

D.R. NO. 94-23

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

In the Matter of

CAMDEN COUNTY JUDICIARY,

Public Employer,

-and-

OPEIU LOCAL 32,

Petitioner,

-and-

Docket No. RO-94-77

CAMDEN COUNCIL No. 10,

Intervenor,

-and-

COMMUNICATIONS WORKERS OF AMERICA,

Intervenor.

SYNOPSIS

The Director of Representation dismisses a representation petition filed on behalf of judiciary employees included in a county-wide unit covered by an existing agreement. The Director finds that the petition was not timely filed in accordance with N.J.A.C. 19:11-2.8. The Director determines that the petitioner's argument that the judiciary employees were improperly included in the county-wide unit is insufficient to process the petition. The Director holds that the Act's policy of encouraging stability and the finality of collective negotiations agreements requires that removal of employees who may be improperly included in a unit be effectuated during the appropriate window period or upon expiration of the contract covering them.

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Appearances:

For Public Employer, Camden County Judiciary
Mark A. Rosenbaum
Chief, Employee Relations

For Public Employer, Camden County
Richard Dodson
Director of Human Resources

For the Petitioner, OPEIU, Local 32
Zazzali, Zazzali, Fagella & Nowak, attorneys
(Robert A. Fagella, of counsel)

For the Intervenor, Camden Council No. 10,
Tomar, Simonoff, Adourian and O'Brien, attorneys
(Mary L. Crangle, of counsel)

For the Intervenor, Communications Workers of America,
Weissman & Mintz, attorneys
(Steven P. Weissman, of counsel)

DECISION

On December 2, 1993, OPEIU Local 32 filed a Petition for Certification of Public Employee Representative, supported by an adequate showing of interest, with the Public Employment Relations Commission. Local 32 seeks to represent a negotiations unit of all full-time and regular part-time certified and Rule 1:33 appointed judicial employees including probation investigators, court clerks, court aides and clericals. The petition lists the employer as the Camden County Judiciary.

The petitioned-for employees are included in a broad-based County-wide unit of employees represented by Camden Council 10. Council 10 submitted its agreement with the County that expires on December 31, 1994 and a computer printout of dues deductions from employees in the petitioned-for titles. It has been granted intervenor status pursuant to N.J.A.C. 19:11-2.7. CWA submitted a showing of interest from at least 30% of the employees in the petitioned-for titles and was also granted intervenor status pursuant to N.J.A.C. 19:11-2.7.^{1/}

Council 10 urges dismissal of the petition. It states that its current agreement with the County covering the petitioned-for employees renders the petition untimely pursuant to N.J.A.C. 19:11-2.8. It also states that when there have been challenges to

^{1/} In accordance with agency policy, the processing of this petition was held in abeyance for 30 days to give the CWA and Local 32 an opportunity to resolve an Article XXI jurisdictional dispute before an AFL-CIO umpire.

the propriety of mixed units of judiciary and non-judiciary employees, such issues have been raised during the appropriate open periods rather than mid-contract.

The Judiciary also contends that this petition is untimely pursuant to N.J.A.C. 19:11-2.8. The Judiciary states that when it has severed court employees from mixed negotiations units, the process was initiated upon the expiration of any contract between the mixed unit and the county, and not during the pendency of such an agreement.

The Judiciary and the Judicial Alliance of Labor Organizations^{2/} have agreed to a draft personnel bill addressing issues raised by the impending State takeover of county courts. The draft bill establishes an open period for filing representation petitions to determine statewide negotiations units and majority representatives of judicial employees. The Judiciary states that it would be an inefficient use of the parties' resources to process a petition that would be preempted by the state takeover within a year. It urges dismissal of the petition.

Camden County states that the petitioned-for employees have been represented by Council 10 in a county-wide unit for over 30 years and that the unit has been stable. It opposes the creation of another unit.

^{2/} The alliance consists of labor organizations that currently represent judiciary employees in separate units throughout the state.

CWA also opposes processing the petition^{3/} It, too, asserts that the petition is untimely and barred by the current agreement between Council 10 and Camden County. It also states that the Judiciary has not, as of this time, chosen to negotiate a separate agreement covering its employees.

Local 32 urges that its petition be processed. It alleges that Council 10's current agreement with Camden County is insufficient to act as a contract bar pursuant to N.J.A.C. 19:11-2.8 because the Judiciary, as the employer of the petitioned-for employees, is not a party to the contract. Local 32 also states that the State takeover legislation demonstrates that neither the Legislature nor the Judiciary intended to cede authority over judicial employees to the County. Local 32 states that judiciary employees should have the right to choose their own representative and that issue is distinct from the question of who the employer is.

N.J.A.C. 19:11-2.8 provides that a representation petition may not be filed "during the period of an existing written agreement containing substantive terms and conditions of employment..." except during certain prescribed periods. The agreement between the County and Council 10 expires on December 31, 1994. Therefore, Local 32's petition was not filed during any of the "window" periods outlined in the rules. N.J.A.C. 19:11-2.8(c)(1), (2) and (3).

^{3/} CWA's intervention with a 30% showing of interest grants it full standing to argue issues concerning the petition.
N.J.A.C. 19:11-2.7(b).

Local 32 contends that the agreement between the County and Council 10 should not bar its petition. It states that the Judiciary is the proper employer of the petitioned-for employees, but is not a party to the collective negotiations agreement covering them. However, this argument does not render Local 32's petition timely. There is no dispute that the petitioned-for employees are covered by the current contract and have been included in the county-wide unit for many years. Even where employees are improperly included in collective negotiations units, they normally can be removed only during certain limited time periods pegged to the expiration of the collective agreement covering them. The Act's policy of encouraging stability and the finality of collective negotiations agreements requires that the removal of such employees from a unit be effectuated close to or upon the expiration of the agreement which covers them. Bergen Pines Hospital, D.R. No. 80-20, 6 NJPER 61 (¶11034 1980); Clearview Reg. H.S. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977).

Local 32 is concerned with the petitioned-for employees' right to choose their own representative. However, we ordinarily require petitions seeking to represent any of the employees covered by a contract to be timely filed in accordance with the Commission's rules, regardless of the parties' substantive arguments favoring severance. Camden Judiciary, D.R. No. 92-29, 18 NJPER 282 (¶23120 1992). The regulations governing timely petitions seek to strike a balance between employees' statutory rights to select or reject a

negotiations representative and the need for stable employer-employee relationships. Clearview. That balance would not be served by processing an untimely petition.

Accordingly, for the reasons stated above, the petition is dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: April 12, 1994
Trenton, New Jersey