

P.E.R.C. NO. 80-125

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PARSIPPANY-TROY HILLS BOARD
OF EDUCATION,

Respondent,

-and-

Docket No. CO-80-185

PARSIPPANY-TROY HILLS MATRONS,
MAINTENANCE, CUSTODIAL AND BUS
DRIVERS ASSOCIATION, NJEA,

Charging Party.

SYNOPSIS

The Special Assistant to the Chairman, in an Interlocutory Decision, denies the request of the Parsippany-Troy Hills Matrons, Maintenance, Custodial and Bus Drivers Association, NJEA, for interim relief. The Special Assistant concluded that there were substantial and material disputed legal and factual issues that could not be resolved through an interim relief proceeding.

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Charging Party,

-and-

TEAMSTERS LOCAL NO. 11,

Intervenor.

Appearances:

For the Respondent, Dillon, Bitar & Luther, Esqs.
(Mr. Henry N. Luther, of Counsel, Mr. John W. Adams
and Mr. Myles C. Morrison, on the Brief)

For the Charging Party, Greenberg & Mellk, Esqs.
(Mr. Arnold M. Mellk, of Counsel, Mr. Alan G. Kelley,
on the Brief)

For the Intervenor, Craig and Edelstein, Esqs.
(Mr. Stephen J. Edelstein, of Counsel and on the
Brief)

INTERLOCUTORY DECISION

On January 8, 1980 the Parsippany-Troy Hills Matrons,
Maintenance, Custodial and Bus Drivers Association, NJEA ("NJEA")
filed an Unfair Practice Charge with the Public Employment Relations
Commission alleging that the Parsippany-Troy Hills Board of Education
("Board") violated the New Jersey Employer-Employee Relations Act,

as amended, N.J.S.A. 34:13A-1 et seq. (the "Act"). More specifically, the charge alleged that the Board violated N.J.S.A. 34:13A-5.4(a)(1) and (a)(5) ^{1/} by refusing to negotiate with the NJEA as the majority representative of the employees in the negotiations unit at issue and by illegally recognizing Teamsters Local No. 11 ("Teamsters") as the exclusive majority representative.

The NJEA's charge was accompanied by a request for interim relief, pending the disposition of the unfair practice proceeding. The NJEA sought an order directing the Board to cease and desist from negotiating with the Teamsters during the pendency of this unfair practice proceeding before the Commission. The Order to Show Cause as modified was executed and issued on January 9, 1980 and was originally made returnable on January 23, 1980. The Show Cause hearing was later postponed until January 25, 1980 by joint consent.

On January 25, 1980, the undersigned, who has been delegated the authority to act upon requests for interim relief on behalf of the Commission, explored settlement alternatives relating to the instant charge with the Board, the NJEA and the Teamsters prior to convening the Order to Show Cause hearing.

^{1/} These subsections prohibit employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act and (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances by the majority representative."

The Teamsters had filed a motion, pursuant to N.J.A.C. 19:11-2.7, to intervene in the proceeding, which motion was granted at that time by the undersigned. Subsequently an additional hearing date was scheduled for January 31, 1980. On January 31, 1980 all the parties agreed upon a mutually acceptable resolution of the underlying issues involved in the instant charge, providing in part for a representation election involving the NJEA and the Teamsters. A component of this settlement agreement was that the undersigned would prepare a written interlocutory decision addressing the NJEA's request for interim relief.

Many of the factors in this matter are not in dispute. In or about the 1960-1961 school year, maintenance workers, custodians and bus drivers employed within the Parsippany-Troy Hills School District organized an association for the purpose, inter alia, of collective negotiations. Subsequent to its formation, this unaffiliated association negotiated a series of collective negotiations agreements with the Board. On or about December 2, 1974, a secret ballot election was conducted by the Commission to determine the exclusive representative, if any, for the purpose of collective negotiations of a designated negotiations unit consisting of all Matrons, Bus Drivers, Maintenance and Custodial employees represented by the Board, but excluding managerial executives, professional, craft and clerical employees, policemen and supervisors within the meaning of the Act.^{2/} By certification dated December 10, 1974, the Commission certified

^{2/} The Parsippany-Troy Hills Matrons, Maintenance, Custodial and Bus Drivers Association, NJEA and Teamsters Local 97 of New Jersey, a/w IBT were the organizations involved in the election.

that the Parsippany-Troy Hills Matrons, Maintenance, Custodial and Bus Drivers Association, NJEA, had been designated as the exclusive majority representative of all employees within the unit.

