D.R. NO. 94-7

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

In the Matters of

STATE OF NEW JERSEY (Public Advocate),

Respondent,

-and- Docket No. RO-93-157

COMMUNICATIONS WORKERS OF AMERICA,

Charging Party.

STATE OF NEW JERSEY (Transportation),

Respondent,

-and- Docket No. RO-93-171

COMMUNICATIONS WORKERS OF AMERICA,

Charging Party.

STATE OF NEW JERSEY (Human Services),

Respondent,

-and- Docket No. RO-93-189

COMMUNICATIONS WORKERS OF AMERICA,

Charging Party.

SYNOPSIS

The Director of Representation dismisses three representation petitions filed by the CWA as untimely under N.J.A.C. 19:11-2.8(1)(c). The CWA sought to add approximately 107 unrepresented employees to its existing unit of higher level supervisors employed by the State. The Director rejects CWA's argument that the Commission adopt the NLRB practice, as enunciated in NLRB v Mississippi Power and Light, of allowing mid-contract accretion petitions for unrepresented employees. The Director reaffirms the rationale underlying Clearview Reg. H.S. Bd. of Ed., which holds that the contract bar rule in N.J.A.C. 19:11-2.8(1)(c) strikes a balance between employees' statutory rights to select or reject negotiations representatives' and the parties' need for stable employer-employee labor relationships.

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Charging Party.

Appearances:

For the Respondent
David Collins, Coordinator, Office of Employee Relations

For the Charging Party
Weissman & Mintz, attorneys
(Steven P. Weissman, of counsel)

DECISION

On April 5, 1993, CWA filed a Petition for Certification of Public Employee Representative, Docket No. RO-93-157, seeking to

expand its existing unit of State higher level supervisors to include approximately 34 chief investigators and assistant chief investigators employed by the State, Department of the Public Advocate. On May 5, and on July 21, 1993, CWA also filed two additional petitions, Docket Nos. RO-93-171 and RO-93-189 respectively, seeking to enlarge the higher level supervisors' unit to include approximately 56 supervising engineers employed at the Department of Transportation and approximately seven supervising medical review analysts employed at the Department of Human Services. The showings of interest for all three petitions were adequate. The State refuses to consent to an election for the three petitions, asserting that the petitions are time-barred by the parties' current collective negotiations agreement.

On June 30, 1993, I notified the parties that I intended to consolidated the petitions for consideration of the timeliness issue. Both parties submitted statements of positions.

N.J.A.C. 19:11.2.8(c)(1) states that a representation petition involving employees of a State agency may not be filed during the pendency of an existing agreement except during the open period -- that is, not less the 240 days and not more than 270 days before the expiration date of the agreement. The parties' current agreement expires June 30, 1995. Therefore, applying N.J.A.C. 19:11.2.8(c)(1), the open period in which a petition seeking to

represent employees for this bargaining unit would be from October 4 to November 2, 1994.

The CWA argues that the contract bar set out in subsection 2.8(c)(1) should not apply to situations where, as here, the incumbent majority representative seeks to accrete or add unrepresented employees into an existing negotiations unit. It urges that the Commission adopt the NLRB practice. The NLRB does not bar mid-contract accretion petitions for unrepresented employees. Its rationale is that represented employees should not, in effect, disenfrancise unrepresented, eligible employees who may desire representation. See NLRB v Mississippi Power and Light, 120 LRRM 2302 (5th Cir. 1985).

N.J.A.C. 19:11-2.8(1)(c) was first interpreted in Clearview Reg. H.S. Bd. Ed., D.R. No. 78-2, 3 NJPER 248 (1977). There, the exclusive representative of a teachers unit sought, mid-contract, to expand its unit to include certain unrepresented employees.

The then Director of Representation stated that the contract bar established by this subsection seeks to strike a balance between employees' statutory rights to select or reject negotiations representatives and the need for stable employer-employee labor relationships. The Director noted that this relationship may be disturbed by the filing of a representation petition, which seeks to accrete employees to an existing unit. Limiting the filing of representation petitions to a period of time shortly before an agreement expires ensures that the parties' negotiations relationship will not be subjected to continuous and untimely disruptions.

Although the NLRB's interpretation of the NLRA may serve as a guide for interpreting the New Jersey Employer-Employee Relations Act, Lullo v. IAFF, 55 N.J. 409 (1970); Galloway Tp. Bd. of Ed. v. Galloway Tp. Ass'n of Ed. Secy's, 78 N.J. 1 (1978), the Commission is not obligated to follow NLRB precedent. It is free to reject NLRB precedent and rely upon its own experience and expertise in establishing policies which best foster the purposes of the Act. See Bergen Cty, P.E.R.C. No. 84-2, 9 NJPER 451 (¶14196 1983).

The CWA has not presented reasons sufficient to reverse Clearview. Long years in applying this policy have confirmed the wisdom of seeking labor relations stability. It must be noted that the positions which are the subjects of these petitions are not newly created ones. Petitions for these positions could have been filed in earlier open periods. Therefore, I dismiss the representation petitions on the basis that they are untimely under N.J.A.C. 19:11-2.8(1)(c).

BY ORDER OF THE DIRECTOR
OF REPRESENTATION

Edmund G. Gerber, Director

DATED: September 10, 1993
Trenton, New Jersey