

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

In the Matter of

BOARD OF TRUSTEES OF THE FREE
PUBLIC LIBRARY OF THE TOWNSHIP
OF WEST ORANGE,

Public Employer,

-and-

I.U.O.E., LOCALS 68-68A-8B,

Petitioner,

DOCKET NO. RO-85-31

-and-

ESSEX COUNCIL #1, N.J.C.S.A.,

Intervenor.

SYNOPSIS

The Commission Designee directs an election in a unit of employees employed by the Board of Trustees of the Free Public Library of the Township of West Orange. In reliance on In re East Brunswick Board of Education, it was determined that the contingency provision contained in the duration clause of the agreement did not operate so as to extend such agreement and, thereby, create a contract bar to the instant Petition for Certification of Public Employee Representative. The Commission Designee also found that on the basis of the specific termination date set forth in the duration clause of the agreement, the Petitioner properly calculated the open period and filed its Petition in a timely manner.

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Appearances:

For the Public Employer
Loftus & Cuozzi
(Martin Loftus, of counsel)

For the Petitioner
Zazzali, Zazzali & Kroll
(Paul Kleinbaum, of counsel)

For the Intervenor
Fox & Fox
(Frederick Knapp, of counsel)

DECISION AND DIRECTION OF ELECTION

On September 14, 1984, the International Union of Operating Engineers, Local 68-68A-68B, AFL-CIO (hereinafter called the "Petitioner"), filed a Petition for Certification of Public Employee Representative with the Public Employment Relations Commission (hereinafter called the "Commission"). The petitioner sought to represent all librarians employed at the West Orange Public Library and named the Township of West Orange as the employer. In a letter dated September 25, 1984, the Township advised the Commission that it was not the public

employer of the employees in question. It claimed that the Board of Trustees of the Free Public Library of the Township of West Orange (hereinafter called the "Board") is the public employer.

On October 2, 1984, the Petitioner filed an amended Petition for Certification of Public Employee Representative in which it identified the employer as "Township of West Orange and/or West Orange Public Library."

A Commission staff agent scheduled an informal investigatory conference and requested that the parties submit a written statement of position regarding the instant matter. On October 17, 1984, the Board responded and indicated, inter alia, that the petitioned-for employees are currently included in a negotiations unit represented by Essex Council #1, NJCSA (hereinafter called "Council #1") and that a contract covering the period August 4, 1983 through December 31, 1984 is currently in effect. On October 22, 1984, the Commission advised Council #1 that the within petition had been filed and that it may have a representational interest in this matter. Council #1 was invited to attend the informal investigatory conference as an Intervenor.

On October 29, 1984, a Commission staff agent conducted an informal investigatory conference at which time the parties were provided with an opportunity to advance their respective positions. Council #1 (hereinafter called the "Intervenor") declined to enter into an agreement for consent election. A schedule for the submission of statements of position was established during the conference, and statements by the Petitioner and the Intervenor have been received.

On the basis of the administrative investigation, I find the following facts:

1. The Board of Trustees of the Free Public Library of the Township of West Orange is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., is subject to its provisions and is the employer of the employees who are the subject of the instant Petition.

2. The International Union of Operating Engineers, Local 68-68A-68B, AFL-CIO, and Essex Council #1, New Jersey Civil Service Association, are employee representatives within the meaning of the Act and are subject to its provisions.

3. The Board states that it has no objections to a secret ballot election being conducted by the Commission among unit employees.

4. Essex Council #1, NJCSA, has properly intervened pursuant to N.J.A.C. 19:11-2.7(a).

5. The contract between the Intervenor and the Board, executed August 4, 1984, provides the following in Article 13A:

This agreement shall be effective as of the date of signing hereon by all of the parties hereto, and shall remain in full force and effect through December 31, 1984. It is agreed to and understood by and between the parties hereto, that unless specifically referred to as retroactive hereto, all terms and provisions of this agreement are not retroactive to January 1, 1982, and shall assume full force and effect beginning only on the date of the signing of this agreement and continue thereon to expiration of this agreement.

Article 13B. provides as follows:

This agreement shall automatically renew itself on January 1, 1984, and continue from that point, on a year to year basis, unless one or more of the parties hereto shall notify the other parties hereto in writing, at lease ninety (90) calendar days prior to the scheduled expiration date of this agreement, that it desires to modify or terminate this agreement. In the event such notice is given,

negotiations for a new agreement shall begin not later than sixty (60) days prior to the scheduled expiration date of this agreement.

6. In its letter dated October 30, 1984, the Intervenor asserts the following positions:

(a) The contract covering employees in the instant unit is presently in effect and does not expire until December 31, 1985.

(b) The contract became effective on August 4, 1983 and was applied retroactively to January 1, 1983. ^{1/}

(c) The contract continues to be in effect and acts as a bar to the instant petition because of the automatic renewal provision set forth in Article 13B.

