

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matters of

COUNTY OF CAPE MAY ASSIGNMENT
JUDGE,

Public Employer,

-and-

CAPE LOCAL 1983,

Docket No. AC-85-1

Petitioner,

-and-

CIVIL & PUBLIC EMPLOYEES LOCAL
1983, a/w IBPAT, AFL-CIO,

Intervenor.

BOROUGH OF STONE HARBOR,

Public Employer,

-and-

CAPE LOCAL 1983,

Docket No. AC-85-2

Petitioner,

-and-

CIVIL & PUBLIC EMPLOYEES LOCAL
1983 a/w IBPAT, AFL-CIO,

Intervenor.

CITY OF WILDWOOD,

Public Employer,

-and-

CAPE LOCAL 1983,

Docket No. AC-85-3

Petitioner,

-and-

CIVIL & PUBLIC EMPLOYEES LOCAL
1983, a/w IBPAT, AFL-CIO,

Intervenor.

P.E.R.C. NO. 85-80

CITY OF CAPE MAY,

Public Employer,

-and-

CAPE LOCAL 1983,

Docket No. AC-85-4

Petitioner,

-and-

CIVIL & PUBLIC EMPLOYEES LOCAL
1983, a/w IBPAT, AFL-CIO,

Intervenor.

COUNTY OF CAPE MAY,

Public Employer,

-and-

CAPE LOCAL 1983,

Docket No. AC-85-5

Petitioner,

-and-

CIVIL & PUBLIC EMPLOYEES LOCAL
1983, a/w IBPAT, AFL-CIO,

Intervenor.

BOROUGH OF AVALON,

Public Employer,

-and-

CAPE LOCAL 1983,

Docket No. AC-85-6

Petitioner,

-and-

CIVIL & PUBLIC EMPLOYEES LOCAL
1983, a/w IBPAT, AFL-CIO,

Intervenor.

SYNOPSIS

The Public Employment Relations Commission dismisses several Amendment of Certification petitions which Cape Local 1983 filed. Local 1983 sought to amend certifications covering a group

of negotiations units to eliminate existing references to the Civil and Public Employees Local 1983, a/w the International Brotherhood of Painters and Allied Trades, AFL-CIO based on a disaffiliation election conducted under its auspices. The Commission finds that such an amendment is inappropriate since the International is a functioning viable entity and there is a question concerning representation. Therefore, the appropriate method for resolving such disputes is a representation petition seeking a Commission conducted election.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matters of

COUNTY OF CAPE MAY ASSIGNMENT
JUDGE,

Public Employer,

-and-

CAPE LOCAL 1983,

Docket No. AC-85-1

Petitioner,

-and-

CIVIL & PUBLIC EMPLOYEES LOCAL
1983, a/w IBPAT, AFL-CIO,

Intervenor.

BOROUGH OF STONE HARBOR,

Public Employer,

-and-

CAPE LOCAL 1983,

Docket No. AC-85-2

Petitioner,

-and-

CIVIL & PUBLIC EMPLOYEES LOCAL
1983 a/w IBPAT, AFL-CIO,

Intervenor.

CITY OF WILDWOOD,

Public Employer,

-and-

CAPE LOCAL 1983,

Docket No. AC-85-3

Petitioner,

-and-

CIVIL & PUBLIC EMPLOYEES LOCAL
1983, a/w IBPAT, AFL-CIO,

Intervenor.

CITY OF CAPE MAY,

Public Employer,

-and-

CAPE LOCAL 1983,

Docket No. AC-85-4

Petitioner,

-and-

CIVIL & PUBLIC EMPLOYEES LOCAL
1983, a/w IBPAT, AFL-CIO,

Intervenor.

COUNTY OF CAPE MAY,

Public Employer,

-and-

CAPE LOCAL 1983,

Docket No. AC-85-5

Petitioner,

-and-

CIVIL & PUBLIC EMPLOYEES LOCAL
1983, a/w IBPAT, AFL-CIO,

Intervenor.

