

P.E.R.C. NO. 2006-76

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HUDSON COUNTY,

Public Employer,

-and-

Docket No. RO-2006-059

UNITED WORKERS OF AMERICA, LOCAL 322,

Petitioner,

-and-

DISTRICT 1199J, NUHHCE, AFSCME, AFL-CIO,

Intervenor.

SYNOPSIS

The Public Employment Relations Commission denies a request for review and stay of an election filed by Patrick Desmond. United Workers of America, Local 322 petitioned to represent a unit of County employees currently represented by District 1199J, NUHHCE, AFSCME, AFL-CIO. Following the execution of a Consent Election Agreement a dispute arose as to who represents Local 322. The Commission denies the review and stay, finding that the Director properly exercised his authority in determining that the representation petition was supported by a valid showing of interest and that showing is not subject to collateral attack now. Any factional dispute that arose after the Consent Agreement was signed is an internal union matter that need not be resolved before an election. That question can be decided by a court of competent jurisdiction if a dispute persists after the election.

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.

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Appearances:

For the Public Employer, Louis C. Rosen, Deputy County Counsel

For the Intervenor, Oxfeld Cohen, P.C., attorneys
(Arnold Shep Cohen, of counsel)

For the Petitioner, O'Connor & Mangan, P.C., attorneys
(Bryan C. McCarthy, of counsel)

For Patrick Desmond, John J. Collins, attorney

DECISION

On March 23, 2006, Patrick Desmond requested review of March 17 and 20 decisions of the Director of Representation. He also seeks a stay of an election pending review. The request involves a petition filed by United Workers of America, Local 322 seeking to represent employees of Hudson County. District 1199J, NUHHCE, AFSCME, AFL-CIO is the current majority representative and has

intervened in these proceedings. The substance of Desmond's request is as follows:

On February 10, 2006, a representation petition was filed on behalf of United Workers of America, Local 322. The petition designated Michael Lovullo, Business Agent, as the Representative to Contact and Bryan C. McCarthy as the Attorney/Consultant Representing Petitioner. The petitioner indicated that its address was in Clifton, New Jersey.

We take administrative notice of the fact that on March 8, 2006, a Consent Election Agreement was executed setting an election date of March 31, 2006.^{1/} That agreement was signed by representatives of all parties - the County, District 1199J, and UWA, Local 322. Patrick Desmond signed the agreement on behalf of UWA, Local 322. The agreement stipulated that "the parties hereby waive a hearing on all issues that could be raised at a hearing." The Consent was approved by the Director of Representation on March 9.

We take administrative notice of a letter dated March 14, 2006 from the Director of Representation to attorneys Bryan C. McCarthy and John J. Collins. The Director acknowledged receipt of letters from each asserting that they represent UWA, Local 322. The Director also acknowledged receipt of a letter from

^{1/} We take administrative notice of letters sent by this agency that were referenced but not included in the Request for Review. N.J.A.C. 19:11-6.6(e).

Stephen Sombrotto, UWA's national president. Sombrotto had advised the Director that Local 322's officers are Joseph Sullivan, President; Cesar Alarcon, Vice-President; and Jordan El Hag, Secretary-Treasurer and that Michael Lovullo is the Local 322 business agent. In addition, Sombrotto informed the Deputy Director by telephone that McCarthy continues to be Local 322's attorney. The Director's letter noted that the Commission does not intervene in internal union disputes and would not permit that internal union dispute to prevent the election from going forward. The Director added that the agency would provide informational copies of notices and correspondence to Collins, but that it could not permit two spokespersons for the same organization. The Director concluded by stating that since the petition was filed by Lovullo, McCarthy was named on the petition as the attorney, and the UWA national president confirmed that Local 322 has been chartered and Sullivan's name appears as president on the charter, the Commission would continue to deal with McCarthy as the attorney of record.

On March 17, 2006, Desmond filed a "Petition For Amendment of Representation Petition." He requested that the name of the Representative to Contact be changed from Michael Lovullo to Patrick Desmond. His reasons included allegations that:

1. In a proposed Charter Agreement dated March 7, 2006, Stephen Sombrotto acknowledged that Desmond was the President of UWA, Local 322.

