P.E.R.C. No. 15

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PORT AUTHORITY TRANSIT CORPORATION, a subsidiary of Delaware River Port Authority

Public Employer

and

TEAMSTERS LOCAL UNION 676, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America

Docket No. R-14

Petitioner

and

TRANSPORT WORKERS UNION OF AMERICA, AFL-CIO and its Local 234

Intervenor

DECISION AND DIRECTION OF ELECTION

Pursuant to a Notice of Hearing to resolve a question concerning the representation of certain employees of the Port Authority Transit Corporation, a subsidiary of Delaware River Port Authority, hearings were held on February 12 and 21 and June 6, 1969 [1/] before ad hoc Hearing Officer Lewis M. Gill. [2/] On July 22, 1969 the ad hoc Hearing Officer issued his Report and Recommendations. Thereafter Exceptions to the Hearing Officer's Report and Recommendations were filed by Petitioner. The Commission has considered the record, the Hearing

1/ Transport Workers Union while appearing at the February Hearings did not formally appear on June 6, although notified of the hearing.

2/ At the February 21, 1969 hearing Intervenor questioned: 1. The existence of the New Jersey Public Relations Commission and 2. The delegation of authority to Hearing Officer Gill and whether it was a unilateral act of the Chairman or an act of the whole Commission. Inasmuch as all Commissioners had been sworn in and the assignment of Hearing Officer Gill by the Chairman was made in the name of and ratified by the full Commission, the delegation was proper.

Officer's Report and Recommendations and the Exceptions and finds:

1. Port Authority Transit Corporation, a subsidiary of Delaware River Port Authority, hereinafter called PATCO, is a public employer within the meaning of the Act and is subject to the provisions of the Act.

Intervenor, notwithstanding its recent certification after filing with the Commission a Petition for Certification of Public Employee Representative in Delaware River Port Authority, Docket No. R-82, argues in effect that PATCO, Delaware River Port Authority's subsidiary, is not a "public employer" within the meaning of the Act and is not subject to the jurisdiction of the Public Employment Relations Commission. Intervenor is mistaken.

First, PATCO is an "agency of the State" [3/] and as such comes literally within the definition of "public employer". [4/]

Second, the public policy of this State with regards to labor disputes is set forth in Section 2 of the Act which reads in part: "...the best interests of the people of the State are served by the prevention or prompt settlement of labor disputes, both in the private and public sectors...". If the Commission does not honor this mandate and take jurisdiction, a void will exist, the Commission would be remiss and the public not served.

3/ See Delaware River and Bay Authority v. International Organization of Masters, Mates, and Pilots, 45 N.J. 138, where the Supreme Court of New Jersey referring to the Bay Authority, also a bi-state agency, held: "The Authority here is an agency of the State and its activities clearly involve a proper exercise of governmental functions. While there may be many other agencies which more directly affect the public health, safety and welfare, the Authority is nonetheless engaged in what is now widely taken to be an essential public operation." 211 A. 2d at 793.

4/ Section 3 (c) of the Act reads in part: "...this term /employer/ shall include public employers and shall mean the State of New Jersey,...or any branch or agency of the public service."

Third, New Jersey is most involved. PATCO and its parent authority are both headquartered in Camden, New Jersey. PATCO's main "plant" is in Lindenwold, New Jersey where all rolling stock is stored and its maintenance shop is located. Eight of the twelve stops on the Lindenwold to Philadelphia Rapid Transit line are in New Jersey. A majority of the employees reside in New Jersey and a large percentage of employees report there at the start of the work day. Pension fund deductions are banked in New Jersey. Payroll checks are issued from the Lindenwold, New Jersey office. All hiring and processing of employee grievances are done by the personnel department employees from the main PATCO office in Camden.

