

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MIDDLETOWN TOWNSHIP,  
Respondent,  
-and-  
IUE LOCAL 417,  
Petitioner.

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Docket No. RO-2000-22

MIDDLETOWN TOWNSHIP,  
Respondent,  
-and-  
IUE LOCAL 417,  
Petitioner.

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Docket No. RO-2000-23

MONMOUTH COUNTY SHERIFF'S  
OFFICE,  
Respondent,  
-and-  
IUE LOCAL 417,  
Petitioner.

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Docket No. RO-2000-24

FREEHOLD TOWNSHIP,  
Respondent,  
-and-  
IUE LOCAL 417,  
Petitioner.

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Docket No. RO-2000-25

MIDDLETOWN TOWNSHIP,  
Respondent,  
-and-  
IUE LOCAL 417,  
Petitioner.

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Docket No. RO-2000-27

MONMOUTH COUNTY RECLAMATION  
CENTER,  
Respondent,  
-and-  
IUE LOCAL 417,  
Petitioner.

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Docket No. RO-2000-28

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MONMOUTH COUNTY,  
-and- Respondent,  
IUE LOCAL 417, Docket No. RO-2000-29  
Petitioner.

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MONMOUTH COUNTY,  
-and- Respondent,  
IUE LOCAL 417, Docket No. RO-2000-30  
Petitioner.

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COLTS NECK TOWNSHIP,  
-and- Respondent,  
IUE LOCAL 417, Docket No. RO-2000-32  
Petitioner.

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SYNOPSIS

The Public Employment Relations Commission denies the request of OPEIU, Local 32 for review. The Director of Representation denied Local 32's request to intervene in representation petitions filed by IUE Local 417 seeking to represent various employees in Middletown Township, Monmouth County Sheriff's Office, Freehold Township, Monmouth County, Monmouth County Reclamation Center and Colts Neck Township. These parties were previously represented by PESU Local 702. OPEIU claims that since PESU and OPEIU merged, OPEIU should be treated as the majority representative. The Commission concludes that on this record, there is little or no reason for believing that the employees in these negotiations units view OPEIU Local 32 as their chosen majority representative or that OPEIU Local 32 is essentially the same representative as PESU Local 702 and therefore entitled to stand in its shoes.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

P.E.R.C. NO. 2000-47

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Docket No. RO-2000-32

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Appearances:

For the Petitioner, IUE Local 417, Thomas Fagan, IUE Staff Representative

For the Respondent, Middletown Township, Dowd & Reilly, attorneys (Richard C. Leahey, of counsel)

For the Respondent, Monmouth County Sheriff's Office, Robert J. Hrebek, Assistant County Counsel

For the Respondent, Freehold Township, Dorf & Dorf, attorneys (Gerald L. Dorf, of counsel)

For the Respondent, Colts Neck Township, Stanton, Hughes, Diana, Salsberg, Cerra & Mariani, attorneys (Richard M. Salsberg, of counsel)

For the Movant for Intervention, OPEIU Local 32, Weissman & Mintz, attorneys (Mark Rosenbaum, of counsel; Steven P. Weissman and Colin M. Page, on the brief)

DECISION

The Office and Professional Employees International Union, Local 32 ("OPEIU Local 32") has requested review of an administrative decision of the Director of Representation. The Director denied its request to intervene in the above-captioned representation proceedings. We deny review.

The Public Employees Service Union, Local 702 ("PESU Local 702") was the majority representative of various negotiations units of employees employed by Middletown Township, Monmouth County Sheriff's Office, Freehold Township, Monmouth County, Monmouth County Reclamation Center, and Colts Neck Township. In September 1999, the International Union of Electronic, Electric, Salaried, Machine and Furniture Workers, AFL-CIO, Local 417 ("IUE Local 417") filed nine representation petitions seeking to become the new majority representative of employees in those negotiations units.

