

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF JERSEY CITY,  
Public Employer,

-and-

LOCAL 246, JERSEY CITY PUBLIC  
EMPLOYEES, INC.  
Petitioner,

Docket No. RO-76-44

-and-

LOCAL 245, JERSEY CITY PUBLIC  
EMPLOYEES, INC.  
Intervenor.

SYNOPSIS

The Executive Director determines that the showing of interest is adequate to support the filing of the representation petition herein and justifies the direction of an election. The Intervenor had raised objections to the showing of interest and pursuant to the Executive Director's investigation of the case, had submitted evidence in the form of affidavits which it alleged substantiated its objections. The Executive Director has reviewed the affidavits and other evidence and has determined that while some doubt has been cast on the validity of a portion of the showing of interest, it is not sufficient to justify a dismissal of the representation proceeding.

The confidentiality of the showing of interest is an essential element of the protections afforded public employees in the exercise of their rights under the Act. As such, a secret ballot election, not evidentiary hearings, provides the best method of resolving disputes over the employees' choice of a representative. The post-election objection mechanism affords an adequate remedy if the alleged inappropriate conduct has affected the results of the election.

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DECISION AND DIRECTION OF ELECTION

On September 30, 1975, a timely Petition was filed by Local 246, Jersey City Public Employees, Inc. ("Local 246") seeking certification as the majority representative of a unit of "non-supervisory blue and white collar employees in the Department of Public Works and in the Division of Human Resources in the Parks and Recreation Section" of the City of Jersey City ("City").

The undersigned caused an initial investigation of the petition to be conducted. The City certified that the usual Notice to Public Employees was posted on October 8, 1975 and supplied a list of unit employees. Local 245, Jersey City Public Employees, Inc., ("Local 245"), supported by a currently effective agreement with the City covering the employees involved<sup>1/</sup>

1/ The agreement, effective January 1, 1974, and terminated December 31, 1975, contains the following recognition clause:  
(Continued)

sought and was granted intervention in the proceedings.

On October 6, 1975, Local 245 objected to the petition filed by Local 246, stating its objections in seven paragraphs, as follows:

- "1. The Petition is defective in that it did not include a list of employees, 30% or more, allegedly supporting the Petition.
2. The Petition is not supported by 30% or more of the employees in the unit.
3. The signatures of employees in the unit were obtained by fraud, deceit and misrepresentation.
4. The Petitioner has failed to make a request as Majority Representative.
5. The Petition is grounded in misrepresentation in that the Petitioner declares and for all purposes and effect swears that Local 246, Jersey City Public Employees, Inc. is not affiliated (no affiliation) when in fact it is a duly chartered Local of Jersey City Public Employees, Inc. the parent Union and is bound by its constitution and by-laws.
6. Inclusion in the bargaining unit now represented by Local 246, Jersey City Public Employees, Inc. would merge Local 245 and Local 246 both chartered Locals of Jersey City Public Employees, Inc.
7. The Public Employment Relations Commission is without authority and jurisdiction to merge two Locals, both chartered by the same parent Union, Jersey City Public Employees, Inc. A merger can only be accomplished by the vote of the membership of the Locals involved and such merger would be subject to the rules governing the Public Employment Relations Commission, particularly when defined Bargaining Units are concerned and there is a petition for inclusion or exclusion."

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1/ (Continued)

"The City hereby recognizes Local 245 as the collective negotiations agent for all non-supervisory blue and white collar employees in the Department of Public Works, including the following divisions: Auto services, sanitation, streets and sewers, engineering, forestry, facilities maintenance, and the water division, except for water meter readers therein, as well as employees within the Division of Human Resources in the Parks and Recreation Section."

Simultaneously, it requested a hearing on these objections.

Subsequently, on October 30, 1975, Local 245 filed an unfair practice charge with the Commission alleging, in essence, the same subject matter as raised in its first three objections to the representation proceeding. (The above-referenced charge is discussed in the accompanying Executive Director decision No. 76-20.)

The initial investigation into the representation matter revealed the following information. While Local 245 represents a unit of employees as described in footnote 1, Local 246 currently represents a unit of non-supervisory employees of City Hall and Agencies of the Mayor in Jersey City. The City, by letter of October 15, 1975, stated that it "...takes no position with regard to the employees choice of bargaining representation. However, if the aim of the instant Petition is to merge the Department of Public Works Unit currently represented by Local 245 into the Bargaining Unit of employees of City Hall and Agencies of the Mayor, which is currently represented by Local 246, we most strenuously object to such merger."

