

E.D. NO. 78

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF JERSEY CITY,
Public Employer,

-and-

LOCAL #1, JERSEY CITY FMBA,
Petitioner,

Docket No. RO-948

-and-

LOCAL 1066, JERSEY CITY UNIFORMED
FIREFIGHTERS ASSOCIATION, IAFF,
AFL-CIO,

Intervenor.

SYNOPSIS

The Executive Director dismisses a petition filed by the Petitioner seeking to represent all firemen employed by the Public Employer in the absence of a dispute regarding substantial and material factual issues. It is held that, although an indefinite "extension" of an agreement is an interim as opposed to a final agreement and does serve not as a bar to the filing of a petition, a later "Memorandum" containing substantive terms and conditions of employment for a stated term and which, by its terms, requires only formal execution to form a complete contract, does serve as a bar to the filing of a petition.

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DECISION

On December 12, 1974, a Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission by Local #1, New Jersey State FMBA (Petitioner) with respect to a unit of approximately 570 firemen employed by the City of Jersey City.^{1/} The unit sought included all employees with the rank of fireman, and excluded all employees above the rank of fireman. Local 1066, Jersey City Uniformed Firefighters Association, IAFF, AFL-CIO (hereinafter Local 1066) has intervened in this proceeding.

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. All parties

^{1/} This petition was perfected December 23, 1974 regarding the required showing of interest.

have been advised of their obligation under Rule Section 19:11-1.12, and have been afforded an opportunity thereunder, to present to the undersigned documentary and other evidence, as well as statements of position, relating to the Petition.^{2/}

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 after a hearing. Pursuant to Rule Section 19:11-1.12(c), 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 Jersey City is a public employer within the meaning of the New Jersey Employer-Employee Relations Act and is subject to its provisions.
3. Both Local #1, Jersey City FMBA and Local 1066, Jersey City Uniformed Firefighters Association, IAFF, AFL-CIO, are employee representatives within the meaning of the New Jersey Employer-Employee Relations Act and are subject to its provisions.
4. The City of Jersey City refuses to recognize the Petitioner as exclusive representative of the employees in question.

^{2/} The undersigned sent a letter to the parties June 23, 1975 giving them until July 3, 1975 to provide any additional evidence or statements of position and indicating that, in the absence of substantial and material disputed factual issues, the matter would be handled in accordance with the Commission's Rules.

Accordingly, a question concerning the representation of public employees exists and this matter is properly before the undersigned for determination.

5. There is no dispute regarding the following factual matters:

- (a) There was an agreement in effect between the City of Jersey City and Local 1066, IAFF, AFL-CIO between January 1, 1972 and December 31, 1973.
- (b) On December 7, 1973, Messrs. Pachman and Solomon, attorneys for the Public Employer and the Intervenor, respectively, signed a document which provided in pertinent part that the previous 1972-1973 agreement "...shall remain in effect until a successor is executed."
- (c) The same two individuals signed a two-page handwritten document entitled "Memo of Agreement" December 5, 1974, which indicates in part that the parties have reached "full and complete agreement" and that the memo "... is final and needs only the formal execution of both parties to form a complete contract..."
- (d) The instant petition was filed December 12, 1974 and was perfected December 23, 1975.
- (e) The City of Jersey City and Local 1066 executed an agreement January 6, 1975 with an effective date of January 1, 1974 and a termination date of December 31, 1975.

6. The positions of the parties may be summarized as follows:
 - (a) The Public Employer has taken no position with regard to the choice of employee representative.
 - (b) The Intervenor asserts that the extension of the 1972-1973 contract which was dated December 7, 1973, and the Memo of Agreement dated December 5, 1974, act as bars to the filing of the instant petition (Rule Section 19:11-1.15). Additionally, the Intervenor maintains that the petition should be dismissed because the Intervenor was not served with a copy of the petition by the Petitioner (Rule Section 19:11-1.6).
 - (c) The Petitioner's position herein is that the timeliness provisions of Rule Section 19:11-1.15 do not bar the instant petition.
7. While it is true that the Commission's Rules did require that a copy of petitions be served on all known interested parties, the undersigned views the failure of the Petitioner to comply a technical failure which did not prejudice any party. The Petitioner listed Local 1066 on the petition as the certified or recognized majority representative. The Commission served a copy of the petition on Local 1066 December 24, 1974 and Local 1066 has been accorded status as an intervenor herein. Additionally, it is noted that the cited section of the Commission's Rules was amended effective December 18, 1974 eliminating the requirement that the Petitioner serve the parties listed on the petition and

requiring the Executive Director to provide such service. Therefore, the petition will not be dismissed on this basis.

The other issue relates to the timeliness of the petition. Generally, under the Commission's Rules a petition will be considered timely filed if there is no existing written agreement containing substantive terms and conditions of employment in effect between the parties when a petition is filed or if a petition is filed not less than 90 days and not more than 120 days before the expiration of such an agreement in a case involving employees of such a municipality.^{3/}

There are two elements to this issue: the "extension" and the "Memorandum of Agreement". The undersigned concludes that the December 5, 1973 "extension" is not capable of being considered a final agreement as contemplated by the Commission's Rules and thus will not serve to bar the instant petition.

The "extension", by its own terms, was to remain in effect only "...until a successor agreement is executed;" and thus was not a final agreement. Instead, it was merely an interim agreement. The "extension" further provided that, "The successor agreement shall be retroactive to January 1, 1974, except as may be otherwise agreed by the parties." The 1974-75 agreement signed January 6, 1975

provided that the agreement became effective January 1, 1974. This "extension" is not found to constitute a bar to the timely filing of a petition because it was an interim agreement subject to subsequent modification - and it was subsequently modified through negotiations - and it was not the type of agreement, i.e. a written agreement containing substantive terms and conditions of employment, which would serve to bar the timely filing of a petition.

The second element concerns the "Memorandum of Agreement". As noted above, the "Memo" provides that, "this Memorandum is final and needs only the formal execution of both parties to form a complete contract..." Furthermore, the "Memo" states that "...the parties have reached full and complete agreement on the terms of an agreement for the years 1974 and 1975." The "Memo" covers a number of substantive terms and conditions of employment including but not limited to salaries for the two years, an increase in longevity, shift differential, guaranteed overtime, holidays, vacations, and clothing allowance. The undersigned concludes that this "Memo", containing as it does substantial terms and conditions of employment which will serve to stabilize the employment relationship for a fixed and stated term and which is described as a "final" agreement and as a "full and complete" agreement,

does serve as a bar to the timely filing of the instant petition.

Based upon the above, the instant petition is hereby dismissed as untimely.

BY ORDER OF THE EXECUTIVE DIRECTOR



Jeffrey B. Tener
Executive Director

DATED: Trenton, New Jersey
July 24, 1975