

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

In the Matter of

NEWARK HOUSING DEVELOPMENT &  
REHABILITATION CORPORATION,

Public Employer,

-and-

DOCKET NO. RO-79-47

SERVICE EMPLOYEES INTERNATIONAL  
UNION, LOCAL 617,

Petitioner.

SYNOPSIS

The Director of Representation, based upon an administrative determination, dismisses a Petition for Certification of Public Employee Representative with respect to the employees of the Newark Housing Development and Rehabilitation Corporation, finding that the Corporation is not a public employer within the meaning of the Act. Although the Corporation receives federal funding through a contract with the City of Newark, the Corporation maintains substantial control of labor relations affecting its employees. The Corporation is chartered as a private non-profit Corporation, designates its own directors, and hires and fires its own employees.

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UNION, LOCAL 617,

Petitioner.

Appearances:

For the Public Employer  
Oliver Lofton, Esq.

For the Petitioner  
Rothbard, Harris & Oxfeld  
(Sanford R. Oxfeld, of Counsel)

DECISION

On September 5, 1978, 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 the Service Employees International Union, Local 617 ("Local 617"). Local 617 seeks to represent a proposed collective negotiations unit consisting of clerical and professional employees employed by the Newark Housing Development and Rehabilitation Corporation (the "Employer" or the "Corporation"). The Corporation claims that it is not a "public employer" and,

therefore, subject to the jurisdiction of the Commission.

The undersigned has caused an administrative investigation to be conducted into the matters concerning the Petition in order to determine the facts. Based upon the 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 disputed factual issues exist which may more appropriately be resolved at a hearing. Pursuant to N.J.A.C. 19:11-2.6(c), 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. Service Employees International Union, Local 617 is an employee representative within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), and is subject to the provisions of the Act.

3. Local 617 is seeking to represent in one unit all clerical and professional employees employed by the Corporation.

4. A Commission staff agent convened an informal conference with the parties on October 19, 1978. At the conference, the Employer asserted that the Commission did not have jurisdiction in this matter since the Corporation was not a public employer within the meaning of the Act. Local 617 contended that the Corporation was a public employer subject to the Commission's jurisdiction.

Pursuant to an agreement reached at the October conference, Local 617 filed a petition with the National Labor Relations Board

(the "NLRB") seeking the same unit as petitioned for herein. The instant Petition was held in abeyance. By letter dated October 27, 1978, the Regional Director of the NLRB declined jurisdiction over the Corporation based upon a finding that the Corporation was too closely aligned with the City of Newark, which was exempt from NLRB jurisdiction.

In a letter dated October 30, 1978, Local 617 argued that the NLRB's denial of jurisdiction over the Corporation established that the Corporation was a public employer and, therefore, subject to the jurisdiction of the Commission. By correspondence dated November 16, 1978, the Corporation stated continued adherence to its position that it was not a public employer within the meaning of the Act.

On February 1, 1979, the undersigned directed further investigation. A conference was convened on February 15, 1979, at which both parties reiterated their positions. By letter dated February 16, 1979, the assigned staff agent submitted interrogatories to the parties requesting additional information. The Employer responded to the interrogatories on March 2, 1979, but Local 617 relied upon the information previously submitted.

Thereafter, another informal conference was conducted in this matter on March 19, 1979, at which additional information regarding the public employer issue was obtained. On April 6, 1979, Local 617 was provided an opportunity to submit additional information in this matter.

5. Insofar as there is a dispute among the parties as to whether the Corporation is a public employer, the instant matter is properly before the undersigned for this threshold determination. Local 617 alleges that "the issue as to whether or not the Newark Housing Development and Rehabilitation Corp. is a public employer is now res judicata ... " The Corporation argues that the Commission should reach its own conclusions based upon its own investigation regarding the public employer issue and not rely on the decision issued by the NLRB. <sup>1/</sup>

6. The Corporation submitted considerable documentary information regarding its relationship with the City of Newark and its employment relationship with the personnel involved herein. This information reveals the following:

(a) The Corporation is incorporated as a private, non-profit corporation. The purpose of the Corporation is to stimulate private home ownership, and rehabilitation of property within the City of Newark, and to render technical assistance to housing developers. The Corporation solicits federal and private operating funds.

(b) The Corporation is a party to a written agreement with the City of Newark. One purpose of the agreement is to permit

<sup>1/</sup> The undersigned is not inclined to accept the Board's letter decision as res judicata in a PERC proceeding either as to the facts or legal conclusions. The Board and PERC interpret different statutory enactments. Moreover, the Commission, in a representation matter posing the question herein, is engaged in a nonadversarial "quasi legislative" investigatory proceeding in which the Commission's policy is to insure that findings are made upon as full a factual record as can be developed. The undersigned, further, is not persuaded by Local 617's premise that if the Board declines to assert jurisdiction over an employer because of its relationship to a governmental entity, the conclusion follows that the former must be a "public employer" within the meaning of the New Jersey Employer-Employee Relations Act.

the Corporation to obtain federal funds through the City of Newark and to insure that the Corporation provides the consultant services as detailed therein. The City exercises limited auditing control over the federal money obtained through this process.

(c) The Corporation's Board of Directors are not selected by the Mayor of the City of Newark. Rather, the Board elects additional Directors when vacancies occur after soliciting recommendations from various community groups, the business community and the Mayor of Newark.

(d) The Corporation pays rent to the City of Newark for its office space.

(e) The Chief executive officer of the Corporation hires, fires and directs the employees of the Corporation. None of the personnel are hired by the City of Newark.

(f) The Mayor's Policy and Development Office of the City of Newark does not have the right to approve or disapprove hiring.

(g) All employees are paid with checks of the Corporation.

(h) The hours, vacations, sick-time and benefits of the employees are fixed by the chief executive officer of the Corporation and the Corporate Board of Directors.

(i) The Corporation pays the full benefit package for its employees.

(k) There is no interchange of supervision between the City of Newark and the Corporation.

(l) The Corporation does not have a pension plan for its employees and its employees are not entitled to be part of

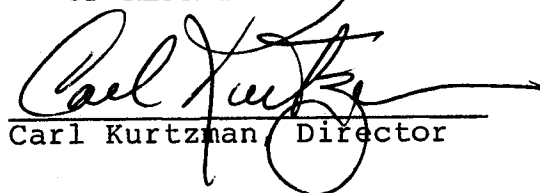
the state pension system.

7. On July 9, 1979, the undersigned advised the parties that the specific evidence proffered to date did not appear to place in dispute any substantial and material factual issues and that, based upon the investigation, it appeared that the Corporation is not a public employer within the meaning of the Act. The parties were advised that the facts reveal that the employer is a private, nonprofit corporation. Additionally, the investigation establishes that the Corporation exercises substantial control over labor relations affecting the employees involved herein, and, furthermore, this control is not subject to City of Newark review. Therefore, the undersigned observed that it would appear that the Commission lacks jurisdiction over the Corporation and Corporation employees.

The parties were provided an additional opportunity to present any other documentary evidence or statements of position relating to this matter, and advised that in the absence of any substantial and material disputed factual issues, the undersigned would thereafter issue a decision dismissing the Petition. No further documentation or statements of position have been provided to the Commission.

Accordingly, for the reasons stated above, the undersigned determines that the Newark Housing Development and Rehabilitation Corporation is not a public employer within the meaning of N.J.S.A. 34:13A-3(c), and the instant Petition is hereby dismissed.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Carl Kurtzman, Director

DATED: July 20, 1979  
Trenton, New Jersey