

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

In the Matter of

CLINTON TOWNSHIP BOARD OF
EDUCATION,

Public Employer,

-and-

DOCKET NO. RO-82-73

CLINTON TOWNSHIP EDUCATION
ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation, applying the recognition bar rule, dismisses an untimely Petition for Public Employee Representative filed by Petitioner. Under Commission rules, a Petition is not timely filed where the employer has extended a valid recognition to an employee representative within the past year. The Director rules that the employer may assert the protection of the rule even though the recognized representative has not, as well, asserted the recognition as a bar to a Petition. The Director further notes that the Petitioner has not produced any written evidentiary proffer to support the claim that the employer, prior to the filing of the Petition, waived its right to assert protection of the recognition bar rule. Accordingly, the Director finds that he need not consider the merits of the claim.

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Appearances:

For the Public Employer
Cassetta, Brandon Associates
(Raymond Cassetta, Consultant)

For the Petitioner
New Jersey Education Association
(John Thornton, Jr., UniServ Representative)

DECISION

On October 13, 1981, the Clinton Township Education Association (the "Association") filed a Petition for Certification of Public Employee Representative with the Public Employment Relations Commission (the "Commission"). The Association seeks to add secretaries to the existing collective negotiations unit currently represented by the Association. The current unit consists of classroom teachers, nurses, physical education teachers, teaching principals, librarians, reading teachers, child study team, compensatory education teachers and Title I teachers.

The Clinton Township Board of Education (the "Board") objects to the processing of the Petition by virtue of a claim that the Petition is time barred by a voluntary recognition extended to the "C.T.E.A. Supportive Staff Association" on May 11, 1981, as the exclusive representative of a separate unit of secretaries and clerks, excluding the executive secretary, the secretary to the board secretary and all other employees.

The undersigned has caused an administrative investigation into the matters and allegations raised by the filing of the Petition.

Based upon the administrative investigation to date, the undersigned finds and determines as follows:

1. The disposition of this matter is properly based on the administrative investigation herein, it appearing that no substantial and material factual issues exist which may more appropriately be resolved after an evidentiary hearing. Pursuant to N.J.A.C. 19:11-2.6(b), 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 Clinton Township 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. (the "Act"), is the employer of the employees who are the subject of this Petition, and is subject to the provisions of the Act.

3. The Clinton Township Education Association and the C.T.E.A. Supportive Staff Association are employee representatives

within the meaning of the Act and are subject to its provisions.

4. The Clinton Township Education Association has filed a Petition for Certification of Public Employee Representative with the Commission seeking to add secretaries to the existing collective negotiations unit consisting of classroom teachers, nurses, physical education teachers, teaching principals, librarians, reading teachers, music teachers, permanent substitutes, art teachers, supplemental teachers, child study team, compensatory education teachers, and Title I teachers. The Association is willing to consent to an election among the secretaries to ascertain their representational desires.

4. The Board is not willing to consent to an election, but rather asserts that the May 11, 1981 voluntary recognition, which it extended to the C.T.E.A. Supportive Staff Association as exclusive representative of a separate unit of secretaries, bars the filing of this Petition.

N.J.A.C. 19:11-2.8(b) provides that:

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) (Emphasis added)

The Association contends that the above section of the Commission's rules should not be applied in the instant matter, since the C.T.E.A. Supportive Staff Association has not sought to

intervene in the instant proceeding in order to protect its right to an insulated 12 month period following recognition free from challenge by competing organizations.

Notwithstanding the current representative's failure to participate in the instant proceeding, there nevertheless appears to be an existing employee representative which, undisputedly, has been validly recognized within the 12 months prior to the filing of the Petition. That existing employer-employee relationship is disrupted by the filing of the Petition, and is therefore entitled to the protection of the recognition bar rule. See In re Clearview Reg. H.S. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977). Either the current representative or the employer may assert the protection of the rule. See also, Runnemedede Bd. of Ed., D.R. No. 80-21, 6 NJPER 81 (1980), wherein the undersigned dismissed a petition filed by the Education Association to add aides to its existing teachers' unit within one year of a certification of the Association as the exclusive representative of a separate unit of aides.

In correspondence dated December 14, 1981, the undersigned advised the parties of the results of the administrative investigation and the above analysis. The parties were further advised of their responsibilities, under N.J.A.C. 19:11-2.6, to submit documentary or other evidence, including a statement of position, raising substantial and material factual issues which would warrant the convening of a hearing pursuant to N.J.A.C. 19:11-2.6(c). Petitioner was advised that in the absence of a

withdrawal request or the submission of the required materials, the undersigned would dismiss the instant Petition as untimely.

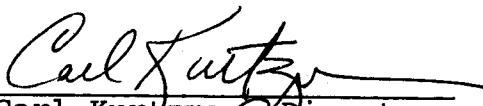
The Petitioner, by way of a letter dated January 4, 1982, contended that additional factors were present to warrant against the dismissal of the Petition as untimely. It contends that the Board "willfully enticed the Secretarial Association into premature recognition by promising virtual automatic recognition in the subsequent negotiations round." On January 11, 1982, the undersigned advised the Petitioner that he was unable to ascertain exactly what information the above statement by the Petitioner sought to convey. The undersigned, therefore, requested the Petitioner to clarify its position by providing a more expanded factual statement and evidentiary proffer in support thereof. No further submission has been provided by the Petitioner.

If the Association's position is that the employer promised it or the recognized representative at an earlier time not to raise a timeliness claim to a subsequent Petition filed by the instant Petitioner, the undersigned sees no evidence in support of this claim. Absent the proffer of written evidence of a waiver by the employer of its rights under the recognition bar rule, the undersigned will not consider whether an alleged waiver prior to the filing of a Petition for Certification of Public Employee Representative will negate an assertion of the recognition bar rule by the employer when a petition is filed.

Accordingly, in the absence of a withdrawal request and in the absence of any substantial and material factual issues

warranting the convening of an evidentiary hearing, the undersigned dismisses the instant Petition.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: March 3, 1982
Trenton, New Jersey