OPEIU Local 32 sought to intervene in the representation proceedings pursuant to N.J.A.C. 19:11-2.7(a). Rather than filing showings of interest pursuant to that rule, it claimed that PESU Local 702 and OPEIU Local 32 had merged and that OPEIU Local 32 was now entitled to be treated as the majority representative. IUE Local 417 opposed that request, asserting that the merger was invalid and that OPEIU was not the majority representative. PESU Local 702 did not seek to intervene in these proceedings.

The Director of Representation investigated the petition. On October 15, 1999, he wrote the parties a letter denying OPEIU Local 32's request to intervene. He found that the standards for intervention set by N.J.A.C. 19:11-2.7(a) had not been satisfied. That regulation provides, in part:

No employee organization will be permitted to intervene in any proceeding to resolve a question concerning the representation of employees unless it has submitted a showing of interest of not less

than 10 per cent of the employees in the unit involved in the petition or has submitted a current or recently expired agreement with the public employer covering any of the employees involved. An employee organization will be permitted to intervene in a proceeding to resolve a question concerning the representation of public employees if it is currently certified or recognized in accordance with N.J.A.C. 19:11-3.1 (Recognition as exclusive representative)....

Specifically, OPEIU Local 32 was not currently certified as the majority representative since the certification issued to PESU Local 702 had not been amended in accordance with N.J.A.C. 19:11-1.6. Nor had OPEIU Local 32 been recognized as the majority representative in accordance with N.J.A.C. 19:11-3.1. Nor had OPEIU Local 32 submitted any contract naming it as the majority representative of any employees in these units. While OPEIU Local 32 argued that its alleged merger with PESU Local 702 nevertheless entitled it to intervene as the majority representative, the Director rejected that argument. He found that OPEIU Local 32 had not given union members notice of the merger, an opportunity to discuss merger issues, or an opportunity to vote on the merger; and that OPEIU Local 32 had not shown continuity of representation between itself and PESU Local 702. The Director relied upon private sector cases for determining whether an employee organization that has affiliated or merged with a majority representative should be accorded the same status as the prior majority representative, entitled to bargain with the employer, and/or entitled to have a certification amended to reflect the name change.

See Sullivan Brothers Printers, Inc., 317 NLRB 561, 149 LRRM 1217 (1995); Quality Inn Waikiki, 297 NLRB 497, 133 LRRM 1078 (1984); see also In re Bridgewater Tp., 95 N.J. 235, 240-241 (1984); Lullo v. IAFF, 55 N.J. 409, 429 (1970) (approving reliance on NLRB cases in deciding cases not turning on negotiability issues).

On October 20, 1999, OPEIU Local 32 requested review of the Director's decision to deny intervention and a stay of representation proceedings until it was decided whether review would be granted. IUE Local 417 opposed these requests.

On October 22, 1999, OPEIU Local 32 filed an Article XX charge against IUE Local 417 with the AFL-CIO. This charge asked the AFL-CIO to bar one AFL-CIO affiliate, IUE Local 417, from raiding negotiations units allegedly represented by another AFL-CIO affiliate, OPEIU Local 32. If that no-raiding claim were upheld, IUE Local 417 could be required to withdraw its representation petitions or face AFL-CIO sanctions.

On October 25, 1999, the president of the AFL-CIO and OPEIU Local 32 asked the Director to defer representation proceedings for 30 days so that the Article XX dispute could be resolved. On October 26, the Director granted that request, consistent with agency practice. State of New Jersey, D.R. No. 81-20, 7 NJPER 41, 48 (¶12019 1980). On October 27, the Chair notified the parties that the requests for review and a stay would be held in abeyance for 30 days.



By letter dated November 15, 1999, OPEIU withdrew its Article XX, Section 2 charges. The president of the AFL-CIO in turn withdrew his request for an Article XX deferral.<sup>1/</sup>

On November 29, 1999, the Acting Director of Representation notified the parties that staff agents would soon contact IUE Local 417 and the employers to make new election arrangements. IUE Local 417 and the employers had entered previous consent election agreements setting election dates, but the Article XX proceedings began before the Director decided whether to approve those agreements. The election dates in these agreements were no longer feasible. New consent agreements setting new election dates have since been entered and approved in each unit.

