

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

In the Matter of

LAKEWOOD BOARD OF EDUCATION,

Public Employer,

-and-

LAKEWOOD EDUCATION ASSOCIATION,
N.J.E.A.,

DOCKET NO. RO-86-46

Petitioner,

-and-

TRANSPORT WORKERS UNION OF
AMERICA, LOCAL 225,

Intervenor.

SYNOPSIS

The Director of Representation dismisses a petition filed by the Lakewood Education Association, N.J.E.A., to represent certain employees presently represented by the Transport Workers Union of America, Local 225. The Director finds that the Petition is untimely because it is barred by the Commission's certification and contract bar rules. In so ruling, the Director rejects the Petitioner's argument, as to certain unit employees, that a contractual salary and benefits reopener for a third year renders the contract bar inapplicable. The Director also rejects the Petitioner's contentions of defunctness, schism and certain policy arguments.

D.R. NO. 86-12

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Appearances

For the Public Employer
John Miraglia, Labor Consultant

For the Petitioner
Klausner & Hunter
(Stephen B. Hunter of counsel)

For the Intervenor
Michael T. O'Brien, Assistant Administrator

DECISION

A Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission ("Commission") by the Lakewood Education Association/New

Jersey Education Association ("Association" or "Petitioner") on October 11, 1985, seeking to represent certain employees employed by the Lakewood Board of Education ("Board"). The Petition, supported by an adequate showing of interest, seeks to add custodians, maintenance workers, bus and van drivers, and bus aides to an existing collective negotiations unit represented by the Petitioner, consisting of all certified, clerical personnel, aides and law enforcement officers employed by the Lakewood Board of Education.

The petitioned-for employees are currently represented by the Transport Workers Union of America, Local 225, ("TWU"). On October 21, 1985, TWU applied for intervenor status in this matter pursuant to N.J.A.C. 19:11-2.7, on the basis of its collective negotiations agreement with the County which expires on June 30, 1987. The application by TWU for intervenor status is hereby granted. TWU also requested that the petition be dismissed as untimely pursuant to N.J.A.C. 19:11-2.8. This request will be reviewed infra.

I have authorized an administrative investigation into the matters and allegations involved in the Petition in order to determine the facts. See N.J.A.C. 19:11-2.2 and N.J.A.C. 19:11-2.6. On the basis of the administrative investigation, I find and determine the following:

1. The Lakewood Board of Education 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 subject to its provisions

and is the employer of the employees who are the subject of the Petition.

2. The Lakewood Education Association/New Jersey Education Association and the Transport Workers Union of America, Local 225, are employee representatives within the meaning of the Act and are subject to its provisions.

3. The petitioned-for employees are included in a collective negotiations unit represented by TWU. Presently, a collective negotiations agreement covering the petitioned-for employees is in effect between the Lakewood Board of Education and TWU. Said agreement runs from July 1, 1984 through June 30, 1987.

4. On January 13, 1985, the TWU filed a petition before this Commission to add bus aides to the existing unit of Board of Education employees represented by TWU (Docket No. R0-85-108). Pursuant to an Agreement for Consent Election, an election was conducted on March 15, 1985, wherein a majority of the valid votes counted were cast for the TWU. On March 29, 1985, a Certification of Representative was issued adding bus aides to the existing unit represented by TWU.

5. Article XXIV of the current collective bargaining agreement between TWU and the Board covering the petitioned-for employees provides for a "salary and benefit reopener for 1986-87."

6. The majority representative referred to in the collective bargaining agreement is designated as "Local 225 or its

successor TWU." Subsequent to the effective date of the agreement, the TWU opened a new office in Lakewood, New Jersey, designated as "Branch 4." Said office presently serves the petitioned-for employees.

7. At an informal conference conducted by a Commission staff agent on October 30, 1985, the parties were invited to submit documentary evidence and/or argument relevant to the issues raised by the Petitioner. The submissions of the Petitioner were complete by December 13, 1985. The TWU submitted documents on December 20, 1985, and no submissions were received from the Board.

8. The Board has filed no statement of position in this matter and has indicated orally that it maintains a position of neutrality with respect to the Petition.

The TWU's contentions relative to the inappropriate nature of the petition are two-fold. First, the TWU maintains that a valid collective negotiations agreement covering the petitioned-for employees is presently in existence and that accordingly, pursuant to N.J.A.C. 19:11-2.8(c), the petition is untimely. Said regulation provides as follows:

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...

3. In a case involving employees of a school district, the petition is filed during the period

between September 1 and October 15, inclusive within the last 12 months of such agreement.

Second, with respect to the bus aides, the TWU similarly argues that Petitioner is barred from filing a petition due to the recent certification by the Commission of these employees. TWU relies on N.J.A.C. 19:11-2.8(b), which states as follows:

Where there is a certified or recognized representative, a petition for certification or decertification will not be considered as timely filed if during the preceding 12 months an employee organization has been certified by the commission as the exclusive representative of employees in an appropriate unit, or an employee organization has been granted recognition by a public employer pursuant to N.J.A.C. 19:11-3.1 (Recognition as exclusive representative).

