

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

In the Matter of

CITY OF BAYONNE,

Public Employer,

-and-

BAYONNE FIRE LIEUTENANTS
ASSOCIATION, FMBA,

DOCKET NO. RO-82-173

Petitioner,

-and-

BAYONNE FIRE SUPERIORS
ASSOCIATION,

Intervenor.

SYNOPSIS

The Director of Representation, on the basis of an administrative investigation, dismisses a petition filed by the Bayonne Fire Lieutenants Association seeking to represent a unit limited to Fire Lieutenants employed by the City of Bayonne. The Director determined that the Lieutenants are currently represented by the Bayonne Fire Superiors Association who have a collective negotiations agreement in effect with the City which includes Lieutenants and operates as a bar to the filing of this petition at this time.

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Appearances:

For the Public Employer
Apruzzese & McDermott, attorneys
(Maurice J. Nelligan of counsel)

For the Petitioner
Howard Goldberger, attorney

For the Intervenor
Schneider, Cohen, Solomon & DiMarzio, attorneys
(David Solomon of counsel)

DECISION

On June 7, 1982, a Petition for Certification of Public Employee Representative, supported by a valid showing of interest, was filed with the Public Employment Relations Commission ("Commission") by the Bayonne Fire Lieutenants Association, F.M.B.A. ("Petitioner"), seeking to represent all employees in the rank of

lieutenant who are employed by the City of Bayonne Fire Department ("City").

The Bayonne Fire Superiors Association ("Superiors Association") is the current majority representative of fire department superior officers. The Superiors Association argues that lieutenants are included in its unit, and it has intervened herein on the basis of the submission of a collective negotiations agreement, effective from January 1, 1980 through December 31, 1982, purportedly covering the petitioned-for employees.

In the face of a claim raised by the City and the Superiors Association that the Petition is untimely under N.J.A.C. 19:11-2.8(c) by virtue of the aforesaid agreement, the Petitioner argues that a contract bar does not exist for two reasons:

First, the Petitioner argues that the title and rank of lieutenant did not exist and was not filled at the time the agreement was reached and that said agreement was not intended to cover lieutenants.

Second, the Petitioner indicated that when the agreement was first reached, the Superiors Association was affiliated with the FMBA, but that on or about July 1, 1981, the Superiors Association dropped its affiliation with the FMBA. The Petitioner argues that by dropping its FMBA affiliation, a schism was created which prevents the agreement from operating as a bar to the Petition.

Both the City and the Superiors Association disagree with the Petitioner and argue that the agreement does include and

was intended to cover the rank and title of lieutenant as evidenced by the recognition and wages clauses of their agreement. In addition, the Superiors Association argues that no schism has occurred with respect to its representation of the unit.

In accordance with N.J.A.C. 19:11-2.2(a), 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 Bayonne is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), is the employer of the employees who are the subject of the Petition and is subject to the provisions of the Act.

3. The Bayonne Fire Lieutenants Association, FMBA, and the Bayonne Fire Superiors Association are employee representatives within the meaning of the Act and are subject to its provisions.

4. The instant Petition was filed on June 7, 1982, pursuant to which an informal conference was conducted in this matter on June 22, 1982, at which time a copy of the collective negotiations agreement between the City and the Superiors Association was provided to the Commission. The Preamble and Recognition clause in that agreement reads as follows:

PREAMBLE

This Agreement, effective this 11th day of November, 1980, by and between the City of Bayonne, hereinafter referred to as the "City" or "Employer", and the Bayonne Fire Superiors Association holding the rank of Captain (excluding the Drill Master and the ~~Senior Fire Inspector~~), (sic) and above the rank of fire fighter, is designed to maintain and to promote an harmonious relationship between the City of Bayonne and such of its employees who are within the provisions of this Agreement, through collective negotiations, in order that a more efficient and progressive public service may be rendered.

ARTICLE I

RECOGNITION AND AREAS OF NEGOTIATIONS

Section 1. Recognition. The City hereby recognizes the Bayonne Fire Superiors Association as the exclusive representative of all Fire Department employees holding the rank of Captain (excluding the Drill Master and the ~~Senior Fire Inspector~~) (sic) and all uniformed Fire Department employees above the rank of firefighter of the City of Bayonne.

