

D.R. NO. 88-22

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

In the Matter of
CITY OF WILDWOOD,

Public Employer,

-and-

Docket No. RO-88-43

UNITED INDEPENDENT UNION
a/w NATIONAL FEDERATION OF INDEPENDENT
UNIONS,

Petitioner,

-and-

C.A.P.E. LOCAL 1983,

Intervenor.

SYNOPSIS

The Director of Representation finds a contract bar to a petition filed by the United Independent Union seeking to represent all blue and white collar employees employed by the City of Wildwood. The Director held that a Memorandum of Agreement signed and ratified by the City and the incumbent union, C.A.P.E. Local 1983, contained substantial terms and conditions of employment sufficient to stabilize the bargaining relationship, and thus constituted a contract bar. The petition was dismissed.

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Appearances:

For the Public Employer
Sills, Beck, Cummis, Zuckerman, Radin
Tischman & Epstein
(Richard N. Salsberg, of counsel)

For the Petitioner
Henry Schickling, Business Representative

For the Intervenor
Spear, Wilderman, Sigmond, Borish,
Endy and Silverstein
(Warren Borish, of counsel)

DECISION

On April 23, 1987, the City of Wildwood ("City") and
C.A.P.E. Local 1983 ("Local 1983") signed a Memorandum of Agreement
setting forth terms and conditions of employment for all blue and

white collar employees employed by the City for the period January 1, 1987 through December 31, 1987. By its terms, the Memorandum required the parties' ratification and approval.

On May 4, 1987, Local 1983 ratified the Memorandum. On May 20, 1987, by formal resolution, the City Council ratified the Memorandum and authorized the Mayor and City Clerk to execute a contract embodying its terms. None of the terms of the Memorandum were implemented.

On July 13, 1987, an unfair practice charge was filed by the City alleging Local 1983 violated the New Jersey Public Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically §§5.4(b)(3) and (4),^{1/} by refusing to reduce the negotiated agreement to writing and sign a formal contract embodying the terms of the Memorandum of Agreement. On September 1, 1987, Local 1983 filed an Answer denying it committed an unfair labor practice and stating that it refused to sign the contract because it did not accurately set forth the salary terms negotiated in the Memorandum of Agreement. Both parties acknowledged the existence of a contract but differed on the actual implementation of what each believed to be the clear salary provision in the Memorandum of Agreement.

^{1/} These subsections prohibit employee organizations, their representatives or agents from: "(3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit; (4) Refusing to reduce a negotiated agreement to writing and to sign such agreement."

On September 30, 1987, a Representation Petition was filed by the United Independent Union, affiliated with the National Federation of Independent Unions ("UIU") seeking to represent the unit currently represented by Local 1983 (all blue and white collar employees employed by the City). This petition was supported by an adequate showing of interest.

On October 9, 1987, the City withdrew its unfair practice charge.

The issue presently before us is whether the Memorandum of Agreement signed on April 23, and ratified by the parties on May 4 and 20, 1987, will act as a contract bar to the pending representation petition. In County of Middlesex, D.R. No. 81-1, 6 NJPER 355 (¶11179 1980), req. for rev. den. P.E.R.C. No. 81-29, 6 NJPER 439 (¶11224 1980), the Commission held that a Memorandum of Agreement will be considered sufficient to bar a representation petition if it contains substantial terms and conditions of employment and if it has been ratified, where ratification is required by its terms. The Commission developed this standard from the criteria set forth by the National Labor Relations Board in Appalachian Shale Products Co., 121 NLRB No. 149, 42 LRRM 1506 (1958).^{2/} The NLRB held:

^{2/} The experience and adjudication of the NLRB can be used as a guide for public sector determinations. Lullo v. Int'l Assn. of Firefighters Local 1066, 55 N.J.409 (1970).

...[T]o serve as a bar, a contract must contain substantial terms and conditions of employment deemed sufficient to stabilize the bargaining relationship...

42 LRRM at 1508. (emphasis supplied)

The NLRB further elaborated on the elements which must be present in order to find a contract bar in USM Corporation, 256 NLRB No. 162, 107 LRRM 1358 (1981) as follows:

... the Employer and the Union affixed their signatures to the November 21 memorandum of agreement alleged as a bar to the instant petition, and it is clear that that agreement, together with the initialed documents which were incorporated by reference, covered substantial terms and conditions of employment, sufficient, in our opinion to stabilize the bargaining relationship. The parties scheduled no further negotiations after November 21 and, after receiving notice that the employees had ratified the agreement, the Employer immediately began to implement its provisions. It is clear, therefore, that when the November 21 agreement was signed and ratified it was intended to be final and binding. (Footnotes omitted) (107 LRRM at 1361).


See also Gaylord Broadcasting, 250 NLRB No. 58, 104 LRRM 1360 (1980).

Here, the parties signed and ratified a Memorandum of Agreement covering, and incorporating by reference, essentially all terms and conditions of employment, including a salary increase based on a percentage. The sole item not specifically included therein was the employees' actual salary guide, although the terms for developing this guide were agreed upon in the memorandum. Subsequent to ratification, but before the formal contract signing, the only thing left unfinished by the parties was the ministerial task of creating the salary scales along the guidelines set forth in the agreement. No further negotiations were scheduled and both parties thought they had a final and binding agreement.

Thereafter, a problem arose when a section of the salary guide for those on the top of the guide was calculated. Although the parties both thought the language was clear, each had a different interpretation of how the numbers should be developed. However, the incumbent Union and the City never disputed that an agreement was reached on all other issues (including the salary guides for all other employees) as of the date the memorandum was ratified. The only further discussions between the parties were with regard to the interpretation of the salary guide for the top step.

Based on the foregoing, we hold that the Memorandum of Agreement signed by the parties on April 23, 1987, and fully ratified on May 20, 1987, constitutes a contract bar to the Petition filed on September 30, 1987. The Memorandum contains substantial terms and conditions of employment sufficient to stabilize the bargaining relationship. The Petition is dismissed.

BY ORDER OF THE
DIRECTOR OF REPRESENTATION


Edmund G. Gerber, Director

DATED: December 30, 1987
Trenton, New Jersey