E.D. No. 29

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ELIZABETH BOARD OF EDUCATION
Public Employer

and

Docket No. RO-179

LOCAL 866, AFFILIATED WITH THE
INTERNATIONAL BROTHERHOOD OF TEAMSTERS
Petitioner

and

SERVICE EMPLOYEES INTERNATIONAL UNION,
AFL-CIO, LOCAL 184,
ELIZABETH PUBLIC SCHOOLS
Intervenor

DECISION AND DIRECTION OF ELECTION

Pursuant to a Notice of Hearing to resolve a question concerning the representation of certain employees of the public employer, a hearing was held before Hearing Officer Martin Pachman on December 4, 1970. All parties were given an opportunity to examine and cross-examine witnesses, to present evidence and to argue orally. Thereafter, on March 11, 1971, the Hearing Officer issued his Report and Recommendations. On March 19, 1971, the Intervenor filed timely exceptions which, upon reconsideration, he voluntarily withdrew on May 14, 1971.

The Executive Director has considered the record and the Hearing Officer's Report and Recommendations and on the basis of the facts in this case finds:

1. The Elizabeth Board of Education is a public employer within the meaning of the Act and is subject to its provisions.
2. Local 866, affiliated with the International Brotherhood of Teamsters, and the Service Employees International Union, AFL-CIO, Local 184, Elizabeth Public Schools are employee representatives within the meaning of the Act.
3. The Public Employer refuses to recognize Local 866 as the majority representative of certain employees employed by the Elizabeth Board of Education; therefore, a question concerning representation exists and the matter is appropriately before the undersigned for determination.
4. In the absence of exceptions, the undersigned, having considered the record and the Hearing Officer's Report and Recommendations, adopts the findings and recommendations of the Hearing Officer pro forma.
5. The appropriate collective negotiating unit is: "Included: All head janitors, firemen, groundskeepers, assistant janitors, matrons, engineers, general repairmen, truck drivers, laborers, and bus driver-utility men; Excluded: all office clerical, craft and professional employees, policemen, managerial executives and supervisors within the meaning of the Act.

DIRECTION OF ELECTION

A secret-ballot election shall be conducted among employees in the unit described above no later than 30 days from the date set forth below. Eligible to vote are employees employed in the unit described during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation, or temporarily laid off, including those in military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

Those eligible to vote shall vote on whether or not they desire to be represented for the purpose of collective negotiations by Local 866, affiliated with the International Brotherhood of Teamsters, Chauffeaurs, Warehousemen and Helpers of America; Service Employees International Union, AFL-CIO Local 184, Elizabeth Public Schools or neither.

The majority representative shall be determined by a majority of the valid votes cast.

The election directed herein, shall be conducted in accordance with the provisions of the Commission's Rules and Regulations and Statement of Procedure.

Maurice J. Nelligan, Jr.
Executive Director

DATED: June 2, 1971
Trenton, New Jersey

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ELIZABETH BOARD OF EDUCATION
Public Employer

and

LOCAL 866, AFFILIATED WITH THE
INTERNATIONAL BROTHERHOOD OF TEAMSTERS
Petitioner

and

Docket No. RO-179

SERVICE EMPLOYEES INTERNATIONAL UNION,
AFL-CIO, LOCAL 184,
ELIZABETH PUBLIC SCHOOLS
Intervenor

APPEARANCES:

For the Public Employer:
Robert Murray, Esquire
For the Petitioner:
Howard Goldberger, Esquire
For the Intervenor:
Abraham L. Friedman, Esquire

REPORT AND RECOMMENDATIONS

A petition was filed with the Public Employment Relations Commission on September 14, 1970 by Local 866 affiliated with International Brotherhood of Teamsters seeking a representation election for certain blue collar employees of the employer. Pursuant to a Notice of Hearing to resolve a question concerning the representation of these employees, a hearing was held before the undersigned on December 4, 1970 at which all parties were given an opportunity to examine and cross-examine witnesses, to present evidence and to argue orally. No party desired to submit briefs or memoranda of law. Upon the entire record in this proceeding, the Hearing Officer finds:

1. The Elizabeth Board of Education is a public employer within the meaning of the Act and is subject to its provisions.

2. Local 866, affiliated with International Brotherhood of Teamsters and the Service Employees International Union, AFL-CIO, Local 184, Elizabeth Public Schools are employee representatives within the meaning of the Act.

