

P.E.R.C. NO. 90-45.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOUTH JERSEY PORT CORPORATION,

Respondent,

-and-

WATCHMENS AND GUARDS UNION,
AFL-CIO,

Docket Nos. CE-89-21
CO-H-89-61
RD-90-2

Charging Party.

SYNOPSIS

The Public Employment Relations Commission grants the South Jersey Port Corporation's request for review of the Director of Representation's decision to allow certain unfair practice charges to block the processing of a decertification petition. A party seeking a block must submit documentary evidence that the conduct underlying the alleged unfair practice prevents a free and fair election. The case is remanded to the Director so that Watchmens and Guards Union, AFL-CIO, can submit the required documentary evidence.

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Appearances:

For the Respondent, Apruzzese, McDermott, Mastro & Murphy,
Esqs. (Maurice J. Nelligan, Jr., of counsel)

For the Charging Party, O'Donnell & Schwartz, Esqs.
(Catherine J. Minuse, of counsel)

DECISION AND ORDER

On October 16, 1989, the South Jersey Port Corporation requested review of the Director of Representation's decision to allow certain unfair practice charges to block the processing of a decertification petition. N.J.A.C. 19:11-8.1. The Corporation claims that it took no position on the block because it was not requested to do so; the Watchmens and Guards Union submitted no required documentary evidence to support its request for a block; the Director has no authority to block the processing of a decertification petition, and the guards have not had a wage increase since January 1988.

On October 26, 1987, the Union filed a reply. It states that it will submit whatever documentation the Commission requests; that the Commission is well within its authority in implementing the

blocking charge doctrine and that it would be happy to negotiate a pay raise for guards.

We recently reviewed the Director's decision to block the processing of a representation petition during the pendency of a related unfair practice charge. Matawan-Aberdeen Reg. Sch. Dist., P.E.R.C. No. 89-69, 15 NJPER 68 (¶20025 1988). We noted that the party seeking a block must submit documentary evidence that the conduct underlying the alleged unfair practice prevents a free and fair election. Id. at 68.

Here the Director did not request that the union submit the required documentary evidence. That evidence must be reviewed before a decision on blocking can be made. The request for review is granted and the matter is remanded to the Director for proceedings consistent with this decision.^{1/}

^{1/} N.J.A.C. 19:11-2.6 grants the Director of Representation the authority to direct an election when, among other things, it appears to him that "the policies of the Act...will be effectuated thereby, and that an election will reflect the free choice of the employees in the appropriate unit." Cf. Columbia Pictures Corp., 8 NLRB 1313, 1314-15, 23 LRRM 1504 (1949). The standards to be applied in evaluating requests to block elections were developed through the adjudication of representation disputes and ensure that such decisions will be based on the particular circumstances of each case. The decision to develop the standards through adjudication rather than by rulemaking under the Administrative Procedure Act, N.J.S.A. 32:14B-1 et seq., was a proper exercise of agency discretion. See State v. Stavola, 103 N.J. 425 (1986); Metromedia, Inc. v. Director, Div. of Taxation, 97 N.J. 313 (1984).

ORDER

The case is remanded to the Director of Representation for proceedings consistent with this decision.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Wenzler, Johnson, Reid, Bertolino, Ruggiero and Smith voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey
November 20, 1989
ISSUED: November 21, 1989