Fourth, the Commission has inferentially been told by the Court to act. The Superior Court of New Jersey, Chancery Division, Camden County, in taking jurisdiction in an ancillary matter concerning the parties, commanded and enjoined PATCO to desist and refrain from engaging in certain conduct "until such time as the New Jersey Public Employment Relations Commission has resolved and finally determined all issues regarding the question concerning whether it /Transport Workers Union or the Transport Workers Union, Local 234/ or any other Labor Organization represents the employees of Defendant in an appropriate negotiating unit." (Emphasis added)

2. Teamsters Local Union 676, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter called Teamsters, and Transport Workers Union of America, AFL-CIO, and its Local 234, hereinafter called TWU, are employee representatives within the meaning of the Act.[5/]

5/ Amalgamated Transit Union, Division 880, AFL-CIO, hereinafter called ATU, while participating in the hearing, reserved its right to show whatever interest might be necessary and to appear on the ballot. As no such interest has been submitted, ATU's motion to intervene is hereby denied.

3. The public employer having refused to recognize any of the employee representatives as the exclusive representative of certain employees, a question concerning the representation of public employees exists and the matter is appropriately before the Commission for determination.

In an ancillary proceeding (Coyle...et al v. PATCO, et al #7633 in equity, Court of Common Pleas, Philadelphia County, Pennsylvania) TWU took the position that a "Memorandum of Understanding entered into the 13th day of January, 1969 by and between Port Authority Transit Corporation (PATCO) and Transport Workers Union of America (AFL-CIO) and Transport Workers Union of Philadelphia, Local #234 (jointly)" is a bar to an election. PATCO, petitioner and ATU urge that it not be considered a bar.[6/]

Section 19:11-15 (d) of the Commission's Rules and Regulations and Statement of Procedure entitled "Timeliness of Petitions", setting forth what is commonly known as contract bar procedure, states in part, "During the period of an existing written agreement containing substantive terms and conditions of employment..." (Emphasis added) This doctrine was promulgated in order to stabilize the negotiating relationship and to place the parties in a continuous state of certainty with respect to material and pertinent aspects of their labor relations during the lifetime of the contract. The Commission finds this doctrine is applicable to the instant case.

The contract in the instant case is not for a particular period or term. It contains a provision carrying over to PATCO seniority accrued with another employer but Section 4 reads, "The parties pledge themselves to meet as soon as mutually convenient and as early as possible

6/ This agreement marked for identification ATU #1 is hereby received into evidence solely as to the contract bar issue.

and to work out in collective bargaining the definitive terms of a Memorandum of Understanding covering wages, hours, pensions, and other fringe benefits, and working conditions to be effective for a period into the future to be mutually agreed upon."

As the contract is open ended with no termination date and it contains only a "pledge" to bargain in future concerning wages, hours, pensions, and other fringe benefits, and working conditions, it is incapable of promoting the employer-employee peace as contemplated by the Act and is, therefore, not a bar to an election.[7/]

4. The Hearing Officer's Report and Recommendations, attached hereto and made a part hereof, are adopted, except as modified herein.

5. In accordance with the recommendations of the Hearing Officer and the provisions of the Act, the appropriate collective negotiations unit is found to be: "All hourly paid employees of PATCO, but excluding office clerical employees, managerial executives, policemen, professional employees, craft employees[8/] and supervisors within the meaning of the

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7/ TWU's counsel in a letter dated July 25, 1969 to Hearing Officer Gill contends that the contract is a bar because the substantive terms of the PATCO-TWU contract are contained in the TWU-SEPTA contract (another employer not party to this proceeding). As the substantive terms and conditions of employment between PATCO and TWU are not embodied in a written agreement, nor in this instance is parol evidence permitted to detail the terms of the Memorandum of Agreement, it will not be considered a bar.

8/ The unit agreed to by the parties includes the job classifications, among others, "electronic technicians, electricians, and machinists". Section 8(d) of the Act provides that except where dictated by established practice, prior agreement or special circumstances, no unit shall be appropriate which includes "both craft and non craft employees unless a majority of such craft employees vote for inclusion in such unit". A similar provision exists regarding professional employees. Inasmuch as the record does not clearly reveal whether or not any of the employees working in any of the above-mentioned classifications is a "craft employee" or a "professional employee" or there are any special circumstances, established practice or prior agreements, the Commission will permit employees in these classifications to vote subject to challenge without resolving their status at this time.