Four collective negotiations agreements were entered into by the Board and the Matrons, Maintenance, Custodial and Bus Drivers Association from the date of the aforementioned certification to the date that the instant unfair practice charge was filed. These agreements covered respectively the 1974-75, 1975-77, 1977-78 and 1978-80 school years. An NJEA Consultant was directly involved in negotiations with the Board regarding the 1974-75 and 1975-77 agreements. Apparently no NJEA Consultant was present or involved in negotiations with the Board on behalf of the unit concerning the 1977-78 and 1978-80 agreements. There was no specific reference to the NJEA in any of the aforementioned four collective negotiations agreements previously referred to.

In a letter dated July 11, 1979, the Board was informed that the members of the negotiations unit had, by secret ballot election, voted 51 to 21 to affiliate with the Teamsters. This affiliation election had been conducted on July 6, 1979. In a letter dated August 10, 1979, an NJEA Consultant, Anton Schulzki, wrote a letter to the Board Secretary, in part asserting that the Matrons, Maintenance, Custodial and Bus Drivers Association, NJEA was the exclusive majority representative of the unit members until the representation question was decided through

Commission procedures. Schulzki in essence put the Board on notice that he believed that any Teamster intervention in the negotiations relationship with the Board was illegal. In a letter dated August 16, 1979, the Board informed the Teamsters representative that the Board was prepared to negotiate with the Matrons, Maintenance, Custodial and Bus Drivers Association affiliated with Teamsters Local No. 11.

In letters dated October 15, 1979 addressed to the Board Secretary and Director of Employee Relations, Schulzki asserted that the Matrons, Maintenance, Custodial and Bus Drivers Association, NJEA demanded to negotiate a successor agreement with the Board. In correspondence dated October 17, 1979, however, the Board affirmed that it was satisfied that the Association was affiliated with Local 11 of the Teamsters and stated that the present agreement between the Board and the Association indicated no other affiliation. The Board in this October 17, 1979 letter to Schulzki added that it had already "commenced a bargaining relationship with the Teamsters, including the processing of grievances submitted by the employee organization." Actual negotiations sessions between the Board and the Association affiliated with the Teamsters commenced on or about October 23, 1979.

No amendment of certification petition (an AC petition) was filed by any employee organization concerning the negotiations

unit at issue nor was any RO petition (a petition for certification of public employee representative filed by an employee organization) or RE petition (a petition for certification of public employee representative filed by a public employer) filed by any party to this instant proceeding prior to the filing of the unfair practice charge by the Matrons, Maintenance, Custodial and Bus Drivers Association, NJEA on January 8, 1980.

The NJEA asserts that the Board of Education violated N.J.S.A. 34:13A-5.4(a)(1) and (a)(5) when it ceased to recognize it as the certified majority representative of the employees in the aforementioned negotiations unit and instead recognized the unit's affiliation with the Teamsters without the Commission's representation processes, set forth at N.J.A.C. 19:11-1.1 et seq. being invoked.

The NJEA contends that relevant case law establishes that the NJEA is presumed to continue as the exclusive majority representative of the unit employees as long as the Commission's representation processes, once invoked, do not mandate a contrary conclusion, even if the NJEA was subsequently repudiated by a majority of the unit members.

The NJEA alternatively states that an employer who is faced with conflicting claims of rival units, i.e. the Teamsters and the NJEA in the instant matter, must adhere to a policy of strict neutrality and may not recognize or enter

into a contract with either union until and unless the question concerning representation has been resolved by the relevant administrative agency, such as PERC in the instant matter.