BOROUGH OF AVALON,

Public Employer,

-and-

CAPE LOCAL 1983,

Docket No. AC-85-6

Petitioner,

-and-

CIVIL & PUBLIC EMPLOYEES LOCAL
1983, a/w IBPAT, AFL-CIO,

Intevenor.

Appearances:

For the County of Cape May Assignment Judge
Joan Kane Josephson, Chief/Labor Relations

For the Borough of Stone Harbor, E.F. Pain,
Administrative Assistant

For the City of Wildwood, Marc Pfeiffer, Business
Administrator

For the City of Cape May, Fred Coldren, City Manager

For the County of Cape May, Tusso, Gruccio, Pepper,
Giovinazzi & Butler, P.A. (Lawrence Pepper, Jr.,
of Counsel)

For the Borough of Avalon, Fineberg & Rodgers, P.C.
(Robert A. Fineberg, of Counsel)

For the Petitioner, Samuel & Ballard, Esqs.
(Alice W. Ballard, of Counsel)

For the Intervenor, Meranze, Katz, Spear & Wilderman,
Esqs. (Bernard N. Katz, of Counsel)

DECISION AND ORDER

On July 24, 1984, Cape Local 1983 ("Local 1983") filed six Petitions for Amendment of Certification of Representative with the Public Employment Relations Commission. Local 1983 sought to amend certifications covering a group of negotiations units to eliminate any reference to the Civil and Public Employees Local 1983, affiliated with the International Brotherhood of Painters and Allied Trades, AFL-CIO ("International"). Local 1983 specifically claimed, based on a disaffiliation election which it conducted on July 20, 1984, that a majority of the voting employees in each unit desired Local 1983 to disaffiliate from the International. On July 30, 1984, the International intervened pursuant to N.J.A.C. 19:11-2.7.

A description of the disputed negotiations units and certifications follows.

The negotiations unit in the County of Cape May consists

of all blue and white collar employees and was certified on January 5, 1972. The Certification of Representative was issued to Civil and Public Employees, International Brotherhood of Painters and Allied Trades. The current contract covering these employees expired on December 31, 1984. There are approximately 600 employees in this unit. In the disaffiliation election Local 1983 conducted, 169 employees voted to disaffiliate from the International; 63 voted against disaffiliation, and 3 ballots were not counted.

The negotiations unit in the Borough of Avalon consists of all blue collar employees and was certified on April 25, 1972. The Certification of Representative was issued to the International Brotherhood of Painters and Allied Trades, AFL-CIO. The current contract covering these employees expires on December 31, 1985. There are approximately 30 employees in the unit. 15 employees voted to disaffiliate from the International; no employees voted against disaffiliation, and eight ballots were not counted.

The negotiations unit in the City of Cape May consists of all blue collar employees and was certified on June 15, 1972. The Certification of Representative was issued to the International Brotherhood of Painters and Allied Trades, AFL-CIO, Local 1983. The current contract covering these employees expired on December 31, 1984. There are approximately 30 employees in the unit. 22 employees voted to disaffiliate from the International; no employees voted against disaffiliation, and one ballot was not counted.

There are two negotiations units in the City of Wildwood. One consisting of all non-supervisory employees was certified on July 9, 1971, and the other consisting of all lifeguards was certified on December 11, 1972. The Certification of Representative for the non-supervisory unit was issued to Civil and Public Employees, International Brotherhood of Painters and Allied Trades, AFL-CIO. The Certification of Representative for the lifeguard unit was issued to the International Brotherhood of Painters and Allied Trades, AFL-CIO, Local 1983. Local 1983 filed a single petition seeking to amend both certifications. It appears that the contracts covering these units expired on December 31, 1984, and that there are about 125 employees in these units. 43 employees voted to disaffiliate from the International and 8 voted against disaffiliation.