(d) For the purpose of determining the timeliness of the instant petition, Commission rules allow an existing contract to act as a bar for a maximum of three years. The Intervenor points out that for purposes of determining a timely filing, an agreement for a term in excess of three years is treated as a three year agreement under the rules. The Intervenor argues that "[u]nder the terms of the renewal provision, the agreement was automatically renewed for an additional one year term on October 2, 1984, since neither the appointing authority nor the Association submitted written notification at least 90 days prior to the scheduled expiration date, that it desired to modify or terminate the agreement. Accordingly, the contract is automatically renewed for one year and presently expires on December 31, 1985. Because of the three year limitation on the contract bar rule, ...a petition filed during the open period in 1985 would be

^{1/} The operative starting date of the contract is somewhat unclear. For purposes of this discussion, the undersigned has assumed the operative date is 1/1/83.

timely. We do not argue that this provision could act in excess of three years to bar a petition."

7. The Petitioner argues that the agreement between the Intervenor and the Board should not bar the instant petition. The Petitioner argues that since the contract expressly states an expiration date of December 31, 1984, its petition, filed on October 2, 1984, is timely and should not be barred by the agreement. Moreover, the Petitioner contends that an automatic renewal provision in a contract should not operate to bar an otherwise timely petition.

8. On November 9, 1984, the Intervenor filed a letter responding to the Petitioner's argument and reasserted its position that the instant petition should be dismissed on the grounds that a contract bar exists.

9. In correspondence dated December 18, 1984, the Chief Assistant to the Commission Designee advised the parties that on the basis of the administrative investigation, it appeared that a valid and timely Petition for Certification of Public Employee Representative had been filed. The Chief Assistant reminded the parties of their obligations under N.J.A.C. 19:11-2.6 to present documentary and other evidence, as well as statements of position, and afforded the parties an opportunity to proffer any such submissions. None of the parties submitted additional evidence or statements of position.

* * *

The first issue to be determined is whether, on the basis of the duration clause of the agreement, an "open" period exists during calendar year 1984. N.J.A.C. 19:112.8(d) states:

For the purposes of determining a timely filing, an agreement for a term in excess of three years will be treated as a three year agreement; an

agreement for an indefinite term shall be treated as a one year agreement measured from its effective date.

In making this determination, the initial question to be answered is whether a two year agreement with an automatic one year renewal provision establishes a two year or three year contract bar.

The Director of Representation addressed this issue in In re East Brunswick Bd. of Ed., D.R. No. 80-39 6 NJPER 308 (¶ 11148 1980). In East Brunswick, the parties' agreement contained a duration clause which provided, that:

This agreement shall be effective as of July 1, 1978, and shall continue in effect until June 30, 1980, or until a successor agreement has been negotiated.

The duration clause further indicated that certain contract articles would be "closed" through the 1980-81 contract period, and that certain contract articles, including the salary guide, would be subject to a "reopener" for the 1980-81 period. On the basis of the contract language listing both "closed" articles and articles subject to reopener, the incumbent employee organization argued that a three year contract bar period existed. The Petitioner argued that the duration clause should be likened to a contract for an indefinite period and thus accorded contract bar effect for only one year.

The Director of Representation rejected the Petitioner's argument on the ground that the duration clause established a fixed term for the contract period (June 30, 1980) notwithstanding the language, "until a successor agreement has been negotiated." The Director pointed out that "it is not unusual in the public sector for parties to fix the duration of their agreement, and then to provide

a contingency for the contract's continued viability after its expiration until a successor agreement is reached." ^{2/} In re East Brunswick, supra, at 308. The Director then specifically addressed whether the contract in East Brunswick provided for a two year or three year bar. In reaching his determination, the Director pointed out that "[t]he compelling consideration is whether the contract duration has been defined with sufficient clarity to afford the parties full three year protection and thus restrict the rights of employees to petition to change their negotiations representative." In re East Brunswick, supra, at 309. The Director noted that there are two essential objectives to be achieved by the contract bar rule: 1) providing stability to negotiations relationships and, 2) affording any outside party an opportunity to determine when a representation petition can be timely filed. The Director then held that because of the ambiguity contained in the contract, an "outside" party could interpret the duration clause as properly providing for more than one "open" period within which to file a representation petition during the life of the contract. In re East Brunswick Bd. of Ed., supra, at 309.

In the instant matter, the contract contains a duration clause which provides for a specific date of termination, December 31, 1984. It also contains "contingency" language which insures the contract's continued viability after its expiration and until a successor agreement is negotiated. The contingency language may assume significance only as of January 1, 1985, the date upon which that portion of the contract begins to operate. In re East Brunswick Bd. of Ed., at 308.

^{2/} In fact, the Director noted that this is the current state of the law. See, In re Piscataway Twp. Bd. of Ed., P.E.R.C. No. 91, 1 NJPER 49 (1975).

