

D.R. NO. 92-11

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

In the Matter of

COUNTY OF MONMOUTH,

Public Employer,

-and-

LOCAL 702,
PUBLIC EMPLOYEES SERVICE UNION,

Docket No. RO-92-65

Petitioner,

-and-

LOCAL 11, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS,

Intervenor.

SYNOPSIS

The Director of Representation orders an election among the County's blue-collar workers. The Director rejects arguments that the showing of interest is stale and that the Petitioner is not qualified to represent employees because of its business agent's alleged criminal conviction. The Director also finds that the incumbent organization's unfair practice charges alleging discriminatory access to the employees is not supported and should not block the processing of the petition to an election.

D.R. NO. 92-11

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

In the Matter of
COUNTY OF MONMOUTH,

Public Employer,

-and-

LOCAL 702,
PUBLIC EMPLOYEES SERVICE UNION,

Docket No. RO-92-65

Petitioner,

-and-

LOCAL 11, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS,

Intervenor.

Appearances:

For the Public Employer
Robert J. Hrebek, Assistant County Counsel

For the Petitioner
Robert J. Feeney, Business Agent

For the Intervenor
Schneider, Cohen, Solomon, Leder & Montalbano, attorneys
(Bruce D. Leder, of counsel)

DECISION AND DIRECTION OF ELECTION

On October 2, 1991, Local 702, Public Employees Service Union ("Local 702") filed a Petition for Certification of Public Employee Representative with the Public Employment Relations Commission ("Commission"). Local 702 seeks to represent a unit of

blue-collar employees employed by Monmouth County ("County").^{1/}
The petitioned-for employees are presently represented by Local 11, International Brotherhood of Teamsters ("IBT"). IBT intervened in this matter by submitting a copy of its current contract with the County covering the blue-collar unit. N.J.A.C. 19:11-2.7.

There are approximately 300 employees in the blue-collar unit. These employees are in the Departments of Highways, Public Buildings and Grounds, Traffic Safety and Engineering, Central Motor Pool, Bridge Maintenance, Shade Tree, Senior Citizens Alternative Transportation (SCAT), and the Reclamation Center.

The current contract covering this unit expires December 31, 1991. Local 702's petition was timely filed. See N.J.A.C. 19:11-2.8. Local 702 seeks an election among employees in the existing blue-collar unit.^{2/}

The County does not consent to an election. It asserts that the petition is not supported by a legitimate showing of interest as required by the Commission's rules. It also argues that

^{1/} This petition replaces an earlier petition (Docket No. RO-92-52) Local 702 filed on August 29, 1991, seeking only reclamation center employees.

^{2/} On November 4, 1991, Local 702 filed unfair practice charges (Docket Nos. CO-92-133 and CO-92-134) alleging that the County violated N.J.S.A. 34:13A-5.4(a)(1), (2), (3) and (5) by threatening employees with loss of benefits if they elected Local 702 as their bargaining representative, and by directing shop stewards to attend a negotiations session between the County and the IBT after Local 702 filed its representation petition. However, Local 702 has requested that these charges not block the processing of this petition to an election.

the petition is "tainted" and should be dismissed because it alleges Local 702's business agent and organizer has a criminal conviction which should bar his union involvement.

IBT also refuses to consent to an election. IBT filed an unfair practice charge against the County on October 15, 1991, (Docket No. CO-92-109) alleging that the County illegally assisted Local 702's representation campaign by permitting Local 702 representatives to meet with County employees during work time. IBT argues that its charge should block further processing of the election petition. IBT also asserts that the showing of interest submitted by Local 702 in support of its petition is stale and/or improperly dated. IBT and the County both urge the petition's dismissal.

I have conducted an administrative investigation pursuant to N.J.A.C. 19:11-2.6(b). The disposition of this matter is properly based upon the administrative investigation. I have not found any substantial and material factual disputes which may be more appropriate for a formal hearing. N.J.A.C. 19:11-2.6(b). The investigation found the following facts:

The Showing of Interest Issue

The County and the IBT contend that Local 702's petition is not supported by an adequate showing of interest as required by the Commission's rules. N.J.A.C. 19:11-1.2(a)(8) requires that "...petitions for certification of public employee representative shall be accompanied by a showing of interest as defined in N.J.A.C.

19:10-1.1(a)(25) of not less than thirty (30) percent of the employees in the unit alleged to be appropriate." N.J.A.C.