The negotiations unit in the Borough of Stone Harbor consists of all public works employees and was certified on November 30, 1983. The Certification of Representative was issued to Civil and Public Employees, Local 1983, International Brotherhood of Painters and Allied Trades, AFL-CIO. No contract covers these employees. There are approximately 15 employees in the unit. Six employees voted to disaffiliate from the International; two voted against disaffiliation, and one ballot was not counted.

The final negotiations unit consists of employees of the Assignment Judge of the Superior Court for the County of Cape May. The Commission's records, however, do not reveal that a Certification of Representative covering these employees has

issued. The petition states that a contract covering these employees expired on December 31, 1984. There are approximately 60 employees in the unit. 24 voted in favor of disaffiliation while one voted against disaffiliation.

On July 18, 1984, the International imposed a trusteeship on Local 1983 and appointed a special trustee to administer its affairs.^{1/} On July 20, Local 1983 conducted the disaffiliation election; it alleges that employees were notified of these elections by letters dated July 2. On July 24, Local 1983 filed the instant petitions.

Before the Administrator of Representation Proceedings, Local 1983 sought to have these Certifications of Representative amended to eliminate any reference to the International. Local 1983 claimed that it was entitled to these amendments since, it alleged, the employees had been properly notified of the disaffiliation elections; the employees had voted for disaffiliation, and there would be a continuity of unit composition and leadership. The International opposed the amendments, arguing that it still represented these employees and that the disaffiliation elections had been improperly conducted. No employer supported or opposed the proposed amendments; each employer stated that the dispute was strictly an intra-union affair.^{2/}

^{1/} The validity of this action has been litigated in the United States District Court for the State of New Jersey. On December 12, 1984, Judge John F. Gerry declared the trusteeship valid and enjoined Local 1983 from interfering with the trusteeship and contending that the International was not the sole and exclusive representative of these employees. He specifically found the disaffiliation elections were improperly conducted and void.

^{2/} The County of Cape May Assignment Judge informed the Commission that a Certification of Representative has never issued covering Judiciary employees in Cape May County and therefore the proposed amendment was inappropriate.

On October 18, 1984, the Administrator of Representation Proceedings, based upon his investigation, dismissed all the petitions. D.R. No. 85-6, 10 NJPER ____ (¶ ____ 1984). He found that the International continued to be a viable entity and that it opposed the amendments.^{3/} Quoting from Missouri Beef Packers, Inc., 175 NLRB 179, 71 LRRM 1177, 1178 (1978), ("Missouri Beef Packers"), he concluded that an "amendment of certification may not be granted when there is a question concerning representation and...such amendments are not permitted where the certified representative remains in existence and opposes the amendment."^{4/}

On November 5, 1984, after receiving an extension of time, Local 1983 filed a request for review. Local 1983 contends that the Administrator erred in relying on Missouri Beef Packers. It argues as well that when a local has held a proper disaffiliation election and assures continuity of membership and representation, amendments to certifications should be permitted.

On November 27, 1984, the International, after receiving an extension of time, filed a response opposing review. The International argues that it is a viable organization still responsible for the representation of the employees and that the Administrator properly relied on Missouri Beef Packers.

^{3/} The Administrator dismissed two of the petitions for other reasons. In the Borough of Avalon, the Certification of Representative was issued to the International alone and therefore he found that Local 1983 had no standing to seek an amendment. In the County of Cape May Assignment Judge, he found that no Certification of Representative had issued, and therefore, an amendment could not issue.

^{4/} See also, North Electric Co., 164 NLRB 942, 65 LRRM 1379 (1967); Gas Service Co., 231 NLRB 123, 87 LRRM 1226 (1974).

It argues as well, that "amendment of certification proceedings are inappropriate...where a question concerning representation is present. A question concerning representation quite obviously exists where two bodies seek to represent employees in a bargaining unit; in such a case, representation proceedings are the only appropriate formal mechanism by which a collective bargaining representative may be designated."