The Board maintains that the undisputed facts in the case indicates that the Matrons, Maintenance, Custodial and Bus Drivers Association -- an organization that had been in existence for approximately 15 years without being affiliated with another organization -- simply terminated its affiliation with the NJEA and voted to affiliate with the Teamsters. The Board argues that as long as a change in affiliation results from a secret ballot election conducted by the members of the negotiations unit upon proper notification, and as long as there is continuity in the composition of the unit as well as its officers before and after a change in the affiliation, the organization, in this case the Association, is entitled to make such changes without public employer or Commission intervention. The Board thus concludes that the change in affiliation did not give rise to a question concerning representation, notwithstanding the NJEA's subsequent protest, and was exclusively a matter to be determined internally by the union membership.

The Teamsters assert that the Association voted to disaffiliate from the NJEA in June, 1978 and subsequently affiliated, as of July, 1979, with the Teamsters. The Teamsters agree with the Board that changes in affiliation where there is

both continuity of unit composition and officers are internal union matters that cannot give rise to questions concerning representation. The Teamsters further note that the NJEA would urge the Commission to pursue a different course and analyze the underlying issue as a question concerning representation. The Teamsters state, however, that even under this latter analysis, the NJEA cannot sustain its burden. The Teamsters maintain that a question concerning representation cannot be raised by a "naked claim to continuing interest in the employees..." (Teamsters' brief at page 6). The Teamsters argue that the facts indicate that the NJEA's claim to continuing majority status was nothing more than a naked claim that should have been discounted by the Board as raising a question concerning representation. Moreover, the Teamsters suggest that the facts that could be elicited at an evidentiary hearing would indicate that the NJEA abandoned the Association some time in 1978 and as a "defunct" union could not raise a question concerning representation without filing a petition for certification.

After careful consideration of the arguments of the parties, and in further consideration of the statements proffered during the show cause process, the undersigned concludes that the NJEA has not satisfied the Commission's interim relief standards. It must first be borne in mind that this is an interim

proceeding seeking extraordinary relief pursuant to N.J.A.C. 19:14-9.1 et seq. and is not a substitute for the Commission's normal unfair practice procedures. The standards that have been developed by the Commission for evaluating the appropriateness of interim relief are stringent in nature and are quite similar to those applied by the courts when confronted with similar applications. Basically the test is two-fold: the substantial likelihood of success on the legal and factual allegations in the final Commission decision, and the irreparable nature of the harm that will occur if the requested relief is not granted.^{3/} Both standards must be satisfied before the requested relief will be granted.

In the instant case there would appear to be substantial and material disputed legal and factual issues that may only be resolved through the utilization of the Commission's plenary hearing procedures, after the issuance of a Complaint and Notice of Hearing.

From a legal perspective, the legal issues raised in this matter are novel and complex. As a "case of first impression"

^{3/} See for example In re Township of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975); In re State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); In re Township of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); In re City of Jersey City, P.E.R.C. No. 77-13, 2 NJPER 293 (1976); In re Ridgefield Park Board of Education, P.E.R.C. No. 78-1, 3 NJPER 217 (1977); In re Newark Redevelopment and Housing Authority, P.E.R.C. No. 78-15, 4 NJPER 52 (¶4024 1978); In re Union County Regional High School Board of Education, P.E.R.C. No. 78-27, 4 NJPER 11 (¶4007 1978); In re Willingboro Education Association, P.E.R.C. No. 78-64, 4 NJPER 168 (¶4083 1978); and In re Jackson Twp. Board of Education, P.E.R.C. No. 79-48, 5 NJPER 62 (¶10041 1979).

before the Commission, legal issues of the kind raised in this charge should not be resolved through an interim relief proceeding, but should be decided by the entire Commission after an evidentiary hearing, if that is necessary.

