

E.D. NO. 42

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HOUSING AUTHORITY OF THE CITY OF JERSEY CITY
Public Employer

and

HOUSING AUTHORITY WORKERS ASSOCIATION
Petitioner

Docket No. RO-287

and

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND
MACHINE WORKERS, AFL-CIO, LOCAL 480
Intervenor

DECISION AND DIRECTION OF ELECTION

Pursuant to a Notice of Hearing to resolve a question concerning the representation of certain employees of the Jersey City Housing Authority, a hearing was held on June 30, 1971 before Bernard J. Manney, Hearing Officer for the Commission, at which all parties were given an opportunity to examine and cross-examine witnesses, to present evidence and to argue orally. Thereafter on August 2, 1971 the Hearing Officer issued his Report and Recommendations.^{1/} On August 18, 1971 Intervenor timely filed exceptions to the Report and Recommendations of the Hearing Officer. The undersigned has considered the record, the Hearing Officer's Report and Recommendations and the Intervenor's exceptions and on the basis of the facts in this case, finds:

1. The Housing Authority of the City of Jersey City is a public employer within the meaning of the Act and is subject to the provisions thereof.
2. The Housing Authority Workers Association, hereinafter called the Association, and the International Union of Electrical, Radio and Machine Workers, AFL-CIO, Local 480, hereinafter called Local 480, are employee representatives within the meaning of the Act.
3. The Employer has refused to grant recognition to the Association as the exclusive representative of the unit petitioned for; there is, therefore, a question concerning the representation of public employees and the matter is properly before the undersigned for determination.
4. Local 480, the incumbent representative of the employees involved herein, contends in its exceptions that the instant petition is untimely in that a contract bar within the meaning of 19:11-15(d) of

1/ Attached hereto and made a part hereof.

the Rules and Regulations exists. 2/ The facts involved in this matter are not in dispute:

1. Since 1962, Local 480 has represented the employees of the employer.
2. On September 4, 1968 a contract was entered into with that effective date and an expiration date of September 5, 1971 between Local 480 and the Housing Authority.
3. On November 21, 1969 the Association filed a petition with the Commission which was found to be untimely within the meaning of Section 19:11-15(d) of the Rules and was dismissed by the Commission. 3/
4. The budget submission date of the Employer is December 31 of each year.
5. The instant petition was filed by the Association on May 3, 1971.

Rule 19:11-15(d) provides in pertinent part:

"During the period of an existing written agreement containing substantive terms and conditions of employment, a petition for certification of public employee representative or a petition for decertification of public employee representative involving those employees normally will not be considered timely filed unless the petition is filed not less than 120 days and not more than 150 days before the last date, if any, for budget submission of the public employer immediately preceding the expiration or renewal date of such agreement or two (2) years from the effective date of the agreement, whichever is earlier,..."

Intervenor, Local 480, contends that the 30 day open period for timely filing should be measured in reference to the December 31, 1970 budget submission date, this being the last budget submission date prior to the contract's terminal date of September 5, 1971. This calculation produces an open period of August 3 to September 3, 1970 and since this is earlier than two years from the contract's effective date (which would be September 4, 1970), the former calculation should control. Thus, according to Intervenor, the instant petition having been filed in May 1971 is well beyond the timely period. Intervenor regards as absurd the Hearing Officer's interpretation that in applying the Commission's contract bar rules, that portion of the contract term which exceeds two years is to be ignored. Intervenor also relies on the policy of the National Labor Relations Board in support of its contention.

After careful consideration, we find Intervenor's contention to be without merit. The Commission in its earlier decision, P.E.R.C. No. 45,

2/ The Employer takes no position in this dispute and has agreed "to abide by the decision of the Commission."

3/ In the Matter of Housing Authority of Jersey City, et. al. P.E.R.C. NO. 15

clearly stated that under the rule in question a contract for a term exceeding two years would constitute a bar only for the first two years of its term measured from the contract's effective date. It seems clear from that expression that the second anniversary is, constructively, the terminal date of the contract. That means, necessarily, that the contract will have no force or effect as a bar to any petition filed after the contract's second anniversary. There would be little logic in imposing a two year constructive term for purposes of computing the 150-120 day open period prior to the contract's terminal date, yet once past that open period giving full effect to the contract, for bar purposes, regardless of its duration.

