

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF BRICK,

Public Employer,

-and-

Docket No. RO-835

TEAMSTERS LOCAL #102, I.B.T.C.W.,  
Petitioner

-and-

OCEAN COUNCIL NO. 12, N.J.C.S.A.,  
Intervenor.

SYNOPSIS

On the basis of an administrative investigation, the Executive Director directs an election in a unit of municipal blue and white collar employees. The Public Employer's contentions that the Petition should be dismissed for lack of request for recognition and for its failure to receive a list of the names of those employees who have signed a petition requesting recognition, are found to be without merit. The Petition is found to be timely, contrary to the Public Employer's alternative contract bar and recognition bar arguments. The Petitioner's failure to serve copies of the Petition on the Public Employer and the Intervenor is not found to be prejudicial, in view of actual notice and opportunity to participate fully in the proceedings. A further contention of the Intervenor is disregarded for lack of substantiation.

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DECISION AND DIRECTION OF ELECTION

A Petition for Certification of Public Employee Representative, supported by an adequate showing of interest, was filed with the Public Employment Relations Commission by Teamsters Local #102, I.B.T.C.W. (the "Teamsters") with respect to a unit composed of the approximately 85 employees of the Township of Brick (the "Township") other than policemen, supervisors, and managerial executives.<sup>1/</sup> A motion to intervene was filed by Ocean Council No. 12, N.J.C.S.A. ("Council 12"), supported by a recently expired agreement with the Township covering the employees in the unit petitioned for by the Teamsters. 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. All

<sup>1/</sup> Simultaneous with the filing of the instant Petition, the Teamsters filed a request to withdraw its earlier Petition in Docket No. RO-832 seeking a unit narrower in scope. The withdrawal request is hereby approved.

parties have been advised of their obligation under Rule Section 19:11-1.12, and have been afforded an opportunity thereunder, to present to the undersigned documentary and other evidence, as well as statements of position, relating to the matters and allegations set forth in the Petition. On the basis of the administrative investigation herein, the undersigned finds and determines as follows:

1. The disposition of this matter is properly based upon the administrative investigation herein, it appearing to the undersigned that no substantial and material factual issues exist which may more appropriately be resolved after a hearing. Pursuant to Rule Section 19:11-1.12(c) 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 Township of Brick is a public employer within the meaning of the Act and is subject to its provisions.

3. Teamsters Local #102, I.B.T.C.W., and Ocean Council No. 12, N.J.C.S.A., are employee representatives within the meaning of the Act and are subject to its provisions.

4. The Township refuses to recognize the Teamsters as the exclusive representative of certain Township employees. Furthermore, the Township and Council 12 contend that Council 12 currently represents the employees in question. Accordingly, a question concerning the representation of public employees exists and this matter is properly before the undersigned for determination.

5. The motion to intervene filed by Council 12 is hereby granted.

6. The Petition alleges that the Teamsters requested recognition on May 8, 1974 and that the Township declined recognition on May 9, 1974. In support of this contention the Teamsters submitted a letter from its President to the Township Administrator, dated May 8, 1974, requesting a meeting "to determine by card count that I do in fact represent the sanitation and road employees of Brick Township, and as their representative I am ready to negotiate a contract....", together with the Administrator's reply, dated May 9, 1974, referring the Teamsters to the Public Employment Relations Commission for "handling such matters." Without referring to the foregoing, the Township contends that the Petition should be dismissed for lack of a request for recognition, arguing that a later letter from the Teamsters, dated June 13, 1974, simply amounted to the Teamsters' expression of objection to a ratification vote being taken concerning a proposed agreement between the Township and Council 12. This June 13 letter, from the Teamsters' President to the Township Administrator, stated in pertinent part:

As a representative of your sanitation, road workers and others, I must object to an illegal vote to be held Friday, June 14, 1974 on a contract proposal. I must contest this election on behalf of the members of Local #102, I.B.T. because a petition has been put on file with P.E.R.C. in Trenton, N.J. asking for an election as soon as possible to determine who in fact represents these workers of the municipality.

It is unnecessary to pass upon the contention, implicit in the Township's argument, that a demand for recognition is a

condition precedent to the processing of an otherwise valid representation petition. Suffice it to say that the communications of May 8 and 9, the existence or substance of which is not disputed by the Township, clearly amount to a demand and refusal, and that the June 13 letter serves to confirm the earlier correspondence. The Township's argument is accordingly found to be without merit.

7. The Township maintains that it did not receive "a list of the names of those employees who have signed a petition requesting recognition," and that the Petition should accordingly be dismissed. In the absence of further clarification of this argument, the undersigned must assume that the Township is referring to the showing of interest filed by the Teamsters, which according to Rule Section 19:10-1.1 may consist of a petition, among other things. The showing of interest submitted in a representation case is for administrative purposes only, utilized to assure the agency that its resources will not be sapped by the processing of frivolous or unsupported claims of majority representation. The materials submitted are deemed confidential and are returned to the filing party upon the conclusion of the proceeding. For these reasons a determination as to the adequacy or inadequacy of a showing of interest is not subject to collateral attack. See Rule Section 19:11-1.7. For the reasons set forth above, the Township's contention lacks merit.

