

D.R. NO. 89-37

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

In the Matter of

ELIZABETH HOUSING AUTHORITY,
Public Employer,

-and-

LOCAL 6, AMALGAMATED
& INDUSTRIAL WORKERS,

Docket No. RO-89-109

Petitioner,

-and-

S.E.I.U., LOCAL 455,

Intervenor.

SYNOPSIS

The Director of Representation orders an election among certain employees of the Housing Authority of the City of Elizabeth. The Director did not find persuasive the intervenor's allegations that the petitioner is not a valid employee representative within the meaning of the New Jersey Employer-Employee Relations Act.

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Appearances:

For the Public Employer
Ann Ferguson, Personnel Officer

For the Petitioner
Robert Sparago, Representative

For the Intervenor
Edward T. Kahn, Representative

DECISION AND DIRECTION OF ELECTION

On March 21, 1989 Amalgamated Local 6, Amalgamated Industrial and Service Workers Union ("Local 6") filed a petition for Certification of Representative of Public Employee Representative with the Public Employment Relations Commission ("Commission"). By its petition, Local 6 seeks to represent a unit of all maintenance employees employed by the Housing Authority of the City of Elizabeth ("Authority"). The employees who are the

subject of the petition are presently represented by Local 455, Service Employees International Union, AFL-CIO ("Local 455"). Local 455 requested to intervene in the matter on the basis of its most recent collective negotiations agreement effective from July 1, 1987 through June 30, 1989. We grant intervenor status to Local 455. N.J.A.C. 19:11-2.7(a) The petition appears to be timely filed.^{1/} The Authority consents to a secret ballot election. The intervenor Local 455 refuses to consent to an election because it alleges that Local 6 is not a valid employee representative within the meaning of the New Jersey Employer-Employee Relations Act ("Act").

We have conducted an administrative investigation into the issues. On May 4, 1989 we wrote to the parties, informing them of our findings, and intention to order an election in this matter.^{2/} On May 24, 1989 we received Local 455's response. Based upon our investigation, we make the following findings:

1/ N.J.A.C. 19:11-2.8(c) provides:

During the period of an existing written agreement containing substantive terms and conditions of employment and having a term of three years or less, a Petition for Certification of Public Employee Representative...normally will not be considered timely filed unless:

2. In a case involving employees of a...municipal authority...the petition is filed not less than 90 days and not more than 120 days before the expiration or renewal date of such agreement.

2/ Our letter provided the parties with seven days to submit additional material facts which might change our initial determination. On both May 15 and 17, 1989, Local 455 requested and received extensions of time in which to file its response.

1. The disposition of this matter is properly based upon our administrative investigation, as we have not found any substantial and material factual disputes which may more appropriately be resolved at a hearing. N.J.A.C. 19:11-2.6(c).

2. The Authority and Local 455 have a written collective negotiations agreement covering the period from July 1, 1987 through June 30, 1989. The recognition paragraph states: "The Authority hereby recognized the UNION as the exclusive negotiating representative of the maintenance employees of the Authority, exclusive of administrative and supervisory employees."

3. The petitioner, Local 6 submitted a statement certifying that it represents employees as to wages, hours and other terms and conditions of employment, and that it seeks to represent the employees who are the subject of the petition here as to wages, hours, and other terms and conditions of employment.

4. The petitioner and intervenor are employee representatives within the meaning of the Act and are subject to its provisions.

5. Local 455 has sought information concerning the legitimacy of Local 6 as an organization appropriate for collective negotiations. Local 455 states that Local 6's address is nothing more than an answering service. Local 455 has discovered no filings with the U.S. Department of Labor, nor has it provided us with any adverse information about Local 6.

ANALYSIS

Local 455 alleges that Local 6 is not a valid employee representative within the meaning of the Act and refuses to consent to a secret ballot election. Local 455 presented no factual evidence to support this assertion. Local 455 misconstrues the applicability of U.S. Department of Labor policy and rules to New Jersey's public sector labor organizations. The Act does not impose any filing or registration requirements upon such organizations. It does not require a physical office, or require that such organizations have or disclose prior or existing negotiations agreements, including benefits funds.^{3/}

N.J.S.A. 34:13A-3(e) states:

[the term employee representative] shall include any organization, agency, or person authorized or designated by a public employer, public employee, group of public employees, or public employee association to act on its behalf and represent it or them.

In prior decisions considering a petitioner's organizational structure, the Commission has interpreted the Act's requirements to allow for a wide range of appropriate structures.^{4/} In Camden Police Department, P.E.R.C. No. 82-89, 8

^{3/} The Act has been amended five times since its passage in 1968 and in no instance has the legislature mandated registration/reporting requirements of the type implied by intervenor here.

^{4/} This is consistent with those policies underlying the Act which permit organization of all public employees who desire collective negotiations. N.J.S.A. 34:13A-2.

NJPER 226 (¶13094 1982), the Commission explained, "we particularly emphasize that a petitioner is not required to have certain attributes in order to file a representation petition. N.J.S.A. 34:13A-3(e). It is only required not to have an illegal structure. Beyond enforcing the Act's specific prohibitions, we will not interfere in a petitioner's internal affairs." 8 NJPER at 227, n. 2.

Here, there is only an allegation of illegal structure, unsupported by facts or by reference to any requirement of the Act. Local 455's proffer merely shows it doubts the validity of Local 6, based on its research. Although Local 455 contends that Local 6 is not a proper organization to represent employees, We do not agree. Such a conclusion runs counter to the important public policy of affording the widest opportunity to public employees to choose their own representatives.

Based upon the petitioner's certification of purpose, the requirements of the Act at subsection 13-3(e), and in the absence of any information to the contrary, we find that Local 6 is an employee representative within the meaning of the Act. Accordingly, we order the conduct of an election, pursuant to the petition, in the historical unit described in the above-cited recognition agreement. The unit shall consist of:

Included: All full and regular part-time maintenance employees employed by the Housing Authority of the City of Elizabeth.

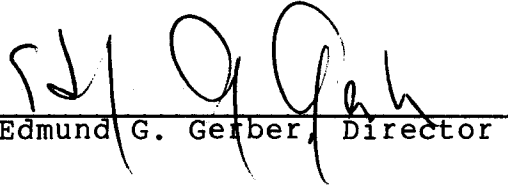
Excluded: All other employees, professional employees, managerial executives, police, craft, confidential employees, fire fighters, supervisors within the meaning of the Act, and all employees in other negotiations units.

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: June 7, 1989
Trenton, New Jersey