

D.R. NO. 92-2

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

In the Matter of

BOROUGH OF LAVALLETTE,

Public Employer,

-and-

Docket No. RO-91-189

IBT LOCAL 469,

Petitioner,

-and-

AFSCME, COUNCIL #71,

Intervenor.

SYNOPSIS

The Director of Representation orders an election among all blue collar employees employed by the Borough of Lavallette to determine whether they wish to be represented for purposes of collective negotiations by IBT Local 469, AFSCME Council #71 or no representative. Despite a finding by an AFL-CIO impartial umpire that IBT was in violation of Article XX of the AFL-CIO constitution by filing a petition to represent employees already represented by another AFL-CIO affiliate, the Director held that the Commission cannot compel IBT to withdraw its claim and therefore must expeditiously process the otherwise valid petition. Neither the Borough nor AFSCME set forth any reasons why the structure and/or composition of the unit was improper.

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Appearances:

For the Public Employer
Sinn, Fitzsimmons, Cantoli, West & Pardes, attorneys
(Kenneth B. Fitzsimmons, of counsel)

For the Petitioner
William O'Keefe, Secretary/Treasurer

For the Intervenor
Robert C. Little, Staff Representative

DECISION AND DIRECTION OF ELECTION

On June 4, 1991, the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 469 ("IBT") filed a timely petition to represent all blue collar employees including laborers, electricians, public works repairmen, senior public works repairmen and linesmen employed by the Borough of Lavallette ("Borough"). A sufficient showing of interest was

submitted with the petition. The petitioned-for employees are currently represented by Local 3304-B, Council #71, American Federation of State, County and Municipal Employees, AFL-CIO ("AFSCME"). The most recent collective bargaining agreement between the Borough and AFSCME expired December 31, 1989.

An informal investigatory conference was scheduled for June 21, 1991. By letter dated June 17, 1991, Lane Kirkland, President, AFL-CIO, requested that the Commission hold the matter in abeyance pending the outcome of AFL-CIO Internal Disputes Plan proceedings. Since both AFSCME and IBT are AFL-CIO affiliates, AFSCME filed an Article XX complaint with the AFL-CIO against the IBT seeking to enforce the AFL-CIO's no-raid policy. Pursuant to Mr. Kirkland's request, and in accordance with agency policy, the Commission pended the matter for 30 days to allow resolution of the internal dispute.

On July 25, 1991, AFSCME and IBT met with an AFL-CIO umpire. No settlement was reached. The parties agreed to submit a stipulation of facts to an impartial umpire. On August 8, 1991, the umpire issued a determination finding IBT in violation of Article XX, Section 2 of the AFL-CIO constitution. IBT has refused to withdraw its petition.

AFSCME refuses to consent to a secret ballot election. It cites the determination in the Article XX matter, but otherwise raises no objection to the validity of the petition or the structure and/or composition of the unit. IBT urges that a secret ballot election be held as soon as possible. The Borough also raises no

objection to the validity of the petition or the structure and/or composition of the unit. It avers that it remains neutral in the dispute between the unions and that it will abide by any determination of the Commission.

The Commission cannot compel IBT to withdraw its petition in light of the AFL-CIO umpire's decision. If it chooses to pursue the matter, we must process the case expeditiously and provide the petitioned-for employees the opportunity to pick their collective negotiations representative. Neither the Borough nor AFSCME has set forth any reasons why this petition is invalid or why the structure and/or composition of the petitioned-for unit is improper. Accordingly, I direct that a representation election be conducted among all blue collar employees employed by the Borough of Lavallette, excluding all other employees, supervisors within the meaning of the Act, confidential employees, managerial executives, craft employees, clericals, police, professional and seasonal employees.

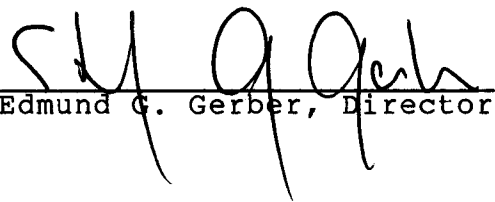
The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation 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 units, 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 organization 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: August 22, 1991
Trenton, New Jersey