Act"[9/]

6. In accordance with the Commission's findings, set forth above, the Commission directs that a secret-ballot election shall be conducted among the employees in the unit found appropriate.[10/] The election shall be conducted as soon as possible but not later than thirty (30) days from the date set forth below.[11/]

Eligible to vote are all employees listed in Section 5 who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were ill, or on vacation, or temporarily laid off, including those in military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

9/ At the June 6 hearing, PATCO, Petitioner and the ATU agreed as to the appropriateness of this unit. TWU, while not appearing on this date, has never taken issue with the unit sought in the Petition. Administrative Notice is taken to the fact that before the Philadelphia County Court TWU, therein, has urged such a unit.

10/ The Commission makes no findings at this time regarding the mechanics of the conduct of the election.

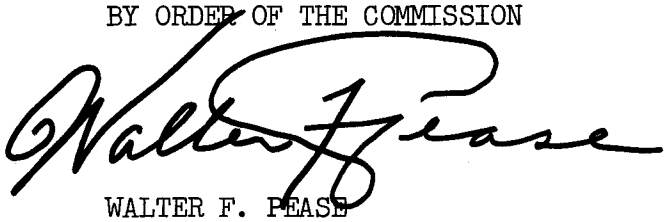
11/ During the hearing ATU in an offer of proof to the submission of ATU #1, took the position that the circumstances of the execution of Memorandum of Agreement were unfair to it and prevented it from having an equal chance to secure representation among the PATCO employees. Though the Agreement was received into evidence, its offer of proof to develop the matter, as to the effect of the agreement, is further rejected as not being material in a representation matter. It is noted in passing that Petitioner, though not receiving the alleged favored treatment afforded TWU, did submit a showing of interest and that at this late date, no showing has been made by ATU.

With regard to the Hearing Officer's suggestion that an election be delayed until the Philadelphia court has handed down its adjudication, which would presumably terminate the restraining order of that court, the Commission respectfully declines. It is noted that: (1) A Camden, New Jersey court has outstanding an injunction dependent upon an adjudication of this Commission, (2) The matter can best be resolved by an election, and (3) No party would be irreparably harmed by an election being held now.

Those eligible to vote shall vote on whether or not they desire to be represented for the purposes of collective negotiations by Teamsters Local Union 676, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America; Transport Workers Union of America, AFL-CIO, and its Local 234; or neither.

The majority representative, if any, shall be determined by a majority of the valid ballots cast. If none of the choices in the election receives a majority of the valid ballots cast, there shall be one run-off election between the two choices receiving the largest and second largest number of votes.

BY ORDER OF THE COMMISSION



WALTER F. PEASE
CHAIRMAN

DATED: September 23, 1969
Trenton, New Jersey

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

Port Authority Transit Corporation and Teamsters, Local 676	Docket No. R-14

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

This case concerns a claim by the petitioning Teamsters Local 676 to represent the employees of the Port Authority Transit Corporation (hereinafter referred to as PATCO). The case has had a rather complicated history, and it is in order to set forth a brief outline of what has transpired thus far.

PATCO is a wholly-owned subsidiary of the Delaware River Port Authority, which in turn is a bi-state agency of the states of New Jersey and Pennsylvania, established by compact of the two state legislatures and with the consent of Congress. PATCO operates the so-called Lindenwold high-speed line between Philadelphia and Lindenwold, New Jersey. The employees involved are engaged in maintenance and operation of the rapid transit cars on this line.

The line began operating commercially in January 1969, and a dispute promptly arose over representation of the employees, principally between Local 676 of the Teamsters (hereinafter referred to as Teamsters) and Local 234 of the

Transport Workers Union (hereinafter referred to as TWU). A third union in this proceeding, Amalgamated Transit Union, Division 880 (hereinafter called Amalgamated), does not claim representation rights, but is objecting to a determination being made at this stage, for reasons to be discussed below.

Upon the filing of a representation petition by the Teamsters, the Public Employment Relations Commission (hereinafter called either PERC or the Commission) designated the undersigned as Hearing Officer and scheduled a hearing in Cherry Hill, New Jersey on February 12, 1969. All of the above-mentioned parties appeared, although the TWU and the Amalgamated appeared only specially for the purpose of objecting to the proceeding. After informal conferences with the parties, it was agreed to hold a further hearing on February 21st, limited to the question of the Commission's jurisdiction. That hearing was duly held, and the parties thereafter filed briefs with the Commission on the issue of jurisdiction. On May 12, 1969, the Commission notified the parties of a further hearing on June 6, 1969. That hearing was held in Camden, New Jersey, and evidence and arguments were produced on the question of appropriate unit and other questions regarding the Teamsters' request for an election.

