

D.R. NO. 82-22

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF REPRESENTATION

In the Matter of

CITY OF CAMDEN,

Public Employer,

-and-

DOCKET NO. RO-82-60

AFSCME, AFL-CIO, COUNCIL #71,

Petitioner,

-and-

NJCSA, COUNCIL #10,

Intervenor.

SYNOPSIS

The Director of Representation, on the basis of an administrative investigation, dismisses a Petition filed by AFSCME, seeking to represent certain City employees, since the Petition was not filed in accordance with the Commission's "contract bar" rules. CSA's contract with the City, covering the petitioned-for employees is effective until December 31, 1981, and thus, a petition could not be filed after October 1, 1981. AFSCME's petition was filed on October 5, 1981.

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Appearances:

For the Public Employer
Laurence E. Rosoff, City Attorney

For the Petitioner
Robert Little, Staff Representative

For the Intervenor
Carmen and Mills, P.A.
(Joseph A. Carmen, Esq. of Counsel)

DECISION

On October 5, 1981, a Petition for Certification of Public Employee Representative, supported by an adequate showing of interest, was filed with the Public Employment Relations Commission (the "Commission") by AFSCME, AFL-CIO, Council #71 ("AFSCME") seeking to represent a collective negotiations unit described as including all public works and demolitions employees of the City of Camden (the "City"). Camden Council #10, New Jersey Civil Service Association ("CSA") is the current exclusive representative of a unit of the City's

non-uniformed employees including the petitioned-for employees herein and has intervened in this matter on the basis of its current contractual agreement with the City.

The undersigned has caused an administrative investigation to be conducted into the matters and allegations set forth in the petition in order to determine the facts. On the basis of the administrative investigation herein the undersigned finds and determines as follows:

(1) The disposition of this matter is properly based upon the administrative investigation herein, it appearing that no substantial and material factual issues exist which may more appropriately be resolved at a hearing. Pursuant to N.J.A.C. 19:11-2.6(b) there is no necessity for a hearing where, as here, no substantial and material factual issues have been placed in dispute by the parties.

(2) The City of Camden is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), is the employer of the employees who are the subject of this petition and is subject to the provisions of the Act.

(3) AFSCME, AFL-CIO, Council #71 and Camden Council #10, New Jersey Civil Service Association are employee representatives within the meaning of the Act and are subject to its provisions.

(4) AFSCME has petitioned for an election among public works and demolition employees of the City. The petitioned-for employees are currently included in a collective negotiations unit represented by CSA and are covered by a collective negotiations

agreement which is in effect until December 31, 1981. By separate letters, each respectively dated October 20, 1981, both the City and CSA have claimed that the filing of the petition was barred pursuant to N.J.A.C. 19:11-2.8(c), in view of the existing written agreement covering the petitioned-for employees.

N.J.A.C. 19:11-2.8(c) provides, in relevant part,

During the period of an existing written agreement containing substantive terms and conditions of employment and having a term of three years or less, a petition for certification of public employee representative normally will not be considered timely filed unless ... (2) In a case involving employees of a county or a municipality, any agency thereof, or any county or municipal authority, commission or board, the petition is filed not less than 90 days and not more than 120 days before the expiration or renewal date of such agreement ...


AFSCME has been advised that its petition was not filed within the "window" period established by the above-cited rule, which terminated October 1, 1981. ^{1/} AFSCME was requested to withdraw the petition but has declined this request.

Accordingly, for the reasons above, the undersigned determines

1/ The Commission is guided by the National Labor Relations Board's interpretation of contract expiration dates in applying the contract bar rules. The NLRB defines the contract expiration date as the last effective date of the contract. A contract "to" or "until" a date does not include that date and the last effective date is the preceding date. Borman Investment Company Local 93, 97 LRRM 2309 (W.D. Mo. 1977), Hemisphere Steel Products, Inc., 131 NLRB No. 13, 47 LRRM 1595 (1961), Williams Laundry Company, 97 NLRB No. 144, 29 LRRM 1207 (1962).

that the petition filed by AFSCME was not filed in accordance with N.J.A.C. 19:11-2.8(c)(2), and the petition is hereby dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: November 5, 1981
Trenton, New Jersey