Intervenor misplaces its reliance upon NLRB policy. To the contrary, the Board's policy is consistent with the above disposition. In Pacific Coast Association of Pulp & Paper Manufacturers, 121 NLRB No. 124, 42 LRRM 1477 (1958), the Board stated: "A contract of more than two years duration will be treated as a contract for a fixed term of two years... To be timely in relation to such a contract, a petition must be filed from 150 to 60 days before the end of the first two years of the contract term or after the expiration of the two year period." Emphasis added Subsequently the Board modified its measuring periods, but it continues to adhere to the policy that a petition filed after the constructive terminal date of the contract is timely.

In view of the foregoing it is not necessary to comment on the merits of Intervenor's computation that the 150-120 day open period be calculated in reference to the budget submission date preceding the actual termination date of the contract. The petition here was filed after the second anniversary of the contract and it is therefore timely filed.

5. The appropriate unit, as stipulated by the parties at the hearing is found to be: All employees of the Housing Authority of Jersey City excluding the Executive Director, the Maintenance Director, office clerical employees and police. 3/

DIRECTION OF ELECTION

It is directed that a secret-ballot election be conducted among the employees in the unit described in paragraph 5 above. The election shall be conducted no later than thirty (30) days from the date set forth below.


Those eligible to vote are employees set forth in paragraph 5 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 employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

3/ Administrative notice is taken of the Commission's earlier decision, PERC No. 45, and the stipulation in the preceding hearing that established practice exists dictating the inclusion of supervisors and craft employees within the overall blue collar unit sought.

Those eligible shall vote on whether they desire to be represented for the purpose of collective negotiations by the Housing Authority Workers Association; International Union of Electrical, Radio and Machine Workers, AFL-CIO, Local 480; or none.

The majority representative shall be determined by a majority of the valid ballots cast.

The election directed herein shall be conducted in accordance with the provisions of the Commission's Rules and Regulations and Statement of Procedure.


Maurice J. Neilligan, Jr.
Executive Director

DATED: December 23, 1971
Trenton, New Jersey

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

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Intervenor

HEARING OFFICER'S REPORT AND RECOMMENDATION

Pursuant to a Notice of Representation Hearing dated May 24, 1971 and an Order Rescheduling Hearing dated June 21, 1971, a hearing was held June 30, 1971 before the undersigned at Newark, New Jersey. All parties were given an opportunity to examine and cross-examine witnesses, present evidence and to argue orally.

The Hearing Officer has considered the entire record and finds:

1. The Housing Authority of the City of Jersey City is a public employer within the meaning of the New Jersey Employer-Employee Relations Act.
2. Housing Authority Workers Association and the International Union of Electrical, Radio and Machine Workers, AFL-CIO, Local 480, are employee representatives within the meaning of the New Jersey Employer-Employee Relations Act.
3. The Employer does not recognize the Petitioner as the exclusive representative of the instant employees and the Intervenor maintains that an existing contract proscribes the instant petition and therefore a question concerning the representation of public employees exists and the matter is properly before the Commission for determination.

QUESTION TO BE RESOLVED:

Is the petition of the Housing Authority Workers Association timely filed?

POSITION OF THE PARTIES:

1. The Public Employer expressed his intention to "abide by the decision of the Commission or any election that may be ordered." (T-11)
2. The Petitioner contends that a contract bar does not exist. The instant collective negotiation agreement covers a period of three years and PERC "will not look past a two year contract with regard to representative elections." To support this, he quotes from PERC No. 45

(Exhibit I-1) to wit, "Since the renewal contract is effective from September 4, 1968 to September 5, 1971, a period exceeding two years, it may constitute a bar for only the first two years of its term measured from its effective date, that is until September 5, 1970, pursuant to Section 19:11-15(d) of the Commission's Rules and Regulations." (T-23) ^{1/} Accordingly, the Petitioner maintains the petition is timely filed.