At this last hearing on June 6, the TWU declined to appear and participate, although they were duly notified of the hearing and in fact had an observer present.

At the conclusion of the hearing, the following telegram was sent by the undersigned to counsel for the TWU,

with copies to the other parties in the case:

> "CONFIRMING TELEPHONE CONVERSATION, NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION HAS DIRECTED THAT TRANSPORT WORKERS UNION BE GIVEN OPPORTUNITY TO SECURE TRANSCRIPT OF HEARING ON PATCO REPRESENTATION CASE HELD ON FRIDAY JUNE SIXTH, AND TO SUBMIT TO PERC BY JUNE 23 ANY COMMENTS OR ARGUMENTS ON THE ISSUES RAISED. IN ANY CASE, YOU ARE REQUESTED TO ADVISE PERC BY THAT DATE WHETHER OR NOT TWU DESIRES TO BE PLACED ON THE BALLOT IN ANY ELECTION WHICH MAY BE DIRECTED BY PERC IN THIS PROCEEDING."

On June 11, counsel for TWU addressed a reply to the undersigned, with copies to the other parties, referring to an injunction which had been issued by the Philadelphia Court of Common Pleas on June 5th, and stating that "since TWU was one of the parties enjoined we would be unable to comply with the suggestion set forth in your telegram".

The injunction referred to had been read into the record at the hearing on June 6th; it was issued in response to a motion of certain individual employees and the TWU, as plaintiffs and plaintiff intervenors, seeking to restrain PERC from proceeding with the hearings in this dispute. The Court denied that motion, but did issue a restraining order against all the parties except PERC. That order, directed to the plaintiff employees, the TWU, PATCO, and the Teamsters (the Amalgamated was not a party in that case), directed the parties to "refrain from enforcing or carrying into effect or attempting to enforce or carry into effect any direction, order or decree issued as a result of any hearing held before

the Public Employment Relations Commission of New Jersey affecting the issues or subject matter presently before this Court, until the hearings before this Court have been concluded and an adjudication filed".

As of the date of this present report, no adjudication has been filed by the Court, and the above injunction is still in effect. It does not enjoin or restrain PERC from issuing any "direction, order or decree", but it does direct that the listed parties refrain from doing anything by way of "enforcing or carrying into effect" any such direction, order or decree if it is one "affecting the issues or subject matter" before the Court.

The voluminous record of the proceedings before the Court (which occupied several days of hearings) was not introduced as part of the record in this hearing, although it is available to PERC if needed, but the nature of that proceeding was summarized by counsel. In brief, the "issues or subject matter" before the Court, insofar as pertinent here, concern a claim by TWU that it has a valid contract with PATCO which, among other things, grants TWU recognition as the collective bargaining representative of the PATCO employees. That contract, which is not for any definite term, has also not been made a part of this record, although it has been physically produced and made part of an offer of proof in case PERC should decide that it is pertinent.

Whether it is pertinent in this proceeding is an extremely fuzzy question, as matters have developed. At the

hearing on June 6, as indicated above, TWU declined to appear, and it is evident from TWU counsel's letter of June 11 that at least so long as the injunction from the Common Pleas Court is in effect, TWU will take no part in this proceeding before PERC. Accordingly, TWU is not at this point asserting that its contract with PATCO is a bar to an election - at this point TWU is not asserting anything at all, having declined to participate. And both PATCO and the Teamsters stated at the June 6th hearing that they were not asserting that the contract was a bar to an election. (The Teamsters, however, have made it clear that if PERC does decide to give any consideration to the contract, the Teamsters challenge its validity on several grounds.)

However, the Amalgamated does contend that the contract is pertinent, for reasons which are the reverse of those advanced by the TWU before the Court. The Amalgamated says the contract should bar an election at present, not because it is a valid contract, but because the circumstances of its execution were unfair to the Amalgamated and prevented the Amalgamated from having an equal chance to secure representation among the PATCO employees. The reasons for this contention were developed in a detailed offer of proof at the June 6th hearing, with both PATCO and the Teamsters objecting to any consideration being given to the issues thereby advanced.

