

D.R. NO. 94-11

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

In the Matter of

TOWNSHIP OF HOLMDEL,

Public Employer,

-and-

LOCAL #702 PUBLIC EMPLOYEES SERVICE
UNION,

Docket No. RO-94-48

Petitioner,

-and-

TRANSPORT WORKERS UNION OF AMERICA, AFL-CIO,
LOCAL 225,

Intervenor.

SYNOPSIS

The Director of Representation directs an election among a unit of blue and white collar employees employed by the Township of Holmdel and currently represented by Local 225. The Director rejects Local 225's argument that the employer's final offer, which was implemented for the period covering January 1, 1991 through December 31, 1993 should act as a bar to the processing of Local 702's petition under N.J.A.C. 19:11-2.8.

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Intervenor.

Appearances:

For the Public Employer
Apruzzese, McDermott, Mastro, Murphy, attorneys
(Robert Clarke, of counsel)

For the Petitioner
Robert Feeney, Business Representative

For the Intervenor
Susan Resch, Secretary Treasurer

DECISION

On October 12, 1993, Local No. 702 Public Employees Service Union filed a petition seeking to represent all blue and white collar employees employed by the Township of Holmdel. These employees are currently represented by the Transport Workers Union, Local 225.

By letter dated November 5, 1993, Local 225 intervened in this matter. It claims that Local 702's petition should be dismissed because it was not timely filed under N.J.A.C. 19:11-2.8. According to Local 225, the employer's final offer, which was unilaterally implemented for the period covering January 1, 1991 through December 31, 1993, should act as a bar to the processing of this petition under N.J.A.C. 19:11-2.8.

Local 702 disputes that the employer's final offer should act as a bar to the processing of its petition. It claims that this final offer does not constitute a signed written agreement between the parties. N.J.A.C. 19:11-2.8 does not apply here.

The Township will consent to an election of the appropriate bargaining unit, assuming there is a sufficient showing of interest and a timely filed petition.

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N.J.A.C. 19:11-2.8(c) provides:

(c) 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 ... the petition is filed not less than 90 days and not more than 120 days before the expiration or renewal date of such agreement;

The Commission has previously held that in order for an agreement to operate as a bar to the filing of a petition under N.J.A.C. 19:11-2.8(c), the agreement must be in writing and executed

by the parties prior to the filing of the petition. See City of Pleasantville, D.R. No. 86-10, 12 NJPER 70 (¶17027 1985); Transport of New Jersey, D.R. No. 82-38, 8 NJPER 154 (¶13067 1982). See also Appalachian Shale Products Co., 121 NLRB No. 149, 42 LRRM 1506 (1958).

Here, after the parties reached impasse, the employer implemented its final offer. No agreement was reached and executed by the parties. Thus, there is no agreement to operate as a bar to the processing of Local 702's petition under N.J.A.C. 19:11-2.8(c); Pleasantville; Transport of New Jersey.

Accordingly, I direct that an election be conducted among the employees in the petitioned-for unit as follows:

Included: All blue and white collar employees employed by the Township of Holmdel.

Excluded: Managerial executives, confidential employees, professional employees, craft employees, police employees, supervisory employees within the meaning of the Act, and all other employees employed by the Township of Holmdel.

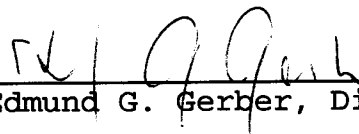
The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, including those in the military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible

to vote are employees who resigned or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

Pursuant to N.J.A.C. 19:11-9.6, the public employer is directed to file with us an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the units, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by us no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously provided to the employee organization with a statement of service filed with us. We shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

The exclusive representative, if any, shall be determined by a majority of the valid votes cast in the election. The election shall be conducted in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Edmund G. Gerber, Director

DATED: December 21, 1993
Trenton, New Jersey