



Cornell University
ILR School

Cornell University ILR School
DigitalCommons@ILR

Board Decisions - NYS PERB

New York State Public Employment Relations
Board (PERB)

11-3-1975

State of New York Public Employment Relations Board Decisions from November 3, 1975

New York State Public Employment Relations Board

Follow this and additional works at: <https://digitalcommons.ilr.cornell.edu/perbdecisions>

Thank you for downloading an article from DigitalCommons@ILR.

Support this valuable resource today!

This Article is brought to you for free and open access by the New York State Public Employment Relations Board (PERB) at DigitalCommons@ILR. It has been accepted for inclusion in Board Decisions - NYS PERB by an authorized administrator of DigitalCommons@ILR. For more information, please contact catherwood-dig@cornell.edu.

If you have a disability and are having trouble accessing information on this website or need materials in an alternate format, contact web-accessibility@cornell.edu for assistance.

State of New York Public Employment Relations Board Decisions from November 3, 1975

Keywords

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

Comments

This document is part of a digital collection provided by the Martin P. Catherwood Library, ILR School, Cornell University. The information provided is for noncommercial educational use only.

OPINION

Section 201.4(c) of our Rules states: "The determination by the Director as to the timeliness of a showing of interest and of its numerical sufficiency is a ministerial act and will not be reviewed by the Board." This practice has been affirmed in a court action (Matter of Civil Service Employees Association v. Helsby, 63 Misc. 2d 403 [Supreme Court, Suffolk County, 1970]) by a State court. The State court quoted, with approval, the language of a Federal court decision refusing to countenance litigation of a question involving a sufficiency of a showing of interest because "it is the election... which decides the substantive issue whether or not the [union] or another labor organization, if any, actually represents a majority of the employees involved in a representation case."

CSEA's motion papers argue that the Director violated the Rules of this Board in directing an election because "he has not determined that PEF has a thirty (30%) percent showing of interest...."¹

¹ The Director's letter to the parties indicates that he was not able to determine with precision the percentage of the showing of interest because the number of eligible employees in the negotiating unit, which is the denominator of the equation, is uncertain. He wrote:

"In support of its petition, PEF submitted a substantial showing of interest comprised of timely authorization cards and petitions executed by employees clearly within the PS&T Unit. The purpose of PERB's showing of interest requirement is to determine whether its resources should be devoted to the processing of a petition; in other words, a petition should be processed only if there is substantial support for its filing. In the instant case, my prolonged investigation has revealed the existence of such support.

"It is fair to prognosticate that a continuation of the investigation of the showing of interest would require much additional time and effort. In that event, the question of which, if any, of the competing employee organizations is the choice of a majority of the employees in the PS&T unit would not be resolved by a date sufficiently in advance of the expiration of the existing contract so as to allow a reasonable period of time for negotiations."

We decline to deal with that question at this time. The policy of this State as articulated by the Legislature is that representation cases should be quickly processed to their conclusion without interruption for litigation of intermediate determinations. In 1971 the Legislature amended the statutory provisions providing for judicial review [CSL Section 213(b)] to specify that "[o]rders of the board or its agents made pursuant to subdivisions one and two of section two hundred seven of this chapter [i.e., intermediate orders in representation proceedings] shall be reviewable only in a proceeding brought under article seventy-eight of the civil practice law and rules to review an order of the board made pursuant to subdivision three of section two hundred seven of this chapter [i.e., final orders in representation proceedings]."

Two years earlier, when the Legislature amended the Taylor Law to prevent improper employer and employee practices, it specified [CSL Section 205.5(d)]: "The pendency of proceedings under this paragraph shall not be used as the basis to delay or interfere with determination of representation status pursuant to section two hundred seven of this article or with collective negotiations." Our own Rules have also been amended to expedite representation cases in a manner that is directly relevant to the matter before us. When first adopted in 1967, our Rules provided, at Section 201.6(h): "After receipt of the report and recommendations of the investigator or the hearing officer, or upon consent of the parties, the Director of Representation may direct an election, recommend dismissal of the petition, or otherwise dispose of the matter. The direction of an election may be appealed to the Board within seven days thereafter."

(Emphasis supplied). The underscored language of the above quote was eliminated when our Rules were amended in 1969. Since then, the Rule [now Section 201.9(c)(3)] reads: "Unless expressly authorized by the Board, rulings by the Director or by a trial examiner shall not be appealed directly to the

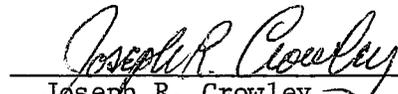
Board, but shall be considered by the Board when it considers such exceptions to the decision of the Director as may be filed."

Consistent with our own policies and with the policies inherent in the legislation, we decline to authorize consideration of the intermediate determination of the Director. The motion of CSEA is denied.

Dated: Albany, New York
November 3, 1975



Robert D. Helsby, Chairman



Joseph R. Crowley



Fred L. Denson