3. The Public Employer having refused to recognize Local 866 as the majority representative of the blue collar employees employed by the Elizabeth Board of Education, a question concerning representation exists and the matter is appropriately before the undersigned for Report and Recommendation.

4. The parties have stipulated as to the composition of the unit as follows: Included: head janitors, firemen, groundskeepers, assistant janitors, matrons, engineers, general repairmen, truck drivers, laborers, and bus drivers-utility men, and further stipulated that this unit does not include managerial executives, supervisors, professional, police or craft employees within the meaning of the Act.

5. Intervenor, Service Employees International Union, has raised several objections to the timeliness of the instant petition. Specifically, Intervenor raises Section 19:11-15(b), recognition bar, 19:11-15(c) election bar and 19:11-15(d) contract bar.

Section 19:11-15(b) in pertinent part provides "Where there is a certified or recognized representative, a petition will not be considered as timely filed if during the preceding twelve (12) months... an employee organization has been granted recognition by a public employer pursuant to Section 19:11-14." Testimony indicates that for some period of time preceding the enactment of the Act there had been a relationship between the public employer and intervenor. This relationship was formalized by the Board of Education in April of 1969 by passing a resolution granting recognition to intervenor as negotiating representative for its blue collar employees pursuant to the Act. Employer had satisfied itself of the majority status of intervenor by a review of authorization cards presented to it.

Some four months thereafter the Commission adopted its Rules and Regulations, including Section 19:11-15(b) as stated above, and Section 19:11-14 which sets forth a recognition procedure to be followed by a public employer. This latter section provides that an employer must, in addition to satisfying itself of the majority status of its employees, post notices for 10 days indicating its intent to recognize, and serve written notice upon any other organizations that have claimed an interest in representing any of the employees for which recognition is about to be granted. If no organization within 10 days notifies the employer of a claim to represent these employees, then a written recognition may be executed. Clearly, the initial recognition granted by the public employer did not fully meet the requirements of Section 19:11-14, as well might be expected, since it took place prior to the effective date of the Rules. In any event, this initial recognition took place some seventeen months prior to the filing of the instant petition, and therefore whether or not intervenor's original recognition should be considered as sufficient to set up a recognition bar is moot and therefore need not be ruled upon.

On April 9, 1970, subsequent to the effective date of the Rules, the employer and intervenor, executed their second negotiated agreement, incorporating a recognition clause. Although not specifically argued by the parties, there was much inconclusive testimony on the record as to whether or not this was accompanied by another check by employer into intervenor's majority status. This second recognition took place well after the Rules and Regulations were effective, and although the record is inconclusive as to whether or not a card check took place, it is clear that neither posting nor notification of other interested organizations, as mandated by Section 19:11-14 took place. Therefore, it is not necessary at this time to decide whether or not the second recognition clause adopted as part of the contract constituted a recognition within the meaning of 19:11-15(b). It should be noted, however, that in a decision of the Executive Director, Deptford Township Board of Education, E.D.5, (1970), it was held that this recognition bar is intended to give a newly recognized organization and the employer a reasonable time to consummate an initial collective bargaining agreement, and once this is done, even if in less than the one year period, they become like other contracting parties and subsection (d) of the rule should apply. The undersigned is in full agreement with the reasoning set

out in that decision as to both points covered therein. It is clear that under this reasoning 19:11-15(b) 1) applies only to an initial recognition and 2) extends only to that period of time until a contract is entered into, but no longer than twelve months.

