

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

In the Matter of

CITY OF ATLANTIC CITY,

Public Employer,

-and-

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFERS, WAREHOUSEMEN
AND HELPERS OF AMERICA, Local 331,

DOCKET NO. RO-82-45

Petitioner,

-and-

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
AFL-CIO, LOCAL 2303,

Intervenor.

SYNOPSIS

The Director of Representation dismisses a representation petition seeking to represent blue collar employees of the City. The Petition has not been accompanied by an adequate showing of interest.

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Appearances:

For the Public Employer
John Miraglia, Consultant

For the Petitioner
Howard Casper, attorney

For the Intervenor
Sterns, Herbert & Weinroth, attorneys
(John J. Donnelly of counsel)

DECISION

On September 23, 1981, a Petition for Certification of Public Employee Representative was docketed with the Public Employment Relations Commission (the "Commission") by the International Brotherhood of Teamsters, Chauffers, Warehousemen and Helpers of America, Local 331 ("Local 331") with respect to a negotiations unit described as including "all employees in the

Department of Public Works" employed by the City of Atlantic City (the "City"). On the Petition, Local 331 claimed that there were approximately 200 employees in the proposed unit. Local 331 stated that the Petition was supported by 30% or more of the employees in the described unit, and submitted a showing of interest, as required by N.J.A.C. 19:11-1.2(a)(8) and as defined at N.J.A.C. 19:10-1.1. Additionally, Local 331 stated that the American Federation of State, County and Municipal Employees, AFL-CIO ("AFSCME") was the incumbent representative. Having preliminarily reviewed the showing of interest and it appearing that the showing of interest totaled at least 30% of the approximate number of unit employees, as claimed by Local 331, the undersigned commenced the normal processing of this matter.

On September 24, 1981, the undersigned advised the City and AFSCME of the filing of the Petition. The City was requested to submit an alphabetized list of employees within five days. All parties were advised that a conference with a Commission staff agent would be convened October 8, 1981. The conference was postponed, and rescheduled for October 14, 1981.

At the conference of October 14, 1981, the Commission was formally advised that the unit represented by AFSCME Local 2303 was not confined to public works employees, but included blue collar employees in four other departments. Local 331 did not dispute this assertion; rather, Local 331 asserted that it intended the unit description of its Petition to be coextensive with the unit represented by AFSCME Local 2303.

On the date of the conference, the City presented the Commission with a list of all employees in the AFSCME unit. Based upon this list, which numbered in excess of 300 employees, Local 331 was advised that its showing of interest was substantially insufficient to raise a valid question concerning representation among the employees in the AFSCME unit. Local 331 thereafter presented an additional showing of interest on October 14 and October 15, respectively. If accepted, the combined additional showing would support the filing of a Petition for the unit represented by AFSCME.

In a letter received October 14, 1981, Local 331, through its attorney, formally requested the opportunity to correct the definition of the unit contained in the Petition. Local 331 stated that it always intended to petition for the unit represented by AFSCME and that the unit definition contained in the Petition was a "semantic" error. The attorney for Local 331 stated that he drafted the Petition as counsel for Local 331 and urged that Local 331 should not "be penalized for what is in essence a clerical error on my part."

Assuming for the present purposes that Local 331 did intend to petition for the larger unit, ^{1/} and in view of Local 331's insistence that its Petition be considered only as a Petition for the larger unit, the issue before the undersigned is whether the Petition has been accompanied by a sufficient showing of interest. The "window" period for the filing of a petition for

^{1/} This assumption does not constitute a determination by the undersigned that Local 331, in fact, intended to petition for the entire blue collar unit.

the AFSCME unit closed on October 1, 1981, inasmuch as AFSCME's existing contract with the City is effective as of January 1, 1980 until December 31, 1981. ^{2/} N.J.A.C. 19:11-2.8(c)(2). Accordingly, assuming the stated intent of Local 331, issue before the undersigned is whether Local 331 should be permitted to present additional showing of interest during the "insulated" period to perfect the filing of its Petition.

Under Commission policy a petition is docketed on the date of receipt but is not considered as validly filed until the date that a 30% showing of interest is received in support of the Petition. Further, the Commission adheres to a rigid application of the contract bar period. Both the Petition and its supporting showing of interest must be presented to the Commission during the "window" period. Accordingly, a party requesting the relaxation of this Commission policy to permit a non-timely filing of its showing of interest would be required to demonstrate specifically the extreme circumstances which prevented it from submitting the requisite showing of interest during the timely period.

