), is the employer of the employees herein, and is subject to the provisions of the Act.

3. Teamsters Local 97 of New Jersey and AFSCME, Council 71, Local 2279 are employee representatives within the meaning of the Act and are subject to its provisions.

4. The Teamsters and the Township consent to the conduct of a secret ballot election among the employees in the petitioned-for unit. AFSCME declines to consent to an election. Accordingly, a Petition for Certification of Public Employee Representative having been filed, a question concerning representation exists and the matter is properly before the undersigned for determination.

5. No party disputes the appropriateness of the petitioned-for unit, and the undersigned finds the unit prima facie appropriate for collective negotiations.

6. AFSCME argues that the unfair practice charge currently pending against the Township precludes the Commission from proceeding with the representation election, stating that the alleged violations of N.J.S.A. 34:13A-5.4(a)(1), (2) and (5) should "block" the holding of such an election.

All parties have filed statements of position concerning the instant matter, the charge and the interrelationship between the two, if any.

The undersigned discussed the blocking effect of a pending unfair practice charge upon a representation proceeding in In re Matawan School District Board of Education, D.R. 78-11, 4 NJPER 37 (para. 4019 1977). In that matter, an intervenor/incumbent representative sought to block a representation election on the basis of a charge alleging that the public employer wrongfully suspended negotiations after receiving a demand for recognition by a competing union. The undersigned, tracing the history of the National Labor Relations Board (the "NLRB") decisions concerning this subject, stated: ^{2/}

It is of significance to the instant proceeding that among categories of cases in which the NLRB will decline to follow the blocking charge procedure, are, first, cases in which it seems unlikely that the alleged unfair labor practices would affect the election results, and second, those in which the alleged violations are related, at least in part, to the unresolved question of representation.

^{2/} See Lullo v. International Association of Fire Fighters, 55 N.J. 409 (1970), and Board of Education of West Orange v. Wilton, 57 N.J. 404 (1971), regarding the similarities of the Act and labor statutes in other jurisdictions, particularly at the federal level.

In Matawan, the petitioner's organizational campaign and its demonstration of employee support preceded its demand for recognition. Thereafter, the employer ceased negotiations with the incumbent. In Matawan, the Petitioner presented the employer with proof of its employee support. Unlike Matawan, however, AFSCME alleges that the petitioner's notification and demand were unsubstantiated by the submission of proof to the employer of employee support at the time the employer halted negotiations. ^{3/}

The above factual distinction, assuming its verity, does not significantly affect the analysis of the issue presented herein - i.e. should an election be withheld pending litigation of the charge. The principle expressed in Matawan, and equally applicable herein, is that an election will proceed if the demonstration of employee support raising the question concerning representation preceded, and, was therefore unrelated to, the employer's cessation of negotiations. Where such is the case, the transfer of employee support giving rise to the certification petition is not attributable to the alleged activities complained of in the unfair practice charge. In the instant

^{3/} The charge in Docket No. CO-81-321 states, in part, "It is the position of the charging party that such notification by the Teamsters did not suspend the Township's duty to negotiate with AFSCME, and that the cancellation of the fact finding session and refusal to negotiate violate subsections (1) and (5). Furthermore, the Township's action, whether intentional or otherwise, had the effect of assisting the Teamsters in the organizing drive by forcing AFSCME into a position of being unable to represent the full interests of its members, thus interfering with the existence of AFSCME. Finally by eliminating every opportunity for AFSCME to negotiate and sign an agreement, the Township assisted the Teamsters by extending the open period for filing a petition with PERC for an undetermined length of time. The Union therefore charges a violation of subsections (1) and (2)."

matter, the Teamsters' showing of interest raising the question concerning representation predates the employer's cessation of negotiations. Furthermore, the undersigned's analysis of the character and scope of the unfair practice charge leads to the conclusion that the alleged employer conduct would not have the tendency to impair the employees' free choice.

The undersigned, therefore, determines that employee choice should not be postponed at this time. The undersigned notes that the Commission has adequate authority to fashion an appropriate remedy if the subsequent litigation of the unfair practice charge establishes that the employer's activities tainted the free choice of employees.

Accordingly, there existing no substantial and material factual issues in dispute which may more appropriately be resolved after a hearing, the undersigned directs that an election be conducted among employees in the existing unit: All white collar employees employed by the Township of Dover and excluding all police officers, managerial executives, confidential employees, craft employees, professionals and supervisors within the meaning of the Act. 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, or 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 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 the undersigned, an eligibility list consisting of an alphabetical listing of names of all eligible voters together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by the undersigned no later than ten (10) days prior to the date of election. Copies of the eligibility list shall be simultaneously filed with the Teamsters and AFSCME with statement of service to the undersigned. The undersigned shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

Those eligible to vote shall vote on whether or not they desire to be represented for the purpose of collective negotiations by Teamsters Local No. 97 of New Jersey, AFSCME, Council 71, Local 2279, or neither.

The exclusive representative, if any, shall be determined by the majority of valid ballots cast by the employees voting in the election. The election directed herein shall be conducted in accordance with the provisions of the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: June 26, 1981
Trenton, New Jersey