Finally, to deepen the fog surrounding the status

of the contract in this proceeding, it should be noted that at the earlier hearing on February 21, 1969, when TWU was present, its counsel made an offer of proof regarding the contract. He did not specifically assert that it would be a bar to an election if an election were otherwise appropriate, but in effect argued that certain provisions for transfer rights between SEPTA and PATCO, contained in the agreement, constituted an additional reason for PERC not to assume jurisdiction.

There is also in effect a Preliminary Injunction issued on April 18, 1969 by the Superior Court of New Jersey, Chancery Division, and directed against PATCO. This injunction, issued on petition of the Teamsters, enjoins PATCO from recognizing or negotiating with TWU "until such time as the New Jersey Public Employment Relations Commission has resolved and finally determined all issues regarding the question concerning whether it or any other Labor Organization represents the employees of Defendant in an appropriate negotiating unit."

We thus have the quite remarkable situation of PATCO being enjoined by the Philadelphia court from putting into effect any order of PERC, and at the same time being enjoined by the New Jersey court from dealing with the TWU until the issues have been resolved by PERC. It should be noted that neither court has undertaken to enjoin PERC in any manner, so PERC is not under any inhibition against directing or holding an election, assuming that it legally has juris-

diction over the dispute. Whether PATCO or the other parties would be in violation of the Philadelphia court's order by participating in any such election, is presumably a matter for the court to determine if the question arises, and I express no opinion on that subject.

The one area where there appears to be no dispute at all - at least so far as this record indicates - is the appropriate voting unit if an election is directed at this point. At the June 6th hearing, the Teamsters proposed a unit of all hourly paid employees of PATCO, excluding guards and supervisory and office clerical employees, and PATCO concurred with this proposed unit. Counsel for the Amalgamated raised no objection to that unit if an election were to be directed at this time, merely noting that if an election were to be held at some later date, there might be additional employees to consider, such as those of potential feeder lines. And while the TWU has not stated any position on the appropriate unit, it is of interest to note that its contract with PATCO, referred to above, describes the unit as the hourly employees of PATCO, exclusive of those in "executive, supervisory and clerical capacities".

All of the points outlined above could be elaborated upon in some detail; there is detailed evidence in the record on some of the points, and offers of proof on others. Additional evidence will be in order on some points if PERC decides that they are pertinent - such as the circumstances

surrounding the contract between PATCO and TWU, and other related points raised by the Amalgamated in its offer of proof. However, for purposes of this report, I believe the essential facts have been stated.

My conclusions and recommendations are as follows:

1. As to whether PERC legally has jurisdiction, I make no recommendation one way or the other. That legal question has been briefed by the parties, and I understand PERC has sought a ruling from the Attorney General of New Jersey on the point; it would clearly be inappropriate for me to volunteer any recommendation on that issue.

2. If the Commission decides to assume jurisdiction, the next question would be whether it is appropriate to direct an election <u>at this time</u>. There are three principal points to consider on this question, which may be described as follows:

a. Whether the PATCO-TWU contract should be treated as a bar to an election at this time.

b. Whether it is appropriate to conduct an election while the restraining order of the Philadelphia Court of Common Pleas is still in effect.

c. Whether an election should be delayed for certain other reasons advanced by the Amalgamated (to be outlined below).

Taking these points up one at a time, I would recommend that the PATCO-TWU contract should <u>not</u> be treated as

a bar to an election, because it is not a contract for any particular term. I make no findings or recommendations on some of the other points of dispute about that contract - whether it should be disregarded because of the circumstances surrounding its execution, for instance; it is unnecessary to do so in view of my recommendation that it not be treated as a bar in any event. Also, if those points are to be decided, further evidence would be required; all that is in the record now concerning those points is an offer of proof.

