

E.D. NO. 60

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWN OF MONTCLAIR,
Public Employer,

-and-

Docket No. RO-885

TEAMSTERS LOCAL 945, I.B.T.,
Petitioner,

-and-

COUNCIL 52, A.F.S.C.M.E., AFL-CIO,
Intervenor.

SYNOPSIS

In the absence of disputed factual issues, the Executive Director directs an election in a unit of municipal blue collar employees on the basis of an administrative investigation. The incumbent organization sought dismissal of the Petition pursuant to the contract bar rule. The Petition was timely filed during the open period. After the open period, the Petition was amended to delete certain titles from the unit description. In a case of first impression before the agency, the Executive Director rules that under circumstances where the amendment contracts the unit petitioned for, the filing date of the original Petition controls with respect to the application of the contract bar rule.

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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 on September 23, 1974 by Teamsters Local 945, I.B.T. (the "Teamsters") with respect to a unit of approximately 85 hourly paid blue collar employees employed by the Town of Montclair (the "Town").^{1/} On October 8, 1974 Intervenor status was granted to Council 52, A.F.S.C.M.E., AFL-CIO ("AFSCME") upon AFSCME's timely motion therefor supported by a collective negotiations agreement between the Town and AFSCME executed on September 18, 1974 and having a term of January 1, 1974

1/ The unit described in the Petition reads as follows: "Included: Sanitation-drivers and loaders, Mechanics (masters), Garage attendants, laborers, truck drivers, heavy equipment operators, water meter repairmen and readers, park attendants (all hourly employees included in present contract). Excluded: Supervisors, annual salaried employees, elected officials, and clericals."

to December 31, 1974.^{2/} On November 6, 1974 the Teamsters filed a statement amending the Petition by deleting certain titles^{3/} currently included in separately certified units represented by AFSCME^{4/}, in order that the Petition might relate to the unit covered by the aforementioned collective negotiations agreement between the Town and AFSCME. 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 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 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

^{2/} The recognition clause sets forth the following unit definition: "All hourly paid employees in the Department of Public Works consisting of hourly refuse laborers, hourly refuse chauffeurs, hourly street and sewer workers, hourly shop workers, hourly traffic workers, junior water distribution mechanics, senior water distribution mechanics, station operators, custodian operators and maintenance mechanics."

^{3/} The titles in question are those described in the Petition as "water meter repairmen and readers" and "park attendants". See footnote 1, supra.

^{4/} On May 31, 1974 AFSCME was certified in Docket No. RO-794 as exclusive representative of a stipulated unit of certain Town employees including, among others, "meter repairmen" and "meter setter". On June 18, 1974 AFSCME was certified in Docket No. RO-795 as exclusive representative of a stipulated unit of certain Town employees including, among others, "recreation maintenance" employees. Elections had been conducted in both RO-794 and RO-795 on May 23, 1974, pursuant to separate Agreements for Consent Election.

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 Town of Montclair is a public employer within the meaning of the Act and is subject to its provisions.

3. Teamsters Local 945, I.B.T., and Council 52, A.F.S. C.M.E., AFL-CIO, are employee representatives within the meaning of the Act and are subject to its provisions.

4. Presented with concurrent claims of majority representative status by the Teamsters and AFSCME, the Town has indicated that it will await the Commission's determination prior to engaging in collective negotiations with respect to the employees involved. Prior to the amendment of the Petition, AFSCME indicated that it will not consent to an election. AFSCME has not subsequently proffered a contrary position. Accordingly a question concerning the representation of public employees exists and this matter is properly before the undersigned for determination.

