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8-6-1975

State of New York Public Employment Relations Board Decisions from August 6, 1975

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from August 6, 1975

Keywords

NY, NYS, New York State, PERB, Public Employee Relations Board, board decisions, labor disputes, labor relations

Comments

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

TOWN OF ISLIP,

Employer,

-and-

LOCAL 237, INTERNATIONAL BROTHERHOOD OF
TEAMSTERS,

Petitioner.

#1A-a - 8/6/75

BOARD DECISION AND CERTIFICATION

CASE NO. C-1126

On July 22, 1975 the Director of Public Employment Practices and Representation (Director) issued a decision that Local 237, International Brotherhood of Teamsters (Local 237) had submitted sufficient evidence to satisfy requirements for certification without an election as representative of all lifeguards, senior lifeguards and chief lifeguards of the Town of Islip (Town). Exceptions to this decision were submitted by the Town on August 1, 1975. The exceptions were accompanied by a brief in support thereof.

Having reviewed the exceptions and the supporting brief, we determine that they are without merit and we, therefore, confirm the decision of the Director. We have taken this action even before the expiration of the time for the filing of a response to the exceptions by Local 237. Our reason for doing so is that this proceeding involves seasonal employees who work during the summer. Any delay in the resolution of this proceeding will frustrate the opportunity for negotiations.

The Town specifies three exceptions to the decision of the Director.

The exceptions are:

1. The acceptance of evidence of the employees' choice of a representative in collective negotiations by other than a secret ballot election arbitrarily deprives employees of their full freedom of choice.
2. The Director erred in accepting a petition signed by employees as evidence of a majority support sufficient for certification without an election; the Board's

Rules restrict certification without an election to circumstances where "a majority of the employees within the unit have indicated their choice by execution of dues deduction authorization cards which are current, or by individual designation cards which have been executed within six months prior to the certification." (Rules of the Board, §201.9(g)(1)).

3. The Town was improperly denied an opportunity to examine the petition and to object to the consideration of some of the signatures on it.

In support of its first exception, the Town argues that both the National Labor Relations Board and the courts have, in applying the National Labor Relations Act, commented that evidence other than a secret ballot election is an unreliable indication of the desires of employees to be represented by a union. These arguments must fall in the face of the language of the Taylor Law, which provides (in §207.2) that PERB shall "ascertain the public employees' choice of employee organization as their representative...on the basis of dues deduction authorization and other evidences, or, if necessary, by conducting an election." This language not only countenances reliance by PERB on evidences other than a secret ballot election, but indicates a preference for such an alternative procedure unless PERB finds that an election is necessary.

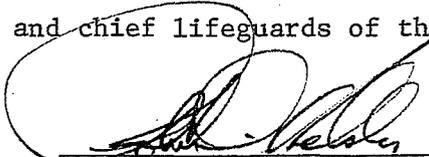
The second exception appears to indicate that the procedure followed by the Director is inconsistent with and in violation of our Rules. We conclude that it is not. The abovequoted language of §201.9(g)(1) was inserted in our Rules in 1969, at which time we altered our procedures for certification without an election. Our purpose in promulgating the abovequoted language was to specify the age of a proof of support that would be considered timely. The reference to individual designation cards was descriptive of proofs of support that had been submitted and not prescriptive of showings of interest that would be accepted. In our judgment individually executed signatures on a petition are a sufficient indication of employee support to justify certification without an

election where the requirements for such certification are otherwise satisfied. Moreover, the Act itself does not restrict evidence sufficient for certification without an election to dues deductions and individual designation cards.

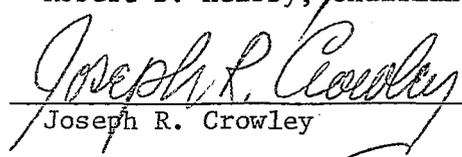
The third exception is directed at the anonymity, vis-a-vis an employer, of the employees who support an employee organization. To some extent it could be directed at a secret ballot election as well as at certification without an election. Admittedly, in a secret ballot election the employer may know who is voting, if not whether or not the ballot is cast in favor of representation. The preservation of the confidentiality of the preferences of the employees is a value of great priority. In countenancing certification without an election, the Legislature could not have intended to compromise the confidentiality of the employees by insisting upon a role for the employer in policing the selection procedure. The Legislature clearly relied upon PERB to police that selection procedure (CSL §205.5(a) and (b)). This diminished role of the employer in the representation process is not inconsistent with the Taylor Law. Even under the National Labor Relations Act without its specific reference to certification without an election, "[w]ho is to represent the employees as bargaining agent and the manner of selection are matters which belong exclusively to employees." NLRB v. Sunbeam Electric Manufacturing, 133 F 2d 856 (1943).

NOW, THEREFORE, we confirm the decision of the Director certifying, without an election, Local 237, International Brotherhood of Teamsters as exclusive negotiating representative of a unit of all lifeguards, senior lifeguards and chief lifeguards of the Town of Islip.

Dated: Albany, New York
August 6, 1975



Robert D. Helsby, Chairman



Joseph R. Crowley

Board Member Fred Denson did not participate in the issuance of this decision.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#1A-b-8/6/75

In the Matter of :
TOWN OF ISLIP, :
Employer, :
-and- : Case No. C-1126
LOCAL 237, INTERNATIONAL BROTHERHOOD :
OF TEAMSTERS, :
Petitioner. :

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected;

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that LOCAL 237, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

has been designated and selected by a majority of the employees of the above named public employer, in the unit described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit:

Included: All lifeguards, senior lifeguards and chief lifeguards.

Excluded: Senior beach manager, assistant beach managers and all other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with LOCAL 237, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

and enter into a written agreement with such employee organization with regard to terms and conditions of employment, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances.

Signed on the 16th day of August, 1975.


ROBERT D. HELSBY, Chairman


JOSEPH R. CROWLEY

Mr. Denson did not participate in the issuance
of this decision
FRED L. DENSON