Therefore, in the opinion of the undersigned it must be concluded that there is no recognition bar to this petition in that the latter recognition could not create a bar for the reasons noted above, and the initial recognition predated the petition by some seventeen months.

The next argument raised by petitioner is that the instant petition was filed within 12 months of the effective date of the agreement, and therefore is untimely according to Section 19:11-15(c). That section reads: "No election shall be conducted within 12 months after the effective date of an agreement, provided the agreement is for a period of 12 months or more." This section does not at all speak to the issue of the time for filing of a petition, but merely to the time that the Commission may hold an election. It is clear then, that any election directed by the Commission may not be held until April 10, 1971, twelve months and one day after the effective date of the current agreement. Intervenor herein, argues that a lapse of time of some seven months between the filing of a petition and the conduct of an election constitutes too long a delay. It should be pointed out that in accord with its statutory mandate not to intervene in matters of recognition and unit definition except in the event of a dispute, the Commission has approved agreements for consent elections in which all parties agree to set a date for election within this twelve month period and, in fact, such elections have been conducted. Therefore the argument which intervenor raises as to the delay could well have been obviated by all parties execution of a consent agreement to hold the election at some time earlier than the April 10, 1971 date noted above.

With regard to Section 19:11-15(d) of the Rules, Intervenor argues that the statute does not define budget submission date, that the budget submission date is unknown, and finally that there is no budget submission date and therefore the alternative timeliness period shall be controlling. The section in question reads: "During the period of an existing written agreement containing substantive terms and conditions of employment, a petition for certification of public employee representative involving those employees normally will not be considered timely filed unless the petition is filed not less than 120 days and not more than 150 days before the last date, if any, for budget submission of the public employer immediately preceding the expiration or renewal date of such agreement or two (2) years from the effective date of the agreement, whichever is earlier, unless unusual circumstances exist which will substantially affect the unit or the majority representation. In the absence of a budget submission date the period shall be measured from the expiration or renewal date of such agreement or two (2) years from the effective date of the agreement, whichever is earlier."

Simply stated this section states that to be timely, if there is a budget submission date, a petition must be filed 120-150 days before the last date for budget submission prior to the expiration date of the contract. In the instant case, the undersigned will take judicial notice of the fact that

the Board of Education of the City of Elizabeth is a type one school district, with a board of school estimate. The Education Law, Section 18A:22-7 in part provides: "The board of education of every school district having a board of school estimate shall prepare and deliver to each member of the board of school estimate on or before February 1, in each year... a budget for the ensuing year..." Since the board of education is the public employer, and by this date the budget must be submitted to the board of school estimate, and thereafter is no longer within the Board of Education's exclusive power and control, this is "the last date...for budget submission of the public employer," within the meaning of Section 19:11-15(d) of the Rules.

With this exact knowledge of the budget submission date, and the fact that the expiration date of the consent agreement is June 30, 1971 it is apparant that the date on which this petition was filed, September 14, 1970, was well within the 120-150 days prior to February 1, 1971. The petition then, in the opinion of the undersigned is clearly timely within the meaning of Section 19:11-15(d) of the Rules.

RECOMMENDATIONS

Based upon all of the above, the undersigned hereby recommends the following:

1. There is no recognition bar to the instant petition.
2. The petition is timely filed in accordance with Section 19:11-15(d) of the Rules.
3. No election may be held prior to April 10, 1971.
4. An election therefore should be held on or after April 10, 1971 to determine the exclusive representative for collective negotiations for employees in the following stipulated unit: Included: All head janitors, firemen, groundskeepers, assistant janitors, matrons, engineers, general repairmen, truck drivers, laborers, and bus driver-utility men; Excluded: all office clerical, craft and professional employees, policemen, managerial executives and supervisors within the meaning of the Act.

Martin Pachman
Hearing Officer

DATED: March 11, 1971
Trenton, New Jersey