On December 2, 1975, at an informal conference called among the parties pursuant to the initial investigation, it appeared that the parties could not agree to a consent election.

On December 29, 1975, the undersigned, considering the totality of the circumstances presented, reopened the investigation pursuant to N.J.A.C. 19:11-1.12. In a letter to the parties, the undersigned observed the following:

1. The petition filed by Local 246 does not seek to merge the two units currently represented by Local 245 and Local 246 respectively. Rather Local 246 seeks an election limited to the former's unit consisting of all employees within the Public Works Department and Division of Human Resources in the Parks and Recreation Department. The petition, therefore, does not seek a change in the composition of the negotiating units; it seeks a change in the negotiating agent for the unit represented by Local 245. In addition, Local 245 and Local 246 have stipulated that the petitioned-for unit is an appropriate unit.

2. The failure of the Petitioner to request recognition by the Public Employer is not fatal, inasmuch as it is clear that there exists a question concerning representation, and as the Employer had taken no position regarding the selection of representative.

3. Paragraphs 1, 2, and 3 of Local 245's objections challenge the showing of interest submitted by Local 246 in support of its petition, and must be analyzed in conjunction with the Commission's rule having reference thereto.

N.J.A.C. 19:11-1.7 provides that the showing of interest "shall not be furnished to any of the parties. The Executive Director shall determine the adequacy of the showing of interest and such decision shall not be subject to collateral attack at a hearing before a hearing officer." Moreover, a Petitioner is not required to supply any party with a list of employees who

support the efforts of the Petitioner.

4. The showing of interest submitted by the Petitioner, on its face, is adequate to support the Petition.

In reopening the investigation, the undersigned noted that "(W)e have received no evidence to support the allegation that the signatures were fraudulently obtained." Local 245 was afforded until January 12, 1976, to provide affidavits or other evidence in support of its objections to the Commission. Additionally, all parties were informed of their obligations under N.J.A.C. 19:11-1.2 as amended, to present documentary and other evidence as well as statements of position, relating to the instant petition by January 12, 1976, and that in the absence of any substantial and material factual issue the undersigned "may thereafter issue a decision in this matter."

On January 12, 1975, Local 245 provided the Commission with numerous affidavits in support of its objections. Two types of affidavits were provided: one consisting of a six paragraph statement; and the other consisting of a five paragraph statement. The affidavits were signed, and signatures were notarized.

The six paragraph affidavit, which basically alleges forgery in the showing of interest, states:

- "1. I am an employee of the City of Jersey City.
2. I am a member of Jersey City Public Employees, Inc., Local 245.
3. I at no time signed a membership card for Jersey City Public Employees, Inc., Local 246.
4. I at no time signed a petition or any other paper to have Jersey City Public Employees, Inc. Local 246 represent me or to decertify Jersey City Public Employees, Inc., Local 245.

5. If my name appears on any Jersey City Public Employees, Inc., Local 246 card or petition it is a forgery.
6. I sign this affidavit voluntarily."

The five paragraph affidavit, alleging either forgery or misrepresentation, stated:

- "1. I am a member of Jersey City Public Employees, Inc., Local 246.
2. I at no time desired to discontinue my membership in Jersey City Public Employees, Inc., Local 245.
3. I at no time desired to become a member of Jersey City Public Employees, Inc., Local 246 and at no time wanted Jersey City Public Employees, Inc., Local 246 to represent me or the Department in which I work.
4. If my name appears on a Jersey City Public Employees, Inc., Local 246 membership card or any petition calling for Jersey City Public Employees, Inc., Local 246 to represent the Department in which I am employed, my signature is either forged or was obtained by misrepresentation and false statements.
5. This affidavit is signed by me voluntarily and of my own free will. I understand what is contained in this affidavit and sign it without being threatened or forced to do so."

The majority of the affidavits consisted of the first type.

The undersigned has caused a thorough and careful examination of the affidavits provided by Local 246 and the showing of interest provided by the Petitioner. The showing of interest presented by Local 246 consisted of individual authorization cards which read as follows:

"I hereby apply for membership in the Jersey City Public Employees, Inc., Local Union 246, and designate that organization and its subordinate bodies as my representative for purposes of collective bargaining on matter of wages, hours,

and other conditions of work. Please consider this your authority to deduct from my earnings Four Dollars (\$4.00) per month, or an amount as may be certified to you by the Union as my current monthly dues. The monthly amount deducted shall be paid to the Local Union Treasurer, as you may be directed. This authorization shall remain in effect unless terminated by me upon 1 year written notice in advance or by termination of my employment."