2. An LM-1 Form filed with the U.S. Department of Labor indicates that Desmond is president of UWA, Local 322 with a term that expires in 2009. Nothing in the form refers to Sombrotto, Sullivan, Luvullo, McCarthy, Alarcon, or El Hag. Desmond asserts that they have no role in UWA, Local 322.
3. The proposed Charter Agreement represents that Local 322 is separate from Sombrotto's union and will remain independent.
4. Desmond is the legal president of UWA, Local 322, an incorporated non-profit labor organization in the State of New Jersey and registered with the U.S. Department of Labor.
5. Luvullo is not now and never was an agent of UWA, Local 322.
6. Luvullo has participated in fraudulent representation at the direction of Sombrotto, who contacted Commission offices via phone and fax on several occasions.
7. Sombrotto is a convicted criminal and therefore the Commission should not permit his cohort, Lovullo, to continue to be listed as the representative.
8. Sombrotto and Luvullo have misrepresented the intentions of the true petitioner and the workers of Hudson County which was for there to be an election between District 1199J and UWA, Local 322 as founded, incorporated, registered and led by Desmond with Desmond as the representative.

The Petition for Amendment requested that the address and phone number of the petitioner be changed to a Bayonne address. It also asked that the attorney/consultant be changed from McCarthy to Collins. The reasons for that request included allegations that:

1. McCarthy acknowledged that Desmond was UWA, Local 322 President. McCarthy acted on behalf of Desmond at the March 8 Consent Conference.
2. McCarthy is not the legal representative of UWA, Local 322. His services were used once at the conference and were never retained.
3. McCarthy has participated in this misrepresentation at Sombrotto's direction, not a true officer of UWA, Local 322.
4. McCarthy is Sombrotto's legal representative. Collins is the representative of UWA, Local 322.

Desmond continues that the statement by PERC that this is an internal union dispute is wrong. He alleges that a fraud is being facilitated by PERC and that Sombrotto has misrepresented himself to PERC as president of a national union.

We take administrative notice of the fact that on March 20, 2006, the Director of Representation denied Desmond's request. He stated that once a Consent Election Agreement has been signed by all parties and approved by the Director, the Commission will not accept amendments to the Petition. He continued that more importantly, only the Petitioner is authorized to amend its Petition and that as he had previously determined, Desmond was not an authorized spokesperson for the Petitioner. Finally, the Director stated that the Commission has no jurisdiction to resolve what is essentially an intra-union dispute between two factions of the UWA.

Also on March 20, 2006, Desmond filed an Addendum to his Petition for Amendment of Representation Petition. He stated that Lovullo lacked standing to file the Representation Petition and lacked a valid showing of interest because it was the intention of all those who signed petition cards that Desmond represent them in the upcoming election. He asked the Commission to investigate the petition and ensure that the correct parties are represented and for a stay of the election until all matters can be resolved.

That same day, the Acting Director of Representation wrote a letter informing Desmond that it had already been determined that the Petition was validly filed by a representative of UWA, Local 322; all parties signed a Consent Agreement, including Desmond; all parties waived a hearing on all issues that could be raised; the Director had determined that the Petition was supported by a valid showing of interest; and the agency will not conduct an investigation into the intent of the employees who signed authorization cards.

In his Request for Review, Desmond asks that we stay the election until review can be conducted to ascertain the correct intended petitioner and representative of the voting unit.

On March 27, 2006, Collins filed Desmond's response to a letter from the Director dated March 22. We take administrative notice of the contents of the March 22 letter. It stated that

there is no Commission procedure for employees to designate union officers or other leaders; the appointment or election of union officers is an internal union matter over which this Commission does not normally assert jurisdiction; it is not Commission policy to investigate the intention of authorization card signers; the showing of interest is not subject to collateral attack; the Director had previously issued a ruling in another case that Sombrotto is not disqualified from union participation; neither the Charter Agreement nor a Retainer Agreement with McCarthy is fully executed; the UWA National President has informed us of the officers of the officially chartered Local 322 and that McCarthy continues to be the attorney of record; and the request to amend the Petition for Certification is untimely. The Director concluded that based on the Petition filed by Lovullo and the Consent Agreement, the election scheduled for March 31 would proceed unless a stay is otherwise ordered.