The Wages clause reads as follows:

Section 1. The parties hereto have negotiated the following base salaries covering the

positions and periods of time set forth herein as follows:

Effective First Pay Period	Maintenance Repairer Mech. Repairer Lieutenant	Sr. Fire Inspector UFD Chief's Secretary Ass't Training Officer Senior Mechanic Fire Captain
January 1980	\$19,699	\$21,607
January 1981	21,274	23,336
January 1982	22,246	24,355
July 1982	23,104	25,296

5. N.J.A.C. 19:11-2.8(c) provides in pertinent 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 or a petition for decertification of public employee representative normally will not be considered timely filed unless:

* * *

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.

6. Both the City and the Superiors Association have raised the agreement as a bar to the filing of the Petition at this time. They argue that the Petition is untimely pursuant to N.J.A.C. 19:11-2.8 because it was filed more than 120 days prior to the end of the agreement.

The Commission's contract bar rule is well established ^{1/} and is patterned after a similar policy of the National Labor

^{1/} In re Camden Cty. Welfare Bd., P.E.R.C. No. 65 (1971), and In re Cty. of Middlesex, D.R. No. 81-1, 6 NJPER 355 (¶ 11179 1980), req. for review den. P.E.R.C. No. 81-29, 6 NJPER 439 (¶ 11224 1980).

Relations Board ("NLRB"). ^{2/} See Lullo v. Int'l. Assn. of Fire Fighters, 55 N.J. 409 (1970).

On its face, the agreement is a bar to the processing of this Petition. The Petitioner's argument that the agreement was not intended to include the lieutenants is not substantiated and is at odds with the inclusionary language of the recognition clause of the agreement and the specific reference to lieutenants in the wages provision. In both the Preamble and the Recognition clause of the agreement, the parties include in the unit: "all uniformed Fire Department employees above the rank of firefighter." The rank of lieutenant is clearly above the rank of firefighter and thus is included in the agreement. In addition, the wages clause clearly provides a salary for the rank of lieutenant. Even if the lieutenant position was vacant at the time the agreement was reached, the agreement reflects a clear intention to provide coverage for lieutenants upon their appointment.

7. The Petitioner has also alleged that the agreement does not bar the Petition because a schism has occurred. The NLRB has held in a leading case Hershey Chocolate Corp., 121 NLRB 901, 42 LRRM 1460 (1958), that under certain limited circumstances a schism in a bargaining representative will render its contract bar policy inoperative. Generally, Hershey requires a finding of basic intra-union conflict at the highest organization levels and

^{2/} See Reed Roller Bit Co., 72 NLRB No. 157, 19 LRRM 1227 (1974); Pacific Coast Assn. Pulp & Paper Mfg., 121 NLRB No. 134, 43 LRRM 1477 (1958); and General Cable Corp., 139 NLRB No. 111, 51 LRRM 1444 (1962).

a resultant disruption of the local union-management relationship which undermines the stability of the bargaining relationship. However, in the absence of any intra-union disruption, and where the bargaining relationship is stable and the representative is willing and able to represent the employees, any schism that may have occurred will not prevent the agreement from operating as a bar to a petition. See Allied Chem. Corp., 197 NLRB 360, 80 LRRM 1339 (1972).

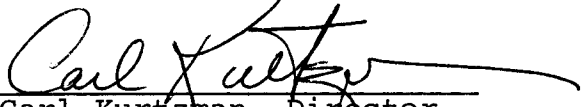
In the instant matter the Petitioner has alleged that the Superiors Association disaffiliated from the FMBA during the term of the agreement and that such disaffiliation was a schism. However, the mere act of disaffiliation, if it occurred, would not establish that there was an intra-union disruption or that the Superiors Association is unable to represent the employees or that the stability of the existing agreement has been undermined. In addition, neither the Preamble nor the Recognition clause of the agreement show that the FMBA was in any way recognized as the majority representative of the superior officers, or that the Superiors Association was affiliated with the FMBA.

On August 5, 1982, the undersigned advised the parties that based upon the investigation to date, it appeared that the existing collective agreement served as a bar to the filing of the Petition and that the Petition was, therefore, untimely. The parties were reminded of their obligations pursuant to N.J.A.C. 19:11-2.6, to present documentary and other evidence as well as briefs and/or statements of position, relating to the instant

Petition and were afforded an additional opportunity to proffer such material. The parties were further advised that in the absence of any substantial and material disputed factual issues, the undersigned would thereafter issue a decision dismissing the Petition. The undersigned has not received any further evidentiary proffers from the parties.

Accordingly, the undersigned determines that the instant Petition is not timely filed pursuant to the requirements of N.J.A.C. 19:11-2.8(c), and the Petition is hereby dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Carl Kurtzman, Director

DATED: August 26, 1982
Trenton, New Jersey