

D.R. NO. 90-16

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

In the Matter of

PHILLIPSBURG BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. RO-90-79

PHILLIPSBURG SUPPORT STAFF ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation dismisses as untimely a representation petition filed by the Phillipsburg Support Staff Association. The petition was barred by current agreements. The Director finds that a petition is filed when it is received in the Commission's office.

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Appearances:

For the Public Employer  
Boyd Harbourt, Esq.

For the Petitioner  
New Jersey Education Association  
(John Davis, UniServ Field Rep.)

DECISION

On October 20, 1989, the Phillipsburg Support Staff Association ("Association") filed a Petition for Certification of a Public Employee Representative with the Commission. It seeks to represent a unit of secretaries, clerks and aides employed by the Phillipsburg Board of Education ("Board").

The secretaries and clerks are currently represented by the Phillipsburg Education Secretarial Association. The aides are currently represented by the Phillipsburg Para-professional Association. The agreements between the Board and the Phillipsburg Para-professional Association and the Phillipsburg Education Secretarial Association are effective between July 1, 1987 and June

30, 1990.

At a November 22, 1989 conference, the Board indicated that current collective negotiations agreements covering the petitioned-for unit bar this petition. The Association does not challenge the validity of the contracts, but asserts that the petition was timely filed.

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

During the period of an existing written agreement containing substantive terms and conditions of employment having a term of three years or less, a petition for certification of public employee representative normally will not be considered timely filed unless: (3) In a case involving employees of a school district, the petition is filed during the period between September 1 and October 15, inclusive, within the last 12 months of such agreement....

The Petition was mailed on October 12, 1989 and received in our offices on October 20, 1989. Because October 15 fell on a Sunday, the open period was extended until 5 p.m. on October 16, 1989. The petition was filed four days after the close of the open period.

In a December 5, 1989 letter, we informed the Association that the Petition did not appear to be timely filed under N.J.A.C. 19:11-2.8(c). The Association contacted the United States Postal Service which indicated that a properly addressed letter mailed in Phillipsburg, New Jersey would never take as long as eight days to reach Trenton, New Jersey. The Association therefore argues that it constructively met the October 16, 1989 filing deadline.

A petition is filed when it is received in the Commission's office. It is unfortunate that a petition mailed on October 12, 1989 did not reach our office until October 20, 1989. Nevertheless, the Petition was filed after the end of the open period.

The Association also argues that the contract bar is a discretionary doctrine that was developed to ward off rival union disputes which would disrupt the bargaining relationship and labor peace. It asserts that since the contract bar is designed to provide the majority representative with an insulated period, it does not apply to this situation. Here the Association seeks to merge two units it already represents.

The contract bar doctrine, while not statutorily required, is provided by the Commission's rules. N.J.A.C. 19:11-2.8(c).

In City of Hackensack, D.R. No. 86-2, 11 NJPER 570 (¶16199 1985), the Commission stated that:

The timely period for filing representation petitions...is designed to balance the interests of various parties in a contested representation matter. Subsection 19:11-2.8 balances the rights of employees to select the organization of their choice to represent them as against the rights of the employer...to negotiate in a stable environment without the threat of a challenging representation petition.

Here, the employer properly raised the contract bar to protect its interests.

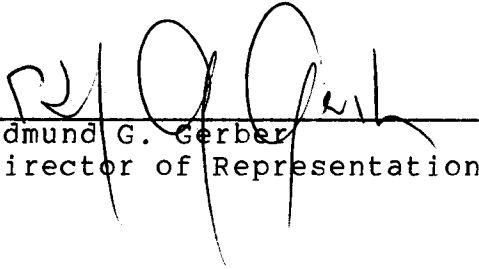
The Association's petition is untimely. Based upon the plain meaning of N.J.A.C. 19:11-2.8(c) and the reasons set forth in Hackensack, the Association's petition must be dismissed. See also

Clearview Reg. Bd. of Ed., D.R. No. 78-2, 2 NJPER 248 (1977); Jersey City Bd. of Ed., P.E.R.C. No. 79-15, 4 NJPER 455 (¶4206 1978); Lakewood Bd. of Ed., D.R. No. 86-12, 12 NJPER 216 (¶17087 1986); Phillipsburg Bd. of Ed., D.R. 89-8, 15 NJPER 80 (¶20032 1988).

ORDER

The Association's petition is dismissed.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Edmund G. Gerber  
Director of Representation

DATED: December 28, 1989  
Trenton, New Jersey