The cards are clearly captioned in bold print "Jersey City Public Employees, Inc. Local 246." The cards are signed by the employees and are dated. A comparison of the cards and the affidavits revealed the following. There were numerous cards presented in the showing of interest for which no corresponding affidavit was received. In the bulk of those affidavits which did overlap and which alleged forgery only, the signatures on both the cards and affidavits appear to be by the same hand. The same would appear to be true of the second type of affidavit, though the alternative allegation of misrepresentation presents an additional dimension in those documents.

Based upon the examination and signature comparison conducted, and upon all the evidence and issues presented, the undersigned makes the following observations and determinations in this matter:

Perhaps the most fundamental function of the Commission is to insure that public employees shall have and shall be protected in the full exercise of the rights guaranteed to them by the Act. N.J.S.A. 34:13A-5.3. In furtherance of this aim, the law provides



for secret ballot elections to ascertain the employees' choice of a majority representative. Elaborate procedures have also been developed for maintaining the secrecy of the vote even for employees whose ballots have been challenged. If the challenge is resolved in the voters favor, the actual ballot is combined with the total votes cast in such a way as to protect the anonymity of the voter. In these and other ways the Commission takes pains to insure that employees will not be, or feel that they are being, intimidated or coerced in the free exercise of their rights under the Act.

The Commission believes that the strict confidentiality of the showing of interest is an essential element of the protection afforded public employees. Employees must feel secure that the Commission's processes cannot be used to gain access to the names of those who may have expressed some dissatisfaction with the status quo. The holding of a full evidentiary hearing into the adequacy of the showing of interest, at any time, but especially prior to a self-determination election, would permit an objecting party to make a fishing expedition in the hope of discovering the very information which the Act is designed to protect. Even if their attempt would prove unsuccessful the very existence of the hearing could create an atmosphere potentially disruptive of the free exercise by the employees of their right to choose their majority representative.

The reason for requiring that a showing of interest accompany a representation petition is to satisfy the Commission

that sufficient interest exists to merit the processing of the petition. The showing of interest is therefore an administrative device designed for the convenience of the Commission.

Certainly, the Commission has an obligation, when the showing of interest is questioned, to satisfy itself that its processes are not being abused. But such satisfaction is a ministerial act reserved to the Commission. The object of such an investigation is not to ascertain whether the petitioning party still has the same support it did when it filed, or even to resolve each challenge to the showing of interest raised by the objecting party. The true desires of the employees involved, which is the essential question to be resolved, will best be ascertained by the holding of an election, not by drawn out evidentiary hearings.

Notwithstanding the above, it should be noted, that if the activities complained of have a serious deleterious effect on the "laboratory standards" applied to elections, the offended party is not without a remedy. N.J.A.C. 19:11-2.4(f)-(i) provides that objections can be made to the conduct of the election or to conduct affecting the results of the election, subsequent to the tallying of the ballots. An investigation into such conduct, including where necessary the holding of hearings, can be held and an appropriate remedy can be fashioned to rectify any damage which has occurred.

The undersigned has given full consideration to the evidence presented. While some doubt has been raised as to the

validity of the petitioner's showing of interest, the investigation conducted has satisfied the undersigned that the showing of interest is adequate to justify the continued processing of the petition. As stated above, an election is the preferred method for ascertaining the free choice of the employees.

In so ruling, the undersigned makes no finding on the validity of the affidavits submitted by Local 246 in support of its objection to the showing of interest. Nor is this determination in any way determinative as to their relevancy or adequacy as evidence in support of any post election objections, if such are made. The determination herein is limited to the finding that the Commission's showing of interest requirement for the initiation of a representation proceeding has been adequately met. See N.J.A.C. 19:11-1.7.

Accordingly, the undersigned directs an election in the following unit: All blue and white collar employees in the Department of Public Works and in the Division of Human Resources in the Parks and Recreation Section of the City of Jersey City, excluding craft and professional employees, managerial executives, confidential employees, police, 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 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 Rule Section 19:11-2.7, the public employer is directed to file with the undersigned an election eligibility list, consisting of an alphabetical listing of the names of all eligible voters together with their last known mailing addresses and job titles. Such list must be received 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 or not they desire to be represented for the purposes of collective negotiations by Jersey City Public Employees, Inc. Local 246 or Jersey City Public Employees, Inc. Local 245 or neither.

The majority representative shall be determined by a majority of the 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 EXECUTIVE DIRECTOR

  
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Jeffrey B. Tener  
Executive Director

DATED: Trenton, New Jersey  
February 11, 1976