5. AFSCME contends that the Petition should be dismissed for two reasons. First, it is argued that the original Petition is barred by virtue of the inclusion of certain employees represented by AFSCME as a result of representation elections conducted on May 23, 1974 and certifications issued shortly thereafter. See footnote 4, supra. See also Rule Section 19:11-1.15(b) barring petitions filed within 12 months after the issuance of a certification (the so-called "certification bar" rule).^{5/}

^{5/} AFSCME incorrectly cites the "election bar" rule contained in Rule Section 19:11-1.15(a) as the basis for its first contention. However the election bar rule only pertains to situations where there is no recognized or certified majority representative and a valid election was conducted within the preceding 12 months.

Secondly, AFSCME maintains that even if the employees affected by the certification bar rule were effectively deleted by the Teamsters' amendment, the amendment was filed after the "open" period of the contract bar rule. Rule Section 19:11-1.15(c)(2) provides in pertinent part that in a case involving municipal employees, "[u]nder 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...filed not less than 90 days and not more than 120 days before the expiration or renewal date of such agreement." The open period in the instant matter is thus between 90 and 120 days prior to December 31, 1974. The essence of AFSCME's second argument, therefore, is that although the original "tainted" petition may have been timely filed on September 23, 1974, the "curing" amendment filed on November 6, 1974 was untimely and the Petition must therefore be dismissed.

The Town has expressed no position with respect to AFSCME's contentions. The Teamsters argue that the amended Petition is timely, as it refers to titles that were included in the original Petition, which itself was timely.

As no party has argued against the appropriateness of the unit sought in the amended Petition, the sole issue to be determined relates to the question of the timeliness of the amended Petition. As this is a question of first impression before this agency, the undersigned has afforded the parties an additional opportunity to submit supplemental evidence and/or statements of

position relating thereto. Both AFSCME and the Teamsters have responded, essentially repeating their earlier contentions. The undersigned concludes that the amended Petition is timely, and that an election should be directed in the appropriate unit. The original Petition was timely filed, and put the Town and AFSCME on notice of the employees sought to be represented. By subsequently contracting the unit sought to be represented by amending the Petition, the Teamsters cannot be said to have surprised or prejudiced either the Town or AFSCME. This was not an attempt to enlarge the unit sought, in which case a different result might obtain. Under the circumstances presented, the filing date of the Teamsters' original Petition controls with respect to the application of the contract bar rule. For this reason it is unnecessary to pass upon AFSCME's certification bar argument.^{6/}

6. The undersigned directs that a secret-ballot election be conducted in the unit described in the amended Petition, excluding managerial executives, supervisors, confidential employees, professional employees, craft employees, and policemen within the meaning of the Act. 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

^{6/} Without passing upon it, the undersigned observes that the original Petition might very well have been processed, even absent its subsequent amendment. The Teamsters clearly indicated on the face of the Petition that the unit sought amounted to "all hourly employees included in present contract", referring to the existing contract between the Town and AFSCME. With such an expression of intent, it is not unreasonable to hypothesize that the processing of the original Petition may have culminated in a result similar to that set forth herein.

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.

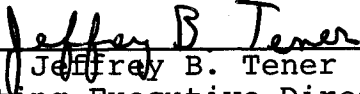
Pursuant to Rule Section 19:11-2.7 the public employer is directed to file with the undersigned an election eligibility list, consisting of an alphabetical listing of the names of all eligible voters together with their last known mailing addresses and job titles. Such list must be received by the undersigned no later than ten (10) days prior to the date of the election. The undersigned shall make the eligibility list immediately available to all parties to the election. Failure to comply with the foregoing shall be grounds for setting aside the election upon the filing of proper post-election objections pursuant to the Commission's Rules.

Those eligible to vote shall vote on whether or not they desire to be represented for the purpose of collective negotiations by Teamsters Local 945, I.B.T.; Council 52, A.F.S.C.M.E., AFL-CIO; or Neither.

The majority representative shall be determined by a majority of the valid votes cast. The election directed herein

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

BY ORDER OF THE EXECUTIVE DIRECTOR



Jeffrey B. Tener
Acting Executive Director

DATED: Trenton, New Jersey
January 7, 1975