

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

In the Matter of

MERCER COUNTY SUPERINTENDENT
OF ELECTIONS,

Public Employer,

-and-

FLORENCE LECHOWICZ,

DOCKET NO. RD-82-5

Petitioner,

-and-

MERCER COUNCIL #4, CWA,
LOCAL 1040, AFL-CIO,

Employee Representative.

SYNOPSIS

The Director of Representation, on the basis of an administrative investigation, dismisses a Petition for Decertification of Public Employee Representative filed on behalf of certain employees, who have raised a question concerning the continued majority status of the exclusive representative since the Petition has not been timely filed. Prior to the filing of the Petition, the employer and the exclusive representative executed a Memorandum of Agreement and ratified the agreement. The Commission has held that a Memorandum of Agreement may constitute an "existing written agreement" which bars a petition if it contains substantial terms and conditions of employment and has been ratified by the parties where ratification is required by the memorandum. The Director determines that the Petition has not been filed in accordance with N.J.S.A. 19:11-2.8(c)(1).

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Appearances:

For the Public Employer
Office of Employee Relations
Wes Merritt, Employee Coordinator

For the Petitioner
Florence Lechowicz, pro se

For the Employee Representative
Robert O. Yaeger, Representative

DECISION

On October 29, 1981, a Petition for Decertification of Public Employee Representative, supported by an adequate showing of interest, was filed with the Public Employment Relations Commission (the "Commission") by Ms. Florence Lechowicz (the

"Petitioner"), on behalf of certain employees, raising a question concerning the continued majority status of the exclusive representative, Mercer Council No. 4, CWA, Local 1040, AFL-CIO ("Council 4") with regard to a unit of public employees employed by the Mercer County Superintendent of Elections ("Superintendent of Elections").

In accordance with N.J.A.C. 19:11-2.2(a), the undersigned has caused an investigation to be conducted into the matters and allegations set forth in the Petition in order to determine the facts.

Based upon the 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 Mercer County Superintendent of Elections 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. Mercer Council No. 4, CWA, Local 1040, AFL-CIO is an employee representative within the meaning of the Act and is subject to its provisions.

4. Council 4 is the certified majority representative of a collective negotiations unit of all employees of the Mercer County Superintendent of Elections.

5. The Petitioner has filed a Petition for Decertification of Public Employee Representative, supported by an adequate showing of interest, asserting that the certified representative no longer represents a majority of the employees and that employees no longer desire to be represented for the purpose of collective negotiations by the certified majority representative or by any other employee representative.

6. N.J.A.C. 19:11-2.8(c) provides in part:

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:

(1) In a case involving employees of the State of New Jersey, any agency thereof, or any State authority, commission or board, the petition is filed not less than 240 days and not more than 270 days before the expiration or renewal date of such agreement.

* * *

7. Council 4 alleges that the instant Petition which was filed October 29, 1981, is not timely filed under the above rule because "The Union and Management reached a tentative agreement in a new three-year contract on October 8, 1981." In support of this claim Council 4 has submitted a document dated October 8, 1981 entitled "Memorandum of Agreement."

The Superintendent of Elections, by letter dated November 9, 1981, contends that the "Union and Management [have] reached an agreement and that agreement has been ratified by all parties involved, it is the opinion of [the Labor Negotiator for the employer] that the decertification petition is inappropriate at this time and should be dismissed."

Council 4 and the Superintendent of Elections thus assert that the Memorandum of Agreement, as ratified, constitutes a binding written agreement between the parties and operates as a bar since it was effectuated before the filing of the Petition.

8. The "Memorandum of Agreement" sets forth new salary provisions, the terms of a grievance procedure and a provision for dues deductions, and has a duration clause. It further provides for the continuation of all other terms of the expired agreement. The agreement also contains the following provisions.

The negotiating committees of the Mercer County Office Superintendent of Elections and C.W.A. Local 1040 agree to recommend the following in resolution of their negotiations to their principals

* * *

Both Parties agree under the mediator's imposition not to release any terms of this settlement prior to ratification.

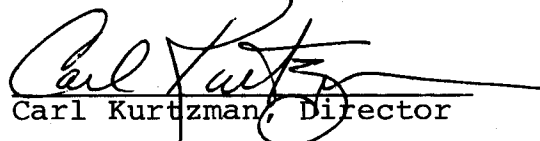
Council 4 and the Superintendent assert that Council 4 held a ratification meeting on October 14, 1981, at which time the employees ratified the agreement. The undersigned notes that the memorandum of agreement was signed by the management negotiating team and by the Superintendent of Elections.

9. The Commission has held that a Memorandum of Agreement may constitute an "existing written agreement" which bars a petition pursuant to N.J.A.C. 19:11-2.8(c) if it contains substantial terms and conditions of employment and if it has been ratified, where ratification is required by the memorandum. In re Cty. of Middlesex, P.E.R.C. No. 81-29, 6 NJPER 439 (¶ 11224 1980). See also In re City of Jersey City, E.D. No. 79 (1975). Both the Superintendent of Elections and Council 4 assert that these conditions are met herein by virtue of their execution of a memorandum of agreement which contained substantial terms and conditions of employment for a stated term, and by virtue of the ratification of the agreement which occurred before the filing of the instant Petition.

On January 11, 1982, the undersigned advised the parties that upon review of the memorandum of agreement and the undisputed claim that the required ratifications were effectuated prior to the filing of the instant Petition, a contract bar existed when the instant Petition was filed. Pursuant to N.J.A.C. 19:11-2.6(a), the undersigned reminded the parties of their obligations to present documentary and other evidence or statements of position with respect to the instant Petition, and afforded the parties an additional opportunity to proffer any supplemental evidence or statements of position relevant to the instant Petition. The undersigned further advised that in the absence of the presentation of facts placing in dispute any substantial and material factual issues, the undersigned would thereafter dismiss the Petition.

No response has been received by the undersigned. Accordingly, for the reasons stated above, the undersigned determines that the present matter has not been filed in accordance with N.J.A.C. 19:11-2.8(c)(1) and hereby dismisses the instant Petition.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: February 9, 1982
Trenton, New Jersey