A preliminary issue not specifically addressed by the parties relates to whether the Commission must recognize a change in affiliation at any time subsequent to the certification of a particular majority representative, regardless of the individual circumstances, if no amendment of certification petition (AC Petition) is filed by an employee organization pursuant to the Commission's Rules set forth at N.J.A.C. 19:11-1.6. Assuming arguendo that a change in affiliation can be effectuated without the filing of an AC petition so as to relieve a public employer from the continuing obligation to negotiate with the certified majority representative, an additional legal issue must be considered, i.e., whether an amendment of certification or change in affiliation through an internal union vote is legally permissible where the certified representative, in this case the Matrons, Maintenance, Custodial and Bus Drivers Association, NJEA, opposes the amendment and/or change in affiliation. The Commission has heretofore permitted amendments of certification in cases where all of the parties have consented to said amendment, including the originally certified majority representative. In the present case, the Matrons, Maintenance, Custodial and Bus Drivers Association, NJEA, has of course not consented to any change in affiliation.

The Third Circuit Court of Appeals, having jurisdiction over certain private sector labor relations matters in New Jersey, has held in a series of decisions ^{4/} that whenever a local independent labor union affiliates with and becomes a local unit of an international union, a change is effected in the bargaining agent of the affected employees which requires the filing of a petition for certification to resolve the question concerning representation that has arisen, at least in the absence of the consent of all relevant parties, including the organization originally certified, to an alternate procedure, i.e., an internal affiliation vote. Inferentially, one may argue that the Third Circuit would apply this rationale to situations where a local changed its affiliation from one international union to another. As of this date, however, the National Labor Relations Board, over the dissent of Board member Penello, and other Circuit Courts of Appeals disagree with the Third Circuit's analysis and would normally grant the amendment of certification sought in an AC proceeding if there was continuity of unit compensation and officers, a secret ballot election conducted after proper notice favoring the change in affiliation, and if the existing contract would be honored by the new representative. It is thus apparent that the state of law is not clear concerning issues relating to changes in affiliation and/or amendments of certification.

^{4/} See e.g. United States Steel Corp. v. NLRB, 457 F.2d 660 (3rd Cir. 1972); NLRB v. Bernard Gloekler North East Co., 540 F.2d 197 (3rd Cir. 1976) and Sun Oil Co. v. NLRB, 576 F.2d 553 (3rd Cir. 1978).

An additional complicating factor in the case before the undersigned relates to the claims of the Board, implicitly, and the Teamsters explicitly, that the Matrons, Maintenance, Custodial and Bus Drivers Association, NJEA, was "defunct" as an organization at the time it filed the instant unfair practice charge and therefore had no standing to file said charge until it had filed a timely RO petition with the Commission. In this regard, the parties were in substantial disagreement concerning the relevant facts associated with the claim that the NJEA in 1978 disavowed any intention to continue to represent the negotiations unit.

Lastly, additional legal disputes persist if one analyzes the dispute not as an affiliation issue at all, but as a question concerning representation. As stated by the NJEA, it is a generally accepted principle of law that when two rival unions attempt to obtain recognition as exclusive majority representative from an employer, a question concerning representation is thereby raised, requiring a representation election before one of the competing unions is recognized as the majority representative. However, the Commission in In re City of Newark, P.E.R.C. No. 76-28, 2 NJPER 178 (1976), concluded, in affirming a Hearing Examiner's Recommended Report and Decision, that there had to be supportable claims made by the competing unions and that a naked claim concerning the representation of particular employees could not raise a question concerning representation.

The undersigned concludes that in the instant case there would have to be an evidentiary hearing convened to analyze the nature of the claims of the NJEA and the Teamsters in order to determine whether a question concerning representation was raised which should have prevented the Board from recognizing the Association's affiliation with the Teamsters. This again is not a matter that can be resolved in an order to show cause proceeding.

For the above-stated reasons, the Charging Party's application for interim relief is hereby denied.^{5/}

BY ORDER OF THE COMMISSION



Stephen B. Hunter
Special Assistant to the Chairman

DATED: Trenton, New Jersey
April 7, 1980

^{5/} In light of the undersigned's determination that the Commission's substantial likelihood of success standard has not been satisfied, it is unnecessary to determine whether the Commission's "irreparable harm test" is satisfied in this matter.