Collins's response makes the following allegations. He asserts that Desmond heads UWA, Local 322. His proofs were not intended to represent an internal union matter. There is only one UWA, Local 322 and it is headed by Desmond. The union that PERC is recognizing as Local 322 does not exist, except in Sombrotto's mind. Collins continues that the proposed Charter Agreement with Sombrotto was rejected by Desmond, as was the Retainer Agreement with McCarthy. Collins also asserts that when

Desmond "realized who these people were" he wanted no affiliation with them. Collins asserts that the Director has concluded without facts that Sombrotto is the National President. He further asserts that the Director has accepted without proof that a charter has been effected, and accepted the words of a person who pleaded guilty to "threatening employees with injury to coerce them to vote for a union." As for the Consent Conference, Collins asserts that Desmond was UWA, Local 322's representative; the County was instructed to turn over a list of employees to Desmond and Collins; and McCarthy was present because of his knowledge of the proceedings, not as UWA, Local 322's lawyer.

District 1199J opposes a stay of the election and relies on the reasoning in the Director's decisions. The County filed a response indicating that it has maintained an impartial posture and wished to take no position adverse to either party. It expressed concerns about the prejudicial effects of a stay on the County and adverse consequences should the election be delayed.

Attorney McCarthy filed a response opposing a stay because the Commission does not have jurisdiction to resolve an internal dispute. His response makes the following allegations. He asserts that Desmond makes a number of outlandish arguments noting that a similar challenge to Sombrotto's legal qualifications to act as a collective negotiations representative was dismissed by the Director of Representation and Unfair

Practices in another case. McCarthy asserts that Desmond ironically relies on Gerald McCann, "a convicted felon"; the petitioner is located at the Clifton address printed on the authorization cards signed by the employees; and any confusion is being fostered by Desmond and his cohorts who are incorrectly advising employees that the election has been cancelled and a hearing scheduled.^{2/}

2/ At 2:43 p.m. on Wednesday, March 29, the Commission received a fax (faxed to the other parties as well) from Collins. This fax has been presented at the last minute and contains factual allegations that should have been timely presented to the Director so we will not consider them here. We will, however, set them forth and also describe the contents of a related letter.

The faxed letter alleged that Desmond had signed a representation petition that was the one intended to be filed, but that Lovullo fraudulently replaced Desmond's signature with his in filing the petition that was actually filed. Attached to the fax were copies of the two forms. Collins asserted that the form signed by Desmond but not filed was inadvertently mixed in with other Hudson County Democratic Party papers and was only discovered recently.

The letter does not specify when the form signed by Desmond was found and in any event the factual allegations could have been raised earlier and a certification could have been submitted from Desmond saying that the form had been lost. We note that a March 13 letter from Collins to the Deputy Director of Representation stated that while there had been a misunderstanding in having the petition signed by Lovullo submitted to PERC, that submission was "purely a misunderstanding and in no way done to mislead, misrepresent or otherwise commit a fraudulent act." That letter further states: "While being advised, Mr. Desmond misunderstood who should sign the petition to your office and Mr. Lovullo ended up signing the paper." The letter reiterates: "This confusion arose

(continued...)

Review will be granted only for one or more of these compelling reasons:

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.

The petition was filed by Michael Lovullo, identifies UWA, Local 322 as the petitioner, and designates Bryan McCarthy as its attorney. The Director properly exercised his authority in determining that the representation petition was supported by a valid showing of interest and that showing is not subject to collateral attack now. N.J.A.C. 19:11-2.1. All parties participated in a Consent Conference and entered into a Consent Agreement setting an election date of March 31 and waiving a hearing on all issues that could be raised at a hearing. Desmond signed that agreement. The Director correctly concluded that any

2/ (...continued)
from a misunderstanding of procedure and in no way was meant to be dishonest or misleading."

factional dispute that arose after the signing of the Consent Agreement is an internal union matter that need not be resolved before an election is conducted. That question can be decided by a court of competent jurisdiction if a dispute persists after the election. We take no position on any such dispute. Teamsters Local 331, P.E.R.C. No. 2001-30, 27 NJPER 25 (¶32014 2000) (Commission will not intervene in internal union affairs); Fairview Bd. of Ed., D.R. No. 80-7, 5 NJPER 427 (¶10222 1979) (dispute over who was union spokesperson need not delay election). We simply hold that there are no grounds for staying the election pursuant to the Consent Election Agreement or granting review.

ORDER

The request for review and the request for a stay of the election are denied.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, Katz and Watkins voted in favor of this decision. None opposed. Commissioners DiNardo and Fuller recused themselves.

ISSUED: March 30, 2006

Trenton, New Jersey