

D.R. NO. 93-20

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

In the Matter of

BOROUGH OF RED BANK,

Public Employer,

-and-

Docket No. RO-93-131

PESU, LOCAL 702,

Petitioner,

-and-

UFCWU, LOCAL 56,

Intervenor.

SYNOPSIS

The Director of Representation orders an election among blue collar and office/clerical employees employed by the Borough of Red Bank, pursuant to a petition filed by the Public Employees Service Union, Local 702. The Director rejected the claim by the incumbent union, United Food and Commercial Workers Union, Local 56, that an oral agreement to extend the parties' collective bargaining agreement operates as a bar to the processing of the petition under N.J.A.C. 19:11-2.8.

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Appearances:

For the Public Employer
Richard O'Connor, attorney

For the Petitioner
Hott & Margolis, attorneys
(Timothy Hott, of counsel)

For the Intervenor
Guazzo, Perelson, Rushfield, & Guazzo, attorneys
(Mark C. Rushfield, of counsel)

DECISION AND DIRECTION OF ELECTION

On February 9, 1993, the Public Employees Service Union, Local 702, filed a Petition for Certification of Public Employee Representative, with the Public Employment Relations Commission. The petition was supported by an adequate showing of interest. Local 702 seeks to represent a unit of blue collar employees and office/clerical employees employed by the Borough of Red Bank. The petitioned-for employees are presently represented by the United

Food and Commercial Workers Union, Local 56. Local 56 has intervened in this matter on the basis of its most recent negotiations agreement with the Borough.^{1/} Local 56 objects to the petition and will not consent to a secret ballot election. Local 56 alleges that it has an agreement with the Borough, effective until April 1, 1993, which bars the petition.

Local 56 and the Borough had an agreement, effective from January 1, 1992 through December 31, 1992, covering a unit of blue collar and office/clerical employees.

Local 56 asserts that on about December 29, 1992, its representative Stephen Hornik and Borough Administrator Sally Levine agreed orally to to extend the parties' existing terms and conditions of employment until April 1, 1993. Hornik sent Levine a letter on December 30, 1992, confirming the oral agreement. The letter states, in relevant part:

This is to confirm our agreement to a three (3) month extension of the present Contract which would now expire on Thursday, April 1, 1993, with our prior understanding agreement that any wage increases would be retroactive back to and including January 1, 1993.

We would like to have a date for negotiations at your earliest possible convenience.

The letter is the sole written evidence of the alleged agreement.

^{1/} N.J.A.C. 19:11-2.7.

N.J.A.C. 19:11-2.8 states:

(c) 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 . . . normally will not be considered timely filed unless:

2. In a case involving employees of a county or a municipality, . . . the petition is filed not less than 90 days and not more than 120 days before the expiration or renewal date of such agreement;

If Hornik's letter constitutes a valid agreement within the meaning of the Act, it would bar the processing of the petition. The window period for filing petitions under N.J.A.C. 19:11-2.8, would be between December 2, 1992 and January 1, 1993 and, thus, Local 702's petition filed on February 9, 1993, would be untimely. However, the "agreement" by its terms is an extension due to expire on a date certain, Thursday, April 1, 1993, with the understanding that any wage increases would be retroactive back to and including January 1, 1993. The retroactivity provision makes the agreement interim, contingent for settlement of final terms upon continued negotiations. Interim agreements do not qualify as final agreements for the contract bar rule. See Jersey City, E.D. No. 78, NJPER Supp. 605 (¶161 1975) (agreement between city and incumbent union did not serve as bar to petition because it was merely interim agreement to remain in effect only until successor agreement was executed).

The alleged agreement is not signed by both parties.

N.J.S.A. 34:13A-5.3 states:

When an agreement is reached on the terms and conditions of employment, it shall be embodied in

writing and signed by the authorized representatives of the public employer and the majority representative.

An agreement which bars the filing of a representation petition must be written and executed by both parties before the petition is filed. See City of Pleasantville, D.R. No. 86-10, 12 NJPER 70 (¶17027 1985). See also, Appalachian Shale Products Co., 121 NLRB No. 149, 42 LRRM 1506 (1958).

Accordingly, the letter proffered by Local 56 cannot serve to bar Local 702's petition. I order an election among the petitioned-for employees. The unit shall be:

Included: All office and clerical employees and all blue collar employees employed in the roads, parks, sanitation, maintenance and custodial departments of the Borough of Red Bank.

Excluded: All other employees including all employees represented in other negotiations units, managerial executives, confidential employees, police employees, craft employees, professional employees and supervisors within the meaning of the Act.

The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, including those in the military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who resigned or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

Pursuant to N.J.A.C. 19:11-9.6, the public employer is directed to file with us an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the units, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by us no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously provided to the employee organization with a statement of service filed with us. We shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

The exclusive representative, if any, shall be determined by a majority of the valid votes cast in the election. The election shall be conducted in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: March 31, 1993
Trenton, New Jersey