8. Council 12 states, without further elaboration or substantiation, that it has received "certain information indicating that the petition was not properly signed and may, in effect,

be void." Rule Section 19:11-1.12(a) requires the presentation of documentary and other evidence with respect to allegations made during the investigation of a representation petition. Council 12 has been afforded ample opportunity to proffer evidence substantiating this naked allegation, but has not done so. The undersigned will accordingly disregard this vague and unsupported contention.

9. The Township maintains that the instant Petition, filed on June 14, 1974, was filed at a time when a successor agreement with Council 12 (the predecessor having expired on December 31, 1973) had been negotiated and ratified,<sup>2/</sup> although it was not formally executed until June 20, 1974, some six days after filing. The Township claims that the successor agreement constitutes "an existing written agreement" for contract bar purposes, pursuant to Rule Section 19:11-1.15(c). Alternatively, the Township argues recognition bar pursuant to Rule Section 19:11-1.15(b), stating that it recognized Council 12 in accordance with the criteria of Rule Section 19:11-1.14(b), that is, that the Township "has and is satisfied after a good faith inquiry that there has been a suitable showing of interest on behalf of" Council 12.

With respect to contract bar, it is undisputed that the successor agreement was not executed until after the Petition was filed. Assuming that the Township is correct with respect to

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<sup>2/</sup> Council 12 maintains that the agreement was "in the ratification process" when the Petition was filed.

negotiation and ratification prior to filing, an unsigned agreement nevertheless cannot serve as a bar to the timely filing of a representation petition.<sup>3/</sup> As to the Township's alternative argument with respect to recognition bar, the undersigned concludes that the recognition bar rule is not intended to apply where the parties' relationship has produced a collective agreement. A contrary interpretation could render the contract bar rule meaningless, for the criteria of Rule Section 19:11-1.14(b) could be easily timed so as to foreclose filings during the otherwise "open" periods. The recognition bar rule precludes filings for only 12 months after recognition. If the parties are unable to perfect their relationship during this 12 month period by entering into a bona fide collective agreement, the unit employees may reasonably seek another representative. It would be illogical, therefore, to permit recognition bar after the relationship has been thus perfected.<sup>4/</sup>

For the foregoing reasons, the undersigned concludes that the Petition is timely.

10. Council 12 urges dismissal of the Petition due to the Teamsters' failure to comply with the requirement of Rule Section 19:11-1.6 that, when the Petition is filed with the Executive

<sup>3/</sup> Council 12 appears to agree that the Petition is timely, relying instead upon the Teamsters' failure to serve copies of the Petition simultaneous with its filing, discussed below.

<sup>4/</sup> Even if recognition bar were appropriate under the circumstances presented herein, no evidence has been proffered with respect to the remaining criteria of Rule Section 19:11-1.14(b).

Director, "copies shall be served simultaneously on all known interested parties." Council 12 argues that the Petition is thus "deficient and should not be allowed." Although noncompliance is certainly not condoned, the undersigned is not convinced that prejudice has resulted. The undersigned cannot dispute Council 12's contention that "notice and an opportunity to be heard is an integral part of our constitutional concept of due process of law," but it has not been shown that the Teamsters' inaction has deprived Council 12 or the Township of these essential elements of fair play. Both Council 12 and the Township were provided actual notice of, and have participated fully in, the processing of the Petition from the outset. The Township was informed in writing by the Teamsters on June 13, 1974 that "a petition has been put on file with P.E.R.C. in Trenton, N. J. asking for an election" with respect to the unit employees, and both the Township and Council 12 were contacted by the agency shortly after the Petition was filed, were provided with copies of the Petition, and have been afforded unrestricted opportunity to present their factual and legal contentions. Under the circumstances, an otherwise proper proceeding will not be abandoned due to a technical deficiency.

11. Neither the Township nor Council 12 has expressed a position with respect to unit appropriateness. Accordingly, the appropriate unit is as follows: "All employees employed by the Township of Brick, excluding managerial executives, supervisors, confidential employees, professional employees, craft employees, and policemen within the meaning of the Act."



12. The undersigned directs that a secret-ballot election be conducted in the unit found appropriate. 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 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. The Commission requires the submission of an alphabetical list of all eligible voters along with their job titles at least seven days prior to the election. Accordingly, the public employer is hereby directed to submit such list to the Executive Director and to the employee organizations which will appear on the ballot as set forth below. 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.

Those eligible to vote shall vote on whether or not they desire to be represented for the purpose of collective negotiations by Teamsters Local #102, I.B.T.C.W., Ocean Council No. 12, N.J.C.S.A., or Neither.

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 Commis-

sion's Rules and Regulations and Statement of Procedure.

BY ORDER OF THE EXECUTIVE DIRECTOR

  
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Jeffrey B. Tener  
Acting Executive Director

DATED: Trenton, New Jersey  
November 8, 1974