Article 13B coincides with the operation of the open period. To wit: The contract has, by its express terms, an expiration date of December 31, 1984. Thus, calculating the open period based upon this expiration date, that period would be from September 3 to October 2, 1984 and the insulated period would be from October 3, 1984 to December 31, 1984. On October 2, 1984, if neither party to this contract had given the other notice of its desire to modify or renegotiate this agreement, then on January 1, 1985, the contract would "renew itself" for a one year contract term. Thus, by the terms of Article 13B, on January 1, 1985, a new one year contract would have been automatically negotiated if neither side had notified the other of its intent to alter the terms of the extant 83-84 agreement. This tandem operation of the expiration of a two year contract on December 31, 1984 and the "automatic renegotiation" of a one year contract on January 1, 1985, cannot in any event serve to eliminate the open period under the first agreement.

Further, even assuming arguendo that Article 13B was structured as a typical option year extension, it still could not operate as a bar to the instant petition because of the uncertainty it would create in the minds of those who may have an interest in filing timely representation petitions. Accordingly, no extension of the contract, for contract bar purposes, can be permitted by such a clause. See, In re City of Atlantic City, D.R. No. 82-34, 8 NJPER 83, 84 (¶ 13034 1982) affd., P.E.R.C. No. 82-81, 8 NJPER 137 (¶ 13059 1982). In re East Brunswick Bd. of Ed., supra; In re City of Jersey City, E.D. No. 78 (1975); In re Twp. of Franklin, P.E.R.C. No. 64 (1971); cf. In re

Hudson Co. Bd. of Chosen Freeholders, D.R. No. 78-14, 3 NJPER 295

(1977). On the basis of the foregoing, I find that the petition filed by the Petitioner is timely.

Assuming arguendo that the contract termination date, for purposes of calculating the contract bar, was determined to be December 31, 1984, the Intervenor argues alternatively that the petition filed herein is untimely on the basis that the petition was filed outside the permissible "open" period. The Intervenor contends that the "insulated" period should be calculated from January 1, 1985, which is the renewal date of the contract pursuant to Article 13B. The Intervenor argues that by calculating the insulated period utilizing January 1, 1985 rather than December 31, 1984, the petition is rendered untimely. It appears, however, that the Intervenor has misapplied the rule and miscalculated the "open" period.

N.J.A.C. 19:11-2.8 provides, in relevant part, as follows:

(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 or a Petition for Decertification of Public Employee Representative normally will not be considered timely filed unless:

...2. In a case involving employees of a county or a municipality, any agency thereof, or any county or municipal authority, commission or board, the petition is filed not less than 90 days and not more than 120 before the expiration or renewal date of such agreement.

Thus, the rule clearly provides for an insulated period of a full 90 days. The date upon which the 90 day insulated period would begin would fall on either October 3rd or October 4th, 1984, depending upon which expiration date (December 31, 1984 or January 1, 1985) is utilized.

Since the instant petition was filed on October 2, 1984, it was timely filed in any event.

On the basis of the administrative investigation, I find the appropriate unit for collective negotiations to be the following: all permanent Civil Service employees employed by the Board of Trustees of the Free Public Library of the Township of West Orange, including Junior Library Assistant, Senior Librarian/Cataloger, Senior Librarian/Reference, Senior Librarian/Acquisitions, Book Repairer, Supervising Library Assistant, Junior Librarian/Young Adult, but excluding all managerial executives, confidential employees, police employees, professional employees, craft employees, supervisors within the meaning of the Act and all other employees.

Pursuant to N.J.A.C. 19:11-2.6(b)(3), I hereby direct that an election be conducted among the employees described above. The election shall be conducted no later than thirty (30) days from the date set forth below.

Those eligible to vote are the employees set forth above who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation or temporarily laid off, including those in military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are those 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.

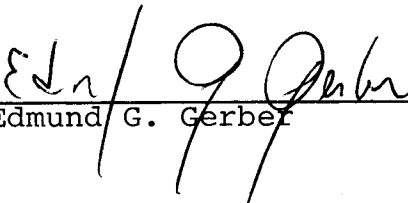
Pursuant to N.J.A.C. 19:11-9.6, the Public Employer is directed to file with me and the International Union of Operating

Engineers, Local 66-68A-68B, AFL-CIO, and Essex Council #1, New Jersey Civil Service Association, an election eligibility list consisting of an alphabetical listing of the names of all eligible voters together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by me no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously filed with the I.U.O.E., Local 68-68A-68B and Essex Council #1 with a statement of service to me. The parties are advised that I shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

Those employees eligible to vote shall vote on whether or not they desire to be represented for the purpose of collective negotiations by the International Union of Operating Engineers, Locals 68-68A-68B, AFL-CIO; Essex Council #1, New Jersey Civil Service Association; or neither.

The exclusive representative, if any, shall be determined by the majority of valid ballots cast by the eligible employees voting in the election. The election directed herein shall be conducted in accordance with the provisions of the Commission's rules.

BY ORDER OF THE COMMISSION DESIGNEE


Edmund G. Gerber

DATED: February 6, 1985
Trenton, New Jersey