3. The Intervenor argues that under 19:11-15(d) the petition filed by the Housing Authority Workers Association is barred. He interprets 19:11-15(d) to mean that "a petition may not be filed during the term of our contract, not more than 150 days, not less than 120 days before the last budget submission date preceding the expiration date of our contract." (T-19) Specifically, he holds that since the termination date of the instant (3-year) contract is September 5, 1971, and the last date for budget submission is December 31, 1970, "a petition in order to be timely under these rules and regulations must be filed not more than 150 days, not less than 120 days prior to December 31, 1970." (T-19) Therefore, he contends that the petition is not timely filed and should be dismissed inasmuch as it was filed on May 3, 1971. (T-21)

DISCUSSION AND FINDINGS:

In view of the Public Employer's expressed stand of impartiality, the undersigned addresses himself to the position of the Intervenor. The undersigned cannot agree with the Intervenor's interpretation of 19:11-15(d) or of PERC No. 45. Section 19:11-15(d) prescribes that "During the period of an existing written agreement containing substantive terms and conditions of employment, a petition for certification of public employee representative or a petition for decertification of public employee representative involving those employees normally will not be considered timely filed unless the petition is filed not less than 120 days and not more than 150 days before the last date, if any, for budget submission of the public employer immediately preceding the expiration or renewal date of such agreement, or two (2) years from the effective date of the agreement, whichever is earlier, unless unusual circumstances exist which will substantially affect the unit or the majority representation."

Absent the said "unusual circumstances," the overt intent of this Commission rule is to provide a precise measuring point for purposes of determination of timeliness of petitions, and a definitive, two year insulation period in instances of collective negotiation contracts of

^{1/} PERC No. 45 deals with a previous representation petition Docket No. 36 filed by the instant Petitioner on November 21, 1969. In that case, the Commission determined that the petition was not timely filed and dismissed it.

multi-year duration. The record does not indicate the existence of unusual circumstances which will substantially affect the unit or the majority representation. As further substantiation of this intent, 19:11-15(d) mandates, too, that "In the absence of a budget submission date, the period shall be measured from the expiration or renewal date of such agreement or two (2) years from the effective date of the agreement, whichever is earlier." *

PERC No. 45 found in the aforementioned case, RO-35, that "Since the renewal contract is effective from September 4, 1965 to September 5, 1971, a period exceeding two years, it may constitute a bar for only the first two years of its term measured from its effective date, i.e., until September 5, 1970, pursuant to Section 19:11-15(d) of the Commission's Rules and Regulations. * A Timely petition, therefore, is one filed not less than 120 days nor more than 150 days immediately preceding December 31, 1969, which is the last day for budget submission preceding the second anniversary date of the renewed contract. Inasmuch as the petition here involved was filed November 21, 1969, it was not timely filed as required by Section 19:11-15(d) of the Commission's Rules and Regulations. Accordingly, the petition is hereby dismissed!" * Here too, it is clear that a multi-year collective negotiation contract may effectively bar for a period not exceeding the "first two years of its term measured from its effective date."

The undersigned deduces from 19:11-15(d) and PERC No. 45 that the Petitioner was afforded a choice of alternatives i.e., he could have filed a timely petition not less than 120 days and not more than 150 days prior to December 31, 1969, or could opt to file after September 5, 1970.

The instant contract covers a period of three years to wit, from September 4, 1968 to September 5, 1971 (Exhibit P-1). The Association filed its petition on May 3, 1971 i.e., after the second anniversary of the current agreement at issue and, accordingly, the undersigned finds that it is timely filed.

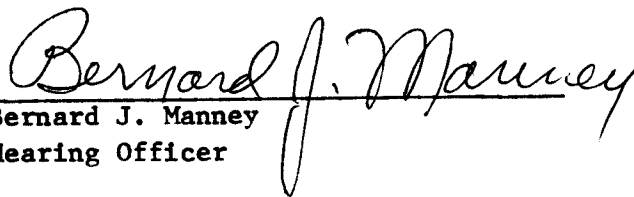
RECOMMENDATIONS:

From all of the foregoing and the official record of these proceedings, the undersigned recommends:

1. That a secret-ballot election be conducted among the employees as hereinafter delineated in the designated appropriate unit and the date for the election shall be determined by the Public Employment Relations Commission.
2. The appropriate unit shall be as follows: "All employees of the Housing Authority of the City of Jersey City, excluding Maintenance Director and Executive Director, ~~office clerical and professional employees, craft employees, policemen and supervisors~~ within the meaning of the Act.
3. Those eligible to cast ballots in this election shall vote on whether they desire to be represented for purposes of collective negotiations.

* Emphasis added.

by the Housing Authority Workers Association, the International Union of Electrical, Radio and Machine Workers, AFL-CIO, Local 480, or neither.


Bernard J. Manney
Hearing Officer

DATED: August 2, 1971
Trenton, New Jersey