

P.E.R.C. NO. 2008-32

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

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

Respondent,  
-and-

Docket No. CI-2006-046

PATRICK DESMOND, et al.,

Charging Parties.

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COUNTY OF HUDSON,

Respondent,  
-and-

Docket No. CI-2006-047

PATRICK DESMOND, et al.,

Charging Parties.

SYNOPSIS

The Public Employment Relations Commission denies the charging parties' request for special permission to appeal D.U.P. No. 2007-4 and dismisses a Complaint against the County of Hudson and District 1199J, NUHHCE, AFSCME, AFL-CIO. This case arose in the wake of a representation petition filed by United Workers of America, Local 322. District 1199J won representation in a runoff election. The charging parties filed unfair practice charges against the County of Hudson and District 1199J alleging that a County Freeholder campaigned in support of District 1199J in the election and that the County disadvantaged Local 322 by providing transportation to the polling site for employees of the County Jail. The Commission holds that the charging parties do not have standing to litigate the allegations in the unfair practice charges. The Commission finds that the charging parties cannot stand in Local 322's shoes to seek a new election or a finding that the County and District 1199J violated Local 322's rights. The Commission dismisses the Complaint.

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 Respondent, District 1199J, Oxfeld Cohen, P.C.,  
attorneys (Arnold Shep Cohen, of counsel)

For the Respondent, County of Hudson, Scarinci &  
Hollenbeck, LLC, attorneys (Sean D. Dias, of counsel)

For the Charging Parties, Librero D. Marotta, attorney

DECISION

This case arises in the wake of a representation petition  
filed in February 2006 by United Workers of America, Local 322  
(RO-2006-059). Local 322 sought to represent blue and white  
collar employees then represented by District 1199J, NUHHCE,

AFSCME, AFL-CIO. On March 31, 2006, our agency conducted a secret ballot election in which eligible employees cast their votes for District 1199J, Local 322 or no representative. No party received a majority of votes cast. Claiming that he was the authorized representative of Local 322, Patrick Desmond had sought to delay the election, but the Director of Representation found that he was not the representative and allowed the election to proceed. We denied Desmond's requests for review of that determination and for a stay of the election. P.E.R.C. No. 2006-76, 32 NJPER 101 (¶49 2006).

In a run-off election conducted the next month, 233 votes were cast for District 1199J and 175 votes were cast for Local 322. Local 322 filed election objections asserting, among other things, that Hudson County Freeholder Jeff Dublin campaigned in support of 1199J, and the County disadvantaged Local 322 by providing transportation to the Duncan Avenue polling site for employees of the County jail. Local 322 then withdrew those objections and 1199J was certified as the majority representative.

Desmond, along with 26 other employees, then filed unfair practice charges against District 1199J and the County. The Director of Unfair Practices issued a Complaint on some, but not all, of the charging parties' allegations. D.U.P. No. 2007-4, 32 NJPER 403 (¶166 2006). The allegations for which a Complaint

issued essentially mirrored allegations in the election objections that had been filed and withdrawn by Local 322. The allegations for which a Complaint did not issue were that a Local 322 supporter was promised a job with District 1199J if she supported that union, another employee was discharged and Desmond was "written up" for supporting Local 322, and District 1199J was given privileged campaign access that was not afforded to Local 322.

District 1199J requested special permission to appeal the issuance of a Complaint on the two allegations against it. The charging parties requested special permission to appeal the refusal to issue a Complaint on the remaining allegations. Because we did not have a quorum to consider the requests, the case proceeded to hearing without the benefit of our review. The Hearing Examiner has since issued her report and recommendations. H.E. No. 2008-2, 33 NJPER 243 (¶94 2007). District 1199J and the charging parties have filed exceptions, and we now have a quorum.

We deny the charging parties' request for special permission to appeal the Director's decision refusing to issue a Complaint on the remaining allegations. The charging parties do not have standing to litigate on behalf of the two employees who supported Local 322 but who are not among the charging parties. Cf. State of New Jersey, P.E.R.C. No. 85-77, 11 NJPER 74 (¶16036 1985), aff'd NJPER Supp.2d 162 (¶143 App. Div. 1986). Additionally, the

allegations that Desmond was "written up" for campaigning for Local 322 and that District 1199J was given campaign access not afforded Local 322 lacked the required specificity. The charge did not specify who wrote Desmond up, nor did it detail who made the request for access on behalf of Local 322, and who denied the request on behalf of the County. N.J.A.C. 19:14-1.3a(3).

As for the allegations that proceeded to hearing and are the subject of District 1199J's request, the charging parties do not have standing to litigate those issues.<sup>1/</sup> After the runoff election between Local 322 and District 1199J, Local 322 filed objections on those same issues. It then withdrew the objections and 1199J was certified as the majority representative. The charging parties cannot stand in Local 322's shoes to seek a new election or a finding that the County and District 1199J violated Local 322's rights. If Local 322 is not interested in pursuing those claims, individual employees not authorized to act on its behalf may not do so instead. As we stated in P.E.R.C. No. 2006-76, any factional dispute over who can or should represent the interests of Local 322 is an internal union matter that can be decided by a court of competent jurisdiction.

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<sup>1/</sup> Those allegations were that Dublin unlawfully campaigned on behalf of District 1199J and the County illegally provided transportation to the Duncan Avenue polling site.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Branigan, Buchanan and Watkins voted in favor of this decision. Commissioner Fuller abstained from consideration. None opposed.

ISSUED: December 20, 2007

Trenton, New Jersey