On January 3, 1985, the Chairman, acting pursuant to authority delegated to him by the full Commission and N.J.A.C. 19:11-8.2, granted Local 1983's request for review. The parties were then given an opportunity to file further papers on the merits.

The issues to be resolved are whether Petitions for Amendment of Certification are appropriate under the circumstances of these cases and, if not, what method is more appropriate for resolving these disputes. Under all the circumstances, we hold that the proposed amendments of certification are not appropriate and must be dismissed. The appropriate method for resolving such disputes is for Local 1983 to file petitions seeking Commission conducted representation elections.

We agree with the Administrator that Missouri Beef Packers establishes the general rule for determining the appropriateness of an amendment to certification. In that case, the Board stated:

As we have frequently held in the past, amendment of certification is not appropriate in those cases where a question concerning representation is presented. Amendment of certification, by and large, is intended to permit changes in the name of the representative itself. Where, as here, there is no

guaranty of continuity of representation and the certified labor organization is a functioning, viable entity, and opposes amendment, it cannot be granted without doing violence to the purposes of the Act, which include the promotion of stability in labor-management relations. Additionally, amendment of certification under these circumstances would circumvent and unnecessarily abridge the Act's requirement that employees select their own collective-bargaining representative. The result we arrive at here does not preclude the Petitioner from renewing the combat by filing representation petitions when permitted under our contract-bar rules, if it musters the required 30 percent support. If we, in fact, err in this result, only time is lost without the possibility of interfering with a reasonably tranquil continuity of representation and without submerging the right of the employees to choose their own collective-bargaining representative. Accordingly, we shall dismiss the petitions.

Id. at 1179. 5/

We now apply the rule of Missouri Beef Packers to this case. In each unit except one, ^{6/} this Commission conducted a representation election and certified the International as a majority representative. The International is a functioning viable entity. It has attempted to exercise control over Local 1983 by imposing a trusteeship and has thus brought into question Local 1983's ability to guarantee continuity of representation; Local 1983 has attempted to sever itself from the International by conducting disaffiliation elections and filing the instant

^{5/} Local 1983 relies on two NLRB cases in its attempt to distinguish Missouri Beef Packers. Duquesne Light Co., 248 NLRB 168, 104 LRRM 1043 (1980); Ocean Systems, Inc., 223 NLRB 105, 92 LRRM 1019 (1976). In both these cases, the Board amended certifications to substitute Local unions for the Internationals. These cases, however, are consistent with the general rule of Missouri Beef Packers because in these cases (unlike Missouri Beef Packers and here), the Internationals supported the proposed amendments.

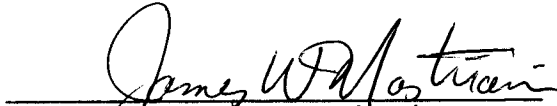
^{6/} We adopt the Administrator's determination that there is no certification covering employees of the Assignment Judge of the Superior Court of the County of Cape May. Accordingly, we dismiss that petition.

petitions. The International vigorously opposes the proposed amendments. In short, there is a struggle between two labor organizations over which will represent the employees in these units. Under all these circumstances, it is clear that Local 1983's petition seeks to oust the International from its part in representing employees and thus to change the representative itself, not merely the representative's name. Accordingly, the petitions for amendment of certification are inappropriate and must be dismissed. In order to accomplish its objectives, Local 1983 must instead file representation petitions and win elections.

ORDER

The Petitions for Amendment of Certification (AC-85-1, AC-85-2, AC-85-3, AC-85-4, AC-85-5, and AC-85-6) are dismissed.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Hipp, Newbaker, Suskin and Wenzler voted in favor of this decision. None opposed. Commissioner Graves abstained.

DATED: Trenton, New Jersey
January 22, 1985
ISSUED: January 23, 1985