19:10-1.1 defines showing of interest as:

...a designated percentage of public employees in an allegedly appropriate negotiations unit or a negotiations unit found to be appropriate, who are members of an employee organization or have designated it as their exclusive negotiations representative....When requesting certification, such designations shall consist of authorization cards or petitions, signed and dated by employees normally within six months prior to the filing of the petition, authorizing the employee organization to represent such employees for the purpose of collective negotiations....

The County and IBT maintain that the showing of interest submitted by Local 702 was collected from the employees more than six months prior to the filing of this petition. The IBT also asserts that the cards were dated sometime after they were signed by someone other than the employees.

N.J.A.C. 19:11-2.1 provides: "The Director of Representation shall determine the adequacy of the showing of interest and such decision shall not be subject to collateral attack."

In Jersey City Medical Center, D.R. No. 83-19, 8 NJPER 642 (¶13308 1982), the then Director of Representation stated:

The submission of a showing of interest by a petitioner is an administrative requirement for the purpose of ensuring that sufficient interest exists among employees on behalf of the petitioner to warrant the expenditure of Commission resources in processing the petition. It is uniquely an administrative concern, and questions relating to its validity must be raised in a proper manner. Unless good cause exists to

the contrary, challenges questioning the validity of a showing of interest are to be raised prior to the informal conference and should be embodied in the challenging party's response to the Commission's initial request for positional statements.

Consistent with N.J.A.C. 19:11-2.1, the undersigned engages in a separate review of claims regarding the propriety of the showing of interest. Documentary and other evidence in support of such claims shall be filed within 72 hours of the raising of the challenge.
(Footnotes omitted)

IBT first raised its challenge to the showing of interest by letter of October 22, after the October 15, 1991 informal conference. IBT Business Agent Donald Krauchuk asserts in an affidavit that he was told by unnamed employees of the County Reclamation Center that Local 702 secured signed authorization cards from Reclamation Center employees in February, 1991.

We have reviewed the showing of interest submitted by Local 702 in support of its petition, and checked the showing against the employer's payroll list. The showing of interest signed by employees within six months of this petition's filing meets the 30 percent requirement of N.J.A.C. 19:11-1.2(a)(8). I find that there is sufficient showing of interest to support Local 702's petition for an election.

The Blocking Charge Issue

IBT argues that the representation petition should not be processed until its unfair practice charge has been processed. The IBT's charge alleges that the County assisted Local 702's organizing efforts by permitting its representatives to meet with County employees during work time.

The filing of an unfair practice charge or even the issuance of an unfair practice complaint will not automatically block the processing of a representation petition. A blocking charge procedure is not required by the Act or the Commission's Rules. The decision on whether an unfair practice charge should block a representation petition is a matter within our discretion. State of New Jersey, D.R. No. 81-34, 7 NJPER 209 (¶12093 1981), req. for rev. den. P.E.R.C. No. 81-127, 7 NJPER 256 (¶12115 1981). State of New Jersey set forth the legal standards for determining when we would permit an unfair practice charge to block a representation petition. Procedurally, the charging party must first request that the charge block the representation proceedings. Second, it must submit documentary evidence in the representation forum establishing the basis for the claim that the conduct underlying the unfair practice prevents a free and fair election. Where the charging party proffers such evidence, the Director will exercise his discretion to block if, under all of the circumstances presented, the employees could not exercise their free choice in an election. See Village of Ridgewood, D.R. No. 81-17, 6 NJPER 605 (¶11300 1980). In State of New Jersey, the Commission adopted the following factors in evaluating whether a fair election can be conducted during the pendency of the unfair practice charge:

The character and the scope of the charge(s) and its tendency to impair the employee's free choice; the size of the working force and the number of employees involved in the events upon which the charge is based; the entitlement and interests of the employees in an expeditious

expression of their preference for representation; the relationship of the charging parties to labor organizations involved in the representation case; a showing of interest, if any, presented in the R[epresentation] case by the charging party; and the timing of the charge. [NLRB Case Handling Manual, Section 11730.5]

On the basis of the investigation and supporting affidavits from IBT and Local 702, I see no basis to conclude that the conduct alleged in the IBT's charge will interfere with the conduct of a free and fair election. Blocking effect is not accorded to the IBT's charge.