On November 30, 1999, the Chair denied OPEIU Local 32's request for a stay and informed the parties that the Commission would consider the request for review at its December 16 meeting.

On December 13, 1999, OPEIU Local 32 requested oral argument. We deny that request. The issues have been fully briefed.

N.J.A.C. 19:11-8.2 sets forth the grounds for determining whether to grant a request for review. This regulation states:

A request for review will be granted only for one or more of these compelling reasons:

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<sup>1/</sup> OPEIU Local 32 asked the president to reconsider that withdrawal because charges under section 5 of Article XX remain pending; that section prohibits AFL-CIO affiliates from disparaging each other during an organizational campaign. The president denied that request.

1. A substantial question of law is raised concerning the interpretation or administration of the Act or these rules:
2. The Director of Representation's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of the party seeking review.
3. The conduct of the hearing or any ruling made in connection with the proceeding may have resulted in prejudicial error; and/or
4. An important Commission rule or policy should be reconsidered.

This case presents this question: under the circumstances presented, can a union created by an alleged merger of two unions intervene in a representation proceeding based on a claim that it enjoys the official status of a majority representative previously enjoyed by one of those two unions?

Having considered the parties' arguments and the record, we are satisfied that the Director of Representation correctly analyzed the circumstances presented and that no substantial question of law or fact warrants review or interruption of the scheduled elections. PESU Local 702 was an independent organization, unaffiliated with the AFL-CIO. As a result of the merger, it was dissolved. OPEIU Local 32 is a different and much larger organization. OPEIU Local 32 took none of the steps it could have taken to attempt to secure the official status of majority representative enjoyed by PESU Local 702 before its dissolution. It did not secure recognition from public employers in accordance with N.J.A.C. 19:11-3.1; had it attempted to do so, the public employees in these negotiations units

would have been publicly notified of that attempt. Nor did OPEIU Local 32 petition for an amendment of any certifications issued to PESU Local 702; had it attempted to do so, it would have been required to show that the PESU Local 702 members in these negotiations units had been given notice of the merger and an opportunity to discuss and vote on the merger and that there was continuity of representation between it and PESU Local 702. OPEIU Local 32 has submitted no contracts naming it as the majority representative and no cards authorizing dues deductions in its name as opposed to PESU Local 702. It has also abandoned its Article XX no-raiding claim, a claim that required it to prove that it had been recognized or certified as the majority representative. On this record, there is little or no reason for believing that the employees in these negotiations units view OPEIU Local 32 as their chosen majority representative or that OPEIU Local 32 is essentially the same representative as PESU Local 702 and therefore entitled to stand in its shoes.

Our decision does not decertify OPEIU Local 32 because it was never certified. Nor does it have an unduly harsh effect. N.J.A.C. 19:11-2.7 permits an employee organization to intervene on the basis of a 10% showing of interest among the employees in a negotiations unit. OPEIU Local 32 has had several months in which to submit such showings of interest. N.J.A.C. 19:11-2.7(c).<sup>2/</sup>

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<sup>2/</sup> In fact, OPEIU Local 32 has submitted a sufficient showing of interest in the Monmouth County matter (Dkt. No. RO-2000-29) and will participate in that election.

Compare Western Commercial Transport, Inc., 288 NLRB No. 27, 127 LRRM 1313 (1988) (new organization resulting from affiliation must establish its status as bargaining representative through same means any labor organization must use in the first instance).

ORDER

The request for review of the administrative decision denying intervention is denied.

BY ORDER OF THE COMMISSION



Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, Madonna, McGlynn, Muscato and Ricci voted in favor of this decision. None opposed.

DATED: December 16, 1999  
Trenton, New Jersey  
ISSUED: December 17, 1999