

P.E.R.C. NO. 87-95

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF UNION,

Public Employer,

-and-

PARK MAINTENANCE, CRAFTSMEN AND
MECHANICS ASSOCIATION, CORP.,

DOCKET NO. RO-87-42

Petitioner,

-and-

UNION COUNTY PARK, FIELD AND
MAINTENANCE EMPLOYEES, IUE, AFL-CIO,

Intervenor.

SYNOPSIS

The Public Employment Relations Commission declines the Union County Park Field and Maintenance Employees, IUE, AFL-CIO, request for a review and stay of election ordered by the Director of Representation to determine the exclusive representative of all blue-collar and craft employees at Union County's recreational facilities. The IUE claims that the Petitioner, the Park Maintenance, Craftsmen and Mechanics Association, is not qualified to represent these employees because its attorney formerly represented the County. The Commission finds, however, that this alleged factor would not prevent a free and fair election.

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Appearances:

For the Public Employer
Apruzzese, McDermott, Mastro & Murphy, Esqs.
(Robert T. Clark, of counsel)

For the Petitioner
Weinberg & Kaplow, Esqs.
(Irwin Weinberg, of counsel)

For the Intervenor
Lewis, Greenwald, Kennedy & Lewis, Esqs.
(Nicholas F. Lewis, of counsel)

DECISION AND ORDER

On September 30, 1986, the Park Maintenance, Craftsmen and Mechanics Association, Corp. ("Association") filed a Petition for Certification of Public Employee Representative. The Association seeks to represent all blue collar and craft employees at the County of Union ("County") recreational facilities. Union County Park,

Field and Maintenance Employees, IUE, AFL-CIO ("IUE"), the incumbent representative of these employees, intervened pursuant to N.J.A.C. 19:11-2.7.

Before the Director of Representation, IUE claimed the petition should be dismissed because the Association's attorney, Irwin Weinberg, was formerly the County's labor counsel. It asserted that Weinberg should be disqualified from representing the Association and that his representation gives the Association an "unfair advantage" in the election. The County has declined to take a position concerning IUE's claim.

On December 24, 1986, the Director of Representation, based upon his investigation, directed an election. County of Union, D.R. No. 87-16, ___ NJPER ___ (¶ ___ 1986). He found that Weinberg had merely filed the representation petition and stated that:

the proceeding at issue is not an adversarial one; it is an administrative proceeding designed to allow the employees to choose, through the mechanism of a Commission representation election, a majority representative for collective negotiations or no representative. There have been no allegations made that the Association used the name of Mr. Weinberg or his former relationship with the County in any way in the election campaign. Nor are there allegations that the Association has been dominated or interfered with by the County through Mr. Weinberg. It is difficult to see how a client relationship which ended over two years ago can interfere with employees' exercise of their right to choose a majority representative for collective negotiations. Given the limited involvement of Mr. Weinberg in this matter, [I am] satisfied that his representation of the Association will not interfere with the conduct of a free and fair election. Nor, does his limited participation as an attorney in a non-adversarial representation proceeding give rise to an

appearance of a conflict of interest.
[Slip Op. at 5-6]

On January 9, 1987, after receiving an extension of time, IUE requested review of this decision and a stay of the election pending review. It contends that the Director erred in failing to disqualify Weinberg and in finding that Weinberg ceased representing the County over two years ago.^{1/}

We have the responsibility to ensure that public employees have the right to choose a majority representative and this responsibility must be carried out in the manner least disruptive to labor peace. New Jersey Civil Service Ass'n., P.E.R.C. No. 81-94, 7 NJPER 105 (¶12044 1981). Representation elections, therefore, must ordinarily be held very quickly in order to dispel confusion over who represents whom and to ensure orderly negotiations over successor contracts. There is a strong presumption in favor of having as expeditious an election as possible. State of New Jersey, P.E.R.C. No. 83-118, 9 NJPER 182, 185(¶14086 1983). A stay of an election is warranted only when the questioned conduct would prevent a fair election. The ultimate consideration is whether the employees can exercise their free choice. See N.J.A.C. 19:11-2.6(b)(3).

We deny IUE's request for review and a stay because it does not appear at this point, based on the record before us, that


^{1/} IUE submits an October 7, 1985 letter from Weinberg to an IUE representative agreeing to substitute "Union" for "Association" in the contract then in force.

Weinberg's limited role in these proceedings warrants dismissing the petition or depriving employees of an opportunity to vote. There is no evidence that the Association has made his former position an issue during the campaign or that employees have been improperly influenced. Rather, it appears he has simply represented the Association in preparing and filing the representation petition. We do not believe that this factor, coupled with his prior representation of the County, warrants a stay of the election proceedings.^{2/}

ORDER

The requests for review and a stay of election are denied.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

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

DATED: Trenton, New Jersey

January 16, 1987

ISSUED: January 16, 1987

^{2/} We hold only that a stay is not warranted. If factual submissions later show that the election has been unfair or improperly influenced, our rules permit a post-election challenge and other avenues of relief. See, e.g., City of Newark, P.E.R.C. No. 85-1, 10 NJPER 456 (¶15206 1984) Hudson Cty., P.E.R.C. No. 84-131, 10 NJPER 320 (¶15153 1984).