There is no support for the IBT's contention that the County assisted Local 702's organizing drive by granting preferential or unequal employee access to Local 702 representatives. First, there is no direct evidence that Local 702 met with employees on County time. Affidavits the IBT submitted are based on the hearsay of unnamed sources. Assuming Local 702 met with workers during work time, there is no evidence that the County was aware of or sanctioned such meetings on work time. Local 702 states that it did not meet with employees on work time and that the County never gave it permission to meet with employees. The County states that it did not permit Local 702 representatives access to employees. No evidence has been submitted showing how or by whom the County granted access to Local 702 representatives.

The County states that neither organization asked for nor was granted permission to campaign during work hours at the work place and if either union was able to gain access to the workers, it was without the employer's permission.

It does appear that, through the cooperation of the IBT shop stewards, Local 702's representatives simply walked into County facilities and talked to employees on break time without permission from the County.

In Union County Regional Board of Education, P.E.R.C. No. 76-17, 2 NJPER 50 (1976), and County of Bergen, P.E.R.C. No. 84-2, 9 NJPER 451 (¶14196 1983), the Commission found that during an representation campaign period, employee organizations are entitled to equal access to employees. A claim of unequal access will only be sustained when one organization shows that it made a request for but was denied the access granted to another organization. Ocean County, D.R. No. 86-25, 12 NJPER 511 (¶17191 1986).^{3/}

The IBT has not demonstrated that the County permitted Local 702 representatives access to County employees or that the IBT was denied, or even requested similar access.^{4/}

^{3/} Ocean County cited LaPointe Machine Tool Company, 113 NLRB 172, 36 LRRM 1273, 1274 (1955), where the NLRB held that

It is not an interference with an election to permit one of two unions to solicit support on company time and property where there is no showing that the other union involved had requested, and had been denied similar privileges.

^{4/} We also note that, while the IBT asserts that pursuant to its contract it was only permitted access to the employees' work facilities in order to process grievances, the affidavits submitted by Local 702 and signed by IBT shop stewards all indicate that, notwithstanding this contract restriction, IBT representatives enjoyed regular and unrestricted access to employees during the work day.

Challenge to PESU's Business Agent

The County asserts that Local 702's petition for certification is tainted by the alleged criminal conviction of one of its business agents. The County asserts that the business agent is prohibited from serving in any capacity as an agent of the union by the Labor-Management Reporting and Disclosure Act ("LMRDA"), 29 U.S.C., Section 504.

This Commission does not have jurisdiction over alleged violations of the LMRDA.^{5/} N.J.S.A. 34:13A-3(e) defines an employee representative:

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.

Local 702 has been authorized by certain Monmouth County employees to represent them for purposes of collective negotiations. We will not investigate or interfere in a petitioner's internal affairs except as to enforce the specific requirements and prohibitions of our Act. Camden Police Department, P.E.R.C. No. 82-89, 8 NJPER 226 (¶13094 1982); Passaic County, D.R. No. 89-32, 15 NJPER 265 (¶20113 1989). Accordingly, I find that

5/ Employee organizations which limit membership to employees of state, county and municipal employers and subdivisions thereof are not subject to the jurisdiction of the LMRDA. Local 1498 v. Federation of Govt. Employees, 522 F.2d 486 (3d Cir. 1975); New Jersey County and Municipal Council 61 v. State, County and Municipal Employees, 478 F.2d 1156 (3d Cir. 1973), cert. den 414 U.S. 975 (1973). No evidence indicates Local 702 represents private sector employees.

Local 702 is an employee representative within the meaning of our Act and is a valid petitioner in the instant matter.

I find that the petition is valid, is supported by an adequate showing of interest and seeks an election in an appropriate unit. Therefore, I direct that an election be conducted among the employees in the petitioned-for unit comprised as follows:

Included: All regularly employed blue collar employees of Monmouth County in the Departments of Highways, Public Buildings and Grounds, Traffic Safety and Engineering, Central Motor Pool, Bridge Maintenance, Shade Tree, Senior Citizens Alternative Transportation (SCAT), and the Reclamation Center.

Excluded: Confidential employees, managerial executives, police, clerical employees, professionals and supervisors within the meaning of the Act.

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.

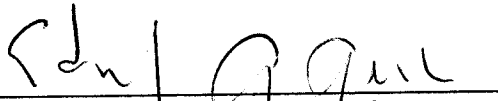
Pursuant to N.J.A.C. 19:11-9.6, the public employer is directed to file with us an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the

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. I 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 they wish to be represented for collective negotiations by Local 702, IBT Local 11, or no representative.

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: January 7, 1992
Trenton, New Jersey