In support of the petition, Petitioner contends that the contract relied upon by the TWU cannot serve as a bar pursuant to N.J.A.C. 19:11-2.8(c) because the contract was not properly ratified so as to include terms and conditions of employment for the bus aides. An affidavit was submitted to that effect. Further, the NJEA argues that even if a valid ratification vote did in fact take place, the "...collective bargaining agreement ...is devoid of substantive terms for [the bus aides]..." and therefore cannot serve as a bar to the petition. In the alternative, Petitioner requests that a hearing be conducted to explore the fact issues raised concerning the bus aides.

It is clear that under the certification bar rule outlined in N.J.A.C. 19:11-2.8(b), the certification issued to TWU regarding

the bus aides on March 29, 1985 would bar the instant petition. A timely petition could only be filed after March 29, 1986. Accordingly, without ruling on the issues raised by the Petitioner with respect to the ratification process and the contents of the contractual agreement as affecting bus aides, the undersigned finds that pursuant to N.J.A.C. 19:11-2.8(b), the petition is untimely as to the bus aides and must be dismissed.

Second, Petitioner asserts that the agreement between the Board and the TWU for the period of July 1, 1984 through June 30, 1987, is actually only a two year agreement which expires on June 30, 1986. Based on the language of the contract in Art. XXIV, the Association contends that the parties have "[e]ffectively negotiated a two year agreement expiring on June 30, 1986 with a reopener for all terms and conditions of employment for the purported third year of the agreement."

This argument is not persuasive. A salary and benefits reopener is not a reopener for all terms and conditions of employment as suggested by the Petitioner. Instead, it is a mid-term modification provision which does not remove the contract as a bar to an untimely representation petition consistent with the Commission's rules and relevant case law. See e.g., Delux Metal Mfg., 121 NLRB 95, 43 LRRM 1470 (1958), In re County of Ocean, D.R. No. 82-31, 8 NJPER 66 (¶13027 1981), and In re City of Vineland, D.R. No. 82-53, 8 NJPER 323 (¶13147 1981).

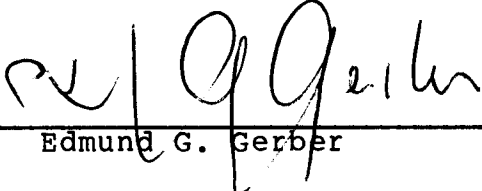
Third, NJEA submits that its petition is timely because the TWU is either defunct or suffering a schism which renders it "...no longer able or willing to fulfill its responsibilities in the administrative contract." The sole basis for this allegation is the change in designation of Respondent from the old TWU "Local 225" to the new office known as "Branch 4." Thus, Petitioner requests a hearing on these schism and defunctness issues. However, the above representations and argument, on their own, do not rise to the level of a question concerning representation nor raise fact questions properly resolved by hearing. While indicative of change in name or structure, the representations do not indicate policy or organizational conflicts which render the TWU unwilling or unable to represent unit employees. In the absence of evidentiary proffers from the Petitioner which raise significant questions as to the continuing viability of the TWU as the majority representative of the petitioned-for employees, I find that a hearing on these issues is not warranted. See Hershey Chocolate Corp., 121 NLRB 124, 42 LRRM 1460 (2958); Hamilton Tool Co., 190 NLRB 114, 77 LRRM 1257 (1972), and State Trooper NCO Association of New Jersey, D.R. No. 85-3, 10 NJPER 541, (¶15251 1984).

Lastly, Petitioner also maintains that "the dismissal of the ... petition will not promote the objectives of the New Jersey Employer-Employee Relations Act." In making this argument, the Petitioner relies on all the issues reviewed above. However, in

this instance, the sum is not greater than the parts of the whole; that is, the petition may not succeed on collective arguments which have failed individually. In further support of this argument, Petitioner submitted an affidavit from one of its supporters indicating, inter alia, that an election should be held "... regardless of the circumstances since there appears to be so much dissatisfaction with Local #225." While these arguments are considered, they do not outweigh the substantial public interests supported by the contract bar rule: stability and peace in labor management affairs, and protection of collective agreements reached by parties at arms length. Accordingly, the dismissal of the petition is not inconsistent with the Act's Declaration of Policy (N.J.S.A. 34:13A-2).

Based on the foregoing facts, applicable case law and policy, I hereby determine that the petition in this matter is not timely filed pursuant to N.J.A.C. 19:11-2.8. I further find that the petitioner has not raised fact questions properly resolved by hearing. Accordingly, the petition in this matter is hereby dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Edmund G. Gerber

DATED: February 25, 1986
Trenton, New Jersey