As to the pendency of the restraining order of the Philadelphia Court of Common Pleas, I think that is essentially a policy question for the Commission to decide, and I will not make any definite recommendation as to whether the Commission should direct that an election be held while that restraining order is in effect. However, there is one practical aspect of the matter which the Commission may wish to consider in this connection. It is obviously desirable to have any election which may be directed, result in a clear-cut resolution of the dispute over representation. The chances of achieving that result would be considerably better, I would suggest, if the propriety of the parties' participation in the election were not open to question because of the restraining order. With that thought in mind, the Commission may wish to consider deferring the actual conduct of an election until the Philadelphia Court has handed down its adjudication, which would presumably terminate the restraining order according to its terms. This course of action might be especially worth

considering if the Commission could receive some assurance, through informal channels, that the Court's adjudication will be forthcoming promptly.

Finally, we come to the other reasons advanced by the Amalgamated in support of its request that no action be taken by the Commission at this time. As outlined in an offer of proof by Amalgamated's counsel at the June 6th hearing, those reasons consist basically of allegations that PATCO refused to grant to Amalgamated the "same kind of treatment as it afforded to the TWU", by way of a written agreement recognizing accrued seniority and pension rights. Because of its inability to secure such an agreement, the Amalgamated was assertedly unable to induce its members on the Public Service bus lines to accept employment with PATCO. The net result of all this, it is alleged, was that "the initial complement of employees was weighted, so to speak, in favor of the TWU personnel". It is contended that any election should be deferred until the effects of this asserted favoritism toward TWU have worn off.

The dispute is in a very strange posture in this respect. Ordinarily, the Union which was the beneficiary of the asserted favoritism would be assumed to be pressing for an election, but of course that is not the case here. For whatever reason, the effects of the alleged favoritism have apparently already worn off, if they ever existed, because the Teamsters are pressing for an immediate election, confidently

asserting that they have signed up an overwhelming majority of the employees, while the TWU is objecting to an election being held. There is no contention by the Amalgamated that PATCO has given any favored treatment to the Teamsters, and holding off their request for an election because of asserted favoritism toward the TWU seems highly inappropriate. My conclusion is that the asserted favored treatment of the TWU is not a valid reason for deferring an election at this point.

Two other arguments are advanced by the Amalgamated. One is that PATCO either is applying or is going to apply for federal funds, which would require compliance with certain labor protective provisions under the Urban Mass Transportation Act. It is asserted that compliance with these provisions would afford certain benefits to the employees of Public Service and thereby potentially affect the representation dispute. I find it unnecessary to go into this point in more detail, because I accept the testimony of the PATCO representatives that PATCO has no application for federal funds pending or contemplated.

Finally, it is argued that the possibility of future feeder lines may add other groups of employees to the appropriate unit. Here again, I find it unnecessary to explore this point in detail, since the prospects of any feeder lines being operated by PATCO appear to be extremely remote if not altogether non-existent. Holding up an election for an indefinite period because of some remote possibility of ac-

cretions to the unit, appears to be unwarranted.

In this connection, it should be noted that while there has been discussion of certain future additions to the trackage of the line, which would involve additional PATCO employees, I accept the testimony of the PATCO representatives that any such additional trackage is at least five years away. In the reasonably near future, only about 10 to 15 more employees are contemplated beyond the present complement of about 118.

Various suggestions were made at the close of the hearing regarding the mechanics of holding an election if one were ordered - time and place of voting, wording of the ballot, and so forth. It seems inappropriate to recite those suggestions here - the record is available if the Commission wishes to inspect it, but I assume that any and all questions of mechanics will be worked out with the parties by whatever agent or agency the Commission may designate to conduct an election.

RECOMMENDATIONS

The undersigned hereby recommends to the Commission as follows:

1. If the Commission decides to assume jurisdiction over the dispute, an election should be conducted among all hourly paid employees of PATCO, excluding guards and supervisory and office clerical employees.

2. The Commission should consider, as a policy question, whether it would be advisable to delay the date of the election until an adjudication is filed in the pending case before the Philadelphia Court of Common Pleas, thus terminating the restraining order which is currently in effect, if it can be ascertained that such an adjudication will be forthcoming promptly.

3. The other arguments advanced for delaying the holding of an election are found to be without merit, and it is recommended that they be rejected by the Commission.

Lewis M. Gill
Hearing Officer

July 22, 1969