In correspondence to the undersigned received October 19, 1981, Local 331 clarified its October 14, 1981 submission, supra. Local 331 asserts, in part:

^{2/} The Commission is guided by the National Labor Relations Board's interpretation of contract expiration dates in applying the contract bar rules. The NLRB defines the contract expiration date as the last effective date of the contract. A contract "to" or "until" a date does not include that date and the last effective date is the preceding day. Borman Investment Co. v. Local 93, 97 LRRM 2309 (W.D. Mo. 1977), Hemisphere Steel Products, Inc., 131 NLRB No. 13, 47 LRRM 1595 (1961), Williams Laundry Co., 97 NLRB No. 144, 29 LRRM 1207 (1952).

Unfortunately, at the time of the drafting of the Representation Petition, Local 331 was under the mistaken belief that the Department of Public Works included all the Blue Collar employees and further believed that said unit was comprised of approximately 200 employees.

This mistaken belief accounts for the designation on the petition of approximately 200 employees, and also accounts for the submission of less than the required 30% showing of the unit of 326 as set forth by the employer.

Further, in an attached affidavit, Local 331's Director of Organization, states:

The number of cards I submitted was based on my erroneous belief that the unit was composed of 200 employees.

The burden of ascertaining the appropriate unit and the number of employees contained in the unit is carried by the Petitioner.

Commission records indicate that Local 331 is not a newcomer to Atlantic City. Local 331 is the certified representative of the City's white collar employees. In addition, in 1977, Local 331, by the same attorney, filed a Petition (Docket No. RO-78-56) for "All employees presently represented by AFSCME known as 'Blue Collar Workers,'" and estimated the size of the unit as 450 employees.

It appears to the undersigned from the above that Local 331 in its current Petition substantially underestimated the size of the AFSCME unit by 63%. ^{3/} No cogent reason has been provided to the undersigned for Local 331's "mistaken belief" as to the unit definition or "erroneous belief" as to the size of the unit. Most important, it appears that Local 331 did not, prior to its

3/ Local 331 estimated the size of the unit at 200. In actuality, it consists of 326 employees.

Petition, proceed with the reasonable diligence required of petitioners to ascertain the definitional scope and size of the petitioned-for unit. In this regard, Local 331's "mistaken belief" and "erroneous belief" have not been attributed to any reason other than its own organizational laxity. These factors militate against a favorable disposition of its request to relax the filing rules.

Finally, the undersigned has reviewed Local 331's additional claim that had the City responded promptly to the Commission with a list of unit employees, Local 331 would have had the opportunity to forward additional cards within the "window" period.

Initially, the undersigned notes that the employer's list of employees is requested by the Commission as a means of verifying the accuracy of the petitioner's estimated unit size and the validity of the petitioner's showing of interest designations. If the employer's list is presented in sufficient time to allow for a showing of interest verification before the close of the "window" period, this determination, in particular circumstances, may provide an opportunity for a petitioner to resubmit a timely petition before the close of the "window" period. However, a petitioner filing a petition near the end of the "window" period which either underestimates the size of the unit or contains an inadequate number of valid cards runs the risk that the normal processing of the petition will not be completed in sufficient time for it to have an opportunity to cure the petition's deficiencies. In the instant matter, Local 331's Petition was not

received by the Commission until September 23. The Commission, after verifying the adequacy of the showing of interest against the approximate size of the unit as claimed by the Petitioner, requested the City's list on September 24. The City was provided five days, plus three days for service under Commission rules, to respond. Thus, at the earliest calculation, the City's list was not due until the close of business October 2, 1981. Accordingly, the "window" period would have expired before Local 331 could possibly have had the opportunity to remedy its otherwise invalid Petition.

Accordingly, for the above reasons, the undersigned cannot approve Local 331's request for relaxation of the "window" period for the purpose of allowing consideration of a showing of interest which was submitted fourteen days after the close of the "window" period. The Petition was not accompanied by a 30% showing of interest as required by the Commission's rules, and therefore, cannot be considered validly filed. Local 331's Petition is hereby dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: October 30, 1981
Trenton, New Jersey