

D.R. NO. 98-13

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

In the Matter of

VILLAGE OF RIDGEWOOD,
Public Employer,

-and-

RIDGEWOOD BLUE COLLAR EMPLOYEES
ORGANIZATION,
Petitioner,

Docket No. RO-98-2

-and-

LOCAL 29, RWDSU,
Employee Organization.

SYNOPSIS

After conducting a full hearing, the Director of Representation finds that a valid, ratified contract exists between an incumbent union and the employer which acts as a bar to the filing of a representation petition.

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Appearances:

For the Public Employer,
Grotta, Glassman & Hoffman, attorneys
(Beth Hinsdale, of counsel)

For the Petitioner,
James DeRaffaele, President

For the Employee Organization,
Balk, Oxfeld, Mandell & Cohen, attorneys
(Nancy Iris Oxfeld, of counsel)

DECISION

On July 10, 1997, the Ridgewood Blue Collar Employees Organization filed a Petition for Certification of Public Employee Representative with the Public Employment Relations Commission, seeking to represent approximately 85 blue-collar workers employed by the Village of Ridgewood. The petition was supported by an adequate showing of interest from among the employees in the unit.

N.J.A.C. 19:11-1.2. These unit employees are currently represented by Local 29 RWDSU. Both the Village and Local 29 refused to consent to an election and assert that a current contract bars the filing of this petition.

An administrative investigation revealed substantial and material factual issues exist which would best be resolved after a hearing (N.J.A.C. 19:11-2.6(d)1). Accordingly, I issued a notice of hearing and as Director, I conducted a hearing in this matter on February 23, 1998. All parties participated in the hearing and were given the opportunity to introduce evidence, present witnesses, and argue orally. All parties waived their right to file post-hearing briefs.

Upon the record, I make the following:

FINDINGS OF FACT

Local 29 has represented the Village's blue-collar employees for many years. Local 29 and the Village were parties to a 1992-95 collective agreement covering this unit, and, through most of 1996, the parties negotiated for a successor contract. Local 29's negotiations committee consisted of its then business agent Paul Freda, shop steward James DeRaffaele, and a small group of unit members. Village Administrator Larry Worth negotiated on behalf of the Village.

At a negotiations session on November 25, 1996, the parties entered into a tentative agreement. Local 29 agreed to recommend

the package to the membership. The following day, Worth drafted and sent to Freda a document entitled "Memorandum of Agreement," setting forth contract terms that he and Local 29's negotiations committee had agreed to recommend to the Village Council and union membership for their respective approvals.

Worth sent a memorandum to the Village Council on December 2, 1996, explaining that the parties had reached a tentative agreement and transmitted the draft Memorandum of Agreement. Thereafter, the Village Council ratified the memorandum of agreement.

At a Local 29 membership meeting in early December 1996, Freda presented the contract settlement package to the membership. The membership responded that it would accept the salary package but with two additional conditions: it sought an informal procedure before Worth, by-passing the grievance procedure that could be used prior to the imposition of major discipline and an additional bonus pay for holiday stand-by time. Apparently two other issues were also raised at the ratification meeting but these issues never clearly identified and Worth testified without contradiction that these items were managerial prerogatives and, therefore, non-negotiable. Freda assured the members that he believed the additional items could be obtained, and a ratification vote was then conducted. At the hearing Freda testified that the main concern for the union was getting an agreement to by-pass the grievance procedure for major discipline.

Freda met again with Worth on December 9, 1996. Freda told him the membership had ratified the settlement subject to the Village's agreement on an increase in on-call holiday pay from four hours pay to five, and the modified grievance procedure for on-call disputes. Worth agreed to these changes on behalf of the Village and he deemed the Memorandum of Agreement to be fully ratified.

On January 14, the Village Council passed a salary ordinance adopting the agreed upon wage increases, retroactive to January 1, 1996. The terms of the settlement agreement were almost immediately implemented, including retroactive salary increases and a change to managed care health insurance.

In early January 1997, Freda severed his employment relationship with Local 29. Nothing further happened with regard to the contract until March 1997, when DeRaffaele contacted John Mahoney, the new Local 29 business agent and asked him to come to Ridgewood to finish the contract and clear up certain other unresolved items. On April 10, 1997, Worth and the new Local 29 business agent met and signed the three-page memorandum of agreement which Worth drafted in November 1996.

The memorandum of agreement, which sets salary, benefits and working conditions for the blue-collar unit, covers the period from January 1, 1996 through December 31, 1999. The agreement includes the following preamble:

This memorandum summarizes agreements reached by and between bargaining representatives of RWDSU, Local 29 and the Village of Ridgewood relative to a new collective bargaining agreement. Both

parties understand that this agreement is subject to ratification by the Union membership and approval by the Village Council. It will not be binding on either party until such ratification and approvals are obtained.

Following the April 10 signing of the Memo, neither party conducted a second ratification, nor was a full contract prepared for execution.

However, all witnesses including Victor Borsellino, a witness for the petitioner, testified that an agreement was in effect between the parties. Borsellino testified however that he has never seen a written contract and he expressed his dissatisfaction with Mahoney as a union representative. He maintains that Mahoney is never available.

ANALYSIS

The Commission's Rules provides that representation petitions may be filed only during certain time periods. The Commission has created a balance between employees' rights to choose their negotiations representatives and the parties' rights to labor peace and stability in the negotiations process. N.J.A.C. 19:11-2.8 (c) provides,

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 or a petition for decertification 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 of a county or municipality 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;...

The issue to be resolved here is whether at the time of the filing of the petition, there was an existing written agreement in effect, which would bar the timely filing of this petition.

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 Transport of New Jersey, D.R. No. 82-38, 8 NJPER 154 (¶13067 1982); City of Vineland Police Dept., D.R. No. 82-53, 8 NJPER 53 (¶13147 1982). See also, Appalachian Shale Products Co., 121 NLRB No. 149, 42 LRRM 1506 (1958).

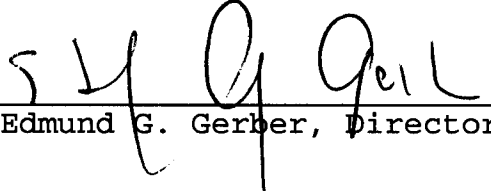
On the evidence before me, the memorandum of agreement acts as a valid contract. Although the memorandum was signed in April and states that it is subject to membership ratification and Council approval, the actual ratification occurred in December 1996, prior to the April 10 re-signing of the memorandum. The preamble language, as prepared in November 1996 (before ratification and approvals occurred), simply was not edited out.

I cannot consider the issues raised by the petitioner and particularly Victor Borsellino, that employees are dissatisfied with their current union representative and the union failed to prepare a fully executed agreement. These issues are not relevant to determine if there is a contract which bars bringing a

representation petition.

It is apparent that there was a ratification of the memorandum and the memorandum was signed. The signed memorandum of agreement bars the filing of the representation petition. The petition is dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: February 26, 1998
Trenton, New Jersey